

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

RANDALL SALLY, on behalf of himself )  
and all others similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ADIDAS AMERICA, INC. )  
 )  
Defendant. )

Cause No. 20SL-CC03903

Division 17

FILED IN DIV. 17

AUG 31 2023

JOAN M. GILMER  
CIRCUIT CLERK, ST. LOUIS COUNTY

~~PROPOSED~~ FINAL ORDER AND JUDGMENT

This matter having come before the Court for consideration of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Unopposed Motion for Approval of Attorneys' Fees and Incentive Award, due and adequate notice having been given to all Parties and the Settlement Class Members, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. Unless stated otherwise, all capitalized terms used in this Final Order and Judgment shall be defined and interpreted in accordance with the definitions in the Parties' Settlement Agreement.
2. The Court has read and considered the papers filed in support of Plaintiff's Motions, including all exhibits thereto and supporting declarations. The Parties have provided the Court with sufficient information to enable it to determine whether to certify the Settlement Class and finally approve the Settlement.
3. The Court finds that it has jurisdiction over the subject matter of the Litigation and all claims raised therein, and has personal jurisdiction over all Parties to the Litigation, including all Settlement Class Members.

4. The Court preliminarily approved the Parties' Settlement Agreement in its Preliminary Approval Order dated April 10, 2023. Pursuant to Missouri Rule of Civil Procedure 52.08, the Court's Preliminary Approval Order, and the Parties' Notice Plan, the Settlement Class Members were notified of the terms of the proposed Settlement and of a final approval hearing to determine, inter alia, whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release and dismissal of the released claims against the Releasees.

5. The Court held a final approval hearing on August 31, 2023, at which time the Parties and all other interested persons were afforded the opportunity to be heard in support of or in opposition to the Settlement. Settlement Class members were notified of their right to retain an attorney and appear at the hearing in support of or in opposition to the proposed Settlement.

6. Pursuant to Mo. R. Civ. P. 52.08, and solely for purposes of settlement, the Court finally approves certification of the following Settlement Class:

[A] persons who, from July 27, 2015 through October 31, 2020, purchased tangible personal property from adidas in a remote sales transaction in which: 1) such property was shipped by, or on behalf of, adidas from a "ship-from" location outside the state of Missouri to the purchaser's delivery address within the state of Missouri; and 2) the purchaser was charged Missouri tax at more than the proper Missouri state and local use tax rate applicable at the delivery address. Excluded from the class are: Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest in a Defendant, and Defendant's legal representatives, predecessors, successors, assigns, and employees; Class Counsel and members of the immediate family of class counsel; and the judge and staff to whom this case is assigned, and any member of the judge's immediate family and any customers who returned the product for a full refund.

7. Based on the papers filed with the Court and the presentations made to the Court by the Parties and other interested persons at the final approval hearing, and pursuant to Missouri Rule 52.08(e), the Court now grants final approval to the Settlement and finds that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members, because: Plaintiff and Settlement Class Counsel have adequately and capably represented the

Settlement Class; there is no evidence of fraud or collusion; the Settlement will deliver valuable relief while avoiding the considerable costs, risks, and delays of trial and appeal; the stage of the proceedings and the amount of discovery complete favor approval; the probability of Plaintiff's success on the merits and the range of possible recovery in relation to the benefits provided by the Settlement favor approval; and there is no meaningful opposition to the settlement. Therefore, the Settlement is finally approved.

8. For settlement purposes only, the Court confirms the appointment of Randall Sally as Settlement Class Representative of the Settlement Class and the following counsel as Settlement Class Counsel:

Daniel J. Orlowsky  
ORLOWSKY LAW, LLC  
7777 Bonhomme Ave., Suite 1910  
St. Louis, Missouri 63105

Adam M. Goffstein  
GOFFSTEIN LAW, LLC  
7777 Bonhomme Ave., Suite 1910  
St. Louis, MO 63105

9. With respect to the Settlement Class, the Court finds, for settlement purposes only, that the prerequisites for a class action under Rule 52.08 have been satisfied in that: (a) the Members of the Settlement Class are so numerous that joinder of all Members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiff are typical of the claims of the Settlement Class they seeks to represent; (d) Plaintiff has and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Members of the Settlement Class predominate over any questions affecting only individual Members of the Settlement Class; and (f) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

10. The Settlement was negotiated at arms'-length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties engaged in extensive

negotiations. Class Counsel and Defendant's Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

11. The Settlement, as set forth in the Settlement Agreement, is in all respects fair, reasonable, and adequate, is in the best interests of the Settlement Class Members and is approved in all respects in accordance with Rules 52.08(a), (b)(2) and (b)(3).

12. The Settlement was negotiated at arms'-length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties engaged in extensive negotiations and formal mediation. Class Counsel and Defendant's Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

13. Notice to the Members of the Settlement Class required by Mo. R. Civ. P. 52.08(b)(3) has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of the Missouri Rules of Civil Procedure, and all other applicable laws.

14. The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Parties' Settlement Agreement and the Preliminary Approval Order. The Court has further determined that the Notice Plan fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Mo. R. Civ. P. 52.08(b)(3), applicable law, and the Due Process Clause of the United States Constitution.

15. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly stated and shall have the full force of an order of this Court.

16. The Court enters judgment and dismisses the Litigation with prejudice, with each Party to bear its own fees and costs (except as otherwise provided herein and in the Settlement Agreement) as to Plaintiff's and all Settlement Class Members' claims against Defendant. The Court adjudges that the Settlement Class Member Released Claims, the claims covered under the Individual General Release by Settlement Class Representative, and all of the claims described in the Settlement Agreement are released against the Releasees.

17. The Court adjudges that Plaintiff and all Settlement Class Members who have not opted out of the Settlement Class shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Settlement Class Member Released Claims against the Releasees.

18. The Court further adjudges that, upon entry of this Order, the Settlement Agreement and the above-referenced release of the Settlement Class Member Released Claims will be binding on, and have preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members who did not validly and timely opt out of the Settlement, and their respective affiliates, assigns, heirs, executors, administrators, successors, agents, and insurers, as set forth in the Settlement Agreement. The Releasees may file the Settlement Agreement and/or this Final Order and Judgment in any action or proceeding that may be brought against them 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.

19. Plaintiff and Settlement Class Members who did not validly and timely request exclusion from the Settlement are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Settlement Class Member Released Claims or any of the claims described in the Settlement Agreement against any of the Releasees.

20. The Court approves payment of Attorneys' Fees to Settlement Class Counsel in the amount of \$249,502.65. This amount shall be paid from the Class Settlement Amount in accordance with the terms of the Settlement Agreement. The Court, having considered the materials submitted by Settlement Class Counsel in support of final approval of the Settlement and their request for Attorneys' Fees and in response to any timely filed objections thereto, finds the award of Attorneys' Fees appropriate and reasonable for the following reasons:

- a. The Settlement has provided significant relief to the Settlement Class.
- b. Defendant's adoption of the Injunctive Relief was a negotiated, material term of Settlement.
- c. The Settlement Notice constituted the best notice practicable to Settlement Class Members.
- d. Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy on behalf of Plaintiff, Class Representatives, and the Settlement Class as a whole.
- e. The Action involves complex factual and legal issues and, in the absence of Settlement, would involve further lengthy proceedings and uncertain resolution of such issues.
- f. Had the Settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from Defendant, and that

any recovery would have been significantly delayed, which would have resulted in the continued exposure of Settlement Class Members to the challenged tax practices.

- g. The amount of attorneys' fees awarded to Class Counsel is fair and reasonable given: the results of the Settlement, which are substantial; that there was a substantial number of transactions at issue that took place between Settlement Class Members and Defendant; Class Counsel was able to secure a significant benefit for the Class in terms of both injunctive and monetary relief; significant skill was required to prosecute this case, including the experience, reputation, and ability of Class Counsel; the fact that the fees were always contingent; and the fee is not disproportionately excessive in light of the benefits conferred on the Members of the Settlement Class. Moreover, the amount awarded is within the norms in class action cases in the state of Missouri.

21. The Court approves payment of an Incentive Award in the amount of \$5,000 for the Settlement Class Representative, and specifically finds such amount to be reasonable in light of the services performed by Plaintiff for the Settlement Class, including taking on the risks of litigation and helping achieve the compensation made available to the Settlement Class. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

22. Neither this Final Order and Judgment, the Settlement Agreement, nor the payment of any consideration in connection with the Settlement shall be construed or used as an admission or concession by or against Defendant or any of the Releasees of any fault, omission, liability, or wrongdoing, or of the validity of any of the Settlement Class Member Released Claims. This Final

Order and Judgment is not a finding as to the merits of any claims in this Litigation or a determination of any wrongdoing by Defendant or any of the Releasees. The final approval of the Settlement Agreement does not constitute any position, opinion, or determination of this Court as to the merits of the claims or defenses of the Parties or the Settlement Class Members.

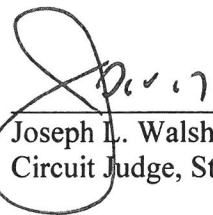
23. Any outstanding objections to the Settlement Agreement are overruled and denied in all respects. The Court finds that no reason exists for delay in entering this Final Order and Judgment. Accordingly, the Clerk is directed to enter this Final Order and Judgment.

24. The Parties, without further approval from the Court, are permitted to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits supporting the declarations and to the Settlement Agreement) so long as they are consistent in all material respects with the Final Order and Judgment and do not limit the rights of the Settlement Class Members.

IT IS SO ORDERED.

ENTERED: \_\_\_\_\_

8/31/23

  
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Joseph L. Walsh III  
Circuit Judge, St. Louis County, Division 17