

IN THE CIRCUIT COURT OF ST. CLAIR COUNTY
STATE OF ILLINOIS

JORDAN MEISTER, individually and on)
behalf of all others similarly-situated in the)
United States,)
)
Plaintiff,)
)
v.)
)
NUTRIBULLET, LLC; HOMELAND)
HOUSEWARES, LLC; CAPITAL BRANDS,)
LLC; CAPITAL BRANDS DISTRIBUTION,)
LLC; and CAPITAL BRANDS HOLDINGS,)
INC.,)
)
Defendants.)
)

No. 22-LA-0024

FILED
ST. CLAIR COUNTY
APR 11 2022
Marie P. Zing
CIRCUIT CLERK
44

**AMENDED ORDER GRANTING PLAINTIFF'S UNCONTESTED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter comes before the Court on Plaintiff Jordan Meister's ("**Plaintiff**" or "**Class Representative**") unopposed motion for the preliminary approval of a proposed class action settlement with Nutribullet, LLC; Homeland Housewares, LLC; Capital Brands, LLC; Capital Brands Distribution, LLC; and Capital Brands Holdings, Inc. ("**Defendants**"), the terms and conditions of which are set forth in the Settlement Agreement filed with the Court on February 17, 2022 ("**Settlement Agreement**").

Background

On January 12, 2022, counsel for Plaintiff filed a putative class action, in the Circuit Court for the 20th Judicial Circuit, Court of St. Clair, State of Illinois, raising various claims under common law and Illinois consumer protection law, and similar state laws, including claims for false advertising, intentional or negligent misrepresentation, failure to warn, concealment, and

Mailed out of deceptive trade practices, alleging that Defendants advertised, marketed, and sold the Blenders
Office on 4/18
 Plaintiff
 Defendant
 All Parties

without adequately informing consumers that the Blenders should not be operated continuously for more than one minute or be used to blend hot or warm ingredients due to safety concerns. That lawsuit alleges that Defendants' omission misleads consumers into believing the product is safe and its use is without risk. Plaintiff contends that Defendants caused consumers to pay a premium for the Blenders, and/or to pay more for the Blenders than they otherwise would have, had the Blenders been adequately labeled with appropriate disclosures. Plaintiff seeks to recover, on behalf of a class of all Persons who purchased, for non-commercial use and not for the purposes of resale, the Blenders in the United States between June 1, 2017, and the date of this Order.

Defendants deny that there is any factual or legal basis for Plaintiff's allegations. Defendants do not admit any false advertising, intentional or negligent misrepresentation, failure to warn, deceptive trade practices, design or manufacturing defect regarding the Blenders, or to any wrongdoing or liability whatsoever. They also deny that Plaintiff or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Defendants finally deny that this case should be certified as a class action, except for purposes of settlement; however, in the interest of settling, Defendants do not oppose Plaintiff's request to certify the Settlement Class.

In a good faith effort to explore potential early resolution and avoid continued litigation and expenses, the parties informally exchanged information. As part of that initial information exchange, Plaintiff's Counsel sought, and Defendant supplied for Plaintiffs Counsel's eyes counsel only, highly confidential sales data regarding the Blenders (collectively, the "Sales Data") to allow the parties to analyze and consider damages methodologies, including data to assist in an analysis of whether any price premium existed for the Blenders. The Sales Data included direct to consumer and wholesale sales data for the Blenders. Following that data exchange, the parties

discussed the potential for global resolution of all non-personal injury claims related to the Blenders. Accordingly, the parties engaged in extensive, arm's-length negotiations related to a further voluntary exchange of information to assess the potential for settlement.

Following this information exchange, Plaintiff's Counsel and counsel for Defendants agreed to participate in mediation before the Honorable Patrick Walsh, retired United States Magistrate Judge for the Central District of California. The parties selected Judge Walsh given his experience in resolving complex litigation matters and his location in California, where Defendants are based.

Counsel for the parties engaged in multiple pre- and post-mediation telephone conferences with retired Magistrate Judge Walsh and one another to identify and eventually crystalize the issues for mediation. Each submitted substantial written mediation briefs and exhibits.

On June 15, 2021, Plaintiff's counsel and counsel for Defendants mediated the case and formally presented arguments regarding their clients' positions. During the mediation session, Judge Walsh engaged in extensive discussions with counsel for the parties in attempt to identify common ground between the parties' respective positions. After exchanging several rounds of settlement demands and offers, the mediation terminated unsuccessfully with the expectation of continuing negotiations with Judge Walsh. Over the next four months, the Parties continued to negotiate through Judge Walsh and ultimately reached agreement.

On January 26, 2022, the Parties fully executed the Settlement Agreement. On February 17, 2022, Plaintiff's counsel filed their Motion for Preliminary Approval of the Class Action Settlement and contemporaneously filed the Settlement Agreement and attached exhibits regarding same.

On March 14, 2022, the Court (in advance), having read and reviewed the parties' submissions, conducted a hearing to determine whether a settlement between the parties would be fair, reasonable and adequate, i.e., whether the requirements of section 2-801 of the Code (735 ILCS 5/2-801), as interpreted by our appellate courts in *City of Chicago v. Korshak*, 206 Ill. App. 3d 968 (1st Dist. 1990) and *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App(5th Dist.) 180033, 143 N.E. 3d 645 (2019) have been met. Outside of counsel for the parties, no one else appeared in person or remotely via zoom technology for the properly noticed hearing.

As the Court explained from the onset in the hearing, that although review of class action settlements necessarily proceeds on a case-by-case basis, the following **factors**, commonly referred to as the "Korshak factors" have been consistently identified as relevant to the determination of whether a settlement is fair, reasonable, and adequate: 1) the strength of plaintiffs' case balanced against the money and relief offered in the settlement; 2) the defendants' 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 the settlement; 6) the class members' reaction to the settlement; 7) the opinion of competent counsel; and 8) the state of proceedings and amount of discovery completed. *Id.*

OPINION AND ORDER

The law favors settlement of class actions, and a trial court should not "disapprove a settlement. . . unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval." *Gowdey v. Commonwealth Edison Co.*, 371 Ill. App. 3d 140, 149-150 (Pt Dist. 1976). The standard to be used in evaluating the compromise settlement of a class action is that the agreement must be fair, reasonable and adequate. *People ex rel. Wilcox v. Equity Funding Life Insurance Co.*, 61 Ill. 2d 303, 317 (1975).

The Class Representatives have moved the Court for preliminary approval of a proposed class action settlement with Defendants, the terms and conditions of which are set forth in the Settlement Agreement filed with the Court on February 17, 2022. As enumerated above, the Settlement was negotiated with the assistance and oversight of retired Magistrate Judge Patrick Walsh.

The terms of the Settlement are summarized in the proposed Class Notice to Settlement Class Members, which is attached as Exhibits B1-3 to the Settlement Agreement. In brief, Defendants have agreed to add language to the **outside** of the Blenders' packaging (already found inside the Blenders' packaging), informing consumers that the Blenders should not be operated continuously for more than one minute or be used to blend hot or warm ingredients.

In addition, members of the Settlement Class may submit a claim for reimbursement as follows:

- Settlement Class Members who elect to fill out the Claim Form and who provide valid Proof of Purchase or Serial Number for the purchase of a 600-watt model Blender may recover \$5.00 per Blender.
- Settlement Class Members who elect to fill out the Claim Form and who provide valid Proof of Purchase or Serial Number for the purchase of a 900-watt model Blender may recover \$7.00 per Blender.
- In the alternative, Settlement Class Members who elect to fill out the Claim Form and who provide valid Proof of Purchase or Serial Number of the purchased Blender may receive a one-time discount code for \$15 off the purchase of a new 900-watt model Blender or \$10 off the purchase of a new 600-watt model Blender. This discount shall

only be available on Defendant's website: <https://www.nutribullet.com/> and will be in addition to any other existing promotional offers on the website.

If the total amount of all Valid Claims exceeds the Settlement Amount of ten million dollars and zero cents (\$10,000,000.00), then the Benefit payable to each Claimant shall be proportionately reduced, such that Defendants' maximum liability for Valid Claims will not exceed the Settlement Amount in the aggregate.

As part of the Settlement, Plaintiff's counsel intend to apply to this Court for an award from Defendants to pay their attorneys' fees, costs (including court costs), expenses, and disbursements incurred by them and their experts, staff, and consultants in connection with this action. Plaintiff's counsel may also apply to this Court for a payment from Defendants to the Class Representative for up to \$5,000.00. Such amounts must be approved by the Court. The Court will defer any ruling on the appropriateness of such awards until the Final Approval Hearing.

Having considered all matters submitted to it at the hearing on the motion and otherwise, including the complete record of this action, and good cause appearing therefore, the Court grants preliminary approval and hereby finds and concludes as follows:

1. The Court preliminarily finds and concludes, solely for purposes of considering this Settlement, that the requirements of 735 ILCS 5/2-801 et seq. and especially those of 5/2-807(b) pertaining to an order approving a proposed settlement of a class action that results in the creation of a common fund for the benefit of a class, are conditionally satisfied for certification of the Settlement Class to pursue claims for breach of implied warranties, unjust enrichment, fraud, concealment, negligent misrepresentation, the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq., and under the consumer protection laws of the states of the United States. The Court has analyzed the facts consistently identified as the Korshack factors and the requirements of 735 ILCS

5/2-801 and grants preliminary approval for the reasons set forth in Plaintiffs Unopposed Motion for Preliminary Approval of Class Action Settlement, as well as for the additional reasons outlined below:

- a. The strength of the Plaintiffs case balanced against the money and substantial injunctive relief offered in the settlement strongly favor settlement;
- b. Defendants have the ability to pay;
- c. The complexity, length and expense of further litigation strongly favor settlement;
- d. There is no evidence of opposition to the settlement;
- e. There is no evidence of collusion between the parties or their counsel;
- f. There is no evidence that any class member disfavors settlement, while the Class Representative strongly favors settlement;
- g. The opinion of competent counsel strongly favors settlement;
- h. The stage of proceedings and the status of discovery strongly favor settlement now;
- i. The Settlement Class Members are too numerous to be joined in a single action;
- j. There are questions of fact or law common to the class, and the common questions predominate over any questions affecting only individual members;
- k. The Class Representative is typical of consumers around the country in that they all purchased the Blenders, the packaging/warnings of which are

alleged to have been inadequate for identical reasons, and, thus, their claims for breach of implied warranty, unjust enrichment, fraud, negligent misrepresentation, failure to warn, the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, and violations of consumer protection statutes all states in the United States are such that they will fairly and adequately protect the interests of the class; and

1. A settlement class is an appropriate method for fairly and efficiently adjudicating the controversy and is superior to alternative means of resolving the claims and disputes at issue in this litigation.

2. The capitalized terms used in this Order shall have the same meaning as defined in the Settlement Agreement except as otherwise expressly provided.

3. The Court preliminarily approves the Settlement Agreement as within the range of possible final approval and as meriting submission to the Settlement Class for its consideration. The parties' Agreement was reached as a result of extensive arm's-length negotiations between the parties and their counsel and involved a well-respected and experienced mediator. Additionally, before entering into the Agreement, Defendants supplied documents, including Sales Data, to Plaintiff's Counsel. Thus, Plaintiff and their counsel had sufficient information to evaluate the strengths and weaknesses of the case and to conduct informed settlement discussions.

4. For purposes of the Settlement only, the Court provisionally certifies the Settlement Class, which consists of all Persons who, between June 1, 2017, and the Effective Date of this Order, purchased any Blender in the United States or any of its territories through any in-store or online distributor or retailer, such purchases not made for the purpose of resale or commercial use. Specifically excluded from the Settlement Class are: (i) any Governmental Entity; (ii) subsidiaries,

divisions, affiliates, officers, employees, and directors of Defendants; (iii) any assigned judges and members of their families within the first degree of consanguinity, or any member of the Court's staff; (iv) all individuals or entities that purchased the Blenders for resale; and (v) Class Counsel.

5. The Court further notes that Plaintiff filed a lawsuit seeking a nationwide class; that Defendants do not oppose Plaintiffs request to certify a nationwide Settlement Class for the purpose of this Settlement; and that, in the event final approval of the Settlement Agreement is denied, or a mandate is issued reversing an award of final approval, or the Settlement Agreement is otherwise terminated, the certification of the Settlement Class will be void; and that, in such event, Defendants do not waive, and instead expressly reserve, all rights to defend this Action and shall not be precluded from challenging class certification in further proceedings in the Action or in any other action.

6. The Court conditionally designates pursuant to 735 ILCS 5/2-801(3) the law firms of Cochran Law PLLC; Nelson & Nelson, Attorneys at Law, P.C.; and Armstrong Law Firm LLC as Class Counsel and Jordan Meister as Class Representative for purposes of this Settlement. The Court preliminarily finds that the Class Representative and Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class Members. The Court designates, and approves, Kroll Settlement Administration to serve as Settlement Administrator.

7. Because the Settlement Agreement is within the range of reasonableness and possible final approval, notice shall be provided to the Settlement Class as described in Section V of the Settlement Agreement.

- a. The Media Plan consists of the notice plan, in substantially the form attached thereto as Exhibit B2 of the Settlement Agreement, developed by the Settlement Administrator to notify the Settlement Class of the

Settlement Notice and to command the Class Members' attention about their rights under the Settlement. If the Defendants have consumer contact information through Defendants' customer service line and/or database, Defendants will provide direct notice to said consumers.

- b. At least ten (10) business days prior to the Notice Date, the Settlement Administrator will establish the Settlement Website. The website shall be **user friendly** and make it **readily discernible** to include information about the Settlement Notice in both downloadable PDF format and HTML formats with a clickable table of contents; answers to frequently asked questions; a contact information page that includes the address for the Settlement Administrator and addresses and telephone numbers for Class Counsel and Defendants' counsel; the Settlement Agreement; the signed Preliminary Approval Order and publicly filed motion papers and accompanying papers; and a downloadable and online version of the Claim Form. The Settlement Administrator shall add to the Settlement Website all other material filings by the parties or the Court regarding the Settlement, including Plaintiffs application for attorneys' fees, costs, expenses, and/or payments to the Class Representatives, the motion for final approval, and any orders with respect to such applications and motions.
- c. The Settlement Administrator shall initiate the process of providing the online notices on websites as set forth in the Media Plan, so that overall notice of the Settlement (including the Publication Notice) is reasonably calculated to apprise the Settlement Class Members of the Settlement.

- d. The Settlement Administrator shall issue the Publication Notice as described in the Media Plan.
- e. The Settlement Administrator also will receive and process Claim Forms.

Defendants alone will pay the notice and administration costs associated with the Settlement.

8. Prior to the Final Approval Hearing, the following deadlines shall apply:

Notice Date Commencement	30 days after Preliminary Approval Order
Claim Form Period	Commences on the Notice Date and ends 60 days later
Claim Form Deadline	60 Days after Notice Date
Opt-Out Deadline	60 Days after Notice Date
Objection Deadline	60 Days after Notice Date

9. A **Final Approval Hearing** shall be held before this Court on **Thursday, June 30, 2022, at 8:30 a.m. in courtroom 403**, in the 20th Judicial Circuit, Court of St. Clair, State of Illinois, to address: (i) whether the proposed Settlement should be finally approved as fair, reasonable, adequate, and equitable, and whether the Final Approval Order should be entered, and (ii) whether Class Counsel’s application for attorneys’ fees, costs, and a payment to the Class Representative should be approved.

10. The Court approves, as to form and content, the Claim Form and Notices that are substantially similar to the forms attached as Exhibits A and B1-3 to the Settlement Agreement. The Claim Form and all the Notices are written in plain English and are easy to comprehend. The Parties shall have discretion to jointly make non-material minor revisions to the Claim Form and

Notices before publishing. Responsibility for settlement administration, including, but not limited to, notice and related procedures, shall be performed by the Settlement Administrator, subject to the oversight of the Parties and this Court as described in the Settlement Agreement.

11. Due to advances in technology, Federal Rule of Civil Procedure 23 (c)(2)(B) was recently amended to specifically permit notice "by one or more of the following: United States mail, electronic means, or other appropriate means." Here, the Court finds that the Parties' plan for providing notice to the Settlement Class is reasonably calculated to provide notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and complies fully with the requirements of due process, 735 ILCS 5/2-803, and any other applicable law. The Parties and the Settlement Administrator shall comply with the notice plan as set forth in the Settlement Agreement.

12. No later than five (5) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to the Parties a list of the names of the Persons who, pursuant to the Class Notice, described herein, have excluded themselves from the Settlement Class in a valid and timely manner. Plaintiff's counsel shall file that list with the Court. The Court retains jurisdiction to resolve any disputed exclusion requests.

13. Any member of the Settlement Class who elects to be excluded shall not receive any benefits of the Settlement, shall not be bound by the terms of the Settlement Agreement, and shall have no standing to object to the Settlement or intervene in the Action. If the Settlement is granted final approval, all Settlement Class Members who do not timely submit a valid request for exclusion will be bound by the Final Approval Order and final judgment and enjoined from

bringing or prosecuting any action relating to the Released Claims, including claims related to the sell-through of existing stock, as defined in the Settlement Agreement.

14. Any Settlement Class Member who does not submit a valid and timely request for exclusion may submit an objection to the Settlement Agreement. The written objection must satisfy the requirement described in the Settlement Notice. An objection must be electronically filed or postmarked no later than **sixty (60) days** after the Notice Date or it will be rejected.

15. Any Settlement Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class Member's own expense. However, if the Settlement Class Member wishes to object to the Settlement at the Final Approval Hearing (either personally or through counsel), the Settlement Class Member must submit a written objection as set forth in the prior paragraph of this Order.

16. Plaintiff shall file their motion for final approval and class representative payments no later than fourteen (14) days prior to the Final Approval Hearing and their motion for an award of attorneys' fees, costs, and expenses no later than fourteen (14) days prior to the Final Approval Hearing. Those motions and all supporting documentation shall simultaneously be posted to the Settlement Website.

17. In the event that the proposed Settlement is not finally approved by the Court, or in the event that the Settlement Agreement becomes null and void pursuant to its terms, this Preliminary Approval Order and all orders entered in connection herewith (including any order amending the petition) shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy; in such event the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties,

who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

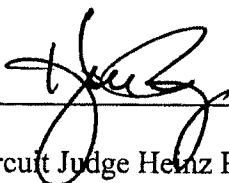
18. This Order shall not be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession, or an admission by Defendants of the truth of any allegations made by the Plaintiff or of any liability or fault of any kind.

19. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class Members, be continued by Order of the Court.

20. The Court will have continuing jurisdiction over the Action for the purpose of implementing the Settlement until the Action and all related matters are fully resolved, and for enforcement of the Settlement, the Settlement Agreement and Final Order thereafter.

21. The Parties to the Settlement Agreement are directed to carry out their obligations under the terms thereof.

Approved and so Ordered.



Circuit Judge Heinz Rudolf

Dated: Tuesday, April 11, 2022.