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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

IN RE CONAGRA FOODS, INC.	Case No.: CV 11-05379-CJC(AGRx) MDL No. 2291
ROBERT BRISEÑO, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. CONAGRA FOODS, INC., Defendants.	ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT [Dkt. 660] AND DENYING MOTION TO STRIKE [Dkt. 684]

I. INTRODUCTION

In this 2011 class-action lawsuit, Plaintiffs challenge Defendant ConAgra Foods, Inc.'s allegedly deceptive marketing of its Wesson Oil products as "100% Natural."

After years of investigation and litigation, including extensive mediation efforts with two separate judges, the parties reached a settlement, which this court preliminarily approved. (Dkt. 654.) Plaintiffs now ask the court to grant final approval of the settlement and the requested attorney fees, costs, and incentive awards. For the following reasons, the motion is **GRANTED**.

II. BACKGROUND

For over ten years, bottles of ConAgra's Wesson Oil had a label calling the product "100% Natural."[1] Plaintiffs sued in 2011, alleging that the "natural" claim was false and misleading because the oil contains genetically modified organisms (GMOs), and that they paid more for the oil because of that false and misleading claim. After another judge of this court certified eleven consumer classes and the Ninth Circuit affirmed, *see Briseño v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017); *Briseño v. ConAgra Foods, Inc.*, 674 F. App'x 654 (9th Cir. 2017), the parties conducted extensive settlement negotiations before both retired Judge Edward A. Infante and Magistrate Judge Douglas McCormick. (Dkt. 652 [Joint Declaration of Henry J. Kelston & Adam J. Levitt, hereinafter "Kelston/Levitt Decl."] ¶¶ 51–65.)

The resulting settlement—reached after a mediator's proposal from Judge McCormick—provided that Defendant will not label, advertise, or market Wesson Oils as "natural," absent future legislation or regulation. (Dkt. 652, Ex. 1 [Settlement Agreement and Release, hereinafter "Settlement Agreement"] ¶ 3.3.) It also provided class members the following monetary benefits:

(a) $0.15 for each unit of Wesson Oils purchased to households submitting valid claim forms (to a maximum of thirty units without proof of purchase, and unlimited units with proof of purchase),

(b) an additional fund of $575,000 to be allocated to New York and Oregon class members submitting valid claim forms, as compensation for statutory damages under those states' consumer protection laws, and

(c) an additional fund of $10,000 to compensate those in all classes submitting valid proof of purchase receipts for more than thirty purchases, at $0.15 for each such purchase above thirty, with Class Counsel paying any non-funded claims (i.e. claims above the $10,000 provided by ConAgra) from any attorney fees awarded in this case.

(*Id.* ¶ 3.1.)

After the parties reached a settlement in principle, ConAgra sold the Wesson brand to Richardson International. The parties thus revised the terms of the agreed injunctive relief to apply to ConAgra only in the event it reacquires the Wesson brand. Plaintiffs' counsel represents, however, that "pursuant to industry custom and related facts," "it is virtually certain that Richardson will not restore the allegedly false '100% Natural' claim to the Wesson Oil packaging." (Mot. at 4; *see* Dkt. 661-1 [Declaration of Larry Kopald].)

The Court granted preliminary approval of the Settlement Agreement on April 4, 2019, and appointed JND Legal Administration ("JND") as settlement administrator. (Dkt. 654.) JND provided notice calculated to reach the class in all eleven states via print and digital publications, a press release, and a hotline, as outlined in the Settlement Agreement. (Dkt. 661-2 [July 23, 2019 Declaration of Jennifer M. Keough Regarding Settlement Administration and Notice Plan, hereinafter "Keough 7/19 Decl."] ¶¶ 8–16; Exs. B, H.) JND received 97,880 timely claims for 2,792,794 units, and one untimely

claim for 10 units. (Dkt. 688-1 [September 24, 2019 Declaration of Jennifer M. Keough Regarding Settlement Administration and Notice Plan, hereinafter "Keough 9/19 Decl."] ¶ 10.) One plaintiff opted-out, and one plaintiff objected. (*Id.* ¶¶ 7, 9; Dkt. 666.)

Plaintiffs now move for final approval of the Settlement Agreement, attorney fees and costs, and incentive awards. (Dkts. 660–661 [hereinafter "Mot."]; Dkt. 662 [hereinafter "Fee Mot."].)

III. DISCUSSION

A. Motion to Strike

As a preliminary matter, Objector M. Todd Henderson moves to strike two expert declarations from Colin B. Weir filed in support of Plaintiffs' motion (Dkts. 652-4 and 674-1). (Dkt. 684 [Motion to Strike Declaration of Mr. Colin Weir Under *Daubert*, hereinafter "Strike Mot."].) Henderson argues these declarations fail to meet the standards for admissible expert opinions because they "do not hinge on any scientific methods or data," but rather are "based on an *ipse dixit*," "false assumption," and "methodology [that] unscientifically and impermissibly gerrymanders data to avoid risking falsification of his hypothesis." (Strike Mot. at 1, 6.)

Specifically, Henderson contends that Weir's opinion rests on the "false assumption" that the injunction prohibits anyone from advertising Wesson Oils as natural in the future. (Strike Mot. at 3–5.) He maintains this assumption is false because the Settlement Agreement binds only ConAgra, and since ConAgra no longer owns Wesson Oil, "[t]he injunction is no more meaningful than an injunction against Ford Motor on the marketing of the Edsel." (*Id.* at 3.) Without a meaningful prospective prohibition on

labeling Wesson Oil as natural, Henderson argues, consumers receive no benefit whatsoever from the injunction. (*Id.* at 4.)

The Court is not persuaded that it should strike Weir's declarations. Henderson's contention that Weir's declarations "cannot help the Court," (*id.* at 6), is simply incorrect. Indeed, it is difficult for courts to "judge with confidence the value of the terms of a settlement agreement, especially one in which, as here, the settlement provides for injunctive relief." *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). Having one expert's opinion—however purportedly flawed—on the value of that injunction helps the Court develop its own view. Similarly, the arguments presented in the motion to strike help the Court determine how much weight to give Weir's opinions. The Court thus **DENIES** the motion to strike.

B. Fairness of the Settlement

The Court now evaluates the fairness of the settlement. Although there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), a settlement of class claims requires court approval. Fed. R. Civ. P. 23(e). This is because "[i]ncentives inhere in class-action settlement negotiations that can, unless checked through careful district court review of the resulting settlement, result in a decree in which the rights of class members, including the named plaintiffs, may not be given due regard by the negotiating parties." *Staton*, 327 F.3d at 959 (alterations and quotations omitted).

Under Federal Rule of Civil Procedure 23, the Court must "determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." *Staton*, 327 F.3d at 959 (citation and quotation marks omitted). In considering whether this standard is met

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