

IN THE SUPERIOR COURT OF DOUGHERTY COUNTY, GEORGIA

BS STEAKS LLC; PAPA JOE'S OYSTER BAR
& GRILL, INC.; SNELGROVE'S
RESTAURANT, INC.; SOUND WAVES OF
SURF CITY, INC.; VLMOONEY, INC. d/b/a
KRIS & SAM'S; and LIT'L PEPPER
GOURMET, INC.

Plaintiffs,

v.

US FOODS, INC.

Defendant.

Case No.: 18-CV-968-1

CLASS ACTION

FILED
2018 SEP 14 AM 9:49
DOUGHERTY COUNTY
CLERK OF COURTS
EVONNE S. HULL

**ORDER PRELIMINARY APPROVING SETTLEMENT
AND PROVIDING FOR NOTICE**

Plaintiffs, without objection from Defendant, have made application for an order approving the settlement of this litigation, in accordance with the Settlement Agreement which, together with its exhibits, sets out the terms and conditions of the proposed settlement and notice to the Settlement Class. Having reviewed the filings and conducted a hearing to consider the same, it is,

HEREBY ORDERED:

1. Pursuant to O.C.G.A. § 9-11-23, the Court preliminarily certifies, for purpose of effectuating the settlement only, the following Settlement Class:

All customers in the United States which paid US Foods one or more of the Fees at any time from August 31, 2013 through and including the Friday before notice is provided to the Settlement Class.¹

2. With regard to the Settlement Class, the Court preliminarily finds that (a) the members of the Settlement Class are so numerous that joinder is impracticable, (b) there are

¹ Excluded from the Settlement Class are: (a) any individual or entity currently in bankruptcy (b) any individual or entity whose obligations were discharged in bankruptcy (c) government entities; and (c) any judicial officer, including that officer's family, which presided over this case.

questions of law and fact common to the Settlement Class which predominate over any individual questions, (c) the claims of the named Plaintiffs are typical of those of the Settlement Class, (d) the named Plaintiffs and their counsel have fairly and adequately represented and protected the interests of the members of the Settlement Class; and (e) a class action is superior for the fair and efficient adjudication of this consolidated litigation through settlement.

3. The Court appoints BS Steaks LLC; Papa Joe's Oyster Bar & Grill, Inc.; Snellgrove's Restaurant, Inc.; Sound Waves of Surf City, Inc.; VLMooney, Inc. d/b/a Kris & Sam's; and Lit'l Pepper Gourmet, Inc. as representatives of the Settlement Class.

4. The Court appoints Oscar M. Price, IV and Nicholas W. Armstrong, of Price Armstrong, LLC, and Patrick Flynn of Flynn & Phillips, LLC as Class Counsel for the Settlement Class.

5. The Court grants preliminary approval to the Settlement Agreement as the product of informed, non-collusive negotiations, without obvious deficiencies, which falls within a reasonable range.

6. The Court approves, as to form and content, the notice plan to the Settlement Class proposed in the Settlement Agreement and its exhibits, and finds that this notice is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to the members of the Settlement Class.

7. Any Settlement Class Member may request to be excluded from the Settlement Class. Such requests for exclusion must be received Settlement Administrator, Class Counsel, and Defendant's Counsel on or before 21 days before Final Fairness Hearing and must otherwise comply with the requirements set forth in the Class Notice documents and Settlement Agreement. If the Court grants final approval of the Settlement Agreement and enters final judgment, all

members of Settlement Class who have not submitted valid requests for exclusion shall be bound by the Final Judgment.

8. The Final Fairness Hearing shall be held before this Court at 12:30 pm on January 16, 2019 at the Dougherty County Courthouse, Albany, Georgia, to determine whether the final settlement of this litigation on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate.

9. Any member of the Settlement Class who wishes to object to the settlement may do so by filing a written objection with the Court and delivering a copy to counsel on or before 21 days before Final Fairness Hearing and must otherwise comply with the requirements set forth in the Class Notice documents and Settlement Agreement. No objector shall be heard and no objection shall be considered unless it complies with these requirements. The Court may impose additional requirements on objectors as it deems necessary or appropriate, including the posting of bond and providing of testimony or other discovery.

10. Members of the Settlement Class may appear at the Final Fairness Hearing, at their own expense, individually or through counsel of their choice, by complying with the notice provisions set forth in the Class Notice documents and Settlement Agreement. If they do not enter an appearance, they will be represented by Class Counsel. If the Court grants final approval of the Settlement Agreement and enters final judgment, all members of the Settlement Class who have not given appropriate notice of their intent to appear individually in accordance with the procedures outlined in the Class Notice documents and Settlement Agreement shall be deemed to have waived their right.

11. All filings in support of Final Approval and the distribution of attorney's fees and expenses, and class representative incentive awards, shall be filed and served no later than seven days before the Final Fairness Hearing.

SO ORDERED this 13th day of September, 2018.


Hon. Denise Marshall

Prepared by:

Patrick S. Flynn
Flynn & Phillips, LLC
Georgia Bar No. 004765
P.O. Box 7
Albany, Georgia 31702
229-446-4886
Pflynn@fpplaw.com