

IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI

FILED

MAR 09 2023

MARLAINA WALLACE
CIRCUIT CLERK
PHELPS COUNTY, MO

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

Plaintiff,

Case No. 22PH-CV01205

v.

NESTLE USA, INC., a Delaware corporation,

Defendant.

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

WHEREAS, on December 8, 2022, this Court entered an Order Preliminarily Approving Class Settlement, Approving Class Notice, Appointing Settlement Administrator, Appointing Lead Class Counsel and Class Representatives, 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 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 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”;
- b. Appointed as Lead Class Counsel for the Settlement Class: (i) the Law Office of L. DeWayne Layfield, PLLC; (ii) KamberLaw LLC; and (iii) Steelman Gaunt Crowley; and (iv) Southern Atlantic Law Group, PLLC;
 - 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 Judgment should be entered;
 - e. Approved the Claim Form and set the Claims Deadline;
 - f. Designated Kroll Settlement Administration (“Kroll”) as the Settlement Administrator and instructed Kroll to perform the following functions, as set forth in the Settlement Agreement:
 - 1. Process requests for exclusion (Opt-Outs) to 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 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 Claim Forms; 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 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;
- 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, including 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 last day to submit Opt-Outs and Objections was February 27, 2023 and no exclusion requests and no Objections were received by Kroll, which is detailed in the Fenwick Declaration re: Opt-Outs and Objections, filed March 2, 2023;

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

WHEREAS, this Court, having heard from counsel in this matter, 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 Nestle USA, Inc. ("Defendant" or "Nestle") deceptively and unlawfully packaged, marketed and labeled certain powder coffee creamer Products as defined in the Settlement Agreement, which are sold in a variety of sizes, and collectively referred to herein as "Products" or a "Product." Specifically, Plaintiff alleges that Defendant represented that the Products can make up to a specified number of servings; however, contrary to these representations, the Products do not always yield the represented number of servings when consumers follow the "Serving Size" instructions on the labels of the Products.

2. Plaintiff's Petition and Jury Demand – Class Action was filed on September 2, 2022 and includes claims for violations of the Missouri Merchandising Practices Act (“MMPA”), Unjust Enrichment, Breach of Express Warranty, and Breach of Implied Warranty.

3. After extensive and numerous settlement negotiations, including a full-day, formal mediation session with a neutral mediator, and additional follow-up negotiations after the mediation, the Parties agreed to settle this case.

4. The Settlement Agreement provides substantial and meaningful programmatic relief to the Settlement Class as follows: The Defendant shall commence the process to either (1) revise the Nutrition Facts panel such that the common household measurement and metric mass expressed therein are in compliance with 21 C.F.R. § 101.9(b) or (2) place an asterisk statement on the label that explains that the front-of-pack statement of servings per container is based on a serving size with a mass of 2 grams. Defendant shall not manufacture any Products with Labeling containing the Challenged Language during the period (the “Restricted Period”) beginning on the first-month anniversary of the date of entry by the Court of the Preliminary Approval Order (“PAO Date”) and ending on the ninth-year anniversary of the entry of the PAO Date, other than Products containing demonstrably accurate information on the Label. If Class Counsel believes that the Labeling of any Product does not comply, they shall provide written notice to Defendant of the specific facts and circumstances of any alleged non-compliance and discuss in good faith with Defendant appropriate changes, if any, to the then-existing Labeling; to the extent agreed, Defendant will then have 120 days from the date of such agreement to bring its practices into compliance. If no agreement is reached, Class Counsel may apply to the Court to enforce the Agreement.

5. The Settlement also provides substantial and meaningful monetary benefits to the

Settlement Class as follows: Defendant agreed to provide cash benefits in a Settlement Fund with a two-tiered structure as part of a Maximum Settlement Amount of US \$10,000,000 (ten million dollars) in the aggregate. Defendant will pay or cause to be paid Valid Claims based on which of the following two Tiers the Settlement Class Member elects and for which the Settlement Class Member qualifies: Tier 1 Settlement Class Members who elect to fill out the Claim Form section for Tier 1 and who do not have valid Proof of Purchase may recover \$0.50 per Unit purchased, up to a maximum of \$5.00 per Household; or Tier 2 Settlement Class Members who elect to fill out the Claim Form section for Tier 2 and who provide valid Proof(s) of Purchase may recover 30% of price paid per Unit purchased for the number of Units for which a valid Proof of Purchase has been provided, up to a maximum of \$40.00 per Household. The Maximum Settlement Amount will also fund all Class Representative Service Awards and Attorneys' Fees and Costs. However, excluded from the Maximum Settlement amount are any costs related to the Notice and Administration Expenses and Programmatic Relief, which will be borne by Defendant.

6. The Preliminary Approval Order established a Claims Period that commenced in December 2022 and continues through March 14, 2023.

7. The Preliminary Approval Order established an Objection and Opt-Out deadline of February 27, 2023.

8. 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 they 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.

9. For purposes of the Programmatic Relief specified in Section 5.1 of the Settlement, the prerequisites for a class action under Rule 52.08(b)(2) have been satisfied in that: (a) the number of 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 they seeks to represent; (d) Plaintiff has and will fairly and adequately represent the interests of the Settlement Class; and (e) Defendant has acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final declaratory relief with respect to the Settlement Class as a whole.

10. Nicholas Cahill and Julia Yonan are appointed as Class Representatives of the Settlement Class.

11. The Court confirms the following as Lead 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.

12. 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).

13. The Settlement was negotiated at arms'-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.

14. 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.

15. No Objections to the Settlement were received and no Opt-Outs of the Settlement were received. This positive reaction by the Settlement Class demonstrates the strength of the Settlement.

16. Plaintiff and Defendant are directed to promptly consummate the Settlement in accordance with the Class Action Settlement Agreement and all its terms.

17. 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.

18. The Action is hereby dismissed, with prejudice, on the merits, by 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.

19. The Action is hereby dismissed, with prejudice, on the merits, as against Defendant presently or previously named in the Action.

20. 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.

21. 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.

22. Service Awards are hereby awarded in the total amount of \$7,000, comprised of \$3,500 to each of the two Class Representatives: Nicholas Cahill and Julia Yonan. Lead Class Counsel shall cause the Settlement Administrator to 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.

23. Class Counsel are hereby awarded \$2,600,000 in (i) attorneys' fees and (ii) reimbursement of their reasonable expenses in accordance with Section VII of the Settlement. Defendant shall deposit the sums awarded and approved by the Court in an account established and maintained by the Settlement Administrator no later than fifteen (15) business days following the earlier of (i) the Effective Date or (ii) such date that Class Counsel provides payment security in a form agreed by Class Counsel and Defendant in its sole discretion (which security shall provide for recovery of all fees and expenses paid to Class Counsel in the event that the final judgment or the Attorneys' Fees and Costs Award is reversed or otherwise reduced); provided, that the date described in clause (ii) shall not occur prior to the following entry of the Final

Approval Order and award of the Attorneys' Fees and Costs.

24. The award of attorneys' fees to Class Counsel shall be allocated among Class Counsel in a fashion that, in the opinion of Lead Class Counsel, fairly compensates them for their respective contributions in the prosecution of the Action. In making its award of Attorneys' Fees and Costs, in the amounts described in paragraph 23 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 the Programmatic Relief 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 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 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 Lead 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 programmatic 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.

25. 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.

26. 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.

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

- a. Effectuating the Settlement and the terms of the Class Action 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, 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; and
- f. Any other matters related or ancillary to the foregoing.

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

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: 3-9-2023


WILLIAM EARL HICKLE
JUDGE OF THE CIRCUIT COURT