

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

KIERAN O'HARA, on behalf of himself and all  
other similarly situated individuals,

Plaintiff,

vs.

DIAGEO BEER COMPANY USA & DIAGEO  
NORTH AMERICA, INC.

Defendants.

Civil Action No. 1:15-cv-14139-MLW

**ORDER GRANTING PLAINTIFF'S ASSENTED-TO MOTION FOR FINAL  
APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT**

This matter is before the Court on Plaintiff Kieran O'Hara's ("Plaintiff" or "Settlement Class Representative") Motion for Final Approval of the Proposed Class Action Settlement and entry of judgment. Plaintiff, individually and on behalf of the proposed settlement class, and Defendants Diageo Beer Company USA and Diageo North America, Inc., have entered into a First Revised Settlement Agreement and Release (ECF No. 147-2) and a Supplemental Agreement Amending First Revised Settlement Agreement and Release (ECF No. 164-1) (collectively, the "Settlement Agreement") that settles the above-captioned litigation.

On June 28, 2021, the Court granted Plaintiff's Assented-To Motion for Preliminary Approval of the Proposed Class Action Settlement (ECF No. 141), after consideration of the Motion, Plaintiff's Memorandum in Support of His Assented-To Motion for Preliminary Approval of the Proposed Class Action Settlement (ECF No. 142), and Plaintiff's Supplemental Memorandum in Support of His Assented-To Motion for Preliminary Approval (ECF No. 147), conditionally certifying a Settlement Class pursuant to Fed. R. Civ. P. 23 of:

All individuals who purchased a six-pack or twelve-pack of Guinness Extra Stout in the Commonwealth of Massachusetts between December 15, 2011, and September 3, 2015.

The Settlement Class excludes any individuals who purchased Guinness Extra Stout for resale, including distributors and retailers. The following are also excluded from the Settlement Class: (i) Defendants, (ii) any Entity in which Defendants have a controlling interest, (iii) Defendants' officers, directors, legal representatives, Successors, Subsidiaries, and assigns; and (iv) any individual who timely and validly opts-out of the Settlement Class.

*See* ECF No. 148.

Pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to opt-out, and of the right of members of the Settlement Class to be heard at a Final Fairness Hearing to determine, among other things: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with prejudice.

The Court has considered the Parties' Settlement Agreement (ECF No. 147-2 and 164-1); Plaintiff's Assented-To Motion for Final Approval of the Proposed Class Action Settlement (ECF No. 156); Plaintiff's Unopposed Fee and Expense Application (ECF No. 155); and the Parties' Joint Supplemental Memorandum in Support of Plaintiff's Assented-To Motion for Final Approval of the Proposed Class Action Settlement (ECF No. 164); together with all exhibits, and the arguments and authorities presented by the Parties and their counsel at the Final Fairness Hearing held on October 7, 2021, and the subsequent hearing held on November 17, 2021, and the record in the Action, and finding good cause shown,

For the reasons stated at the November 17, 2021 hearing, it is hereby ORDERED that:

1. Terms and phrases in this Final Approval Order and Judgment shall have the same

meaning as ascribed to them in the Parties' First Revised Settlement Agreement and Release and the Supplemental Agreement Amending the First Revised Settlement Agreement and Release.

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

3. The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval—including (i) the creation of the Settlement Website, and (ii) the dissemination of Notice via Internet—complied with the requirements of Fed. R. Civ. P. 23 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to opt-out of the Settlement Agreement, and their right to appear at the Final Fairness Hearing.

4. Seven individuals: Monica Almy; Nathan Dayberry; Aja Ramos; Anais Garcia; Sandra Caldwell; Stacey Celarie; and Asena Vaai have submitted timely Opt-Out Requests and are, therefore, excluded from the Settlement Class.

5. No Objections to the Settlement were filed.

6. The Court finds that Defendants properly and timely notified the appropriate government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

7. Defendants' notice (ECF No. 151) complied with all applicable requirements of CAFA. In addition, more than ninety (90) days have elapsed since Defendant provided notice pursuant to CAFA and the Final Fairness Hearing. *See* 28 U.S.C. § 1715(d).

8. The requirements of Fed. R. Civ. P. 23(a) and (b)(3) are met and, therefore, the Settlement Class is CERTIFIED.

9. In view of the factors considered pursuant to Fed. R. Civ. P. 23(e)(2), the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class. Therefore, the Settlement is finally APPROVED.

10. Due to potential delays by regular mail, the Court orders that the Settlement Administrator shall receive and process any claims received by mail after the end of the Claims Period on October 26, 2021, but prior to November 9, 2021. Any additional claims received by mail after November 9, 2021 will be addressed to the Parties for resolution.

11. The Parties shall implement the Settlement Agreement according to its terms and provisions. The Settlement Agreement is incorporated into this Final Approval Order and Judgment in full and shall have the full force of an Order of this Court.

12. The Action, as identified in the Settlement Agreement, is DISMISSED with prejudice.

13. Upon the Effective Date of this Final Approval Order and Judgment, Plaintiff and each and every Settlement Class Member who did not opt out of the Settlement Class (whether or not such member submits a claim), including such individuals' respective present or past heirs, executors, estates, administrators, employees, agents, insurers, attorneys, accountants, or anyone acting on their behalf shall be deemed to have released Defendants, as well as any and all of Defendants' respective present or past predecessors, successors, assigns, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, shareholders, lenders, auditors, investment advisors, legal representatives, assigns and companies, firms, trusts, and corporations from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or

unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations—including known or unknown claims, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based federal, state, local, statutory or common law or any other law, rule or regulation, against the released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the allegations in the operative complaint in this Action, or relating to any matters that were raised or could have been raised in this Action, including the labeling, advertisement, and sale of Guinness Extra Stout during the Class Period.

14. Upon the Effective Date of this Final Approval Order and Judgment, the foregoing release of claims and the Settlement Agreement will be binding on, and will have *res judicata* and preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members and Releasing Parties. All Settlement Class Members are permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on or arising out of any of the Released Claims.

15. This Final Approval Order, the Judgment to be entered hereon, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendants of any fault, wrongdoing, or liability on the part of Defendants or of the validity for litigation of any claims that have been, or could have been, asserted in the Action.

16. This Order, the Settlement, or statements made in this case shall not be offered or received in evidence in any action of proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature, or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; *provided, however*, that the Settlement, this Order, and the Judgment to be entered hereon may be filed in any action by Defendants or Settlement Class Members seeking to enforce the Settlement or the Judgment by injunctive or other relief, or to assert defenses including, but not limited to, *res judicata*, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settlement's terms shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

17. Having considered Plaintiff's Unopposed Fee and Expense Application (ECF No. 155), the Parties' Joint Supplemental Memorandum in Support of Plaintiff's Assented-To Motion for Final Approval of the Proposed Class Action Settlement (ECF No. 164), and the Supplemental Agreement Amending First Revised Settlement Agreement and Release (ECF No. 164-1), for reasons explained at the November 17, 2021 hearing, the Court AWARDS \$1,285,000.00 to Class Counsel as reasonable attorneys' fees and expenses and \$15,000.00 as a Service Award to the Settlement Class Representative/Plaintiff, Kieran O'Hara.

18. In accordance with the Settlement Agreement, Defendants shall pay \$1,300,000.00 to Forrest, Mazow, McCullough, Yasi & Yasi, P.C. within thirty (30) days after this Order approving the Settlement becomes final if no appeal is taken, or, if an appeal is taken, within thirty (30) days after Plaintiff notifies Defendants that all appeals have expired or have been exhausted

in such a manner as to affirm this Order. In addition, Defendants shall pay \$200,000.00 to the Settlement Administrator as *cy pres* awards for distribution in the amount of \$100,000.00 each to the National Consumer Law Center and Mothers Against Drunk Driving, no later than thirty (30) days after the Effective Date, as defined in Section 11.1 of the Settlement Agreement. Other payments should be made in accordance with Sections 3.14, 16.2, and 16.3 of the Settlement Agreement.

19. In the event that the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement, (a) the Settlement Agreement and this Order shall become void, shall have no further force or effect, and shall not be used in any Action or any other proceedings for any purpose other than as may be necessary to enforce the terms of the Settlement Agreement that survive termination; (b) this matter will revert to the status that existed before execution of the Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the Parties' settlement discussions, negotiations or documentation (including any briefs filed in support of preliminary or final approval of the Settlement) shall (i) be admissible into evidence for any purpose in any Action or other proceeding other than as may be necessary to enforce the terms of the Settlement Agreement that survive termination, (ii) be deemed an admission or concession by any Party regarding the validity of any Released Claim or the propriety of certifying any class against Defendants, or (iii) be deemed an admission or concession by any Party regarding the truth or falsity of any facts alleged in the Actions or the availability or lack of availability of any defense to the Released Claims.

20. The Parties, without further approval from the Court, are permitted to agree and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) if, and only if, they

are consistent in all material respects with this Final Approval Order and Judgment, and do not limit the rights of Settlement Class Members.

21. Without affecting the finality of this Final Approval Order and Judgment for purposes of appeal, until the Effective Date the Court shall retain jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement.

22. This Court hereby directs entry of this Final Approval Order and Judgment pursuant to Federal Rule of Civil Procedure 58 based upon the Court's finding that there is no just reason for delay of enforcement or appeal of this Final Approval Order and Judgment.

IT IS SO ORDERED, this 2nd day of December, 2021.

  
The Honorable Mark L. Wolf  
U.S. District Judge