

IN THE CIRCUIT COURT OF  
ST. LOUIS COUNTY STATE OF MISSOURI

MAHASIN AHMAD, AARON  
ASELTINE, and LISA LADONSKI,  
individually and on behalf of all others  
similarly situated,

CASE NO. 21SL-CC00593

Plaintiffs,

v.

PANERA BREAD COMPANY and  
PANERA LLC,

Defendants.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND UNOPPOSED APPLICATION FOR AN  
AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS  
TO CLASS REPRESENTATIVES**

This matter comes before the Court on Plaintiffs' Motion for Final Approval of Class Action Settlement ("Motion for Final Approval") and Plaintiff's and Class Counsel's Unopposed Application for An Award of Attorneys' Fees, Expense, Service Awards to Class Representatives ("Application"). The Motion for Final Approval and the Application came before the Court for hearing on May 31, 2024, at 9:00 a.m. pursuant to the Court's Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement and Conditional Certification of the Settlement Class ("Preliminary Approval Order") dated December 12, 2023 and the March 11, 2024 amendment to the Preliminary Approval Order. In the Preliminary Approval Order, the Court preliminarily certified a settlement class ("Settlement Class") defined as:

All persons who placed an order for delivery on the Panera App and/or the Panera Website between October 1, 2020 and August 31, 2021.

The Court also approved the form, content, and method of disseminating Class Notice, appointed Class Representatives and Class Counsel, and scheduled a fairness hearing on May 31, 2024, at 9:00 a.m.

The Court held the fairness hearing in this matter on May 31, 2024, at 9:00 a.m. to consider whether: (1) the Settlement is fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing the action with prejudice; and (3) whether and in what amount to award attorneys' fees and litigation expenses to Class Counsel and service awards to the Class Representatives. Having considered all matters submitted to it at the fairness hearing and otherwise, and with due and adequate notice given to the Settlement Class as directed by the Court in its Preliminary Approval Order, the Court finds that the Motion for Final Approval and the Application should be **GRANTED**.

**THE COURT HEREBY FINDS, CONCLUDES, AND ORDERS** as follows:

1. This Order incorporates by reference the Preliminary Approval Order dated December 12, 2023, the amendment to the Preliminary Approval Order dated March 11, 2024, and the Settlement Agreement dated November 17, 2023 ("Agreement"), including the definitions contained therein. All terms used in this Final Order and Judgment shall have the same meaning as set forth in the Agreement and Preliminary Approval Order.

2. The Court has jurisdiction over the subject matter of the Action and over all of the Parties, including all Settlement Class Members.

3. The Court hereby reaffirms its findings and conclusions in the Preliminary Approval Order that, for purposes of the Agreement and the Settlement, the standards for class certification under Rule 52.08 of the Missouri Rules of Civil Procedure and applicable case law

have been met for the Settlement Class. Accordingly, the Court grants final certification of the Settlement Class defined as:

All persons who placed an order for delivery on the Panera App and/or the Panera Website between October 1, 2020 and August 31, 2021.

4. The Court also reaffirms its findings and conclusions in the Preliminary Approval Order that the named Plaintiffs in this Action, Mahasin Ahmad, Aaron Aseltine, and Lisa Ladonski, and Plaintiffs' attorneys, Kaliel Gold PLLC, Consumer Protection Legal, LLC, and Shamis & Gentile, P.A., are adequate to represent the Settlement Class as Class Representatives and Class Counsel, respectively.

5. The Court appoints Mahasin Ahmad, Aaron Aseltine, and Lisa Ladonski as Class Representatives for the Settlement Class and finds that it meets the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure.

6. The Court appoints KalielGold PLLC, Consumer Protection Legal, LLC, and Shamis & Gentile, P.A. as Class Counsel and finds that they meet the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure.

7. The Court has conducted a thorough examination of the record and has determined that the Settlement is fair, reasonable, and adequate pursuant to Missouri Rule of Civil Procedure 52.08 and applicable case law. In evaluating the fairness of the Settlement, the Court has considered: "(1) the existence of fraud or collusion behind the Settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the submissions of class counsel, class representatives, and absent class members." *Bachman v. A. G. Edwards. Inc.*, 344 S.W.3d 260, 266 (Mo. App. 2011) (quoting *Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. App.

2000).) The Court finds that each of these factors supports granting final approval of the Settlement. With respect to these factors, the Court finds and concludes as follows:

a) First, the Court finds that the Settlement is the result of arm's length negotiations between two adverse parties. There is no suggestion or evidence that the Settlement is the product of fraud or collusion. The Settlement was reached after contentious negotiations by counsel experienced in litigating and settling class actions. The Settlement involves significant concessions by both sides and provides substantial relief to members of the Settlement Class, including both monetary relief for past allegedly unfair delivery charges and prospective relief in the form of business practice changes.

b) Second, the factual and legal issues in this case are relatively complex and would require expensive and protracted litigation to resolve. Plaintiff's allegations present intricate issues regarding whether Defendant misrepresented its "Delivery Fee" and price markups on delivery orders.

c) Third, the Settlement was reached by parties with sufficient information to effectively evaluate the terms of the Settlement and represent the Settlement Class. The Parties engaged in a sufficient amount of formal and informal discovery to drive the Parties' settlement discussions, including Panera's production of information related to the nature, timing, and implementation of Defendant's advertisements, marketing materials, and disclosures on the Panera App and the Panera Website regarding delivery fees, service fees, and menu prices; Panera's Terms of Use and Terms & Conditions for the Panera App and the Panera Website; the approximate number of customers who purchased food for delivery on the Panera App and the Panera Website at issue in the Action; and the approximate fees and prices charged customers who purchased food for delivery on the Panera App and the Panera Website at issue in the

Action. This key information, along with the Parties' extensive settlement negotiations, allowed Plaintiffs and Class Counsel to meaningfully assess the strengths and weaknesses of their novel claims. Further, prior to the commencement of litigation, Class Counsel engaged in an independent investigation of Plaintiffs' claims and Panera's deceptive delivery fee practices, as well as potential claims of other Settlement Class Members.

d) Fourth, the Court finds that success on the merits is far from certain. This Action faced potential obstacles at all levels that could have resulted in no recovery at all for the Settlement Class;

e) Fifth, the Settlement falls within the range of possible recovery the Class could achieve at trial if Plaintiff were to succeed on the merits. Furthermore, it is possible that the Settlement Class would receive no recovery if the case were resolved through continued litigation and a trial. Additionally, the appeal could have reversed the decision denying Defendant's Motion to Compel. The Settlement provides immediate and certain benefits to the Class that may not be available through continued litigation.

f) Sixth, the Court finds that the opinions of Class Representatives and Class Counsel and the response of absent Settlement Class members weigh in favor of final approval. Class Representative and Class Counsel, who have extensive knowledge of the factual and legal issues in the case and actively have been involved in the negotiations and mediation, support the proposed Settlement as fair, reasonable, and adequate. Their assessment of the benefits provided by the Settlement in light of the risks associated with continued litigation is entitled to appropriate weight. In addition, all available evidence indicates that the Settlement enjoys overwhelming support from the Settlement Class, as there has been no objection to the settlement and just two requests for exclusion from the settlement.

8. Based upon its evaluation of the foregoing factors and the record submitted by the Parties, the Court finds that the Agreement and Settlement are fair, reasonable, and adequate. The Court, therefore, **GRANTS** final approval of the Settlement in all respects. The parties are directed to implement the terms of the Settlement as provided in the Agreement. Without further order of the Court, the parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Agreement.

9. The notice to the Settlement Class of this action and the proposed Settlement, issued pursuant to the Settlement Agreement and the Court's Preliminary Approval Order and amendment thereto, was adequate and constituted the best notice practicable under the circumstances. Notice of the Settlement reached over two million class members by direct email notice, and by media publication of over 23 million targeted impressions designed to reach class members whose email addresses were not available. The notice was reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The Court reaffirms its findings in the Preliminary Approval Order that the notice issued to the Settlement Class satisfies the requirements of Rule 52.08(e), due process, and Missouri law.

10. The Court also agrees with the proposed recipient of any *cy pres* fund remaining from the Cash Fund: the recipient of any remaining monies in the Cash Fund shall be Feeding America.

11. The Court also has considered Plaintiff's and Class Counsel's Application for reasonable attorneys' fees and litigation expenses. The Court finds that Class Counsel has achieved an excellent Settlement for the Settlement Class. Given the substantial results obtained for the Settlement Class, the efforts and skill shown by Class Counsel in investigating and

bringing this class action to a successful resolution, and the considerable risk Class Counsel incurred in pursuing this matter on a contingency basis, the Court finds that Plaintiff's and Class Counsel's request for an award of \$1,333,333.00, representing approximately 33.33% of the settlement value is reasonable and will be rewarded. The Court further finds \$11,709.68 in taxable litigation costs and expenses, is reasonable and will be awarded. The Court finds and concludes that the requested award is fair and reasonable for numerous reasons, including the following:

12. In awarding Class Counsel its reasonable attorneys' fees and litigation expenses, the Court has considered the total amount of benefits afforded by the Settlement. *See Berry v. Volkswagen of Am., Inc.*, No. 0515-CV01171-01, at ¶¶ 3, 4 (Mo. Cir. Ct. Jackson Cnty. May 3, 2011), *aff'd*, 397 S.W.3d 425 (Mo. banc 2013) (“[T]he reasonableness of the fees must be measured against the benefit conferred by the settlement rather than the actual amount paid out[.]”). The Court finds that, as measured under Missouri law and stipulated by the parties, the value of the settlement to the Settlement Class is in excess of \$4,000,000. As described in the Settlement Agreement, Defendant will provide up to \$4,000,000 in monetary benefits, consisting of a fund of (1) \$2,000,000 cash for payment of valid cash claims, service awards, and attorneys' fees and expenses (if awarded by the court); and (2) \$2,000,000 retail value in free vouchers for an item from Panera's "Soups & Mac" menu for Settlement Class Members who elect to receive a Soups & Mac Vouchers Settlement Award. Moreover, Defendant agreed to change its practice. Beginning on or around August 2021, Panera revised its disclosures on the Panera App and the Panera Website to state expressly that menu prices may be higher for delivery orders and fees apply, and included a similar disclosure at the checkout page, just prior to purchasing food for delivery. Panera has agreed to keep these or substantially similar disclosures in place as long as

they are applicable to delivery orders. The Court also considers the economic value to the Settlement Class of Defendant's prospective business practice changes, which provides significant prospective benefits to the Settlement Class. *See Hale v. Wal-Mart Stores, Inc.*, Nos. 01CV218710, 02CV227674, 2009 WL 2206963, ¶ 6 (Mo. Cir. Ct. Jackson Cnty. May 15, 2009) (Midkiff, J.) ("In determining the total value of the Settlement for purposes of calculating the attorneys' fee award, this Court will consider the economic value of such prospective injunctive relief obtained for the Class."). These business practice changes eliminate significant future harm to the Settlement Class, which provides an additional significant prospective benefit to the entire class and to the general public.

13. Under the percentage of recovery approach, Class Counsel's total fee and expense request of \$1,333,333.00 represents 33.33% of the total value of the monetary benefits provided by the Settlement. A fee award of 33.33% easily falls within the range of awards routinely granted by courts in Missouri. *See Bachman*, 344 S.W.3d at 267 (holding that a fee award of approximately one-third of the value of a settlement is "not unreasonable" in class action cases); *Hale*, 2009 WL 2206963, ¶ 30 ("The 38.3% fee requested in this case is customary and well in line with attorneys' fees award in similar cases."); *McLean v. First Horizon Home Loan Corp.*, No. CV228590, 2007 WL 5674689, ¶ 11 (Mo. Cir. Ct. Jackson Cnty. June 7, 2007) (Scoville, J.) ("[33.3%] contingency fee is well within the average recovery from recent class action settlements."); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 499 (D.D.C. 1981) (awarding 45% of \$7.3 million gross settlement fund as reasonable attorneys' fees).

14. Based on the foregoing, the Court **GRANTS** Plaintiffs' and Class Counsel's application for an award of attorneys' fees and expenses in the amount of \$1,333,333.00. In addition to compensating Class Counsel for its reasonable attorneys' fees incurred in prosecuting



this Action to a successful resolution, this award will reimburse Class Counsel for the \$11,709.68 in litigation costs and expenses reasonably incurred in this litigation, including court costs, filing and service fees, mediation costs, advertising costs, and pro hac vice related costs; and other expenses that are typically awarded to class counsel. *See* 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 6:24 (8th ed. 2011) (noting that “class counsel also is entitled to reimbursement from the class recovery (without interest) for the costs and reasonable out-of-pocket expenses incurred in prosecuting the litigation”); *Hale*, 2009 WL 2206963, ¶ 30 (“computer-assisted research, photocopying, telephone, facsimile charges, postal messenger, express mail, deposition fees, transcripts, expert witnesses, travel and meals, and subpoena services are reasonably incurred in connection with the prosecution of a [modern], complex litigation.”).

15. The Court has also considered Class Counsel’s application for service awards to Class Representative in the amount of \$5,000 each for Plaintiffs Mahasin Ahmad, Aaron Asestine, and Lisa Ladonski. The Court finds that Class Counsel’s request for a service award is fair and reasonable. *See* *McLaughlin on Class Actions*, *supra*, § 6:28 (“[I]t is fair and reasonable to compensate class representatives, ordinarily within the range of \$1,000-\$20,000, for the efforts they make in obtaining a recovery on behalf of the class.”); *Bachman*, 2010 WL 5648344, ¶ 4 (awarding \$10,000 each to the two representative plaintiffs).

16. In determining the reasonableness of a service award, the Court considers: “(1) the actions the named class representatives have taken to protect the interests of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the named class representatives expended in pursuing the litigation.” *Hale*, 2009 WL 2206963, ¶ 43. The Court finds that the time and effort Plaintiffs devoted to this matter

contributed to the overall result and benefitted the Settlement Class. Here, the successful outcome in this case would not have been possible without the efforts of Plaintiffs, and their initiative and efforts on behalf of the Settlement Class should be rewarded. *See id.* at ¶43 (“The purpose of service awards, or supplemental compensation, for class representatives is to encourage people with significant claims to pursue actions on behalf of others similarly situated.”). The Court hereby approves a service award of \$5,000 to each named Plaintiff.

17. The Court hereby dismisses this action against Defendant with prejudice as to all members of the Settlement Class, as outlined in the Agreement. Upon Final Judgment, and except as to such rights or claims as may be created by the Agreement, and in consideration for the settlement benefits described in the Agreement, Plaintiffs and the Settlement Class shall fully release and discharge Panera and all its present and former parent companies, affiliates, subsidiaries, shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors, personal representatives, heirs and assigns, retailers, suppliers, franchisees, licensees, independent contractors, distributors, endorsers, consultants, and any and all other entities or persons upstream and downstream in the production/distribution channels (together, the “Released Parties”) from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Settlement Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Released Parties in any court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other

adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to Panera's advertising, marketing or promotion related to Panera delivery and fees, charges and costs for, or associated with, delivery orders through the Panera App or Panera Website during the Class Period including, without in any way limiting the foregoing, the claims alleged in each Petition filed in the Action, arising from, directly or indirectly, communications, disclosures, nondisclosures, representations, statements, claims, omissions, messaging, marketing, labeling, advertising, promotion, packaging, displays, brochures, studies, manufacture, distribution, operation, performance, functionality, notification, providing, offering, dissemination, replacement, any claims for rescission, restitution or unjust enrichment for all damages of any kind, violations of any state's deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes, any violation of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes, damages, costs, expenses, extracontractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs against the Released Parties pertaining to or relating to the claims alleged in the Action, notwithstanding that Plaintiffs and the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Released Claims herein (the "Released Claims"). A Settlement Class Member who fails to timely request exclusion from the Settlement Class but does not submit a Claim Form so as to be entitled to a Settlement Award is still bound by the terms of the Agreement, including the release of the Released Claims.

18. With respect to the Released Claims, each Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code section 1542 (and equivalent, comparable or analogous provisions of the laws of the United States of America or any state or territory thereof, or of the common law or civil law). Section 1542 provides that:

**A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH 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.**

Each term of this paragraph shall inure to the benefit of each and all of the Released Persons, and each and all of their respective successors and personal representatives, which persons and entities are intended to be beneficiaries of this paragraph. None of the above releases includes release of claims or otherwise affects rights to enforce the terms of the Settlement Agreement.

19. Upon the Final Judgment, and except as to such rights or claims as may be created by the Agreement, and in consideration for the settlement benefits described in the Agreement, Defendant shall fully release and discharge Class Representatives and Class Counsel from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Defendant ever had or now has against Class Representatives and Class Counsel in any court, tribunal,

arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, concerning the institution or prosecution of the Action.

20. Neither this Final Judgment and Order, nor any terms or provisions of the Agreement, shall be admissible as evidence for any purpose against the Parties in any pending or future litigation involving any of the parties. This Final Judgment and Order shall not be construed as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal, and Defendant specifically denies any such fault, wrongdoing, breach, or liability. Nor shall this Final Judgment and Order be construed or used as an admission, concession, or declaration by or against Plaintiff or the Class that their claims lack merit or that the relief requested in the action is inappropriate, improper, or unavailable. Neither the fact of, nor any provision contained in the Agreement or the documents submitted in connection with the Settlement, nor any actions taken thereunder shall be deemed evidence of a concession or admission of any kind as to the truth of any fact alleged or validity of any legal argument that has been, could have been, or in the future might be asserted. Nothing in this Final Judgment and Order shall be relied upon, cited as, constitute evidence of, or constitute an admission that class or collective action certification is or may be appropriate in any other action.

21. Without affecting the finality of the Judgment entered herein in any way, the Court hereby retains continuing jurisdiction to implement the Settlement through enforcement of this Judgment and to construe, enforce, and administer the Agreement pursuant to its terms. Specifically, the Court retains continuing jurisdiction over the Action to enforce Defendant's obligations under the Agreement to provide compensation to the Settlement Class as provided in the Agreement, pay Class Representatives service awards as provided in this Judgment and the

Agreement, and pay Class Counsel any award of attorneys' fees and expenses made by the Court, subject to the terms of the Agreement. If Defendant fails to fulfill its obligations, the Court has the power to vacate the provision of this Judgment releasing, relinquishing, and discharging, and barring and enjoining the prosecution against the Released Persons arising from or relating to Defendant's allegedly unfair delivery charges.

**SO ORDERED:**

  
Judge Division 2

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 25, 2024, I electronically filed the foregoing with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to all counsel of record.

/s/ Tiffany Marko Yiatras