

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

) No. 1:14-md-02542 (VSB)
) No. 1:14-mc-02542 (VSB)
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IN RE: KEURIG GREEN MOUNTAIN SINGLE-SERVE)
COFFEE ANTITRUST LITIGATION) **DISTRIBUTION MOTION**
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I. STATEMENT OF FACTS

This action has been settled pursuant to the terms of the Stipulation and Agreement of Settlement (“Stipulation”) filed with this Court on September 30, 2020. ECF No. 1114, Ex. 1. Unless otherwise defined, all capitalized terms herein have the same meaning attributed to them in the Stipulation.

On December 16, 2020, the Court entered the Order Granting Preliminary Approval of Class Action Settlement (the “Preliminary Approval Order”). ECF No. 1216. On December 29, 2020, the Court issued an order clarifying the Preliminary Approval Order. ECF No. 1218. On June 7, 2021, the Court entered the Final Order and Judgment. ECF No. 1394. The Court retained jurisdiction over “administration, interpretation, consummation, and enforcement of the Agreement and this Order and Final Judgment.” *Id.* at 6, ¶ 17.

The Court-appointed Claims Administrator, JND Legal Administration LLC (“JND”) has now completed all analyses and accounting procedures in connection with the submitted claims and has finalized all determinations of which claims are authorized and which are ineligible. Only distribution of the Net Settlement Fund to the Authorized Claimants remains to complete the Settlement process. Class Counsel therefore request that the Court authorize distribution of the Net Settlement Fund to Authorized Claimants, as identified in **Exhibits B-1 and B-2** to the Declaration of Gretchen Eoff in Support of Motion for Distribution of Net Settlement Fund (“Second Eoff Declaration”), dated February 21, 2023.

II. DETERMINATION OF AUTHORIZED CLAIMS

Pursuant to the Preliminary Approval Order, Class Members who wanted to participate in the Settlement were required to submit a Proof of Claim postmarked no later than July 15, 2021. ECF No. 1724, ¶ 3. As a result of an effective notice program, as of December 8, 2022, JND received 81,372 Proofs of Claim. Of these, 81,179 were submitted timely and 193 were postmarked after the July 15, 2021 deadline. *Id.* ¶ 4. JND reviewed all Proofs of Claim it received and has now finalized its determination, subject to court approval, of which claims are authorized and which are ineligible.

The Final Approval Order adopts the Plan of Allocation, which provides for different rates of compensation for claims that are supported by documentary evidence of purchase than those that are supported only by the testimony of the claimant. Of the claims received, 5,185 were supported by documentation. Second Eoff Declaration, ¶ 8.a. Several claimants were bulk filers, that is institutions with voluminous purchases. Because of the difficulty of locating invoices for purchases for the entire Class Period, particularly for bulk filers, some claimants asked to be compensated at the documented claims rate for claims attested by the claimant's own records without external support. After presentation to Special Master Farnan, claimants were given an opportunity to produce a verified transactional history together with a declaration from a person with responsibility for keeping and reviewing purchase records. Pursuant to this procedure, 73 claimants produced additional support for their timely-filed claims, and 60 produced no support, or support that was not sufficient to meet the standard identified to them after review of JND. Second Eoff Declaration, ¶ 8.c.

JND's processing of bulk filers' claims took longer than initially anticipated. Class counsel and counsel for certain bulk filers engaged in detailed negotiations and review of specific data to reach an agreement before the Special Master, and again in the course of implementing the agreed protocol. Following the Special Master's resolution of the procedure for bulk filer documentation, JND issued notice to the bulk filers indicating that they had until July 28, 2022 to submit their claims. However, individualized processing of many bulk filers' supplemental documentation was labor-intensive. Additionally, JND denied requests for additional deadline extensions, so as to adhere to the court-ordered claim deadline previously established by this Court. JND ultimately provided the final updated communication to bulk filers on June 28, 2022.

A. Timely and Properly Documented Claims

JND analyzed the Proofs of Claim it received and determined that 76,460 were timely and properly documented. Second Eoff Declaration, ¶ 8.a. These valid claims represented a Claim

Value¹ of \$67,122,035.43. *Id.* ¶ 34. Plaintiff respectfully requests that the Court approve all 76,459 timely and properly documented claims as identified in **Exhibit B-1** to the Second Eoff Declaration.

B. Untimely and Properly Documented Claims

JND received 165 untimely claims that were properly documented. Second Eoff Declaration, ¶ 8.a. These claims represent a total Claim Value of \$112,215.73. *Id.* ¶ 8.a. JND has recommended that this Court approve these claims because it believes no delay has resulted from the provisional acceptance of the late claims. *Id.* Plaintiffs agree with this analysis and also recommend that the Court approve all 165 claims as identified in **Exhibit B-2** to the Second Eoff Declaration.

C. Deficient and Ineligible Claims

Many of the Proofs of Claim submitted were incomplete, not signed, not properly documented, or were otherwise deficient. Second Eoff Declaration, ¶ 8.b. If a Proof of Claim was determined to be wholly deficient (for example, if the Proof of Claim was missing documentation for the entire claim, or if the claimant did not sign the Proof of Claim, or if the claimant did not provide enough information to calculate the Claim Value, or if the claim was determined to have no value when calculated under the Court-approved Plan of Allocation), JND sent the Claimant an Incomplete Claim Notice (Entire Claim). *Id.* ¶ 8.b. A sample Incomplete Claim Notice (Entire Claim) is attached to the Second Eoff declaration as **Exhibit C**. If a claim was determined to be partially deficient (for example, if the claimant was missing documentation for some transactions, or did not supply some transactional information), JND sent the claimant an Incomplete Claim Notice (Partial Claim). A sample Incomplete Claim Notice (Partial Claim) is attached to the Second Eoff Declaration as **Exhibit D**. JND mailed (or e-mailed in the case of Electronic Claims) approximately 1,349 Incomplete Claim Notices (Entire Claim) and approximately 167 Incomplete

¹ “Claim Value” reflects the total amount of K-Cup purchases, adjusted based on the Plan of Allocation. See ECF No. 1323-1 at 181-82, 188 (Plan of Allocation and Claim Form)

Claim Notice (Partial Claim) in connection with Proofs of Claim during the administration of the Settlement. *Id.* ¶ 8.b. These Notices are referred to collectively as “Incomplete Claim Notices.”

JND ultimately rejected 4,747 claims for the following reasons:

<u>Reason For Rejection</u>	<u>Number of Claims</u>
Non-Compensable	1,028
Duplicates	3,197
Rejected/Fraud	522

Second Eoff Declaration, ¶ 8.b.

See Second Eoff Declaration, **Exhibit E** for a table detailing the deficient and ineligible claims. Plaintiff respectfully requests that all 4,747 deficient and ineligible claims as identified in **Exhibit E** to the Second Eoff Declaration be rejected.

D. Documentation of Bulk Filer Claims

JND sent 133 additional notices to bulk filers, as in institutions with voluminous purchases. Of those 133 bulk filers, 28 did not respond. The remaining 105 bulk filer Proof of Claim responses are summarized below with JND’s recommendation for handling for Settlement payment distribution.

<u>Count</u>	<u>Status</u>	<u>JND Recommendation</u>
73	Provided declaration and/or documentation that proves purchases or explains any issues with the claim data provided.	Compensate at proof of purchase rate.
2	Declaration received that did not address the extrapolation issues in the claim data.	Compensate at no proof of purchase rate.
22	Provided declaration stating that receipts are no longer available and indicated that claim data spreadsheet was based on estimates.	Compensate at no proof of purchase rate.
8	Claimant responded but did not provide any new documentation or information.	Compensate at no proof of purchase rate.

Second Eoff Declaration, ¶ 8.c. See Second Eoff Declaration, **Exhibit F** for a table detailing the bulk filer claims.

III. PLANNED DISTRIBUTION OF THE NET SETTLEMENT FUND

Pursuant to the Stipulation, “The claims process for the distribution of the Settlement Fund will be administered by an independent claims administrator selected by Settlement Class Counsel and approved by the Court.” ECF No. 1114, Ex. 1, pg. 14, ¶ 48. Class Counsel now seek to distribute the Net Settlement Fund to the Class Members whose 76,625 claims have been accepted as set forth in **Exhibits B-1 and B-2** to the Second Eoff Declaration, in proportion to the Claim Values as shown therein.

If the funds remaining in the Settlement Fund following *pro rata* distribution(s) to all Authorized Claimants are an amount that is not cost effective or efficient to redistribute to Authorized Claimants, then Class Counsel intend to distribute such remaining funds, after payment of any further Notice and Administration Expenses, Taxes and Tax Expenses, to a non-sectarian, not-for profit organization recognized as tax-exempt under Internal Revenue Code section 501(c)(3) to be designated by the Court.

Class Counsel previously identified to the Court a recipient on such undistributed funds: Consumer Reports, a not-for profit organization recognized as tax-exempt under Internal Revenue Code section 501(c)(3) that benefits the Class in the way that the Class suffered injury, in their capacities as consumers. IPPs' Mem. of Law In Support Motion for Final Approval of Class Action Settlement with Keurig, ECF 1320, pg. 4-5 (Motion granted by Court in ECF No. 1394). Class counsel request that the Court order that any unclaimed funds remaining in the Settlement Fund following *pro rata* distribution, where it is not cost effective to redistribute to Authorized Claimants, be granted to Consumer Reports.

IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court approve and enter the [Proposed] Order Granting Unopposed Motion for Distribution of Net Settlement Fund submitted herewith.

DATED: March 14, 2023

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

/s/ Thomas H. Burt

Thomas H. Burt
Mark C. Rifkin
Patrick Donovan
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
270 Madison Avenue
New York, NY 10016
Telephone: (212) 545-4600
Facsimile: (212) 646-0114
Rifkin@whafh.com
Burt@whafh.com
Donovan@whafh.com

/s/ Robert N. Kaplan

Robert N. Kaplan

Gregory K. Arenson

Hae Sung Nam

Jason A. Uris

KAPLAN FOX & KILSHEIMER LLP

850 Third Avenue, 14th Floor

New York, NY 10022

Telephone: (212) 687-1980

Facsimile: (212) 687-7114

RKaplan@kaplanfox.com

GArenson@kaplanfox.com

hnam@kaplanfox.com

juris@kaplanfox.com

/s/ Clifford H. Pearson

Clifford H. Pearson

Daniel L. Warshaw

Matthew A. Pearson

PEARSON WARSHAW, LLP

15165 Ventura Blvd., Suite 400

Sherman Oaks, CA 91403

Telephone: (818) 788-8300

Facsimile: (818) 788-8104

cpearson@pwfirm.com

dwarshaw@pwfirm.com

mapearson@pwfirm.com

Settlement Class Counsel

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**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR
DISTRIBUTION OF CLASS SETTLEMENT FUND**

[PROPOSED] ORDER GRANTING UNOPPOSED MOTION FOR DISTRIBUTION OF
CLASS SETTLEMENT FUND

IT IS HEREBY ORDERED THAT:

1. Plaintiff's Unopposed Motion for Distribution of Class Settlement Fund is GRANTED.
2. The funds that are currently in the Net Settlement Fund¹ (less any necessary amounts to be withheld for payment of potential tax liabilities and related fees and expenses) shall be distributed on a pro rata basis to the Authorized Claimants, identified in **Exhibits B-1 and B-2** to the Declaration of Gretchen Eoff In Support of Motion For Distribution of Net Settlement Fund ("Eoff Declaration"). The funds shall be distributed pursuant to the Stipulation and the Plan of Allocation of the Net Settlement Fund set forth in the Notice of Pendency and Proposed Settlement of Class Action.
3. Any person asserting a claim submitted after January 11, 2023, is fully and forever barred from asserting such claims.
4. Any person asserting any rejected claims are finally and forever barred from asserting such claims as of January 2, 2022, the date by Court-appointed Claims Administrator, JND Legal Administration LLC ("JND"), used as a cutoff for communications regarding deficient and/or rejected notices.
5. The Court finds that the administration of the Settlement and proposed distribution of the Net Settlement Fund comply with the terms of the Stipulation and the Plan of Allocation, and that all persons involved in the review, verification, calculation, tabulation, or any other aspect of

¹ Unless otherwise defined, capitalized terms herein have the same meanings attributed to them in the Stipulation and Agreement of Settlement, dated as of September 30, 2020 (ECF No. 1114, Ex. 1, the "Stipulation").

the processing of the claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund (including, but not limited to Plaintiffs' Counsel and JND) are released and discharged from any and all claims arising out of such involvement, and all Class Members are barred from making any further claims against the Net Settlement Fund or the Released Parties beyond the amount allocated to them pursuant to this Order.

6. The checks for distribution to Authorized Claimants shall bear the notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION 180 DAYS AFTER ISSUE DATE." Plaintiffs' Counsel and JND are authorized to locate and/or contact any Authorized Claimant who has not cashed his, her, or its check within said time.

7. If any funds remain in the Net Settlement Fund by reason of undeposited checks, or otherwise, after JND has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund deposit their distribution checks, any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be used: (i) first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants who would receive at least a \$10.00 payment; (ii) second, to pay any additional Notice and Settlement Administration Costs incurred in administering the Settlement; and (iii) finally, to make a second distribution to Authorized Claimants who cashed their checks from the initial distribution and who would receive at least \$10.00 from such second distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second

distribution is economically feasible. If six (6) months after such second distribution, whether or not such distribution is undertaken, any funds that remain in the Net Settlement Fund after JND has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in this Settlement cash their checks, shall be donated to Consumer Reports, a national non-profit consumer advocacy organization for investor protection.

8. JND is hereby ordered to discard paper or hard copies of Proofs of Claims and supporting documents not less than one (1) year after all distributions of the Net Settlement Fund to the eligible claimants, and electronic copies of the same not less than three (3) years after all distributions of the Net Settlement Fund to the eligible claimants.

9. This Court retains jurisdiction over any further application or matter which may arise in connection with this action.

IT IS SO ORDERED

Dated: _____

HONORABLE VERNON S. BRODERICK
UNITED STATES DISTRICT JUDGE