

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Kelly Forrester, Sonya Bolen, and
Stephanie Watson, Individually and as
Class Representatives,

Plaintiffs,

vs.

La Carreta, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2019-CP-18-00234

**SECOND AMENDED CONSENT
ORDER PRELIMINARILY APPROVING
CLASS SETTLEMENT AND CLASS
NOTICE**

This matter is before the Court on the joint motion of Plaintiffs and Defendant for preliminary court approval of a class-wide settlement reached between the parties, including approval of the notice informing class members of the settlement terms and their rights under the settlement. The Honorable Maite Murphy previously approved this class settlement Consent Order. However, the parties now wish to amend the Order to extend claims-related deadlines provided in Exhibit No. 1 referenced herein. Therefore, upon consent of the parties and after a thorough hearing on the record, this Court now amends and reapproves this Order and its attached Exhibit No. 1.

FACTS

Defendant is a restaurant operating in Summerville, South Carolina. Plaintiffs allege that in November and December 2018, approximately 290 people became ill after consuming food at the restaurant. Defendant has denied those allegations.

On February 5, 2019, Plaintiff Kelly Forrester filed a Complaint against Defendant. On February 20, 2020, Plaintiff Kelly Forrester filed an Amended Complaint naming Sonya Bolen and Stephanie Watson as additional, proposed Class Representatives. On

April 8, 2019, Defendant answered the Complaint. On April 9, 2019, Plaintiffs moved to certify the class action.

On June 16, 2019, the Court certified the following class with consent of the parties:

All South Carolina residents who consumed food at La Carreta during November and December 2018, and who suffered gastrointestinal illnesses or other injuries arising from the food they consumed.

The Court appointed Kelly Forrester, Sonya Bolen, and Stephanie Watson as Class Representatives, and appointed Pierce, Sloan, Wilson, Kennedy & Early, LLC ("Pierce Sloan") as class counsel. Defendant reserved their right to decertify or modify the class as provided by Rule 23, SCRCP.

After the Court certified the class action and appointed Pierce Sloan as Class Counsel, Pierce Sloan consulted with John C. Bohren II, Esq., Wigger Law Firm, and Ron Simon & Associates, attorneys who represented several members of the class in a personal capacity. Class Counsel Pierce Sloan has agreed to compensate Mr. Bohren, Wigger Law Firm, and Ron Simon & Associates from the amount paid to Pierce Sloan as attorneys' fees. Defendant has been informed of this arrangement and agreed to it.

THE SETTLEMENT

Following class certification, Class Counsel and Defendant entered arms' length negotiations and reached a proposed Class Settlement. The parties seek preliminary approval of the (1) proposed Class Settlement, (2) Notice of Class Settlement to be sent to all known class members, and (3) approval of the claims procedure. The terms of the proposed Class Settlement are as follows:

1. Defendant's insurer will create a Settlement Fund of \$712,000, subject to increase based on the number of claims submitted by those who provide evidence of

medical treatment, as set forth in the foregoing paragraphs. Defendant and their insurer will not be obligated to pay more than \$1 million with respect to this Class Settlement.

2. The Settlement Class is the same class as the previously certified class: All South Carolina residents who consumed food at La Carreta during November and December of 2018 and who suffered gastrointestinal illnesses or other injuries arising from the food they consumed.
3. Each class member who submits a claim and provides evidence of medical treatment related to the consumption of food at La Carreta will receive the greater of (a) three times the amount of medical bills submitted, or (b) Five Thousand Dollars (\$5,000.00).
4. Each class member who submits a claim, but does not provide evidence of medical treatment, must provide (1) proof of purchase, and a signed Affidavit affirming the class member's contraction of gastrointestinal illness, or (2) a complaint submitted to DHEC with their contact information, and a signed Affidavit regarding gastrointestinal issues.
5. Of the aforementioned settlement fund, Defendant's insurer will allocate Two Hundred Thousand Dollars (\$200,000.00) to the category mentioned in the preceding paragraph. Each class member who meets the requirements set forth in the preceding paragraph will receive the lesser of: (a) the pro rata amount remaining after all other claims and costs have been paid, or (b) One Thousand Dollars (\$1,000.00). In other words, class members without evidence of medical treatment will receive no more than One Thousand Dollars (\$1,000.00).
6. Class Counsel will receive Two Hundred Fifteen Dollars (\$215,000.00) as compensation for costs and attorney fees to be paid from the settlement fund.

7. Suzanne Klok, Esq. of Klok Law Firm, LLC is appointed as the class settlement administrator. All fees and expenses incurred by Suzanne Klok, Esq. of Klok Law Firm, LLC will be drawn from the lump sum paid to Class Counsel, as referenced in Paragraph 6.

8. This is an opt-out class. All class members will remain class members and subject to the terms of this Class Settlement, unless and until they timely file a request to be excluded from the class.

9. If more than 30 members of the Class opt-out, Defendant will have the sole option, but not the obligation, to withdraw from and cancel the Class Settlement.

10. The class settlement administrator will return unclaimed amounts from the Settlement Fund to Defendant's insurer at the end of the settlement process.

PROPOSED NOTICE AND CLAIMS PROCEDURE

Following preliminary approval by the Court, a copy of the Notice of Settlement and Claim Form, attached hereto as Exhibit No. 1, will be mailed directly to all Class Members identified by the parties. Class Counsel and Defendant will make all reasonable efforts to identify as many Class Members as possible. Notice shall be sent within thirty (30) days of this Preliminary Order, but the parties are authorized the send notices to additional Class Members identified after thirty (30) days.

In addition, notice of the Class Settlement and contact information for the Settlement Administrator will be published in The Post & Courier and a nationally circulated news publication once a week for three weeks no later than thirty (30) days following entry of this Preliminary Order. The Claims Administrator will also set up a website with details about the Class Settlement and procedure for how to file claims. The

notice published in the nationally circulated publication will provide general notice of the settlement and crave reference to the claims administration website for further details.

The Claim Form will request proof of purchase, proof of medical expenses or other out-of-pocket losses, proof of a DHEC complaint, and/or a signed Affidavit and/or attestation regarding gastrointestinal illness ("Proof of Loss") as outlined in the preceding Paragraphs 3, 4, and 5. Defendant reserves the right to contest any Proof of Loss submitted. Defendant and Class Counsel will attempt to resolve disputes over Proof of Loss. Each member of the Settlement Class, whose Proof of Loss is rejected or partially rejected, will have an opportunity to appeal to the Court as to the sufficiency of the Proof of Loss.

Each Claim Form sets out the notice and review process, including deadlines to opt-out of the class settlement, object to the class settlement, object to the application for attorney fees and costs, and submit a Claim Form. Additionally, it will provide information about the Final Fairness Hearing and the Appeals and Distribution Hearing.

The deadline for submission of Claim Forms will be no later than thirty (30) days prior to the Final Fairness Hearing, but Class Members identified (or with addresses identified) after that deadline may be given additional time, up to the date of the Final Fairness Hearing, to submit a Claim Form and/or Objections.

FINDINGS AND RULINGS

Rule 23(c), SCRCP, states:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

There is a "strong judicial policy in favor of settlements, particularly in the class

action context." *In re Paine Webber Ltd. P 'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998). "[S]ettlement classes have proved to be quite useful in resolving major class action disputes. While their use may still be controversial, most courts have recognized their utility and have authorized the parties to seek to compromise their differences including class action issues, through this means." *S. Carolina Nat. Bank v. Stone*, 749 F. Supp. 1419, 1428-29 (D.S.C. 1990).

a. The Court preliminarily finds that the proposed Class Settlement is the result of arms' length negotiation between experienced and well-informed counsel and is a fair, just, and reasonable resolution of the disputes between the parties and is in the best interest of the class members.

b. Having reviewed the proposed Notice of Settlement and Claim Form, attached as Exhibit No. 1 hereto, the Court finds that the form and manner of notice proposed by the parties meets the requirements of due process and Rule 23, SCRCP, provides the best notice practicable under the circumstances, and constitutes sufficient notice to all persons entitled to notice. Therefore, the Court hereby approves such Notice and directs that the Notice be delivered to Class Members by First Class Mail, if address information is available, and by publication notice. The Court approves Suzanne Klok, Esq. of Klok Law Firm, LLC as class administrator herein.

c. This is an opt-out class. Any Class Member who desires to request exclusion from the Settlement Class must submit a written Statement of Exclusion in the manner required by the Notice of Settlement and mailed to the Class Settlement Administrator at the address provided in the Notice of Settlement by the deadline set forth in the class notice.

d. A hearing will be held before the Presiding Judge of the Court of Common Pleas for Dorchester County ("Final Settlement Hearing") to determine: (a) whether the Proposed Settlement set forth in the Agreement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Classes; (b) whether the requested attorneys' fees and costs and administrative costs are fair and reasonable; and (c) whether a final judgment should be entered dismissing the claims of Plaintiffs and the Class Members with prejudice and on the merits, as required by the Agreement. At the Final Settlement Hearing, the Court will also resolve any disputes regarding Proofs of Loss submitted by Class Members and timely objected to by Defendant.

e. Application for an award of attorney fees, costs, and expenses to Class Counsel ("Fee Petition") must be filed and served at least thirty (30) days in advance of the Fairness Hearing and will be considered by the Court at the Fairness Hearing.

f. Defendant's objections to Proof of Loss submitted by Class Members must be filed and served at least thirty (30) days in advance of the Fairness Hearing and will be considered by the Court at the Fairness Hearing. Service will include service on the Class Member who submitted the Proof of Loss. Any Proofs of Loss to which Defendant does not object will be accepted as final. A Class Member may respond to Defendant's objections, including providing additional documentation or support for a Proof of Loss, before the Fairness Hearing.

g. Any Class Member who objects to the terms of the Class Settlement may appear at the Final Settlement Hearing and be heard as to why the Class Settlement should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a final judgment should not be entered thereon. Any such Class

Member must serve and file written objections in the form and manner required by the Notice of Settlement. Such written objections must be filed with the Court no later than ten (10) days before the Fairness Hearing, must contain the objector's full name, telephone number, and current address, must declare that the objector is a member of the Class, and must provide a detailed statement of specific objections to any matter before the Court and the grounds therefore. Copies of all materials also must be filed with the Clerk of Court and served upon counsel at the following addresses:

The Honorable Cheryl Graham
Dorchester County Clerk of Court
5200 E. Jim Bilton Blvd.
St. George, SC 29477

Carl E. Pierce, II, Esquire
Pierce, Sloan, Wilson, Kennedy & Early, LLC
P.O. Box 22437
Charleston, SC 29413

Penn W. Ely, Esquire
Clawson & Staubes, LLC
126 Seven Farms Dr., Ste. 200
Charleston, SC 29492

h. Following the Final Settlement Hearing, the Court will issue a Final Order approving disbursement of the Settlement Fund in accordance with the Court's findings. Disbursement will commence once the Final Order is no longer subject to appeal. Disbursement will include the return of unused Settlement Funds to Defendant's insurer.

i. Upon the entry of Final Order after the Final Settlement Hearing, Plaintiffs and all Class Members (except those who have served a timely Statement of Exclusion) will be forever barred from asserting against Defendant any claims arising from the consumption of food prepared or sold at La Carreta during November and December

of 2018 and who suffered gastrointestinal illnesses or other injuries arising from the food they consumed, and Plaintiffs and all Class Members will be conclusively deemed to have released any and all such claims.

j. The parties are ordered to take all reasonable steps necessary to complete this settlement.

IT IS SO ORDERED.

Hon. Diane S. Goodstein

_____, South Carolina



Dorchester Common Pleas

Case Caption: Kelly Forrester , plaintiff, et al VS La Carreta Inc

Case Number: 2019CP1800234

Type: Order/Consent Order

It is so Ordered!

s/Diane S. Goodstein