# EXHIBIT 7

final Order

**DEPARTMENT 310 - LAW AND MOTION RULINGS**

FILED
Superior Court of California
County of Los Angeles
AUG 06 2015
Sherri R. Carter, Executive Officer/Clerk
By _____, Deputy
Roxanne Arriaga

**Case Number:** BC58568 **Hearing Date:** August 06, 2015 **Dept:** 310

Perry v. Truong Giang Corp.
Case No.: BC59568
Hearing Date: 8/6/2015
Department 310

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, MOTION FOR FEES, COSTS, AND INCENTIVE PAYMENT, AND MOTION TO SEAL PORTIONS OF PLAINTIFF'S MOTION FOR FINAL APPROVAL

[redacted]

Grant Motion to Seal, Motion for Final Approval, and Motion for Attorney's Fees, Costs and Incentive Awards as prayed, contingent upon a supplemental declaration from the Notice Administrator providing up-to-date information regarding response to the Class Notice (opt-outs and objections).

DISCUSSION

I. Background

This is an injunctive relief only class action case involving certain teas marketed by Defendant as having weigh loss benefits. The Complaint alleges causes of action for relief under the CLRA (CC §§1750, et seq.), Unfair Competition Law (B&P Code §§17200, et seq.), False Advertising Law (B&P Code §§ 17500, et seq.), and Breach of Implied Warranties. The action was settled following mediation with the Honorable Leo S. Papas (Ret.), and additional negotiations thereafter. On March 30, 2015, the Court heard and granted Plaintiff's motion for preliminary approval of the settlement.

II. Notice and Opt Out Process

In California, the notice must have "a reasonable chance of reaching a substantial percentage of the class members." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 251, citing Cartt v. Superior Court (1975) 50 Cal.App.3d 960, 974.) Importantly, however, the plaintiff need not demonstrate that each member of the class has received notice. As long as the notice had a "reasonable chance" of reaching a substantial percentage of class members, it should be found effective.

Class Action Administration, Inc. ("CAA") was retained to provide notice to the class of the proposed settlement. CAA has submitted evidence demonstrating that the notice procedure provided for in the Section 5 of Settlement Agreement and approved by the Court has been followed. Specifically, the Notice Administrator was required to, and CAA did: (1) create and maintain a class action website; (2) establish a toll-free number for class members to call in order to have questions answered in both English and Spanish; (3) cause Summary Notice to be published in various newspapers; (4) cause banner advertisements to display on Facebook; and (5) mail Notice to the 15 persons who directly purchased product from Defendant. (Declaration of Matthew McDermott, ¶¶3-8.) The Court finds that such notice is sufficient as it had a reasonable chance of reaching a substantial percentage of class members.

As of June 30, 2015, CAA had received no requests for exclusion. (McDermott Declaration, ¶9.) However, as July 6, 2015 is the last day for opting out, CAA will need to provide supplemental information at the time of the hearing. Objections were to be submitted directly to the Court and as of today's date, the Court has not received any objections.

III. Dunk Factors

It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. (California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶14:139.12 (2012).) The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to the proposed class settlement. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801, citing Officers for Justice v. Civil Service Com'n, etc. (9th Cir. 1982) 688 F.2d 615, 625; In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 723.) This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case. (Wershba, supra, 91 Cal.App.4th at 244-245.)

The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable. (7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1165-1166; Wershba, supra, 91 Cal.App.4th at 245.) There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. (2 Herbert Newburg & Albert Conte, Newburg on Class Actions §11.41 at 11-88 (3d ed. 1992); Manual for Complex Litigation (Third) §30.42.)

With these standards in mind, the Dunk/Wershba factors are addressed in turn.

1. Strength of the plaintiff's case

Plaintiffs believe that they have evidence demonstrating that Defendant's product labels are deceptive and that the products do not work. Plaintiffs also believe that certification of a class is appropriate. However, they are aware that Defendants have certain defenses and that Plaintiffs may not be able to establish their claims, and/or that the class may not be certified. (Motion at 14:10-28.)

This factor weighs in favor of final approval.

2. The risk, expense, complexity and likely duration of further litigation.

Had this case not settled, there would have been additional risks and expenses associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

In connection with Preliminary Approval, the Court granted a motion to seal certain documents. Now, in connection with this current motion, Plaintiff has filed a Motion to Seal portions of the Memorandum of Points and Authorities in favor of Final Approval. This motion is granted on the basis that the Court has previously ordered sealing of this same material. The redacted matter supports the Plaintiff's contention that Defendant's financial condition was a genuine risk to Plaintiff's success if the litigation were to continue, and that an injunctive relief only settlement is fair, adequate and reasonable.

This factor weighs in favor of final approval.

3. The risk of maintaining class action status through trial

There is always a risk of decertification. (Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226: "Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.")

This factor weighs in favor of final approval.

4. Amount offered in settlement

As part of the Court's analysis of this factor, the Court takes into consideration the admonition in (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133.) In Kullar, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

This action settled for injunctive relief only. Paraphrasing the terms of the Settlement Agreement, Defendant: (1) will permanently modify its labels and packaging; (2) add an FDA disclaimer; (3) remove the language, "special formula Dieters' Drink is . . . for those desiring to adjust weight" from its products; (4) remove language that the product is "100% guaranteed herbal drink to help you lose weight without dieting" in both English and Spanish from its products; (5) remove any language stating that the products are "safe to drink whole year round," including language advising Spanish speakers they can drink one cup per day to maintain weight and two cups per day to lose weight; (6) remove any language conveying the message that the products are effective for long-lasting weight loss or are helpful in dieting efforts; (7) ensure that any Chinese language on its packaging is consistent with these modifications; and (8) modify its websites to comport with these label modifications.

This factor weighs in favor of final approval.

5. Extent of discovery completed and stage of the proceedings

Class Counsel engaged in formal and informal discovery, reviewed documents (including Defendant's profit and loss statements), reviewed FDA guidelines, and took the deposition of Defendant's person most knowledgeable. (Motion at 18:16- 19:4.)

This factor weighs in favor of final approval.

6. Experience and views of counsel

As noted at the time of Preliminary Approval, Class Counsel has sufficient class action experience. (Declaration of Ronald Marron, ¶7, and Exhibit 5, Marron Declaration re: Preliminary Approval, ¶¶12-28.) It is class counsel's opinion that the settlement is fair, adequate, and reasonable.

This factor weighs in favor of final approval.

7. Presence of a governmental participant

This factor is not applicable here.

8. Reaction of the class members to the proposed class settlement

As of June 20, 2015, there have been no objections or requests for exclusion. However, updated information will need to be provided at the time of the hearing, as the day for doing so is July 6, 2015.

Conclusion on Dunk Factors

On balance, this is a fair settlement that satisfies the Dunk factors, such that final approval is warranted.

IV. Attorneys' Fees, Costs, and Incentive Payments

A. Attorneys' Fees

Class Counsel requests attorney fees and costs in the total amount of $250,000.
1. Determining the Lodestar Amount and Calculating Counsel's Hourly Rate and Fees

The Court employ the lodestars method in awarding fees, as opposed to a percentage of the common fund method. This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's efforts.

Class Counsel Ronald Marron states that his firm has spent at least 457.5 hours on this case. Marron explains that the work performed included investigation of the claims, drafting of pleadings, researching and drafting settlement position papers, drafting discovery and reviewing responses, extensive negotiations and attendance at mediation, drafting disclaimer language, settlement, and release language, ascertaining the scope and breadth of the class and analyzing certification elements, due diligence document review, preparing for and taking Defendant's deposition, preparing motion papers, attending hearings, reviewing and negotiating Class Notice, and the notice plan, and communication and meetings among parties and counsel. (Marron Declaration, ¶15.) The Court finds that the hours spent are reasonable based on the type of litigation and the length of time this case has been pending.
The names and billing rates of all the people at the firm who spent time on this litigation are set forth in paragraph 4 of the Marron Declaration in support of fees and costs. These rates range from $745/hour for Marron, to $475/hour for senior associates, to $290 for law clerks and $215 for paralegals. Marron states that he pays all staff and that none of these are volunteer hours. (Marron Declaration, ¶18.) Marron also provides evidence of the reasonableness of these hourly rates at paragraphs 5-14 and Exhibits 2 and 3. The Court finds that the hourly rates charged are reasonable. Appendix 1 to the Motion for Fees is a chart setting forth the lodestar calculation, which totals $252,677.22. It appears that class counsel utilized skill in litigating this case, and by all accounts, have good reputations in the legal community (at the very least, there is no evidence before the Court to indicate that any one of the attorneys has a negative reputation in the legal community). It also appears that class counsel spent appreciable time on the case, which time could have been spent on other meritorious fee-generating cases.

Marron presents evidence demonstrating that costs in this case amount to $9,313.75. (Marron Declaration, ¶19.) Adding that to the lodestar, Marron's firm has fees and costs that total $261,990.97 ($252,677.22 + $9,313.75).

2. The attorney fees and costs requested ($250,000), is less than the lodestar, even before costs are added.

Once the Court has calculated the lodestar figure, it may consider other relevant factors that could increase or decrease that figure. "The court expresses these factors as a number (or as an equivalent percentage), and the lodestar is multiplied by that number. Thus, the number is referred to as the 'multiplier.'" (Pearl, California Fee Awards (2006 Supp.), §13.1.) Although there are some objective standards governing what factors may be used to decide whether to apply a multiplier, the trial courts have considerable discretion in determining the size of the multiplier, as long as they consider the proper factors. (Ibid.) Indeed, "there is 'no mechanical formula [that] dictate[s] how the [trial] court should evaluate all these factors....[Citations.]'" (Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19, 41, citing Flannery v. California Highway Patrol (1998) 61 Cal.App.4th 629, 639.)

"[The lodestar] may be adjusted by the court based on factors including... (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which

the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award. [Citation.] The purpose of such adjustment is to fix a fee at the fair market value for the particular action." (Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132, citing Serrano v. Priest (1977) 20 Cal.3d 25, 49.) However, the Court cannot consider the same factors twice when setting the multiplier and the lodestar as it could amount to double counting. (Ketchum, supra, 24 Cal.4th at 1138; see also Flannery v. CHP (1998) 61 Cal.App.4th 629, 647, reversing the application of a 2.0 multiplier to a fee award, in part because "the skill and experience of counsel" and "the nature of the work performed" factors were duplicative of factors the trial court had explicitly considered in setting the lodestar.)

The motion indicates that a multiplier is not requested if the Court awards the full amount of the fee requested, but that if the Court were to adjust the rates, a multiplier would be justified. In support of a positive multiplier, the motion points out that this case involved difficult legal issues because federal and state laws governing dietary supplements are a gray area, and because proving the difference between the price paid (around $2 per box of tea) and the actual value received would have been difficult since arguably some value was received (the tea itself). Additionally, the motion argues that the attorneys displayed skill in researching and settling this case, which provides a benefit not only to Class Members but to the public at large, and that in so doing, the attorneys undertook significant risk by spending time on this litigation on a contingency basis.

The Court is not inclined to apply a positive multiplier, but for all the reasons articulated above, finds that the combined fee and cost request of $250,000 is reasonable and awards that amount in full.

3. Cross-check
Not applicable.

B. Costs
Included in the above calculation.

C. Costs of Administration
Neither the Motion for Final Approval nor the Motion for Fees and Incentive Awards prays for recovery of the cost of administration. Examination of the Settlement Agreement demonstrates that Defendant was to pay the Notice Administrator within 10 days of Preliminary Approval. (Settlement Agreement, ¶5.2.) Thus, it appears that the Notice Administrator has already been paid. If this is not correct and if an order directing such payment is required, Class Counsel must so specify and must provide supplemental briefing and evidence in support of any such request.

D. Incentive Payment

Finally, Class Counsel seeks an incentive payment of $1,500 to each of the Class Representatives, Donna Perry and Jacqueline Johnson.

The Court considers the following factors, among others, in determining whether to pay an incentive or enhancement award to the Class Representatives:

- Whether an incentive was necessary to induce the class representative to participate in the case;
- Actions, if any, taken by the class representative to protect the interests of the class;
- The degree to which the class benefited from those actions;
- The amount of time and effort the class representative expended in pursuing the litigation;
- The risk to the class representative in commencing suit, both financial and otherwise;
- The notoriety and personal difficulties encountered by the class representative;
- The duration of the litigation; and
- The personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

(California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012), citing Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804; Bell v. Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726; In re Cellphone Fee Termination Cases (2010) 186

Cal.App.4th 1380, 1394; Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412).

The Court grants an award of $1,500 to each Class Representative for the following reasons:
¿ At the time of Preliminary Approval, each Class Representative submitted a declaration outlining the time she had spent on this litigation since January, 2014. (Copies of these declarations may be found at Exhibit 12 of the Marron Declaration.)
¿ Perry and Johnson each purchased Defendant's product and brought this litigation because they believe that diet products should contain truthful labels.
¿ Because of this litigation, the Settlement Class as well as the public at large received a real benefit.
¿ Perry and Johnson each spent time assisting Class Counsel and were available to answer questions during mediation.
¿ The awards are in line with what is traditionally award in injunctive relief only cases.

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