

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

MOLLY BECKER, SONJA BOLERJACK,
FRANK GONZALEZ, VINCENT LEBRECHT,
MARIA MCBAIN, VICTORIA RODGERS,
PAMELA SMYTHE, and ROBIN WHITE,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

MASSIMO ZANETTI BEVERAGE, USA, Inc.,
a Delaware corporation, MOTHER PARKER'S
TEA & COFFEE USA, Ltd., a Texas limited
partnership, and REILY FOODS COMPANY, a
Delaware corporation,

Defendants.

Case No. 20PH-CV00569

FILED
JUL 29 2020
SUE BROWN, CIRCUIT CLERK
PHELPS COUNTY, MO.

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, APPROVING
CLASS NOTICE, AND SCHEDULING FAIRNESS HEARING**

The Court has considered Plaintiffs' Motion for Preliminary Approval of Class Settlement pursuant to Mo. R. Civ. P. 52.08. Upon review of the Motion and the Settlement Agreement and its attachments, and after consideration of the Parties' submissions and the arguments at the hearing on this matter, if any, for good cause shown, the Court preliminarily finds that the terms of the settlement are fair, adequate, and reasonable. The Court further finds that the notice provisions provided for by the Settlement Agreement are adequate and appropriate to inform members of the class of the terms of the settlement.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court does hereby preliminarily approve the Settlement Agreement¹ and the settlement set forth therein (the "Settlement"), subject to further consideration at the Final Approval Hearing described below.

2. A hearing (the "Final Approval Hearing") shall be held before this Court on November 16, 2020, at 9:00 a.m. to determine whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, adequate, and reasonable to the Class and should be approved by the Court, and whether a Final Approval Order and Judgment should be entered herein.

3. Plaintiffs Molly Becker, Sonja Bolerjack, Frank Gonzalez, Vincent Lebrecht, Maria McBain, Victoria Rodgers, Pamela Smythe, and Robin White are preliminarily appointed as representatives of the Settlement Class ("Class Representatives"); the following attorneys for Plaintiffs are preliminarily appointed as Lead Class Counsel for the Settlement Class: (i) the Law Office of L. DeWayne Layfield, PLLC; (ii) KamberLaw LLC; and (iii) Steelman & Gaunt; and the following attorneys for Plaintiffs are preliminarily appointed as Class Counsel for the Settlement Class: (i) Law Office of L. DeWayne Layfield, PLLC; (ii) KamberLaw LLC; and (iii) Steelman & Gaunt; (iv) Southern Atlantic Law Group PLLC; and (v) Law Office of Howard W. Rubinstein PA. This Court is familiar with David L. Steelman and Scott A. Kamber and has found them to be experienced, thoughtful, and effective advocates in class actions who adequately, faithfully, and zealously represent the classes they represent.

4. For purposes of determining whether the terms of the Settlement should be finally approved as fair, adequate, and reasonable, the following Settlement Class is conditionally

¹ The Court, for purposes of this Order, adopts the definitions of capitalized terms set forth in the Settlement Agreement.

certified for settlement purposes only:

All Persons who purchased any Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) Persons who purchased or acquired any Products for resale; (b) the Released Parties; (c) all Persons who file a timely and valid Opt-Out; (d) Plaintiffs' Counsel and Defendants' Counsel; (e) federal, state, and local governments (including all agencies and subdivisions, but excluding employees not otherwise excluded hereunder); and (f) the judicial officers and courtroom staff overseeing the Action.

5. Should the Settlement not become final, Defendants may still oppose class certification, and the fact that the Court ordered class certification as part of the Settlement (or that Defendants were willing to stipulate to class certification as part of the Settlement), shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in this Action or in any other proceeding.

6. The Court designates Heffler Claims Group ("Heffler") as the Settlement Administrator and instructs Heffler to perform the following functions, as set forth in the Settlement Agreement:

- a. Process Opt-Out requests from the Settlement in accordance with Section IX of the Settlement Agreement;
- b. Process Objections to the Settlement in accordance with Section IX of the Settlement Agreement;
- c. Process Claim Forms in accordance with Section VI of the Settlement Agreement;
- d. Before disseminating the Settlement Notice, establish the Settlement Website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement, including submission of Claim Forms; and
- e. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.

7. The Court approves, as to form and content, the Settlement Notice, the Publication Notice, and the Media Plan attached as Exhibit B to the Settlement Agreement, and finds that the

distribution of the Settlement Notice substantially in accordance with Section VIII of the Settlement Agreement meets the requirements of Mo. R. Civ. P. 52.08(b)(3), 52.08(c)(2) and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

8. On or before August 31, 2020, the Settlement Administrator shall disseminate the Settlement Notice by setting up the Settlement Website on the Internet and posting both the Settlement Notice and Publication Notice. On or before September 7, 2020, Defendants shall ensure that the Settlement Administrator has published the Publication Notice pursuant to the Media Plan. The Publication Notice shall also be posted on the Settlement Website until the conclusion of the Claim Period, or such later date as may be agreed to by Class Counsel and Defendants' Counsel.

9. The Settlement Administrator shall prepare a declaration attesting to compliance with the Settlement Notice requirements and a statement of the number of Persons the Media Plan reached. Such declaration shall be provided to Defendants' Counsel and Class Counsel and filed with the Court on or before November 6, 2020.

10. The Court approves the Claim Form in form and content as Exhibit A to the Settlement Agreement.

11. As set forth in paragraph VI of the Settlement Agreement, Claim Forms shall be submitted no later than 75 days after the commencement of the Claims Period. (the "Claims Deadline"). To be timely, all Claim Forms must be submitted either online or postmarked by the Claims Deadline in accordance with paragraph VI of the Settlement Agreement.

12. Any Settlement Class Member who intends to object to the Settlement must do so no later than November 2, 2020 (the "Objection Deadline"). In order to object, the Settlement Class

Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendants' Counsel, also prior to the Objection Deadline, a document that includes all of the following:

- a. The case name and number, *Becker, et al. v. Massimo Zanetti Beverage USA, Inc., et. al*, Case No. 20PH-CV00569 (Phelps Circuit Court, MO.);
- b. The name, address, telephone number, and, if available, the email address of the Person objecting;
- c. The name and address of the lawyer(s), if any, who is representing the Person objecting in making the Objection or who may be entitled to compensation in connection with the Objection;
- d. A detailed statement of Objection(s), including the grounds for those Objection(s);
- e. Copies of any papers, briefs, or other documents upon which the Objection is based;
- f. A statement of whether the Person objecting intends to appear at the Final Approval Hearing, either with or without counsel;
- g. The identity of all counsel (if any) who will appear on behalf of the Person objecting at the Final Approval Hearing and all Persons (if any) who will be called to testify in support of the Objection;
- h. A statement of his/her membership in the Settlement Class, including all information required by the Claim Form;
- i. The signature of the Person objecting, in addition to the signature of any attorney representing the Person objecting in connection with the Objection; and
- j. A detailed list of any other objection by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. This information is requested in order to assist the Court in determining whether the Objection is made by a professional objector seeking financial consideration for their efforts. Failing to provide this information will not effect the validity of the Objection, but may result in the Court presuming that the Objection is made by a professional objector.

13. Any Settlement Class Member who fails to file and serve timely: (a) a written objection containing all of the information listed in items (a) through (j) of the previous paragraph;

and, (b) notice of his/her intent to appear at the Final Approval Hearing pursuant to this paragraph, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal.

14. Any Settlement Class Member may request to be excluded (or "Opt-Out") from the Settlement Class. A Settlement Class Member who wishes to Opt-Out of the Settlement Class must do so no later than November 2, 2020 (the "Opt-Out Deadline"). In order to Opt-Out, a Settlement Class Member must complete and mail to the Settlement Administrator a request to Opt-Out that is received no later than the Opt-Out Deadline. Opt-Out requests that are received after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely submits an Opt-Out request will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order and the Releases contemplated thereby.

15. Except for those Persons who have properly and timely submitted Opt-Out requests, all Settlement Class Members will be bound by the Settlement Agreement and the Final Approval Order, including the Releases, regardless of whether they file a Claim or receive any monetary relief. Any Person who timely and properly submits an Opt-Out request shall not: (a) be bound by any orders or the Final Approval Order nor by the Releases contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Person requesting exclusion from the Settlement Class must personally sign his or her own individual Opt-Out request. No Person may Opt-Out of the Settlement Class for any other Person, or be Opted-Out by any other Person, and no Person shall be deemed Opted-Out of the Settlement

Class through any purported “mass” or “class” Opt-Outs.

16. The Settlement Administrator shall provide Class Counsel and Defendants’ Counsel with a final list of any timely Opt-Out requests received by the Settlement Administrator on or before November 6, 2020.

17. On or before November 6, 2020, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file with the Court, and Defendants’ Counsel, a report stating the total number of Persons who have submitted timely and valid Opt-Out requests from the Settlement Class and Objections to the Settlement, and the names of such Persons.

18. No later than five days prior to the Final Approval Hearing Class Counsel shall submit papers in support of final approval of the certification of the Settlement Class, the designation of Plaintiffs as the representatives of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, the Settlement, and any response to any Objections. Class Counsel’s Application for Attorneys’ Fees and Expenses shall be filed with the Court on or before October 19, 2020.

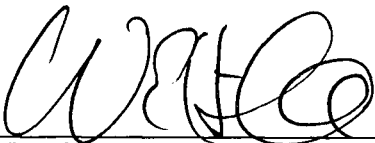
19. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Class Representatives or Defendants of any fact or allegation, or of any liability, fault, or wrongdoing of any kind.

20. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties, if appropriate without further notice to the Class.

21. The Court hereby stays all proceedings in this Court other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred.

IT IS SO ORDERED.

Dated: 7-29-2020



JUDGE OF THE CIRCUIT COURT