

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

DACIA TRENTHAM,)
Individually and on behalf of all)
others similarly situated,)
)
Plaintiff,)
v.)
)
TASTE OF NATURE, INC.,)
)
Defendant.)

No. 18PH-CV00751

Judge William Earl Hickle

FILED
OCT 24 2018
SUE BROWN, CIRCUIT CLERK
PHELPS COUNTY, MO.

**FINAL APPROVAL OF THE SETTLEMENT AGREEMENT; FINAL JUDGMENT;
AWARD OF ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE
INCENTIVE AWARDS; AND ORDER OF DISMISSAL WITH PREJUDICE**

This cause was called in open Court on this 24th day of October, 2018 at 9:00 a.m. David L. Steelman and Scott A. Kamber appeared for Plaintiffs and Nicole Ozeran on behalf of Defendant. There was one objector in this matter who did not appear, nor did any other class members. The Court considered the Motion for Final Approval of Class Action Settlement, Final Judgment, Award of Attorneys' Fees, Costs, and Class Representative Incentive Awards and Order of Dismissal with Prejudice. The Court heard argument on behalf of Plaintiffs by David L. Steelman and Scott A. Kamber and Nicole Ozeran on behalf of Defendant.

WHEREAS, on June 18, 2018, this Court entered an Order Preliminarily Approving Class Settlement, Approving Class Notice, and Scheduling Fairness Hearing ("Preliminary Approval Order") that:

- a. Conditionally certified, for settlement purposes only, pursuant to Mo. R. Civ. P. 52.08, a class consisting of "All Persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all

Persons who purchased or acquired the Product for resale; (b) Taste of Nature and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely Opt-Out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and (e) the judge(s) to whom this Action is assigned and any members of their immediate families.”

- b. Appointed David L. Steelman and Stephen F. Gaunt of STEELMAN, GAUNT & HORSEFIELD, and Naomi B. Spector of KAMBERLAW LLP as counsel to the Settlement Class;
- c. Preliminarily approved the Settlement as fair, adequate and reasonable;
- d. Set a hearing to take place, before this Court (the “Final Approval Hearing”), upon notice to members of the Settlement Class, to determine whether the proposed settlement of the Action in accordance with the terms set forth in the Settlement Agreement should be approved as fair, adequate and reasonable to the Class and whether a Final Approval Order and Judgement should be entered;
- e. Approved the Claim Form and set the Claims Deadline;
- f. Designated Heffler Claims Administration (“Heffler”) as the Settlement Administrator and instructed Heffler to perform the following functions, as set forth in the Settlement Agreement:
 1. Process requests for exclusion from the Settlement in accordance with Section IX of the Settlement Agreement;
 2. Process objections to the Settlement in accordance with Section IX of the Settlement Agreement;

3. Process Claim Forms in accordance with Section V and VI of the Settlement Agreement;
 4. Before disseminating the Settlement Notice, establish the Settlement Website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement, including submission of claims; and
 5. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.
- g. Prescribed the method and period of time for providing notice to members of the Settlement Class of the certification of the Settlement Class and found that the distribution of Settlement Notice in accordance with Paragraph VIII of the Settlement Agreements meets the requirements of Mo. R. Civ. P. 52.08(b)(3) and (c)(2) and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto;
- h. Prescribed the method and period of time during which members of the Settlement Class may file objections to the Settlement and found that any Settlement Class Member who fails to serve timely and properly a written objection containing all of the information listed in items (a) through (j) of the Preliminary Approval Order and notice of whether he/she intends to appear at the Final Approval Hearing shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to appeal; and

- i. Prescribed the method and period of time during which members of the Settlement Class may file requests to be excluded (or “opt out”) from the Settlement Class and found that any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order and the Releases contemplated thereby.

WHEREAS, this Court finds that the papers are detailed and sufficient to rule on Plaintiff’s Motion for Final Approval of Class Action Settlement and Plaintiff’s Motion for Attorneys’ Fees, Costs, and Class Representative Incentive Awards (“Motions”); and

WHEREAS, this Court, having heard from Class Counsel on behalf of the Settlement Class, and from Defendant’s counsel, and having reviewed all other arguments and submissions presented by all interested persons and entities with respect to the Settlement and Plaintiff’s Motions; and

WHEREAS, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement, it is hereby

ORDERED, ADJUDGED, DECREED, AND FOUND THAT:

1. This case arises out of Plaintiff’s allegations that Defendant Taste of Nature, Inc. (“Defendant” or “Taste of Nature”) engaged in deceptive and unlawful conduct in packaging its “theater-box” candy Products in non-transparent, cardboard containers, which contain non-functional slack-fill. Plaintiff contends that Defendant’s misrepresentations give rise to claims for violation of the Missouri Merchandising Practices Act (“MMPA”) and unjust enrichment.

2. After extensive settlement negotiations, including formal mediation, the Parties agreed to settle this case.

3. The Settlement Agreement provides substantial and meaningful injunctive relief to the Settlement Class. Within sixty (60) calendar days after entry of the Final Approval Order, Taste of Nature will immediately evaluate the level of fill in the Products and will commence working on the design, fill-level, development and/or production of proposed modifications, fill-level and/or replacements for its existing packaging. In addition, within 180 days following issuance of a final approval order, Defendant shall include the following on the front of the Products: (a) a full-scale depiction of one piece of the Product (b) the phrase "actual size" adjacent to the visual depiction, and (c) the approximate number of pieces contained therein. This is intended to be consistent with California Assembly Bill No. 2632. To the extent that this legislation is not signed into law, Defendant may elect to either proceed with the above packaging modifications, or implement the following modifications on the same schedule set forth above: Defendant will modify its fill level quality control procedures and target fill levels to at least 50% for bag-in-a-box theater box Products. Fill levels will be measured from the top of the candy, with carton sides held rigid. Nothing in this provision shall prevent Defendant from making changes to its quality control procedures not inconsistent with the foregoing, or as necessary to comply with governmental or regulatory requirements.

4. The Settlement Agreement also provides substantial and meaningful monetary benefits to the Settlement Class without a cap on the gross potential payout. Taste of Nature has agreed to a two-tiered structure to provide relief to Class Members. Within sixty (60) days of the end of the Claim Period, Taste of Nature will pay or cause to be paid Valid Claims, as follows: (a) Settlement Class Members who do not have valid Proof of Purchase may recover \$0.25 per Product purchased for up to a maximum of four Units (\$1 per Household); or (b) Settlement Class Members who provide valid Proof of Purchase may recover \$0.25 per Product purchased for up to a

maximum of fifty Units (\$12.50 per Household). Defendant is also separately paying for all notice and administration costs.

5. The Settlement Agreement and Preliminary Approval Orders establish a Claims Period that continues through December 24, 2018.

6. The Settlement Class as provided in the Preliminary Approval Order is unconditionally certified pursuant to Mo. R. Civ. P. 52.08(a), (b)(2) and (b)(3). The prerequisites for a class action under Rule 52.08 have been satisfied in that: (a) the members of the Settlement Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiff are typical of the claims of the Settlement Class she seeks to represent; (d) Plaintiff has and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

7. For purposes of the injunctive relief specified in Section 5.1 of the Settlement Agreement, the prerequisites for a class action under Rule 52.08(b)(2) have been satisfied in that: (a) the number members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiff are typical of the claims of the Settlement Class she seeks to represent; (d) Plaintiff has and will fairly and adequately represent the interests of the Settlement Class; and (e) the Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole.

8. Plaintiff Trentham and each of Class Representatives Tsuchiyama, Martin, Willoughby, and Gillespi are appointed as Class Representatives of the Settlement Class.

9. The Court confirms the following as Class Counsel: David L. Steelman and Stephen F. Gaunt of Steelman, Gaunt & Horsefield; and Naomi B. Spector of KamberLaw, LLP.

10. The Settlement, as set forth in the Settlement Agreement, is in all respects fair, reasonable, and adequate, is in the best interests of the Settlement Class Members, and is approved in all respects in accordance with Rules 52.08(a), (b)(2) and (b)(3).

11. The Settlement was negotiated at arm's-length by experienced counsel who were fully informed of the facts and circumstances of the action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties engaged in extensive negotiations and formal mediation. Class Counsel and Defendant's Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

12. Notice to the members of the Settlement Class required by Mo. R. Civ. P. 52.08(b)(3) has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the members of the Settlement Class, and satisfied the requirements of the Missouri Rules of Civil Procedure, and all other applicable laws.

13. There was only one objection to the Settlement, which is meritless and frivolous. Mr. Patrick S. Sweeney lacks standing to object to the Settlement because he failed to establish that he is a member of the Settlement Class, pursuant to the requirements of the Preliminary Approval Order, Settlement Agreement and Claim Form for submitting an objection. Each of

the purported bases for Mr. Sweeney's objection are entirely without merit. Furthermore, no other objections were received to the Settlement and no Class Members opted out of the Settlement. This positive reaction by the Class demonstrates the strength of the Settlement.

14. Plaintiff and Defendant are directed to promptly consummate the Settlement in accordance with the Settlement Agreement and all of its terms.

15. The Settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of the Defendant, Plaintiff, Class Representatives, or any of the Settlement Class Members or Released Parties.

16. The Action is hereby dismissed, with prejudice, on the merits, as against the Plaintiff, Class Representatives, and all members of the Settlement Class, on the terms and conditions set forth in the Settlement Agreement, and without costs to any party except as provided herein and in the Settlement Agreement.

17. Upon the Effective Date, Plaintiff, Class Representatives, each Settlement Class Member, and each Releasing Party shall be deemed to have, and by operation of this Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties in the manner(s) set forth in Section XII of the Settlement Agreement.

18. Upon the Effective Date, Plaintiff, Class Representatives each Settlement Class Member, and each Releasing Party shall be permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims.

19. A Service Award is hereby awarded to Plaintiff Trentham and each of Class Representatives Tsuchiyama, Martin, Willoughby, and Gillespie in the amount of \$3,000 each, for a total of \$15,000. Class Counsel shall pay these Service Awards to the Class

Representatives following payment of this amount by Defendant as compensation for their efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class.

20. Class Counsel are hereby awarded (i) attorneys' fees and (ii) reimbursement of their reasonable expenses in accordance with Section VII of the Settlement Agreement as follows: \$440,000 in cash payments which will be paid in accordance with the following schedule: (1) Year One payment of \$120,000 within 14 days after Final Approval; (2) Year Two payment of \$80,000 by July 1, 2019; (3) Year Three payment of \$80,000 by June 30, 2020; (4) Year Four payment of \$80,000 by June 30, 2021; and (5) Year Five payment of \$80,000 by June 30, 2022; and assignment of an Insurance Policy issued by First Mercury Insurance Company and held by Defendant (Policy Number MI-CGL- 0000051984-02), for total compensation not to exceed one million dollars (\$1,000,000). Class Counsel shall provide to Defendant in a timely manner all information necessary to enable Defendant to make the payments and assignment of the Insurance Policy.

21. The award of attorneys' fees to Class Counsel shall be allocated among Class Counsel in a fashion that, in the opinion of Class Counsel, fairly compensates them for their respective contributions in the prosecution of the Action. In making its award of attorneys' fees and reimbursement of expenses, in the amounts described in paragraph 19, above, the Court has considered and finds as follows:

- a. The Settlement has provided significant relief to the Settlement Class.
- b. Defendant's adoption of substantial changes to its packaging practices was a negotiated, material term of Settlement.
- c. The Settlement Notice constituted the best notice practicable to Settlement

Class members.

- d. Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy on behalf of the Plaintiff, Class Representatives and the Settlement Class as a whole.
- e. The Action involves complex factual and legal issues and, in the absence of Settlement, would involve further lengthy proceedings and uncertain resolution of such issues.
- f. Had the Settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from the Defendant, and that any recovery would have been significantly delayed, which would have resulted in the continued exposure of Settlement Class Members' to the challenged representations.
- g. The amount of attorneys' fees and reimbursable expenses awarded to Class Counsel is fair and reasonable given: the results of the Settlement, which are substantial; that there are a substantial number of Products sold by Defendant; Class Counsel was able to secure a significant benefit for the Class in terms of both injunctive and monetary relief; significant skill was required to prosecute this case, including the experience, reputation, and ability of Class Counsel; the fact that the fees were always contingent; and the fee is not disproportionately excessive in light of the benefits conferred on the Members of the Settlement Class. Moreover, the amount awarded is within the norms in class action cases in the state of Missouri.

22. Defendant and the Released Parties shall not be liable for any additional fees or expenses for Class Counsel or counsel of any Plaintiff, Class Representative or Settlement Class Member in connection with the Action, beyond those expressly provided in the Settlement Agreement.

23. By reason of the Settlement, and approval hereof, there is no just reason for delay and this Final Order and Judgment shall be deemed a final judgment pursuant to Rule 74 of the Missouri Rules of Civil Procedure.

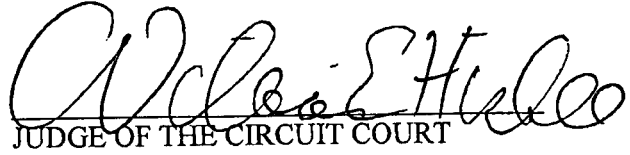
24. Jurisdiction is reserved, without affecting the finality of this Final Approval Order and Judgment, over:

- a. Effectuating the Settlement and the terms of the Settlement Agreement, including the payment of Class Counsel's attorneys' fees and reimbursement of expenses, including any interest accrued thereon;
- b. Supervising all aspects of the administration of the Settlement;
- c. Determining whether, in the event an appeal is taken from any aspect of this Final Approval Order and Judgment, notice should be given at the appellant's expense to some or all Settlement Class Members apprising them of the pendency of the appeal and such other matters as the Court may order;
- d. Enforcing and administering the Settlement Agreement and the Settlement including any releases executed in connection therewith, and the provisions of this Final Approval Order and Judgment;
- e. Adjudicating any disputes that arise under the Settlement Agreement; and
- f. Any other matters related or ancillary to the foregoing.

25. The above-captioned Action is dismissed in its entirety with prejudice.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: 10-24-2018


JUDGE OF THE CIRCUIT COURT