

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

**SHAREL MAWBY, on behalf of herself
And all others similarly situated,**

Plaintiff,

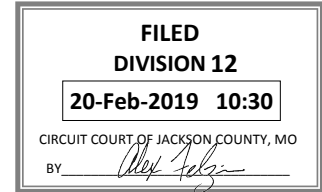
v.

MILO'S KITCHEN, LLC, et al.,

Defendants.

Case No. 1616-CV03384

Division 12



**ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter comes before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. After reviewing and considering the record, including the supporting filings and the parties' Settlement Agreement, the Court finds that the proposed class action settlement should be given preliminary approval.

IT IS THEREFORE ORDERED that Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement is hereby **GRANTED**.

IT IS FURTHER ORDERED that:

1. Preliminary Approval of the Settlement and Certification of the Settlement Class.

a. This Order incorporates the parties' Settlement Agreement (the "Agreement"), its definitions, and the exhibits thereto. Unless otherwise provided herein, the terms defined in the Agreement shall have the same meanings herein.

b. Based on the Court's examination of the record, the Court has made a preliminary determination that there is probable cause to find that the proposed settlement is fair, reasonable, adequate, and in the best interests of the settlement class under Rule 52.08 and applicable case law. In evaluating the fairness of the settlement, the Court considered: (1) the absence

of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the action; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of Plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of Plaintiff's counsel and Plaintiff. *See State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378 n.6 (Mo. Ct. App. 1997).

In particular, the Court preliminarily finds that: (a) the settlement is not the product of any fraud or collusion, but rather resulted from arm's-length negotiations between adverse parties represented by experienced counsel and supervised by an experienced mediator; (b) the settlement was agreed to only after Plaintiff's counsel conducted sufficient research and discovery to effectively evaluate the strengths and weaknesses of Plaintiff's claims; (c) Plaintiff and her counsel have concluded that the settlement is fair, reasonable, and adequate; and (d) the settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the settlement to the settlement class. Having considered the essential terms of the settlement under the standards for preliminary approval of settlements recommended in the relevant jurisprudence, the Court preliminarily approves the settlement and finds that those class members whose claims would be settled, compromised, dismissed, and/or released pursuant to the settlement should be given notice and an opportunity to be heard regarding final approval of the settlement and other related matters.

c. The Court preliminarily finds that the proposed settlement class meets all of the applicable requirements under Rule 52.08(a) and (b)(3). Accordingly, this Court hereby certifies the following class for settlement purposes only:

All Persons who, for personal, household or family use, purchased in the State of Missouri from March 1, 2011 through January 31, 2013 Milo's Kitchen brand Chicken Jerky and Chicken Grillers Home-style Dog Treats manufactured in and/or imported from China. Excluded from the settlement class are: (a) Defend-

ants, subsidiaries and affiliates of Defendants, directors and offices of Defendants, and members of their immediate family; (b) any Person who files a valid, timely Request for Exclusion; (c) federal, state, and local governments entities (including all agencies and subdivisions thereof, but excluding employees thereof); (d) any Persons who have previously settled and released their claims arising out of the purchase of the Products in the State of Missouri; and (e) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

d. The named Plaintiff, Sharel Mawby, is conditionally appointed as representative of the settlement class, and Plaintiff's counsel, Shank & Moore, LLC, is conditionally appointed as class counsel.

e. Entry of this Order is without prejudice to the rights of: (a) Defendant to oppose certification in the action and/or seek decertification or modification of any certified class should the settlement not be approved or implemented for any reason; or (b) the Parties to terminate the settlement as provided in the Agreement.

2. Approval of Class Notice and Method of Dissemination and Appointment of Settlement Administrator. Plaintiff has presented to the Court a notice plan that utilizes a digital notice campaign expected to reach a substantial portion of potential class members, supplemented with a dedicated settlement website providing class members with a detailed long-form settlement notice, along with the claim form, the settlement agreement, any orders of the Court pertaining to the settlement, and all other significant case-related documents that class members might find helpful in understanding the case and assessing the proposed settlement.

The Court finds that the proposed forms of notice submitted with Plaintiff's motion are reasonably calculated under the circumstances to apprise interested individuals of the settlement and afford them the opportunity to exercise all options available to them with respect to the settlement. The digital notices will target likely class members and direct them to additional information about the proposed settlement on the settlement website. The long-form notice available

on the settlement website (and by direct mail on request) fairly and adequately: (a) describes the terms and effect of the settlement; (b) notifies the settlement class that Plaintiff's counsel will seek reimbursement of litigation expenses, an award of attorneys' fees, and a service award for Plaintiff; (c) notifies the settlement class of the time and place of the final approval hearing; (d) advises the settlement class that the Court will exclude all members who so request by a specified date and describes the process for requesting exclusion; (e) advises the settlement class that a judgment in the case, whether favorable or not, will bind all class members who do not properly request exclusion; and (f) advises the settlement class that members who do not request exclusion may, if so desired, file objections to the settlement and enter an appearance in the case through counsel. For these reasons, the Court approves the proposed class settlement notices in form and content.

The Court also approves the proposed notice plan, which utilizes a digital media campaign consisting of: (a) internet banner notices targeted to class members; (b) targeted social media banner notices; and/or (c) web-based notice using keyword searches displaying notice banners. The expected reach of this notice exceeds the benchmark of reasonableness recognized by the Federal Judicial Center. The digital notice campaign will advise class members of the proposed settlement, and, as noted above, will direct them to a dedicated website containing more detailed information about the settlement. Given the nature of the claims in this case and the difficulty in personally identifying the consumers comprising the settlement class, the Court finds that the proposed digital media campaign complies with Rule 52.08(c)(2) because it will provide the best notice practicable under the circumstances.

The Court hereby appoints Atticus Administration, LLC ("Atticus") as the settlement and claims administrator in the case for purposes of disseminating settlement notice and managing

the claims process to follow. Within fifteen (15) days after the date of this Order (the “Notice Date”), Atticus will begin the digital media campaign and ensure that the agreed-upon settlement website (www.dogtreatsettlement.com) is operational, with copies of all settlement-related materials (including, but not limited to, the Agreement, the claim form and this Order) available for review by potential class members.

3. Exclusion from the Settlement. Any member of the settlement class who wishes to be excluded (“Opt-Out”) from the settlement must submit a written Opt-Out request to Atticus as directed in the detailed settlement notice, postmarked on or before **April 22, 2019**, which is forty-five (45) days after the Notice Date. In order to be valid, each Opt-Out request must state that the individual submitting the request wants to be excluded from the class in *Mawby v. Milo’s Kitchen, LLC*, and must include that individual’s name, address and telephone number. The request must also be personally signed by the individual seeking exclusion, and may not be made on behalf of anyone other than that individual.

Members of the settlement class who request exclusion (a) cannot file a claim under the settlement and will not receive a settlement payment; (b) cannot file an objection to the settlement; and (c) will not be bound by the terms of the Agreement or any judgment entered in this matter, including the releases provided therein, and will retain any right to file their own lawsuit(s) concerning the claims in this matter. Each member of the settlement class who does not properly submit an Opt-Out request by the deadline set forth above will remain a member of the settlement class and will be bound by the terms of the Agreement and any judgment entered in this matter, including the releases provided therein.

4. Claim Forms. The proposed Claim Form is approved in form and content, with such non-substantive modifications as the parties might make by agreement to facilitate the

claim submission process. In order to be eligible for a settlement payment, class members must complete and timely submit a Claim Form, which will be made available on the settlement website and shall be provided by the settlement administrator directly to any potential class member upon request. All Claim Forms must be submitted to the settlement administrator as directed in the Claim Form, either electronically through the settlement website or by mail. To be valid, Claims Forms must be submitted electronically or postmarked on or before **April 22, 2019**, which is forty-five (45) days after the Notice Date. Any claims submitted or postmarked after that date shall be barred, provided however, that the claims administrator may, in its discretion, permit a Settlement Class Member who makes a timely Claim to remedy deficiencies in such Settlement Class Member's Claim Form or related documentation after the submission deadline. Any class member who fails to submit a valid, timely Claim Form (and does not exclude himself or herself, as described above) shall be forever barred from receiving any settlement payment pursuant to the Agreement, but shall in all other respects be bound by all of the terms of the Agreement and any judgment entered in this matter, including the releases provided therein. Any Claim Form submitted by a class member will not bar that class member's ability to object to the Settlement or any aspect thereof.

5. Objections to the Settlement. Any member of the settlement class who wishes to object to the fairness, reasonableness, or adequacy of the settlement, to any settlement term, or to the proposed requests for litigation expenses, attorneys' fees, and/or a service award for Plaintiff, may file an objection to that effect. A valid and proper objection must include: (1) the name, address, telephone number, and, if available, the email address of the person objecting, and if represented by counsel, of his/her counsel; (2) specific objections made in writing; (3) a statement whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;

(4) a statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and (5) a detailed list of any other objections submitted by the objector, or his/her counsel, to any class actions in any court, whether state or otherwise, in the United States in the previous five (5) years. If the objector and/or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the objection to this Settlement.

Objections must be mailed to all of the following:

To the Court:

Jackson County Civil Records
Independence Courthouse Annex
308 West Kansas Street, 2nd Floor
Independence, Missouri 64050

To Plaintiff's Counsel:

Christopher S. Shank
SHANK & MOORE, LLC
1968 Shawnee Mission Parkway, Suite 100
Mission Woods, Kansas 66205

To Counsel for Defendant:

Richard Fama
Cozen O'Connor
45 Broadway Atrium, Suite 1600
New York, NY 10006

All objections must be filed with the Court and received by parties' counsel on or before **April 22, 2019**, which is forty-five (45) days after the Notice Date. If the objector retains an attorney to represent him/her for the purposes of making an objection, the attorney must formally enter his/her appearance at the same time the objection is made.

Any member of the settlement class who does not timely file and serve a valid written objection complying with the terms of this Order will be deemed to have waived all objections to the settlement and will be foreclosed from raising any objection at the Final Approval Hearing. If

any party desires to file a response to any objection that is made, that response must be filed no later than seven (7) days before the Final Approval Hearing.

6. Final Approval of the Settlement. The Final Approval Hearing is scheduled for **June 14, 2019 at 11:00 a.m.**, which is at least 90 days after the Notice Date. The hearing will be held in Division 12 of the Circuit Court of Jackson County, Missouri, in the courtroom of the Honorable Jennifer M. Phillips, located in the Eastern Jackson County Courthouse, 308 W. Kansas, Independence, Missouri, 64050.

At the hearing the Court will determine, among other things: (a) whether the proposed settlement merits final approval as fair, reasonable, and adequate; (b) whether this action should be dismissed with prejudice and whether judgment should be entered pursuant to the terms of the Agreement; (c) whether the settlement notice was sufficient under the circumstances; (d) whether Plaintiff's counsel adequately represented the settlement class in conjunction with the settlement; (e) whether the applications for attorneys' fees and a service award are reasonable and should be approved; and (f) whether the Court shall enter a Final Approval Order providing that the Court retains jurisdiction for enforcement of the Released Claims, directing distribution of the settlement payments for valid and approved claims in accordance with the Agreement, and entering the release and injunction provided in the Agreement.

No later than seven (7) days prior to the Final Approval hearing, Plaintiff's counsel shall file all motions associated with the final approval hearing, including a motion for final approval of the settlement and a motion for award of attorneys' fees and a service award for Plaintiff. The Claims Administrator shall post a copy of these motions on the class settlement website and shall provide copies to any class member who requests them.

Any objector who files and serves a timely, valid objection may appear at the Final Approval Hearing, either in person or through qualified counsel retained at the objector's expense. Objectors and their attorneys intending to appear at the final approval hearing must file and serve a notice of intention to appear setting forth the name, address, and telephone number of the objector and the objector's attorney, if applicable. This notice must be filed with the Court and served on counsel for the parties at the respective addresses listed in Section 5, above, and must be accomplished on or before the deadline set forth in that same Section. Any objector or attorney who does not timely file and serve a notice of intention to appear shall not be permitted to appear at the Final Approval Hearing.

The Court reserves the right to reschedule the Final Approval Hearing without further notice, provided that the time or the date of the Final Approval Hearing shall not be set at a time or date earlier than the time and date set forth above. The Court also reserves the right to approve the settlement at or after the Final Approval Hearing with such modifications as may be agreed-to by the parties.

7. Termination of the Settlement. This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions prior to execution of the Agreement if the settlement is terminated in accordance with the Agreement.

8. Use of Order. This Order is not admissible as evidence for any purpose against any party in any pending or future litigation involving any of the parties. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability, and Defendants specifically denies any such fault, wrongdoing, breach, and liability. This Order shall not be construed or used as an admission, conces-

sion, or declaration by or against Plaintiff or the settlement class that their claims lack merit or that the relief requested in this action is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any party of any arguments, defenses, or claims that may exist in the event that the settlement is terminated. All proceedings conducted pursuant to the settlement are for settlement purposes only. Neither the fact of settlement, nor any provision contained in the Agreement or documents submitted in conjunction with settlement approval, nor any actions taken with respect to settlement approval shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth or falsity of any allegation or validity or invalidity of any legal argument that has been, could have been, or might in the future be asserted.

9. Stay/Injunction. Because the settlement entered into by the parties has been preliminarily approved by this Court, all proceedings in this action, other than those necessary to administer and evaluate the settlement pursuant to Rule 52.08, are stayed. Further, by this Order, all Settlement Class Members, unless and until they have timely excluded themselves from the Settlement Class in accordance with the procedures set forth in this Order, are hereby enjoined (i) from 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, arising out of, or concerning, any of the claims and causes of action or the facts and circumstances giving rise to the instant action and/or the Released Claims; (ii) from filing, commencing or prosecuting a lawsuit (other than the instant lawsuit) or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any Settlement Class Members who have not timely excluded themselves (including by seeking

to amend a pending complaint or petition to include class allegations or seeking class certification in a pending action), based on, arising out of, or concerning, any of the claims and causes of action or the facts and circumstances giving rise to the instant action and/or the Released Claims; and (iii) from attempting to solicit other Settlement Class Members from excluding themselves from this settlement, except that Plaintiffs' right or ability to prosecute or participate in the instant action shall remain intact per the terms of the Settlement Agreement (but, except for proceedings concerning the settlement process and settlement approval, the instant action shall be stayed in its entirety as set forth in this paragraph 9).

10. Other Provisions.

a. No discovery with regard to the settlement or Agreement shall be permitted unless first approved and directed by the Court upon a proper showing made through filing of an appropriate motion by the party seeking such discovery.

b. Any information received by the claims administrator in connection with this settlement that pertains to a particular Member of the Settlement Class shall be confidential and shall not be disclosed by the claims administrator to any other Settlement Class Member or their counsel.

c. Defendants may communicate with Settlement Class Members regarding the provisions of this Agreement, so long as such communications are not inconsistent with settlement notice or other agreed-upon communications regarding the Agreement. The Released Entities may refer Settlement Class Members to class counsel, the claims administrator, the toll free number, and/or the settlement website. Defendants will not discourage the filing of any claims allowed under the Agreement. Defendants may continue to communicate with their customers, business

contacts, and members of the public in the ordinary course of business without first requesting or receiving Court approval for those communications.


d. The Court may enter its Order and Judgment approving the settlement and dismissing the action on the merits and with prejudice regardless of whether it has approved the plan of distribution or awarded attorneys' fees and expenses.

e. All funds held in the Settlement Fund shall be deemed and considered to be *in custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Agreement and/or further order(s) of the Court.

f. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement.

IT IS SO ORDERED.

Date: February 19, 2019



The Honorable Jennifer M. Phillips
Jackson County Circuit Judge

CERTIFICATE OF MAILING

It is hereby certified that a copy of the forgoing was sent via the E-Filing System this 20th day of February, 2019, to all attorneys of record.



Law Clerk