

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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VINCENT J. EMILIO, on behalf of himself	:
and all others similarly situated,	:
	:
Plaintiff,	:
	:
vs.	:
	:
	:
ROBISON OIL CORP. d/b/a ROBISON,	:
	:
Defendant.	:
-----X	

Index No. 03-01412  
(Scheinkman, J.)

**ORDER PRELIMINARILY  
APPROVING SETTLEMENT, SCHEDULING FAIRNESS  
HEARING AND AUTHORIZING DISSEMINATION OF NOTICE**

Plaintiff Vincent J. Emilio (“Plaintiff”), individually and on behalf of the class defined in the Settlement Agreement and herein (the “Class”), and Defendant Robison Oil Corp. d/b/a Robison (“Defendant” or “Robison”) (hereinafter, collectively with Plaintiff, the “Parties”), having reached a proposed settlement (the “Settlement”) of the disputes between them in the above-captioned action (the “Action”), which is embodied in the Settlement Agreement presented to the Court;

The Parties having applied to this Court for approval of the Settlement and for dismissal of Plaintiff’s Amended Class Action Complaint with prejudice upon the terms and conditions set forth in the Settlement Agreement; and

The Court having read and considered the Settlement Agreement and accompanying exhibits, and the Parties to the Settlement Agreement having consented to the entry of this Preliminary Approval Order, and all capitalized terms used herein having the same meaning defined in the Settlement Agreement;

IT IS HEREBY ORDERED THAT:

1. The requirements for class certification under Article 9 of the New York Civil Practice Law and Rules ("CPLR"), upon preliminary review, are satisfied, and the following Class is preliminarily certified for the purpose of considering and approving the Settlement:

All persons and entities within the State of New York who, for the period beginning on January 28, 1997 and continuing to September 6, 2006 (the "Class Period"), allegedly were wrongfully and deceptively required to pay Robison Oil Corp. d/b/a Robison ("Robison") amounts in excess of the electric rates required under the terms of their annual fixed-rate electric supply service contracts with Robison (the "Class").

Excluded from the Class are Robison, its subsidiaries, affiliates, owners, executive officers, directors and employees, and any persons previously requesting exclusion in response to dissemination of the Notice of Pendency of Class Action and any judge presiding, or who has presided, over the action.

2. For purposes of the Settlement, this Court preliminarily finds and concludes that the numerosity, typicality, commonality and adequacy requirements of CPLR Article 9 are satisfied, and that in accordance with Article 9, common issues of fact and law predominate and make certification of the Action as a class action superior to other available methods for the fair and efficient adjudication of the controversy.

3. The Court appoints Plaintiff Vincent J. Emilio as representative of the Class and the attorneys identified as "Settlement Class Counsel" in the Settlement Agreement, William R. Weinstein of Law Offices of William R. Weinstein, and Michael A. Katz, as counsel for the Class for purposes of this Settlement. The Court also preliminarily finds and concludes that in negotiating and entering into the Settlement Agreement, Plaintiff and Settlement Class Counsel have fairly and adequately represented and protected the interests of all Class members, as required under CPLR Article 9.

4. The Court preliminarily approves the Settlement Agreement as fair, adequate and reasonable to the Class, subject to the Fairness Hearing as described in the notice and summary notice to be disseminated to the Class pursuant to CPLR Article 9.

5. The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action and Fairness Hearing and Claim Form/Release ("Settlement Notice"), annexed as Exhibit B to the Settlement Agreement, and the Summary Notice of Proposed Settlement of Class Action and Fairness Hearing ("Summary Settlement Notice"), annexed as Exhibit D to the Settlement Agreement, and finds that the mailing and dissemination of the Settlement Notice substantially in the manner set forth in Paragraph 7 of this Preliminary Approval Order, and the publication of the Summary Settlement Notice substantially in the manner set forth in Paragraph 7 of this Preliminary Approval Order, meet the requirements of CPLR Article 9 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice for all purposes to all persons entitled thereto.

6. Settlement Class Counsel is hereby authorized to retain RG2 Claims Administration LLC, 30 South 17th Street, Philadelphia, PA 19103, to act as Settlement Administrator for the Settlement of the Action. The Settlement Administrator shall be responsible, under the direction of Settlement Class Counsel, for (i) the dissemination of notice to the Class and other Robison electric customers not included in the Class in accordance with this Preliminary Order, and (ii) establishing and administering the Settlement Fund, including distributing the Net Settlement Benefits to Class members, and distributing the settlement administration fees and costs, attorneys' fees and expenses and Plaintiff's incentive fees as may be awarded by the Court in accordance with the Final Judgment after the Settlement becomes final. Insofar as the Settlement Administrator is not qualified to do so, Settlement Class Counsel

is authorized to retain tax counsel or accountants in connection with the determination of any tax liability of the Settlement Fund, which amounts are to be paid from the Settlement Fund.

7. Within 30 days after entry of this Preliminary Approval Order:

(a) The Settlement Administrator shall cause a copy of the Settlement Notice, substantially in the form annexed as Exhibit B to the Settlement Agreement, to be distributed to all persons within the Class by mailing such Settlement Notice to the addresses listed on the Class list prepared by Settlement Class Counsel pursuant to the Settlement Agreement, with the addresses having been subject to appropriate updating by the Settlement Administrator, followed by the re-mailing of returned Settlement Notices as appropriate in light of any further updating as determined by the Settlement Administrator to be appropriate;

(b) The Settlement Administrator shall cause a copy of the Summary Settlement Notice, substantially in the form annexed as Exhibit D to the Settlement Agreement, to be published on one weekday in a size no smaller than 1/12 of a page, in the *Westchester Journal-News*;

(c) Settlement Class Counsel William R. Weinstein, Robison and the Settlement Administrator shall cause the Settlement Notice, the Settlement Agreement with exhibits and Plaintiff's Amended Class Action Complaint to be posted on their websites with a conspicuous link to such information identifying the existence of the Settlement of the Action until fifteen (15) days following the Effective Date of the Settlement; and

(d) The Settlement Administrator shall cause a copy of a notice in a form agreed to by the Parties to be mailed to all Robison electric customers who previously were mailed notice of pendency of the class action but who have been determined by Settlement Class Counsel not to have an "Allowed Claim" to notify them that they have been determined by

Settlement Class Counsel not to be part of the Class under the Settlement and will not be entitled to share in any of the Net Settlement Benefits, but will not be required under the Settlement to release any claims they may have against Robison.

8. A Fairness Hearing will be held before this Court at 2<sup>PM</sup> ~~AM~~ on the 3<sup>rd</sup> day of February 2012, in Courtroom 105, New York State Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, on the fairness of the proposed Settlement, including: (1) whether to finally approve the Settlement as set forth in the Parties' November 14, 2011 Settlement Agreement as fair, reasonable, and adequate; (2) whether a Final Judgment in the form of Exhibit C to the Settlement Agreement should be entered dismissing the Action against Defendant with prejudice; and (3) whether the application of Settlement Class Counsel for the payment of the settlement administration fees and costs, an award of attorneys' fees and expenses including expert fees, and an award of incentive fees to Plaintiff, should be granted. The Court may adjourn or continue the Fairness Hearing without further notice to the members of the Class.

9. At or before the Fairness Hearing, Settlement Class Counsel shall file proof, by affidavit of the Settlement Administrator, of the dissemination of notice in accordance with this Preliminary Order. Additionally, Settlement Class Counsel William R. Weinstein and Robison shall file proof by affidavit or affirmation that the required documents were posted to their websites in accordance with this Preliminary Approval Order.

10. Any Class member who did not previously request exclusion from the Class in response to the mailing of the notice of pendency of class action disseminated to all potential members of the Class pursuant to the Court's July 16, 2010 Notice Order shall have the right to object to the Settlement of the Action, to Settlement Class Counsel's application for payment of

the settlement administration's fees and costs, an award of attorneys' fees and expenses including expert fees, and an award of incentive fees to Plaintiff, or to the proposed Final Judgment, and shall have the right to appear and be heard at the Fairness Hearing, either personally or through an attorney retained at the Class member's own expense. Any such objections to the Settlement shall be considered by the Court at the Fairness Hearing only if, no later than fifteen days prior to the Fairness Hearing, the objecting Class Member files with the Court, and mails by first-class mail to Settlement Class Counsel and Defendant's Counsel at the addresses prescribed in the Settlement Notice and Summary Settlement Notice, a notice of his, her or its intention to appear and supporting papers, along with a detailed statement of the reason(s) for the objection. Any Class member who does not make his, her or its objection in the manner provided in this paragraph shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement or the application of Settlement Class Counsel for the payment of the settlement administration's fees and costs, an award of attorneys' fees and expenses including expert fees and an award of incentive fees to Plaintiff.

11. Upon the Effective Date of the Settlement, all Class members shall be barred forever from asserting any Released Claim against any Released Party, and by operation of the Final Judgment shall be conclusively deemed to have fully and finally released the Released Parties from all Released Claims.

12. All Class members are preliminarily enjoined from commencing or prosecuting any actions asserting any of the Released Claims, either directly, representatively, derivatively or in any other capacity, against any Released Party, pending the final determination of whether the Settlement Agreement should be finally approved by the Court.

13. The reasonable fees and costs of the Settlement Administrator for preliminarily administering the Settlement prior to final approval shall be paid by Robison in the manner set forth in Paragraph 2(a)(i) of the Settlement Agreement.

14. Pending final determination of whether the Settlement will be approved, all other proceedings in this Action shall be stayed.

15. It shall be the responsibility of Settlement Class Counsel to respond to inquiries from Class members regarding the Settlement, including questions regarding the computation of their Allowed Claims and their allocable Net Settlement Benefits, other than inquiries regarding the processing of Claim Forms, which shall be handled by the Settlement Administrator. Settlement Class Counsel also shall respond to inquiries from other Robison customers who are advised pursuant to Paragraph 7(d) of this Preliminary Approval Order that they have been determined not to be members of the Class entitled to share in the Net Settlement Benefits. Defendant and its counsel shall have no responsibility for the administration of the Settlement other than cooperating in good faith with Settlement Class Counsel and the Settlement Administrator as necessary to effect the administration of the Settlement in accordance with the terms of the Settlement Agreement.

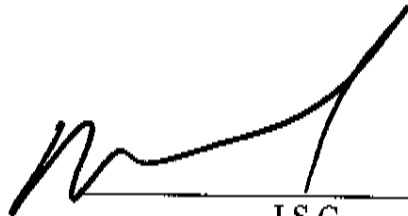
16. This Court has jurisdiction over all claims of all Class members asserted in this Action, and has jurisdiction over all Class members.

17. In the event the Settlement Agreement shall terminate, or not become effective for any reason, this Preliminary Approval Order, including its provisions preliminarily certifying the Class, shall be vacated and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy; in such event, the Settlement Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights

of the Parties hereto, who shall be restored to their respective positions as of the date of the Settlement Agreement.

18. The Court may, for good cause shown, extend any of the deadlines set forth in this Preliminary Approval Order without further notice to the Class. The Settlement Hearing may be adjourned or continued without further order of the Court.

Dated: White Plains, New York  
November 18, 2011



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J.S.C.

**Hon. Alan D. Scheinkman**  
**Supreme Court Justice**