

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JEANNIE PATORA, individually on behalf :
of herself and on behalf of all others similarly :
situated, :

Plaintiff, :

v. :

TARTE, INC. :

Defendant. :

Case No.: 7:18-cv-11760-KMK

**~~PROPOSED~~ ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT, GRANTING PRELIMINARY CERTIFICATION OF SETTLEMENT
CLASS, AND PROVIDING FOR NOTICE**

WHEREAS, a putative class action complaint was filed in this District on December 14, 2018 (the “Action”) by plaintiff Jeannine Patora (“Plaintiff”), on behalf of herself and those similarly situated, against defendant Tarte Inc.’s (“Defendant”);

WHEREAS, on January 24, 2019, Plaintiff has made an unopposed motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of the Action (“Motion”), in accordance with the Settlement Agreement dated December 12, 2018 (the “Settlement Agreement”), which, together with the Exhibits attached thereto, sets forth the terms and conditions for a proposed settlement of the Action;

WHEREAS, the Parties represent that they have conducted an extensive and thorough examination, investigation and evaluation of the relevant facts, and allegations to assess the merits of the potential claims to determine the strength of both defenses and liability sought in the Action.

WHEREAS, as part of that investigation, Plaintiff’s Counsel obtained significant information from Defendant through informal discovery regarding sales data, distribution and pricing;

WHEREAS, Plaintiff’s Counsel asserts that they extensively investigated the Products’ ingredients and evaluated the various state consumer protection laws, as well as the legal landscape, to determine the strength of the claims, the likelihood of success, and the parameters within which courts have assessed settlements similar to the Proposed Settlement; and

WHEREAS, the Parties have entered into a Settlement Agreement in which they have agreed to settle the Action, subject to the approval and determination by the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the Action with prejudice; and the Court, having reviewed the Settlement Agreement, including the exhibits attached thereto, as well as the Motion and all declarations filed in support, and having found good cause based on the record,

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. This Preliminary Approval Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Preliminary Approval Order shall have the same meanings as set forth in the Agreement.

2. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Action, Plaintiff, the Settlement Class Members, and Defendant.

3. **Preliminary Class Certification for Settlement Purposes Only.** Having made the findings set forth above, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), the Court hereby preliminarily certifies a class (the “Settlement Class”) for settlement purposes only, of all persons and entities that, during the Class Period, both resided in the United States and purchased in the United States any of Defendant’s “High-Performance Naturals”-branded products for personal use and not for resale. Excluded from the Settlement Class are those persons who opt out of the Settlement Class pursuant to the procedure set forth below and in Paragraph 6.3 of the Settlement Agreement. Also excluded are (a) Defendant’s board members or executive-level officers, including its attorneys; (b) governmental entities; and (c) the Court, the Court’s immediate family, and the Court’s staff. “Class Period” means the period from November 13, 2013, until the last day for claim submission, as set forth on the Notice sent to the Class and on the Settlement Website [at least 90 calendar days from the date of the first publication of the Class Notice].

4. The Court preliminarily finds, solely for purposes of the Settlement, that the Court is likely to be able to certify the proposed Settlement Class for purposes of judgment on the Settlement proposal because: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to Settlement Class Members; (c) Plaintiff’s claims are typical of the claims of the Settlement Class; (d) Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. **Class Representative and Class Counsel.** The Court appoints Jason Sultzer of the Sultzer Law Group, P.C. as counsel for the Settlement Class (“Class Counsel”). Jeannine Patora is hereby appointed as Class Representative.

6. **Preliminary Settlement Approval.** The Court preliminarily approves the Settlement set forth in the Settlement Agreement as being within the range of possible approval as fair, reasonable, and adequate, within the meaning of Federal Rule of Civil Procedure 23 and the Class Action Fairness Act of 2005, based on the Parties’ information provided to the Court and subject to final consideration at the Fairness Hearing provided for below. Accordingly, and because the Court is likely to be able to certify the proposed Settlement Class for purposes of judgment on the Settlement proposal, the Court has adequate grounds to direct Notice to the Settlement Class.

7. **Fairness Hearing.** The Fairness Hearing shall take place before the Honorable Kenneth M. Karas on January 28, ^{2020 at 11:00 AM} ~~2019~~, at the United States District Court for the Southern District of New York, Courtroom 521, in The Hon. Charles L. Brieant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, New York, to determine, among other things: (a) whether the Action should be finally certified as a class action for settlement purposes pursuant to Rule 23(a) and (b)(3); (b) whether the Settlement of the Action should be finally approved as fair, reasonable, and adequate pursuant to Rule 23(e); (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) whether Settlement Class Members should be bound by the release set forth in the Settlement Agreement; (e) whether the application of Plaintiff’s Counsel for an award of Attorneys’ Fees and Expenses should be approved pursuant to Rule 23(h); and (f) whether the application of the named Plaintiff for an Service Award should be approved.

8. **Administration.** In consultation with, and with the approval of, Defendant, Class Counsel is hereby authorized to establish the means necessary to administer the Proposed Settlement and implement the Claim Process, in accordance with the terms of the Settlement Agreement.

9. **Class Notice.** The proposed Class Notice, Summary Settlement Notice, and the notice methodology described in the Settlement Agreement and in the Declaration of the Settlement Administrator are hereby approved.

- a. Pursuant to the Settlement Agreement, the Court appoints the Angeion Group to be the Settlement Administrator to assist in implementing the terms of the Settlement Agreement.
- b. Not later than 21 days after the entry of the Preliminary Approval Order, the Settlement Administrator shall establish an Internet website that will inform Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include materials agreed upon by the Parties and as further ordered by this Court.
- c. Not later than 21 days after the entry of the Preliminary Approval Order, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Settlement Class Members.
- d. Beginning not later than 21 days after the entry of the Preliminary Approval Order, and subject to the requirements of the Preliminary Approval Order, the Settlement Agreement, and the Declaration of the Settlement Administrator, the Settlement Administrator shall commence the Notice Program, including the internet banner advertisements as described in the Declaration of the Settlement Administrator.
- e. During the Claim Period, the Settlement Administrator shall also publish the Summary Settlement Notice in the California regional edition of *USA Today* as described in the Declaration of the Settlement Administrator.
- f. Not later than ten (10) calendar days before the date of the Fairness Hearing, the Settlement Administrator shall file with the Court: (a) a list of those

persons who have opted out or excluded themselves from the Settlement;
(b) the details outlining the scope, methods, and results of the notice program; and (c) confirmation of compliance with the obligation to give notice to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and any other applicable statute, law or rule, including, but not limited to, the Due Process Clauses of the United States Constitution.

10. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the Proposed Settlement, and their rights under the Proposed Settlement, including but not limited to their rights to object to or exclude themselves from the Proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clauses of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices

11. **Exclusion from the Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Class may elect to opt out of the monetary portion of the Class Settlement, relinquishing his or her rights to monetary compensation under this Agreement. Settlement Class Members who opt out of the Settlement will not release their claims for damages that accrued during the Class Period. Settlement Class Members wishing to opt out of the Settlement must send to the Class Action Settlement Administrator by U.S. mail a personally signed letter including their name and address and providing a clear statement communicating that they elect to be excluded from the Settlement Class. Any request for exclusion or opt-out must be postmarked no later than

December 30, 2019 [30 days before Fairness Hearing]. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. The Settlement Administrator shall forward copies of any written requests for exclusion to Class Counsel and Defendant's Counsel. The Settlement Administrator shall file a list reflecting all requests for exclusion with the Court no later than ten (10) calendar days before the Fairness Hearing. Any Settlement Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the release in the Settlement Agreement, even if he or she has litigation pending or subsequently initiates litigation against Defendant relating to the claims and transactions released in this Action.

12. **Objections and Appearances.** A Settlement Class Member may object to the Agreement either on his or her own without an attorney, or through an attorney hired at his or her expense. Any objection must be in writing, signed by the Settlement Class Member (and his or her attorney, if individually represented), and filed with the Court, with a copy delivered to Class Counsel and SVG Counsel, at the addresses set forth in the Class Notice, no later than December 30, 2019 [30 days before Fairness Hearing]. Any objection shall contain a caption or title that identifies it as "Objection to Class Settlement in *Patora v. Tarte, Inc.*, 7:18-cv-11760-KMK (S.D.N.Y.).

13. Any objection shall contain information sufficient to identify and contact the objecting Settlement Class Member (or his or her individually-hired attorney, if any), as well as a clear and concise statement of the Settlement Class Member's objection, the facts supporting the objection, and the legal grounds and authority on which the objection is based, and whether he or she intends to appear at the Fairness Hearing, either with or without counsel. Any objection shall also include documents sufficient to establish the basis for the objector's standing as a Settlement Class Member, such as (i) a declaration signed by the objector under penalty of perjury, with language similar to that included in the Claim Form, that the Settlement Class Member purchased ~~at least one of the Products~~ during the Class Period; or (ii) receipt(s) reflecting such purchase(s).

14. Any objection shall also include a detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement.

15. Any Settlement Class Member filing an objection may be required to sit for deposition regarding the objection. Any Settlement Class Member who fails to comply with the provisions of this Order shall waive and forfeit any and all rights he or she may have to object, and shall be bound by all terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the release in the Settlement Agreement in the Action.

16. Class Counsel and Defendant shall have the right to respond to any objection no later than seven (7) days prior to the Fairness Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting member of the Settlement Class or to the individually-hired attorney for the objecting member of the Settlement Class; to Class Counsel; and to Defendant's Counsel.

17. Any Settlement Class Member, including Settlement Class Members who file and serve a written objection, as described above, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement Agreement or proposed Settlement, or to the award of Attorneys' Fees and Expenses or the Service Award to the Plaintiff. Settlement Class Members who intend to make an appearance at the Fairness Hearing must file a Notice of Intention to Appear with the Court, listing the name, address and phone number of the attorney, if any, who will appear, no later than fifteen (15) days before Fairness Hearing.

18. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his/her intent to appear at the Fairness Hearing pursuant to this Section shall not be

permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by any means, including but not limited to an appeal.

19. **Termination of Settlement.** This Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement; (b) the Settlement is terminated in accordance with the Settlement Agreement; or (c) the Settlement does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose.

20. **Nationwide Stay and Preliminary Injunction.** Pending final determination of whether the settlement should be finally approved, Plaintiff, all Settlement Class Members, and any person or entity allegedly acting on behalf of Settlement Class Members, either directly, representatively or in any other capacity, are enjoined from commencing or prosecuting against Defendant, or against any of the Released Persons, any action or proceeding in any court or tribunal asserting any of the claims released by the Settlement Agreement, provided, however, that this injunction shall not apply to individual claims of any Settlement Class Members who timely exclude themselves in a manner that complies with Paragraph 11 of this Preliminary Approval Order. This injunction is necessary to protect and effectuate the settlement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate this settlement and enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments.

21. **Effect of Settlement Agreement and Order.** Class Counsel, on behalf of the Settlement Class, and Defendant entered into the Settlement Agreement solely for the purpose of ~~compromising~~ and settling disputed claims. This Order shall be of no force or effect if the

Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. The Settlement Agreement, the documents relating to the Settlement Agreement, and this Order are not, and should not in any event be (a) construed, deemed, offered or received as evidence of a presumption, concession or admission on the part of Plaintiff, Defendant, any member of the Settlement Class or any other person; or (b) offered or received as evidence of a presumption, concession or admission by any person of any liability, fault, or wrongdoing, or that the claims in the Action lack merit or that the relief requested is inappropriate, improper, or unavailable for any purpose in any judicial or administrative proceeding, whether in law or in equity.

22. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

23. **Continuance of Hearing.** The Court reserves the right to continue the date of the Fairness Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve or modify the Settlement without further notice to Settlement Class Members.

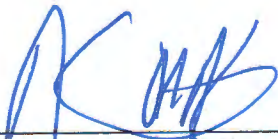
24. The Court sets the following schedule for the Fairness Hearing and the actions which must precede it:

- a. Plaintiff shall file her Motion for Final Approval of the Settlement no later than [44 days before Fairness Hearing] December 16, 2019.
- b. Plaintiff shall file her Motion for Attorneys' Fees, Costs and Expenses, and Motion for Service Award no later than [44 days before Fairness Hearing] December 16, 2019.
- c. Settlement Class Members must file any objections to the Settlement and the Motion for Attorneys' Fees, Costs and Expenses, and/or the Motion for Service Award by no later than [30 days before Fairness Hearing] December 30, 2019.

- d. Settlement Class Members must exclude themselves, or opt-out, from the Settlement by no later than [30 days before Fairness Hearing] December 30, 2019
- e. Settlement Class Members who intend to appear at the Final Fairness Hearing must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than [15 days before Fairness Hearing] January 13, 2020.
- f. The Settlement Administrator shall file: (a) a list of those persons who have opted out or excluded themselves from the Settlement; (b) the details outlining the scope, methods, and results of the notice program; and (c) compliance with the obligation to give notice to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and any other applicable statute, law or rule, including, but not limited to, the Due Process Clause of the United States Constitution by no later than [10 days before the Fairness Hearing] January 17, 2020.
- g. Class Counsel and Defendant shall have the right to respond to any objection no later than [7 days prior to the Fairness Hearing] January 21, 2020.
- h. The Fairness Hearing will take place on January 28, 2020 ^{at} 11:00 AM [no less than 100 days from the date of the Preliminary Approval Order] at the United States District Court for the Southern District of New York, in Courtroom 521, in The Hon. Charles L. Briant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, New York.

SO ORDERED

DATED: October 2, 2019



Honorable Kenneth M. Karas