

IN THE SUPERIOR COURT OF DOUGHERTY COUNTY, GEORGIA

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.

Plaintiffs,

v.

US FOODS, INC.

Defendant.

Case No.: 18-CV-968-1

CLASS ACTION

FILED
2019 JUL 16 PM 12:38
CLERK OF SUPERIOR COURT
DOUGHERTY COUNTY, GA

**JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS**

Pending before the Court is Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards. Defendant does not oppose this motion. Having reviewed all filings and conducted a hearing to consider the same, and good cause appearing, the Court GRANTS the motion, enters final judgment as follows, and grants final approval of the settlement:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

2. Therefore, pursuant to O.C.G.A. § 9-11-23, the Court grants final class certification 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 [i.e., October 26, 2018].¹

3. Excluded from the Settlement Class are all persons or entities who submitted timely and valid requests for exclusion or opt out requests, which persons or entities are listed on Exhibit 1 attached hereto. The persons listed on Exhibit 1 are not bound by this Judgment or the terms of the Settlement Agreement.

4. The Court finds that notice of the settlement, as set out in the Settlement Agreement and directed by the Court's order granting preliminary approval, was the "best notice practicable under the circumstances...." O.C.G.A. § 9-11-23(c)(2). As demonstrated by the affidavit of the settlement administrator, the Court finds that the notice plan was effectively implemented and provided adequate information and time for members of the Settlement Class to opt out of the settlement, object to the settlement, or otherwise to act to protect their interests. The Court thus reaffirms its findings that the notice given to the Settlement Class satisfies the requirements of due process.

5. The Court finds that the settlement as set out in the Settlement Agreement is in all respects fair, reasonable, and adequate to the members of the Settlement Class. The record before the Court establishes that the relevant factors, including the relief provided, the arms-length

¹ Also 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.

negotiations between the parties, and the risks to the parties, weigh heavily in favor of final approval of the proposed settlement.

6. The response of the Settlement Class to the proposed settlement further supports this conclusion. Less than .00001% of the putative class chose to opt out of the proposed settlement. There have been no objections to the settlement whatsoever.

7. The Settlement Agreement and this Judgment are not admissions of liability, fault or wrongdoing by Defendant or the parties released under the Settlement Agreement, or a finding of the validity of any claims in this or the related litigation, or of any wrongdoing or violation of law by Defendant or the parties released in the Settlement Agreement. Neither this Judgment, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability of, or admission by Defendant, the parties released under the Settlement Agreement, or any of them. Notwithstanding the foregoing, nothing in this Judgment shall be interpreted to prohibit the use of this Judgment in a proceeding to consummate or enforce the Settlement Agreement or this Judgment or Order, or to defend against the assertion of released claims in any other proceeding, or as otherwise required by law.

8. The Court further finds, upon consideration of the record and applicable law including all factors identified in *Friedrich v. Fid. Nat. Bank*, 545 S.E.2d 107, 108 (Ga. App. 2001) (adopted from *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991)), that Plaintiffs' request for attorneys' fees in the amount of one-third of the Settlement Fund is reasonable and fair given the effort expended, the risk assumed, the experience, reputation and ability of Class Counsel, the customary award, the contingent nature of the litigation, and the result

obtained in this litigation. No objection is before the Court to such an award. The Court grants Plaintiffs' request and awards such fees.

9. The Court finds that Plaintiffs' request for reimbursement of litigation expenses in the amount of \$100,000 is fair and reasonable as expenses necessarily and reasonably incurred in the prosecution of this case, and therefore awards such expenses and grants Plaintiffs' request.

10. The Court also approves and finds reasonable the class representative incentive awards of \$15,000 to each named Plaintiff sought by Plaintiffs in recognition of the services rendered and benefits conferred by the named plaintiffs on behalf of the Settlement Class.

11. The Court directs the parties to fulfill their remaining obligations as set forth in the Settlement Agreement, including through the funding and distribution of funds necessary to effectuate the Settlement as set out therein. The terms of the Settlement Agreement are incorporated by reference as partial basis for the Court's order.

12. The Court's designations of Class Counsel and Class Representatives set forth in the order granting preliminary approval of the settlement are confirmed.

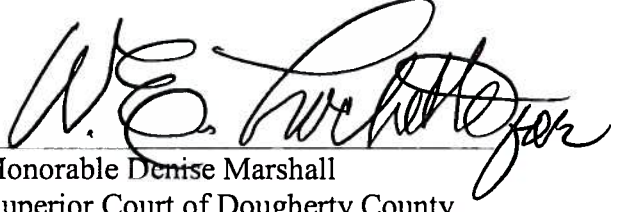
13. Final judgment is hereby entered, and the Court finds that all members of the Settlement Class that did not timely and properly exclude themselves are bound by the Settlement Agreement and release as set out therein, and are hereafter permanently barred and enjoined from initiating, asserting and/or prosecuting any released claims against Defendant or other parties released under the Settlement Agreement in any court or forum.

14. Without affecting the finality of the Judgment, the Court retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and this Order.

15. All other relief not expressly granted to the Settlement Class members is hereby denied.

IT IS SO ORDERED AND ADJUGED.

This the 16th day of January, 2019.


Honorable Denise Marshall
Superior Court of Dougherty County

Prepared by:

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EXHIBIT 1

ClaimID	Business Name
UOB-101370261	FIRST BAPTIST CRYSTAL
UOB-101725604	SENIOR FRIENDSHIP CENTER