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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ALEXANDER VUCKOVIC, Individually	)	
and on Behalf of All Others	)	
Similarly Situated,	)	
	)	
Plaintiff,	)	
	)	Civil Action
v.	)	No. 1:15-cv-13696-GAO
	)	
KT HEALTH HOLDINGS, LLC and	)	
KT HEALTH, LLC	)	
	)	
Defendants.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

FINAL APPROVAL HEARING

June 6, 2018  
10:15 a.m.

John J. Moakley United States Courthouse  
Courtroom No. 22  
One Courthouse Way  
Boston, Massachusetts 02210

Linda Walsh, RPR, CRR  
Official Court Reporter  
John J. Moakley United States Courthouse  
One Courthouse Way, Room 5205  
Boston, Massachusetts 02210  
lwalshsteno@gmail.com

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APPEARANCES:

On Behalf of the Plaintiff:

PASTOR LAW OFFICE, LLP  
By: David Pastor, Esq.  
63 Atlantic Avenue, 3rd Floor  
Boston, MA 02110  
617-742-9700  
dpastor@pastorlawoffice.com

SHEPHERD, FINKELMAN, MILLER & SHAH, LLP  
By: Nathan C. Zipperian, Esq.  
1625 North Commerce Parkway, Suite 320  
Fort Lauderdale, FL 33326  
954-515-0123  
nzipperian@sfmslaw.com

LEONARD LAW OFFICE, PC  
By: Preston W. Leonard, Esq.  
Post Office Box 140336  
Charles St. Station  
Boston, MA 02114-0336  
617-329-1295  
pleonard@leonardlawoffice.com

On Behalf of the Defendants:

FITCH LAW PARTNERS LLP  
By: Stephen C. Reilly, Esq.  
One Beacon Street, 16th Floor  
Boston, MA 02108  
617-542-5542  
scr@fitchlp.com

MASCHOFF BRENNAN LAYCOCK GILMORE ISRAELSEN & WRIGHT, PLLC  
By: Larry R. Laycock, Esq.  
201 South Main Street, Suite 600  
Salt Lake City, UT 84111  
435-575-1388  
llaycock@mabr.com

1 P R O C E E D I N G S

2 THE CLERK: Be seated for a final approval hearing  
3 in the case of *Alexander Vuckovic v. KT Health Holdings*,  
4 15-13696.

5 Would counsel identify yourselves for the record.

6 MR. PASTOR: Good morning, your Honor.

7 David Pastor for the Plaintiff.

8 MR. ZIPPERIAN: Good morning, your Honor.

9 Nathan Zipperian for the Plaintiff.

10 MR. LEONARD: Good morning, your Honor.

11 Preston Leonard for the Plaintiff.

12 MR. LAYCOCK: Larry Laycock of Maschoff Brennan  
13 appearing on behalf of the Defendants, your Honor.

14 MR. REILLY: Your Honor, my name is Stephen Reilly  
15 from Fitch Law Partners here in Boston, also for the  
16 Defendants.

17 THE COURT: Mr. Pastor.

18 MR. PASTOR: Yes, your Honor. As the Court noted,  
19 we are here for a final approval hearing on settlement, and  
20 I'm just going to say a few brief words about it, your Honor.

21 The settlement, we believe, presents a great result  
22 for the Class, and it does so both on paper and in reality.  
23 We created -- and I'll explain it. We created a settlement  
24 fund of \$1,750,000 plus significant injunctive relief. The  
25 class members -- and then, going forward, the class members

1 have filed about 93,000 claims, and the claim period -- this  
2 is pretty much the end of it because the claim period closed  
3 on May 16th. With those 93,000 claims, there were only two  
4 exclusion requests and one objection which we've addressed in  
5 our papers and I can address in a little bit as well. There  
6 were 70 -- they were noticed by mail and e-mail, and they  
7 were -- the primary notice was electronic notice over several  
8 platforms which created about 56 million Web notice  
9 impressions.

10           And once the -- if you take away the  
11 deduction -- the administrative expenses, attorneys' fees and  
12 expenses, and the incentive award, there will be a net  
13 settlement fund of about \$900,000 which is available for  
14 distribution based on the claims that have been made. And if  
15 you take the number of claims that have been made to that  
16 fund, it's an average per claim recovery of about \$9.70 which  
17 compares very favorably to the losses experienced by the class  
18 on a per-unit basis because we have information from KT that  
19 about 80 -- or 90 percent of the Class-grade sales were in the  
20 range of \$13 to \$20 as far as the retail price of the items  
21 go. And so you have a per-claim average recovery of \$9.70  
22 which is very close to that amount, and it's really even  
23 better than if you take the retail price because this is a  
24 price premium case. That's the allegation, that the consumers  
25 paid more for the product than they should have paid based on

1 what we allege were the false representations. But in a price  
2 premium case, it would likely never be the case that the  
3 product is found to be worth zero. The price premium would be  
4 some percentage of the sales price. So the damages or losses  
5 per unit would probably be less than what I just stated.

6 And in addition to the monetary recovery, we have  
7 significant labeling and advertising changes which we  
8 characterize as injunctive relief. That includes product  
9 packaging, website claims, in-store displays, and other  
10 advertising that the company has done. And just a brief  
11 summary, the changes include eliminating certain words and  
12 phrases from the advertising that we negotiated which would  
13 include the phrases, quote, It will keep you pain free, close  
14 quote, "Prevents injury" and "For injury prevention." We have  
15 also modified some other language in the advertising, and  
16 we've added disclaimer language, certain of the advertising  
17 phrases that are in use, and additionally making the  
18 disclaimer language more prominent, i.e., bolder and larger  
19 type size. And these changes, unlike some injunctive relief  
20 changes in advertising cases, are not limited in time or  
21 scope, and they're not qualified by any exemptions or  
22 exceptions.

23 And I've also found out, according to information  
24 that we received from KT, that the -- that these modifications  
25 are now in progress, and there's no certainty to this, but

1 they're expected to probably be completed roughly by the end  
2 of this month. And, you know, that involves dealing with  
3 retailers and stock and everything else, and there will  
4 probably be some existing stock that -- on the shelves that  
5 won't have the new changes, but it will occur gradually over  
6 time.

7           And the other thing I want to say is that the  
8 settlement, we believe, was entered into at what we think is  
9 the appropriate time. It was a balance between reaching a  
10 point at which we had -- the parties collectively, the  
11 Plaintiff in particular, had sufficient information about the  
12 claims and defenses in order to fully evaluate, and we did  
13 that but at the same time we settled in an early enough stage  
14 so that we would enable the parties to avoid further expense  
15 and delay of litigation, and it's particularly important in  
16 this case because we were presented with financial  
17 information, I can't talk about in any specifics, from the  
18 Defendants which cast doubt on the ability to satisfy a  
19 greater judgment or fund a greater settlement. And it's also  
20 the insurance issue because there was a -- there was a case in  
21 this court assigned to a different judge which -- in which one  
22 of the insurers obtained a summary judgment in their  
23 declaratory judgment action against the defendants ruling  
24 basically that they did not have to defend the class claim.  
25 So as time went by, absent a settlement at this stage, that

1 would have cast further doubt on the ability of the Defendants  
2 to fund settlement or to satisfy a judgment.

3           And there is, as the Court is aware, one objection  
4 which was filed. We addressed that in our papers so I won't  
5 spend a whole lot of time on it, but just to make a few brief  
6 points, your Honor. We think that Ms. Sweeney's objection  
7 should be overruled for several reasons.

8           First of all, she's a serial objector who has filed  
9 similar objections in about -- roughly about 20 -- well, she  
10 and her family members, as we cite in our memo, about  
11 20 cases. And mostly -- and largely, if not entirely,  
12 unsuccessful, and pretty much the same objections. They  
13 did -- and by the way, she didn't object to the settlement at  
14 all. She only -- it was very clear from the objections she  
15 only objected to the attorneys' fees. And, honestly, even  
16 with respect to the attorneys' fees, there wasn't what I would  
17 consider a substantive objection. She basically -- the  
18 objection basically centered around her contention that we  
19 didn't appropriately or adequately document the fees, the time  
20 that we spent on the case, and that we didn't address the  
21 lodestar cross-check which we absolutely did in our memo. We  
22 cite that in the final approval memo where we address the  
23 objection.

24           So -- oh, one more point on that, and that is that  
25 part of the basis for the objection that the fees are

1 excessive is her claim that the administrative costs, the  
2 costs of claim -- notice of claims administration to be about  
3 \$500,000. Not correct. It's less than half that, and that's  
4 why we submitted the declaration of I believe it was Kelly  
5 Kratz from Dahl Administration saying that the cost -- the  
6 split cost is about \$245,000, less than half. And so when all  
7 is said and done, contrary to the objection, the  
8 administrative costs and fees plus the attorneys' fees would  
9 not -- would be less than instead of, as she says, greater  
10 than the Class recovery, the net settlement fund that's  
11 available for distribution.

12           And, finally, we're seeking attorneys' fees in the  
13 sum -- in one third of the settlement, the sum of \$583,333.33  
14 and expenses in the amount of \$17,510.75. And I want to make  
15 one point about that and that is that the value, when we talk  
16 about one third, is really based, as it typically would be, on  
17 the monetary portion of the settlement, but it should be noted  
18 that there's significant injunctive relief, which I briefly  
19 summarize, and that has a value as well. Now, granted, we  
20 don't have an expert analysis of the valuation of that as  
21 sometimes happens, but it does have a value, and that's been  
22 noted by other courts and that goes into how a court would,  
23 and I think should, evaluate the settlement. And in one case  
24 I know -- it's the *Bezdek* case which we cite in our memo,  
25 Judge Woodlock, I believe it was, noted that as an important



1 function of the settlement -- important asset to the Class.

2 And, I think, your Honor, that's basically the sum  
3 and substance of it. You know, we've dealt with it -- all  
4 these issues in our papers, and unless the Court has any  
5 questions or anything else to discuss, I think that's about  
6 the extent of it for me.

7 THE COURT: Okay. Anything from the defense?

8 MR. LAYCOCK: Nothing, your Honor.

9 THE COURT: Okay. I have reviewed the papers  
10 submitted, including the objections -- the sole objection that  
11 has been raised. I will approve the settlement including the  
12 attorneys' fees award. Let me just say a couple of things  
13 about it.

14 Some of the points that Mr. Pastor has made were  
15 factors in my decision. I will say, I think the fees are a  
16 little high, but I think they are within the range that has  
17 been approved, and in the absence of a serious challenge to  
18 them, I won't demur on the acceptance of the parties'  
19 agreement.

20 Some of the factors are that I considered in  
21 thinking about this were the size of the Class that has  
22 benefited, the number of people who would be benefited.  
23 That's partly because of the, I guess I would say, substantial  
24 class period. Sometimes -- this is about six years.  
25 Sometimes the class period in cases like this are

1 significantly shorter than that, and so there's substantial  
2 relief to the purchasing public from the negotiated result. I  
3 think there's some possibility that it will -- the benefit  
4 will be actually higher than 50 percent to some consumers  
5 based on participation, but that's speculation.

6 I do also factor in the going-forward injunctive  
7 relief. It has some value that we can't be precise about, but  
8 I think it's -- it would be unfair to disregard that in  
9 assessing the success of the negotiations. And I would say in  
10 summary that it does not appear that the class is in any  
11 way -- the class members are in any way disadvantaged by the  
12 size of the fee award.

13 I have looked at the objector's presentation and  
14 the reasons given for it. I guess, I would say, I think that  
15 some of them are just inaccurate, as Mr. Pastor had pointed  
16 out, that the administrative costs that she estimated was not  
17 the correct number. It's significantly less than that so it  
18 takes some force away from that objection. The objection that  
19 there are no detailed billing records, I don't think that's a  
20 significant objection. The lodestar has been provided.  
21 Without any reason to distrust the presentation of the  
22 lodestar, I don't think there's any need to require billing  
23 records to be provided. So I find that the objection is  
24 insufficient particularly to -- insufficient in view of the  
25 response of the Class itself. Was it, I think, significant in

1 the administration, that out of 90,000 plus, or whatever the  
2 exact number is, only two opted out, so that's kind of a vote  
3 of support by the Class generally, and I think that can be  
4 considered along the side of a single objection. So the  
5 objection is not sufficient for me to change the ruling. So  
6 we will execute a formal order approving the settlement.

7 MR. LAYCOCK: Thank you, your Honor.

8 MR. PASTOR: Your Honor, if the Court would like --  
9 I don't know if it's necessary. I have a copy of the award of  
10 final judgment if the Court --

11 THE COURT: It's on the docket, and we can access  
12 it.

13 MR. PASTOR: Thank you, your Honor.

14 THE COURT: Okay. We'll take a recess.

15 (Motion was adjourned at 10:38 a.m.)  
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CERTIFICATE OF OFFICIAL REPORTER

I, Linda Walsh, Registered Professional Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of June, 2018.

/s/ Linda Walsh

\_\_\_\_\_

Linda Walsh, RPR, CRR  
Official Court Reporter