



17

COPY

FILED
ALAMEDA COUNTY

FEB 06 2018

CLERK OF THE SUPERIOR COURT

By Pam Williams
Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALAN DUCORSKY, on behalf of himself, all others similarly situated and the general public, Plaintiff, v. PREMIER ORGANICS, Defendant.
AND ALL RELATED CROSS-CLAIMS

Case No.: HG16801566

~~PROPOSED~~ ORDER OF FINAL APPROVAL
AND JUDGMENT

Dept.: 17
Judge: Hon. Ioana Petrou

BY FAX

1 This matter came before the Court on plaintiff's motion for final approval of a proposed class action
2 settlement, and motion for attorneys' fees and costs, and a service award. A Fairness Hearing was held on
3 February 6, 2018 in Department 17. Having read and considered the parties' Amended Settlement
4 Agreement, plaintiff's motions and all papers submitted in connection therewith, and having heard oral
5 argument during the Fairness Hearing, and for good cause found,

6 **IT IS HEREBY ORDERED:**

7 1. This Order incorporates by reference the definitions in the Amended Settlement Agreement
8 and Release, and all terms used herein shall have the same meaning as that set forth in the Amended
9 Settlement Agreement and Release, provided however, that in the event of any inconsistency, the terms of
10 this Order shall control.

11 2. This Court has jurisdiction over this action and all Parties and Settlement Class Members.

12 3. For the reasons set forth in the Preliminary Approval Order, and for the reasons set forth
13 herein and on the record during the Final Approval Fairness Hearing conducted February 6, 2018, the Court
14 confirms the order conditionally certifying the Class for settlement purposes, defined as:

15 all persons who, during the Class Period, purchased 14-ounce jars of Premier Organics'
16 Artisana Virgin Coconut Oil, 16-ounce jars of Premier Organics' Artisana Virgin Coconut
17 Oil, and/or boxes of 10 one-ounce packets of Premier Organics' Artisana Virgin Coconut Oil,
18 for personal or household use, with the label or packaging depicted in Exhibit A-1. Excluded
19 from the Class are Premier Organics, its corporate parents, subsidiaries and affiliates, officers
20 and directors, any entity in which Premier Organics has a controlling interest, and the legal
21 representatives, successors or assigns of any such excluded persons or entities.

22 4. The Court reaffirms the Preliminary Approval Order appointing plaintiff as Class
23 Representative and The Law Office of Jack Fitzgerald, PC and The Law Office of Paul K. Joseph, PC and
24 their attorneys of record as Class Counsel.

25 5. Notice of the pendency of this Action as a class action, and of the proposed Agreement, was
26 given to all Settlement Class Members by the best means practicable under the circumstances, including
27 web-based notice utilizing social media and additional "keyword" searches, resulting in over 8.6 million
28 web impressions. Notice to the Class was further effected through the creation of a website,
www.ArtisanaSettlement.com. The Notice Plan, which was approved by the Court, resulted in 49 claims
submitted as of November 27, 2017. The Court finds that the form and method of notifying the Settlement
Class Members of the pendency of the Action, the terms of the proposed Agreement, and the Settlement

1 Class Members' rights and options with respect thereto, was fair, adequate, and met all of the requirements
2 of the Preliminary Approval Order, due process, Cal. Code Civ. Proc. §382 and Cal. Rule Ct. 3.769(f), and
3 any other applicable law.

4 6. The Agreement was reached after serious, informed, arms-length and non-collusive
5 negotiations by capable and experienced counsel with full knowledge of the facts, the law, and the risks
6 inherent in litigating the Action, and was the product of vigorously fought litigation. The Agreement is
7 entitled to a presumption of procedural fairness, and was entered into as the result of a process that was in
8 fact procedurally fair.

9 7. The Agreement confers substantial economic and non-economic benefits upon the
10 Settlement Class Members, is in the public interest, and will provide the parties with repose from litigation.

11 8. Pursuant to Code of Civil Procedure section 382, the Court hereby finds that the Agreement
12 is fair, reasonable, and adequate, and therefore approves the Agreement and directs that the Agreement be
13 effectuated in accordance with the terms set forth therein.

14 9. The Court hereby approves, as fair, reasonable, and adequate, the plan of allocation, *i.e.*, the
15 distribution of benefits to be provided to the Settlement Class Members and the means of providing such
16 benefits, as set forth in the Agreement.

17 10. The Court has considered Class Counsel's request for an award of \$104,000 in attorneys'
18 fees and \$9,297.91 in costs. The Court recognizes Class Counsel's skillful and zealous prosecution of the
19 Action, as well as the risks involved in prosecuting the Action. Having reviewed Class Counsel's Motion
20 for Fees, and all applicable legal authorities, the Court hereby approves an award of attorneys' fees in the
21 requested amount of \$104,000 and an award of costs in the requested amount of \$9,297.91, as well as the
22 fee of Rust Consulting, the Claim Administrator, in an amount not to exceed \$50,000.

23 11. Although the Court is not obligated to perform a lodestar/multiplier "cross-check," *see*
24 *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal. 5th 480, 480, here a cross-check confirms the
25 reasonableness of Class Counsel's fee request. Class Counsel states that it expended 3130 hours (not
26 including those hours necessary to prepare the final approval motion and fee request and estimates it will
27 spend another 10 hours following the filing of their final approval and fee motions), for a total lodestar of
28 \$150,095.

(Handwritten initials)

12. The Court concludes that the billing rates used by Class Counsel are justified by prior awards in similar litigation and evidence presented with Class Counsel's motion showing these rates are in line with prevailing rates in the community. Specifically, the Court finds the following billing rates are reasonable:

Attorney	Hourly Rate
Jack Fitzgerald	\$650
Tom Canova	\$750
Trevor Flynn	\$500
Melanie Persinger	\$440
Paul K. Joseph	\$425
Richelle Kemler Vanden Bergh	\$500

13. The Court concludes that the 313.0 hours of time included in Class Counsel's calculation of its lodestar was reasonably spent on this litigation, including in relation to the results obtained. The court finds Class Counsel's time, and the tasks on which it was expended, to be reasonable.

14. Given Class Counsel's rates and hours, the Court concludes that Class Counsel's reasonable lodestar is \$150,760, as follows.

Timekeeper	Hours	Rate	Lodestar
Jack Fitzgerald (JF)	49.2	\$650	\$31,980
Tom Canova	11.1	\$750	\$8,325
Trevor M. Flynn (TMF)	14.9	\$500	\$7,450
Melanie Persinger	45.5	\$440	\$20,020
Paul K. Joseph (PKJ)	184.4	\$425	\$78,370
Richelle Kemler Vanden Bergh	7.9	\$500	\$3,950
<i>Total=</i>	313.0	-	\$150,095

15. Thus, Class Counsel's request for \$104,000 is reasonable applying the lodestar cross-check.

16. In making the award of attorneys' fees and reimbursement of costs and expenses, the Court has considered and found that:

- a. The Agreement provides direct, immediate and tangible economic benefits to Settlement Class Members, in the form of payments, attorneys' fees, class notice and administration, and a service award to the Class Representative, with an economic value of \$312,500, paid by Defendants into a non-reversionary Common Fund;

1 b. The Action provided further non-economic benefit by catalyzing Premier to remove
2 the labeling claims challenged in this Action;

3 c. Class Counsel have conducted the Litigation and achieved the Agreement with skill,
4 perseverance, and diligent advocacy;

5 d. The Action involves complex legal and factual issues and was actively prosecuted
6 for over a year before settlement was reached. But for the Agreement, the litigation would involve
7 further lengthy proceedings, at considerable risk to the Class, and with uncertain resolution of the
8 legal and factual issues;

9 e. Had Class Counsel not achieved the Agreement, there would remain a significant risk
10 that the Class may have recovered less or nothing from Defendants;

11 f. The requested award of attorneys' fees of \$104,000 represents just less than 33% of
12 the financial benefit to the Class. The Court finds that the requested award of attorneys' fees, costs,
13 and expenses is reasonable when viewed as percentage of the Common Fund, taking all relevant
14 factors into account;

15 g. Class Counsel have devoted approximately 313 hours to this litigation with a
16 combined lodestar of \$150,095. The Court recognizes that the amount requested, \$104,000, is
17 actually a downward departure and represents a 0.693 lodestar (negative) multiplier. The Court
18 recognizes that Class Counsel is accepting a downward adjustment to its lodestar to ensure fair,
19 adequate, and reasonable economic compensation to the Class.

20 h. On balance, the requested award of attorneys' fees, costs, and expenses is fair,
21 reasonable, and consistent with awards in similar cases.

22 17. The Court has considered the requests for a service award for the Class Representative of
23 \$2,500. The Court finds the requested service award to be justified under the facts of this case and the
24 applicable legal authorities. Accordingly, the Court hereby approves the service award of \$2,500 to Mr.
25 Ducorsky.

26 18. The Court notes that no Class Members have opted out of the Settlement. [The Court also
27 notes that no objections were filed and that no objectors appeared at the Final Fairness Hearing.] The lack
28 of objections and opt-outs are strong indicators that the Agreement is fair, adequate, and reasonable.

1 19. The Court finds that the Agreement is fair, reasonable and adequate, and accordingly, the
2 Court approves the Agreement and, for the purposes of Settlement, this order, and the judgment to be entered
3 thereon, the Court finds that the Settlement Class should be and hereby is finally certified, and directs the
4 Parties to implement the Agreement in accordance with its terms. The Claim Administrator shall pay all
5 valid claims, attorneys' fees and costs, and the service award from the Common Fund as set forth in the
6 Agreement.

7 20. The Claim Administrator shall hold 10% of the attorneys' fees award in an interest-bearing
8 account, pending the submission and approval of a final compliance status report after completion of the
9 claims distribution process. A compliance hearing is set for October 23, 2018. The compliance status report
10 must be filed (with a courtesy copy delivered directly to Dept. 17) at least 5 court days prior to the
11 compliance hearing.

12 21. To the extent not specifically ordered herein, the Court orders the parties to comply with all
13 obligations arising under the Settlement Agreement, which become effective upon the date by which any
14 Judgment entered pursuant to the Settlement Agreement becomes Final.

15 22. This Final Approval Order and the Agreement is binding on all Settlement Class Members
16 who have not timely excluded themselves as set forth in the Agreement, including each and every term set
17 forth in Section 3.6 of the Agreement (which the Court incorporates herein by this reference) and all of the
18 releases and waivers set forth therein. Consequently, the Agreement, Final Approval Order, and Judgment
19 shall fully, finally and forever resolve the Released Claims, and can be raised as a complete defense to and
20 will preclude any other action or proceeding against the Released Parties based on the Released Claims, as
21 defined in the Agreement.

22 23. Nothing in this Order shall preclude any action to enforce or interpret the terms of the
23 Settlement Agreement. Any action to enforce or interpret the terms of the Settlement shall be brought solely
24 in this Court.

25 24. The Court expressly retains continuing jurisdiction as to all matters relating to the Settlement,
26 and this Order, and for any other necessary and appropriate purpose.

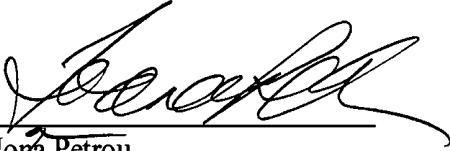
27 25. Having approved the Settlement, judgment is hereby entered pursuant to California Rules of
28 Court Rule 3.769(h), consistent with all provisions of this Order, including the retention of jurisdiction to

1 enforce the terms of the judgment, and each party shall bear its own attorneys' fees and costs except as
2 otherwise expressly provided with this Order.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: 2/6/18


Hon. Iona Petrou