

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHELLE ANN CICCARELLA and
TANASHA RIETDYK, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

CALIFIA FARMS, LLC

Case No. 7:19-cv-08785-CS

**PLAINTIFFS' SUPPLEMENTAL REPLY IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs¹ Michelle Ann Cicciarella, Tanasha Rietdyk, Daniel Mitchell, Adriana Pena, Kayla Villanueva, and Kristen Landeros (collectively “Plaintiffs”) respectfully submit the following supplemental reply in support of Plaintiffs’ Motion for Final Approval of the Class Action Settlement (ECF No. 23). This supplemental reply only addresses correspondence received by newly identified class members after Plaintiffs filed their reply (ECF No. 25)(“Plaintiffs’ Reply”) on July 2, 2020.

For the reasons stated below and in Plaintiffs’ Reply (ECF No. 25) and in Plaintiffs’ opening brief in support of Plaintiffs’ Motion for Final Approval (ECF No. 23-1), Plaintiffs’ Motion for Final Approval of the Class Settlement (ECF No. 23) should be approved and judgment entered, thereby bringing this matter to a close and allowing for class members to be paid.

I. INTRODUCTION

As previously stated, the response from members of the class to the settlement has been overwhelmingly positive. To date, more than sixty thousand (60,000) class members have filed claims. *See* Supplemental Declaration of Carla A. Peak dated July 2, 2020 (ECF No. 25-1)(“July 2, 2020 Peak Suppl. Decl.”). at ¶ 6 (“To date, KCC has received 60,193 timely-filed claim forms.”).

Also as previously stated, no class members have opted out, and none have properly objected to the Settlement by the deadline of June 11, 2020. *Id.*

¹ Unless otherwise indicated, capitalized terms shall have the meaning that the Settlement Agreement ascribes to them. *See* ECF No. 14-1. (“Settlement Agreement”). References to “§ ___” are to sections in the Settlement Agreement.

Since the filing of Plaintiffs' Reply on July 2, 2020, Class Counsel have received correspondence from four newly identified class members. This correspondence is discussed immediately below. None formerly object to the Settlement. Nonetheless, out of an abundance of caution in case they were intended to be objections, Class Counsel hereby submits them to the Court. As seen below, however, none of them have merit such that the Settlement should be rejected. Rather, the Settlement should be granted final approval, judgment entered, and the case closed so that class members can be paid.

II. ARGUMENT

A. Letter from Nicole Cross and Ursule Bissereth

On July 6, 2020, Class Counsel received a letter jointly signed by Nicole Cross and Ursule Bissereth that is purportedly dated May 18, 2020. *See* Exhibit A attached hereto ("Cross/Bissereth Letter"). However, the envelope in which the Cross/Bissereth Letter was sent is postmarked June 29, 2020. *Id.*

The Cross/Bissereth Letter does not state that it objects to the Settlement. However, even if the Cross/Bissereth Letter is treated as an objection, it should be rejected for a number of reasons.

The deadline for objections was June 11, 2020. Since the Cross/Bissereth Letter was not posted until June 29, 2020, it was untimely. The Cross/Bissereth Letter also was not sent to the Claims Administrator or defense counsel as required. For this additional reason, the Cross/Bissereth Letter should be rejected as an objection.

The Cross/Bissereth Letter states that "Our consumer rights have been violated by Califa Farms accordingly to the Federal Trade Commission Act Section 5: Unfair and Deceptive Act Practices and we are demanding proper compensation. Under this Act, there is an FTC penalty

of \$47,530 per deceptive act and practice and a settlement offer of \$15.00 is unjust and an insult.” The Cross/Bissereth Letter then demands \$742,950 for each in compensation.

As previously explained in Plaintiffs’ Reply in response to the same argument raised by different class members, this argument must be rejected because there is no private right of action under the Federal Trade Commission (“FTC”) Act. *See* Plaintiffs’ Reply at 6-7. *See also* *Naylor v. Case & McGrath, Inc.*, 585 F.2d 557, 561 (2d Cir. 1978) (“[I]t is clear that no private right of action arises under that Act,” referring to the FTC Act, 15 U.S.C. § 45(a)(1)); *Alfred Dunhill Ltd. v. Interstate Cigar Co.*, 499 F.2d 232, 237 (2d Cir. 1974) (“[T]he provisions of the Federal Trade Commission Act may be enforced only by the Federal Trade Commission. Nowhere does the Act bestow upon either competitors or consumers standing to enforce its provisions.”); *Weight Watchers International, Inc. v. Noom, Inc.*, 403 F. Supp.3d 361, 372 (S.D.N.Y. 2019) (“there is no private right of action under the FTC Act”); *Oliver v. U.S. Bancorp*, No. 14-cv-8948, 2015 WL 4111908, at *6 (S.D.N.Y. July 8, 2015)(“Notwithstanding plaintiffs’ conclusory reference to the FTC Act, it is well settled that there is no private right of action under the statute.”).

B. Email from Imam Qadriyyah S. Mabel-Dorothy

On July 3, 2020, Class Counsel received an email from Imam Qadriyyah S. Mabel-Dorothy that was forwarding an earlier email from Ms. Mabel-Dorothy. *See* Exhibit B attached hereto (“Mabel-Dorothy Email”). The Mabel-Dorothy Email does not use the word objection or object. However, even if the Mabel-Dorothy Email is treated as an objection, it should be rejected for a number of reasons.

First, the Mabel-Dorothy Email was not sent to the Claims Administrator or defense counsel as required. For this reason, Mabel-Dorothy Email should be rejected as an objection.

In her email, Ms. Mabel-Dorothy states, in part, that “Califia violated me. They violated my trust. They violated the law. Their deceptive act makes me entitled to \$600,000 (\$40,000 x 15).” Presumably, the \$40,000 per violation calculation is based upon the FTC Act. However, as explained above, there is no private right of action under the FTC Act. Accordingly, for this additional reason, if the Mabel-Dorothy Email is treated as an objection, it should be rejected.

C. Shinita Boyd Letter

On July 7, 2020, Class Counsel received a letter from Shinita Boyd dated June 18, 2020. *See* Exhibit C attached hereto. Ms. Boyd does not object to the settlement. Rather she states she is “requesting mediation.” This does not constitute a legitimate objection.

III. CONCLUSION

Based on the foregoing and Plaintiffs' Reply (ECF No. 25) and Plaintiffs' opening brief in support of Plaintiffs' Motion for Final Approval (ECF No. 23-1), the Court should (1) strike or overrule the objections; (2) grant Final Approval of the Settlement; (3) approve the request for Incentive Awards for the Plaintiffs; (4) approve Class Counsel's applications for Attorneys' Fees and Expenses; and (5) enter Final Judgment dismissing the Action with prejudice.

Date: July 8, 2020

Respectfully submitted,

/s/ Michael R. Reese

Michael R. Reese

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505 Northern Blvd Ste 311

Great Neck New York 11021-5101

Telephone: (516) 303-0552

Class Counsel for Plaintiffs and the Certified Class

CERTIFICATE OF SERVICE

I, Michael R. Reese, hereby certify that on July 8, 2020, I cause an electronic copy of the foregoing document to be served on all counsel of record via the Court's CM/ECF system.

/s/ Michael R. Reese
Michael R. Reese

EXHIBIT A

Case 7:19-cv-08785
Cicciorolla V. Califia Farms LLC

May 18, 2020

To whom it concerns:

Our names are Nichole Cross and Ursule Bissereth, we are class members of Califia Farms Non-Dairy class Action Settlement. Our consumer rights have been violated by Califia Farms according to the Federal Trade Commission Act Section 5: Unfair and Deceptive Act Practices and we are demanding proper compensation. Under this act, there is an FTC penalty of \$42,530 per deceptive act and practice and a settlement offer of \$15.00 is unjust and an insult!

Califia Farms front label misrepresentation alludes to this expensive drink being taken from the actual vanilla plant and nothing more when in fact the ingredient list shows it contains other "natural flavors."

Having purchased this product on numerous occasions under the pretense we were purchasing real vanilla NOT imitation vanilla flavoring is not only unfair but HUGELY **deceptive!** If we wanted to spend our hard-earned money on fake products, we would've done just that at a fraction of the cost and not purchase almond milk from Califia Farms. We are demanding \$742,950 each as compensation for the countless bottles of almond milk we have bought and drank for the last 3 years under false pretense of drinking real vanilla. This demand amount considers our time which is invaluable, our gas, mileage, and most importantly the violation of our consumer rights! Attached is proof of purchase for a fraction of the counterfeit bottles purchased over the last 3 years.

We demand a response within 30 days via email or mail from the day of receiving this letter.

Regards,

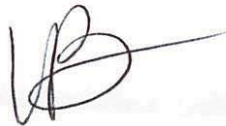


Nichole Cross

nichole@capitallore.com

1431 Deuce Circle, Champions Gate, FL 33896

&



Ursule Bissereth

trtsmc@gmail.com

1322 Island Green Street, Champions Gate FL 33896

JUN 29 20
AMOUNT

\$ 10

R23 5 1-05



11021



1023

Nichole Cross
1431 Dewee Circle
ChampionsGate, FL 33896

Mr. Spencer Sheehan
TO: ~~Nichole Cross~~
505 Northern Blvd
311

Great Neck, NY 11021

7019 2970 0000 3476 3606

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL®



7019 2970 0000 3476 3606

EXHIBIT B

Class member requires response Re: Califia Farms

1 message

Imam Qadriyyah S Mabel-Dorothy <ForYouServices@gmx.com>
To: spencer@spencersheehan.com, mreese@reesellp.com

Fri, Jul 3, 2020 at 12:58 PM

Originally sent May 28th, 2020. I can be reached:

Via email using foryouservices@gmx.com
Via phone using 617-586-9190
Via postal mail 2243 Newnan Street East Point GA 30344

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Sent from my Android phone with GMX Mail. Please excuse my brevity.

On 5/28/20, 2:31 PM Imam Qadriyyah S Mabel-Dorothy <ForYouServices@gmx.com> wrote:

May this email reach you in good health and prosperity. My name is Qadriyyah Safiyyah Mabel-Dorothy. I am certainly a class member of the Califia Farms Non-Dairy class action settlement. I am honestly devastated to find out that Califia deceived me and my family. One of my sons has many allergies and sensitivities. I do my best to buy products that I know will support his dietary success. I am also on a budget. When I first started purchasing Califia Almond Milk I had to make significant changes to our grocery list to accommodate the increase. After awhile I could no longer afford to pay the price for what I thought was superb health. Every time I purchased another brand I felt guilty because I could no longer afford what I thought was a better milk for my son. For years I have been riddled with guilt every time I cannot purchase Califia Almond Milk. To find out the times I am purchasing the Califia Almond Milk, and making sacrifices in other regards, that I have been deceived. I am disgusted! I have been duped! I actually went out my way to shop at stores that carry Califia instead of the ones closer. Wow. I do what I think is the best for myself and my son and all this time its tree bark. It feels like I have been sold snake oil. Califia violated me. They violated my trust. They violated the law. Their deceptive act makes me entitled to \$600,000 (\$40,000 x 15). To be honest I find it very interesting that the limit is 15 purchases but the violation went from 2014 til 2020. Im pretty sure they know we buy more than 15 bottles of milk in a 6 year time span.

Yours, in service to Allah,

Imam Qadriyyah S Mabel-Dorothy
2243 Newnan Street
East Point, GA 30344
617-586-9190

EXHIBIT C

Shinita Boyde

115 west 143rd st 5c
New York City, N.Y 10030
shinitabgotham@gmail.com

18th June 2020

Samuel A Wong

AEGIS LAW FIRM
1500 Walnut st. #700
Philadelphia, PA 19102

RE: REQUEST FOR MEDIATION

To Whom it May Concern,

I am a part of the Califia Farms Class Action Settlement. I am a class member, and I am requesting mediation to resolve the legal matter above. I have several receipts if needed as well.

Please respond to this certified letter within 30 days




Sincerely,



Shinita Boyd
115 West 143rd St
NY NY 10030

SP

U.S. POSTAGE PAID
FCM LETTER
NEW YORK, NY
10090
JUN 13 20
AMOUNT
\$3.55
R2305E123703-32

1000

7019 2970 0002 1544 9206

PLACE TICKET AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE
CERTIFIED MAIL



7019 2970 0002 1544 9206

Samuel A Wons
AEGIS LAW FIRM PC
~~1500 WALKER ST #700~~
~~PHILADELPHIA PA 19102~~
9811 Irvine Center Dr.
SUITE 100
IRVINE, CA 92618