

IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI

NICHOLAS CAHILL,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

NESTLE USA, INC., a Delaware corporation,

Defendant.

Case No. 22PH-CV01205

FILED

DEC 08 2022

SONJA CHILDERS
CIRCUIT CLERK
PHELPS COUNTY, MO

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, APPROVING
CLASS NOTICE, APPOINTING SETTLEMENT ADMINISTRATOR,
APPOINTING CLASS COUNSEL AND CLASS REPRESENTATIVES, AND
SCHEDULING FAIRNESS HEARING**

The Court has considered Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement pursuant to Mo. R. Civ. P. 52.08. Upon review of the Motion and the Settlement Agreement and its attachments, and after consideration of the Parties' submissions and the arguments at the hearing on this matter, if any, for good cause shown, the Court preliminarily finds that the terms of the Settlement are fair, adequate, and reasonable. The Court further finds that the notice provisions provided for by the Settlement Agreement are adequate and appropriate to inform members of the Class of the terms of the Settlement.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court does hereby preliminarily approve the Settlement Agreement¹ and the settlement set forth therein (the “Settlement”), subject to further consideration at the Final Approval Hearing described below.

2. A hearing (the “Final Approval Hearing”) shall be held before this Court on March 9, 2023 at 9:00 a.m. to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, adequate, and reasonable to the Class and should be approved by the Court, and whether a Final Approval Order and Judgment should be entered herein.

3. Plaintiff Nicholas Cahill, as well as additional Class Representative Julia Yonan, are both preliminarily appointed as Class Representatives of the Settlement Class; the following attorneys are preliminarily appointed as Class Counsel for the Settlement Class: (i) the Law Office of L. DeWayne Layfield, PLLC; (ii) KamberLaw LLC; (iii) Steelman Gaunt Crowley; and (iv) Southern Atlantic Law Group, PLLC.

4. This Court is familiar with Class Counsel and has found them to be experienced, thoughtful, and effective advocates in class actions who adequately, faithfully, and zealously represent the classes they represent.

5. For purposes of determining whether the terms of the Settlement should be finally approved as fair, adequate, and reasonable, the following Settlement Class is conditionally certified for settlement purposes only:

All residents of the United States who purchased in the United States the Product(s) (as defined by the list attached as Exhibit A) during the Class Period (January 1, 2017, through date of Preliminary Approval) for personal and household use and

¹ The Court, for purposes of this Order, adopts the definitions of capitalized terms set forth in the Settlement Agreement.

not for resale excluding: (a) the Released Parties; (b) all Persons who file a timely and valid Opt-Out; (c) Defendant, its employees and counsel, as well as the household members of Defendant's employees and counsel; (d) federal, state, and local governments, political subdivisions, or agencies of federal, state and local governments; and (e) the judicial officers, courtroom staff, and members of their households overseeing the Action.

6. Should the Settlement not become final, Nestle USA, Inc. ("Nestle") shall be in the same position and retain the same rights it had prior to entering into the Settlement, including the right to oppose class certification, and the fact that the Court ordered class certification as part of the Settlement, or that Nestle was willing to stipulate to class certification as part of the Settlement, shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in this Action or in any other proceeding.

7. The Court designates Kroll Settlement Administration ("Kroll") as the Settlement Administrator and instructs Kroll to perform the following functions, as set forth in the Settlement Agreement:

- a. Process requests for exclusion (Opt-Outs) from the Settlement in accordance with Section IX of the Settlement Agreement;
- b. Process Objections to the Settlement in accordance with Section IX of the Settlement Agreement;
- c. Process Claim Forms in accordance with Section VI of the Settlement Agreement;
- d. 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
- e. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.

8. The Court approves, as to form and content, the Settlement Notice, the Publication Notice, and the Media Plan attached as Exhibit C to the Settlement Agreement, and finds that the distribution of the Settlement Notice, substantially in accordance with Section VIII of the Settlement Agreement, meets the requirements of Mo. R. Civ. P. 52.08(b)(3), 52.08(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.

9. On or before December 29, 2022, the Settlement Administrator shall disseminate the Settlement Notice by setting up the Settlement Website on the Internet and posting both the Settlement Notice and Publication Notice. On or before December 29, 2022, the Settlement Administrator shall publish the Publication Notice pursuant to the Media Plan and post it to the Settlement Website. The Publication Notice shall remain posted on the Settlement Website until the conclusion of the Claims Period, or such later date as may be agreed to by Class Counsel and Defendant's Counsel.

10. The Settlement Administrator shall prepare a declaration attesting to compliance with the Settlement Notice requirements and a statement of the number of Persons the Media Plan reached. Such declaration shall be provided to Defendant's Counsel and Class Counsel and filed with the Court on or before January 30, 2023.

11. The Court approves the Claim Form in form and content as Exhibit B to the Settlement Agreement.

12. As set forth in Section VI of the Settlement Agreement, claims shall be submitted on or before March 14, 2023 (the "Claims Deadline"). To be timely, all Claims must be submitted by the Claims Deadline in accordance with Section VI of the Settlement Agreement.

13. Any Settlement Class Member who intends to object to the Settlement must do so no later than February 27, 2023 (the "Objection Deadline"). In order to object, the Settlement Class Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendant's Counsel, also prior to the Objection Deadline, a document that includes all of the following:

- a. The case name and number, *Nicholas Cahill v. Nestle USA, Inc.*, No. 22PH-CV01205 (Phelps County Circuit Court, Missouri);
- b. The name, address, telephone number, and, if available, the email address of the Person objecting;
- c. The name and address of the lawyer(s), if any, who is representing the Person objecting in making the Objection or who may be entitled to compensation in connection with the Objection;
- d. A detailed statement of Objection(s), including the grounds for those Objection(s);
- e. Copies of any papers, briefs, or other documents upon which the Objection is based;
- f. A statement of whether the Person objecting intends to appear at the Final Approval Hearing, either with or without counsel;
- g. The identity of all counsel (if any) who will appear on behalf of the Person objecting at the Final Approval Hearing and all Persons (if any) who will be called to testify in support of the Objection;
- h. A statement of his/her membership in the Settlement Class, including all information required by the Claim Form;
- i. The signature of the Person objecting, in addition to the signature of any attorney representing the Person objecting in connection with the Objection; and
- j. A detailed list of any other objection by the Settlement Class Member, or their counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or their counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, they shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. This information is requested in order to assist the Court in determining whether the Objection is made by a professional objector seeking financial consideration for their efforts. Failing to provide this information will not effect the validity of the Objection, but may result in the Court presuming that the Objection is made by a professional objector.

14. Any Settlement Class Member who fails to file and serve timely: (a) a written Objection containing all of the information listed in items (a) through (j) of the previous paragraph; and, (b) notice of their intent to appear at the Final Approval Hearing pursuant to this paragraph, 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 an appeal.

15. Any Settlement Class Member who intends to make an appearance at the Fairness Hearing and has not so indicated in their Objection, must deliver to Class and Defense Counsel, no later than March 1, 2023, a Notice of Intention to Appear. Any attorney hired by a Class Member to represent them and appear at the Fairness Hearing must also file a notice of appearance with the Court no later than March 1, 2023.

16. Any Settlement Class Member may request to be excluded (or Opt-Out) from the Settlement Class. A Settlement Class Member who wishes to Opt-Out of the Settlement Class must do so no later than February 27, 2023 (the "Opt-Out Deadline"). In order to Opt-Out, a Settlement Class Member must complete and mail to the Settlement Administrator a "Request for Exclusion" that is received no later than the Opt-Out Deadline. Requests for Exclusion that are received after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely submits a Request for Exclusion 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.

17. Except for those Persons who have properly and timely submitted Requests for Exclusion, all Settlement Class Members will be bound by the Settlement Agreement and the Final Approval Order, including the Releases, regardless of whether they file a Claim or receive any

monetary relief. Any Person who timely and properly submits a Request for Exclusion shall not: (a) be bound by any orders or the Final Approval Order nor by the Releases contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Person requesting exclusion from the Settlement Class must personally sign their own individual Request for Exclusion. No Person may Opt-Out of the Settlement Class any other Person, or be opted-out by any other Person, and no Person shall be deemed opted-out of the Settlement Class through any purported "mass" or "class" Opt-Outs.

18. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a final list of any timely Requests for Exclusion received by the Settlement Administrator on or before March 2, 2023.

19. On or before March 2, 2023, Class Counsel shall file with the Court a report stating the total number of Persons who have submitted timely and valid Objections to the Settlement, and the names of such Persons, if any.

20. On or before February 20, 2023, Class Counsel shall submit papers in support of their application for Attorneys' Fees and Costs, and Service Awards for Class Representatives. [7 days prior to Obj deadline]

21. On or before March 6, 2023, Class Counsel shall submit papers in support of final approval of the certification of the Settlement Class, and the Settlement, and any response to any Objections.

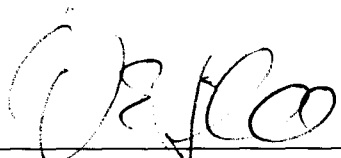
22. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Class Representatives or Abbott of any fact or allegation, or of any liability,

fault, or wrongdoing of any kind.

23. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing without further notice to the members of the Class and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties, if appropriate without further notice to the Class.

IT IS SO ORDERED.

12-8-2022
DATE



JUDGE OF THE CIRCUIT COURT