

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 0:14-cv-60604-KMM

ALLISON GAY, SANDAHL NELSON,
MOLLY MARTIN, LORETTE KENNEY,
CLAUDIA MORALES, AND
GENEVIEVE GAMEZ,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

TOM'S OF MAINE, INC.,

Defendant.

FINAL SETTLEMENT ORDER AND JUDGMENT

This cause is before the Court on the Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, Application for Service Awards, and Class Counsel's Application for Attorney's Fees and Expenses. [D.E. 32]. Upon consideration of the Motion, it is hereby ordered and adjudged as follows:

1. This Judgment incorporates by reference the definitions in the Joint Stipulation of Settlement dated July 24, 2015 ("Agreement") and all capitalized terms used herein shall have the same meanings as set forth in the Agreement unless set forth differently herein. The terms of the Agreement are fully incorporated in this judgment as if set forth fully herein.

2. The Court has jurisdiction over the subject matter of this action and all Parties to the Action, including all Settlement Class Members ("Class Members") who do not timely exclude themselves from the Class. The list of excluded Class Members is attached hereto as Exhibit A.

Class Certification

3. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court hereby certifies the following Class:

All individuals in the United States who purchased at least one Tom's of Maine Covered Product from March 25, 2009 through September 23, 2015. Specifically excluded from the Class are (i) those who purchased Covered Products for purpose of resale; (ii) those with claims for personal injuries arising from the use of Covered Products; (iii) Defendant and its officers, directors and employees; (iv) any person who files a valid and timely Request for Exclusion; and (v) the Judges to whom this Action is assigned and any members of their immediate families.

4. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all such persons or entities who satisfy the Class definition above, except those Class Members who timely and validly excluded themselves from the Class, are Class Members bound by this Judgment.

5. For settlement purposes only, the Court finds:

(a) Pursuant to Federal Rule of Civil Procedure 23(a), Allison Gay, Sandahl Nelson, Lorette Kenney, Claudia Morales, Molly Martin, and Genevieve Gamez (collectively, "Plaintiffs") are members of the Class, their claims are typical of the Class, and they fairly and adequately protected the interests of the Class throughout the proceedings in the Action. Accordingly, the Court hereby appoints Plaintiffs as Class representatives;

(b) The Class meets all of the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) for certification of the Class claims alleged in the First Amended Complaint filed by Plaintiffs, including (i) numerosity, (ii) commonality, (iii) typicality, (iv) adequacy of the class representative and Class Counsel, (v) predominance of common questions of fact and law among the Class for purposes of settlement, and (vi) superiority; and

(c) Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil Procedure, Class Counsel have fairly and adequately represented the Class for

purposes of entering into and implementing the settlement. Accordingly, the Court hereby appoints Class Counsel as counsel to represent Class Members.

6. Persons or entities who filed timely exclusion requests are not bound by this judgment or the terms of the Agreement and may pursue their own individual remedies against Defendant. However, such excluded parties are not entitled to any rights or benefits provided to Class Members by the terms of the Agreement. The list of persons and entities excluded from the Class because they filed timely and valid requests for exclusion is attached hereto as Exhibit A.

Class Notice

7. The Court directed that notice be given to Class Members by publication and other means pursuant to the notice program proposed by the Parties in the Agreement and approved by the Court. The Affidavit of Jeffrey D. Dahl with Respect to Settlement Notice Plan, attesting to the dissemination of the notice to the Class, demonstrates compliance with this Court's Preliminary Approval Order. The Class Notice advised Class Members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class.

8. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. § 1715, and any other applicable law.

Approval Of Class Action Settlement

9. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds after a hearing and based upon all submissions of the Parties and other persons that the settlement proposed by the Parties is fair, reasonable, and adequate. The terms and provisions of the Stipulation are the product of arm's-length negotiations conducted in good faith and with the assistance of an experienced mediator, the Honorable Peter J. Lichtman (retired). The Court has considered all objections to the Settlement and finds that such objections are without merit and should be overruled. Approval of the Stipulation will result in substantial savings of time, money and effort to the Court and the Parties, and will further the interests of justice.

10. The Court has considered the objections of David A. Balz, Steven Franklyn Helfand, Samuel Goldstone, Patrick S. Sweeney, and Dawn Weaver, and finds those objections to be without merit. Thus, those objections are hereby overruled.

11. The first objection is from pro se objector David A. Balz. [D.E. 25]. Balz does not offer any specific criticism of the settlement terms in his objection, but merely expresses support for Tom's products and a general disagreement with the litigation. Such objections are insufficient to render a settlement inadequate. *See, e.g., Domonoske v. Bank of Am., N.A.*, 790 F. Supp. 2d 466, 474 (W.D. Va. 2011). Balz's objection is overruled.

12. The second objection is from Steven F. Helfand.¹ [D.E. 27]. First, Helfand objects to the Agreement's "clear-sailing provision." The fact that a settlement includes a "clear-

¹ Helfand, an attorney, is a well-known serial objector who has represented himself and third parties in objecting to multiple class action settlements. *See, e.g., Chavez v. Netflix, Inc.*, 75 Cal. Rptr. 3d 413, 423–24 (Ct. App. 2008); *Wal-Mart Stores, Inc. v. Buholzer*, 156 F. App'x 346, 347 (2d Cir. 2005); *Lane v. Facebook, Inc.*, 709 F.3d 791, 792 (9th Cir. 2013); *In re NVIDIA GPU Litig.*, 539 F. App'x 822,823 (9th Cir. 2013); *In re WorldCom, Inc. Sec. Litig.*, No. 02 CIV 3288(DLC), 2004 WL 2591402, at *9 (S.D.N.Y. Nov. 12, 2004); *Hillis v. Equifax Consumer*

sailing” provision—where the defendant agrees that it will not contest counsel’s fee request—is immaterial where, as here, “[t]here was no collusion in the settlement negotiations and the Parties began negotiations regarding attorneys’ fees only after finishing negotiating the Settlement itself.” *Fladell v. Wells Fargo Bank, N.A.*, No. 0:13-CV-60721, 2014 WL 5488167, at *4 (S.D. Fla. Oct. 29, 2014). Second, Helfand takes exception to the Class Notice and Claim Form. The Court, however, has already approved the form and content of these documents. Lastly, Helfand objects to the settlement’s cy pres designee, Consumers Union. “The cy pres doctrine permits courts to distribute unclaimed settlement amounts to worthy charities, especially to charities whose purposes harmonize with the underlying lawsuit.” *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1354 (S.D. Fla. 2011). Helfand’s criticism of Consumers Union is unwarranted. As a non-profit organization whose mission “is to work for a fair, just and safe marketplace for all consumers and to empower consumers to protect themselves,” [D.E. 32-4], Consumers Union is aligned with the consumer protection goals of this litigation. Indeed, Consumers Union has been approved by courts as the cy pres recipient in multiple consumer class action settlements.² Helfand’s objection is overruled.

Servs., Inc., No. 104-CV-3400-TCB, 2007 WL 1953464, at *2 (N.D. Ga. June 12, 2007); *Lane v. Facebook, Inc.*, 696 F.3d 811, 816 (9th Cir. 2012).

² See, e.g., *Miller v. Ghiradelli Chocolate Co.*, No. 12-cv-04936-LB, 2015 WL 758094, at *8 (N.D. Cal. Feb. 20, 2015) (listing other cases approving Consumers Union as cy pres recipient in false-advertising lawsuits); *In re LivingSocial Mktg. & Sales Practice Litig.*, 298 F.R.D.1, 13 (D.D.C. 2013) (finding interests and activities of Consumers Union were “directly aligned with those advanced” in the lawsuit); see also Final Order and Judgment at ¶ 14, *In re Aurora Dairy Corp. Organic Milk Mktg. & Sales Practices Litig.*, No. 4:08-MD-1907-ERW (E.D. Mo. Feb. 26, 2013), D.E. 356 (alleging false advertising concerning “organic” claims); Final Order Approving Class Action Settlement at ¶ 7, *Trammel v. Barbara’s Bakery, Inc.*, No. 3:12-cv-02663-CRB (N.D. Cal. Nov. 8, 2013), D.E. 70 (alleging false claims of “all natural” food products and incorporating terms of Settlement Agreement, D.E. 37); Order and Final Judgment Approving Class Action Settlement, Awarding Attorneys’ Fees and Expenses, and Awarding Class Representative Service Awards at Ex. A, *Golloher v. Todd Christopher Int’l Inc. Dbv Vogue Int’l*, No. 3:12-cv-06002-RS (N.D. Cal. Apr. 25, 2014), D.E. 79-1 (alleging false claims of

13. The third objection is from pro se objector Samuel Goldstone. [D.E. 33]. Like Balz, Goldstone merely expresses support for Tom’s products and a general disagreement with the litigation. Again, such objections are insufficient to render a settlement inadequate. Goldstone’s objection is overruled.

14. The last two objections are from professional objector Patrick S. Sweeney,³ one in his individual capacity as a purported member of the class [D.E. 34] and the other as counsel for Dawn Weaver [D.E. 35]. Both the Sweeney objection and Weaver objection are facially specious and without merit. Sweeney’s and Weaver’s objections are the same recycled, boilerplate arguments they have previously (and unsuccessfully) used in the past in a number of other class action settlements. Indeed, much of the language from the Weaver objection was

“organic” hair and skin care products); Order Preliminarily Approving Class Settlement Agreement, Conditionally Certifying the Settlement Class, Providing for Notice, and Scheduling Order at 2, *Baharestan v. Venus Labs., Inc., dba Earth Friendly Products, Inc.*, No. 3:15-cv-03579-EDL (N.D. Cal. Nov. 5, 2015), D.E. 23 (alleging false claims of “natural” products and incorporating Class Settlement Agreement, D.E. 15-2).

³ Sweeney has been recognized as a professional and serial objector to class action settlements by a number of courts. *See, e.g., Roberts v. Electrolux Home Prods., Inc.*, 2014 WL 4568632, at *11-15 (C.D. Cal. Sept. 11, 2014) (noting that Sweeney and his counsel, Darrell Palmer, are serial, professional objectors and overruling objections to consumer class action settlement because they “do not seek to benefit the Class and appear to be made for the improper purpose of delaying the Settlement to extract a fee” and “not only ignore[] the allegations of the case and the positions of the Parties, but [are] meritless and demonstrate[] a failure to appreciate the fact that settlements are by necessity compromises”); *see also Larsen v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at *7 n.4 (N.D. Cal. July 11, 2014) (“[A]ttorney Patrick Sweeney also has a long history of representing objectors in class action proceedings.”); *In re Checking Account Overdraft Litig.*, MDL No. 236, Case No. 09-md-02036-JLK (S.D. Fla. 2009), D.E. 3456, at 5 (identifying “Mr. Sweeney as a serial objector who filed objections to a number of the settlements previously approved in MDL No. 2036”); *Colon v. Jaguar Land Rover, N. Am., LLC*, No. 1-06-CV-075163 (Cal. Super. Ct. 2006). Weaver has also objected to various class action settlements around the country, oftentimes represented by Darrell Palmer, “who courts have ‘widely and repeatedly criticized as a serial, professional, or otherwise vexatious objector.’” *Id.* (“Ms. Weaver’s objections are similar to boilerplate objections made by Darrell Palmer that have been rejected by other courts.”) (quoting *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMc), 2013 WL 6055326, at *4 n.2 (S.D. Cal. Nov. 14, 2013) (listing other cases) (citations omitted)); *Wilkins v. HSBC Bank Nev., N.A.*, Case No. 14-cv-00190 (N.D. Ill.), D.E. 75 (objection by Weaver represented by Palmer).

taken directly from the Helfand objection. Like the Helfand objection, the arguments in the Weaver objection are meritless, filled with boilerplate language and unsubstantiated, conclusory statements attacking the settlement, notice procedures, class counsel's requested attorney's fees and costs, and certification of the settlement class. It is apparent that Sweeney and Weaver are unfamiliar with the actual pleadings and submissions in this case, as well as the substantive terms of the settlement at issue. Weaver's and Sweeney's objections are overruled.

Injunction And Release Of Claims

15. Upon the Effective Date, the named Plaintiffs and each Class Member (other than those listed on Exhibit A) shall be deemed to have, and by operation of this Final Settlement Order and Judgment shall have, released all Released Claims as defined in the Agreement.

16. All Class Members who have not timely and validly submitted requests for exclusion are bound by this Judgment and by the terms of the Agreement.

17. The Court hereby dismisses with prejudice the Action, and the Released Parties are hereby released from all further liability for the Released Claims.

18. The Court enjoins all Class Members from (i) filing, commencing, prosecuting, intervening in or participating as a plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on the Released Claims; (ii) filing, commencing or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any Class Members who have not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on claims made in this Litigation; (iii) pursuing any Released Claims; and (iv) attempting to effect Opt-Outs of

individuals or a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on the Released Claims.

Attorney's Fees, Reimbursements of Costs, and Service Award

19. Plaintiffs in the Action initiated this lawsuit, acted to protect the Class, and assisted their counsel. Their efforts have produced the Agreement entered into in good faith that provides a fair, reasonable, adequate and certain result for the Class. Plaintiffs are each entitled to a service award of \$2,000. Class Counsel is awarded \$1,035,000.00 for reasonable attorney's fees, and \$28,184.07 for reimbursement of reasonable and necessary expenses.

Parties' Continuing Obligations

20. The Parties will provide the Court with an update regarding claims administration. Specifically, following the conclusion of the claims administration process, the Parties will provide the Court with information from the Settlement Administrator, including (i) the total number of submitted and valid claims; (ii) the average claim amount; and (iii) the aggregate amount of the checks cashed by Settlement Class Members.

21. Without affecting the finality of this Judgment, the Court reserves jurisdiction over the implementation, administration and enforcement of this Judgment and the Stipulation, and all matters ancillary thereto.

22. The Court finds that no reason exists for delay in ordering final judgment pursuant to Federal Rule of Civil Procedure 54(b), and the Clerk is hereby directed to enter this Judgment forthwith.

23. The Parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such modifications and expansions of the Agreement, including

without limitation, the claim review procedure, that are consistent with this Judgment and do not limit the rights of Class Members under the Agreement.

Done and ordered in Chambers at Miami, Florida, this 11th day of March, 2016.

K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: Counsel of record

Exhibit A

CLASS MEMBER NAME	ADDRESS	CITY	ST	ZIP	STATUS
MARTHA HELFAND	2245 OLEADA CT	ENGLEWOOD	FL	34224-9074	VALID
ANN WICKERSHAM	1000 WELLER CIR APT 227	WESTMINSTER	MD	21158-4341	VALID
MISSY MOSSOR	452 LITTLE WAY	MACFARLAN	WV	26148-6458	VALID
ANN PATTERSON	725 DIETZ RD	RINGGOLD	GA	30736-8327	VALID
CHAYA STARK	1437 E 27TH ST	BROOKLYN	NY	11210-5308	VALID
DONNA HARGROVES	221 SUNSHINE CIR SW	MATTAWA	WA	99349-1938	VALID
JODI LAWSON	45 HORSESHOE LAKE DR W	HUNTSVILLE	TX	77320-0409	VALID
SANDRA COVEART	10 HANNAH CT	MIDLAND	MI	48642-3615	VALID
JOHN ZISKE	604 GRANITEVILLE RD APT 111	GRANITEVILLE	VT	05654-8126	VALID
ELIZABETH AGNE	3817 N HUDSON DR	FLORENCE	AZ	85132-3915	VALID
JOHN RAASCH	1960 LAS PALMAS LN APT 138	LAUGHLIN	NV	89029-1243	VALID
JEAN WAGNER	124 N MAPLE ST	KUTZTOWN	PA	19530-1105	VALID
MARIA LOU ERNEST	315 BROOKLAWN DR	ROCHESTER	NY	14618-2917	VALID
CAREN HELMICH	528 HARDIN AVE	JACKSONVILLE	IL	62650-2949	VALID
SANDRA LEIDICH	9 READING DR APT 143	WERNERSVILLE	PA	19565-2023	VALID
HAROLD KOCH	11 MUIRFIELD RD	BEDFORD	NH	03110-6120	VALID
LUCILLE MCGILL	545 FAIRBANKS RD	SPRING HILL	FL	34608-6927	VALID
TOM MCMURRAY	19625 GILMAN SPRINGS RD	SAN JACINTO	CA	92583-2100	VALID
RALPH M LABBEE	16 COOLIDGE AVE	TROY	NY	12180-2702	VALID
CASSANDRA KALI MARTIN	719 N BUCHANAN ST	EDWARDSVILLE	IL	62025-1213	VALID
KATHRYN SCHOEMANN	10251 W 44TH AVE UNIT 2-206	WHEAT RIDGE	CO	80033-2872	VALID
PH CHAN	1095 MAPLE CLIFF DR	LAKEWOOD	OH	44107-1251	VALID
PATRICIA DUNSTON	2246 CHAMBERS LAKE LN SE	LACEY	WA	98503-6916	VALID
LAEL WILLARD	1304 S LAUREL ST	PORT ANGELES	WA	98362-7738	VALID
LYNDA SUDLOW	42 WOODWARD RD	PARSONSFIELD	ME	04047-6526	VALID
GREGORY FECTEAU	1006 BRYCE LN	NIXA	MO	65714-9028	VALID
JAYNE KELLEY	676 WAVERLY RD	DIMONDALE	MI	48821-9642	VALID
SARA SPOOR	20 TAYLOR DR	SPRINGFIELD	VT	05156-2216	VALID
JANET OLDING	5830 HIGHWAY 140 W	KLAMATH FALLS	OR	97601-5698	VALID
J. K. KEENER	5945 ABRIANNA WAY APT H	ELKRIDGE	MD	21075-7075	VALID
REBECCA HARRIS	42326 GATEWOOD ST	FREMONT	CA	94538-4126	VALID
EDITH MANN	2942 COATES RD	PENN YAN	NY	14527-8933	VALID
JOEL BROWN	PO BOX 70001	ROSEDALE	MD	21237-6001	VALID
PATRICIA WORTMAN	36480 MINARD AVE	HASTINGS	IA	51540-4083	VALID
NICOLE HAUER	1009 APPACHE TRL	PEGRAM	TN	37143-5084	VALID
JEROME LASZLOFFY	10853 E STORIA AVE	MESA	AZ	85212	VALID

CLASS MEMBER NAME	ADDRESS	CITY	ST	ZIP	STATUS
NOEL COGSWELL	31 WINDSOR ST	WATERBURY	CT	06708-1901	VALID
DEBORAH COOKE	5933 E EASTRIDGE	APACHE JUNCTION	AZ	85119-8976	VALID
STACY BIRMINGHAM	12707 CORNING DR	HOUSTON	TX	77089-6135	VALID
WILLIAM BAILEY	128 SAVAGE RD APT 12A	MILFORD	NH	03055-3147	VALID
CAROLYN SANDERS	312 SAINT LUCIE LN	FORT PIERCE	FL	34946-1811	VALID
MARGARET M DOUGHERTY	136 N INDIANAPOLIS AVE	HERNANDO	FL	34442-4818	VALID
PAM JENNINGS	136 W HIGHLAND AVE	WEST MONROE	LA	71291-7021	VALID
LENA HELMUTH	8117 STATE HIGHWAY 96	CARTHAGE	MO	64836-7108	VALID
MARIA SALANDRIA	411 HAMPTON CRT	WEST CHESTER	PA	19380	VALID
LUCY ROBERSON	1320 W BUFFALO ST	HOLBROOK	AZ	86025-2234	VALID
DOLORES MACKENZIE	8 CENTRAL ST	WARWICK	RI	02886-1204	VALID
KATHRYN GILROY	1432 SKYLINE DR	FULLERTON	CA	92831-1867	VALID
DEAN THOMPSON	3950 TIMBERIDGE DR	IRVING	TX	75038-4802	VALID
FELICIA HELMS	5103 NE RIO CT	ANKENY	IA	50021-4934	VALID
BRITTANY LEE	PO BOX 293	LINCOLNDALE	NY	10540-0293	VALID
CARA SCHMIDT	3919 MARKET ST	CLARKSTON	GA	30021-2521	VALID
LAURA TANNHAUSER	1345 JUNIPER ST	MOUNTAIN HOME	ID	83647-1951	VALID
DIANN FIRACK	81 E 22 MILE RD	PICKFORD	MI	49774-9164	VALID
FRANKIE MCCLURG	314 HIGH MEADOW ST	NACOGDOCHES	TX	75965-2400	VALID
KAREN MCNEIL	3707 STRAIGHTFORK DR	HOUSTON	TX	77082-2924	VALID
HAZEL SILVERA	12427 COPPER MOUNTAIN BLVD	CHARLOTTE	NC	28277-2987	VALID
SUSAN HEFNER	114 TIMBER HILLS RD	HENDERSONVILLE RD	TN	37075	VALID
WILLIS ANTHONY JOHNSON	711 COSMOPOLITAN DR NE	ATLANTA	GA	30324	VALID