

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

KENNETH CHAPMAN, <i>et al.</i> ,	)	CASE NO. 1:16-cv-01114-JG
	)	
Plaintiffs,	)	JUDGE JAMES S. GWIN
	)	
v.	)	
	)	
TRISTAR PRODUCTS, INC.,	)	
	)	
Defendant.	)	

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**DEFENDANT TRISTAR PRODUCTS, INC.’S MEMORANDUM IN OPPOSITION TO  
MOTION TO ENFORCE SETTLEMENT**

Tristar Products, Inc. (“Tristar”) would prefer that it was in a position to bring closure to this matter, but in light of the Notices of Appeal filed by the Arizona Attorney General and State of Arizona (together, the “Arizona Attorney General”), that is unfortunately not the case. The Settlement Agreement states:

“Effective Date” means the first business date after the last of the following conditions have been satisfied: (a) all Parties and Class Counsel have executed this Settlement Agreement; (b) the Court has entered the Final Approval Order; (c) the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Approval Order; (d) in the event there is an appeal, the final dismissal of all appeals from the Final Approval Order; (e) in the event there is an appeal, affirmance on appeal of the Final Approval Order; (f) in the event there is an appeal and if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Approval Order, the time to petition for rehearing or re-argument, and petitions for certiorari and or any other form of review with respect to such ruling or decision has expired; or (g) in the event there is an appeal and if a petition for rehearing or re-argument, petitions for certiorari or any other form of review with respect to the Final Approval Order is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Approval Order.<sup>1</sup>

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<sup>1</sup> Doc. 126-1 at pp. 6-7.

On August 3, 2018, the Court entered its Order granting final approval to the proposed settlement and granting in part Class Counsel's request for fees.<sup>2</sup> On September 4, 2018, the Court denied the Arizona Attorney General's motion to intervene, and the Arizona Attorney General filed a Notice of Appeal.<sup>3</sup> On September 6, 2018, the Court granted Class Counsel's supplemental request for costs and entered judgment in this matter.<sup>4</sup> The Arizona Attorney General filed an Amended Notice of Appeal on September 10, 2018.<sup>5</sup>

Tristar agreed with the Court and Plaintiffs that the settlement should receive final approval and that the Arizona Attorney General should not be allowed to intervene, but as Class Counsel acknowledges: "[the Arizona Attorney General] subsequently appealed both the Final Approval of the settlement and this Court's denial of their motion to intervene."<sup>6</sup> Regardless of the merits of that appeal, that means that the last condition of "Effective Date" has not been satisfied.<sup>7</sup> If the last condition of the "Effective Date" has not been satisfied, then Tristar's obligation to fund the settlement has not yet been triggered.<sup>8</sup> Simply put, there is no part of the Settlement Agreement that needs to be enforced at this time.

In the end, Plaintiffs' request for a more expedient close to the settlement now belongs before the Sixth Circuit Court of Appeals. The remaining conditions to "Effective Date" all rest at the appellate level. Whether through expedited briefing or other relief, the resolution of any appeal is the next step required by the Settlement Agreement. The parties agreed to these

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<sup>2</sup> Doc. 156.

<sup>3</sup> Doc. 162; Doc. 163.

<sup>4</sup> Doc. 164; Doc. 165.

<sup>5</sup> Doc. 167.

<sup>6</sup> Doc. 168 at p. 3.

<sup>7</sup> Doc. 126-1 at pp. 6-7.

<sup>8</sup> See Doc.168 at p. 3 ("The Settlement Agreement entered into by the parties states that "Tristar shall pay any attorney cost and fee awards by the Court, and any [Incentive] Awards and other monetary awards agreed to in this Settlement *within ten business days following the Effective Date.*" (emphasis in original)).

conditions, and the filing of an appeal does not justify rewriting the terms of that agreement. Tristar is confident that the Arizona Attorney General's appeal will prove unsuccessful and the Court's orders will be affirmed. At that time, no motion practice will be necessary to finalize the settlement.

Respectfully submitted,

*/s/ Jonathan F. Feczko*

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2018, a copy of the foregoing Defendant Tristar Products, Inc.'s Memorandum in Opposition to Motion to Enforce Settlement was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/ Jonathan F. Feczko* \_\_\_\_\_

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