

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DANIEL METAGUE, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

WOODBOLT DISTRIBUTION, LLC, d/b/a
NUTRABOLT,

Defendant.

Case No: 8:20-cv-02186-PX

ORDER FOR PRELIMINARY APPROVAL OF SETTLEMENT

WHEREAS, Plaintiff Daniel Metague (hereinafter “Metague” and/or “Plaintiff”) and Defendant Woodbolt Distribution, LLC, d/b/a Nutrabolt (hereinafter referred to as “Defendant,” “Woodbolt,” and/or “Defendant Woodbolt”) entered into a settlement agreement (the “Settlement Agreement”) on January 20, 2023, to settle this class action lawsuit (the “Class Action”); and,

WHEREAS, the Settlement Agreement, together with the attached exhibits, set forth the terms and conditions for a proposed settlement and dismissal with prejudice of this action against Defendant; and

WHEREAS, the Court has before it Plaintiff’s Unopposed Motion for Preliminary Approval of Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm’s-length settlement negotiations between competent and experienced counsel for both Plaintiff and Defendant;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

Preliminary Approval of Settlement and Conditional Certification of the Settlement Class

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. The Court finds that said Settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

3. Pursuant to Fed. R. Civ. P. 23, the Court hereby conditionally certifies the following Settlement Class:

All persons, other than Excluded Persons, who, during the Class Period purchased in the United States, at least one of the Products, including, but not limited to, the XTEND Products set forth in Paragraph 2.39 of the Settlement Agreement, Ex. D, from within six (6) years prior to the filing of the action to January 24, 2023.

4. The Court further finds that the Plaintiff is an adequate Class Representative for the Settlement Class.

5. The Court further finds that Plaintiff's Counsel are adequate Class Counsel.

6. The Court approves the Notice Plan set forth in the Settlement Agreement, including the Email Notice of Settlement, the Postcard Notice, and the Long Form Notice and the Publication Notice.

7. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the conditional certification for the Settlement Class shall be void. Defendant reserves all of its arguments, defenses, and issues that it would have been able to raise absent the Settlement of this action. Additionally, Plaintiff has reserved all rights, including his right to continue with any appeals pending at the time of the settlement.

Notice to Settlement Class Members and Appointment of Settlement Administrator

8. Counsel for the Class (“Plaintiff’s Counsel” and/or “Class Counsel”) are as follows:

Nicholas A. Migliaccio, Esquire
Jason S. Rathod, Esquire
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, DC 20002

D. Aaron Rihn, Esquire
Sara J. Watkins, Esquire
Robert Peirce & Associates, P.C.
707 Grant Street, Suite 125
Pittsburgh, PA 15219

Robert Mackey, Esquire
Law Offices of Robert Mackey
P.O. Box 279
Sewickley, PA 15143

9. Beginning 30 days after preliminary approval, Class Counsel shall cause to be disseminated the Notices, substantially in the form attached as Exhibits B2, B3 and B4 to the Settlement Agreement and in the manner set forth in the Settlement Agreement. Notice will be disseminated expeditiously pursuant to the terms of the Settlement Agreement. Class Members will have sixty (60) days from the Notice Date to opt-out or object to the Settlement. Prior to the Fairness Hearing, Plaintiff and/or the Settlement Administrator shall serve and file a sworn statement attesting to the compliance with the provisions of this paragraph.

10. The Notice to be provided as set forth in the Settlement Agreement is hereby found to be the best means practicable of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, due process, the Constitution of the United States, the laws of Maryland and all other states and applicable laws. The Notices are accurate, objective, informative, and provide Class Members with all of the information necessary to make an informed

decision regarding their participation in the Settlement and its fairness.

11. Class Counsel are authorized to retain Kroll Settlement Administration LLC as a Settlement Administrator in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

12. Any Member of the Settlement Class that wishes to be excluded (“opt-out”) from the Settlement Class may do so by completing and submitting the online form on the Settlement Website or by mailing a valid request to opt-out, as described in the Long Form Notice and Postcard Notice, to the Settlement Administrator. Requests for exclusion must be submitted online by the Exclusion Deadline, or if mailed, must be *received by* the Settlement Administrator (not just postmarked) by the Exclusion Deadline, or they shall not be valid. For exclusion requests that are submitted online, the Class Member shall have the opportunity to print a page immediately after submission showing the information entered and the date and time the request for exclusion was received. A Settlement Class Member who elects to opt-out of this Settlement and the Settlement Class shall not be permitted to object to this Settlement or receive any of the benefits of the Settlement. Settlement Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

13. Any Member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all of the terms and provisions of the Settlement Agreement including, but not limited to, the releases, waivers, and covenants described in the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund created pursuant to the Settlement Agreement.

The Fairness Hearing

14. A virtual hearing on final settlement approval (the “Fairness Hearing” or “Final Approval Hearing”) is hereby scheduled to be held before this Court on **May 31, 2023, at 9:00 a.m.** by Zoom to consider the fairness, reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this Class Action with respect to the Released Party that is the Defendant therein, and the entry of final judgment in the Class Action.¹ Class Counsel’s applications for award of attorneys’ fees and costs shall be heard at the time of the fairness hearing.

15. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court within further notice to the Members of the Settlement Class other than that which may be posted by the Court.

16. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class Members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

17. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any Class Member may object to the proposed Settlement, entry of the Final Order and Judgment approving the settlement, and Class Counsel’s application for fees and expenses by filing and serving a written objection.

18. Any Class Member making the objection (an “objector”) must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector’s intent to

¹ The Court will provide a Zoom invitation link one month prior to the proceeding (no later than April 30, 2023). Counsel for the Parties shall update the Notices to reflect the Zoom information.

appear at the hearing.

19. Objections, along with any notices of intent to appear, must be filed no later than April 24, 2023. If Counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of Court at the following address:

Office of the Clerk
United States District Court for the
District of Maryland
Greenbelt Division
6500 Cherrywood Lane
Greenbelt, MD 20770

20. Objections, along with any notices of intent to appear, also must be mailed to Class Counsel and counsel for Defendant at the addresses listed below:

Nicholas A. Migliaccio, Esquire
Jason S. Rathod, Esquire
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, DC 20002

Counsel for Plaintiff

Geoffrey W. Castello, Esquire
Kelley Drye & Warren LLP
One Jefferson Road
Parsippany, NJ 07054

Counsel for Defendant

21. Only Class Members who have filed and served valid and timely notices of objections shall be entitled to be heard at the Fairness Hearing. Any Class Member who does not timely file and serve an objection in writing regarding the Settlement, entry of Final Order and Judgment, or to Class Counsel's application for fees, cost, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order, shall be deemed to have

waived any such objection by appeal, collateral attack, or otherwise.

22. Persons wishing to be heard at the Fairness Hearing are required to file with the Court and serve on counsel for Plaintiff and Defendant written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

23. All Members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendant.

Other Provisions

24. Upon approval of the Settlement provided for in the Settlement Agreement, each and every time and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

25. All reasonable costs incurred in notifying Members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

26. Counsel for the Parties are authorized to jointly use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Court or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice, and other exhibits that they jointly agree are reasonable and necessary.

IT IS SO ORDERED.

January 24, 2023
Date

/s/
Paula Xinis
United States District Judge