

IN THE CIRCUIT COURT OF PHELPS COUNTY, MISSOURI

**FILED**

**JUN 16 2015**

**SUE BROWN, CIRCUIT CLERK  
PHELPS COUNTY, MO.**

DIANA JILL MILORO, as an individual  
and on behalf of all others similarly situated,

Plaintiff,

vs.

Case No. 15PH-CV00642

VAN'S INTERNATIONAL FOODS, INC.,  
an Arizona corporation,

Defendant.

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

The Court has considered Plaintiff's 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 Agreement<sup>1</sup> 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 September 11

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

2015, at 9 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. Plaintiff Diana Jill Miloro is preliminarily appointed as representative of the Settlement Class (“Class Representative”), and the following attorneys for Plaintiff are preliminarily appointed as counsel for the Settlement Class (“Class Counsel”): David L. Steelman of Steelman, Gaunt & Horsefield, Matthew H. Armstrong of Armstrong Law Firm LLC, and Scott A. Kamber and Stuart L. Cochran of KamberLaw LLC. This Court is familiar with Class Counsel 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 certified for settlement purposes only:

All Persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Product for resale; (b) Van’s and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely Request for Exclusion; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and (e) the judges to whom this Action is assigned and any members of their immediate families.

5. Should the Settlement not become final, Van’s may still oppose class certification and the fact that the Court ordered class certification as part of the Settlement, or that Van’s was 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 Administration (“Heffler”) as the Settlement Administrator and instructs Heffler to perform the following functions, as set forth in the Settlement Agreement:

- a. Process requests for exclusion from the Settlement in accordance with Section VIII of the Settlement Agreement;
- b. Process objections to the Settlement in accordance with Section VIII of the Settlement Agreement;
- c. Process Claim Forms in accordance with Section V 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 claims; 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 attached as Exhibit 1, the Publication Notice attached as Exhibit 2, and the Media Plan attached as Exhibit 3, and finds that the distribution of the Settlement Notice substantially in accordance with Paragraph VII of the Settlement Agreement meets the requirements of Mo. R. Civ. P. 52.08(b)(3) 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. As soon as practicable, but no later than thirty (30) days after the entry of this Preliminary Approval Order, 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. Within thirty (30) days after the entry of this Preliminary Approval Order, Van’s shall publish, cause to be published, or 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 Effective Date, or such later date as may be agreed to by Class Counsel and Defendant's 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 Defendant's Counsel and Class Counsel and filed with the Court no later than fourteen (14) days prior to the Final Approval Hearing.

10. The Court approves the Claim Form attached as Exhibit 4 to the Settlement Agreement.

11. As set forth in paragraph V(D) of the Settlement Agreement, the Claim Period shall commence upon entry of the Final Approval Order and will continue for 90 consecutive days thereafter (the "Claims Deadline"). To be timely, all Claims must be submitted by the Claims Deadline in accordance with paragraph V(D) of the Settlement Agreement.

12. Any Settlement Class Member who intends to object to the Settlement must do so no later than forty-five (45) calendar days after the Notice Date (the "Objection Deadline"). In order to object, the Settlement Class Member must file with the Court, and provide a copy to Class Counsel and Defendant's Counsel, a document that includes all of the following:

1. The name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel;
2. Specifically and in writing, all objections;
3. Whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;
4. A statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and
5. A detailed list of any other objections submitted 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.

Any Settlement Class Member who fails to file and serve timely (a) a written objection containing all of the information listed in items (1) through (5) 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. Any Settlement Class Member who submits a timely written objection shall consent to deposition by Class Counsel prior to the Final Approval Hearing.

13. 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 forty-five (45) calendar days after the date of the Notice Date (the “Opt-Out Deadline”). In order to opt out, a Settlement Class Member must complete and mail to the Settlement Administrator a Request for Exclusion that is postmarked no later than the Opt-Out Deadline. Requests for Exclusion that are postmarked after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely submits a Request for Exclusion 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.

14. Except for those Persons who have properly and timely submitted Requests for Exclusion, 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 a Request for Exclusion 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 Request for Exclusion. No Person may opt-out of the Settlement Class 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.

15. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a final list of any timely Requests for Exclusion received by the Settlement Administrator within five (5) business days after the Opt-Out Deadline.

16. Not later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file with the Court, and Defendant's Counsel, a report stating the total number of Persons who have submitted timely and valid Requests for Exclusion from the Settlement Class and Objections to the Settlement, and the names of such Persons.

17. Class Counsel shall submit papers in support of final approval of the certification of the Settlement Class, the designation of Plaintiff as the representatives of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, and the Settlement; and Class Counsel's Application for attorneys' fees and expenses no later than 14 days before the Final Approval Hearing.

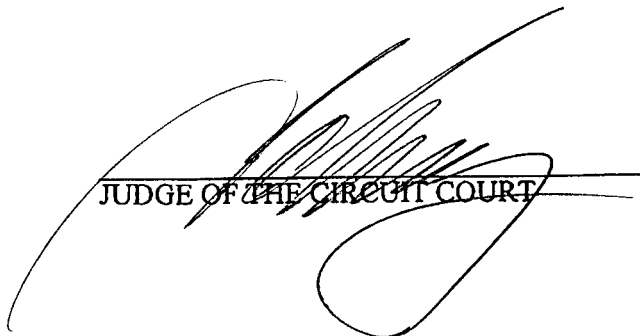
18. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Class Representative or Van's of any fact or allegation, or of any liability, fault, or wrongdoing of any kind.

19. 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.

**IT IS SO ORDERED.**

Dated:

6/16/15

  
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JUDGE OF THE CIRCUIT COURT