

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

LINDA SUCHANEK, et al., individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

STURM FOODS, INC., and
TREEHOUSE FOODS, INC.,

Defendants.

Case No. 11-CV-565-NJR-RJD

MEMORANDUM AND ORDER

ROSENSTENGEL, Chief Judge:

This matter is before the Court on Plaintiff's Motion for Preliminary Approval of Class Settlement (Doc. 439). Defendants did not file a response to the motion. After reviewing and considering the motion, all supporting documents, and the Class Action Settlement Agreement ("Settlement Agreement"), the Court **ORDERS** as follows:

Preliminary Findings Regarding Proposed Settlement: The Court preliminarily finds that:

- A. The proposed Settlement resulted from extensive arms-length negotiations;
- B. The Settlement was reached after eight years of vigorous litigation, including an appeal to the Seventh Circuit and an unsuccessful attempted interlocutory appeal; the parties engaged in extensive motion practice, including a motion to dismiss and motion for summary judgment, motions for class certification, motions to strike

experts, as well as extensive trial preparation up to the eve of trial; after negotiations had continued over several years, including multiple in-person mediation sessions, with multiple skilled and experienced mediators;

C. Class Counsel has concluded that the Settlement Agreement is fair, reasonable, and adequate; and

D. There is cause to believe that the Settlement is fair, reasonable, and adequate and within the range of possible approval to warrant sending notice of the Settlement to the Settlement Class.

Fairness Hearing: A hearing is scheduled at the United States District Court for the Southern District of Illinois, Chief Judge Nancy J. Rosenstengel presiding, on **April 21, 2020, at 1:30 p.m.** (the “Fairness Hearing”) to determine, among other issues:

A. Whether final approval of the Settlement as embodied by the Settlement Agreement as fair, reasonable, and adequate should be granted;

B. Whether the notice and notice methodology was performed as directed by this Court;

C. Whether the motion for attorneys’ fees and costs to be filed by Class Counsel thirty (30) days before the deadline for objections to the proposed settlement are due should be approved and in what amount;

D. Whether the motion for compensation to Class Representatives should be approved and in what amount; and

E. Whether the Administrative Expenses specified in the Settlement Agreement and requested by the parties should be approved for payment from the Settlement Fund.

Establishment of Qualified Settlement Fund: A common fund is agreed to by the parties in the Settlement Agreement and is hereby established and shall be known as the *Suchanek v. Sturm* Litigation Settlement Fund (the “Settlement Fund”). The Settlement Fund shall be a “qualified settlement fund” within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The Settlement Fund shall consist of \$25,000,000.00 (the “Gross Settlement Amount”) and any interest earned thereon. The Settlement Fund shall be administered as follows:

A. The Settlement Fund is established exclusively for the purposes of: (a) making distributions to eligible claimants pursuant to the claims process described in the Settlement Agreement; (b) making distributions to Class Representatives and Class Members as specified in the Settlement Agreement and ordered by the Court; (c) making payments for all settlement administration costs and costs of notice, including payments of all Administrative Expenses specified in the Settlement Agreement; (d) making payments of all Attorneys’ Fees and Costs to Class Counsel as awarded by the Court in this action; and (e) paying employment, withholding, income and other applicable taxes, all in accordance with the terms of the Settlement Agreement and this Order. Other than the payment of Administrative Expenses or as otherwise expressly provided in the Settlement Agreement, no distribution shall be made from the Settlement Fund until after the Settlement Effective Date.

B. Within the time periods set forth in the Settlement Agreement, Defendants shall cause the Gross Settlement Amount to be deposited into the Settlement Fund.

C. Defendants shall timely furnish a statement to the Settlement Administrator that complies with Treasury Regulation § 1.468B-3(e)(2), which may be a combined statement under Treasury Regulation § 1.468B-3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Defendants make a transfer to the Settlement Fund.

D. Defendants shall have no withholding, reporting, or tax reporting responsibilities with regard to the Settlement Fund or its distribution, except as otherwise specifically identified in this Order. Moreover, Defendants shall have no liability, obligation, or responsibility for administration of the Settlement Fund or the disbursement of any monies from the Settlement Fund except for: (1) their obligation to cause the Gross Settlement Amount to be paid no later than the dates specified above; and (2) their agreement to cooperate in providing information that is necessary for settlement administration set forth in the Settlement Agreement.

E. The oversight of the Settlement Fund is the responsibility of the Settlement Administrator. The status and powers of the Settlement Administrator are as defined by this Order.

F. The Gross Settlement Amount caused to be paid by Defendants into the Settlement Fund pursuant to the Settlement Agreement, and all income generated by that Amount, shall be immune from attachment, execution, assignment, hypothecation, transfer, or similar process by any person. Once the Settlement Fund vests it is irrevocable during its term, and Defendants have divested themselves of all right, title, or interest, whether legal or equitable, in the Settlement Fund, provided, however, in the event the Settlement Agreement is not approved by the Court or the Settlement set forth in the

Settlement Agreement is terminated or fails to become effective in accordance with its terms (or, if following approval by this Court, such approval is reversed or modified), the Parties shall be restored to their respective positions in this case as of the day prior to the Settlement Agreement Execution Date; the terms and provisions of the Settlement Agreement and this Order shall be void and have no force and effect and shall not be used in this Case or in any proceeding for any purpose; and the Settlement Fund and income earned thereon shall immediately be disposed of as set forth in the Settlement Agreement.

G. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court.

H. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with Article 6 of the Settlement Agreement, provided, however, that the Settlement Fund shall not expire until its liability for any and all government fees, fines, taxes, charges, and excises of any kind, including income taxes, and any interest, penalties or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all such amounts have been paid by the Settlement Fund.

I. The Settlement Fund shall be used to make payments to Class Members under the Plan of Allocation set forth in the Settlement Agreement. Individual payments to Class Members will be subject to tax withholding as required by law and as described in the Settlement Notice and its attachments. In addition, all Class Representatives' Compensation, Administrative Expenses, and all Attorneys' Fees and Costs of Class

Counsel shall be paid from the Settlement Fund.

J. The Court and the Settlement Administrator recognize that there may be tax payments, withholding, and reporting requirements in connection with the administration of the Settlement Fund. The Settlement Administrator shall, pursuant to the Settlement Agreement, determine, withhold, and pay over to the appropriate taxing authorities any taxes due with respect to any distribution from the Settlement Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes.

K. The Settlement Administrator, in its discretion, may request expedited review and decision by the Internal Revenue Service or the applicable state or local taxing authorities, with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions.

L. The Settlement Administrator shall have all the necessary powers, and take all necessary steps, to effectuate the terms of the Settlement Agreement, including the payment of all distributions. Such powers include receiving and processing information from class members pertaining to their claims and investing,

allocating, and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order.

M. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements, and other transactions of the Settlement Fund. All accounts, books, and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person; the nature and status of any payment from the Settlement Fund and other information which the Settlement Administrator considers relevant to showing that the Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Order, and any future orders that the Court may find it necessary to issue.

N. The Settlement Administrator may establish protective conditions concerning the disclosure of information maintained by the Settlement Administrator if publication of such information would violate any law, including rights to privacy. Any person entitled to such information who is denied access to the Settlement Fund's records may submit a request to the Court for such information. However, the Settlement Administrator shall supply such information to any claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state and local tax liabilities. Such information shall be supplied in the form and manner prescribed by law.

O. This Order will bind any successor Settlement Administrator. The

successor Settlement Administrator(s) shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Settlement Administrator. Any Settlement Administrator(s) who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the Court or by any successor Settlement Administrator(s), to transfer administrative powers over the Settlement Fund to the successor Settlement Administrator(s). The appointment of a successor Settlement Administrator(s), if any, shall not under any circumstances require any Defendant to make any further payment of any nature into the Settlement Fund or otherwise.

Settlement Notice: The Settling Parties have presented to the Court proposed Forms of Settlement Notice, which are attached to this Order as Exhibits 1 and Exhibit 2.

A. The Court finds that the proposed forms and the Settlement Website referenced in the Settlement Notice fairly and adequately:

- i. describe the terms and effect of the Settlement Agreement and of the Settlement;
- ii. notify the Class concerning the proposed Plan of Allocation;
- iii. notify the Class that Class Counsel will seek compensation from the Settlement Fund for the Class Representatives and for Attorneys' Fees and Costs;
- iv. notify the Class that Administrative Expenses related to the implementation of the Settlement will be paid from the Settlement Fund;
- v. post on the Settlement Website the time and location of the Fairness Hearing without additional mailed notice; and
- vi. give notice to the Class of the time and place of the Fairness Hearing and describe how the recipients of the Settlement Notice may object to any of the relief requested.

B. The Settling Parties have proposed the manner of communicating the notice to members of the Class as set forth on Exhibits 1 and 2 hereto and as set forth in the Settlement Website, and the Court finds that such proposed manner is the best notice practicable under the circumstances, and directs that the Settlement Administrator shall, within **sixty (60) days of this Order**, cause the Settlement Notice, with non-substantive modifications as may be agreed upon by the Settling Parties, to be published in accordance with the Notice Plan submitted to the Court.

C. The Court directs Class Counsel, no later than **sixty (60) days before the Fairness Hearing**, to cause the Settlement Notice to be published on the Settlement Website identified in the Settlement Notice.

D. The Court directs Class Counsel to file its motion for attorneys' fees and costs **thirty (30) days before the deadline for objections to the proposed settlement are due**.

E. The Court directs the Parties to file their Motion for Final Approval of the Settlement Agreement at least **ten (10) days before the Fairness Hearing**.

Objections to Settlement: Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of Attorneys' Fees and Costs, or to any request for compensation for the Class Representatives must file an objection in the manner set out in this Order.

A member of the Settlement Class wishing to raise an objection to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of

Attorneys' Fees and Costs, or to any request for compensation for the Class Representatives must do the following: (A) file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection; and (B) serve copies of the objection and all supporting authorities or evidence to Class Counsel and Defense Counsel. The addresses for filing objections with the Court and for service of such objections on counsel for the parties to this matter are as follows:

Clerk of the Court
Margaret M. Robertie
United States District Court
Southern District of Illinois
750 Missouri Avenue
East St. Louis, IL 62201

Class Counsel
Peter H. Burke
Burke Harvey, LLC
2400 Freeman Mill Rd.
Suite 101-N
Greensboro, NC 27406-3912

Defense Counsel
Craig Fochler
John F. Zabriskie
Jonathan W. Garlough
FOLEY & LARDNER LLP
321 North Clark Street, Suite 2800
Chicago, IL 60654-5313

A. For the objection to be considered by the Court, the objector or his, her, or its counsel (if any) must serve copies of the objection(s) on the attorneys listed above and file it with the Court by no later than **thirty (30) days before the date of the Fairness Hearing.**

B. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must serve a notice of appearance on the attorneys listed above and file it with the Court by no later than **thirty (30) days before the date of the Fairness Hearing**.

C. Failure to serve timely objection(s) on either the Court or counsel for the parties shall constitute a waiver of the objection(s). Any Class Member or other person who does not timely file and serve a written objection complying with the terms of this Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

D. The parties may, but are not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two (2) hours in length, on any objector within **ten (10) days** of receipt of the objection and any responses to discovery or depositions must be completed within **ten (10) days** of the request being served on the objector.

E. Any party wishing to file a response to an objection must do so, and serve the response on all parties, **no later than five (5) days before the Fairness Hearing**.

Appearance at Fairness Hearing: Any objector who files and serves a timely, written objection in accordance with the terms of this Order may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to speak at the Fairness Hearing must serve a notice of intention to speak setting forth, among other things, the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone

number of the objector's attorney) on Class Counsel and Defense Counsel (at the addresses set out above) and file it with the Court by no later than **thirty (30) days before the date of the Fairness Hearing**. Any objector (or objector's attorney) who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing.

Claim Form Deadline: All valid claim forms must be received by the Settlement Administrator by **May 7, 2020, at 5 p.m.**, Central Standard Time.

Service of Papers: Defense Counsel and Class Counsel shall promptly furnish each other with copies of all objections that come into their possession.

Termination of Settlement: This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing the day before the Settlement Agreement Execution Date, if the Settlement is terminated in accordance with the Settlement Agreement.

Use of Order: This Order, the Settlement, the Settlement Agreement, and all negotiations, documents, and discussions associated with those, shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability or a waiver of any claims or defenses. This Order shall not be construed or used as an admission, concession, or declaration by or against Class Representatives or the Settlement Class that their claims lack merit, or that the relief requested in the action is inappropriate, improper, or unavailable. This Order shall not be construed or used as a waiver by any party of any arguments, defenses, or claims he, she, or it may have.

Continuance of Hearing: The Court will not continue the Fairness Hearing

without a showing of good cause. If the Court does find good cause to continue the Fairness Hearing, the Class shall be notified of the continuance by publication of the Court's order on the Settlement Website. No other notice shall be required.

IT IS SO ORDERED.

DATED: November 7, 2019

Handwritten signature of Nancy J. Rosenstengel in black ink, written over a circular official seal.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge