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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN BERNARDINO**

9
10 STACY DORCAS, individually, and on behalf
of all others similarly situated,

11 Plaintiff,

12 v.

13 ATERIAN, INC.,

14 Defendant.
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CASE NO. CIVSB2222117

CLASS ACTION

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
REQUEST FOR FEES AND ENTERING
FINAL JUDGMENT**

Date: March 7, 2024

Time: 8:30 AM

Dept.: S26

Judge: Hon. David S. Cohn

Action Filed: December 9, 2022

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**[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND REQUEST FOR FEES AND ENTERING FINAL JUDGMENT**

1 WHEREAS, on August 23, 2023, the Court entered an Order Granting Preliminary
2 Approval of Settlement (“Preliminary Approval Order”), preliminarily approving the proposed
3 settlement of this Action pursuant to the terms of the Settlement Agreement (the “Settlement”)
4 and directing that notice be given to the members of the Settlement Class.

5 WHEREAS, on March 7, 2024, this Court conducted a Final Approval Hearing. Upon
6 consideration of the pending Motion for Final Approval of Class Action Settlement and Request
7 for Fees (“Motion”), this Court, having, heard the presentations of counsel, having reviewed all
8 of the submissions presented with respect to the proposed Settlement, having carefully
9 considered the requirements for class certification, having determined that the Settlement is fair,
10 adequate, and reasonable, having considered the application of Class Counsel for awards of
11 attorneys’ fees and costs, and for an incentive award for the Plaintiff, and having reviewed the
12 materials in support thereof, orders that the Motion is GRANTED, subject to the following terms
13 and conditions:

14 1. With respect to the capitalized terms set forth herein, the Court, for purposes of
15 this Order Granting Motion for Final Approval of Class Action Settlement and Request for Fees
16 and entering Final Judgment (“Final Order”) adopts the definitions set forth in the Settlement.

17 2. This Court has continuing and exclusive jurisdiction over the Settlement and all
18 Parties hereto for the purpose of construing, enforcing, and administering the Settlement.

19 3. The Court finally certifies, for settlement purposes only, the following Settlement
20 Class:

21 all Persons who purchased any of the Covered Products in the United States, its
22 territories, or at any United States military facility or exchange during the Class
23 Period. Excluded from the Settlement Class shall be the assigned Judge to the
24 Action, counsel to the Parties, Mediator Louis M. Meisinger, and their employees,
25 legal representatives, heirs, successors, assigns, or any members of their
26 immediate family; any government entity; Defendant, any entity in which
27 Defendant has a controlling interest, any of Defendant’s subsidiaries, parents,
28 affiliates, and officers, directors, employees, legal representatives, predecessors in
interest, heirs, successors, or assigns, or any members of their immediate family;
and any Persons who timely opt-out of the Settlement Class.

1 4. With respect to the Settlement Class, this Court finds that: (a) the members of the
2 Settlement Class are so numerous their joinder is impracticable; (b) there are questions of law
3 and fact common to the Settlement Class which predominate over any individual questions; (c)
4 the claims of Plaintiff are typical of the claims of the Settlement Class; (d) Plaintiff and Class
5 Counsel have fairly and adequately represented and protected the interests of the Settlement
6 Class; and (e) a class action is superior to other available methods for the fair and efficient
7 adjudication of the controversy.

8 5. Notice to the Settlement Class has been provided in accordance with the
9 Preliminary Approval Order. These materials satisfied the requirements of Cal. Civ. Pro. Code §
10 382 and Cal. Civ. Code § 1781, and Rule 3.766 of the California Rules of Court and (a) provided
11 the best practicable notice, (b) were reasonably calculated, under the circumstances, to apprise
12 the Settlement Class of the pendency of the Action, the terms of the Settlement Agreement, and
13 of their right to appear or object to or exclude themselves from the Settlement Class, (c) were
14 reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive
15 notice, and (d) fully complied with the applicable laws of the State of California. Accordingly,
16 the Court determines that all members of the Settlement Class are bound by this Final Order.

17 6. The Court dismisses with prejudice all claims currently pending before it
18 belonging to Plaintiff and members of the Settlement Class who did not request exclusion from
19 the Settlement Class in the time and manner provided for in the Settlement.

20 7. The Settlement was arrived at after extensive arm's length negotiations conducted
21 in good faith by counsel for the Parties, investigation and discovery were sufficient for this court
22 to act intelligently, counsel is experienced in similar litigation, and the amount of objectors is
23 small. Accordingly, this Court hereby approves the Settlement Agreement as fair, reasonable
24 and adequate in light of the strength of the plaintiffs' case, the complexity, expense and duration
25 of the litigation, the amount offered in settlement, the lack of a governmental participant, and the
26 risks inherent and involved in establishing liability and damages, and in maintaining the class
27 action as to liability issues through trial and appeal.

1 8. The promises and commitments of the Parties under the terms of the Settlement
2 constitute fair value given in exchange for the release of the Released Claims. Therefore, this
3 Final Order releases and absolutely and forever discharges the Defendant and the Released
4 Parties from the Released Claims as set forth in the Settlement.

5 9. All members of the Settlement Class who did not make a valid request for
6 exclusion from the Settlement Class in the time and manner provided in the Settlement are
7 barred, permanently enjoined, and restrained from commencing or prosecuting any action, suit,
8 proceeding, claim, or cause of action in any jurisdiction or court against Defendant and/or the
9 Released Parties based upon, relating to, or arising out of, any of the Released Claims. However,
10 all members of the Settlement Class who did make a valid request for exclusion from the
11 Settlement Class in the time and manner provided in the Settlement are not barred, permanently
12 enjoined, or restrained from commencing or prosecuting any action, suit, proceeding, claim, or
13 cause of action in any jurisdiction or court against Defendant and/or the Released Parties based
14 upon, relating to, or arising out of, any of the Released Claims.

15 10. The Court has considered any and all Objection Statements and overrules them to
16 the extent they are inconsistent with the findings of fact and conclusions of law as set forth in
17 this Final Order.

18 11. Solely for purposes of implementing this Settlement, the Court approves Plaintiff
19 Dorcas as the Class Representative. Plaintiff has requested a Class Representative Service Award
20 in the amount of \$1,500. The Court awards a Class Representative Service Award in the amount
21 of \$_____ to Plaintiff in light of the time and services she rendered on behalf of the Settlement
22 Class, as well as the risks and adverse consequences she potentially faced as a result. The Class
23 Representative Service Award shall be paid from the Cash Fund in compliance with the terms of
24 the Settlement Agreement.

25 12. Solely for purposes of implementing this settlement, the Court approves Faruqi &
26 Faruqi as Class Counsel. Counsel has requested \$171,520.07 in Class Counsel fees and
27 \$28,479.93 in costs. Upon hearing and review of the Motion for Final Approval of Class Action

1 Settlement and Request for Fees, the Court awards \$_____ in counsel fees and
2 \$_____ for costs. This award is fair and reasonable in light of the nature of this
3 Action, Class Counsel’s experience and efforts in prosecuting this Action, and the benefits
4 obtained for the Class. The attorneys’ fees and costs awarded by the Court shall be paid from the
5 Cash Fund in compliance with the terms of the Settlement Agreement.

6 13. The Settlement Administrator shall distribute the Residual Settlement Amount
7 and Voucher Fund to the Authorized Claimants in the manner specified in the Settlement
8 Agreement within forty-five (45) calendar days of the Effective Date.

9 14. A declaration of payment will be filed by the Settlement Administrator with the
10 Court and provided to the Parties within ten (10) calendar days of mailing and digitally paying
11 the settlement proceeds.

12 15. The Persons listed in the relevant exhibit to the Supplemental Declaration of
13 Katherine Rovertoni have submitted valid and timely Requests for Exclusions and are thus
14 excluded from the Settlement Class and not bound by this Final Order.

15 16. For a period of no less than five (5) years after the Effective Date, and subject to
16 all necessary regulatory approvals by appropriate governing agencies, Defendant shall not use
17 the word “Austria” or the Austrian flag on any of the Mueller-branded products, its packaging,
18 labeling, and/or its online marketing, including but not limited to its Mueller-branded products
19 listings on third-party retail sites such as Amazon.com and websites maintained by Aterian
20 (including muellerdirect.com). Defendant shall be permitted four (4) weeks from entry of this
21 Final Order to modify the online marketing described in the proceeding sentence. For removal of
22 any doubt, however, references by third-party retail sites to “Mueller Austria”, “Mueller Austria
23 Store” or third-party references to prior Mueller-branded products will not be construed as a
24 violation of the injunctive relief. Additionally, Defendant shall be permitted to sell through
25 existing inventory of the Products that contain the word “Austria” and/or the Austrian flag.

26 17. The Settlement shall not be offered or be admissible in evidence by or against
27 Defendant or cited or referred to in any other action or proceeding, except (1) in any action or

1 proceeding brought by or against the Parties to enforce or otherwise implement the terms of the
2 Settlement, or (2) in any action involving Plaintiff, members of the Settlement Class, or any of
3 them, to support a defense of res judicata, collateral estoppel, release, or other theory of claim
4 preclusion, issue preclusion, or similar defense.

5 18. In the event that the Settlement is terminated, pursuant to its terms or otherwise,
6 this Judgment shall be vacated *nunc pro tunc*.

7 19. Without affecting the finality of this Final Order in any way, the Court hereby
8 retains continuing jurisdiction over (a) the implementation of this Settlement and any award or
9 distribution to the Settlement Class members; (b) hearing and determining of an application for
10 attorneys' fees and costs; (c) the request for the payment of a Class Representative Service
11 Award to the Plaintiff; and (d) all Parties for the purpose of enforcing and administering the
12 Settlement pursuant to Cal. Civ. Pro. Code § 664.6 or otherwise.

13 20. The Clerk is directed to enter this Final Order forthwith.

14 **IT IS SO ORDERED.**

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16 Dated: _____, 2024

The Hon. David S. Cohn