

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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In re LUCKIN COFFEE INC. SECURITIES : X  
LITIGATION : : Index No. 651939/2020

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This Document Relates To: : : CLASS ACTION  
THE CONSOLIDATED ACTION. : : ~~PROPOSED~~ ORDER PRELIMINARILY  
: : APPROVING SETTLEMENT AND  
: : PROVIDING FOR NOTICE  
\_\_\_\_\_ X

WHEREAS, on September 6, 2022, certain parties to the above-entitled action (the "Action")<sup>1</sup> entered into a Stipulation of Settlement (the "Stipulation" or "Settlement"), which is subject to review by this Court and which, together with the exhibits thereto, sets forth the terms and conditions for the Settlement and dismissal of the Action; and the Court having read and considered the Stipulation and the accompanying documents; and the Parties to the Stipulation having consented to the entry of this Notice Order; and all capitalized terms used herein having the meanings defined in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 7 day of October 2022, that:

1. The Court preliminarily finds that:
  - (a) the Settlement resulted from informed, extensive, good-faith, arm's-length negotiations among Plaintiffs and Defendants; and
  - (b) the Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class.
2. For purposes of the Settlement only, and preliminarily, for purposes of this Order, the Action shall proceed as a class action, pursuant to CPLR §§901 and 902, on behalf of a settlement class (the "Settlement Class") consisting of all persons and entities (and their beneficiaries) who, at any time, purchased or otherwise acquired the Convertible Notes and who did not release claims based on their purchase or acquisition of the Convertible Notes in connection with Luckin's noteholder Scheme of Arrangement, or otherwise. Excluded from the Settlement Class are Defendants; the current and former officers and directors of Luckin; members of their immediate

<sup>1</sup> As used herein, the term "Parties" means Plaintiffs Kimson Chemical, Inc., Teamsters Local 710 Pension Fund, Michael Bergenholtz, and City of Fort Myers Police Officers' Retirement System (collectively, "Plaintiffs"), on behalf of themselves and the Settlement Class, and Defendants Luckin Coffee Inc. ("Luckin"), Thomas P. Meier, Haode Investment Inc., Primus Investment Fund, L.P., Summer Fame Limited, Lucky Cup Holdings Limited, Fortunate Cup Holdings Limited, Mayer Investments Fund, L.P., Richard Arthur, Cogency Global Inc., Credit Suisse Securities (USA) LLC, Morgan Stanley & Co. LLC, China International Capital Corporation Hong Kong Securities Limited, Haitong International Securities Company Limited, Key Banc Capital Markets Inc., and Needham & Company, LLC (collectively, "Appearing Defendants").

families; all subsidiaries and affiliates of Luckin; all persons, firms, trusts, corporations, officers, directors and any other individual or entity in which Luckin has a controlling interest; the legal representatives, agents, affiliates, heirs, successors-in-interest, or assigns of all such excluded parties; any person or entity who held Convertible Notes as of November 22, 2021 at 5:00 p.m. EST; and any persons or entities who appear on the list of creditors of the Noteholder Scheme of Arrangement as maintained by the claims administrator for the Scheme of Arrangement. Also excluded from the Settlement Class are those persons (if any) who would otherwise be Settlement Class Members but who timely and validly exclude themselves therefrom.

3. For purposes of the Settlement only, and preliminarily, for purposes of this Order, the Plaintiffs are hereby certified as Settlement Class Representatives, and Lead Counsel are appointed as Lead Settlement Class Counsel.

4. A Settlement Fairness Hearing is hereby scheduled to be held before the Court at 60 Centre Street, Courtroom 238, New York, New York 10007, on January 31, 2023, at 9:30 am., for the following purposes:

- (a) to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- (b) to determine whether the Judgment as provided under the Stipulation should be entered;
- (c) to determine whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund should be approved by the Court as fair, reasonable, and adequate;
- (d) to determine whether to grant final certification of a Settlement Class for purposes of the Settlement;
- (e) to consider Plaintiffs' Counsel's application for an award of attorneys' fees and expenses;
- (f) to consider Plaintiffs' request for payment for their efforts in prosecuting this Action on behalf of the Settlement Class;

- (g) to consider any objections or opt outs received by the Court; and
- (h) to rule upon such other matters as the Court may deem appropriate.

5. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement Class and may adjourn the Settlement Fairness Hearing without further notice to the Settlement Class. The Court reserves the right to enter the Judgment approving the Stipulation regardless of whether it has approved the Plan of Allocation, Plaintiffs' Counsel's request for an award of attorneys' fees and expenses and Plaintiffs' request for payment for their representation of the Settlement Class.

6. The Court approves the form, substance, and requirements of the Notice of Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release (the "Proof of Claim"), and the Summary Notice of Proposed Settlement of Class Action (the "Summary Notice"), annexed hereto as Exhibits 1, 2 and 3, respectively.

7. The Court approves the appointment of Gilardi & Co. LLC as the Claims Administrator to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Proofs of Claim as more fully set forth below.

8. The Claims Administrator shall cause the Notice and the Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first class mail, postage prepaid, within twenty-one (21) calendar days of this Notice Order, to all Settlement Class Members who can be identified with reasonable effort. Within ten (10) calendar days of this Notice Order, Luckin, at its expense, shall make, or cause to be made, with reasonable effort, the names, last known addresses, or email addresses of Settlement Class record shareholders to the Claims Administrator for the purpose of identifying and giving notice to the Settlement Class. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased or otherwise acquired the Convertible Notes as record owners but not as beneficial owners. Such nominee purchasers are directed, within ten (10) business days of their receipt of the Notice, to either forward copies of the Notice and Proof of Claim to their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice and Proof of Claim promptly to such

identified beneficial owners. Nominee purchasers who elect to send the Notice and Proof of Claim to their beneficial owners shall send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Notice shall be made available to any record holder requesting such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of sending the Notice and Proof of Claim to beneficial owners.

9. The Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal* and once over a national newswire service, within ten (10) calendar days after the mailing of the Notice.

10. Lead Counsel shall, at least seven (7) calendar days before the Settlement Fairness Hearing, file with the Court and serve on the Parties proof of mailing of the Notice and Proof of Claim and proof of publication of the Summary Notice.

11. The form and content of the Notice and the Summary Notice, and the method set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of New York law, due process, and all other applicable laws and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto and reasonably calculated under the circumstances to describe the terms and effect of the Settlement and to apprise the Settlement Class Members of their right to object to the proposed Settlement and to exclude themselves from the Settlement Class. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided pursuant thereto, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

12. In order to be entitled to participate in the Net Settlement Fund, in the event the Settlement is consummated in accordance with its terms set forth in the Stipulation, each Settlement Class Member shall take the following actions and be subject to the following conditions:

(a) Within ninety (90) calendar days after such time as set by the Court for the Claims Administrator to mail the Notice to the Settlement Class, each Person claiming to be an

Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim, substantially in a form contained in Exhibit 2 attached hereto and as approved by the Court, signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and as are reasonably available to the Authorized Claimant.

(b) Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim within such period, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments pursuant to the Stipulation and the Settlement set forth therein, but will in all other respects be subject to and bound by the provisions of the Stipulation, the releases contained therein, and the Final Judgment. Notwithstanding the foregoing, Lead Counsel may, in their discretion, accept for processing late-submitted claims so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed. In connection with processing the Proofs of Claim, no discovery shall be allowed on the merits of the Action or the Settlement. No discovery from or of Defendants shall be allowed on any topic. No Person shall have any claim against Plaintiffs, Plaintiffs' Counsel, or the Claims Administrator by reason of the decision to exercise such discretion whether to accept late-submitted claims.

(c) As part of the Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall (subject to effectuation of the Settlement) release all Released Claims as provided in the Stipulation.

13. Settlement Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless they request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request shall, no later than sixty (60) calendar days after the date set for the initial mailing of the Notice to Settlement Class Members (the "Exclusion Deadline"), mail a request for exclusion in written form by first class mail postmarked to the address designated in the Notice. Such request for exclusion shall clearly indicate the name, address and telephone number of the person seeking exclusion, that the sender requests to be excluded from the Settlement Class, and must be signed by such person. Such persons requesting exclusion are also directed to state the date(s), price(s), and face value of Convertible Notes they purchased or acquired. The request for exclusion shall not be

effective unless it is made in writing within the time stated above, and the exclusion is accepted by the Court. Settlement Class Members requesting exclusion from the Settlement Class shall not be entitled to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

14. Lead Counsel and/or the Claims Administrator shall provide counsel for Appearing Defendants with copies of all requests for exclusion and all written retractions of requests for exclusion as expeditiously as possible and in any event at least twenty-one (21) calendar days before the Settlement Fairness Hearing.

15. The Court will consider objections to the Settlement, the Plan of Allocation, the payment to Plaintiffs, and/or the award of attorneys' fees and expenses. Any person wanting to object must do so in writing and may also appear at the Settlement Fairness Hearing. To the extent any person wants to object in writing, such objections and any supporting papers, accompanied by proof of Settlement Class membership, shall be filed with the Supreme Court of the State of New York, County of New York, Commercial Division, 60 Centre Street, New York, NY 10007, and copies of all such papers served no later than December 27, 202<sup>2</sup>, which is sixty (60) calendar days after the date set for the initial mailing of the Notice to the Settlement Class, to each of the following: Ellen Gusikoff Stewart, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101 on behalf of the Plaintiffs and the Settlement Class, and Lawrence Portnoy, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, on behalf of Defendants. Persons who intend to object in writing to the Settlement, the Plan of Allocation, the request for an award of attorneys' fees and expenses and/or Plaintiffs' request for payment for representing the Settlement Class and desire to present evidence at the Settlement Fairness Hearing must include in their written objections copies of any exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. If an objector hires an attorney to represent him, her or it for the purposes of making an objection, the attorney must both effect service of a notice of appearance on counsel listed above and file it with the Court by no later than December 13, 202<sup>2</sup>. A Settlement Class Member who files a written objection does not have to appear at the Settlement

Fairness Hearing for the Court to consider his, her, or its objection. If the Settlement Class Member intends to appear at the Settlement Fairness Hearing, the Settlement Class Member shall identify any witnesses they may seek to call and exhibits they intend to offer at the Settlement Fairness Hearing in the papers served as set forth above no later than <sup>December 27</sup> \_\_\_\_\_, 202~~2~~. Any member of the Settlement Class who does not make his, her, or its objection in the manner provided shall be deemed to: (i) have waived all such objection; (ii) forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement set forth in the Stipulation, to the Plan of Allocation, and to the award of attorneys' fees and expenses to Plaintiffs' Counsel and Plaintiffs' request for payment, unless otherwise ordered by the Court; (iii) be bound by all the terms and provisions of the Stipulation and by all proceedings, orders and judgments in the Action; and (iv) be foreclosed from appealing from any judgment or order entered in this Action.

16. Any Person that submits a request for exclusion may thereafter submit to the Claims Administrator and to Plaintiffs' Counsel a written and signed revocation of that request for exclusion, provided that it is received no later than five (5) business days before the Settlement Fairness Hearing, in which event that Person will be included in the Settlement Class.

17. All papers in support of the Settlement, the Plan of Allocation, and any application by Plaintiffs' Counsel for attorneys' fees and expenses and payment to Plaintiffs shall be filed fourteen (14) calendar days prior to the deadline in paragraph 15 for objections to be filed. All reply papers shall be filed and served at least seven (7) calendar days prior to the Settlement Fairness Hearing.

18. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

19. Defendants, their counsel, and other Defendants' Released Persons shall have no responsibility for, or liability with respect to, the Plan of Allocation and the related fees and expenses.

20. Pending final determination of whether the Settlement should be approved, the Plaintiffs, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence, maintain or prosecute, and are hereby barred and



enjoined from instituting, continuing, commencing, maintaining or prosecuting any action in any court or tribunal that asserts Released Claims against any of the Defendants' Released Persons. Unless and until the Stipulation is cancelled and terminated pursuant to its terms, all proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court.

21. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation and herein. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts actually and properly disbursed from the Settlement Fund, except as provided for in the Stipulation.

22. If any specified condition to the Settlement set forth in the Stipulation is not satisfied and Plaintiffs or Defendants elect to terminate the Settlement, then, in any such event, the Stipulation, including any amendment(s) thereof, shall be null and void and of no further force or effect (except to the extent otherwise expressly provided in the Stipulation), without prejudice to any party, and may not be introduced as evidence or referred to in this Action, or any action or proceeding by any person or entity for any purpose, and each Party shall be restored to his, her or its respective position as it existed on April 12, 2022.

23. Neither the Stipulation nor the terms of the Settlement, nor any of the negotiations or proceedings connected with it, nor this Order, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

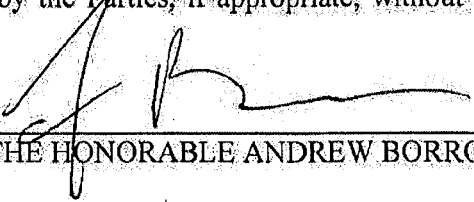
24. The Court may adjourn or continue the Settlement Fairness Hearing without further written notice.

25. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement. The Court may approve the Settlement, with such

modifications as may be agreed to by the Parties, if appropriate, without further notice to the

Settlement Class.

DATED: October 7, 2022



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THE HONORABLE ANDREW BORROK, J.S.C.