

VENTURA
SUPERIOR COURT
FILED

AUG 17 2020

MICHAEL D. PLANET
Executive Officer and Clerk
BY:  Deputy
D. ARREOLA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

EMMA BRENNER, et al.,
Plaintiffs,
v.
KEVITA, INC.,
Defendant.

CASE NO. 56-2017-00502340-CU-FR-VTA

~~[PROPOSED]~~ ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, PROVISIONALLY
CERTIFYING A NATIONWIDE CLASS,
APPROVING PROPOSED NOTICE, AND
SCHEDULING FAIRNESS HEARING

ASSIGNED FOR ALL PURPOSES TO:
HON. MARK S. BORRELL
DEPARTMENT 40

Action Filed: October 4, 2017
Trial Date: None Set

1 Upon review and consideration of the Settlement and all Exhibits thereto that have been
2 filed with the Court, pursuant to California Rule of Court 3.769, it is HEREBY ORDERED,
3 ADJUDGED and DECREED as follows:

4 1. The Court has carefully reviewed the Settlement, as well as the files, records, and
5 proceedings to date in this matter. The definitions in the Settlement are hereby incorporated as
6 though fully set forth in this Order, and capitalized terms shall have the meanings attributed to them
7 in the Settlement.

8 2. The Parties have agreed to settle the Action upon the terms and conditions set forth
9 in the Settlement that has been filed with the Court. The Settlement, including all Exhibits thereto,
10 is preliminarily approved as fair, reasonable, and adequate. Plaintiffs, by and through their counsel,
11 conducted an investigation into the facts and law relating to the matters alleged in their Complaint,
12 including into (i) marketing, advertising, and labeling of the Products; (ii) sales, pricing, consumer,
13 distribution, and financial data; and (iii) Plaintiffs' own documents and information relating to the
14 Products. There was also extensive pretrial discovery, including the production of thousands of
15 documents, written responses to dozens of written discovery requests, including special
16 interrogatories and requests for production, and depositions of numerous witnesses. The Settlement
17 was reached as a result of extensive arms'-length negotiations between the Parties and their counsel,
18 facilitated by an in-person mediation session with a respected mediator, the Honorable Richard
19 Kramer (Retired). The Settlement provides meaningful relief to the Class (including cash payments
20 and label modifications), particularly in light of the modest damages that Plaintiffs and Class
21 Counsel believe are potentially recoverable or provable at trial without the costs, uncertainties,
22 delays, and other risks associated with continued litigation, trial, and/or appeal.

23 3. The Court provisionally certifies, for settlement purposes only, a Class of all persons
24 and entities in the United States and all U.S. territories (including, but not limited to, the
25 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern
26 Mariana Islands, and the other territories and possessions of the United States) who purchased one
27 or more bottles of the Products prior to and including the Notice Date. Excluded from the Class are
28 (a) all persons who are employees, directors, officers, and agents of KeVita, or its subsidiaries and

1 affiliated companies; (b) persons or entities who purchased the Products primarily for the purposes
2 of resale; (c) governmental entities; (d) persons who timely and properly exclude themselves from
3 the Class as provided in the Settlement; and (e) the Court, the Court's immediate family, and Court
4 staff.

5 4. The Court provisionally finds, for settlement purposes only and conditioned upon the
6 entry of this Order and subject to final findings and ratification in the Final Order and Judgment,
7 and the occurrence of the Effective Date, that the prerequisites for a class action under Section 382
8 of California's Code of Civil Procedure have been satisfied in that: (a) the number of Class
9 Members is so numerous that joinder of all Members thereof is impracticable; (b) there are
10 questions of law and fact common to the Class; (c) the claims of the Plaintiffs are typical of the
11 claims of the Class they seek to represent; (d) the Plaintiffs have fairly and adequately represented
12 the interests of the Class and will continue to do so, and the Plaintiffs have retained experienced
13 counsel to represent them; (e) the questions of law and fact common to the Class Members
14 predominate over any questions affecting any individual Class Member; (f) a class action is superior
15 to the other available methods for the fair and efficient adjudication of the controversy; and (g) the
16 Class is ascertainable. All of these findings are made for settlement purposes only.

17 5. The Court appoints the firm of Bradley/Grombacher LLP as counsel for the Class
18 ("Class Counsel"). For purposes of these settlement approval proceedings, the Court finds that this
19 law firm is competent and capable of exercising their responsibilities as Class Counsel. The Court
20 designates named Plaintiffs Emma Brenner, Jonathan Grindell, Adrienne Hirka, Addison Horine,
21 Jessica Torres, Constance Coffin, Ray Glass, Harvey Sitnick, Cindy Prince, Kailee Cenis, Suzy
22 Ramirez, Jason Miller, Todd Cook, Lauri Sincavage, Patrick DeCola, Misty Stemple, Travis
23 Weaver, Rayona Young, and Michael Morelli as the representatives of the Class.

24 6. The Fairness Hearing shall be held before this Court on **January 20, 2021, at 8:20**
25 **a.m.**, to determine whether the Settlement is fair, reasonable, and adequate, and whether it should
26 receive final approval. The Court will also address Class Counsel's application for an award of
27 Attorneys' Fees and Expenses and Incentive Awards for the Plaintiffs (collectively, the "Fee
28 Application") at that time. Papers in support of final approval of the Settlement and the Fee

1 Application shall be filed with the Court according to the schedule set forth in Paragraph 18 below.
2 The Fairness Hearing may be postponed, adjourned, or continued by order of the Court without
3 further notice to the Class. After the Fairness Hearing, the Court may enter a Final Order and
4 Judgment in accordance with the Settlement that will adjudicate the rights of the Class Members (as
5 defined in the Settlement) with respect to the claims being settled.

6 7. Pending the Fairness Hearing, all proceedings in the Action, other than proceedings
7 necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are
8 stayed.

9 8. The Court approves, as to form and content, the Long Form Notice of Pendency and
10 Settlement of Class Action (“Long Form Notice”) and the Summary Notice, attached as Exhibits
11 “D” and “E,” respectively, to the Settlement. The Court further approves the Notice Plan set forth
12 in the Declaration of the Settlement Administrator, attached as Exhibit “H” to the Settlement, and as
13 further explained in the Joint Statement Regarding Class Notice filed on August 13, 2020.

14 9. The Court finds that the Long Form Notice, Summary Notice, and Notice Plan are
15 reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to receive
16 notice, and that they meet the requirements of due process and California Rule of Court 3.769(f).
17 Specifically, the Court finds that the manner of dissemination of the Long Form Notice and
18 Summary Notice described in the Declaration of the Settlement Administrator (Exhibit “H”)
19 complies with Rule 3.769(f), as it is also the best practicable notice under the circumstances, given
20 the manner in which Defendant sells the Products, and is reasonably calculated, under all the
21 circumstances, to apprise members of the class of the pendency of this Action, the terms of the
22 Settlement, and their right to object to the Settlement or exclude themselves from the Class. Notice
23 shall be issued no later than September 16, 2020 (the “Notice Date”). Notice shall include (a) a
24 digital media component, to begin no later than the Notice Date and to conclude no later than 30
25 days after the Notice Date; (b) a Press Release, to be issued on the Notice Date through PR
26 Newswire; (c) a print notice in People Magazine, to be issued within one week of the Notice Date;
27 (d) a print notice in the Ventura County Star, to be issued within one week of the Notice Date, and
28 to be re-run once per week for three consecutive weeks; and (e) a print notice in the territorial

1 newspapers identified in paragraph 23 of the Declaration of the Settlement Administrator, attached
2 to the Settlement Agreement as Exhibit “H,” to be issued within two weeks of the Notice Date. The
3 parties will also monitor claims and may provide additional notice if necessary.

4 10. Class Members will have 120 days total, beginning on the Notice Date, to submit
5 their Claim Forms, which the Court finds is adequate and sufficient time.

6 11. Each member of the Class who wishes to be excluded from (*i.e.*, opt out of) the Class
7 and follows the procedures set forth in this Paragraph shall be excluded. Members of the Class
8 wishing to exclude themselves from the Settlement must send to the Settlement Administrator by
9 U.S. mail (to the following address: Heffler Claims Group, PO Box 41920 Philadelphia, PA 19102-
10 1920) a personally signed letter including (a) their full name; (b) current address; (c) a clear
11 statement communicating that they elect to be excluded from the Class, do not wish to be a Class
12 Member, understand that they will not receive any monetary benefit under the Settlement, and that
13 they elect to be excluded from any judgment entered pursuant to the Settlement; (d) their original
14 signature; and (e) the case name and case number (*Brenner v. KeVita, Inc.*, Case No. 56-2017-
15 00502340-CU-VTA). Any request for exclusion (*i.e.*, to opt out) must be postmarked no later than
16 December 15, 2020. All persons who properly elect to opt out of the Settlement shall not be Class
17 Members and shall relinquish their rights and eligibility for Benefits under the Settlement, should it
18 be finally approved, and may not file an objection to the Settlement or appear at the Fairness
19 Hearing.

20 12. Any member of the Class who fails to submit a valid and timely request for
21 exclusion shall be bound by all terms of the Settlement and the Final Order and Final Judgment.

22 13. Class Members may object to the terms and conditions of the Settlement, the
23 certification of the Class, the entry of the Final Order and Judgment, the amount of Attorney’s Fees
24 and Expenses requested by Class Counsel, and/or the amount of the Incentive Awards requested by
25 the Plaintiffs, by filing a written objection with the Court and serving the written objection upon
26 Class Counsel and Defense Counsel (as defined in the Settlement) in the manner set forth in
27 paragraph 14. Class Members who fail to file with the Court and serve upon Class Counsel and
28 Defense Counsel timely written objections in the manner specified in the Settlement, the Long Form

1 Notice, and the Summary Notice shall be deemed to have waived all objections and shall be
2 foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The
3 Court will not consider written objections that are mailed to the Court and not filed, or objections
4 that are served on the Parties but not filed with the Court.

5 14. Class Members who object must set forth (a) their full name; (b) current address;
6 (c) a written statement of their objection(s) and the reasons for each objection; (d) a statement of
7 whether they intend to appear at the Fairness Hearing, and if so, whether they will appear with
8 separate counsel; (e) their signature; (f) the case name and case number (*Brenner v. KeVita, Inc.*,
9 Case No. 56-2017-00502340-CU-VTA); and (g) a detailed list of any other objections submitted by
10 the Class Member, or his/her counsel, to any class actions submitted in any court, whether state or
11 otherwise, in the United States in the previous five (5) years. If the Class Member or his/her
12 counsel has not objected to any other class action settlement in any court in the United States in the
13 previous five (5) years, he/she shall affirmatively state so in the written materials provided in
14 connection with the Objection to this Settlement. No Class Member shall be entitled to be heard at
15 the Fairness Hearing (whether individually or through separate counsel) or to object to the
16 Settlement, and no written objections or briefs submitted by any Class Member shall be received or
17 considered by the Court at the Fairness Hearing, unless copies of any written objections and/or
18 briefs, along with the Class Member's statement of intent to appear at the Fairness Hearing, have
19 been filed with the Court and served via fax, U.S. mail, or email on the Settlement Administrator, as
20 well as via U.S. mail or email to Class Counsel and Defense Counsel at the addresses set forth
21 below by December 30, 2020. Class Members who intend to appear but do not object to the
22 Settlement shall file a Notice of Appearance by January 6, 2021.

23 Objections must be served as follows:

24 Upon Settlement Administrator at:

25 Heffler Claims Group
26 PO Box 41920
27 Philadelphia, PA 19102-1920
28 E-mail: info@masterbrewsettlement.com

Upon Class Counsel at:

1 Marcus Bradley
2 Kiley Grombacher
3 BRADLEY/GROMBACHER LLP
4 2815 Townsgate Road, Suite 130
5 Westlake Village, CA 91361
6 E-mail: kgrombacher@bradleygrombacher.com

7 Upon Defense Counsel at:

8 Daniel W. Nelson
9 Chantale Fiebig
10 GIBSON, DUNN & CRUTCHER LLP
11 1050 Connecticut Ave. NW
12 Washington, DC 20036-5306
13 E-mail: cfiebig@gibsondunn.com

14 15. Class Counsel shall file their Fee Application on or before December 15, 2020.

15 16. Papers in support of final approval of the Settlement shall be filed with the Court on
16 or before December 15, 2020.

17 17. Responses to objections to the Settlement or Fee Application shall be filed with the
18 Court on or before January 13, 2021.

19 18. In summary, the deadlines set by this Order are as follows:

20 (a) The Long Form Notice shall be published within thirty (30) days after the
21 entry of this Order;

22 (b) The Summary Notice shall be published within thirty (30) days after the entry
23 of this Order;

24 (c) Class Counsel shall file their Fee Application on or before December 15,
25 2020;

26 (d) Papers in support of final approval of the Settlement shall be filed with the
27 Court no later than December 15, 2020;

28 (e) Members of the Class who desire to be excluded shall submit requests for
exclusion postmarked no later than December 15, 2020;

(f) All written objections to the Settlement, including written notices of the
objecting Class Member's intention to appear at the Fairness Hearing, shall be filed with the
Court and served on Class Counsel and Defense Counsel no later than December 30, 2020;

1 (f) Class Members who intend to appear but do not object to the Settlement shall
2 file a Notice of Appearance by January 6, 2021;

3 (g) Responses to objections to the Settlement or the Fee Application shall be
4 filed with the Court no later than January 13, 2021; and

5 (h) The Fairness Hearing shall be held on January 20, 2021 at 8:20 a.m.

6 19. These deadlines may be extended by order of the Court, for good cause shown,
7 without further notice to the Class. Class Members must consult the Settlement Website
8 (www.masterbrewsettlement.com) regularly for updates and further details regarding extensions of
9 these deadlines.

10 20. Pending final determination of whether the Settlement should be approved, Plaintiffs
11 and Class Members, or any of them, are prohibited from directly, indirectly, derivatively, in a
12 representative capacity, or in any other capacity, commencing, prosecuting, or continuing any other
13 action in any forum (state or federal) against any of the Released Parties (as that term is defined in
14 the Settlement) in any court or tribunal asserting any of the Released Claims (as that term is defined
15 in the Settlement).


16 21. Heffler Claims Group is hereby appointed as Settlement Administrator for this
17 Settlement and shall perform all of the duties of the Settlement Administrator set forth in the
18 Settlement.

19 22. Class Counsel and Defense Counsel are hereby authorized to use all reasonable
20 procedures in connection with approval and administration of the Settlement that are not materially
21 inconsistent with this Order or the Settlement, including making, without further approval of the
22 Court, minor changes to the form or content of the Long Form Notice, Summary Notice, and other
23 Exhibits that they jointly agree are reasonable or necessary.

24 23. In the event the Court does not grant final approval to the Settlement, or if for any
25 reason the Parties fail to obtain a Final Order and Judgment as contemplated in the Settlement, or
26 the Settlement is terminated pursuant to its terms for any reason, or the Effective Date does not
27 occur for any reason, then the following shall apply:
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- 1 a. All orders and findings entered in connection with the Settlement shall become null
2 and void and have no force and effect whatsoever, shall not be used or referred to for any purposes
3 whatsoever, and shall not be admissible or discoverable in this or any other proceeding;
- 4 b. The provisional certification of the Class for settlement purposes pursuant to this
5 Order shall be vacated automatically, and the Action shall proceed as though the Class had never
6 been certified pursuant to this Settlement and the related findings had never been made;
- 7 c. Nothing contained in this Order is, or may be construed as, a presumption,
8 concession, or admission by or against Defendant or Plaintiffs of any default, liability, or
9 wrongdoing as to any facts or claims alleged or asserted in the Action, or in any actions or
10 proceedings, whether civil, criminal or administrative, including, but not limited to, factual or legal
11 matters relating to any effort to certify the Action as a class action;
- 12 d. Nothing in this Order or pertaining to the Settlement, including any of the documents
13 or statements generated or received pursuant to the claims process, shall be used as evidence in any
14 further proceeding in this Action, including, but not limited to, motions or proceedings seeking
15 treatment of the Action as a class action; and
- 16 e. All of the Court's prior Orders having nothing whatsoever to do with the Settlement
17 shall, subject to this Order, remain in force and effect.

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DATED: 8/17/20 
The Honorable Mark S. Borrell