

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

KENNETH CHAPMAN, *et al.*,

Plaintiffs,

v.

TRISTAR PRODUCTS, INC.,

Defendant.

Case No. 1:16-cv-1114

Judge James S. Gwin

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**MOTION TO ENFORCE SETTLEMENT**

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Plaintiffs Kenneth Chapman, Jessica Vennel, Jason Jackson, and Edwina Pinon (collectively, “Plaintiffs”) move that the Court order Defendant Tristar Products, Inc. (“Tristar”) to fulfill its obligations under the settlement approved in this case. In support of this motion, Plaintiffs state:

1. The Court entered its Final Approval of the parties’ settlement on August 3, 2018<sup>1</sup> over the “objections”<sup>2</sup> of various governmental parties.<sup>3</sup> In its Final Approval Order, the Court approved Class Counsel’s fees in the amount of \$1,980,382.59 and incentive awards for Plaintiffs Chapman, Vennel, and Jackson in the amount of \$7,500 each, and for Plaintiff Pinon in the amount of \$6,000.<sup>4</sup> The Court subsequently approved Class Counsel’s request for expenses in the amount of \$240,009.63.<sup>5</sup>

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<sup>1</sup> Doc. 156, Opinion & Order.

<sup>2</sup> The governmental parties had no standing to object to the settlement, *see* Docs. 157, 159; nevertheless they voiced their complaints over the settlement to the Court.

<sup>3</sup> *See generally* Doc. 153, Transcript of Final Approval Hearing

<sup>4</sup> Doc. 156, at 16-17.

<sup>5</sup> Doc. 164.

2. The Arizona Attorney General and the State of Arizona (collectively, “Arizona”) subsequently moved to intervene for the limited purpose of appealing the Court’s approval of the settlement.<sup>6</sup>

3. Both Plaintiffs and Tristar opposed the Motion to Intervene.<sup>7</sup> Plaintiffs argued that Arizona lacked any standing to intervene.<sup>8</sup> Plaintiffs noted that Arizona’s opposition to the settlement stood in stark contrast to those of the Class Members, of which *none* had objected to the proposed settlement.<sup>9</sup> Tristar agreed with Plaintiffs’ arguments that Arizona lacked standing and further noted that Arizona’s request to intervene was procedurally defective.<sup>10</sup> In moving to intervene, Arizona failed to articulate any actual claim that it could bring before this Court or on appeal.<sup>11</sup> The parties contend that Arizona may not intervene or appeal the final approval of this settlement because Arizona both lacks constitutional standing and has absolutely no claim for which it can seek intervention.

4. The Court denied Arizona’s motion to intervene and its request to be deemed a formal objector to the parties’ settlement.<sup>12</sup> In denying the requests, the Court found that Arizona lacked standing.<sup>13</sup> The Court further noted that when asked at the final approval if Arizona would represent the Class’s interest, Arizona replied that it would not.<sup>14</sup> The Court found that permitting intervention “would significantly delay the distribution of relief to class members.”<sup>15</sup>

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<sup>6</sup> Doc. 154, Motion to Intervene for the Limited Purpose of Appeal.

<sup>7</sup> Docs. 157, 159.

<sup>8</sup> Doc. 157, Plaintiffs’ Opposition to Motion to Intervene for the Limited Purpose of Appeal.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Doc. 159, Defendant’s Opposition to Motion to Intervene for the Limited Purpose of Appeal.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> Doc. 162, Opinion & Order.

<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.*

5. Arizona subsequently appealed both the Final Approval of the settlement and this Court's denial of their motion to intervene.<sup>16</sup> Plaintiffs are challenging Arizona's appeal.

6. 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.*" Because, as this Court has noted, there is no valid basis for further appeal and delaying settlement,<sup>17</sup> the Effective Date runs from the entry of the Court's Final Approval Order on August 3, 2018.

7. Plaintiffs have consulted with Tristar and have offered a clawback provision, under which Plaintiffs shall return Class Counsel's fees and costs, the Plaintiffs' incentive awards, and other awards to the Class Representatives per the Order of the Court in the unlikely event that the United States Court of Appeals for the Sixth Circuit overturns this Court's Final Approval.

WHEREFORE, Plaintiffs respectfully request that the Court: (1) hold a hearing on an expedited basis regarding any issues remaining pursuant to this Motion to Enforce Settlement on the first available hearing date and (2) enter an order: (a) enforcing the Settlement Agreement, which it has previously approved, requiring Tristar to immediately fund the Settlement, pay Class Counsel's fees and costs, and pay each named Plaintiffs' incentive awards, and (b) granting any such other relief the Court deems appropriate.

Dated: September 24, 2018

Respectfully submitted,

s/Gregory F. Coleman

Gregory F. Coleman (*pro hac vice*)

Adam A. Edwards (*pro hac vice*)

Mark E. Silvey (*pro hac vice*)

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<sup>16</sup> Doc. 163, Notice of Appeal; Doc. 167 Amended Notice of Appeal.

<sup>17</sup> Doc. 162, at 9.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2018, a copy of the foregoing 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/Gregory F. Coleman

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Gregory F. Coleman