

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

EHDER SOTO, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC.,

Defendant.

and

HENEY SHIHAD, individually and on
behalf of all others similarly situated

Plaintiff,

v.

WILD PLANET FOODS, INC., and DOES 1
through 25, inclusive,

Defendant.

Case No. 15-cv-05082-BLF

**SETTLEMENT APPROVAL ORDER
AND FINAL JUDGMENT**

Case No. 16-cv-01478-BLF

The above-captioned consolidated actions are brought by Plaintiffs Ehder Soto and Heney Shihad who allege that Defendant Wild Planet Foods, Inc. cheated customers by under-filling its 5-ounce cans of tuna. On December 23, 2016, the parties filed a stipulation for class action settlement (the “Settlement Agreement”).¹ ECF 44.

On May 11, 2017, the Court entered its Order Granting Preliminary Approval of Class Settlement (the “Preliminary Approval Order”). ECF 52. The Court also provisionally certified a nationwide Settlement Class for settlement purposes, approved the procedure for giving notice and

¹ Except as otherwise specified herein, the Court for purposes of this Settlement Approval Order and Final Judgment adopts all defined terms set forth in the Settlement Agreement.

1 forms of Notice, and set a final approval hearing to take place on September 14, 2017. *Id.* The
2 Settlement Class is defined as: “All residents of the United States of America who, from
3 November 5, 2011 to May 12, 2017, purchased any can of branded tuna produced by, for, or on
4 behalf Wild Planet Foods, Inc., including cans sold under the ‘Wild Planet’ brand and the
5 ‘Sustainable Seas’ brand.” Excluded from this definition are the Released Persons. Settlement
6 Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth
7 in Section V of the Settlement Agreement, shall no longer thereafter be Settlement Class Members
8 and shall not be bound by the Settlement Agreement and shall not be eligible to make a claim for
9 any benefit under the terms of this Settlement Agreement.

10 On September 14, 2017, the Court held a duly noticed final approval hearing to consider:
11 (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and
12 adequate; (2) whether a judgment should be entered dismissing the complaints on the merits and
13 with prejudice in favor of the Defendant and against all persons or entities who are Settlement
14 Class members herein who have not requested exclusion from the Settlement Class; and (3)
15 whether and in what amount to award counsel for the Settlement Class as attorneys’ fees and
16 expenses and whether and in what amount to make incentive awards.

17 The Court, having considered all matters submitted to it at the hearing and otherwise, for
18 the reasons set forth in the Court’s November 27, 2017 Order Granting Plaintiffs’ Motion for Final
19 Approval of Class Action Settlement and Motion for Attorneys’ Fees, Costs, and Incentive
20 Awards (ECF 61), IT IS HEREBY ORDERED that:

21 1. The Settlement Agreement, including the definitions contained therein, is
22 incorporated by reference into this Settlement Approval Order and Final Judgment.

23 2. The Court finds that the prerequisites for a settlement class under Federal Rules of
24 Civil Procedure (“Fed. R. Civ. P.”) 23(a) and (b)(3) have been satisfied in that: (a) the number of
25 Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b)
26 there are questions of law and fact common to the Settlement Class; (c) the claims of the
27 Representative Plaintiffs are typical of the claims of the Settlement Class they seek to represent;
28 (d) the Representative Plaintiffs have and will fairly and adequately represent the interests of the

1 Settlement Class; (e) the questions of law and fact common to the Settlement Class Members
2 predominate over any questions affecting any individual Settlement Class Member; and (f) a class
3 action is superior to the other available methods for the fair and efficient adjudication of the
4 controversy.

5 3. Pursuant to Fed. R. Civ. P. 23, this Court finally certifies this action, for purposes
6 of settlement, as a nationwide class action on behalf of: “All residents of the United States of
7 America who, from November 5, 2011 to May 12, 2017, purchased any can of branded tuna
8 produced by, for, or on behalf Wild Planet Foods, Inc., including cans sold under the ‘Wild Planet’
9 brand and the ‘Sustainable Seas’ brand.” Excluded from this definition are the Released Persons.
10 Settlement Class Members who exclude themselves from the Settlement, pursuant to the
11 procedures set forth in Section V of the Settlement Agreement, shall no longer thereafter be
12 Settlement Class Members and shall not be bound by this Settlement Agreement and shall not be
13 eligible to make a claim for any benefit under the terms of this Settlement Agreement.

14 4. The Court appoints Bursor & Fisher, P.A., Nathan & Associates, APC and Law
15 Offices of Ross Cornell, APC as counsel for the Settlement Class. The Court designates named
16 plaintiffs Ehder Soto and Heney Shihad as the Class Representatives.

17 5. Notice of the pendency of this action as a class action and of the proposed
18 settlement was given to Settlement Class Members in a manner reasonably calculated to provide
19 the best notice practicable under the circumstances. The form and method of notifying the
20 Settlement Class of the pendency of the Actions as a class action and of the terms and conditions
21 of the proposed Settlement met the requirements of Fed. R. Civ. P. 23, due process, and any other
22 applicable law, and constituted due and sufficient notice to all persons and entities entitled thereto.

23 6. The Settlement Agreement is approved as fair, reasonable and adequate, and the
24 Settlement Class Members and the Parties are directed to consummate the Settlement Agreement
25 in accordance with its terms and conditions.

26 7. Pursuant to Fed. R. Civ. P. 23(h), the Court awards Class Counsel attorneys’ fees
27 and expenses in the amount of **\$566,100**. The Court also orders payment of an incentive award in
28 the amount of **\$5000** to Edher Soto and an incentive award in the amount of **\$5000** to Heney

1 Shihad. These amounts are to be paid in the time and manner described in the Settlement
2 Agreement.

3 8. Representative Plaintiffs and all Settlement Class Members (except any such
4 person who has filed a proper and timely request for exclusion) are hereby permanently barred and
5 enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any
6 and all of the Claims against any of the Released Persons.

7 9. Effective as of the Final Settlement Approval Date, each and all of the Settlement
8 Class Members (except any such person who has filed a proper and timely request for exclusion)
9 shall release and forever discharge, and shall be forever barred from asserting, instituting, or
10 maintaining against any or all of the Released Persons, any and all claims, demands, actions
11 causes of action, lawsuits, arbitrations, damages, or liabilities whether legal, equitable, or
12 otherwise, relating in any way to the claims asserted or the factual allegations made in the Actions,
13 including without limitation the alleged under-filling of the Wild Planet Products and/or the
14 purchase of any of the Wild Planet Products at any time on or after November 5, 2011 and prior to
15 May 12, 2017 (collectively, the “Claims”). In addition, upon the Final Settlement Approval Date,
16 the Claims are hereby compromised, settled, released, discharged and dismissed as against the
17 Released Parties on the merits by virtue of the proceedings herein and this Settlement Approval
18 Order and Final Judgment.

19 10. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of
20 the negotiations or proceedings connected with it, nor any of the documents or statements referred
21 to therein shall be:

22 (a) offered by any person or received against the Defendant as evidence or
23 construed as or deemed to be evidence of any presumption, concession, or admission by the
24 Defendant of the truth of the facts alleged by the Representative Plaintiff or any Settlement Class
25 Member or the validity of any claim that has been or could have been asserted in the Actions or in
26 any litigation, or other judicial or administrative proceeding, or the deficiency of any defense that
27 has been or could have been asserted in the Actions or in any litigation, or of any liability,
28 negligence, fault or wrongdoing of the Defendant;

1 (b) offered by any person or received against the Defendant as evidence of a
2 presumption, concession or admission of any fault, misrepresentation or omission with respect to
3 any statement or written document approved or made by the Defendant or any other wrongdoing
4 by the Defendant;

5 (c) offered by any person or received against the Defendant or as evidence of a
6 presumption, concession, or admission with respect to any liability, negligence, fault, or
7 wrongdoing, or in any way referred to for any other reason against any of the settling parties, in
8 any civil, criminal, or administrative action or proceeding; provided, however, that nothing
9 contained in this paragraph shall prevent the Settlement Agreement from being used, offered, or
10 received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement
11 or the Settlement Approval Order and Final Judgment, or in which the reasonableness, fairness, or
12 good faith of the parties in participating in the Settlement (or any agreement or order relating
13 thereto) is an issue, or to enforce or effectuate provisions of the Settlement, the Settlement
14 Approval Order and Final Judgment, the releases as to the Released Persons.

15 11. Without affecting the finality of Settlement Approval Order and Final Judgment in
16 any way, this Court hereby retains continuing jurisdiction over: (a) the disposition of the
17 settlement benefits; and (b) the settling parties for purposes of construing, enforcing and
18 administering the Settlement Agreement.

19 12. Without further order of the Court, the settling parties may agree to reasonably
20 necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

21 13. In the event that the Final Settlement Approval Date does not occur, this Settlement
22 Approval Order and Final Judgment shall automatically be rendered null and void and shall be
23 vacated and, in such event, all orders entered in connection herewith shall be null and void.

24 14. The Court **HEREBY ENTERS FINAL JUDGMENT** in the consolidated Actions.

25 15. The Actions are **HEREBY DISMISSED** with prejudice and without costs as against
26 the Defendant and the Released Persons.

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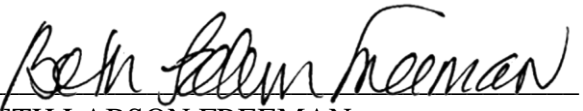
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IT IS SO ORDERED.

Dated: November 27, 2017



BETH LABSON FREEMAN
United States District Judge