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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 29 2021

BY 
JESSICA MORALES, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

KEVIN MALEK, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

PRESSED JUICERY, INC.,

Defendant.

Case No. CIVDS2017665

**~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT,
PROVISIONALLY CERTIFYING THE
SETTLEMENT CLASS, AND
DIRECTING DISSEMINATION OF
CLASS NOTICE**

Judge: Honorable David Cohn

1 WHEREAS, Plaintiff Kevin Malek (“Plaintiff”), individually and on behalf of all members
2 of the Settlement Class, by and through Class Counsel, and Defendant Pressed Juicery, Inc.
3 (“Defendant”), by and through its counsel of record in this Litigation, jointly entered into a
4 settlement of the claims asserted in the Litigation, the terms of which are set forth in a Settlement
5 Agreement and Release, after arm’s-length settlement discussions;

6 WHEREAS, the Settlement Agreement is subject to review under Cal. Code Civ. Pro.
7 § 382 and C.R.C. 3.769;

8 WHEREAS, on January 28, 2021, Plaintiff filed a Motion for entry of an Order Granting
9 Preliminary Approval of the Class Action Settlement, Provisionally Certifying the Settlement
10 Class, and Directing Dissemination of Class Notice (the “Motion for Preliminary Approval”),
11 which Defendant did not oppose;

12 WHEREAS, the Court has read and considered the Settlement Agreement and the exhibits
13 annexed thereto; the Motion for Preliminary Approval; the proposed Notice Plan; the proposed
14 form of the Class Notice and the Publication Notice; the proposed Claims Process; the proposed
15 form of the Claim Form; the proposed form of the Final Judgment and Order Approving
16 Settlement; and submissions relating to the foregoing; and

17 WHEREAS, the Court, being fully advised of the premises and good cause appearing
18 therefore, the Court enters its order and, subject to final determination by the Court as to the
19 fairness, adequacy and reasonableness of the Settlement Agreement, finds and orders as follows;

20 IT IS HEREBY ORDERED THAT:

21 1. The Motion for Preliminary Approval of Class Action Settlement, Provisionally
22 Certifying Settlement Class, and Directing Dissemination of Class Notice is GRANTED, pursuant
23 to C.R.C. 3.769.

24 2. The Settlement Agreement, which the Court finds was negotiated at arms-length,
25 is preliminarily approved as fair, reasonable, and adequate for settlement purposes.

26 3. **Defined Terms:** This Court adopts all defined terms set forth in the Settlement
27 Agreement, including but not limited to all defined terms set out in Section I of the Settlement

1 Agreement, for purposes of this Preliminary Approval Order. Additionally, the Court supplements
2 the foregoing defined terms with all additional defined terms set forth herein.

3 4. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Litigation
4 and over all settling Parties, including the Class Members.

5 5. **Preliminary Approval of Settlement:** The Court hereby preliminarily approves
6 the terms of the Settlement Agreement, subject to further consideration at the Final Approval
7 Hearing, as provided below. The Court has conducted a preliminary assessment of the fairness,
8 reasonableness, and adequacy of the Settlement, and the Court hereby concludes that the proposed
9 Settlement is sufficiently within the range of reasonableness to warrant conditional certification of
10 both the Settlement Class and the California Settlement Class, the scheduling of the Final Approval
11 Hearing, and the implementation of the Notice Plan, each as provided for in this Preliminary
12 Approval Order.

13 6. **Conditional Certification for Settlement Purposes and Appointment of Class**
14 **Representatives and Class Counsel:** The Court conditionally certifies, for settlement purposes
15 the following Settlement Class:

16 **The Settlement Class.** All Persons who purchased any of the Covered Products in
17 the United States, its territories, or at any United States military facility or exchange
18 during the Class Period. Excluded from the Settlement Class are all persons who
19 validly opt out of the Settlement Class in a timely manner; counsel of record (and
20 their respective law firms) for the Parties; Defendant and any of its parents,
21 affiliates, or subsidiaries and all of its respective employees, officers, and directors;
22 the presiding judge in the Action, or judicial officer presiding over the matter, and
23 all of their immediate families and judicial staff; and any Person that entered into a
24 release with Defendant prior to the Effective Date concerning any Covered
25 Products.

26 The Court hereby conditionally certifies Kevin Malek as representative of the Settlement
27 Class as defined above (the "Class Representative").

1 The Court hereby appoints Joshua Nassir and Benjamin Heikali of Faruqi & Faruqi, LLP,
2 as Class Counsel for the Settlement Class.

3 This conditional certification of the Settlement Class, the Class Representative, and this
4 appointment of Class Counsel are solely for purposes of effectuating the proposed Settlement (and
5 for no other purpose and with no other effect upon this or any other action, including no effect
6 upon this action should the settlement not ultimately be approved).

7 The Settlement Class is conditionally certified as to the claim(s) pled on the Class' behalf
8 in the Complaint. Based on the Court's review of the unopposed Motion for Preliminary Approval
9 and its supporting materials, the Court conditionally finds that the proposed Settlement Class
10 satisfies Cal. Code Civ. Pro. § 382, in that:

11 a. The Settlement Class is readily defined by objective and precise
12 characteristics in such a way that self-identification by Class Members is possible. The Settlement
13 Class consists of at least thousands of individuals. The Settlement Class is so numerous that joinder
14 of all persons who fall within their respective class definitions is impracticable. Accordingly, the
15 Settlement Class is ascertainable.

16 b. Common legal and factual questions predominate over individual ones.
17 Members of the Settlement Class share common legal and factual issues related to i) whether the
18 Covered Products' labeling and marketing is misleading to the reasonable consumer; and ii)
19 whether Defendant was unjustly enriched by the sale of the Covered Products.

20 c. The claims of the Class Representative are typical of the claims of the
21 Settlement Class.

22 d. Certification of the Settlement Class by the Court is superior to any other
23 available method for the fair and efficient adjudication of the controversy herein on an individual
24 basis.

25 e. The Class Representative will fairly and adequately protect the interests of
26 the Settlement Class and Class Counsel is qualified and competent to represent the Settlement
27 Class.

1 f. Accordingly, a well-defined community of interests exist in this Litigation.

2 7. **Final Approval Hearing:** Pursuant to C.R.C. 3.769(e), a Final Approval Hearing
3 shall take place before the undersigned, the Honorable David Cohn, at 10:00.m. on October 8,
4 2021 or _____, 2021 (no later than 30 days after the filing of the Final Approval
5 Motion, and no sooner than 60 days following the Claims Deadline), to determine:

6 a. whether the Court should finally certify the Settlement Class and whether
7 the Class Representative and Class Counsel have adequately represented the Settlement Class;

8 b. whether the Court should finally approve the proposed Settlement, on the
9 terms and conditions for which the Settlement Agreement provides, as fair, reasonable, and
10 adequate;

11 c. whether the Court should enter judgment finally releasing the Released
12 Claims of all members of the Settlement Class in this Action against the Released Parties pursuant
13 to the Settlement Agreement and a final judgment;

14 d. whether the Court should approve the application that Class Counsel will
15 submit for attorneys' fees, costs, expenses, and incentive awards for the Class Representative, as
16 provided for in the Settlement Agreement; and

17 e. such other matters as the Court may deem necessary or appropriate.

18 The Court may adjourn the Final Approval Hearing and later reconvene such hearing
19 without further notice to the Class Members.

20 If the Settlement Agreement is approved at the Final Approval Hearing, the Court shall
21 enter a Final Order Approving the Settlement Agreement and Judgment ("Final Order"). The Final
22 Order shall be fully binding with respect to all Class Members who did not request exclusion in
23 accordance with the terms of the Settlement Agreement.

24 8. **Nonmaterial Modifications to Settlement Agreement Allowed:** The Parties may
25 further modify the Settlement Agreement before the Final Approval Hearing so long as such
26 modifications do not materially change the terms of the Settlement. The Court may approve the
27 Settlement Agreement with such modifications as may be agreed to by the Parties, if appropriate,

1 without further notice to the Class Members.

2 a. **Class Notice:** The proposed Class Notice and Publication Notice, and the
3 notice methodology described in the Settlement Agreement and in the Notice Plan are hereby
4 approved. The Court finds that the manner and content of the Class Notice specified in Paragraph
5 V of the Settlement Agreement : (a) will constitute the best practicable notice; (b) are reasonably
6 calculated, under the circumstances, to apprise the Class Members of the pendency of the Action,
7 the terms of the Settlement, and their rights under the Settlement, including but not limited to their
8 rights to object to or exclude themselves from the Settlement and other rights under the terms of
9 the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to
10 all Class Members and other persons entitled to receive notice; and (d) meet all applicable
11 requirements of law, including but not limited to C.R.C. 3.766, and the Due Process Clause of the
12 United States Constitution. The Court further finds that all of the notices are written in simple
13 terminology, are readily understandable by the Class Members, are materially consistent with the
14 Federal Judicial Center’s illustrative class action notices, and fairly apprise the Class Members of
15 the terms of the proposed settlement agreement and of the options open to the dissenting Class
16 Members.

17 The Court approves the Parties’ joint selection of Heffler Claims Group LLC to administer
18 the Notice Plan pursuant to the terms of the Settlement Agreement. Class Notice shall begin to be
19 disseminated within 20 days of entry of this Order. As set forth in the Settlement Agreement,
20 Defendant shall pay the cost of the Notice Plan.

21 9. **Participation in Settlement:** The Court approves the Parties’ proposed Claim
22 Form. Any Class Member who wishes to participate in the Settlement shall complete a Claim
23 Form in accordance with the instructions contained therein and submit it to the Class Action
24 Settlement Administrator no later than August 9, 2021 or _____, 2021 (no later than
25 180 days after the entry of the Preliminary Approval Order), which will be specifically identified
26 in the Claim Form. Such deadline may be further extended without notice to the Class Members
27 by written agreement of the Parties.

1 The Class Action Settlement Administrator shall have the authority to accept or reject
2 claims in accordance with the Settlement. Any Class Member whose claim is rejected by the Class
3 Action Settlement Administrator shall have the right to petition for review of the rejection.

4 Any Class Member may enter an appearance in the Action, at his or her own expense,
5 individually or through counsel who is qualified to appear in the jurisdiction. All Class Members
6 who do not enter an appearance will be represented by Class Counsel.

7 10. **Ability of Settlement Class Members to Opt Out:** Any member of the Settlement
8 Class may request to be excluded from the Class. A Settlement Class Member who wishes to opt
9 out of the Class must do so in accordance with Paragraph VII.B of the Settlement Agreement.

10 11. **Right to Appear and Object:** Any Class Member who wishes to object to the
11 Proposed Settlement must do so in accordance with Paragraph VII.A of the Settlement Agreement.
12 Class Counsel and Defendant shall each have the right to respond to any objection.

13 12. **Termination of Settlement:** If the Settlement Class is not given final certification
14 or such final certification is reversed on appeal, the Settlement Agreement shall be null and void,
15 and the Parties shall revert to the position they were in prior to seeking approval for the Agreement,
16 without prejudice to any legal argument that any of the Parties to the Settlement Agreement might
17 have asserted but for the Settlement Agreement.

18 13. **Stay of Discovery and Other Litigation Activity:** All discovery and other
19 litigation activity in this Action is hereby stayed pending a decision on Final Approval of the
20 Settlement Agreement.

21 14. **Other Proceedings and Class Actions Enjoined:** Pending the Final Approval
22 Hearing and the issuance of the Final Judgment and Order in this Action, all members of the
23 Settlement Class and their legally authorized representatives are hereby preliminarily enjoined
24 from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class
25 members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or
26 administrative, regulatory, or other proceeding or order in any jurisdiction arising out of or relating
27 to the Covered Products or the facts and circumstances at issue in the Action.

1 Additionally, pending the Final Approval Hearing and issuance of the Final Judgment and
2 Order in this Action, all members of the Settlement Class and their legally authorized
3 representatives are hereby preliminary enjoined from filing, commencing, prosecuting, or
4 maintaining any other lawsuit as a class action (including by seeking to amend a pending complaint
5 to include class allegations, or by seeking class certification in a pending action in any jurisdiction),
6 on behalf of members of the Settlement Class, if such other class action is based on or relates to
7 the Covered Products or the facts and circumstances at issue in the Action.

8 15. **Schedule:** The Court sets the following schedule for the Final Approval Hearing
9 and the actions that must precede it:

10 a. The Final Approval Hearing will take place on October 8, 2021 or
11 ~~_____~~, 2021 at 10:00 m. in the courtroom of the Honorable David Cohn,
12 Department S26.

13 b. Plaintiff shall file his Motion for Final Approval of the Settlement by no
14 later than September 8, 2021 or ~~_____~~, 2021;

15 c. Plaintiff shall file his Petition for Attorneys' Fees, Costs, and Expenses, and
16 for Class Representative Incentive Awards no later than July 26, 2021 or ~~_____~~, 2021;

17 d. If the Defendant elects to oppose Plaintiff's Petition Attorneys' Fees, Costs,
18 and Expenses, and for Class Representative Incentive Awards, Defendant will file its Opposition
19 no later than per CCP days after Plaintiff files his Petition.

20 e. If Defendant opposes Plaintiff's Petition, Plaintiff may file a Reply in
21 support of his Attorneys' Fees, Costs, and Expenses, and for Class Representative Incentive
22 Awards no later than per CCP days after Defendant file its Opposition.

23 f. Class Members must exclude themselves, or opt out, from the Settlement
24 by no later than August 9, 2021 or ~~_____~~, 2021;

25 g. No later than, i.e., September 8, 2021 or ~~_____~~, 2021, the
26 Settlement Administrator shall file with the Court a declaration or affidavit that: (a) includes a list
27 of those persons who have opted out or excluded themselves from the Settlement; and (b) provides

1 details outlining the scope, methods, and results of the notice program.

2 h. Class Counsel and Defendant shall have the right to respond to any
3 objection.

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5 **IT IS SO ORDERED.**

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8 Date: 4/29/21



Honorable David Cohn
San Bernardino Superior Court Judge

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