

CITATION: Hardwick v. Blue Buffalo Company, Ltd. et. al., 2021 ONSC 2820
Court File No. 16-67441
2021/04/15

COURT OF ONTARIO
SUPERIOR COURT OF JUSTICE
In the matter of the *Class Proceedings Act, 1992*

BETWEEN:

BRIAN HARDWICK

Plaintiff

– and –

BLUE BUFFALO COMPANY LTD. AND BLUE BUFFALO PET PRODUCTS INC.

Defendants

BEFORE: Regional Senior Justice Calum MacLeod

COUNSEL: Jeff Orenstein and Andrea Grass, for the Plaintiffs

Scott Maidment and Jennifer Dent, for the Defendants

HEARD: April 15, 2021

ENDORSEMENT

[1] This was a motion to certify this action as a class proceeding for the purposes of settlement.

[2] I have reviewed the motion material and heard submissions from counsel. The proposed settlement is for a streamlined process with the following attributes. Firstly, there will be modest payments to all members of the class who have previously registered with class counsel without the need to submit a claim form or proof of purchase. Secondly, there will be *cy pres* payments to certain universities which conduct research into the health and welfare of pets. There will be no other compensation to class members.

[3] Given the streamlined process and the fact that there is no necessity for a separate claims process, class counsel proposes to be the claims administrator.

[4] While this structure is somewhat unusual, I am satisfied that the proposal is in accordance with the objectives of the Act and is fair to the members of the class. The claim is only on behalf of purchasers of products in Canada prior to September of 2019 and it relates to the accuracy of advertising and the content of the product not to actual injuries sustained by pets belonging to class

members. Almost 4,000 class members have registered with class counsel as the result of previous advertising (3,968 to be precise).

[5] Class members will have the opportunity to either opt out of the settlement or to appear at the next hearing to oppose the settlement. My review of the proposal is also informed by the experience under the settlement of a similar claim in the United States.

[6] I am asked to certify a national class. I am satisfied on the evidence that is appropriate. Neither class counsel nor the defendants are aware of any other class proceeding in any other province of Canada and there is no parallel class proceeding in Ontario.

[7] Overall, I am satisfied that the proposed order certifying the proceeding and providing for a single notice process is fair and reasonable. I have approved the draft order with the following dates:

- a. April 30, 2021 for notice
- b. May 30, 2021 as the deadline for objections
- c. June 14, 2021 as the deadline for opting out
- d. June 14, 2021 as the deadline for class members to appoint their own counsel and file an appearance.
- e. July 29, 2021 at 10:00 a.m. as the date for a hearing to approve the settlement.

[8] As I indicated to counsel, although the new s. 24 (12) and 24 (13) of the Act do not apply to this proceeding (due to the transition provisions contained in the amended Act), it has been my practice to require a report from the claims administrator and a closing order once the funds have been distributed. I expect I would impose such a condition at the time of approving the settlement if it is ultimately approved.

[9] I have authorized counsel for the defendant to provide me with certain information to be kept under seal until the approval hearing. For that purpose, he may email my assistant. Similarly, counsel for the class may provide me with a clean copy of the order by email in order that I can apply an electronic signature.

[10] In conclusion, on consent, the motion is granted, and an order may issue accordingly. The hearing to approve the settlement will take place on July 29, 2021 by videoconference. The court will provide the Zoom co-ordinates to counsel who will provide them to members of the class or the public who wish to view the proceedings.

Mr. Justice C. MacLeod

Date: April 15, 2021

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SUPERIOR COURT OF JUSTICE

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AND:

BLUE BUFFALO COMPANY LTD.
AND BLUE BUFFALO PET
PRODUCTS INC., Defendants

BEFORE: Mr. Justice Calum MacLeod

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Plaintiffs

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Mr. Justice C. MacLeod

Released: April 15, 2021