

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAELINE RITO, on behalf of
herself and all others similarly situated,

Plaintiffs,

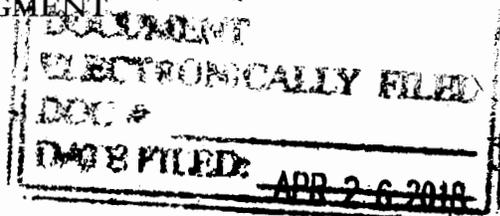
vs.

CASTELLA IMPORTS, INC. and
CASTELLA IMPORTS II, LLC.

Defendants.

CIVIL ACTION NO. 1:15-cv-8395-GBD

[PROPOSED]
ORDER GRANTING FINAL
APPROVAL OF CLASS
ACTION SETTLEMENT,
APPROVAL OF ATTORNEYS'
FEES AND COSTS,
APPROVING SERVICE
AWARDS AND ENTERING
FINAL JUDGMENT



THIS MATTER having been opened to the Court by Poulos LoPiccolo PC and Nagel Rice, LLP, on behalf of Michaeline Rito, Plaintiff and Class Representative by way of Motion to Approve Certification of Settlement Class and Final Approval of Class Settlement (ECF 68) and Plaintiff's Motion for Approval of Agreed Upon Attorneys' Fees and Costs and Class Representative Service Award (ECF 64). On January 10, 2018, the Court entered an order certifying a settlement class, preliminarily approving the class action settlement and directing notice to the settlement class ("Preliminary Approval Order") ECF 63.

WHEREAS, the Court having reviewed Settlement Agreement and Release, including all exhibits attached thereto; the arguments and authorities presented by the parties through their counsel, and the record in the Action, and noting also that there were no objections to the Settlement, and good cause appearing, hereby reaffirms the findings and conclusions in its Order of January 10, 2018 (ECF 63). Accordingly,

IT IS ON THIS 25TH day of April, 2018 HEREBY ORDERED:

1. Jurisdiction

The Court has subject matter jurisdiction under 28 U.S.C. § 1331, and venue is proper in this District. The Court has personal jurisdiction over the Representative Plaintiff, Class Members, and Castella and venue is proper in this District.

2. Class Certification for Settlement Purposes Only

The Settlement Agreement provides for a Settlement Class defined as follows:

All persons in the United States who purchased “Aegean,” “Lira” or “Pegasus” brand extra virgin olive oil at retail after October 23, 2009, for personal or household use.

For the reasons set forth below, the Court reaffirms that it is proper to certify, and hereby does finally certify, for settlement purposes only, the Settlement Class pursuant to Federal Rule of Civil Procedure 23.

a) Numerosity: Pursuant to Fed. R. Civ. P. 23(a)(1), because there are over 190,000 members of the Class the court finds the class is so numerous that joinder of all members is impracticable.

b) Commonality: Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines that there are common issues of law and fact for the Class as follows:

1) Whether Defendants misled class members by representing that their products were EVOO;

2) Whether Defendants advertising and marketing regarding their products sold to class members was unfair;

c) Typicality: Pursuant to Fed. R. Civ. P. 23(a)(3), the claims or defenses of the representative parties are typical of the claims or defenses of the class. The class representative purchased Defendant’s olive oil after reviewing and relying upon the statements on the package that indicated the oil was “extra virgin,” as did all members of the settlement class.

d) Adequacy of Representation: Pursuant to Fed. R. Civ. P. 23(a)(4), the Representative Plaintiff will fairly and adequately protect and represent the interests of all members of the Class, and the interests of the Representative Plaintiff are not antagonistic to those of the Class. Furthermore, the Representative Plaintiff is represented by counsel who is experienced and competent in the prosecution of complex class action litigation.

The Court further finds, for settlement purposes only, that the requirements of Rule 23(b)(3) are satisfied, as follows:

e) Predominance: Questions of law and fact common to the members of the Class, as described above, predominate over questions that may affect only individual members; and

f) Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

3. The Fairness, Adequacy and Reasonableness of the Settlement

The settlement is entitled to a presumption of fairness, adequacy and reasonableness because the agreement was reached after arm's-length negotiations between experienced, capable counsel after the parties obtained an informed view of the strengths and weaknesses of their respective cases through conducting informal discovery and independent product testing and with the assistance of the Magistrate. The Court has assessed the Settlement under the nine factors identified in Second Circuit precedent. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) and *Wal-Mart Stores, Inc. v. VISA U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005) and finds that each of these factors support approval of the settlement.

(a) **The complexity, expense and likely duration of the litigation** - Time and money is saved by reaching a settlement prior to dispositive motion practice and trial. Additional discovery of fact and expert witnesses, voluminous e-discovery, a contested class certification motion and most likely an appeal of any judgment would all be costly and time consuming. Hence, this factor weighs in favor of final approval.

(b) **The reaction of the class to the settlement-** the class consists of approximately 190,000 class members but no class members have opted out or filed objections to the settlement or the attorneys' fee request. Hence, this factor weighs in favor of final approval.

(c) **The stage of the proceedings and the amount of discovery completed -** Here, Plaintiff and her counsel conducted significant investigation and had testing performed of the olive oil purchased by Plaintiff and additional random samples. The parties' counsel also engaged in significant informal exchanges of information regarding Defendants business practices, and their own EVOO test results prior to the negotiation of the settlement. Finally, Defendants provided specific factual information with the goal of addressing allegations raised by Plaintiff in the Amended Complaint and then followed up with additional sworn confirmatory discovery. Thus, this factor favors approval.

(d) **The risks of establishing liability -** Defendants have provided testing results which support their defense that the EVOO Defendants sold during the relevant time period satisfied acidity levels, and thus constituted EVOO. Moreover, the degradation of oil quality over time and due to improper storage techniques is well documented in the literature, which makes it difficult to establish that consumers purchased mislabeled or adulterated oil from Defendants. Establishing Defendants' liability would require significant factual development. Moreover, establishing a favorable outcome at the trial and appellate levels is inherently uncertain. The proposed settlement alleviates this uncertainty. This factor weighs in favor of final approval.

(e) **The risks of establishing damages-** Establishing damages would require significant time and expense including expert testimony. When weighing the risks of establishing damages against the certainty of the injunctive and cash relief, the balance weighs in favor of the Settlement.

(f) **The risks of maintaining the class action through the trial-** It is anticipated that class certification would have required extensive briefing and would have been hotly contested. Defendants would have asserted that normal degradation of oil due to storage factors impacted commonality and that tracing purchasers rendered ascertainability problematic. A favorable ruling on class certification may have certainly resulted in an attempted interlocutory appeal pursuant to Fed .R. Civ. P. 23(f) or an appeal as of right at the conclusion of the litigation. Settlement eliminates these risks, expense and delay.

(g) **The ability of the defendant to withstand a greater judgment -** Although Defendants here would most likely be able to withstand a greater judgment, a "defendant's ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005). Thus, this factor does not impact granting final approval.

(h-i) **Range of Reasonableness of Settlement in Light of Best Possible Recovery and Risks of Litigation** - Very significant risks attend litigating this action. The expense, uncertainties and certain delays involved, when weighed against the monetary relief, which is significant in relationship to the small purchase price of the product, coupled with the significant injunctive relief, provides a concrete and valuable benefit to the class. Hence, these last two *Grinnell* factors favor final approval of the settlement as fair, reasonable and adequate.

4. Class Counsel and Settlement Class Representative

The Court hereby appoints Nagel Rice LLP and Poulos LoPiccolo PC as Class Counsel pursuant to Rule 23(g) and finds that they have fairly and adequately represented the interests of the Settlement Class. The Court further concludes that Michaeline Rito, appointed pursuant to the January 10, 2018 Order is typical of the Class and has fairly and adequately represented the interests of the Settlement Class Members.

5. The Notice Program

The Court finds that the content of the Publication Notice, and Long-Form Notice on the Settlement Website attached to the Agreement as Exhibits B and C satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1) and due process, and accordingly reconfirms its approval of each such Notice.

This Court further approves the proposed methods for giving notice of the settlement to Class Members, as reflected in the Agreement and Preliminary Approval Order. The Court finds that the Class Members will receive the best notice practicable under the circumstances.

6. Findings Concerning Claims Process

The Court finds that Defendants have administered the claims procedure with reasonable diligence and directs Defendant to continue to administer the claims process through July 30, 2018, which is the deadline for submitting claims pursuant to the Settlement Agreement, and thereafter for purposes of administering all timely filed claims. The Court affirms that all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified

in the Notice shall be forever barred from making a claim, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release in the Agreement, and the Final Judgment.

7. Class Action Fairness Notice

The Court finds that Defendants have caused to be served notice of the proposed Settlement on appropriate state officials in accordance with the requirements under the Class Action Fairness Act, 28 U.S.C. Section 1715(b). The Court further finds that no objections to the Settlement or the attorneys' fee request were made by any state official.

8. Objections to Substantive Settlement Terms

The Court finds that there were no objections filed to the Settlement and no requests for exclusion which weighs strongly in favor of final approval.

9. Release

After the Effective Date, the Plaintiff and Class Members and Released Persons shall be deemed to have, and by operation of this Order and Final Judgment entered in connection with this Order shall have, fully and irrevocably released and forever discharged each other from all Released Claims as more fully set forth in the Settlement Agreement.

10. Award of Attorneys' Fees, Costs, and Expenses.

The Settlement Agreement contemplates Plaintiffs' Counsel requesting attorneys' fees, costs and expenses of no more than \$300,000 to be paid by Defendants separate and apart from the Settlement Relief being provided to the class. Plaintiffs' Counsel have filed a separate Motion for Attorney's Fees and Costs which requests the Court approve this sum. (ECF 64). No Class Member has objected to Plaintiffs' Counsel request for a payment of attorneys' fees, costs and expenses, nor has any Class member objected to the amount of the request. After considering the submission of Plaintiffs' Counsels' memorandum of law, declarations and time and expense records in support of

their motion, the Court finds that the requested fee award, which includes costs and expenses, of \$300,000 is reasonable and the sum of \$300,000 is hereby awarded to Class Counsel.

11. Service Award

Pursuant to the Settlement Agreement, the Settlement Class Representative requests that this Court grant her a service award of \$1,000 to compensate her for her time and commitment spent on this litigation. Under the facts of this case, a payment of \$1,000 to the Plaintiff who served as the class representative does not give rise to a conflict between the representative and the Class, but is rather an appropriate measure of compensation for time spent and the public good accomplished through the settlement. The Court finds a service award of \$1,000 is warranted and appropriate.

12. Final Judgment

Pursuant to Federal Rules of Civil Procedure 54 and 58, under the terms of the Settlement Agreement approved by the Court, the Court hereby enters Judgment dismissing with prejudice this Action and all claims in the operative Complaint.

13. Continuing Jurisdiction

The Court shall retain continuing jurisdiction over the Actions, the Parties and the Class, and the administration, enforcement, and interpretation of the Agreement.

APR 26 2018


George B. Daniels, U.S.D.J.