UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

MATT DIFRANCESCO, ANGELA MIZZONI, and LYNN MARRAPODI, individually and on behalf of all others similarly situated, Plaintiffs, v. UTZ QUALITY FOODS, INC., Defendant.	Civil Action No. 1:14-CV-14744-DPW

PLAINTIFFS' ASSENTED TO MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

I. INTRODUCTION

Plaintiffs respectfully seek final approval of the proposed Class Action Settlement that would resolve this action, and which the parties previously amended to address the concerns raised by the Court.[1] (Dkt. 93, the "Settlement".) Plaintiffs move for an award of attorney fees and service awards in a separate, concurrently filed motion.

The Settlement merits final approval because it is eminently fair, reasonable, and adequate. The deadline for Settlement Class Members to submit claims is July 28, 2019. As of this time, the Settlement Administrator reports that 124,134 claims have been filed by Settlement Class Members, effectively endorsing the Settlement, seeking payment under the terms of the Settlement for some 1,144,530 Qualifying Purchases. (Concurrently filed Declaration of Steven Weisbrot ("Weisbrot Decl."), ¶ 11.) This response accords with the Settlement Administrator's prediction prior to the Court's order authorizing dissemination of notice, although more claims can be expected before the deadline. (Dkt. 87-2, ¶ 8.)

It now is clear that the Settlement Class's response will fully subscribe the $1.25 million Settlement Fund, making it highly unlikely that there will be any *cy pres* distribution. Although the precise figure each Claimant will receive will depend on a number of factors, including how may claims are found invalid, and how much the Court awards in Attorney Fees and Expenses and Service Awards, it appears that each Claimant, on average, is likely to receive a cash sum of approximately $4.28.[2] This is a fair result, considering that the Eligible Products at issue are low dollar value snack foods sold for a few dollars each.

---

[1] Unless otherwise defined, capitalized terms used herein have the meaning ascribed to them in the Settlement.

[2] The $4.28 figure appearing in the text assumes: that 5,490 of the Claims received are duplicative; total costs of Settlement Administration in the amount of $350,000, as agreed to by the Settlement Administrator; and that the Court awards $375,000 in Attorney Fees, $9,953.36 in Expenses, and $7,500 in total Service Awards to the three Plaintiffs ($2,500 each).

While the Settlement Administrator has received a significant number of Claims, no objections or requests for exclusion have been received to date. (Weisbrot Decl. ¶ 14.) This is strong evidence that the Settlement Class supports the Settlement and that it should be approved.

Accordingly, Plaintiffs respectfully request that the Court grant this motion, finally approve the Settlement, and issue the [Proposed] Final Approval Order and Final Judgment submitted as Exhibits 3 and 4 to the Settlement Agreement.

II. SUMMARY OF THE SETTLEMENT'S TERMS

The Settlement features a $1.25 million Settlement Fund that will be used, in great part, to refund money to proposed Settlement Class Members ("Class Members"). (Dkt. 93, § IV.A.1.) Notice (including notice pursuant to 28 U.S.C. §1715) and administration costs will be paid out of that fund. (*Id*. § IV.A.2.) Concurrently with this motion, Class Counsel seek an award of attorney fees in an amount of 30% of the Settlement Fund, and reimbursement of their litigation-related expenses, subject to the Court's approval, which would be paid from the Settlement Fund. (*Id*.) Plaintiffs seek Service Awards in the amount of $2,500 each (below the $5,000 cap contemplated by the original and Amended Settlement), also to be paid from the Settlement Fund and also subject to the Court's approval. (*Id*.)

Proposed Class Members who submit timely and proper Claim Forms will receive a payment of $2.00 per Qualifying Purchase up to a maximum of $20.00 per household (the "Initial Claim Amount"), subject to the adjustments set forth in Section IV.E.1 of the Settlement Agreement, provided that their claims are determined by the Settlement Administrator to be otherwise valid. (*Id*. IV.D.) Moreover, subject to the terms set forth Section IV.F.1.-4., the Settlement provides for Defendant's cessation of the terms "Natural" and "All Natural" from the Eligible Products' advertising and labeling for a period of three years. If approved, the

Settlement will fully and finally resolve the claims of Plaintiffs and other proposed Class Members. Should individual Class Members desire an alternate form of relief other than that provided in the Settlement, they have the right to opt out of the Settlement and pursue such relief. (*Id*. § VI.A.)

In the Settlement and in this Court's Order Authorizing Class Notice, when this Court certified the Settlement Class for settlement purposes, the Settlement Class is defined as:

> All persons who, during the Class Period purchased in the United States any of the Eligible Products for use and not resale. Excluded from the Class are: (a) Utz's board members or executive-level officers; (b) persons who purchased the Eligible Products primarily for the purpose of resale, including, but not limited to, retailers or re-sellers of the Eligible Products; (c) governmental entities; (d) persons who timely and properly exclude themselves from the Class as provided in this Agreement; and (e) the Court, the Court's immediate family, and Court staff.

(Dkt. 103, Notice Approval Order at 2-3.)

A. The Settlement's Monetary and Non-Monetary Benefits

The Settlement features a $1.25 million Settlement Fund. (Dkt. 93, Settlement §§ II.A.34, IV.A.1.) Within 10 days after the Final Settlement Date, Defendant will pay the Settlement Fund Balance ($1.25 million minus payments to the Settlement Administrator, and any Attorney Fees and Expenses and Service Awards awarded by the Court) to satisfy valid Claims.

Class Members who submit a Claim Form and purchased any of the Eligible Products during the Class Period are eligible to receive an amount of $2 per Qualifying Purchase, up to a maximum of $20 per household (the "Initial Claim Amount"), subject to the adjustments set forth below. (*Id.* § IV.D, IV.E.) Proposed Class Members may recover such monetary refund by timely submitting a Claim Form (attached as Exhibit 1 to the Amended Settlement) either online at the Settlement Website (www.UtzSettlement.com), or by U.S. Mail. (*Id*. §§ IV.C., V.D.)

Proposed Class Members must submit Claims because Defendant generally does not have their addresses, as the Eligible Products were primarily sold to consumers through retail establishments.

Prior to the Court's order authorizing dissemination of notice, the Settlement Administrator opined that the Notice program likely would result in the neighborhood of 100,000 claims. (Dkt. 87-2; Weisbrot Decl. ¶ 8.)

To date, Class Members have submitted 124,134 Claims for some 1,144,530 Qualifying Purchases. (Weisbrot Decl. ¶ 11.) The Settlement Administrator has not yet processed these Claims to remove duplicates or reviewed them for fraud, but a preliminary review indicates that approximately 5,490 of the Claims will be excluded as duplicates. (*Id.* ¶ 13.)

Given this response and the $2 allowed for each Qualifying Purchase under the terms of the Settlement, it is clear that the Settlement Fund will be entirely accounted for, that each Claimant's Settlement Share will be reduced on a *pro rata* basis, and it is highly unlikely that there will be any *cy pres* distribution. (Dkt. 93, § IV.E.1; *see also supra* note 2 & accompanying text.)

None of the Settlement Fund, including any Residual Funds, will revert to Defendant. (Amended Settlement, § IV.E.3.) Aside from the monetary benefits promised by the Settlement, Defendant agrees not to label the Eligible Products as "Natural" or "All Natural" for at least three years following the Final Settlement Date. (Dkt. 93, § IV.F.1.)

B. Dissemination of Notice to the Class

The Parties developed a comprehensive Notice program with input from the Settlement Administrator, Angeion, a company that specializes in developing class action notice plans. Because the Eligible Products are most typically sold over the counter at retail stores, Defendant

does not have mailing addresses for the overwhelming majority of the proposed Class Members. (Dkt. 87-1, 2d Wolfson Decl. ¶ 14.) Consequently, at the center of the Notice program is the Settlement Website, which provides information about the Settlement, Class Member rights, important dates and deadlines, and a Claim Form that Class Members can submit online. *See* http://www.UtzSettlement.com. The Settlement Website and Settlement have been publicized through the use of Internet banner ads. (Dkt. 93, § V.D.)

All expenses related to Notice and Claims administration will be paid from the Settlement Fund. (*Id.* § IV.A.2.) Angeion has agreed that it will not charge more than $350,000 to disseminate the Notice and administer the Settlement. (Dkt. 93-8, ¶ 29.)

C. Service Awards to Class Representatives and Attorney Fees and Expenses

Concurrently with this motion, Class Counsel petition the Court for a Service Award for each of the three representative Plaintiffs in the amount of $2,500 each — half of the $5,000 allowed under the terms of the Settlement — which would be deducted from the Settlement Fund. (Dkt. 93, § IV.A.2.) Class Counsel also are applying to the Court for an award of reasonable attorney fees and expenses incurred up to the submission of the application to the Court prior to the Fairness Hearing, which shall be paid out of the Settlement Fund. (*Id.* ¶ IX.B.) There is no agreement between the Parties as to the amount of the attorney fees and expenses that Class Counsel can or will seek. (*Id.*) However, Class Counsel has committed to seeking no more than 1/3 of the Settlement Fund.

D. Release Provisions

If the Court grants final approval of the proposed Settlement, Settlement Class Members will be deemed to have released Defendant of all claims, known or unknown, that were asserted or could have been asserted in the litigation except for claims of personal injuries. (Dkt. 93,

§ VIII.) The Released Claims are tied to the labeling, advertising, and purchase of the Eligible Products during the Class Period — a temporal limitation added to the Amended Agreement in response to the Court's concerns expressed at the November 6 hearing. (*See* Dkt. 95-1, Redline of Amended Settlement, at § II.A.26 (defining "Release Claims").)

Language referring to California Civil Code § 1542 also was removed from the Amended Settlement in light of the Court's concerns. (*Id*. at § VII.F.) This language was carefully and collaboratively crafted by counsel for Defendant and Plaintiffs in an effort to address the Court's prior concerns, and with guidance from the release provision approved in *Bezdek v. Vibram USA Inc.*, No. 1:12-cv-10513-DPW, Dkt. 106 (D. Mass. Jan. 16, 2015).

E. Opt-Out Procedure and Opportunity to Object

Any Class Member may opt out of the Settlement by sending to the Settlement Administrator a personally signed letter via U.S. Mail including his or her name, and providing a clear statement communicating that he or she elects to be excluded from the Class. (Dkt. 93, § VI.A.) Such requests must be postmarked on or before the Opt-Out Deadline of June 13, 2019. (*Id*.) Any Class Member who does not request to be excluded may object to the Settlement and/or the applications for Service Awards or Attorney Fees and Expenses. (*Id*. § VII.A.) An objection must be filed with the Court no later than the objection deadline (also June 13, 2019) and must state in writing the specific reason(s), if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention, any evidence or other information the Class Member wishes to introduce in support of the objection, and a statement of whether the Class Member intends to appear and argue at the Fairness Hearing. (*Id*.)

III. ARGUMENT

A. Adequacy of Notice

The Notice program implemented here "was conducted in a reasonable manner, consistent with Fed. R. Civ. P. 23 and due process concerns," in a manner "'reasonably calculated to reach the absent class members.'" *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 336 (D. Mass. 2015) (quoting *Reppert v. Marvin Lumber & Cedar Co.*, 359 F.3d 53, 56 (1st Cir. 2004)). The Notice adequately informed Class Members "of '(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).'" *Bezdek*, 79 F. Supp. 3d at 336 (quoting Fed. R. Civ. P. 23(c)(2)).

As requested by the Court, the Notice specifically informed Class Members that they could object to the Settlement, to any award of Attorney Fees and Expenses, and/or to any Service Awards to Class Counsel, and the maximum amount of Attorney Fees and Expenses and Service Awards that Plaintiffs might seek. (Dkt. 102-1 at §§ 8, 17.) The response rate to date meets the Settlement Administrator's prediction, supporting the conclusion "that notice was given to settlement class members by the best means 'practicable under the circumstances.'" *Bezdek*, 79 F. Supp. 3d at 336 (quoting Fed. R. Civ. P. 23(c)(2)).

B. Final Class Certification

The Court preliminarily certified the Settlement Class in its Notice Approval Order. (Dkt. 103 at 2-3.) Certification remains appropriate, as all requirements of Rule 23(a) and

23(b)(3) are met in this case.[3]

1. This Action Satisfies the Requirements of Rule 23(a)

Rule 23(a) enumerates four prerequisites for class certification, commonly referred to as: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. Fed. R. Civ. P. 23(a); *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613 (1997). Each of these requirements is met here.[4]

The Settlement Class Is Numerous: The Settlement Class includes thousands of persons, in excess of the 124,134 Claimants who have responded to the Class Notice to date by filing Claims. Joinder of all Class Members is plainly impractical, and the numerosity requirement of Rule 23(a)(1) is satisfied.

The Action Presents Common Questions: "The threshold of commonality, is not high." *In re Lupron(R) Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005) (*internal citation omitted*); *Faherty v. CVS Pharm., Inc*., No. 09-CV-12102, 2011 U.S. Dist. LEXIS 23547, at *4 (D. Mass. Mar. 9, 2011). "[T]he rule requires only that resolution of the common questions affect all or a substantial number of class members." *In re Lupron(R)*, 228 F.R.D. at 88; *see also Guckenberger v. Boston Univ.*, 957 F. Supp. 306, 325 (D. Mass. 1997) (noting that Rule 23 does not require that all class members "share identical claims," but rather that "claims be common, and not in conflict."). Here, common questions include whether Defendant communicated the "All Natural" advertising message about the Eligible Products through its

[3] The Defendant maintains that there remain substantial obstacles to certification of a litigation class under Federal Rule of Civil Procedure Rule 23, and that any certification of a preliminary or final settlement class is for settlement purposes only and shall not constitute, nor be construed as, an admission, concession or acknowledgment by Defendant that the Action or any other proposed action is certifiable if litigated. (Amended Settlement § XII.T.)

[4] "The fact that the class members are unidentifiable to the defendants does not render the class unascertainable." *Bezdek*, 79 F. Supp. 3d at 337 (citing *Kent v. SunAmerica Life Ins. Co.*, 190 F.R.D. 271, 278 (D.Mass.2000)).

marketing and advertising campaign, and whether that advertising message is factually true or false, and likely to deceive consumers.

Plaintiffs' Claims Are Typical: "To establish typicality, the plaintiffs need only demonstrate that the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *In re M3 Power Razor*, 270 F.R.D. 45, 54-55 (D. Mass. 2010) (citation omitted); *Swack v. Credit Suisse First Boston*, 230 F.R.D. 250, 260 (D. Mass. 2005) ("As with the commonality requirement, the typicality requirement does not mandate that the claims of the class representative be identical to those of the absent class members."). Factual distinctions between the plaintiffs and class members' claims will not destroy typicality as long as they have the "same essential characteristics." *George v. National Water Main Cleaning Co.*, 286 F.R.D. 168, 176 (D. Mass. 2012). Defendant exposed Plaintiffs and the other Class Members to the same marketing message to induce Class Members to purchase the Eligible Products. Plaintiffs seek to obtain the same relief pursuant to the same legal theories as those of the other Class Members. Plaintiffs' claims are the same as those of the other Class Members. Thus, the typicality requirement is met.

The Interests of the Settlement Class Are Adequately Protected: Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy is satisfied where (i) counsel for the class is qualified and competent to vigorously prosecute the action, and (ii) the interests of the proposed class representatives are not antagonistic to the interests of the Class. *See In re Evergreen Ultra Short Opportunities Fund Secs. Litig.*, 275 F.R.D. 382, 391 (D. Mass. 2011). The adequacy requirement is met here. First, proposed Class Counsel are qualified and experienced in litigating

and settling class actions, including false advertising cases. They have demonstrated expertise in handling all aspects of complex litigation and class actions, and are well qualified to represent the Settlement Class. (Wolfson Decl. ¶ 2 & Ex. A.) Finally, there is no conflict between the Plaintiffs' interests and the interests of the other Class Members because all Class Members are "seeking redress from what is essentially the same injury." *In re M3 Power Razor*, 270 F.R.D. 45, 55 (D. Mass. 2010). Plaintiffs' interests are perfectly aligned with the interests of the Class.

2. The Requirements of Rule 23(b)(3) are Satisfied

"In addition to the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation, the party seeking to obtain class certification must demonstrate that the action may be maintained under Rule 23(b)(1), (2), or (3)." *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 68 (D. Mass. 2005) (citations omitted). Where a court is passing on the certification question in the context of a proposed settlement class, Rule 23(b)(3)'s inquiry regarding the manageability of the case for trial is not necessary. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial."). Nonetheless, the remaining requirements under Rule 23 must still be met in settlement-only certification situations. *Id.* at 621-22. The Settlement Class here satisfies these requirements.

Common Questions of Law and Fact Predominate: The Rule 23(b)(3) predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. In the First Circuit, predominance requires only "a sufficient constellation" of common issues. *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 70 (D. Mass. 2005) (citation omitted).

The predominance requirement is easily satisfied here. As discussed above, Plaintiffs allege that they and other Class Members are entitled to the same legal remedies based upon the same alleged wrongdoing by Defendant — exposure to the same alleged false and misleading advertising claims. Plaintiffs allege that all of the advertisements on the Eligible Products, including the packaging and related materials, convey the same advertising message – that they are "All Natural." (*See* samples of Eligible Product advertisements, Dkt. 77-1, Ex. B.) The central issues for every Class Member are whether Defendant's advertising and marketing campaign conveyed this message to the reasonable consumer and whether the claim is true or substantiated. These two issues predominate because they would have to be decided in every trial brought by individual class members and can be proven or disproven with the same class wide evidence. Under these circumstances, the requirements of Rule 23(b)(3) are satisfied.

A Class Action is Superior: Rule 23(b)(3) sets forth the relevant factors for determining whether a class action is superior to other available methods for the fair and efficient adjudication of a controversy. These factors include: (i) the class members' interest in individually controlling separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (iv) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3).

In a case where there are many class members each with relatively small claims, "a class action is the only feasible mechanism for resolving the dispute efficiently." *In re M3 Power Razor*, 270 F.R.D. 45, 56 (D. Mass. 2010). Under the circumstances presented here, where Class Members may have individual claims of only a couple of dollars, a class action is clearly superior to any other mechanism for adjudicating the case. *Id.* at 56. Second, certification would

be superior because concentrating this litigation in one forum would not only prevent the risk of inconsistent outcomes but would also reduce litigation costs and promote greater efficiency.

C. Final Approval Is Appropriate

Under Rule 23(e), after directing notice to all class members in a reasonable manner and prior to granting final approval to the proposed settlement, the Court must conduct a fairness hearing and determine whether the settlement's terms are "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

As this Court has explained, "a presumption that the settlement is within the range of reasonableness when certain procedural guidelines have been followed." *In re M3 Power Razor*, 270 F.R.D. at 62-63 (D. Mass. 2010). "These guidelines include whether: '(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.'" *Id.* at 63 (quoting *In re Lupron Mktg. and Sales Prac. Litig.*, 345 F. Supp. 2d 135, 137 (D. Mass. 2004)); *see also Bezdek*, 79 F. Supp. 3d at 343.

"However, more than presumptive fairness is required for final approval." *Bezdek*, 79 F. Supp. 3d at 343. "One list of factors often employed in this district in conducting a final review of a proposed settlement is that provided by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir.1974)." *Bezdek*, 79 F. Supp. 3d at 343. The *Grinnell* factors are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463. While instructive, Courts reviewing settlements recognize that not all *Grinnell* factors employed in evaluating a settlement must be satisfied. Instead, a court should look at the factors in light of the circumstances of each case. *Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 61 (S.D.N.Y. 2003). Further, the Court should neither substitute its judgment for that of the parties who negotiated the settlement, nor conduct a mini-trial on the merits of the action. *See Greenspun v. Bogan*, 492 F.2d 375, 381 (1st Cir. 1984) ("[A]ny settlement is the result of a compromise – each party surrendering something in order to prevent unprofitable litigation, and the risks and costs inherent in taking litigation to completion. A district court, in reviewing a settlement proposal, need not engage in a trial of the merits, for the purpose of settlement is precisely to avoid such a trial.") (citations omitted).

1. The Settlement Is Entitled to a Presumption of Reasonableness

The Settlement Is the Product of Arms'-Length Negotiations: The Settlement is the result of intensive and extensive arm's-length negotiation between the Parties, arrived at only after numerous, lengthy negotiation sessions spanning over a year, both in-person and telephonic, and with the assistance of the Honorable Peter Lichtman (Ret.) of JAMS as mediator. Even after the essential Settlement terms were agreed to, not all issues were resolved, and the Settlement Agreement went through several more versions and drafts before being finalized and executed. The Settlement is the result of arm's length negotiations between capable and experienced counsel, and is, therefore, entitled to a presumption of fairness, reasonableness, and adequacy. *See Rolland v. Cellucci*, 191 F.R.D. 3, 6 (D. Mass. 2000) (giving "strong initial presumption that the parties' compromise is fair and reasonable" because the issues were contested and the "settlement was reached after arms-length negotiations").

Substantial Discovery Was Conducted: "The court is required to ascertain whether sufficient evidence has been obtained through discovery to determine the adequacy of the settlement." *Rolland*, 191 F.R.D at 10 (citation omitted). Here, the volume and substance of discovery clearly "provided the parties with adequate information as to their respective litigation positions in order to act intelligently in negotiations." *Bezdek*, 79 F. Supp. 3d at 347.

Class Counsel, who are experienced in prosecuting this type of action, undertook an extensive investigation, interviewed consumers who purchased the Eligible Products, gathered and reviewed the advertising and marketing materials at issue, obtained and analyzed sales and sales-related information regarding the Eligible Products, obtained and analyzed publicly-available and internal marketing information and engaged in extensive discovery, as discussed above. (Wolfson Decl. ¶¶ 8-10, 12.) Class Counsel also thoroughly analyzed the legal issues in this case, including Defendant's defenses. Some of these relevant facts and legal issues were fully briefed in Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint, which the Court denied. (Dkt. 43.)

The Proponents of the Settlement Are Experienced in Similar Litigation: Courts also recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration. *Rolland*, 191 F.R.D. at 10; *see also Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999). Class Counsel has extensive experience in class action litigation and has successfully litigated false advertising and consumer protection class actions in courts around the country. (Wolfson Decl. ¶ 2 & Ex. A.) Similarly, Defense counsel is comprised of a team of highly skilled and sophisticated lawyers with extensive class action experience and defended Utz vigorously throughout the litigation.

There Are No Objections to Date: Although the Settlement Administrator began disseminating Notice of this Settlement in March of this year, and some 124,134 Claims have been received, no Class Members have objected to the Settlement, or requested exclusion from it, to date. (Weisbrot Decl. ¶ 11.)

2. The Settlement Meets the *Grinnell* Factors for Final Approval

a. Prospects of the Case

Plaintiffs are confident that they could and would prevail if this case proceeded to trial, but significant obstacles to any such recovery must be acknowledged. For instance, Plaintiffs would be required to prove both their theory and calculations of recoverable damages with expert testimony, which would be expensive, complex, and subject to *Daubert* challenges. Ascertaining the price premium paid by Class Members for the "all natural" claims at issue presents a significant challenge.

Securing nationwide class certification under Massachusetts law presents its own undeniable challenges. Moreover, even if the Class could recover a judgment after a trial, the additional delay through post-trial motions and the appellate process could deny the Settlement Class any recovery for years and, with the passage of time, make it more difficult to locate and pay Class Members if and when a favorable judgment became final.

b. Value of the Settlement

Against the backdrop of such risks entailed with continued litigation, the Court must consider the significant value presented to Settlement Class Members by the Settlement. Even after pro ration, the cash per Qualifying Purchase promised by the Settlement presents a fair and reasonable recovery, representing a significant portion of the price paid for the snack foods at issue.

"Were this case to proceed to trial, the damages under a price premium theory would amount to something less than the market value of the [snack foods] as purchased with [their] purported ["all natural"] benefits, and the difficulties in proving this amount could prove fatal to meaningful recovery in the case." *Bezdek*, 79 F. Supp. 3d at 345. As was the case in *Bezdek*, it is not possible "to determine with certainty at this stage what the price premium paid by consumers for the purported ["all natural"] benefits of [Defendant's snack foods] could be," but it is reasonable to assume that it is a relatively small percentage of the total price of these snacks, which continued to be edible if not all natural. *Id.*

In addition, under the Settlement, Defendant agrees to refrain from using "Natural" and "All Natural" labeling claims for three years following the Final Settlement Date. (Dkt. 93, § IV.F.) Such "relief has been recognized as a meaningful component of a settlement agreement, particularly where it mimics the injunctive relief that the plaintiffs could achieve following trial." *Bezdek*, 79 F. Supp. 3d at 346. As was the case in *Bezdek*, "[o]verall, the relief afforded by the proposed settlement is reasonable and appropriate in light of the uncertainty of a better outcome at trial." *Id.* at 347.

c. The Reaction of the Class

As noted above, Settlement Class Members have submitted some 124,134 Claims, but not a single request for exclusion or objection, to date. This is an overwhelmingly positive response that counsels in favor of final approval. *See, e.g.*, *Bezdek*, 79 F. Supp. 3d at 347.

VI. CONCLUSION

The proposed Settlement is fair, reasonable, and adequate, and it merits final approval. Plaintiffs respectfully request that the Court finally certify the Settlement Class for settlement purposes, enter an order substantially in the form of the [Proposed] Final Order submitted as

Exhibit 3 to the Settlement (Dkt. 93-3), and enter final judgment substantially in the form of the [Proposed] Final Judgment submitted as Exhibit 4 to the Settlement (Dkt. 93-4).

Dated: May 31, 2019

AHDOOT & WOLFSON, PC

By: /s/ *Tina Wolfson*

Tina Wolfson (*pro hac vice*)
twolfson@ahdootwolfson.com
Robert Ahdoot (*pro hac vice*)
rahdoot@ahdootwolfson.com
10728 Lindbrook Dr.
Los Angeles, CA 90024
Phone: (310) 474-9111
Fax: (310) 474-8585

MIRABELLA LAW
Erica C. Mirabella (MA Bar No. 676750)
erica@mirabellaLLC.com
132 Boylston Street, 5th Floor
Boston, MA 02116
Phone: (617) 580-8270
Fax: (617) 583-1905

BARBAT MANSOUR & SUCIU PLLC
Nick Suciu III (*pro hac vice*)
nicksuciu@bmslawyers.com
434 West Alexandrine #101
Detroit, MI 48201
Phone: (313) 303-3471

Counsel for Plaintiffs and
Proposed Settlement Class Counsel

CERTIFICATE OF SERVICE

I hereby certify I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 31, 2019.

/s/ *Tina Wolfson*_____
Tina Wolfson