

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

VICKI LINNEMAN, <i>et al.</i> , On Behalf of	:	CASE NO. 1:15-cv-748
Themselves and all Others Similarly Situated,	:	
	:	
Plaintiffs,	:	(Judge Susan J. Dlott)
	:	(Magistrate Judge Stephanie K. Bowman)
v.	:	
	:	
VITA-MIX CORPORATION, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

This matter comes before the Court on Plaintiffs’ Corrected and Amended Motion for Preliminary Approval of Class Action Settlement (“Motion”). The Court has reviewed the Motion and the Class Action Settlement Agreement and Release dated September 26, 2017 (“Agreement”)<sup>1</sup> entered into by Plaintiffs with Vita-Mix Corporation, Vita-Mix Management Corporation, and Vita-Mix Manufacturing Corporation (collectively, “Defendants” or “Vita-Mix”), and attached exhibits, and finds that the Motion should be **GRANTED**.

**NOW, THEREFORE**, the Court hereby **FINDS, CONCLUDES AND ORDERS**:

1. The Court does hereby preliminarily and conditionally approve, for settlement purposes, the following Class:

All Persons domiciled within the United States and its territories who: (a) own a Vitamix household blender with a blade assembly dated on or after January 1, 2007 but before October 1, 2016; or (b) own a Vitamix commercial blender that was (i) purchased on or after September 15, 2015

<sup>1</sup> All capitalized terms used in this Order shall have the same meanings as set forth in the Agreement.

but before August 9, 2016 or before April 7, 2017 in the case of a commercial blender from the XL product line, (ii) never used in connection with the Replacement Seal, and (iii) purchased through a third-party, such as a dealer, distributor, or restaurant supply store and not acquired directly from Vita-Mix. Excluded from the Class are Defendants and their officers and directors; Class Counsel and their partners, associates, lawyers, and employees; and the judicial officers and their immediate family members and associated Court staff assigned to this case. Also excluded from the Class are persons who own one or more of the blenders described in this Section received as a benefit, gift, award, or compensation directly from Vita-Mix in connection with such person's work for Vita-Mix unless such person separately purchased any blender(s) described in this Section, in which case their eligibility for class membership and benefits is limited to any such purchased blender(s).

2. Based upon information provided: the class is ascertainable; it numbers in the millions, satisfying numerosity; there are common questions of law and fact, including whether the seal at issue was defective, satisfying commonality; the proposed Class Representatives' claims are typical, in that they are members of the Class and allege they have been damaged by the same conduct as other members of the Class; proposed Class Representatives and Class Counsel can fully, fairly, and adequately protect the interests of the Class; question of law and fact common to members of the Class predominate over questions affecting only individual members for settlement purposes; and a nationwide class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this controversy.
3. The Court appoints Named Plaintiffs Vicki A. Linneman and Obadiah N. Ritchey as the Class Representatives of the Class.
4. The Court appoints Bill Markovits and Paul M. DeMarco of Markovits, Stock & DeMarco, LLC, Jeffrey S. Goldenberg of Goldenberg Schneider, L.P.A., and Justin C. Walker of the Finney Law Firm, LLC as Class Counsel for the Class.

5. The Court appoints JND Legal Administration as Settlement Administrator.
6. The Court does hereby preliminary approve the Settlement, including the notices and the releases contained therein as being fair, reasonable, and adequate as to Class Members, subject to further consideration at the Fairness Hearing described below.
7. A hearing (the "Fairness Hearing") shall be held before the Court on March 27, 2018 at 10:00 a.m. for the following purposes:
  - a. To determine whether the proposed Settlement on the terms and conditions provided for by the Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court;
  - b. To determine whether a Final Approval Order, as defined in the Agreement, should be entered;
  - c. To determine whether the claims process under the Settlement is fair and reasonable and should be approved by the Court;
  - d. To determine whether Plaintiffs' application for attorneys' fees and reimbursement of expenses, and requested Service Awards for the Class Representatives should be approved; and
  - e. To rule upon such other matters as the Court may deem appropriate.
8. The Court approves, as to form and content, the Short Form Settlement Notice (which includes a perforated Proof of Claim Form), Settlement Notice, Publication Notice, electronic Claim Form, and finds that the mailing, distribution, and publishing of the various notices in the form and manner set forth in paragraph 10 of this Order meet the requirements of Fed. R. Civ. P. 23 and due process, and is the best notice

practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled to notice.

9. The Complaint was commenced after February 18, 2005. The Court directs Vita-Mix to notify the appropriate Federal and State officials under the Class Action Fairness Act of 2005, 28 U.S.C. §1715. Counsel for Vita-Mix shall, at or before the Fairness Hearing, file with the Court proof of compliance with the Class Action Fairness Act of 2005, 28 U.S.C. §1715.

10. The firm of JND Legal Administration (“Settlement Administrator”) is hereby appointed, under the supervision of Class Counsel, to administer the notice procedure as well as the processing of claims as more fully set forth below:

- a. No later than February 6, 2018: i) Class Counsel shall cause a copy of the Short Form Settlement Notice, substantially in the form as presented to the Court, to be emailed or mailed by first class mail to all potential Class Members who can be identified with reasonable effort; ii) Class Counsel shall cause the Settlement Notice, substantially in the form attached as Exhibit 7 to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, to be posted on the Settlement Website, along with other relevant court documents and settlement information; iii) Vita-Mix shall prominently display on its internet landing page a notice of settlement, with a link to the Settlement Notice; Class Counsel shall cause the Publication Notice, substantially in the form as presented to the Court, to be published once in magazines that may include or be similar to *Cooking Light*, *Good Housekeeping*, and *People*, and over PR Newswire in English and Spanish, or as otherwise ordered by the

Court; iv) Class Counsel shall cause online and social media notice, substantially in the form presented to the Court, to be disseminated online and on social media through targeted placement; v) Class Counsel shall cause the electronic Claim Form, substantially in the form presented to the Court, to be published and made available on the Class Website;

b. No later than February 6, 2018, Class Counsel shall cause proof, by affidavit or declaration, of such mailing and publishing to be filed with the Court.

11. To be entitled to make a claim under the Settlement, in the event the Settlement is effected in accordance with the terms and conditions set forth in the Agreement, each Class Member shall take the following actions and be subject to the following conditions:

a. A properly executed electronic or hard copy Claim Form must be submitted to the Settlement Administrator no later than September 28, 2018. Such deadline may be extended by Court Order. Each Claim Form submitted via U.S. Mail shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first class mail). Each Claim Form electronically submitted shall be deemed to be submitted when transmitted. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated by the Settlement Notice. Any Class Member who does not submit a Claim Form within the time limit provided shall be barred from receiving any benefit, unless otherwise ordered by the Court. Notwithstanding the foregoing, Class

Counsel shall have discretion to accept late-submitted claims for processing by the Settlement Administrator so long as Vita-Mix is in agreement.

- b. The Claim Form submitted by each Class Member must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding subparagraph.
- c. As part of the Claim Form, each Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall (subject to effectuation of the Settlement) release all Settled Class Claims as provided in the Agreement.

12. All Class Members shall be bound by all determinations and judgments in the class action concerning the Settlement, including, but not limited to, the releases provided for in the Agreement, whether favorable or unfavorable, except those who timely and validly requested exclusion from the Class and have not opted back in. The persons and entities who timely and validly requested exclusion from the Class will be excluded from the Class and shall not have rights under the Agreement, shall not be entitled to submit any Claim Forms, and shall not be bound by the Agreement or the Final Approval Order as to Vita-Mix in the class action.

13. Pending final determination of whether the Agreement should be approved, Class Counsel, Plaintiffs, and Class Members are barred and enjoined from commencing or prosecuting any action asserting any Settled Class Claims against Vita-Mix.

14. Any Class Member may enter an appearance in the Lawsuit, individually or, at their own expense, through counsel of their own choice, in which case such counsel must file with the Clerk of Court and deliver to Class Counsel and counsel for Vita-Mix a

notice of such appearance no later than March 7, 2018. If they do not enter an appearance, they will be represented by Class Counsel.

15. All papers in support of the Settlement, Class Counsel's Fee Application, and requests for Service Awards for the Class Representatives shall be filed no later than January 31, 2018.

16. Any Class Member may appear and show cause, if he, she, or it has any reason why the proposed Settlement should not be approved as fair, reasonable, and adequate, or why Class Counsel's application for an award of attorneys' fees and for reimbursement of expenses should not be granted; provided, however, that no person shall be heard or entitled to contest such matters unless that person has delivered by hand or sent by first-class mail sufficient written objections and copies of all papers and briefs, consistent with the Settlement Agreement, any such person wishes to submit in support of any such objection delivered or post-marked no later than March 7, 2018 to each of the following:

OFFICE OF THE CLERK  
Potter Stewart U.S. Courthouse  
Room 103  
100 East Fifth Street  
Cincinnati, Ohio 45202

MARKOVITS, STOCK & DeMARCO, LLC  
W.B Markovits, Esq./Paul M. DeMarco, Esq.  
3825 Edwards Rd., Suite 650  
Cincinnati, Ohio 45209  
*Class Counsel*

PORTER WRIGHT MORRIS & ARTHUR LLP  
Tracey L. Turnbull  
950 Main Avenue, Suite 500  
Cleveland, OH 44113  
*Counsel for Vita-Mix*

VITAMIX SETTLEMENT ADMINISTRATOR  
c/o JND LEGAL ADMINISTRATION  
PO Box 7028  
Broomfield, CO 80021

17. Any person who does not make his, her, or its objection in the manner provided in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the Agreement, unless otherwise ordered by the Court. Any papers in response to any such objections or in further support of the above-named motions shall be filed no later than March 14, 2018.
18. This Order, the Agreement, and the Settlement, and any of their terms, and all negotiations, discussions, and proceedings in connection with this Order, the Agreement, and the Settlement, shall not constitute evidence, or an admission by Vita-Mix, that any acts of wrongdoing have been committed and shall not be deemed to create any inference that there is any liability on the part of Vita-Mix. This Order, the Agreement, and the Settlement and any of their terms, and all negotiations, discussions and proceedings in connection with this Order, the Agreement, and the Settlement shall not be offered or received in evidence or used for any purpose in this or any other proceeding in any court, administrative agency, arbitration tribunal, or other forum of any kind or character in the United States or any other country except as necessary to enforce the terms of this Order or the Settlement.
19. Any third-party retailer and/or distributor of Vitamix blenders must reasonably produce Class Member information to Class Counsel for the purpose of assisting Class Counsel in identifying and/or contacting Class Members to provide notice of this Settlement.



20. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications or matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Plaintiffs and Vita-Mix, if appropriate, without further notice to the Class.

Dated: October 31, 2017

  
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HONORABLE SUSAN J. DLOTT  
UNITED STATES DISTRICT JUDGE