

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMIT HEZI, JOSEPH NINA, and DANIEL
PRESCOD individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CELSIUS HOLDINGS, INC,

Defendant.

Case No. 1:21-cv-09892-VM

**[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND COSTS AND SERVICE
AWARDS**

On March 31, 2023, a hearing having been held before this Court on Plaintiffs' Motion for Award of Attorneys' Fees and Costs and Service Awards (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of the Actions to be fair, reasonable and adequate, and otherwise being fully informed on the premises and good cause appearing therefore; and

It appearing that the Class Notice substantially in the form approved by the Court in the Court's November 23, 2022, Order Granting Preliminary Approval of Settlement (the "Preliminary Approval Order") was distributed to the Class in accordance with the Notice Plan described in the Settlement Agreement and approved by the Court;

//

//

//

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Order incorporates by reference the definitions in the Class Action Settlement Agreement (the “Settlement”), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Settlement.

2. The Court has jurisdiction over the subject matter of the Fee Motion and all matters relating thereto, including Class Representatives, Defendant, and all members of the Settlement Class who have not timely and validly requested exclusion.

3. Notice of Class Counsel’s Fee Motion was given to all Class Members in accordance with the Court-approved Notice Plan;

4. The Court hereby grants Plaintiffs’ Motion for Award of Attorneys’ Fees and Costs and Service Awards. This amounts to one-third of the Settlement Fund (\$2,600,000) in fees, plus reimbursement of costs in the amount of \$242,294.01, which shall be paid to Class Counsel from the Settlement Fund. The Court finds that the amount of fees awarded is fair, reasonable, and appropriate under the “percentage-of-recovery” analysis.

5. The Fees and Costs Award shall be paid to Class Counsel within twenty-one (21) calendar days of entry of Judgment and subject to the terms, conditions, and obligations of the Settlement Agreement, and in particular, ¶ 3.2 thereof, which terms, conditions, and obligations are incorporated herein.

6. In making this award of fees and costs to Class Counsel, the Court has considered and found that:

(a) the Settlement has created a non-reversionary common fund of \$7,800,000 in cash that is to be fully funded seven (7) calendar days after the Effective Date, and numerous

Class Members who submit, or have submitted, valid Claims will benefit from the Settlement achieved by Class Counsel;

(b) the Settlement also provides the Class with meaningful injunctive relief, as Defendant has agreed to remove the allegedly false “No Preservatives” label attribute and adopt a “nutrition facts panel” in place of the current “dietary supplement” label;

(c) the Notice that was distributed to Settlement Class Members explained that Class Counsel was moving for attorneys’ fees in an amount not to exceed one-third of the Settlement Fund (\$2,600,000) and for reimbursement of actual costs not to exceed \$300,000;

(d) Class Counsel has prosecuted the Actions and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) Class Counsel has expended substantial time, effort, and resources pursuing the Actions on behalf of the Class;

(f) Class Counsel pursued the Actions on a contingent basis, having received no compensation during the litigation, and any fee amount has been contingent on the result achieved;

(g) the Actions involve complex factual and legal issues and, in the absence of the Settlement, would require further lengthy proceedings where the ultimate resolution of these complex issues would be uncertain;

(h) had Class Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from Defendant;

(i) Class Counsel has devoted 3,494.6 hours to litigating the Actions, with a lodestar value of \$2,648,727, to achieve the Settlement;

(j) public policy considerations favor the award of reasonable attorneys' fees and expenses in consumer protection class action litigation; and

(k) the attorneys' fees and costs awarded are fair and reasonable, and consistent with awards in similar cases within the Second Circuit.

7. Class Representative Daniel Prescod is hereby awarded \$10,000 as a Service Award in recognition of his substantial assistance in prosecuting the Actions, and as compensation for his expenditure of time, effort, and resources in diligently discharging his duties as Class Representative.

8. Class Representatives Amit Hezi and Joseph Nina are hereby awarded \$5,000 each as Service Awards in recognition of their substantial assistance in prosecuting the Actions, and as compensation for their expenditure of time, effort, and resources in diligently discharging their duties as Class Representatives.

IT IS SO ORDERED.

Dated: _____

The Honorable Victor Marrero
United States District Judge