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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PATRICK MCMORROW, *et al.*,
Plaintiffs,
v.
MONDELEZ INTERNATIONAL, INC.,
Defendant.

Case No. 17-cv-02327-BAS-JLB

ORDER:

**(1) GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT; AND**

**(2) SETTING FINAL APPROVAL
HEARING FOR FEBRUARY 28,
2022, AT 3:00 p.m.**

(ECF No. 196)

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Plaintiffs Patrick McMorrow, Marco Ohli, and Melody DiGregorio brought this class action against Defendant Mondelez International, Inc., alleging that Mondelz labeled the belVita breakfast biscuits as “nutritious,” despite the biscuits’ high added sugar content. (Compl., ECF No. 1.) Plaintiffs now move unopposed, pursuant to Federal Rule of Civil Procedure 23(e), for preliminary approval of a settlement reached between the parties and for certification of a settlement class. (Mot., ECF No. 196.) The Court finds this motion

1 suitable for determination on the papers submitted and without oral argument. *See* Fed. R.
2 Civ. P. 78(b); Civ. L.R. 7.1(d)(1). Having read and considered the Settlement Agreement,
3 Plaintiffs’ Motion, and the arguments of counsel, the Court **GRANTS** Plaintiffs’ motion
4 for preliminary approval of class action settlement.

5 The Court hereby finds and orders as follows:

6 1. Settlement Terms. All capitalized terms herein have the same meanings ascribed
7 to them in the Settlement Agreement (ECF No. 196-2).

8 2. Jurisdiction. The Court has jurisdiction over the subject matter of the action and
9 over all parties to the action, including all members of the Settlement Class.

10 3. Preliminary Approval of Proposed Settlement Agreement. The Court finds that,
11 subject to the Final Approval hearing, the proposed Settlement Agreement is fair,
12 reasonable, adequate, and within the range of possible approval considering the possible
13 damages at issue and defenses to overcome. The Court also finds that the Settlement
14 Agreement: (a) is the result of serious, informed, non-collusive, arms-length negotiations,
15 involving experienced counsel familiar with the legal and factual issues of this case and
16 made with the assistance and mediation services, Hon. Charles W. McCoy, Jr. (Ret.); and
17 (b) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23,
18 and the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715. Therefore, the Court
19 grants preliminary approval of the Settlement.

20 4. Class Certification for Settlement Purposes Only. The Court conditionally
21 certifies, for settlement purposes only, a Settlement Class defined as all persons who,
22 between November 16, 2013, and November 17, 2021 (the “Class Period”), purchased in
23 the United States, for household use and not for resale or distribution, any of the Class
24 Products which include Mondelez’s belVita Crunchy Biscuits, Soft Baked Biscuits, Bites,
25 and Sandwiches Breakfast products (the “Class Products”).

26 5. The Court finds, for settlement purposes only, that class certification under
27 Federal Rule of Civil Procedure 23(b)(3) is appropriate in the settlement context because
28 (a) the Settlement Class Members are so numerous that joinder of all Settlement Class

1 Members is impracticable; (b) there are questions of law and fact common to the Settlement
2 Class which predominate over any individual questions; (c) the claims of the Plaintiffs and
3 proposed Class Representatives are typical of the claims of the Settlement Class; (d) the
4 Plaintiffs and proposed Class Representatives and their counsel will fairly and adequately
5 represent and protect the interests of the Settlement Class Members; (e) questions of law
6 or fact common to the Settlement Class Members predominate over any questions affecting
7 only individual Settlement Class Members; and (f) a class action is superior to other
8 available methods for the fair and efficient adjudication of the controversy.

9 6. Class Representatives. The Court appoints Plaintiffs Patrick McMorrow, Marco
10 Ohlin, and Melody DiGregorio as Class Representatives.

11 7. Class Counsel. The Court appoints Fitzgerald Joseph LLP as Class Counsel.

12 8. Settlement Class Administrator. The Court hereby approves Postlethwaite &
13 Netterville (“P&N”) to act as Class Administrator. P&N shall be required to perform all
14 the duties of the Class Administrator as set forth in the Agreement and this Order.

15 9. Qualified Settlement Fund. P&N is authorized to establish the Settlement Fund
16 under 26 C.F.R. § 1.468B-1(c) and (e)(1), to act as the “administrator” of the Settlement
17 Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator
18 in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal
19 Revenue Code of 1986. All costs incurred by the Class Administrator operating as
20 administrator of the Settlement Fund shall be construed as costs of Claims Administration
21 and shall be borne solely by the Settlement Fund. Interest on the Settlement Fund shall
22 inure to the benefit of the Class.

23 10. Class Notice. The Court approves the form and content of the Class Notice in
24 the long form attached to the Settlement Agreement as Exhibit 1,¹ the short form attached
25 to the Settlement Agreement as Exhibit 2,² and the other forms of notice submitted with
26 Plaintiffs’ Motion for Preliminary Approval. The Court finds that dissemination of the
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28 ¹ (ECF No. 196-2 at 21–31)

² (ECF No. 196-2 at 32–33)

1 Class Notice as proposed in the Settlement Agreement and in P&N's Notice Plan as set
2 forth in the Declaration of Brandon Schwartz³ meets the requirements of Federal Rule of
3 Civil Procedure 23(c)(2), and due process, and further constitutes the best notice
4 practicable under the circumstances. Accordingly, the Court hereby approves the Notice
5 Plan.

6 11. Objection and Exclusion Deadline. Settlement Class Members who wish either
7 to object to the Settlement or to exclude themselves from the Settlement must do so by the
8 Objection Deadline and Exclusion Deadline of January 19, 2022. Settlement Class
9 Members may not both object to and exclude themselves from the Settlement. If a
10 Settlement Class Member submits both a Request for Exclusion and an Objection, the
11 Request for Exclusion will be controlling.

12 12. Exclusion from the Settlement Class. To submit a Request for Exclusion,
13 Settlement Class Members must follow the directions in the Notice and submit online at
14 the Settlement Website by the Exclusion Deadline, or send a compliant request to the Class
15 Administrator at the address designated in the Class Notice, postmarked by the Exclusion
16 Deadline. No Request for Exclusion may be made on behalf of a group of Settlement Class
17 Members.

18 13. All Settlement Class Members who submit a timely, valid Request for Exclusion
19 will be excluded from the Settlement and will not be bound by the terms of the Settlement
20 Agreement and any determinations and judgments concerning it. All Settlement Class
21 Members who do not submit a valid Request for Exclusion by January 19, 2022, in
22 accordance with the terms set forth in the Agreement, will be bound by all determinations
23 and judgments concerning the Agreement.

24 14. Objections to the Settlement. To object to the Settlement, Settlement Class
25 Members should follow the directions in the Notice and file with the Court or mail to the
26 Class Administrator a written Objection by the Objection Deadline. In the written
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28 ³ (ECF No. 196-7)

1 Objection, the Settlement Class Member should include (i) a caption or title that clearly
2 identifies the Action and that the document is an objection, (ii) the Settlement Class
3 Member's name, current address, and telephone number, or—if objecting through
4 counsel—his or her lawyer's name, address, and telephone number, (iii) the Class
5 Product(s) the Settlement Class Member bought during the Class Period, (iv) a clear and
6 concise statement of the Class Member's objection, as well as any facts and law supporting
7 the objection, (v) the objector's signature, and (vi) the signature of the objector's counsel,
8 if any. Upon the Court's Order at the parties' request, the Parties will have the right to
9 obtain document discovery from and take depositions of any objecting Settlement Class
10 Member on topics relevant to the Objection.

11 15. If a Settlement Class Member does not submit a written Objection to the
12 Settlement or to Class Counsel's application for attorneys' fees and costs or the Service
13 Awards in accordance with the deadline and procedure set forth in the Notice and this
14 Order, but the Settlement Class Member wishes to be appear and be heard at the Final
15 Approval Hearing, the Settlement Class Member may do so provided the Objector satisfies
16 the requirements of Federal Rule of Civil Procedure 23(e)(5)(A) at the Final Approval
17 Hearing.

18 16. Objecting Settlement Class Members may appear at the Final Approval Hearing
19 and be heard. Such Class Members are requested, but not required, in advance of the Final
20 Approval Hearing, to file with the Court or mail to the Class Administrator a Notice of
21 Intent to Appear.

22 17. All Members of the Settlement Class, except those who submit timely Requests
23 for Exclusion, will be bound by all determinations and judgments regarding the Settlement,
24 whether favorable or unfavorable to the Settlement Class.

25 18. Submission of Claims. To receive a Cash Award, Settlement Class Members
26 must follow the directions in the Notice and file a claim with the Class Administrator by
27 the Claims Deadline of January 19, 2022. Settlement Class Members who do not submit a
28 claim will not receive a Cash Award, but will be bound by the Settlement.

1 19. Schedule of Future Events. The Court adopts the following schedule (with Day
2 “0” being the date of this Order):

Event	Day	Approximate Weeks After Preliminary Approval
Date of Preliminary Approval Order	0	-
Deadline to commence 63-day notice period	21	3 weeks
Deadline for Plaintiffs to file Motion for Attorney’s Fees, Costs, and Incentive Awards	49	7 weeks
Notice Completion date, and deadline to make a claim, opt out, and object	63	9 weeks
Deadline for Plaintiffs to file Motion for Final Approval	84	12 weeks
Final Approval Hearing	103	14 weeks

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16 20. Final Approval Hearing. A Final Approval Hearing is scheduled for **February**
17 **28, 2022, at 3:00 p.m.**, in Courtroom 4B, for the Court to determine whether the proposed
18 settlement of the Action on the terms and conditions provided for in the Settlement
19 Agreement is fair, reasonable, and adequate to the Settlement Class and should be finally
20 approved by the Court; whether a Judgment should be entered; and to determine any
21 amount of fees, costs, and expenses that should be awarded to Class Counsel and the
22 amount of any service awards to Plaintiffs. The Court reserves the right to adjourn the date
23 of the Final Approval Hearing without further notice to the members of the Settlement
24 Class, and retains jurisdiction to consider all further applications arising out of or connected
25 with the proposed Settlement. The Court may approve the Settlement, with such
26 modifications as may be agreed to by the settling Parties, if appropriate, without further
27 notice to the Settlement Class.
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1 21. Stay of Proceedings. All proceedings in this action are stayed until further order
2 of this Court, except as may be necessary to implement the Settlement or comply with the
3 terms of the Settlement Agreement.

4 22. Pending the final determination of whether the Settlement should be approved,
5 the Settlement Class Representatives and all Settlement Class Members are hereby stayed
6 and enjoined from commencing, pursuing, maintaining, enforcing, or prosecuting, either
7 directly or indirectly, any Released Claims in any judicial, administrative, arbitral, or other
8 forum, against any of the Released Parties. Such injunction will remain in force until Final
9 Approval or until such time as the Parties notify the Court that the Settlement has been
10 terminated. Nothing herein will prevent any Settlement Class Member, or any person
11 actually or purportedly acting on behalf of any Settlement Class Member(s), from taking
12 any actions to stay or dismiss any Released Claim(s). This injunction is necessary to
13 protect and effectuate the Agreement, this Preliminary Approval Order, and the Court's
14 flexibility and authority to effectuate the Agreement and to enter Judgment when
15 appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments.
16 This injunction does not apply to any person who files a Request for Exclusion.

17 23. If the Settlement is not approved or consummated for any reason whatsoever,
18 the Settlement and all proceedings in connection with the Settlement will be without
19 prejudice to the right of Defendant or the Class Representatives to assert any right or
20 position that could have been asserted if the Agreement had never been reached or proposed
21 to the Court, except insofar as the Agreement expressly provides to the contrary. In such
22 an event, the certification of the Settlement Class will be deemed vacated. The certification
23 of the Settlement Class for settlement purposes will not be considered as a factor in
24 connection with any subsequent class certification issues.


25 24. No Admission of Liability. By entering this Order, the Court does not make any
26 determination as to the merits of this case. Preliminary approval of the Settlement
27 Agreement is not a finding or admission of liability by Defendant. Furthermore, the
28 Agreement and any and all negotiations, documents, and discussions associated with it will

1 not be deemed or construed to be an admission or evidence of any violation of any statute,
2 law, rule, regulation, or principle of common law or equity, or of any liability or
3 wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to the
4 Agreement will not be discoverable or used, directly or indirectly, in any way, whether in
5 this Action or in any other action or proceeding, except for purposes of demonstrating,
6 describing, implementing, or enforcing the terms and conditions of the Agreement, this
7 Order, the Final Approval Order, and the Judgment.

8 25. Retention of Jurisdiction. The Court retains jurisdiction over the Action to
9 consider all further matters arising out of or connected with the Settlement Agreement and
10 the settlement described therein.

11 **IT IS SO ORDERED.**

12
13 **DATED: November 17, 2021**


Hon. Cynthia Bashant
United States District Judge