

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DATE FILED: May 12, 2015

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:
BENJAMIN CAREATHERS, :
:
Plaintiff, :
v. :
:
RED BULL NORTH AMERICA, INC., :
:
Defendant. :
-----X

13 Civ. 0369 (KPF)

CLASS ACTION

-----X
DAVID WOLF, *et al.*, :
:
Plaintiff, :
v. :
:
RED BULL GMBH, *et al.*, :
:
Defendant. :
-----X

13 Civ. 8008 (KPF)

KATHERINE POLK FAILLA, District Judge:

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court on May 1, 2015, pursuant to the Court’s Preliminary Approval Order filed on September 3, 2014, for a hearing on the application of the Plaintiffs for final approval of the settlement set forth in the Stipulation of Settlement dated July 31, 2014, as amended and filed with the Court on April 30, 2015 (ECF No. 78) (the “Stipulation”). Due and adequate notice having been given to the Settlement Class as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings conducted in these Actions and otherwise being fully informed, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. The Court has subject matter and personal jurisdiction over the Parties, including all Settlement Class Members.

3. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and consistent with the requirements of due process, the Court hereby finally approves the Settlement and finds that the entire Settlement is, in all respects, fair, reasonable and adequate. The Court further finds that the Settlement was entered into in good faith following arm's-length negotiations and is not collusive. The Parties are hereby directed to perform the terms of the Stipulation.

4. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, for purposes of effectuating the Settlement, the Court hereby certifies the Settlement Class as follows:

All Persons who purchased Red Bull Products in the United States¹ during the Class Period. Excluded from the Settlement Class are: (a) employees, officers, directors, agents, and representatives of (1) Defendants and each of their subsidiaries and affiliates, and (2) all distributors,

¹ As per § II.A.31 of the Stipulation, "United States" means all fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the other territories and possessions of the United States.

wholesalers, retailers, and licensors of Red Bull Products; (b) those who purchased Red Bull Products for the purpose of re-sale; (c) all federal judges who have presided over either of the Actions; and (d) all person who have been properly excluded from the Settlement Class.

The Court finds the persons identified in Exhibit A attached hereto have timely and properly requested exclusion from the Settlement Class and are not bound by this Judgment (“Excluded Persons”).

5. With respect to the Settlement Class, the Court finds and concludes that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Actions is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over questions affecting only individual Settlement Class Members; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class; (d) the Plaintiffs and Plaintiffs’ Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for a fair and efficient adjudication of the controversy.

6. The Actions are hereby dismissed with prejudice as to Plaintiffs and all Settlement Class Members, except for Excluded Persons identified in Exhibit A. The Parties will bear their own fees and costs, except as otherwise expressly provided in the Settlement.

7. As of the Effective Date, Plaintiffs and each Settlement Class Member who has not validly excluded himself or herself from the Settlement Class shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons. In connection with the Released Claims, each Settlement Class Member shall be deemed as of the Effective Date to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

8. The Court finds that the Notice to the Settlement Class was given in accordance with the Court's Order of September 3, 2014, was collectively the best notice practicable under the circumstances of these proceedings of the matters set forth therein, and fully satisfies the requirements of Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure, due process, and any other applicable laws.

9. All Settlement Class Members, and all Persons actually or purportedly acting on behalf of any Settlement Class Member, are hereby permanently enjoined from asserting, commencing, maintaining, prosecuting,

or enforcing, directly or indirectly, in any judicial, administrative, arbitral, or other forum, any claim that will be released as part of the Settlement, provided that this injunction shall not apply to Excluded Persons.

10. Defendants are hereby ordered to make all payments required by and in accordance with the Stipulation and the Court's Order granting Plaintiffs' Motions for Final Approval of Class Settlement and for Approval of Attorneys' Fees, Service Fees, and Reimbursement of Expenses. Defendants are further enjoined from making any future claims about the functional benefits of Red Bull Products without medical and/or scientific support.

11. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim or any facts alleged in the Actions, or of any wrongdoing or liability of Defendants, or of the propriety of maintaining the Actions as class actions; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any proceeding in any court, administrative agency, or other tribunal, except that Defendants may file the Stipulation or the Judgment in any action that may be brought against any Released Person in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement and any disputes concerning payment or distribution of the proceeds from the Settlement; (b) enforcement of this Order; and (c) all Parties hereto solely for the purpose of construing, enforcing, and administering the Settlement and this Order.

SO ORDERED.

Dated: May 12, 2015
New York, New York



KATHERINE POLK FAILLA
United States District Judge

EXHIBIT A

BENJAMIN CAREATHERS
v.
RED BULL NORTH AMERICA, INC.

DAVID WOLF and MIGUEL ALMARAZ

v.

RED BULL GMBH; RED
BULL NORTH AMERICA, INC.; and RED
BULL DISTRIBUTION
COMPANY, INC.

Requests for Exclusion Received Timely as of April 22, 2015

#	Name	GCG ID#
1	Alexander Severson	0FE8A8D954
2	Amber McNeff	33D94CDA38
3	Andrea Bianchi	CC2176578D
4	Benjamin Fittje	E11F172554
5	Brett Anderson	72681511A6
6	Brian Mark South	D4D6B0A640
7	Bridget Ehiemenonye	5997AEBB15
8	Casey Franks	1F8CE1C8BC
9	Courtney Amber Lemons	848A2B168C
10	Cristal Maldonado	76A0197D40
11	Damaris Dolan	351ECCEB41
12	Derrick Onwuachi	A71505EC27
13	Dzhamila Keshishian	19DA618237
14	Felicia M Spencer	D4A875F397
15	Francisco Ferrer	FC58A5CD27
16	Gary Case	CD2C9299EB
17	Gina Hronek	3C456109C0
18	Issa Beydoun	A362363E33
19	Jabbar Nettles	06EBC3D245
20	Jennifer Bronzell	9CDB7C0FF0
21	Laura Immel	B3D6730EA7
22	Lordan Stanley	EBFCE2391D
23	Madison Pearce	9C92F78EE4
24	Michael Griener	BF304C243D

#	Name	GCG ID#
25	Michael Grotzke	BBF78560C4
26	Mikhail Romanov	B37DFF0C24
27	Rachel Lindell	053617E035
28	Ryan Jermaine Hill	29579CA460
29	Tigran Ketsoyan	FD14AEFF58
30	Troy Immel	D14134C952