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TIFFANEE GOULD, ET
AL.,

Plaintiffs,

V.

THE GUIDA-SEIBERT
DAIRY COMPANY, ET
AL.

Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**CAMDEN VICINAGE
CIVIL ACTION**

Case No.: 1:22-CV-01861-NLH-AMD

**MEMORANDUM OF LAW IN SUPPORT OF
JOINT MOTION TO APPROVE
SETTLEMENT**

Plaintiffs, Tiffanee Gould, Dominique Wilson, and Deborah Pollitt, on behalf of themselves and their minor children, and Defendant The Guida-Seibert Dairy Company (“Defendant” or “Guida-Seibert”), state the following in support of their Joint Motion to Approve Settlement:

I. Introduction

This action was brought by Plaintiffs Tiffanee Gould, Dominique Wilson, and Deborah Pollitt, parents of preschool children attending The Martha F. Wilson Early Childhood Development Center, located at 1602 Pine Street, Camden, New Jersey, on behalf of themselves, their minor children, and two putative classes.

Plaintiffs alleged that Defendant distributed contaminated milk cartons containing a commercial cleaning agent known as Vortexx to several elementary schools in the Camden City School District (“CCSD”), where Plaintiffs’ minor children and other children allegedly ingested the affected product.

After the Hon. Noel L. Hillman granted Defendant’s partial motion to dismiss in its entirety and denied Defendant’s motion to strike class allegations, the Parties exchanged informal discovery in an effort to mediate the sole remaining claim (the children’s statutory products liability claim). On or about August 3, 2023, the parties attended a mediation before the Honorable Mark Falk, U.S.M.J. (Ret.), wherein the parties reached a proposed settlement on an individual basis on behalf of sixteen (16) New Jersey student plaintiffs and their parents/guardians (“New Jersey Student Plaintiffs”).

As set forth more fully below, the settlement directly addresses the issues raised in the action and provides the following benefits to the New Jersey Student

Plaintiffs: (1) individual settlement payments of \$8,500.00 per student whose guardian returns a signed release, inclusive of attorneys' fees and costs, and (2) compensation for the medical expenditures of all New Jersey Student Plaintiffs who submitted expenses allegedly associated with the consumption of the product, for a total of \$4,602.00.

By this motion, the Parties jointly seek the court's approval of the settlement. As set forth further below, the settlement is both reasonable, fair, and necessary. Pursuant to the agreement reached at the mediation, Defendant does not object to the payment of these awards. In light of the foregoing, the Parties respectfully request that this Motion be granted in its entirety.

II. Factual Background

A. Overview and Procedural History

On April 1, 2022, the named plaintiffs, parents of preschool children attending school in the CCSD, filed a Class Action Complaint alleging on behalf of themselves, their minor children, and two classes of similarly situated parents/guardians and children, that on or about March 30, 2022, certain children enrolled at schools within the CCSD consumed a mixture of pasteurized water and a food-grade sanitizer, Vortexx®, from a carton produced by Defendant that was inadvertently filled with the solution (the "Incident").

The named plaintiffs filed this lawsuit attempting to certify two putative classes: one representing the parents and legal guardians of affected schoolchildren, and the other consisting of those schoolchildren. The putative classes each assert claims for negligence, violations of the New Jersey Products Liability Act, negligent infliction of emotional distress. The complaint also requested punitive damages.

Guida-Seibert has defended and vigorously contested the claims in this lawsuit. Guida-Seibert generally denies the plaintiffs' allegations and denies any wrongdoing or liability to the schoolchildren. Guida-Seibert also maintains that none of the putative class of children was harmed and that a class cannot be certified given the facts of this case, under Federal Rule of Civil Procedure 23. Guida-Seibert has elected to settle this matter voluntarily without any admission of liability or wrongdoing solely to avoid the further expense, inconvenience, uncertainty, and the distraction of burdensome, protracted, and costly litigation.

On May 23, 2022, Guida-Seibert filed a (1) partial motion to dismiss, and (2) motion to strike the class allegations. *See* ECF Nos. 10 and 11. On February 21, 2023, the Court granted Guida-Seibert's partial motion to dismiss in its entirety, dismissing: (1) the claims brought by the parents, (2) two of the claims brought on behalf of the putative class of schoolchildren (negligence and negligent infliction of emotional distress), and (3) the punitive damages claim. The Court denied Defendant's Motion to Strike the Class allegations. The Court's ruling left only the

New Jersey Products Liability Act claim brought on behalf of the putative class of schoolchildren. *See* ECF Nos. 26 & 27.

B. Pre-Mediation Discovery

Following the Court's February 21, 2023 rulings on Defendant's partial motion to dismiss and motion to strike, the Parties exchanged substantial informal discovery. In doing so, Defendant produced documents related to: (1) the production run, (2) quality assurance and testing documents prepared during the production runs in which the subject milk cartons were produced, (3) Guida-Seibert's investigation into the Incident and its voluntary recall of affected milk cartons, (4) the Connecticut Department of Agriculture's investigation of the Guida-Seibert's manufacturing facility, and (5) quality assurance and food safety policies in effect at the time of the Incident. The New Jersey Student Plaintiffs also produced documents from their health care providers concerning treatment related to the Incident. *See* Schirripa Decl. ¶ 14, and Ex. B.

Two of the sixteen plaintiffs represented by the plaintiffs' counsel submitted medical or counselling expenses, and none alleged any serious or permanent physical or mental injury related to the Incident. *Id.* ¶ 11.

C. Mediation and The Proposed Settlement

On August 3, 2023, the parties participated in a mediation before the Hon. Mark Falk, U.S.M.J. (Ret.), wherein an agreement was reached to settle, on an individual basis, the claims of sixteen (16) members of the putative New Jersey student class whose parent or legal guardian returns a signed release, i.e., the New Jersey Student Plaintiffs. *See* Schirripa Decl. ¶ 8-9. On August 15, 2023, the parties informed the Court that the mediation was successful, and requested the Court stay all upcoming deadlines while the parties prepared the necessary settlement paperwork. *See* ECF No. 41.

D. The Proposed Settlement

As described in the Form Confidential Settlement Agreement and General Release, *see* Schirripa Decl., Exhibit A (“Settlement Agreement”), for each student whose parent or legal guardian returns an executed release, the Settlement Agreement contemplates two types of compensation in consideration for a general release of claims: a Settlement Payment for each New Jersey Student Plaintiff, and the reimbursement of all out-of-pocket medical expenses provided in informal discovery. The Settlement Agreement also states that each of the Parties will bear their own costs, expenses, and attorneys’ fees in prosecuting or defending the lawsuit and the negotiation and execution of the Settlement Agreement(s).

E. Settlement Payment

The settlement contemplates a one-time payment of \$8,500.00 for each of the sixteen (16) New Jersey Student Plaintiffs whose parent or legal guardian returns a signed release, less any attorneys' fees and expenses approved by this Court, which is to be deposited in a trust fund established by the Surrogate of Camden County for the benefit of the minor children. *See* Schirripa Decl. Ex. A at § c. The parties agree that this amount shall be inclusive of all fees, costs, and expenses incurred in the litigation and settlement of this action. sixteen(16)

F. Reimbursement of Out-of-Pocket Medical Expenses

Defendant also agreed to compensate two (2) of the sixteen (16)-parents or legal guardians of the New Jersey Student Plaintiffs for their out-of-pocket medical expenses incurred as a result of the incident and provided during informal discovery. As stated in the Schirripa Declaration, the two parents or legal guardians of New Jersey Student Plaintiffs to be reimbursed for out-of-pocket medical expenses are:

1. Ciarra Wallace, on behalf of her minor child, Z.W., in the amount of \$1,053.00; and
2. Harry Estevez & Yaneris Lugo de Esteves, on behalf of their minor child, H.E., in the amount of \$3,549.00.

Schirripa Decl., Exh. C. Accordingly, Defendant has agreed to compensate the parents or legal guardians of these two New Jersey Student Plaintiffs a collective total of \$4,602.00.

G. Attorneys' Fees and Reasonable Expenses

Pursuant to the Settlement Agreement, the parties are to bear their own attorneys' fees, costs, and expenses incurred as a result of the litigation and settlement of their claims. However, pursuant to N.J. Ct. R. 1:21-7(c)(6), the parents/guardians of the New Jersey Student Plaintiffs and their attorneys have agreed to a 25% contingency fee from the gross settlement of each New Jersey Student Plaintiff's gross settlement whose parent or guardian returns a signed release as payment for their attorneys' fees, in addition to reasonable costs as described in the accompanying Bill of Costs. The New Jersey Student Plaintiffs, by their parents/guardians, and their attorneys do not herein request that the out-of-pocket medical expenses be included in the calculations of the attorneys' fees.

III. The Settlement Payments and Reimbursement of Out-of-Pocket Medical Expenses Incurred Are Fair and Reasonable.

A. Legal Standard

“Determining an appropriate award is not an exact science. The facts of each individual case drive the amount of any award.” *In re AremisSoft Corp. Sec. Litig.*,

210 F.R.D. 109, 128 (D.N.J. 2002), *citing*, *In re Computron Software, Inc.*, 6 F. Supp.2d 313, 321 (D.N.J. 1998). While compromise of any litigation is encouraged, a court must not substitute its own judgment for that of the parties. *McCray v. Beatty*, 64 F.R.D. 107, 110 (D.N.J. 1974). Indeed, the Court’s role in approving a settlement is to determine whether the settlement is reasonable and fair to any party involved in the suit. *Id.* The district courts in the Third Circuit are given wide discretion to give effect to joint compromises that timely advance the interests of the parties without wasteful litigation. *Sullivan v. D.B. Investments, Inc.*, 667 F.3d 273, 317 (3d Cir. 2011).

The United States Court of Appeals for the Third Circuit has held that “the parties to an administrative settlement of a minor’s claim need only follow the procedures in place in either state or federal court for the approval of a minor’s settlements.” *Reo v. U.S. Postal Serv.*, 98 F.3d 73, 78 (3d Cir. 1996). Accordingly, New Jersey Court Rule 4:44 codifies the requirement that all settlements in favor of minors or the mentally incapacitated be reviewed for fairness and reasonableness. *See S.T. v. 1515 Broad Street, LLC*, 241 N.J. 257, 282-283) (2020) (without judicial finding that client was mentally incapacitated under Rule 4:86, trial court had no authority to conduct a hearing under Rule 4:44-3 or to deny client the right to determine whether to accept a settlement.). The Court’s options are to either approve or disapprove a settlement; it does not have the authority to vary the terms of the

settlement even in the best interests of the minor. *Impink ex rel. Baldi v. Reynes*, 396 N.J. Super. 553, 562-564 (App. Div. 2007).

B. The Settlement Payment is Fair and Reasonable

As outlined in the Schirripa Declaration, this matter involves a bona fide dispute that was litigated in an adversarial manner prior to reaching a settlement. *See* Schirripa Decl. at ¶¶ 4-7. The proposed settlement of \$8,500.00 for each New Jersey Student Plaintiff whose parent or legal guardian returns a signed release, plus medical expenses for two (2) New Jersey Student Plaintiffs who submitted medical expenses during informal discovery, is fair and reasonable and was the product of extensive negotiations between counsel following the exchange of documents and a mediation before the Hon. Mark Falk, U.S.M.J. (ret).

In recommending the settlement to the sixteen (16) New Jersey Student Plaintiffs, Plaintiffs' counsel considered the risks of continued litigation, including the risk of establishing liability and damages, the risk of being unable to obtain class certification, and the difficulty of locating putative class members. Indeed, Plaintiffs' ultimate success is speculative as the Court dismissed all of the parent's individual claims and dismissed the punitive damages claim, leaving only a statutory products liability claim on behalf of the schoolchildren, none of whom allege any lasting or permanent injury or condition as a result of the Incident. And, while the

Court denied Defendant's motion to strike, it did forecast issues that Plaintiffs would likely have at the Rule 23 stage, including difficulty in certifying a Rule 23 class in a personal injury case since matters of individual proof like exposure, dose, and resulting harm would likely predominate.

With regard to the complexity, expense, and likely duration of further litigation, the parties note that it has taken approximately seventeen months to arrive at the procedural point of settlement since the action was commenced. The parties anticipate that, should the litigation continue with regards to the sixteen (16) New Jersey Student Plaintiffs, it could be years more until they see compensation, if any. In contrast, the settlement guarantees that each of the sixteen (16) New Jersey Student Plaintiffs whose parent or legal guardian returns a signed release will receive immediate and substantive relief.

The amount and type of discovery exchanged also was sufficient for the purposes of mediation. However, further litigation would likely require timely and costly discovery, including the depositions of the New Jersey Student Plaintiffs and/or their parents/guardians, depositions of CCSD officials, as well as depositions of Defendant's employees and officers. Additional discovery also would encompass numerous document and other discovery requests and Rule 35 medical exams of the allegedly affected children.

At this stage of the litigation, there is little indication of what the “best possible recovery” could be, and, for obvious reasons, differs by the party. However, the parties agree that in the search for a compromise, the terms of the Form Confidential Settlement Agreement and General Release represents a fair and reasonable outcome, and that further litigation could diminish this possible return for the New Jersey Student Plaintiffs and the possible release of claims for Defendant.

In light of all the attendant risks of litigation, the settlement payment of \$8,500.00 for each New Jersey Student Plaintiff whose parent or legal guardian returns a signed release (plus reimbursement for medical expenses for two New Jersey Student Plaintiffs) is fair and reasonable.

Lastly, as the parties request that the settlement be approved only as to the sixteen (16) New Jersey Student Plaintiffs listed in the Schirripa Declaration at Exh. C whose parents or legal guardians return a signed release, the court need not consider the potential outcomes of the remaining putative class of schoolchildren. Other allegedly affected students are not releasing their claims and remain free to assert any cognizable claim.

Accordingly, the Court should find the settlement to be fair and reasonable.

**C. Reimbursement of Out-of-Pocket Medical Expenses Incurred Are
Fair and Reasonable.**

As stated *supra* § III(b), the Settlement Agreement contemplates the reimbursement of certain medical expenses incurred by the parents of two of the sixteen New Jersey Student Plaintiffs that were provided in informal discovery. *See also* Schirripa Aff. at Ex. B (medical expenses agreed upon). For the same reasons as stated above, the complete reimbursement of these out-of-pocket medical records is fair and reasonable.

IV. CONCLUSION

For the foregoing reasons, the parties request the Court approve the settlement described hereinabove.

Dated: November 17, 2023

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