

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

VIRGINIA SIMONIN, *individually and on  
behalf of all others similarly situated,*

Plaintiff,

v.

WINCO FOODS, LLC,

Defendant.

Case No. 3:19-cv-2094-AR

**ORDER GRANTING PLAINTIFF'S  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AND CERTIFICATION**

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**ARMISTEAD, Magistrate Judge**

Class counsel has filed with the Court a Motion for Preliminary Approval of the Class Action Settlement, seeking an Order preliminarily approving the proposed Settlement (the “Settlement”), conditionally certifying a class for purposes of the Settlement, appointing class counsel, and ordering notice pursuant to the Notice Plan, in accordance with the Settlement Agreement (the “Agreement”), executed by the Parties on March 27, 2024.

The court has reviewed the parties’ Motion, the Agreement, the attached exhibits, and the related submissions. Based on preliminary examination, it appears to the court that the Agreement is sufficiently fair, reasonable, and adequate to warrant notice to the proposed Class;

that the Settlement Class should be certified for settlement purposes; and that the court should hold a hearing after notice to the proposed Class to determine whether to enter a Final Approval Order and final judgment in this action. Accordingly, Plaintiff's motion (ECF No. 91) is granted.<sup>1</sup>

1. Defined Terms. Unless otherwise defined, the definitions provided in the Agreement are incorporated in this Order as though fully set forth herein.

2. Preliminary Approval of Proposed Settlement. The Court preliminary approves the Settlement embodied by the Agreement, subject to further consideration at the Final Approval Hearing, described below. The Court finds that the requirements of FRCP 23 are satisfied with respect to the "Settlement Class Members" (as defined below and in the Agreement) and finds that the Agreement provides substantial relief to the Settlement Class without the risk, cost, or delay associated with continued litigation.

The Court finds that the Settlement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations, facilitated and overseen by Senior Judge Henry J. Kantor. The Court further finds that the Parties have conducted thorough investigation and research, and that the attorneys for the Parties are able to reasonably evaluate their respective positions.

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<sup>1</sup> The parties have consented to jurisdiction by magistrate judge as permitted by 28 U.S.C. § 636(c)(1). (Full Consent, ECF No. 90.)

The Parties' Settlement is granted preliminary approval as it meets the criteria for preliminary settlement approval under FRCP 23. The Court finds that it is appropriate to notify the members of the proposed Settlement Class of the terms of the proposed Settlement.

3. Class Certification for Settlement Purposes Only. The following persons are conditionally certified as Settlement Class Members solely for the purpose of entering a settlement in this matter:

All persons who, between June 1, 2019 and May 8, 2022, purchased certain non-grocery items from a WinCo store located within the City of Portland, Oregon and paid to WinCo a surcharge on certain non-grocery items related to the Clean Energy Surcharge enacted by the City of Portland, effective January 1, 2019. Excluded from the Settlement Class are: (1) any Judge presiding over this Action and members of their families; (2) persons who properly execute and file a timely request for exclusion from the Settlement Class; (3) David Maingot; and (4) the legal representatives, successors, or assigns of any such excluded persons.

Settlement Class Members will be bound by the Agreement unless they submit a timely and valid written Request for Exclusion from the Settlement in accordance with the terms of the Agreement.

4. Requests for Exclusion. Any Request for Exclusion shall be submitted to the Settlement Administrator, rather than filed with the Court, by the Objection/Exclusion Deadline, which is sixty (60) calendar days from the posting and publication of Class Notice to Settlement Class Members. Settlement Class Members are not required to send copies of the Request for Exclusion to counsel. The Settlement Administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every Request for Exclusion or objection received by the Settlement Administrator.

5. Objections. Any of the Settlement Class Members (other than the Class Representative) who has not timely elected to be excluded from the Settlement Class, and who wishes to object the approval of the Settlement, including any application for attorney's fees and costs and service awards to Plaintiffs, should submit any objection in writing in accordance with the Agreement by the Objection/Exclusion Deadline, which is sixty (60) calendar days from the initial publication and posting of Class Notice to Settlement Class Members. The Settlement Administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every objection received by the Settlement Administrator. Any Settlement Class Member who does not make an objection to the Settlement in the manner provided in the Agreement and who does not appear at the Final Approval Hearing to voice their objection shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

6. Class Representative. The court appoints Virginia Simonin as the Class Representative. The Court finds that Plaintiff Virginia Simonin is adequate and does not have interests adverse to the Settlement Class

7. Class Counsel. The court appoints Michael Fuller of OlsenDaines, Kelly Jones of the Law Office of Kelly D. Jones, and Dan Nichol of JurisLaw LLP as Class Counsel. The Court finds that Class Counsel are adequate, as they are experienced in consumer class action litigation and have no conflicts of interest with absent Settlement Class Members, and that they adequately represented the interests of absent Class Members in the Litigation.

8. Final Approval Hearing. The Court will conduct the Final Approval Hearing on August 8, 2024, at 2:00 p.m., in Courtroom 9B at the United States District Court for the District of Oregon Courthouse, located at 1000 S.W. Third Ave., Portland, OR 97204. At that time, the court will address any timely objections filed by a Settlement Class Member, final approval of the Agreement, issuance of the General Judgment of Dismissal, and any other motions in connection with this action. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to Settlement Class Members. Class Counsel shall give notice to any objecting party of any continuance of the Final Approval Hearing. Any responses to objections or other motions related to the Settlement must be submitted no later than seven (7) days before the Final Approval Hearing.

9. Appointment of Settlement Administrator. The court approves the parties' choice of CPT Group as the Settlement Administrator to provide notice to the Class Members and to perform other administrative tasks as set forth herein and in accordance with the terms of the Agreement, with direction and oversight of the Parties. The deadline for posting the Class Notice on the Settlement Website and providing Class Notice by digital publication on social media shall be thirty-five (35) calendar days from the date of this order. The deadline by which all Claim Forms must be postmarked or received by the Settlement Administrator shall be sixty (60) calendar days from the initial posting and publishing of Class Notice to Settlement Class Members. All Administration Costs shall be submitted to the Court for approval and paid from the Settlement Fund.

10. Notice. The court orders the Parties and Settlement Administrator to administer the Notice Plan and Claims Process in accordance with the terms of the Agreement. The Court approves, as to form and content, the proposed class action notice (the “Class Notice”) (attached to the Settlement Agreement as Exhibit 2). The Parties’ proposed Notice Plan complies with FRCP 23(d), is constitutionally sound, and such notice is the best notice practicable under the circumstances. The Class Notice is sufficient to inform Settlement Class Members of the terms of the Settlement, their rights under the Settlement, their rights to object to the Settlement, their right to make a claim to receive a payment under the Settlement or elect not to participate in the Settlement and the processes for doing so, and the date and location of the Final Approval Hearing.

11. Effect of the Agreement. Neither the Agreement nor any document referred to or contemplated therein, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever, and shall not be offered or admitted into evidence or referred to in any way (orally or in writing) in any other action, arbitration, or other proceeding, except as allowed by Rule 408 of the Oregon Evidence Code and Federal Rules of Evidence or other similar rules (and specifically excepting the Action and/or a proceeding involving an effort to enforce the Settlement, as well as reference to the Settlement or Agreement in any SEC disclosure).

The Agreement shall have no precedential, collateral estoppel, or res judicata effect on Defendant in any manner or proceeding other than in (a) this Action and/or (b) a proceeding involving an effort to enforce the Agreement.

12. Other Case Proceedings. All discovery and other pretrial proceedings in this Action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Order.

Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

Class Representative and the Settlement Class Members are hereby enjoined from prosecuting any claim in the Action and from filing actions or proceedings against Defendant related to the Action.

In the event that the Settlement as provided in the Agreement is not finally approved by the Court, or for any reason the parties fail to obtain a Final Approval Order and General Judgment of Dismissal as contemplated in the Agreement, or the Agreement is terminated pursuant to its terms, then the Agreement and all orders and findings entered in connection with the Agreement shall become null and void and of no further force and effect, and shall not be deemed an admission or offered or admitted into evidence or referred to in any way (orally or in writing) in this Action or any other action, arbitration, or other proceeding, for any purpose. In such event, the case shall return to its status as it existed before entry of this Order, and the Agreement and

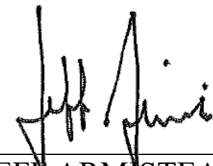
all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto.

Neither the Agreement nor any term or provision in the Agreement, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession of the Class Representative, any Settlement Class Member, Defendant, or any of the Released Parties of any liability or wrongdoing by them, or any of them, and shall not be offered or received into evidence in any action or proceeding or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that the Class Representative, any Settlement Class Member, or any other person has or has not suffered any damage.

13. Retention of Jurisdiction. This court retains jurisdiction to consider all further applications arising out of or connected with the Settlement and the Agreement.

**IT IS SO ORDERED.**

DATED: April 5, 2024



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JEFF ARMISTEAD  
United States Magistrate Judge