

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CONSUMER RESEARCH AND)
PROTECTION, INC.,)
)
Plaintiff,)
)
v.)
)
FRED MEYER STORES, INC.,)
)
Defendant.) Case No. 3AN-16-10640CI
)

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (the "Settlement Agreement") is made and entered into as of the 17 day of December, 2018, by and between CONSUMER RESEARCH AND PROTECTION, INC., individually and on behalf of the Settlement Class Members, as defined in paragraphs 1.c and 1.f below, and Defendant FRED MEYER STORES, INC. This Settlement Agreement is subject to the Court's preliminary and final approval, and the terms and conditions set forth herein.

RECITALS

A. Consumer Research and Protection, Inc. commenced an action on behalf of itself and all others similarly situated, under the caption *Consumer Research and Protection, Inc. v. Fred Meyer Stores, Inc.*, Case No. 3AN-16-10640 CI, in the Superior Court, State of Alaska, Third Judicial District (the "Action"). The Complaint, filed on

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A PROFESSIONAL CORPORATION
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December 13, 2016, alleges claims under the Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Statutes 45.50.471, et seq., in connection with the posting of a placard in Fred Meyer stores in Alaska relating to the legal basis for charging a core charge for lead acid batteries.

B. The Complaint named Fred Meyer Stores, Inc., as Defendant. On February 14, 2017, Defendant answered the Complaint. In its answer, Defendant denied all allegations of wrongdoing of any kind.

C. Settlement Class Counsel have conducted an extensive investigation of the Settlement Class's claims and potential claims against Defendant and the Released Parties in connection with this settlement. Settlement Class Counsel have obtained significant discovery of Defendant, and have also investigated the applicable law, prepared for trial, assessed the possibilities of prevailing on the merits at trial, considered Defendant's defenses, analyzed the possible damages if the Settlement Class were to prevail, considered the likely time and expense that would be incurred before any final judgment could be entered and all rights of appeal exhausted, and considered the known impediments to collecting any such judgment.

D. Notwithstanding Defendant's continuing denial of each and every claim and contention of wrongdoing alleged in the Action, Defendant, CRPI (individually and as Class Representative) and the Settlement Class Members desire to resolve, on mutually agreeable terms, all claims against Defendant and the Released Parties on the terms and

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conditions in this Settlement Agreement, for the purposes of avoiding the burdens, expenses, and uncertainties of continued litigation.

E. The parties have agreed to jointly move the Court for preliminary approval of the Settlement, conditional certification of the Settlement Class, designation of CRPI as the Settlement Class Representative, and designation of Settlement Class Counsel. For the purpose of implementing this Settlement Agreement and the Settlement, and for no other purpose, Defendant stipulates to conditional certification of the Settlement Class, designation of CRPI as Settlement Class Representative, and designation of Settlement Class Counsel. If for any reason this Settlement Agreement should fail to become effective, Defendant's stipulation regarding certification of the Settlement Class, designation of CRPI as Settlement Class Representative, and designation of Settlement Class Counsel shall be null and void, and the Parties shall return to their respective positions in the Lawsuit as those positions existed prior to their agreement on settlement terms.

F. Whether or not this Settlement Agreement becomes effective pursuant to paragraph 7 below, neither this Settlement Agreement, nor any document executed pursuant to it, nor any other act taken to negotiate it or to carry it out (in part or in whole), shall raise any presumption or inference of, or shall be offered or received in evidence as, an admission or concession by Defendant or any other party with respect to any fault, wrongdoing or liability in any amount, degree or kind whatsoever. Neither this Settlement

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Agreement, nor any document executed pursuant to it, nor any act taken to negotiate it or carry it out (in whole or in part), shall be offered or received in evidence in any action or proceeding against any of the parties in any court, administrative agency or other tribunal for any purpose whatsoever, other than to enforce this Settlement Agreement and any related court order. If this Settlement Agreement does not become effective pursuant to paragraph 7 below, then neither this Settlement Agreement, nor any document executed pursuant to it, nor any act taken to negotiate it or carry it out (in whole or in part), shall raise any presumption or inference of, or shall be offered or received in evidence as, a waiver of any right, claim or defense of any party to it.

G. The Settlement Class Representative and Settlement Class Counsel consider the settlement of the Settled Claims upon the terms and conditions hereinafter set forth, to be fair, reasonable and adequate, and in the best interests of the Settlement Class Members.

NOW, THEREFORE, on the basis of the foregoing, and in consideration of the mutual covenants and agreements set forth below, it is hereby stipulated and agreed, by and between Defendant and CRPI (individually and as Settlement Class Representative) and the Settlement Class Members, that the Settled Claims shall be forever settled, compromised, dismissed and released, in the manner and upon the terms and conditions hereinafter set forth.

1. Definitions

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- a. "Person" means any individual, corporation, partnership, association, joint stock company, trust, unincorporated organization or any other type of legal entity.
- b. "CRPI" means Consumer Research and Protection, Inc.
- c. "Defendant" means Fred Meyer Stores, Inc.
- d. "Released Parties" means all or any one or more of the following: Fred Meyer Stores, Inc.; Kroger, Inc.; Interstate Batteries, Inc.; all Interstate Battery distributors, including Interstate Battery Alaska LLC and Interstate Batteries of Seattle; all predecessor corporations and partnerships of the foregoing entities; all past and present officers, directors, agents, attorneys, partners, shareholders, contractors, managers, members, employees, affiliates, subsidiaries, owners, parents, divisions, successors, assigns, or representatives of the foregoing entities; and all related entities.
- e. "Settlement Class Representative" means Consumer Research and Protection, Inc.
- f. "Settlement Class Counsel" means The Northern Justice Project, LLC, and Cook and Associates.
- g. The "Settlement Class" means: All persons or entities that purchased a lead acid Automotive, Marine/RV, Motorcycle/ATV or Garden type battery during the period from December 13, 2014 to January 31, 2017 from any Fred Meyer store located within the State of Alaska.

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h. "Settlement Class Member(s)" means any person who fits within the definition of the Settlement Class, including the Settlement Class Representative, and who does not timely and properly opt out of the Settlement Class. This definition shall include persons who fit within the definition of the Settlement Class, whether or not they have been individually mailed either a notice of the class action or a notice (see paragraph 3 below) of this settlement.

i. "Settled Claims" means any and all claims that have or could have been alleged in the Action at any time; all claims by CRPI or any Settlement Class Member that arise out of the transactions or occurrences that have been alleged in or are a subject of the Action; and any and all claims of any sort of CRPI (individually and as Settlement Class Representative), the Settlement Class, or any Settlement Class Member, against Defendant or the Released Parties, whether such claims are known or unknown, suspected or unsuspected, that heretofore may have existed, which now exist, or which on or before the Effective Date might exist, and whether or not knowledge of such claims might have affected the Settlement Agreement.

j. The "Court" means the Superior Court for the Third Judicial District, State of Alaska.

k. "Herein" means in this Settlement Agreement; "including" means including but not limited to; the singular shall include the plural; the plural shall include the singular; and the neuter, masculine and feminine genders shall each include the others.

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1. "Effective Date" means the date upon which all the events set forth in paragraph 7 below have occurred.

m. "Settlement Agreement" means this Settlement Agreement and all attachments to it.

n. "Final Settlement Hearing" means the hearing to be held by the Court to consider approval of this Settlement Agreement.

2. Jurisdiction.

The Court has jurisdiction, and shall retain and have continuing jurisdiction over the parties to this Settlement Agreement, to make such orders as may be proper and necessary to implement and enforce, on a continuing basis, the terms and conditions of this Settlement Agreement, to grant preliminary and final approval of this Settlement Agreement, and to resolve any controversies which may arise over the settlement, release and dismissal of the Settled Claims. Any dispute or questions relating to the above listed matters and any dispute or question relating to interpretation or construction of this Settlement Agreement shall be presented to the Court for resolution.

3. The Court's Orders Regarding the Settlement.

Promptly following complete execution of this Settlement Agreement, Settlement Class Counsel and Defendant's counsel shall jointly submit this Settlement Agreement to the Court and obtain entry of an order, which shall not differ in any material respect from the forms attached hereto as Exhibits A. Exhibit A is a Preliminary Order Approving

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Settlement ("Preliminary Order"), and providing for conditional certification of the Settlement Class, designation of CRPI as the Class Representative, and designation of Settlement Class Counsel, and approving a Notice of Proposed Settlement and Hearing on Settlement and Notice of Expanded Class.

4. Final Judgment and Order of Dismissal to be Entered by the Court Approving of the Settlement.

Upon final approval by the Court of the settlement set forth in this Settlement Agreement, the Settlement Class Representative and Settlement Class Counsel on behalf of the Settlement Class shall obtain a Final Judgment and Order of Dismissal, which shall not differ in any material respect from the form attached hereto as Exhibit B.

5. Settlement Payments.

a. Defendant shall pay \$162,500 (the "Class Settlement Payment"), to be administered and distributed pursuant to the terms set forth below.

Defendant has agreed to a global payment of \$162,500 divided as follow:

1. A total of \$71,050 will be paid to Settlement Class Members. Each Settlement Class Member will receive an amount equal to two times the core charge for the type of battery they purchased, as follows:

(a) Auto and Marine Battery purchasers will be paid \$30 each (2x core fee);

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(b) ATV/ Motorcycle Battery purchasers will be paid \$10 each (2x core fee);

(c) Garden Battery purchasers will be paid \$16 each (2x core fee).

At this time, there is uncertainty as to the exact number of Settlement Class Members, and the number of Settlement Class Members that can be located and who will have claims allowed is unknown. To the extent that payments to Settlement Class Members in accordance with the schedule set forth above would result in a total payment to Settlement Class Members in excess of \$71,050, payment to each Settlement Class Member will be reduced pro rata so that the total payment to all Settlement Class members equals \$71,050.

2. Settlement Class Counsel will receive \$91,450 in attorney fees and costs (*i.e.* \$162,500 -\$71,050), paid within 30 days of the Effective Date.

3. Any unclaimed funds, including checks that are not cashed within 180 days of mailing, will be donated to a charitable organization mutually acceptable to the parties and their counsel.

b. Defendant shall pay the costs of settlement administration, *i.e.*, the cost of hiring a class action administrator, posting settlement notices, providing notice to class members pursuant to the terms of this agreement, issuing settlement checks, and the like.

c. The Class Settlement Payment and the cost of class settlement administration shall be Defendant's total monetary obligation under this Settlement Agreement. The Class

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Settlement Payment includes all measures of loss, damage, award and expense of every nature, including, by way of example and not limitation: compensatory damages; exemplary and punitive damages; professional and attorney's fees; litigation expenses and multipliers; interest; and costs.

6. Costs and Attorneys' Fees. Except as provided for above, each party to this Settlement Agreement is responsible for its own costs and attorneys' fees incurred in connection with the litigation of the Action as well as the negotiation, drafting, finalization and implementation of this Settlement Agreement, including Settlement Class Counsel's communication with Settlement Class Members.

7. Effective Date of Settlement Agreement. The settlement embodied by this Settlement Agreement shall become effective on the date that all of the events set forth in this paragraph have occurred.

a. Execution: This Settlement Agreement has been executed by Defendant's Counsel and Settlement Class Counsel, as listed on the signature page(s) of this Settlement Agreement.

b. Preliminary Approval: The Court grants preliminary approval of this Settlement Agreement, and approves the forms of notice.

c. Final Approval: The Court grants final approval of this Settlement Agreement and enters its Final Judgment and Order of Dismissal.

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8. Effects of Non-Finality of Settlement Agreement. If any of the events set forth in paragraph 7 above do not occur (including, specifically, if the Court declines to approve the settlement, either preliminarily or finally), the Action and all substantive and procedural issues therein shall thereupon be deemed to have reverted to their status prior to when the parties agreed to settlement terms, and shall proceed in all respects as if this Settlement Agreement, and any related orders, including the orders described in paragraphs 3 and 4 above and any related documents, had not been executed and this Settlement Agreement had not been entered. Class administration costs expended by Defendant at the point of termination shall remain the responsibility of Defendant.

9. Releases.

a. CRPI (individually and as Settlement Class Representative) and the Settlement Class Members do hereby fully, finally, and forever settle, release, and discharge the Defendant and the Released Parties from all Settled Claims.

b. CRPI (individually and as Settlement Class Representative), and the Settlement Class Members agree that they shall never commence, prosecute, or aid in any way, acquiesce in or assist in the bringing of any separate or further litigation or proceeding against the Defendant or Released Parties based upon or arising out of the Settled Claims, except only for efforts which may be necessary to implement, construe, or enforce the terms and provisions of this Settlement Agreement. Further, the Settlement Class Representative, Settlement Class Members, and Settlement Class Counsel warrant that,

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with the exception of the Action, that party or counsel has not commenced in any forum any lawsuit against the Defendant arising from the Settled Claims.

c. CRPI (individually and as Settlement Class Representative) and the Settlement Class Members expressly waive any right they might have to appeal or collaterally attack any judgment or order of dismissal entered pursuant to this Settlement Agreement.

d. The Releases contemplated by this Settlement Agreement shall become effective as of the Effective Date, as defined in paragraph 7. The Releases contemplated by this Settlement Agreement shall become null and void if the Effective Date, as defined in paragraph 7, does not occur.

e. CRPI (individually and as Settlement Class Representative) and the Settlement Class Members acknowledge and assume all risk that their damages, losses and expenses, or any of them whether compensatory, consequential, punitive or other, (hereinafter "Damages") may be greater or more extensive than is now known, anticipated, alleged or expected, and that those Damages may be or may become different in nature, scope or character from those that are now known, anticipated, alleged or expected, and that they may be mistaken as to the character and extent of the Damages. CRPI (individually and as Settlement Class Representative) and the Settlement Class Members expressly assume any such risk, and agree that this Settlement Agreement shall remain in full effect even if they discover that the facts and/or Damages are different from the facts

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and/or Damages as they now understand them. CRPI (individually and as Settlement Class Representative) and the Settlement Class Members represent that they are familiar with the decision of the Alaska Supreme Court case of *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978), but state that they nonetheless intend their releases to discharge Defendant from any liability for Damages caused, enhanced, aggravated or contributed to by the Settled Claims, whether such liability is subsequently discovered or is different in degree or kind than is now alleged, known, anticipated or expected.

10. Recitals. The Recitals contained in the preamble to this Settlement Agreement are a part of the terms and provisions of this Settlement Agreement, and shall be binding on the parties as if set forth in full herein.

11. Notices. All notices, requests, demands, objections, and other communications required or permitted to be given pursuant to this Settlement Agreement shall be in writing, and shall be delivered personally or mailed, postage prepaid, to the following counsel at the following addresses:

Settlement Class Counsel

Jim Davis
Northern Justice Project
310 K Street, Suite 200
Anchorage, AK 99501

Tim Cook
Cook & Associates
3901 Taiga Drive
Anchorage, AK 99516

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Defendant's Counsel

Marc Wilhelm
Richmond & Quinn
360 K Street, Suite 200
Anchorage, AK 99501

12. Entire Settlement Agreement. This Settlement Agreement supersedes any and all other agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or in writing, between the parties with respect to such matters, and each party to this Settlement Agreement acknowledges that no representations, inducements, promises or statements, oral or otherwise, have been made by any party or anyone acting on behalf of any party which are not embodied herein, and further agrees that no other agreement, covenant, representation, inducement, promise or settlement not set forth in writing in this Settlement Agreement shall be valid or binding. Each of the parties hereto hereby further acknowledges that it has been represented by counsel throughout all negotiations which preceded the execution of this Settlement Agreement and that this Settlement Agreement has been executed with the consent and advice of said counsel.

13. Further Assurance and Documents. The parties to this Settlement Agreement and their respective attorneys shall faithfully support this Settlement Agreement according to its terms and conditions, and shall proceed diligently to prepare and execute all documents, to obtain all orders, to seek all Court approvals, and to do all things reasonably necessary or convenient to implement this Settlement Agreement as expeditiously as

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possible, which implementation includes working to achieve its final approval by the Court and having it become fully effective.

14. Construction and Interpretation. This Settlement Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Alaska. All parties to this Settlement Agreement acknowledge that they and their legal counsel have participated or been given the opportunity to participate in the negotiation and preparation of this Settlement Agreement, and agree that any rule or rules of construction requiring ambiguities in an agreement to be construed against the drafting party shall not be employed in the construction of this Settlement Agreement.

15. Execution and Counterparts. This Settlement Agreement and any other document required or contemplated to be executed in order to consummate this Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement. All counterparts of any such document together shall constitute one and the same instrument.

16. Amendments. This Settlement Agreement may not be amended or modified except by a writing, signed by the parties to be bound thereby, or signed by their respective attorneys as authorized.

17. Captions. The captions contained in the paragraphs of this Settlement Agreement are for convenience of reference only and do not in any way limit, expand or modify the terms of provisions of this Agreement.

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18. Warranty of Authority to Sign. Each of the undersigned counsel represents and warrants to the Court, to the parties to this Settlement Agreement and to each other, that he or she has the authority to execute this Settlement Agreement on behalf of those persons and entities for whom each such counsel is shown as signing. This Settlement Agreement when executed by the undersigned attorneys shall be legally binding and enforceable against all parties to it according to the terms and conditions herein.

IN WITNESS WHEREOF, the duly authorized signatures of the undersigned have been affixed as of the dates stated below.

COOK & ASSOCIATES
Attorneys for Plaintiff
Consumer Research & Protection, Inc.
and the Settlement Class

DATED: _____

By: 

Tim Cook, ABA 9007048

NORTHERN JUSTICE PROJECT LLC
Attorneys for Plaintiff
Consumer Research & Protection, Inc.
and the Settlement Class

DATED: 12/26/18

By: 

James J. Davis, Jr., ABA 9412140

RICHMOND & QUINN
Attorneys for Defendant
Fred Meyer Stores, Inc.

DATED: 12/19/18

By: 

Marc G. Wilhelm, ABA 8406054

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