

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JENNY MILMAN and ELLEN THOMAS,)	
on Behalf of Themselves and All Others)	
Similarly Situated,)	
)	Case No: 1:13-cv-7750
Plaintiffs,)	
)	Magistrate Judge Sheila Finnegan
v.)	
)	
THERMOS L.L.C.,)	
)	
Defendant.)	

**ORDER GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**

On December 23, 2014, the Court entered an Order Granting Preliminary Approval of Class Action Settlement and Directing Notice to Settlement Class (the “Preliminary Approval Order”). After notice was provided to the members of the settlement class (hereafter, the “Class”) as set forth in the Settlement Agreement (hereafter, “Agreement”), this Court held a Final Approval Hearing on May 27, 2015, for the purpose of determining (1) whether the proposed settlement, on the terms set forth in the Agreement, is fair, reasonable, and adequate, and should be finally approved by this Court; (2) whether, pursuant to the terms of the proposed settlement, a judgment should be entered dismissing Defendant Thermos L.L.C. (“Thermos”) and releasing Thermos and the other Released Parties from all Released Claims (as those terms are defined in the Agreement); and (3) whether to award attorneys’ fees and expenses to Class Counsel and the agreed payments for compensation of time to Named Plaintiffs Jenny Milman and Ellen Thomas. This Order will refer to the Named Plaintiffs and Thermos as the “Parties” to the Agreement.

The Court, having reviewed the Agreement and all papers submitted in connection with the proposed settlement, having considered all arguments of counsel, and noting that there have been no objections to the proposed settlement, finds that the Parties have evidenced full compliance with the Preliminary Approval Order, and that there are substantial and sufficient grounds for entering this Order Granting Final Approval of Class Action Settlement and Final Judgment (“Final Order and Judgment”). The Court therefore directs the Parties and their counsel to implement and consummate the Agreement and directs the administration of the settlement in accordance with the terms and provisions of the Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has federal subject matter jurisdiction of this Lawsuit and jurisdiction to approve the settlement.
2. The Court has personal jurisdiction over the Named Plaintiffs and all members of the Class.
3. The Agreement is hereby incorporated by reference in this Order, and all terms and phrases used in this Final Order and Judgment shall have the same meaning as in the Agreement.
4. Pursuant to Federal Rule of Civil Procedure 23, the Court finds that (a) members of the proposed Class are so numerous as to make joinder of all members impracticable; (b) there are questions of law or fact common to the proposed Class; (c) the claims of the Named Plaintiffs are typical of the claims of the proposed Class; (d) the Named Plaintiffs and Class Counsel fairly and adequately protected and will continue to protect the interests of the members of the Class; (e) questions of law or fact common to the members of the Class predominate over any questions affecting only individual members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the Lawsuit.

5. The Court therefore finds that the requirements for certifying a settlement class have been met and are appropriate under the circumstances of this case pursuant to Federal Rule of Civil Procedure 23(b)(3). The Court certifies for settlement purposes only the following Class, with the Named Plaintiffs representing the Class as follows:

All persons who purchased a Foogo® stainless steel vacuum-insulated straw bottle or a Foogo® plastic straw bottle in the United States at any time between January 1, 2007 and December 23, 2014 excluding (a) any such person who purchased for resale and not for personal or household use, (b) any officers, directors or employees, or immediate family members of the officers, directors or employees, of Thermos, and (c) the presiding judges and their immediate families.

6. The Court gives final approval to the settlement as fair, reasonable, and adequate to the Named Plaintiffs and to each member of the Class, and in their best interests, and in full compliance with all requirements of due process and federal law. The settlement is finally approved in all respects.

7. Neither the certification of the Class, nor the settlement of this Lawsuit, shall be deemed to be a concession by Thermos of the propriety of the certification of a litigation class, in this Lawsuit or any other action, and Thermos shall retain all rights to assert that class certification for purposes other than settlement is not appropriate. Furthermore, the Agreement shall not be deemed to be an admission of liability or of unlawful conduct by or on the part of Thermos or its future, current, or former officers, agents, and employees, and shall not serve as evidence of any wrongdoing by or on the part of Thermos or its future, current, or former officers, agents and employees. However, reference may be made to the settlement and the Agreement as may be necessary to effectuate the provisions of the Agreement.

8. The Court finds that the notice described in the Agreement and implemented by the Settlement Administrator pursuant to the Agreement (i) constituted the best practicable

notice; (ii) constituted notice that is reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the Action, of the proposed settlement, of their right to object or to exclude themselves from the proposed settlement and to appear at the Final Approval Hearing, and their right to seek monetary relief; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of due process and federal law.

9. The Court finds that Class Counsel and the Named Plaintiffs adequately represented the Class for the purpose of entering into and implementing the Agreement. The Court further finds that Rust Consulting, the Court-appointed Settlement Administrator, has met all requirements of the Court as set forth in the Preliminary Approval Order and the Agreement.

10. No objections to the proposed settlement have been raised.

11. The Court hereby dismisses the Lawsuit with prejudice and without fees or costs except as expressly provided in this Order and the Agreement.

12. The Court finds that the Named Plaintiffs and each member of the Class have conclusively compromised, settled, discharged, dismissed, and released all Released Claims against Thermos and the other Released Parties, as follows:

The Named Plaintiffs and each member of the Class who do not exclude themselves from the Class, for themselves and their heirs, successors and assigns, hereby fully and finally release and discharge Thermos, its parents and affiliates, and all of their respective present and former officers, directors, employees, shareholders, attorneys, agents, successors and assigns (the “Released Parties”) of and from all claims that were or could have been raised in the Lawsuit to the full extent of *res judicata* protection arising out of or related to any purchase of the Foogo® Straw Bottles during the Class Period by any Class Member, regardless of whether any such claim is known or unknown, asserted or as yet unasserted (the “Released Claims”).

13. Accordingly, upon the Effective Date, the Named Plaintiffs and all members of the Class who have not been excluded from the Class, whether or not they returned a Claim

Form within the time and in the manner provided for, are barred from asserting any Released Claims against Thermos and the other Released Parties, and any such members of the Class are deemed to have released any and all Released Claims as against Thermos and the other Released Parties. The settlement and this Final Order and Judgment are binding on, and shall have *res judicata* and preclusive effect in, any pending and future lawsuits or other proceedings encompassed by the Released Claims maintained by or on behalf of the Named Plaintiffs and all other members of the Class.

14. The Court approves the payment of attorneys' fees, costs, and expenses to Class Counsel (the "Attorneys' Fee Award") in the amount of \$395,000.

15. The Court approves payment to Named Plaintiff Jenny Milman in the amount of \$1,500, and payment to Ellen Thomas in the amount of \$1,500, in compensation for their time and service, distributed in accordance with the Agreement.

16. The Court hereby bars and enjoins all members of the Class who have not been excluded from the Class from (i) filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the Released Claims, or the facts and circumstances relating to any of them; and (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of members of the Class who have not been excluded from the Class (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the Released Claims, or the facts and circumstances relating to any of them.

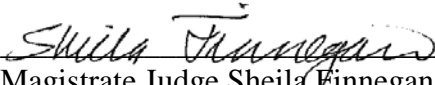
17. No Class Members have requested exclusion from the Class.

18. On or before July 27, 2015, the Parties shall file with the Court a report that sets forth the number of valid claims submitted for each benefit option under the Agreement, the total cash payment that the Parties expect will be made to Class Members who submitted approved claims for cash payments under the Agreement, and the total quantity and approximate retail value of Thermos® product that the Parties expect will be distributed to Class Members who submitted approved claims for replacement product under the Agreement.

19. In the event this settlement does not become effective in accordance with the terms of the Agreement, then the Agreement, this Final Order and Judgment, and all orders entered into regarding this settlement shall be null and void and vacated, in accordance with the Agreement.

20. The Court hereby authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modification, and expansions of the Agreement as (a) are consistent in all material respects with this Final Order and Judgment and (b) do not limit the rights of the Class Members under the terms of the Agreement.

Dated: May 27, 2015



Magistrate Judge Sheila Finnegan
United States District Court, Northern District of Illinois