

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 1:12-MD-02324-LENARD/O'SULLIVAN**

IN RE: HORIZON ORGANIC MILK  
PLUS DHA OMEGA-3 MARKETING  
AND SALES PRACTICE LITIGATION

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**ORDER APPROVING CLASS SETTLEMENT, CLASS COUNSEL'S FEES, AND  
EXPENSES, AND ENTRY OF FINAL JUDGMENT AND DISMISSAL**

On September 22, 2015, this Court granted preliminary approval to the proposed class action settlement set forth in the Stipulation and Settlement Agreement (the "Settlement Agreement") between Plaintiffs and Defendant WhiteWave Foods Company ("WhiteWave") (collectively, the "Parties"). The Court also provisionally certified the Settlement Class for settlement purposes, approved the procedure for giving Class Notice to the members of the Settlement Class, and set a Final Approval Hearing to take place on January 20, 2015. The Court finds that the Class Notice substantially in the form approved by the Court in its Preliminary Approval Order was given in the manner ordered by the Court, constitutes the best practicable notice, and was fair, reasonable, and adequate.

On January 20, 2015, the Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate; (2) whether a judgment should be entered dismissing the Plaintiffs' operative amended complaints on the merits and with prejudice in favor of the Defendants and against all persons or entities who are Settlement Class Members herein who have not requested exclusion from the Settlement Class; and (3) whether and in what amount to award Attorneys' Fees and Expenses to Class Counsel for the Settlement Class and whether and in what amount to award a Case Contribution Award to the Named Plaintiffs.

**WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. The Court takes notice that the parties hereto have entered into a settlement embodied in the Settlement Agreement. This Judgment incorporates by reference the definitions in the Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. This Court has jurisdiction over the subject matter of this action styled *In Re: Horizon Organic Milk Plus DHA Omega-3 Marketing and Sales Practice Litigation*, Case No.: 12-MD-02324-LENARD/O'SULLIVAN (S.D. Fla.) (the "Action") and over all parties to the Action, including the Class Representative, all Members of the Class, and Defendant.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court, by Order dated September 22, 2015 [D.E. 318], certified a settlement class for settlement purposes only consisting of the following:

All persons who, from January 1, 2007 to November 28, 2015, purchased WhiteWave DHA Products<sup>1</sup> throughout the United States for personal use and not for resale during the Class Period.

Excluded from the Settlement Class are all persons who validly opt out of the settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of its respective employees, officers, and directors; the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff; any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning the WhiteWave DHA Products; and any natural person or entity that received any compensation from Defendant to endorse the WhiteWave DHA Products.

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<sup>1</sup> These products are: (1) Horizon Organic Whole Milk plus DHA Omega-3; (2) Horizon Organic Reduced Fat Milk plus DHA Omega-3; (3) Horizon Organic Fat-Free Milk plus DHA Omega-3; (4) Horizon Organic Chocolate Milk plus DHA Omega-3; (5) Horizon Organic Low Fat Milk plus DHA Omega-3; (6) Silk DHA Omega-3 & Calcium All Natural Soy Milk; (7) Horizon Organic Lowfat Chocolate Milk Box plus DHA Omega-3; and (8) Horizon Organic Lowfat Vanilla Milk Box plus DHA Omega-3 (the "WhiteWave DHA Products").

4. The Court finds: (a) that the Notice as provided for in this Court's Order dated September 22, 2015 constituted the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed settlement embodied in the Settlement Agreement and Class Counsel's right to apply for attorney's fees and reimbursement of expenses associated with the Action, and of the right of Class Members to object thereto; (b) that said Notice fully satisfies the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process; and (c) that a full and fair opportunity was accorded to all Persons who are Class Members to be heard with respect to the foregoing matters.

5. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court approves the Settlement, as embodied in the Settlement Agreement, and finds that the Settlement is, in all respects, fair, reasonable, and adequate. This Court further finds that the Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of the Class Representative, the Class Members, and Defendants. Accordingly, the settlement embodied in the Settlement Agreement is hereby approved and shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

6. Class counsel are hereby awarded a total of \$400,000.00 for all attorneys' fees and costs in this matter, which sum the Court finds to be fair and reasonable. This amount is approximately 30.7% of the \$1,300,000.00 in substantial cash and injunctive benefits that the Settlement provides to the Class, which the Court finds to be fair and reasonable.

7. Plaintiffs Colleen Auer, Evereth Barrera, Dr. Brie Gindele, Steven Hulsey, Michelle Schucher, Veronica Sisneros, Jaime Walker, Wendy Wilson, and Sarah A. English

(“Plaintiffs”) are hereby awarded \$1,000.00 each as Class Representative awards which shall be paid from the settlement benefits.

8. The case is hereby **DISMISSED** on the merits with prejudice as to all Defendants, without costs to any party as against any other party, except as otherwise provided in the Settlement Agreement.

9. Neither the Settlement Agreement nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement, the settlement itself, or this Action generally, is or may be deemed to be or may be used as an admission of, or evidence of, (a) the validity of any Released Claim, (b) any wrongdoing or liability of the Defendants, or (c) any fault or omission of any of the Defendants, in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Defendants may file the Settlement Agreement and/or this Judgment in any action that may be brought against either or both of them in order to support a claim, defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim or claim.

10. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) the implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) the disposition of the Settlement Fund; (c) all parties hereto for the purpose of construing, enforcing, and administering the Settlement Agreement and this Judgment; and (d) throughout the entire pendency of the Third Party Substantiation Program to enforce the terms of the Settlement Agreement in that regard.

11. Plaintiffs and Settlement Class Members shall promptly dismiss with prejudice all claims, actions, or proceedings that have been brought by any Settlement Class Member in any jurisdiction and that have been released pursuant to the Settlement Agreement and this Final Order and enjoined pursuant to this judgment. Plaintiffs and all Settlement Class Members are hereby barred and enjoined from asserting any of the Released Claims, including, but without limitation, during any appeals from the Final Approval Order and this Judgment and during the pendency of the Third Party Substantiation Program.

12. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of the Federal Rules of Civil Procedure and the Class Action Fairness Act of 2005 (“CAFA”).

**DONE AND ORDERED** at Chambers in Miami, Florida this 29th day of January, 2016,  
Miami, Florida.

  
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**HONORABLE JOAN A. LENARD**  
**UNITED STATES DISTRICT JUDGE**