

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 20**

FREDRICK MCKINLEY and LISA VIZCARA,
individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

CONOPCO INC. and UNILEVER UNITED STATES,
INC.,

Defendants.

Index No. 805260/2024E

**Motion #1
Decision and Order**

HON. VERONICA G. HUMMEL, A.J.S.C.

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed by the parties in NYSCEF in connection with the motion (Motion #1) of plaintiff seeking an Order pursuant to CPLR 901, 902, 904, 907 and 908 for preliminary approval of a class action settlement and preliminary certification of the settlement class.

FINDINGS OF FACT

1. Plaintiffs Frederick McKinley and Lisa Vizcarra (“Plaintiffs”) bring this Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan before the Court, with the consent of defendants Conopco Inc. and Unilever United States, Inc. (“Defendants”).

2. The Parties conducted a thorough evaluation of the relevant law and facts to assess the merits of the potential claims to determine the strength of both the defenses and liability sought in the action.

3. In addition, Class Counsel evaluated the various state consumer protection laws, as well as the legal landscape, to determine the strength of the claims, the likelihood of success, and the parameters within which courts have assessed settlements similar to the proposed Settlement.

4. The Parties entered into a Settlement Agreement pursuant to which they agreed to settle the Action, subject to the approval and determination by the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the Action with prejudice.

5. The Court has reviewed the Settlement Agreement, including the exhibits attached thereto and all prior proceedings herein, and having found good cause based on the record,

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. **Stay of the Action.** All non-settlement-related proceedings in the action are hereby stayed and suspended until further order of the Court.

2. **Preliminary Class Certification for Settlement Purposes Only.** Having made the findings set forth above, the Court hereby preliminarily certifies a plaintiff class for settlement purposes only, pursuant to New York Civil Practice Law and Rules (“CPLR”) §§ 901-902, in accordance with the terms of the Settlement Agreement (the “Settlement Class”). The Court preliminarily finds, based on the terms of the Settlement described in the Settlement Agreement and for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are issues of law and fact that are common to the Class, and that those issues predominate over questions affecting only individual members; (c) the claims of the representative parties are typical of the claims of the other class members; (d) the Plaintiffs and Class Counsel are adequate representatives of the Class; (e) a class action on behalf of the certified Class is superior to other available means of adjudicating this dispute. Additionally, given the small amount of recovery per class member when weighed against the costs of litigation, the class members have no interests in separate actions but rather prefer to proceed as a class action, as prosecuting thousands of separate actions would be impractical and inefficient. Furthermore, a nationwide class in New York (where Defendant Conopco is incorporated) is preferred to piecemeal litigation in potentially 50 or more separate courts throughout the United States. Finally, there is no difficulty likely to be encountered in the management of this class action.

3. **Class Definition.** The Settlement Class is defined as all persons who, from April 21, 2016 to the date this Preliminary Approval Order was signed by the Court, purchased one or more Breyers Natural Vanilla ice cream products in the United States for personal or household use and not for resale. Excluded from the Settlement Class and Settlement Class Members are: the Released Parties; any government entities; persons who made such purchase for the purpose of resale; persons who made a valid, timely request for exclusion; the presiding judges in the Actions; and mediator Peter Woodin of JAMS.

4. **Class Representatives and Class Counsel.** The Court appoints Michael R. Reese and Sue J. Nam from Reese LLP and Spencer Sheehan of Sheehan & Associates, P.C. as counsel for the Settlement Class. Frederick McKinley and Lisa Vizcarra are hereby appointed as Class Representatives.

5. **Preliminary Settlement Approval.** The Court preliminarily approves the Settlement set forth in the Settlement Agreement pursuant to CPLR § 907-908 as being as fair, reasonable, and adequate, and in the best interest of the Class, subject to final consideration at the Fairness Hearing provided for below. Accordingly, the Settlement Agreement is sufficient to warrant sending notice to the Class.

6. **Fairness Hearing.** A Fairness Hearing shall be held on November 21, 2024 at 9:30 a.m. in IAS Part 20 in the Supreme Court of the State of New York, Bronx County, located at 851 Grand Concourse, Bronx, New York, 10451 to determine, among other things: (a) whether the Action should be finally certified as a class action for settlement purposes; (b) whether the Settlement of the Action should be finally approved as fair, reasonable, adequate and in the best interests of the Class; (c) whether Class Counsel's application for payment of attorney fees and reimbursement of litigation expenses to Class Counsel and payment of service awards to the Class

Representatives should be granted; and (d) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement and final judgment entered.

7. The submissions of the Parties in support of the Settlement, including Plaintiffs' Counsel's application for Attorneys' Fees and Expenses and Service Awards, shall be filed with the Court no later than thirty (30) days prior to the Fairness Hearing and may be supplemented up to fourteen (14) days prior to the Fairness Hearing.

8. **Administration and Class Notice.**

a. The Court accepts the recommendations of Class Counsel and Defendants, and hereby appoints Epiq Class Action & Claims Solutions, Inc. to serve as the Claims Administrator in accordance with the terms of the Settlement Agreement, and to help implement the terms of the Settlement Agreement.

b. The proposed Class Notice, Summary Settlement Notice, the notice methodology described in the Settlement Agreement and in the Affirmation of Cameron R. Azari, of Epiq Class Action & Claims Solutions, Inc. ("Azari Affirmation") is hereby approved.

c. No later than thirty (30) calendar days after the entry of the Preliminary Approval Order, the Claims Administrator shall cause the Notice Plan to commence as described in the Azari Affirmation. Specifically, the Settlement Administrator shall establish a website that will inform Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include materials agreed upon by the Parties and as further ordered by this Court.

d. Not later than thirty (30) days after the entry of the Preliminary Approval Order, the Claims Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Settlement Class Members.

e. The Claims Administrator shall disseminate the notice, as stated in the Settlement Agreement and the Azari Affirmation.

f. Not later than fourteen (14) calendar days before the date of the Fairness Hearing, the Claims Administrator shall file a declaration or affidavit with the Court that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) attests to the proper implementation of the Notice Plan.

9. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Class as discussed in this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law.

10. **Exclusion from Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Class may elect to opt out of the Settlement under this Agreement. Settlement Class Members who opt out of the Settlement will not release their claims for damages that accrued during the Class Period. Settlement Class Members wishing to opt out of the Settlement must send to the Class Action Settlement Administrator by U.S. Mail a personally signed letter including their name and address and providing a clear statement communicating that they elect to be excluded from the Settlement Class. If any Settlement Class Member wishes to be excluded from (in other words, opt out of) the Settlement, the Settlement Class Member may do so by completing

the exclusion form at the Settlement Website; downloading and submitting to the Claim Administrator a completed exclusion form; or submitting a valid request to exclude themselves, as described in the Notice, to the Claim Administrator. Requests to exclude must be received by the Claim Administrator (if submitted electronically) or postmarked (if sent via mail or express mail) by the Opt-Out Deadline or they shall not be valid. A Settlement Class Member who elects to exclude themselves from this Settlement shall not be permitted to object to this Settlement or to intervene. Any potential Settlement Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the release in the Settlement Agreement, even if he or she has litigation pending or subsequently initiates litigation against Defendants or other Released Persons (as defined in the Settlement Agreement) relating to the claims and transactions released in this Action.

11. **Objections and Appearances.** Any Settlement Class Member who intends to object to the fairness of the Settlement must do so in writing no later than the Objection Date. Any objection must be in writing, signed by the Settlement Class Member (and his or her attorney, if individually represented), and must be sent to the Claims Administrator and received by (if submitted electronically) or postmarked by (if sent via paper mail) the Objection Date as specified in this Order. The written objection must include: (i) the case name and number: *McKinley v. Conopco Inc.*, Index No. 805260/2024E; (ii) the name, address and telephone number of the objector; (iii) the name, address, and telephone number of all counsel (if any) who represent the objector, including any former or current counsel who may be entitled to compensation for any reason if the objection is successful, and legal and factual support for the right to such compensation; (iv) documents or testimony sufficient to establish membership in the Settlement Class; (v) a detailed statement of any objection asserted, including the grounds therefor; (vi) whether the

objector is, and any reasons for, requesting the opportunity to appear and be heard at the final approval hearing; (vii) the identity of all counsel (if any) representing the objector who will appear at the final approval hearing and, if applicable, a list of all persons who will be called to testify in support of the objection; (viii) copies of any papers, briefs, or other documents upon which the objection is based; (ix) a detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class litigations submitted in any state or federal court in the United States in the previous five (5) years (or affirmatively stating that no such prior objection has been made); and, (x) the objector's signature, in addition to the signature of the objector's attorney (if any). Failure to include documents or testimony sufficient to establish membership in the Settlement Class shall be grounds for overruling and/or striking the objection on grounds that the objector lacks standing to make the objection. Failure to include any of the information or documentation set forth in this paragraph also shall be grounds for overruling an objection.

Any Settlement Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person or through counsel hired at that Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including Attorneys' Fees and Expenses and Service Awards. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must serve a notice of intention to appear on the Class Counsel identified in the Class Notice, and to Defendants' Counsel, and file the notice of appearance with the Court, no later than fifteen (15) days before the Final Approval Hearing, or as the Court may otherwise direct.

Any Settlement Class Member who fails to comply with Section VI.6.6 of the Settlement Agreement shall waive and forfeit any and all rights he or she may have to appear separately and/or

to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Action, including, but not limited to, the Released Claims and the releases in Section VII of the Agreement.

Class Counsel shall have the right, and Defendants shall reserve their right, to respond to any objection no later than fourteen (14) days before the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting Settlement Class Member or to the individually hired attorney for the objecting Settlement Class Member, to Class Counsel, and to Defendants' Counsel.

12. **Disclosures.** The Claims Administrator, Defendants' Counsel, and Class Counsel shall promptly furnish to each other copies of any and all objections or written requests for exclusion that might come into their possession.

13. **Termination of Settlement.** This Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the Settlement is not finally approved by the Court or does not become final, pursuant to the terms of the Settlement Agreement; (b) the Settlement is terminated in accordance with the Settlement Agreement; or (c) the Settlement does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose.

14. **Effect of Settlement Agreement and Order.** Plaintiffs' Counsel, on behalf of the Settlement Class, and Defendants entered into the Agreement solely for the purpose of compromising and settling disputed claims. This Order shall be of no force or effect if the Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability. The Settlement Agreement, the documents relating to the Settlement Agreement, and this Order are not, and should not in any event be (a) construed, deemed, offered, or received as evidence of a presumption, concession, or admission on the part of Plaintiffs, Defendant, any member of the Settlement Class or any other person; or (b) offered or received as evidence of a presumption, concession, or admission by any person of any fault, wrongdoing, breach, or liability, or that the claims in the Action lack merit or that the relief requested is inappropriate, improper, or unavailable for any purpose in any judicial or administrative proceeding, whether in law or in equity.

15. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Class. If the Settlement receives final approval, this Court shall retain jurisdiction over any action to enforce the release provisions in the Settlement Agreement.

16. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Fairness Hearing without further written notice.


The Court sets the following schedule for the Fairness Hearing and the actions which must precede it:

- a. Plaintiffs shall file their Motion for Final Approval of the Settlement by no later than October 22, 2024.

- b. Plaintiffs shall file their Motion for Attorneys' Fees, Costs, and Expenses, and Motion for Service Award by no later than October 22, 2024.
- c. Settlement Class Members must file any objections to the Settlement and the Motion for Attorneys' Fees, Costs, and Expenses, and the Motion for Service Award by no later than October 31, 2024.
- d. Settlement Class Members must exclude themselves, or opt-out, from the Settlement by no later than October 31, 2024.
- e. Settlement Class Members who intend to appear at the Final Fairness Hearing must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than November 6, 2024.
- f. The Settlement Administrator shall file a declaration or affidavit with the Court that confirms the implementation of the Notice Plan pursuant to the Preliminary Approval Order on November 7, 2024.
- g. Class Counsel and Defendant's Counsel shall have the right to respond to any objection no later than November 7, 2024.

- h. The Fairness Hearing will take place on November 21, 2024 at 9:30 a.m.
in IAS Part 20, 2024 at the Supreme Court of the State of New York,
Bronx County, 851 Grand Concourse, Bronx, New York, 10451.

SO ORDERED this 14 day of August, 2024:

Hon. 
Honorable Veronica G. Hummel
Justice of Supreme Court of the State of New York

x Motion 1 is decided
x in person appearance scheduled for November 21,2024 at 9:30am

Check One: Action Disposed Case Still Active

Motion #1 Is: Granted Denied