

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MELISSA FIORE and BARBARA SELDIN, :
Individually and on Behalf of All Others :
Similarly Situated, :

Plaintiffs, :

v. :

INGENIOUS DESIGNS, L.L.C., and HSN, :
Inc. :

Defendants. :
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No. Case 1:18-cv-07124

ORDER PRELIMINARILY APPROVING SETTLEMENT

This cause is before the Court upon Plaintiff’s Motion for Preliminary Approval of Settlement filed by Plaintiffs Melissa Fiore and Barbara Seldin (“Plaintiff”). Upon review of the terms and conditions of the Settlement Agreement and on the basis of the submissions in support of the motion, and all prior proceedings in this litigation, it is hereby ORDERED:

1. Plaintiff’s Motion for Preliminary Approval and Authorization to Disseminate Notice to Class Members is hereby GRANTED.

2. Plaintiff’s Motion to Certify a Settlement Class is hereby conditionally GRANTED.

3. The Court hereby adopts the definitions set forth in the Settlement Agreement, a copy of which is attached hereto as Exhibit A. The Court finds that the terms of the Settlement Agreement are sufficiently fair, reasonable and adequate to warrant (a) preliminary approval; (b) the conditional certification of the settlement Class; (c) the scheduling of the Fairness Hearing; (d) the distribution of Notice to the Class; and (e) preliminarily barring and enjoining Plaintiffs, the

Class and each Class Member from commencing or prosecuting any actions asserting any of the settled claims(all covered by the Release) either directly, representatively, derivatively or in any other capacity against Defendants, pending the final determination of whether the, Settlement Agreement should be finally approved.

4. Supporting the grant of preliminary approval is the Court's finding that counsel for all Parties have significant experience in litigating and negotiating settlement of complex class actions. Moreover, counsel for all Parties have significant experience in litigating and negotiating settlements of cases involving consumer protections. In addition, the Parties engaged in a lengthy, arm's length settlement process. Over the course of a nearly a year, Plaintiffs' and Defendants' counsel held over 30 negotiating sessions in person, via telephone conference and with the assistance of a highly qualified and experienced mediator. During these lengthy and intense settlement negotiations, the Parties reached the broad parameters of this settlement. Thereafter, the Parties negotiated the precise language and terms of the Settlement Agreement and Exhibits, the proposed orders, and the notices. Accordingly, the settlement was reached after extensive investigation and was negotiated at arm's length by experienced and knowledgeable counsel. Moreover, the Consumer Product Safety Commission conducted its own extensive investigation, with which Lead Counsel cooperated. The resolution of the CPSC investigation incorporates the same relief provided in the Settlement Agreement which validates the fairness, reasonableness and adequacy of the Settlement.

5. As part of these negotiations, Plaintiffs conducted an extensive investigation of the facts and claims alleged in the Action, including, but not limited to interviewing and deposing former employees, interviewing consumers seeking information about the class action and examining their steamers, researching related consumer complaints and interviewing those

consumers, reviewing extensive documents and data, retaining experts and conducting expert analysis of multiple steamers, serving and responding to written discovery requests and taking multiple depositions in related litigation including multiple depositions of HSN and IDL's former upper management to develop information that was critical to negotiation of this Settlement. Through these efforts Plaintiffs' Counsel was able to assure themselves monetary and injunctive relief components of the Settlement Agreement will provide a material benefit to Class Members.

6. The Settlement provides the following relief to Class Members:

7. Monetary Relief

Defendants will provide the following economic benefits to Class Members who submit valid claims with proof of purchase, ownership and destruction: (1) full cash refunds of the purchase price paid for all Steamers purchased new from January 2018 through December 2020 (2) \$8.00 refunds for My Little Steamer Go Mini Steamers purchased new from January 2015 through December 2017, and a \$12.00 refund for all My Little Steamer Deluxe Steamers purchased from January 2015 through December 2017. For all Steamers purchased new prior to January 2015 or for Steamers where Class Members' lack proof of purchase, Class Members with valid claims will receive an \$8.00 HSN voucher for each unit.

Equitable Relief

As a result of this Settlement, Defendants have ceased all manufacture, importation, distribution, and sale of Steamers to and in the United States.

8. For purposes of settlement only, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the following settlement Class is conditionally certified (hereinafter referred to as the "Class"): All individuals who purchased any Joy Mangano brand My Little Steamer from January 1, 2002 through December 31, 2020. Excluded from the Settlement Class

are the Judge to whom the Action is assigned and any member of the Court's staff and immediate family.

9. Christa L. Collins of Collins Law PL is appointed Lead Class Counsel for the conditionally certified Class. All other counsel of record who have appeared on behalf of Plaintiffs are appointed as Co-Class Counsel for the conditionally certified Class.

10. Plaintiffs Melissa Fiore and Barbara Seldin are hereby conditionally certified as the Class Representatives of the Class defined above, for settlement purposes only.

11. This conditional certification of the Class, Class Counsel and the Class Representative is solely for purposes of effectuating the proposed Settlement. If the Settlement Agreement is terminated or is not consummated for any reason, the foregoing conditional certification of the Class and appointment of Class Representatives shall be null and void and of no further effect with respect to any party to this action, and the Parties to the proposed settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the Parties to the Settlement Agreement might have asserted but for the Settlement Agreement. Neither the Settlement Agreement nor the Court's orders issued in connection with consideration of the settlement, including this Order, shall be used or referred to in any litigation for any purpose whatsoever, except as required to enforce those provisions of the Settlement Agreement which survive a failure of the settlement to be consummated or the Effective Date of the settlement to occur.

12. Based on the Court's review of the Plaintiffs' motion and supporting materials, the Settlement satisfies the provisions of Rule 23(e) in that the Court will likely be able to grant approval of the proposed Settlement. More specifically, as required by Rule 23(e)(2) the class representatives and class counsel have adequately represented the Class, the proposal was

negotiated at arm's length, the relief provided for the Class is adequate, and the Settlement treats Class Members equitably.

13. In addition, the nine factors required for final approval under *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000) weigh in support of likely final approval.

14. Finally, the Court also finds that under Rule 23(e) certification of the Settlement Class is likely. The requirements of Rule 23(a) are likely met because:

- (a) The Class, defined above, is so numerous that joinder of all persons who fall within the class definition is impracticable;
- (b) The commonality requirement is satisfied because members of the Class share at least one common legal or factual issue;
- (c) The claims of the Class Representative are typical of the claims of the Class; and
- (d) The Class Representatives will fairly and adequately protect the interests of the Class and are represented by qualified counsel who are competent to represent the Class and prosecute this litigation.

The requirements of Rule 23(b)(3) also likely met in that the common issues predominate over individual issues; and (2) a class action is the superior method of adjudicating this controversy. Fed. R. Civ. P. 23(b)(3).

15. Accordingly, the Court **GRANTS PRELIMINARY APPROVAL** of the Settlement Agreement. The settlement will be submitted to Class Members for their consideration and for a hearing pursuant to Fed. R. Civ. P. 23(e).

16. This Court approves, as to form and content the class notice ("Notice") submitted by the Parties and attached hereto as Exhibit A and Exhibit B to the Settlement Agreement and

finds that the procedures described therein meet all applicable requirements of law including, but not limited to, Rule 23(e) and (h) of the Federal Rules of Civil Procedure and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and provide the best notice practicable under the circumstances. In support of this conclusion, the Court notes that the language in the Notice has been negotiated and agreed to by the Parties and is reasonably calculated, under the circumstances, to apprise members of the settlement Class about this case; the Class members' interest in the case; the proposed settlement; conditional certification of the settlement Class; the rights of members of the settlement Class to object to the settlement or to request exclusion from the settlement Class; and the application of Plaintiff's counsel for an award of attorneys' fees and reimbursement of expenses.

17. This Court orders that (i) the Notice shall be published in the manner consistent with the publication program set forth in Section V. of the Settlement Agreement within 30 days of the date that this Preliminary Approval Order is entered by the Court in the manner set forth in the Notice and (ii) that this notice program shall be completed within 60 days after its commencement. Defendants shall pay for the costs of providing the class Notice. The Court hereby **FINDS** that the Notice fully complies with the requirements of **Fed. R. Civ. P. 23(c)(2)(B)**, and the Notice is thus **APPROVED**.

18. This preliminary approval is subject to further consideration at a Fairness Hearing (the "Fairness Hearing"), which shall be held before this Court by telephone on September 10, 2021 at 11:00 a.m. Participants may connect to the call through dial-in number 888-557-8511 with access code 3152145. The Class will be provided notice of the date, time, place and purpose of the Fairness Hearing. The Court may adjourn the Fairness Hearing without further notice to the members of the Settlement Class.

19. At the Fairness Hearing, this Court will consider (1) the merits of any objections to

the Settlement; (2) whether to grant final approval of the Settlement Agreement pursuant to Rule 23(e) as fair, reasonable, adequate and in the best interests of the Class and to authorize all acts necessary to consummate and effectuate the terms and conditions of the Settlement Agreement; (3) whether the Court should certify the Class for settlement purposes only; (4) whether the Court should enter a Final Judgment approving the settlement and dismissing the Action with prejudice; (5) whether the fees and expenses submitted by Class Counsel should be approved; and (6) such other matters as the Court may deem necessary and appropriate.

20. The Court will separately consider a request for a reasonable fee award for Class Counsel and a service award to the Class Representative. Class Counsel will file a motion requesting the Court to award reasonable attorneys' fees, costs, and expenses, and a payment of a service award to Plaintiff.

21. Any Class Member who desires to be excluded from the Class Settlement must, in accordance with the terms and conditions set forth in Section XI. of the Settlement Agreement, sign a written request to be. The form of this exclusion ("opt out") must comply with the terms of the settlement and be mailed to the Claims Administrator at the address provided in the Notice and postmarked no later than sixty (60) days after the initial date of mailing of the Notice.

22. Any Class member may file and serve a written objection to the settlement and may, at his or her option, appear at the Fairness Hearing to show cause why any of the terms of the Settlement should or should not be approved as fair, reasonable and adequate, or why judgment should not be entered upon them subject to the following schedule:

23. Any Class Member who fails to comply with the provisions of Section IX. of the Settlement Agreement shall waive and forfeit any and all rights he or she may have to object to the Settlement, shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the settlement and/or any aspect of the Settlement Agreement, and shall be

bound by all the terms of this Settlement and by all proceedings, orders and judgments in the Action.

24. If a Class Member hires an attorney to represent him or her, the attorney must (i) file a notice of appearance with the Court no later than sixty (60) days after the initial date of mailing of the Notice , or as the Court may otherwise direct; and (ii) include with the notice of appearance a statement identifying all other class action cases in which the attorney has appeared either as counsel on behalf of an objecting class member or as lead counsel on behalf of a class, including the case style, case number, and court, (iii) include with the notice of appearance, a statement detailing the ultimate disposition of any objection filed by the attorney in any class action case and describe whether the objection was resolved for a payment of fees with no alteration to the underlying class action settlement agreement or, in the event the objection was resolved with an enhancement to the underlying class action settlement agreement, describe those enhancements and how the class action settlement was modified and (iv) serve a copy of the notice and statements on Class Counsel and Defendant's Counsel, by fax and first-class mail.

25. In order to effectuate the proposed Settlement, the parties shall adhere to the following schedule:

Class Notice mailed by:	30 days from entry of this Order.
Class Counsel's Fee Request:	45 days after Notice is mailed
Objection/Exclusion:	60 days after Notice is mailed
Claim Deadline:	120 days after Final Approval

26. The Settlement Administrator shall be responsible for administering the settlement in accordance with the provisions of the Settlement Agreement and this Order.

27. Class Representative and all members of the Class and any other person, representative, or entity acting on behalf of any members of the Class are preliminarily barred and

enjoined from: (i) filing, commencing, prosecuting, maintaining, intervening in, participating in (as members of a class action or otherwise), any claim, lawsuit, arbitration, administrative, regulatory or other proceeding arising out of the released Claims (as defined in section II. Y. of the Settlement Agreement) against any of the Released Parties (as defined in paragraph II. Z. of the Settlement Agreement); and (ii) organizing or soliciting the participation of any members of the settlement Class into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any claim, lawsuit or other proceeding arising out of the Released Claims against any of the Released Parties. The Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Court's review of the settlement.

28. All proceedings in the Litigation other than such as may be necessary to carry out the terms and conditions of the Settlement Agreement or the responsibilities incidental thereto are stayed and suspended until further Order of this Court.

29. Upon consummation and approval of the Settlement provided for in the Settlement Agreement, the Settlement Agreement and each and every term and provision thereof and exhibits thereto shall be deemed incorporated herein as if explicitly set forth and shall have the full force and effect of an Order of this Court.

30. Nothing in this Order shall be construed or used as an admission, concession, or declaration by or against Defendants for any fault, wrongdoing, breach or liability. Nor shall this Order be construed as a finding or conclusion of the Court with respect to the merit or lack of merit of any claim asserted in the action or the defense to any claim asserted in this action.

IT IS SO ORDERED

Entered this 6th day of May, 2021.

/s

STEVEN L. TISCIONE
UNITED STATES MAGISTRATE JUDGE