IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

SHANA GUDGEL and CRAIG WOOLARD, individually and on behalf of all others similarly situated, Plaintiffs, v. REYNOLDS CONSUMER PRODUCTS INC. and REYNOLDS CONSUMER PRODUCTS LLC, Defendants.	Case No. 23LA00000486

CLASS REPRESENTATIVES' MEMORANDUM
IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

Class Representatives[1] Shana Gudgel and Craig Woolard respectfully request that the Court grant final approval of the Parties' Class Action Settlement Agreement. The Settlement achieved in this matter has been met with overwhelming approval of the Class, with **787,992** claims filed as of the date of this memorandum. *See* Supplemental Declaration of Cameron Azari, Esq. of Epiq Class Action & Claims Administration, Inc. Regarding Implementation and Adequacy of Notice Plan dated October 30, 2023 attached as Exhibit A to the Motion for Final Approval ("Azari Oct. 30th Supplemental Decl.") at ¶ 21. In stark contrast, there are no objections to the settlement and only one person has opted out. The absence of any objections, and only one opt-out here is a testament to the fairness and adequacy of this Settlement.

[1] All capitalized terms have the same meaning as the capitalized terms in the Definition section of the Settlement Agreement. *See* Settlement Agreement, section II.

The positive reaction from Settlement Class Members is not surprising because the Settlement is an excellent result, achieved only after over a year of hard-fought litigation and arm's-length negotiations, including two mediation sessions with the Honorable Wayne Andersen, a former Illinois Superior Court Judge and United States District Judge for the Northern District of Illinois. The Settlement provides for creation of a $3,000,000 Settlement Fund to provide meaningful compensation to Settlement Class Members who file valid claims. *See* Declaration of Michael Reese dated October 11, 2023 that was previously filed with the Court ("Reese Decl."), at ¶ 14.[2] As part of the Settlement Agreement, Defendants also have agreed to pay separately the cost of notice; administration costs; the attorneys' fees and expenses of the Class Representatives' counsel; and the Service Awards to the Class Representatives such that these payments by Defendants will not reduce the $3 million Settlement Fund used to pay Class Members' claims.

This Settlement brings certainty, and valuable relief for Settlement Class Members, ending what otherwise would be contentious and costly litigation over the alleged liability of Defendants.

Had this Settlement not been reached, there was a real possibility that Settlement Class Members would not receive any compensation. While Plaintiffs are optimistic that they would be able to secure class certification and prevail on the merits at trial, litigation success is never guaranteed, and Defendants were prepared to vigorously defend this case on the merits and at class certification. The Settlement that Class Counsel achieved is particularly strong given the significant compensation each Settlement Class Member is eligible to receive, and the non-monetary relief designed to prevent any future violations such as those alleged by Plaintiffs in their complaint.

[2] Plaintiffs respectfully refer the Court to the Reese Declaration for a detailed description of the factual and procedural history of the litigation, the claims asserted, the work Class Counsel performed, the settlement negotiations, and the numerous risks the litigation presented.

In sum, the Settlement has received overwhelming support from Settlement Class Members and will result in significant monetary and non-monetary relief when finally approved. The Settlement meets or exceeds applicable standards and is fair, adequate, and reasonable. This Court should grant final approval of the Settlement and certify the Settlement Class it provisionally certified.

I. FACTUAL AND PROCEDURAL BACKGROUND

In this class action, Plaintiffs allege that Defendants made material misrepresentations and omissions regarding the labeling and marketing of Great Value and Hefty Recycling Bags Products in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. §§ 505, *et seq*. *See generally,* Class Action Complaint filed on July 20, 2023.

After motion practice, discovery and extensive negotiations with the assistance of an esteemed mediator, the Parties reached agreement on the terms of a settlement whereby Defendants agreed to establish a Settlement Fund of up to $3,000,000 to pay Class Members' claims as memorialized in the Settlement. Reese Decl. at ¶¶ 3-10. Defendants also shall separately pay the costs of notice; claims administration; the $975,000 in fees and costs of the Class Representatives' counsel; and, the $10,000 in total for the Class Representatives' Service Awards.

The Parties engaged in settlement discussions with the assistance of the Honorable Wayne Andersen (Ret.) of JAMS, who served both as a former Illinois Circuit Court Judge and Northern District of Illinois Judge. In order to competently assess their relative negotiating positions, the Parties exchanged discovery, including, but not limited to, information related to both the strengths and weaknesses of Plaintiffs' case and Defendants' defenses. Given the information exchanged, the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses as well as the risks of continued litigation. Reese Decl. at ¶¶ 6-7.

The initial mediation took place on December 14, 2022, and lasted the entire day. While the Parties engaged in good faith negotiations, which at all times were at arm's length, they failed to reach an agreement that day but continued the mediation. On April 13, 2023, the parties held an additional day of mediation and reached an agreement in substance. The Parties then worked on drafts of the Settlement Agreement that was ultimately filed with the Court on August 18, 2023. Reese Decl. at ¶¶ 8-10.

Plaintiffs filed their Unopposed Motion for Preliminary Approval on August 18, 2023. On August 30, 2023, the Court preliminarily approved the Settlement.

To date, the Settlement the response of the Class has been overwhelmingly positive. As of October 30, 2023, 787,992 claims have been filed. In stark contrast, no Class Member has objected to the Settlement, and only one person has opted out either. *See* Azari October 30th Supplemental Decl. at ¶¶ 20-21.

SUMMARY OF THE SETTLEMENT

The Settlement provides an exceptional result for the class. Defendants will fund up to $3,000,000 to pay all valid claims made by Class Members. Each Class Member who submits a claim will be eligible to receive $2.00 per Product purchased, up to 25 Products for $50 with Proof of Purchase. A Settlement Class Member does not have to provide Proof of Purchase for the first six (6) Products claimed for a total of twelve dollars ($12). Proof of Purchase is required for every Product claimed over six (6) Products up to 25 Products in total for $50. Separate and apart from the $3 million dedicated to pay claims, Defendants are separately paying: the costs of notice and claims administration incurred by the Settlement Administrator; $975,000 for the fees and costs of the Class Representatives' counsel; and $5,000 to each of the Class Representatives (for a total of $10,000) as Service Awards for their work done on this matter.

NOTICE AND SETTLEMENT ADMINISTRATION

Epiq Class Action & Claims Administration, Inc. ("Epiq") was appointed by the Court in its Preliminary Approval Order to be the Settlement Administrator and is handling all Settlement notices, claims, Settlement payments, and other Settlement logistics. Per the procedure already approved by the Court in connection with preliminary approval of the Settlement, notice consisted of (i) digital and social media advertising, (ii) internet sponsored search advertising, (iii) a press release, and (iv) a settlement website. *See* Declaration of Cameron Azari, Esq. of Epiq dated October 10th previously filed with this Court ("Azari October 10th Decl.") at ¶¶ 8-23.

A. Claims, Exclusion, and Objection Procedures

The timeline set forth in the Settlement Agreement gave Settlement Class Members sufficient time to receive Notice, review the relevant documents, and decide what they wanted to do. Notably, Settlement Class Members had until October 25, 2023 to opt out or object to the Settlement Agreement, which is more than 40 days from the Notice Date of September 14, 2023 and 14 days after papers supporting the Attorneys' Fee Award were uploaded to the Settlement Website to exclude themselves from the Settlement or object to its approval. Azari October 10th Decl. at ¶17.

B. Form and Scope of the Release

In exchange for the relief described above, Plaintiffs and all Settlement Class Members who did not exclude themselves will, upon the Effective Date, provide the Released Parties a full release of all Released Claims. The Released Claims include, but are not limited to, any claims for alleged violations of Illinois Consumer Fraud and Deceptive Business Practices Act, and any other federal, state, or local law, regulation, or ordinance, or common law, and any claims asserted or that could have been asserted in the Actions relating to deceptive advertising. Settlement Agreement at ¶¶ 7.1-7.4.

C. The Reaction of the Class

The deadline for submitting opt-outs and objections was October 25, 2023. No member of the Settlement Class objected and only one person opted out. Azari October 30th Supplemental Decl. at ¶ 20. In stark contrast, 787,992 claims have been filed. *Id.* at ¶ 21.

II. THE SETTLEMENT WARRANTS FINAL APPROVAL

Upon final approval, the Settlement will provide Settlement Class Members with significant and timely monetary and injunctive relief as compensation for their Released Claims and will relieve the Parties of the burdens, uncertainties, costs, and risks of continued litigation.

In addition, the Notice Plan approved by the Court and implemented by the Parties and the Settlement Administrator informed Settlement Class Members of their rights under the Settlement and the process for submitting claims. Because the Settlement is fair, reasonable, and provides adequate compensation to the Settlement Class Members, and because the Notice Plan effectively notified Class Members of their rights under the Settlement Agreement, this Settlement warrants final approval by the Court.

A. The Notice Plan Successfully Informed Settlement Class Members About their Rights Under the Settlement Agreement

Because class actions by their nature involve a class representative acting on behalf of a larger class of consumers, critical to any class action settlement is that class members are effectively informed of the settlement and their rights and options thereunder. Accordingly, "[a]fter determining that a lawsuit may proceed on a class-wide basis, through settlement or otherwise, a court may order such notice as it deems necessary to protect the interests of the class." 735 ILCS 5/2-803.

Here, in certifying the Settlement Class and preliminarily approving the Settlement, the Court approved the robust Notice Plan outlined in the Settlement Agreement. *See* Azari October 10th Decl. at ¶¶ 8-23.

The Notice Plan employed best-in-class tools, technology and optimizations to ultimately reach an estimated 70% of potential Class Members. In total, the Notice Plan served over 368 million online display and social media impressions. *See* Azari October 10th Decl. at ¶ 14.

Additionally, the Settlement Website contains a summary of the Settlement, allows for online claim filing, allows Settlement Class Members to contact the Settlement Administrator with any questions or changes of address, provides notice of important dates, such as the Final Approval Hearing, Claims Deadline, and Objection/Exclusion Deadline. The Settlement Website also contains copies of the Notice, the Settlement Agreement, and the Claim Form, available for download. Azari October 10th Decl. at ¶¶ 20-23.

As directed by the Court in its Preliminary Approval Order, the Notice Plan was implemented by Epiq. *See* August 30, 2023 Preliminary Approval Order at ¶ 10; Azari October 10th Decl. at ¶ 17 (stating Notice Plan was implemented on September 14, 2023). Upon implementation, the Notice Plan proved to be extremely successful at informing potential Settlement Class Members of the Settlement in this matter. Given the large number of claims submitted, there is little doubt that the Notice Plan implemented by the Parties was more than sufficient to notify the Settlement Class Members of the Settlement and their rights and options thereunder, and satisfied Due Process considerations. Azari October 10th Decl. at ¶¶ 24-26.

B. All Factors Favor Final Approval

Final approval of the Settlement is warranted, not only because the Settlement Class Members were sufficiently notified of their rights and options under the Settlement, but also because the Settlement itself meets the applicable criteria for final approval.

There is a strong judicial and public policy favoring the settlement of class action litigation, and a settlement should be approved by the Court after determining that the settlement is "fair, reasonable, and adequate." *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3d Dist. 2010); *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). In determining whether a settlement is fair, reasonable, and adequate, Illinois courts consistently apply an eight-factor evaluation, also known as the "*Korshak* factors." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). The factors ultimately to be considered by a court are: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *Korshak*, 206 Ill. App. 3d at 972; *see also Armstrong v. Board of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Of these considerations, the first is most important. *Steinberg* v. *Sys. Software Assocs., Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). Because each of these factors supports a finding that the Settlement here is "fair, reasonable, and adequate," the Court should grant final approval of the Settlement.

1. The Settlement provides significant benefits to the Settlement Class, particularly given the uncertain outcome of litigation

The first factor, the strength of Plaintiffs' case on the merits, balanced against the relief obtained under the Settlement, "is the most important factor in determining whether a settlement should be approved." *Steinberg*, 306 Ill. App. 3d at 170. Here, the Settlement provides significant benefits to the Settlement Class, as every Settlement Class Member will receive from the $3,000,000 Settlement Fund after submitting a timely, claim form $2 per Product purchased, up to $50 (for twenty-five Products) depending upon proof of purchase submitted. In addition, the Settlement provides meaningful prospective non-monetary relief.

Plaintiffs and Class Counsel have obtained an excellent result for the Settlement Class. This is especially true given the significant legal obstacles that Plaintiffs and the Class would undoubtedly have encountered in attempting to achieve a similar result through litigation, which may have ultimately resulted in no recovery whatsoever for Settlement Class Members.

While Plaintiffs might have prevailed on the merits of their claims at trial, success was far from assured and Defendants were and are prepared to vigorously defend this case based on several legal and factual defenses. If Reynolds were to succeed on any of its defenses against Plaintiffs' claims, Settlement Class Members would recover nothing. In addition to any defenses on the merits Reynolds would raise, Plaintiffs would also otherwise be required to prevail on a class certification motion, which would be highly contested and for which success was not be guaranteed.

"Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011). "If the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Id.* Approval of this Settlement will allow Plaintiffs and the Settlement Class Members to receive

meaningful and significant payments now, instead of years from now—or perhaps never. *Id.* at 582. In the absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits could even be contemplated, but evidence and witnesses from across the country would have to be assembled during any trial.

Further, given the complexity of the issues, quickly evolving nature of consumer case law, and the amount in controversy, the defeated party would likely appeal any decision on the merits (at summary judgment and/or trial), as well as any decision on class certification. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appellate process. This entire process, with uncertain results and high risk to all involved, would likely take years to complete. Weighing the strength of Plaintiffs' claims and the potential risks inherent in continued litigation against the significant immediate benefit provided to the Settlement Class Members if this Settlement is finally approved, the first *Korshak* factor strongly supports granting final approval of the Settlement.

2. Reynolds' ability to pay is not at issue here, and Reynolds is able to satisfy its obligations under the Settlement

Though Reynolds' financial standing is not at issue here, resolving this matter now preserves Reynolds' financial resources to be used in a way that directly benefits Settlement Class Members, as opposed to being tied up in the costs of protracted litigation. Under the terms of the Settlement, Reynolds can establish the Settlement Fund that will be used to pay out all valid claims submitted, along with all other fees and expenses, including the Settlement Administrator's fees and expenses in implementing the Notice Plan and reviewing submitted claims. Accordingly, this factor also supports granting final approval.

3. Continued litigation would necessitate the resolution of complex and novel legal issues, as well as extensive and lengthy discovery

The third factor, the "complexity, length and expense of further litigation," *Korshak,* 206 Ill. App. 3d at 972, also weighs heavily in favor of final approval of the Settlement. As the *Korshak* court observed, a "fair and reasonable settlement" is preferred over continued litigation which would leave any potential recovery "in limbo." *Id.* at 973; *see also Isby,* 75 F.3d at 1199–1200 (affirming the final approval of a settlement where continued litigation "would require the resolution of many . . . complex issues" and "entail considerable additional expense"). Indeed, when comparing the "significance of immediate recovery" versus the "mere possibility of relief in the future, after protracted and expensive litigation . . . [i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005).

Litigating this matter would involve significant expense and prolonged discovery. Any decision on the merits favorable to Defendants would be appealed by Plaintiffs, and vice versa, further delaying any final resolution of the matter. Even if Plaintiffs were to ultimately succeed in defeating any dispositive motions brought by Defendants, they would still have to prevail on their motion for class certification. And any such motion for class certification would not only be heavily contested, but would also require additional, extensive discovery efforts by the Parties.

Given the complexity of the claims at issue, the scope of the class, and the significant expenses that would result from having this case proceed with class discovery, dispositive motion briefing, adverse class certification, trial, and any potential appeals, this factor heavily favors granting final approval. In contrast to how long litigation would take, final approval will permit the Settlement Class Members to promptly receive their compensation and allow the Parties to avoid any further expenses and reach a final resolution of their dispute.

4. Settlement Class Members overwhelmingly support the Settlement

Looking at the fourth and sixth *Korshak* factors – as they are "closely related," *Korshak*, 206 Ill. App. 3d at 973 – final approval of the Settlement is not only in the best interest of the Parties but is also overwhelmingly supported by the Settlement Class Members. There is only one person who opted out and ***there are no objectors***. ***In stark contrast, no less than 787,992 claims have been filed.*** Azari October 30th Supplemental Decl. at ¶ 21. The comprehensive scope of the Notice Plan and the fact that there is not a single objection to the Settlement demonstrate that the Settlement Class Members overwhelmingly support this Settlement.

The lack of objectors challenging the Settlement is particularly noteworthy and strongly supports a finding that the Settlement is "fair and reasonable." *see In re Mexico Money Transfer Litig.*, 164 F.Supp.2d 1002, 1021 (N.D. Ill. 2000) (granting final approval of settlements and finding the fact that "99.9% of class members have neither opted out nor filed objections to the proposed settlements . . . is strong circumstantial evidence in favor of the settlements").

5. The Settlement was a result of arm's-length negotiations

With respect to the fifth factor, this Settlement was not the product of any "collusion" between the Parties. *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"). Here, there is no evidence of collusion, nor would there be as there was no collusion. The Settlement was reached only after extensive arm's-length negotiations, including two mediation sessions with a highly respected mediator. These negotiations began only after an exchange of information regarding pertaining to the strengths and weaknesses of the claims and defenses. *See* Reese Decl. at ¶¶ 6-7. Such an involved process underscores the non-collusive nature of the proposed Settlement. Accordingly, this factor weighs in favor of final approval.

6. Co-Lead Class Counsel have significant experience in prosecuting similar class actions and believe that the Settlement is fair, reasonable, and adequate

Class Counsel engage in complex litigation on behalf of consumers and have regularly been appointed as class counsel in numerous complex consumer class actions in state and federal courts across the country. *See* Reese Decl. at ¶ 2; Declaration of William Wright dated October 11, 2023 previously filed with this Court ("Wright Decl.") at ¶¶ 2-5. Given their extensive experience litigating and settling similar class actions across the country, Class Counsel are competent and qualified to provide their opinion as to the strength of the Settlement achieved. Class Counsel strongly believes that final approval of the Settlement is in the best interests of Settlement Class Members. Final approval of the Settlement will avoid any risks and delays associated with allowing the litigation to move forward and will provide the Settlement Class Members with immediate relief. Moreover, the cash award under the Settlement is significant. Class Counsel are confident that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. Reese Decl. at ¶¶ 14-22; Wright Decl. at ¶¶ 17-25. This factor also strongly favors granting final approval of the Settlement.

7. The stage of litigation, the Parties exchanged information sufficient to ensure that the settlement is fair, reasonable, and adequate

Finally, the last *Korshak* factor also supports final approval because this Settlement was reached only after vigorous negotiations and significant investigation and review of discovery by Class Counsel. The Parties exchanged information, including significant exchanges of written discovery, and participated in two mediation sessions with an experienced mediator. Reese Decl. at ¶¶ 3-10. Accordingly, Class Counsel were well-informed to "evaluate the merits of the case and assess the reasonableness of the settlement." *Korshak,* 206 Ill.App.3d at 974. This factor also favors final approval.

III. CONCLUSION

For all the reasons stated above, the proposed Settlement is fair, reasonable, and adequate and Plaintiffs respectfully request that the Court grant this motion and approve the Settlement and certify the Settlement Class. A copy of a proposed final approval order is attached to the Motion for Final Approval as Exhibit B.

Dated: November 1, 2023

Respectfully submitted,

s/ Michael R. Reese

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