

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MEGANNE NATALE and CHELSEA CHENG,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

9199-4467 QUEBEC INC., d/b/a EARTH
RATED,

Defendant.

Case No. 2:21-cv-6775-JS-SIL

Hon. Joanna Seybert

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ OCT 23 2024 ★

LONG ISLAND OFFICE

FINAL
[PROPOSED] ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AGREEMENT AND ENTERING JUDGMENT

Pending before the Court are (i) the Motion for Final Approval of Class Action Settlement and (ii) the Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses and Incentive Awards filed by Plaintiffs Meganne Natale and Chelsea Cheng. (collectively, the "Class Representatives").

WHEREAS, on May 14, 2024, this Court granted preliminary approval of the proposed class action settlement agreement between the parties (the "Agreement" or "Settlement Agreement" or "Settlement").

WHEREAS, the Court provisionally certified a Settlement Class for settlement purposes, approved the procedure for giving notice and forms of Notice. On May 15, 2024, the Court set a final approval hearing to take place on October 23, 2024. The Settlement Class is defined as: all persons in the United States who purchased one or more units of Earth Rated Certified Compostable Poop Bags (the "Certified Compostable Poop Bags") during the class period which extends from October 28, 2015 through June 12, 2024 (the "Class Period"), excluding persons who purchased for the purpose of resale or for purposes other than personal use. Settlement

Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in Paragraph 5.1 of the Settlement, shall no longer thereafter be Settlement Class Members and shall not be bound by the Settlement and shall not be eligible to make a claim for any benefit under the terms of the Settlement.

WHEREAS, to the extent not otherwise defined herein, all capitalized terms in this Order shall have the meanings attributed to them in the Settlement Agreement;

WHEREAS on October 23, 2024, the Court held a hearing to determine whether the proposed Settlement Agreement executed by the Parties should be approved as Final by this Court, and Class Counsel and counsel for 9199-4467 Quebec Inc., d/b/a Earth Rated (“Earth Rated”) appeared at the hearing;

WHEREAS, the Court having considered the Settlement Agreement and all of the files, records, and proceedings herein, and having reviewed the pleadings and evidence filed in support of the request for final approval of the Settlement and conducted the hearing,

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Jurisdiction of the Court. The Court has personal jurisdiction over the parties and the Settlement Class Members, venue is proper, and the Court has subject matter jurisdiction to approve the Settlement Agreement, including all Exhibits thereto, and to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Approval Order, this Court hereby retains jurisdiction with respect to the implementation and enforcement of the terms of this Agreement and this Final Approval Order, and for any other necessary purpose.

2. Arm’s Length Settlement. The Settlement Agreement was negotiated at arm’s length by experienced counsel who were fully informed of the facts and circumstances of this litigation (the “Action”) and of the strengths and weaknesses of their respective positions. The Settlement Agreement was reached after the Parties had engaged in extensive settlement

discussions and after the exchange of information, including information about the size and scope of the Settlement Class. Counsel for the Parties were therefore well positioned to evaluate the benefits of the Settlement Agreement, taking into account the expense, risk, and uncertainty of protracted litigation.

3. Certification of the Settlement Class. Pursuant to Fed. R. Civ. P. 23, this Court hereby finally certifies the Settlement Class, as identified in the Settlement Agreement:

All persons in the United States who purchased one or more units of Earth Rated Certified Compostable Poop Bags during the class period which extends from October 28, 2015 through June 12, 2024 (.

Persons meeting this definition are referenced herein collectively as the “Settlement Class,” and individually as “Settlement Class Members.” Notwithstanding the foregoing, the Settlement Class specifically excludes: (a) all persons who purchased for the purpose of resale or for purposes other than personal use; (b) Defendant and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any person who makes a valid, timely opt-out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof but excluding employees thereof), and (e) the judges to whom this action is assigned and any members of their immediate families.

4. The Court finds, for settlement purposes only, that the prerequisites for a class action under Fed. R. Civ. P. 23 have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class it seeks to represent; (d) Class Representatives and Class Counsel have and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (e) the

questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

5. Objections. No objections to the Settlement were received.

6. Appointment of Class Counsel and Class Representatives. The Court finally appoints, for settlement purposes, the law firm of Bursor & Fisher, P.A. as Class Counsel for the Settlement Class. The Court finally appoints, for settlement purposes, Meganne Natale and Chelsea Cheng as Class Representatives.

7. Notice and Claims Process. The Court makes the following findings on notice to the Settlement Class:

The Court finds that Notice Program, as provided for in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order and Judgment (i) constituted the most effective and best practicable notice under the circumstances to Settlement Class Members, (ii) reached a high percentage of the Settlement Class and constitutes due, adequate, and sufficient notice for all other purposes to all Settlement Class Members and all persons entitled to be provided with notice, (iii) was reasonably calculated to apprise the Settlement Class of the pendency of the Action, the class certification for settlement purposes only, the terms of the Settlement Agreement and benefits afforded, the Settlement Class Members' rights including the right to opt-out of or object to the Settlement and the deadlines and procedures for doing so, the deadline, procedures and requirements for submitting a Claim pursuant to the Settlement, Class Counsel's application for Attorneys' Fees and Expenses and Class Representative Service Awards for the Class Representatives, the time, place, and right to appear at the Final Approval Hearing, and other pertinent information about the Settlement and the Settlement Class Members' rights, (iii) was

reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.

8. CAFA Notice. The Court finds that Defendant (through the Settlement Administrator) provided notice of the proposed Agreement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715.

9. Final Settlement Approval. The Settlement Agreement is finally approved in all respects as fair, reasonable and adequate. The terms and provisions of the Settlement Agreement, including all exhibits thereto, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members. Full opportunity has been given to the Settlement Class Members to participate in the Settlement, exclude themselves from the Settlement, object to the terms of the Settlement or to Class Counsel's request for Attorneys' Fees and Expenses and for Class Representative Service Awards, and otherwise participate in the Final Approval Hearing.

10. Implementing the Settlement. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions. All funding of the Settlement by Defendant shall be done in accordance with and along the timeline provided in the Settlement, with the total funding not to exceed the Settlement Sum, as that term is defined and structured in the Settlement. The Settlement Sum represents Defendant's all-inclusive, sole, exclusive, and full payment for all monetary consideration of any kind whatever to Plaintiffs, Class Representatives, Settlement Class Members, and Class Counsel, including the total amount of monetary relief available to Settlement Class Members for payment of all Valid Claims, for Class Representative

Service Awards, and for Class Counsel's Fee Award. The Settlement Sum does not include reasonable Administration Expenses.

The Settlement Administrator is directed to provide settlement payments to those Settlement Class Members who submitted Valid Claims. All settlement payments shall be paid out of the Settlement Sum within the time period and manner set forth in the Settlement Agreement.



The Court hereby approves Class Counsel's request for Attorneys' Fees and Expenses in ~~\$279,380.26~~ ^{\$279,240.04}. The Court finds that the requested fees are reasonable under the percentage-of-the fund approach. The award of Attorneys' Fees and Expenses to Class Counsel shall be paid out of the Settlement Sum within the time period and manner set forth in the Settlement Agreement.

The Court awards Class Representative Service Awards in the amount of \$5,000 each to Plaintiffs Meganne Natale and Chelsea Cheng, which shall be paid out of the Settlement Sum within the time period and manner set forth in the Settlement Agreement

11. Release of Claims. Upon entry of this Final Approval Order, all Settlement Class Members who did not validly and timely submit requests for exclusion in the manner provided in the Agreement shall, by operation of this Final Approval Order and Judgment, have fully, finally and forever released, relinquished and discharged Defendant and the Released Parties from the Released Claims as set forth herein and in the Settlement Agreement and from any claims or liabilities arising from or related to the Release.

12. Settlement Class Members who have not validly and timely submit requests for exclusion in the manner provided in the Agreement shall be permanently barred and enjoined from asserting any Released Claims in any action or from filing, commencing, prosecuting, intervening

in, or participating in (as class members or otherwise) any action based on or relating to any of the Released Claims or the facts and circumstances relating thereto.

13. Settlement Class Members who have not validly and timely submitted requests for exclusion shall be permanently barred and precluded from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending or future action) based on or relating to any of the Released Claims or the facts and circumstances relating thereto.

14. Any Settlement Class Member who fails to submit a timely, accurate, completed Valid Claim, or who otherwise submits a Claim Form determined to be invalid for any reason whatsoever, shall not be entitled to receive a settlement payment, but shall otherwise be bound by all of the terms in this Agreement, including the terms of the Final Approval Order and the Releases in the Agreement, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

15. The terms of the Settlement Agreement and of this Final Approval Order, including all Exhibits thereto, shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits maintained by Class Representatives and all other Settlement Class Members, as well as their heirs, executors and administrators, successors, and assigns.

16. The Releases, as set forth in the Settlement Agreement, including in Section 6, and which are also set forth in part below, are expressly incorporated herein in all respects and are effective as of the date of this Final Approval Order and Judgment.

a. Effective as of the Final Approval Date, each and all of the Settlement Class Members will release and forever discharge and will be forever barred from asserting,

instituting, or maintaining against any or all of the Released Parties, from any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, attorneys' fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to all claims relating to or arising out of state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, arising out of or in any way related to compostability of the Earth Rated's Certified Compostable Poop Bags, or related to claims or statements relating thereto, during the Class Period, as alleged in or arising from the operative complaint on file in this Action. This release expressly does not extend to personal injury claims regarding the Certified Compostable Poop Bags.

d. On the Final Approval Date, the Releasing Parties will be deemed to have, and will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Final Settlement Approval Date, the Releasing Parties also will be deemed to have, and will have, waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and

release the Released Claims, notwithstanding any Unknown Claims they may have.

e. Permanent Injunction. All Settlement Class Members and/or their representatives (and all persons in active concert with Settlement Class Members and/or their representatives) who have not properly excluded themselves from the Settlement Class are permanently barred and enjoined from directly, indirectly, derivatively, in a representative capacity, or in any other capacity filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing any action in any forum (state or federal) as individuals, class members, putative class members, or otherwise against the Released Parties (as defined in the Agreement) asserting any of the Released Claims (as defined in the Agreement), and/or from receiving any benefits from any lawsuit other than this one, administrative or regulatory proceeding, or order in any jurisdiction, arising out of, based on, or relating to the Released Claims. In addition, all such persons are hereby permanently barred and enjoined from filing, commencing, or prosecuting a lawsuit against Defendant (or against any of the Released Parties) in any form, including as a class action, a separate class, or group for purposes of pursuing a putative class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who do not timely exclude themselves from the Class, arising out of, based on, or relating to the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

17. Enforcement of the Settlement. The administration and consummation of the Settlement as embodied in the Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement,

including, but not limited to, enforcement of the Releases. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

18. The Settlement Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly submitted requests for exclusion, and the Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s).

19. The Releases shall not preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein. The Releases set forth herein and in the Settlement Agreement are not intended to include the release of any rights or duties of the Parties arising out of the Settlement Agreement, including the express warranties and covenants contained therein.

20. Any disputes or controversies arising with respect to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the Parties to exercise their rights, as set forth above and in the Settlement Agreement.

21. No Admissions. Neither this Final Approval Order and Judgment nor the Agreement (nor any other document referred to herein or therein, nor any order relating to the Agreement, nor any action taken to carry out any order relating to the Agreement) is, may be construed as, or may be used as an admission or concession by or against Defendant or the Released Parties of the validity of any claim or defense or any actual or potential fault, wrongdoing, or liability whatsoever or the propriety of class certification. Defendant continues to deny the Action meets the requisites for class certification under Fed. R. Civ. P. 23 for any purpose other

than settlement. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to Defendant's denials or defenses and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency, or other tribunal for any purpose whatsoever, except as evidence of the Agreement or to enforce the provisions of this Final Approval Order and Judgment and the Agreement; provided, however, that this Final Order and Judgment and the Agreement may be filed in any action by or against Defendant or Released Parties to support a defense of *res judicata* or collateral estoppel.

22. Other Provisions. Without further order of the Court or to the Settlement Class, the settling parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement. The Parties are further authorized, without needing further approval from the Court, to agree to written amendments, modifications, or expansions of the Agreement and its implementing documents (including all exhibits) without further notice to the Settlement Class or approval by the Court if such changes are consistent with this Final Order and Judgment and do not materially alter, reduce, or limit the rights of Settlement Class Members under the Agreement

23. If the Settlement Agreement is terminated pursuant to its terms for any reason, or the Effective Date does not occur for any reason, this Final Approval Order and all other orders relating to this Settlement, including as relating to class certification, shall be automatically vacated and the Parties shall be restored to their respective pre-settlement positions in the Action, including with regard to any agreements concerning tolling and similar agreements, and this entire Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Action, and shall not be offered in evidence or used in any litigation for any purpose,

including the existence, certification, or maintenance of any purported class or Defendant's or any Released Party's liability with respect to the claims that are, were or could have been asserted in the Action. In the event of such, this Settlement and all negotiations, proceedings, documents prepared, and statements made in connection with it shall be without prejudice to the Parties, and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose, and all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

24. Dismissal of Action. The Action (including all individual and Class claims presented therein) is hereby dismissed on the merits and with prejudice, without fees or costs to any Party except as otherwise provided in this Final Order and Judgment, and the Agreement.

IT IS SO ORDERED, on 10-23-2024
(date)

/s/ Joanna Seybert

Hon. Judge Joanna Seybert
United States District Court Judge,
Eastern District of New York