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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

J PODAWILTZ, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

**SWISHER INTERNATIONAL, INC.,
PLAID PANTRY, INC., and
PLAID PANTRIES, INC.,**

Defendants.

Case No. 16CV27621

**ORDER GRANTING
PRELIMINARY
APPROVAL OF
CLASS SETTLEMENT**

ORDER GRANTING PRELIMINARY APPROVAL

After having carefully reviewed plaintiff's unopposed motion for conditional class certification and preliminary approval of class settlement, the Court determines and orders as follows:

- A.** Counsel have advised the Court that the parties have agreed, subject to final approval by this Court following notice to the proposed settlement class and a

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2 hearing, to settle this action on the terms and conditions set forth in the
3 settlement agreement.

4 **B.** The Court has reviewed the agreement, as well as the files, records, and
5 proceedings to date in this action. The terms of the agreement are hereby
6 incorporated as though fully set forth in this order.
7

8 **C.** Based upon preliminary examination, it appears to the Court that the
9 agreement is sufficiently fair, reasonable, and adequate to warrant notice to
10 the proposed settlement class; that the settlement class should be certified for
11 settlement purposes; and that the Court should hold a hearing after notice to
12 the settlement class to determine whether to enter a settlement order and
13 final judgment in this action, based upon that agreement.
14

15 Therefore, the Court finds and concludes as follows:
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17 **1. *Preliminary Approval of Proposed Settlement.*** The agreement, including
18 all exhibits, is preliminarily approved as fair, reasonable, and adequate. The
19 Court finds that **(a)** the agreement resulted from extensive arm's length
20 negotiations between the parties and their counsel, and **(b)** the agreement is
21 sufficient to warrant notice to members of the settlement class and the
22 settlement hearing described below.
23

24 **2. *Class Certification for Settlement Purposes Only.*** Under ORCP 32(A) the
25 Court, for settlement purposes only, conditionally certifies the settlement
26 class as defined in the settlement agreement. In connection with the
27 certification, the Court makes the following preliminary findings: **(a)** the
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2 settlement class satisfies ORCP 32(A)(1) because the settlement class appears
3 to be so numerous that joinder of all members is impracticable; **(b)** the
4 settlement class satisfies ORCP 32(A)(2) because there appear to be questions
5 of law or fact common to the settlement class; **(c)** the settlement class satisfies
6 ORCP 32(A)(3) because the claims of the representative plaintiff named in the
7 caption appear to be typical of the claims being resolved through the proposed
8 settlement; **(d)** the settlement class satisfies ORCP 32(A)(4) because the
9 representative plaintiff appears to be capable of fairly and adequately
10 protecting the interests of the above-described settlement class in connection
11 with the proposed settlement and because counsel representing the
12 settlement class are nationally known, locally respected, qualified, competent,
13 and capable of prosecuting this action on behalf of the settlement class; **(e)**
14 the settlement class satisfies the requirements of ORCP 32(A)(3) because, for
15 purposes of settlement approval and administration, common questions of law
16 and fact appear to predominate over questions affecting only individual
17 settlement class members and because settlement with the settlement class
18 appears to be superior to other available methods for the fair and efficient
19 resolution of the claims of the settlement class; and **(f)** the settlement class
20 appears to be sufficiently cohesive to warrant settlement by representation.
21 In making these findings, the Court has exercised its discretion in
22 conditionally certifying a settlement class.
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2 **3. *Representative Plaintiff.*** For settlement purposes only, the Court appoints
3 plaintiff J Podawiltz as representative plaintiff under ORCP 32, and finds
4 that, for settlement purposes only, plaintiff has and will fairly and adequately
5 protect the interests of the settlement class.
6

7 **4. *Class counsel.*** For settlement purposes only, the Court appoints Michael
8 Fuller as lead attorney for the representative plaintiff and the settlement
9 class, and appoints OlsenDaines, Law Office of Robert Le, Levi & Korsinsky,
10 LLP, and Geragos & Geragos as counsel for the settlement class. For purposes
11 of these settlement approval proceedings, the Court finds that class counsel
12 listed above is competent and capable of exercising their responsibilities as
13 class counsel.
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16 **5. *Settlement Administrator.*** The Court appoints JND Legal Administration
17 as settlement administrator, which shall fulfill the settlement administration
18 functions, duties, and responsibilities as set forth in the settlement agreement
19 and as set forth in this Order.
20

21 **6. *Settlement Hearing.*** A final approval hearing (the “settlement hearing”)
22 shall be held before this Court on __, as set forth in the class notice, to
23 determine whether the settlement agreement is fair, reasonable, and
24 adequate, and should be given final approval. Papers in support of final
25 approval of the settlement agreement shall be filed with the Court by __. The
26 Court may postpone, adjourn, or continue the settlement hearing without
27 further notice to the settlement class. After the settlement hearing, the Court
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2 may enter a settlement order and final judgment in accordance with the
3 settlement agreement, which will adjudicate the rights of the settlement class
4 members with respect to the claims being settled.
5

6 **7. Class Notice.** The Court approves the form and contents of the notices
7 attached to the settlement agreement. Swisher and the settlement
8 administrator shall comply with the notice requirements of the settlement
9 agreement. A long form notice substantially in the form as attached to the
10 settlement agreement will be available to settlement class members who
11 request further information from the settlement administrator.
12

13 **8. Findings Concerning Class Notice.** The Court finds that the class notice
14 and the manner of its dissemination described in the settlement agreement
15 constitutes the best practicable notice under the circumstances and is
16 reasonably calculated, under all the circumstances, to apprise settlement
17 class members of the pendency of this action, the terms of the settlement
18 agreement, and their right to object to or exclude themselves from the
19 settlement class. The Court finds that the notice plan is reasonable, that it
20 constitutes due, adequate and sufficient notice to all persons entitled to
21 receive notice, and that it meets the requirements of due process, ORCP 32,
22 and any other applicable laws.
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24 **9. Exclusion from Settlement Class.** Any settlement class members who wish
25 to exclude themselves from the settlement class and timely follow the
26 procedures set forth in the settlement agreement shall be excluded. Any
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2 potential member of the settlement class may mail a written request for
3 exclusion, in the form specified in the class notice, to the settlement
4 administrator at the address listed in the class notice. All persons who
5 properly request exclusion from the settlement class shall not be settlement
6 class members and shall have no rights with respect to, nor be bound by, the
7 settlement agreement, should it be finally approved. The names of all such
8 excluded individuals shall be attached as an exhibit to any final judgment.
9

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11 **10. Costs of Class Notice and Claims Processing.** Swisher shall bear all costs
12 of notice to the settlement class of the pendency and settlement of this action
13 and of processing claims.
14

15 **11. Objections and Appearances.** Any settlement class member who has not
16 timely submitted a written request for exclusion from the settlement class,
17 and thus is a settlement class member, may object to the fairness,
18 reasonableness, or adequacy of the settlement agreement. Any settlement
19 class member who wishes to object to the settlement agreement must submit
20 their objection in writing, with objections mailed to the lead attorney for the
21 class, Attn: Michael Fuller, OlsenDaines, US Bancorp Tower, 111 SW 5th
22 Ave., Suite 3150, Portland, Oregon 97204, postmarked no later than forty-five
23 (45) days after the date that class notice is sent. Class counsel will file copies
24 of any written objections received with the Court via electronic filing. Any
25 objecting settlement class member must include their name and address, the
26 name and number of the case, and a statement of the reasons why they believe
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2 the Court should find that the proposed settlement is not in the best interests
3 of the settlement class. Any objection not timely made in this manner shall be
4 waived and forever barred. Any objecting settlement class member who
5 wishes to address the Court at the settlement hearing must indicate their
6 intent to do so in writing to the lead attorney for the class at the same time
7 that the settlement class member submits the objection and must identify any
8 witnesses and documents that they intend to use or submit at the settlement
9 hearing. Lead attorney for the class will inform the Court and Swisher's
10 counsel accordingly. Any settlement class member who does not timely deliver
11 a written objection and notice of intention to appear within forty-five (45) days
12 after the date that class notice is sent, in accordance with the requirements of
13 this Order, shall not be permitted to object or appear at the settlement
14 hearing, except for good cause shown, and shall be bound by all proceedings,
15 orders and judgments of the Court.
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20 ***12. Motion for Final Approval and Responses to Objections.*** Representative
21 plaintiff shall file with the Court his motion for final approval of the
22 settlement agreement and any responses to any objections to the settlement
23 agreement, together with all supporting documentation.
24

25 ***13. Effect of Failure to Approve the Agreement.*** In the event the Court does
26 not finally approve the settlement agreement, or for any reason the parties
27 fail to obtain a final judgment as contemplated in the agreement, or the
28 agreement is terminated under its terms for any reason, then the following

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2 shall apply: **(a)** all orders and findings entered in connection with the
3 agreement shall become null and void and have no further force and effect,
4 shall not be used or referred to for any purposes whatsoever, and shall not be
5 admissible or discoverable in any other proceeding; **(b)** the conditional
6 certification of the settlement class under this Order shall be vacated
7 automatically, and the case shall return to its status as it existed before entry
8 of this Order; **(c)** nothing contained in this Order is, or may be construed as,
9 any admission or concession by or against representative plaintiff or Swisher
10 on any point of fact or law, including, but not limited to, factual or legal
11 matters relating to any effort to certify this case as a class action for purposes
12 of considering settlement approval; and **(d)** nothing in this Order or
13 pertaining to the agreement shall be used as evidence in any further
14 proceeding in this case, including, but not limited to, motions or proceedings
15 pertaining to treatment of this case as a class action.
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20 **14. Discretion of Counsel.** Counsel are authorized to take all reasonable steps
21 in connection with approval and administration of the settlement not
22 materially inconsistent with this Order or the settlement agreement,
23 including, without further approval of the Court, making minor changes to
24 the content of the class notice that they jointly deem reasonable or necessary.
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26 **15. Stay of Proceedings Pending Approval of the Settlement.** All proceedings
27 before the Court are stayed pending final approval of the settlement, except
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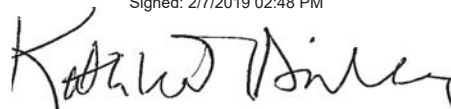
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2 as may be necessary to implement the settlement or comply with the terms of
3 the agreement.

4 **16. *Injunction Against Asserting Released Claims Pending Approval.***

5 Pending final determination of whether the settlement should be approved,
6 representative plaintiff, all settlement class members, and any person or
7 entity allegedly acting on behalf of settlement class members, either directly,
8 representatively or in any other capacity, are preliminarily enjoined from
9 commencing or prosecuting against the released parties any action or
10 proceeding in any court or tribunal asserting any of the released claims,
11 provided, however, that this injunction shall not apply to individual claims of
12 any settlement class members who timely exclude themselves in a manner
13 that complies with this Order. This injunction is necessary to protect and
14 effectuate the settlement, this Order, and the Court's flexibility and authority
15 to effectuate this settlement and to enter judgment when appropriate, and is
16 ordered in aid of the Court's jurisdiction. The Court reserves the right to
17 adjourn or continue the date of the settlement hearing without further notice
18 to settlement class members, and retains jurisdiction to consider all further
19 applications arising out of or connected with the settlement. The Court may
20 approve or modify the settlement without further notice to settlement class
21 members.
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27 **IT IS SO ORDERED.**

Signed: 2/7/2019 02:48 PM



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Circuit Court Judge Kathleen M. Dailey

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Presented by:

/s/ Michael Fuller
Michael Fuller, OSB No. 09357
Lead Trial Attorney for Plaintiff
OlsenDaines
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-743-7000

Agreed as to form by:

/s/ Peter Hargitai
Peter Hargitai, Admitted Pro Hac
Lead Trial Attorney for Defendant Swisher

/s/ Milo Petranovich
Milo Petranovich, OSB No. 813376
Lead Trial Attorney for Defendant Plaid Pantry

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2 **CERTIFICATE OF COMPLIANCE WITH UTCR 5.100**
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4 I certify that this order is ready for judicial signature because I have served a
5 copy of this order on all parties entitled to service and all parties have stipulated to
6 the order.
7

8
9 February 5, 2019
10

11 /s/ Michael Fuller
12 **Michael Fuller, OSB No. 09357**
13 Lead Trial Attorney for Plaintiff
14 OlsenDaines
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