

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (“Agreement”) is entered into this _ day of December, 2018 by and between Plaintiff Jeannie Patora (“Plaintiff”), on behalf of herself and each of the members of the Settlement Class, on the one hand, and Defendant Tarte, Inc. (“Tarte” or “Defendant”), a New York corporation with its principal place of business at 1375 Broadway, New York, New York, 10018, on the other (collectively, Plaintiff and Defendant are the “Parties”). The Parties intend for this Agreement to fully, finally, and forever resolve, discharge, and settle all released rights and claims, subject to the terms and conditions set forth herein.

I. RECITALS

1.1 On November 13, 2017, the Sultz Law Group, P.C., counsel for Plaintiff (“Plaintiff’s Counsel”) sent a pre-suit notice letter to Defendant alleging that the marketing of Defendant’s products that bear the trademark “high-performance naturals” was false and misleading because the products contain certain ingredients Plaintiff alleged were non-natural. The letter enclosed a draft complaint for a civil action to be filed in the United States District Court for the Southern District of New York, and demanded that Defendant preserve certain records related to the allegations in the draft complaint.

1.2 The draft complaint sought certification of a nationwide class and a New York subclass under both Rule 23(b)(3) and 23(b)(2), and alleged seven counts of wrongdoing: (i) violation of New York GBL § 349; (ii) violation of New York GBL § 350; (iii) violation of consumer protection statutes of more than forty states; (iv) breach of express warranty; (v) violation of the Magnusson-Moss Warranty Act; (vi) breach of implied warranty of merchantability; (vii) breach of implied warranty of fitness for a particular purpose.

1.3 Upon receipt of the pre-suit notice letter and draft complaint, Defendant (through Defendant's Counsel) engaged in confidential pre-litigation settlement negotiations with Plaintiff (through her counsel), comprised of correspondence and numerous telephone calls. The Parties exchanged confidential information, including information regarding sales of the products bearing the labeling challenged by Plaintiff.

1.4 On March 23, 2018, the Parties attended an in-person mediation in New York City. The mediation was before Hon. Stephen M. Orlofsky of Blank Rome LLP, and was attended by Plaintiff's Counsel, Defendant's Counsel and Defendant's General Manager. Although the Parties did not reach a settlement, Defendant's Counsel and Plaintiff's Counsel continued to engage in extensive settlement discussions. On or about July 24, 2018, Plaintiff's Counsel and Defendant's Counsel spoke on the phone and agreed upon a framework for a resolution of the matter. Over the next several months, Plaintiff's Counsel and Defendant's Counsel negotiated a term sheet setting out the basic outline of a settlement agreement providing for both monetary and injunctive relief for Plaintiff and the putative class, and a broad release for Defendant. The term sheet was executed by Plaintiff's Counsel and Defendant's Counsel on September 18, 2018. Thereafter, the Parties began drafting and negotiating this Class Settlement Agreement in order to resolve this Action on a classwide basis, with Court approval.

1.5 As soon as practicable following the execution of this Agreement, Plaintiff will file the Complaint in this Action, captioned *Patora v. Tarte, Inc.*, in the United States District Court for the Southern District of New York. On the same date as the filing of the Complaint in this Action, Defendant will file a Notice of Settlement indicating that the parties had

entered into this Class Settlement Agreement and would be seeking the Court's approval to resolve this dispute on a classwide basis.

II. DEFINITIONS

2.1 "Action" means the lawsuit to be captioned *Patora v. Tarte, Inc.*, and filed in the United States District Court for the Southern District of New York.

2.2 "Agreement" or "Settlement Agreement" means this Class Settlement Agreement and any exhibits attached or incorporated hereto, including any amendments the Parties may agree to, and any exhibits to such amendments.

2.3 "Attorneys' Fees and Expenses" means any funds the Court may award to Class Counsel as compensation for any fees and expenses incurred in connection with this Action and/or the Settlement, as set forth in Section VIII of this Class Settlement Agreement. Attorneys' Fees and Expenses do not include costs or expenses associated with Class Notice or the administration of the settlement.

2.4 "Claim Form" means the document to be submitted by Claimants seeking payment pursuant to Section 4.2 of this Class Settlement Agreement. The Claim Form will accompany the mailed Class Notice and will be available online at the Settlement Website, substantially in the form of Exhibit A to this Class Settlement Agreement.

2.5 "Claim Period" means the time period during which the members of the Settlement Class may submit a Claim Form to the Settlement Administrator for review. The Claim Period shall run for a period of time ordered by the Court, and last at least ninety (90) calendar days from the date of the first publication of the Summary Settlement Notice or Class Notice, whether online, via print publication, or via press release, whichever is earlier.

2.6 “Claimant” means a member of the Settlement Class who submits a claim for payment as described in Section 4.2 of this Class Settlement Agreement.

2.7 “Class Action Settlement Administrator,” “Settlement Administrator,” or “Notice Administrator” means the company jointly selected by Class Counsel and Defendant’s Counsel and approved by the Court to provide Class Notice and to administer the claims process.

2.8 “Class Counsel” means the Sultzer Law Group, P.C., 85 Civic Center Plaza, Suite 104, Poughkeepsie, NY, 12601.

2.9 “Class Notice” or “Long Form Notice” means the legal notice of the proposed Settlement terms, substantially in the form of Exhibit B, as approved by Defendant’s Counsel and Class Counsel, subject to approval by the Court, to be provided to potential members of the Settlement Class in the methods set forth below.

2.10 “Class Period” means the period from November 13, 2013, to the deadline for claim submission set forth in the Class Notice.

2.11 “Complaint” means the operative Complaint in the Action.

2.12 “Court” means the United States District Court for the Southern District of New York.

2.13 “Defendant’s Counsel” means Arnold & Porter Kaye Scholer LLP, 10th Floor, Three Embarcadero Center, San Francisco, CA 94111-4024.

2.14 “Effective Date” means:

(a) if no appeal is taken from the Order and Final Judgment, thirty-five (35) days after the Court enters the Order and Final Judgment of this Class Settlement Agreement; or

(b) if an appeal is taken from the Order and Final Judgment, the date on which all appellate rights (including petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for certiorari or any other form of review, and proceedings in the United States Supreme Court or any other appellate court) have expired, been exhausted, or been finally disposed of in a manner that affirms the Order and Final Judgment.

2.15 “Final Approval” of this Class Settlement Agreement means the date that the Order and Final Judgment is entered in this Action approving this Class Settlement Agreement.

2.16 “Fund Institution” means a third-party banking institution where the cash funds Defendant will pay under the terms of this Agreement will be deposited into a Qualified Settlement Service Award Fund account. Pursuant to Section 4.1, Class Counsel will select the Fund Institution, and Defendant’s Counsel will approve it.

2.17 “Initial Claim Amount” means the amount a member of the Settlement Class claims as a cash payment on a Claim Form that is timely, valid, and approved by the Settlement Administrator. The Initial Claim Amount is subject to *pro rata* increase or decrease, depending on the value of all approved Claims submitted, pursuant to Section 4.4.

2.18 “Notice Plan” means the plan for publication of Class Notice developed by the Settlement Administrator, attached hereto as Exhibit C.

2.19 “Order and Final Judgment” means the final order to be entered by the Court approving the Settlement pursuant to the terms and conditions of this Agreement, dismissing the Action with prejudice, releasing claims, and otherwise directing as the Court or the Parties deem necessary and appropriate to effectuate the terms and conditions of this Agreement.

2.20 “Preliminary Approval” means the order preliminarily approving this Agreement, preliminarily certifying the Settlement Class, approving the Notice of Proposed Settlement, and issuing any necessary related orders.

2.21 “Products” means Defendant’s High-Performance Naturals-branded products, and any similar Tarte products, including those products purchased by members of the Settlement Class during the Class Period, as well as any such products or similar products purchased by members of the Settlement Class in the future, provided that there is no substantial change in their formulation or Defendant’s labeling, marketing or advertising that would be material to the claims resolved in this Settlement Agreement and that would contravene Sections 4.5, 4.6, and 4.7 of this Agreement.

2.22 “Proof of Purchase” means a receipt or other documentation reasonably establishing the fact of purchase, date of purchase, and the price paid for a Product during the Settlement Class Period in the United States. Proof of Purchase may be in the form of any reasonably reliable proof customarily provided to Claims Administrators to establish proof of purchase for class membership, such as an itemized store receipt or loyalty/membership card print-outs, or original UPC code for each purchased product.

2.23 “Qualified Settlement Fund” means the type of fund, account, or trust, created pursuant to 26 C.F.R. § 1.468B-1, that the Fund Institution will establish to receive payments under this Agreement.

2.24 “Related Actions” means any action previously filed, threatened to be filed, or filed in the future in any state or federal court asserting claims and/or alleging facts substantially similar to those asserted and alleged in this Action.

2.25 “Released Claims” means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or cost, attorney’s fee or expense, action, or cause of every kind and description that any Plaintiff, the Settlement Class or any member thereof had or have, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims, claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been, or in the future might reasonably be asserted by Plaintiff or members of the Settlement Class either in the Action or in any action or proceeding in this Court or in any other court or forum, including any Related Actions, regardless of legal theory or the law under which such action may be brought, and regardless of the type or amount of relief or damages claimed, against any of the Released Persons, arising out of or relating to the allegations in the Complaint or the labels on the Products (all sizes and fragrances) and Websites or that otherwise relates in any way to advertising, formulation, labeling, or marketing, in any format or medium, of Defendant’s Products as natural, high-performing, or as high-performance naturalsTM. Plaintiff and the Settlement Class agree that the modifications to the labeling, packaging, marketing, and advertising of the Products set forth in Section 4.5 below are satisfactory to Plaintiff and the Settlement Class and alleviate each and every alleged deficiency with regard to the advertising, formulation, labeling, packaging, advertising, and marketing of the Products (and similar deficiencies, if any), with regard to other or future Products set forth in or related to the Complaint and/or Related Actions. For the avoidance of doubt, the term “Released Claims” includes only those claims that arise out

of or relate to the allegations in the Complaint, Related Actions, or Defendant's advertising, formulation, labeling, marketing and advertising of the Products.

2.26 "Released Persons" means and includes Tarte, Inc., and its current and former parents, subsidiaries, affiliates and controlled companies both inside and outside the United States, predecessors, and successors, suppliers, distributors, retailers, customers, and assigns, including the present and former directors, officers, employees, shareholders, agents, insurers, partners, privies, representatives, attorneys, accountants, and all persons acting by, through, under the direction of, or in concert with them.

2.27 "Residual Fund" means the value of any funds remaining in the Settlement Fund, less all Claimants' Initial Claim Amounts; less Class Notice and administration costs, and less all Attorneys' Fees and Expenses and Service Awards pursuant to Court Order or otherwise specified in this Agreement.

2.28 "Service Award" means the amount the named Plaintiff, Jeannie Patora, will receive for her service as class representative, pursuant to Section 8.6.

2.29 "Settlement Amount" means One Million Seven Hundred Thousand Dollars (\$1,700,000.00).

2.30 "Settlement Class" means all persons and entities that, during the Class Period, both resided in the United States and purchased in the United States any of the Products for personal use and not for resale. Excluded from the Settlement Class are: (a) Defendant's board members or executive-level officers, including its attorneys; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court's staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with the procedures approved by the Court.

2.31 “Settlement Fund” means the Settlement Amount that Defendant will pay in cash to the Settlement Fund Institution to be used to pay members of the Settlement Class who submit valid and timely Claim Forms, pursuant to Section 4.2. The Settlement Fund will also be used to pay for any award of Attorneys’ Fees and Expenses that the Court orders, any Class Notice and administration costs, Service Awards, and other costs pursuant to the terms of Section 4.1 of this Agreement.

2.32 “Settlement Hearing(s)” means the hearing or hearings the Court will hold to consider and determine whether it should approve the proposed settlement contained in this Agreement as fair, reasonable, and adequate, and whether it should enter Judgment approving the terms of this Agreement. Settlement Hearings include both a “Preliminary Approval Hearing” and a “Final Approval Hearing” or “Fairness Hearing,” to be held after preliminary approval is granted, as the Court so orders.

2.33 “Settlement Website” means the website to be created for this settlement that will include information about the Action and the Agreement, relevant documents, and electronic and printable forms relating to the Agreement, including the Claim Form. The Settlement Website shall be activated by the date of the first publication of the Summary Settlement Notice or Class Notice, whichever is earlier, and shall remain active until ninety (90) calendar days after the Court enters the Order and Final Judgment.

2.34 “Summary Settlement Notice” or “Short Form Notice” means the Summary Class Notice of proposed class action settlement, to be disseminated by publication substantially in the form of Exhibit D attached to this Agreement. Any changes to the Summary Settlement Notice or Short Form Notice from the form set forth in Exhibit D must be jointly approved by Class Counsel and Defendant’s Counsel.

2.35 “Tally” or “Final Tally” means the calculation and report the Settlement Administrator shall provide to the Parties, which shall include the value, number, and type of timely, valid, and approved Claims. The Final Tally shall also include the amount that members of the Settlement Class timely and validly claimed. The Settlement Administrator shall give the Final Tally to the Parties no later than seven (7) calendar days after the close of the Claim Period.

2.36 “Tarte, Inc.” or “Tarte” means Defendant Tarte, Inc., a New York corporation with its principal place of business located at 1375 Broadway, New York, New York, 10018, and its predecessors, subsidiaries, shareholders, affiliates, officers, directors, partners, employees, agents, servants, assignees, successors, and/or other transferees or representatives.

2.37 “Website” means US-facing websites for Defendant, including https://tartecosmetics.com/en_US/home.

III. CERTIFICATION OF THE CLASS AND PRELIMINARY APPROVAL

3.1 For the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that a nationwide Settlement Class should be certified. Such certification is for settlement purposes only, and has no effect for any other purpose.

3.2 The certification of the Settlement Class shall be binding only with respect to this Agreement. In the event that the Effective Date does not occur for any reason, the Preliminary Approval, and all of its provisions, shall be vacated by its own terms, and this Action shall revert to the status that existed prior to the date of this Agreement.

3.3 As part of the settlement process, Defendant consents to Plaintiff’s application to the Court for entry of an Order which, among other things: (a) preliminarily certifies the

Settlement Class in accordance with the definition set forth in Section 2.30 of this Agreement; (b) preliminarily approves this Agreement for purposes of issuing Class Notice; (c) approves the timing, content, and manner of the Class Notice and Summary Settlement Notice; (d) appoints the Settlement Administrator; (e) appoints the Sultzer Law Group P.C. as Class Counsel and Plaintiff Jeannie Patora as Class Representative; and (f) makes such orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

IV. SETTLEMENT CONSIDERATION AND BENEFITS

The settlement relief includes three components to benefit the Settlement Class: (a) a Settlement Fund from which member of the Settlement Class who submit timely, valid, and approved claims will obtain refunds; (b) modifications to the labeling of the in store displays where the Products are sold; and (c) modifications to Website(s) where Defendant advertises and sells the Products.

4.1 Settlement Fund

(a) Settlement Fund. Defendant shall establish a Settlement Fund with a value of One Million Seven Hundred Thousand Dollars (\$1,700,000.00) and shall make all cash payments due pursuant to Section 4.2 by paying this amount into a Qualified Settlement Fund at the Fund Institution.

The Settlement Fund shall be applied to pay in full and in the following order: (i) any necessary taxes and tax expenses; (ii) all costs and expenses associated with disseminating notice to the Settlement Class, including but not limited to the Class Notice and Summary Settlement Notice; (iii) all costs and expenses associated with the administration of the Settlement, including but not limited to processing claims and fees of the Class Action

Settlement Administrator; (iv) any Attorneys' Fees and Expenses award made by the Court to Class Counsel pursuant to Section VIII of this Class Settlement Agreement; (v) any Service Award made by the Court to Plaintiff under Section 8.6 of this Class Settlement Agreement; (vi) cash payments distributed to Settlement Class Members who have submitted timely, valid, and approved Claims pursuant to the Claims Process outlined in Section 4.2 and the Monetary Relief outlined in Section 4.3 of this Class Settlement Agreement; and (vii) the Residual Funds, if any, pursuant to Section 4.4 of this Agreement.

(b) Defendant's Funding of the Settlement Fund

(i) Within ten (10) days after Preliminary Approval, Defendant shall fund the costs associated with carrying out the Notice Plan.

(ii) Within thirty-five (35) calendar days after the entry of Final Approval, Defendant shall fund the Settlement Fund with the entire Settlement Amount. This deadline may be extended by mutual consent of the Parties.

(c) The Parties must approve any payment of costs or expenses under Sections 4.1(a)(i), 4.1(a)(ii), and 4.1(a)(iii).

(d) In no circumstances shall Defendant's total contribution to or liability for the Settlement Fund exceed the One Million Seven Hundred Thousand Dollars (\$1,700,000.00). Thus, under this Agreement, the Parties agree that the Settlement Fund encompasses the full extent of Defendant's monetary payment due. These payments, pursuant to the terms and conditions of this Agreement, and any other non-monetary obligations of and considerations due from Defendant set forth in this Agreement, will be in full satisfaction of all individual and class claims asserted in or that could have been asserted in this Action.

(e) Defendant and the Released Parties are not obligated (and will not be obligated) to compute, estimate, or pay any taxes on behalf of Plaintiff, Plaintiff's Counsel, Class Counsel, any member of Settlement Class, the Notice Administrator, or the Settlement Administrator.

(f) In the event the Effective Date does not occur, all amounts paid into the Settlement Fund, less amounts incurred for claims administration and notice, shall be promptly returned to Defendant, and this Action shall revert to its status that existed prior to the date of this Agreement, except as otherwise ordered by the Court.

4.2 Eligibility and Process for Obtaining a Cash Payment

To be eligible for a cash payment, a member of the Settlement Class must submit a timely and valid Claim Form, which will be evaluated by the Settlement Administrator.

(a) **Claim Form Availability.** The Claim Form shall be in a substantially similar form to that attached as Exhibit A. The Claim Form will be: (i) included on the Settlement Website to be designed and administered by the Settlement Administrator in consultation with Defendant and Class Counsel, and members of the Settlement Class shall be allowed to complete the Claim Form online; and (ii) made readily available from the Settlement Administrator, including by requesting a Claim Form from the Settlement Administrator by mail, e-mail, or calling a toll-free number provided by the Settlement Administrator.

(b) **Timely Claim Forms.** Members of the Settlement Class must submit a timely Claim Form, which is one postmarked or submitted online before or on the last day of the Claim Period, the specific date of which will be prominently displayed on the Claim Form and Class Notice. For a non-online Claim Form, the Claim Form will be deemed to

have been submitted on the date of the postmark on the envelope or mailer. For an online Claim Form and in all other cases, the Claim Form will be deemed to have been submitted on the date it is received by the Settlement Administrator.

(c) **Validity of Claim Forms.** Members of the Settlement Class must submit a valid Claim Form, which must contain the Settlement Class member's name and mailing address, attestation of purchase(s) as described in Section 4.2(d), type(s) and number of Products purchased, and approximate locations and dates of purchase. Subject to Section 4.2(g) herein, Claim Forms that do not meet the requirements set forth in this Agreement and in the Claim Form instructions may be rejected. The Settlement Administrator will determine a Claim Form's validity.

Where a good faith basis exists, the Settlement Administrator may reject a Claim Form for, among other reasons, (i) failure to attest to the purchase of the Products or purchase of products that are not covered by the terms of this Settlement Agreement; (ii) failure to provide adequate verification or additional information about the Claim pursuant to a request of the Settlement Administrator; (iii) failure to fully complete and/or sign the Claim Form; (iv) failure to submit a legible Claim Form; (v) submission of a fraudulent Claim Form; (vi) submission of a Claim Form that is duplicative of another Claim Form; (vii) submission of a Claim Form by a person who is not a member of the Settlement Class; (viii) request by person submitting the Claim Form to pay funds to a person or entity that is not the member of the Settlement Class for whom the Claim Form is submitted; (ix) failure to submit a Claim Form by the end of the Claim Period; or (x) failure to otherwise meet the requirements of this Class Settlement Agreement.

(d) **Attestation of Purchase Under Penalty of Perjury Required.** For claims without proof of purchase, each member of the Settlement Class submitting a Claim Form shall sign (either by hand or electronic signature if the claim is submitted online) and submit a Claim Form that states to the best of his or her knowledge the total number and type of Products that he or she purchased, and the approximate date(s) of his or her purchases. The Claim Form shall be signed under an affirmation stating the following or substantially similar language: “I declare, under penalty of perjury, that the information in this Claim Form is true and correct to the best of my knowledge, and that I purchased the Product(s) claimed above in the United States during the Class Period for personal or household use and not for resale. I understand that my Claim Form may be subject to audit, verification, and Court review.”

(e) **Verification of Purchase May Be Required.** The Claim Form shall advise members of the Settlement Class that while proof of purchase is not required to submit a Claim, the Settlement Administrator has the right to request verification or more information regarding the purchase of the Products for the purpose of preventing fraud. If the Settlement Administrator requests such verification and the member of the Settlement Class does not timely comply or is unable to produce documents or additional information to substantiate the information on the Claim Form and the Claim is otherwise not approved, the Settlement Administrator may disqualify the Claim, subject to the reconsideration procedure outline in section 4.2(g) below.

(f) **Claim Form Submission and Review.** Claimants may submit a Claim Form either by mail or electronically. The Settlement Administrator shall review and process the Claim Forms pursuant to the process described in this Agreement to determine each

Claim Form's validity. Adequate and customary procedures and standards will be used by the Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims. The Parties shall direct the Settlement Administrator to take all reasonable steps, to ensure that Claim Forms completed and signed electronically by members of the Settlement Class conform to the requirements of the federal Electronic Signatures Act, 15 U.S.C. § 7001, *et seq.*

(g) **Claim Form Deficiencies.** In the event the Settlement Administrator rejects a Claim Form pursuant to section 4.2(c) above, the Settlement Administrator shall mail notice of rejection to Settlement Class Members whose Claims have been rejected in whole or in part. Failure to provide all information requested on the Claim Form will not result in immediate denial or nonpayment of a claim. Instead, the Settlement Administrator will take all reasonable and customary steps to attempt to cure the defect and to determine the eligibility of the member of the Settlement Class for payment and the amount of payment based on the information contained in the Claim Form or otherwise submitted, including advising the Settlement Class Members that if they disagree with the determination, the Settlement Class Member may send a letter to the Claims Administrator requesting reconsideration of the rejection and the Claims Administrator shall reconsider such determination, which reconsideration shall include consultation with Class Counsel and Defendant's Counsel. In such event, Settlement Class Members shall be advised of their right to speak with Class Counsel, and Defendant is entitled to dispute claims if available records or other information indicate that the information on the Claim Form is inaccurate or incomplete. The Parties shall meet and confer regarding resolution of such Claims and, if unable to agree, shall submit those Claims to the Court for determination. As to any Claims

being determined by the Court pursuant to this paragraph, the Claims Administrator shall send payment or a letter explaining the Court's rejection of the Claim, within thirty-five (35) days of the Court's determination.

(h) **Failure to Submit Claim Form.** Unless a member of the Settlement Class opts out pursuant to Section VI, any member of the Settlement Class who fails to submit a timely and valid Claim Form shall be forever barred from receiving any payment pursuant to this Agreement, and shall in all other respects be bound by the terms of this Agreement and the terms of the Order and Final Judgment to be entered in the Action. Based on the Release contained in the Agreement, any member of the Settlement Class who does not opt out will be barred from bringing any action in any forum (state or federal) against any of the Released Parties concerning any of the matters subject to the Release.

(i) **Cash Recovery for Members of the Settlement Class.** The relief to be provided to each member of the Settlement Class who submits a timely and valid Claim Form pursuant to the terms and conditions of this Class Settlement Agreement shall be a payment in the form of a cash refund. The total amount of the payment will vary based on: (i) whether the member of the Settlement Class submits valid Proof of Purchase; (ii) whether the member of the Settlement Class provides additional information regarding his or her purchase, such as the specific product purchased and/or his or her satisfaction with that product; and (iii) the total amount of valid claims submitted. Cash refunds will be paid by the Settlement Administrator via check, pursuant to Section 4.3.

(j) **Monetary Relief for Settlement Class.**

(i) Proof of Purchase. Claimants with Proof of Purchase may obtain a full refund for the Product or Products reflected in the Proof of Purchase, provided

they were purchased for personal use during the Class Period, without any limitation on the number of Products purchased. The Initial Claim Amount depends on the number of Products purchased per the Proof of Purchase provided and is subject to a *pro rata* upward or downward adjustment pursuant to Section 4.4.

(ii) Without Proof of Purchase. Members of the Settlement Class who file a Claim Form for purchases of Products for which they are unable to provide Proof of Purchase may seek reimbursement of up to Five Dollars (\$5.00) per Product purchased for up to five (5) Products per household by stating under penalty of perjury the type(s) and number of Products purchased, and approximate dates of purchases. Alternately, such Settlement Class members may seek reimbursement of up to Five Dollar (\$5.00) per Product purchased for up to ten (10) Products per household by stating under penalty of perjury the type(s) and number of Products purchased, approximate dates of purchases, and retailer and/or location of the purchase(s), and providing additional information regarding the purchase, such as the type of product purchased and/or the Settlement Class member's satisfaction with the product. In such event, any request to provide additional information must be agreed upon by the Parties. The substance of Settlement Class Members' responses to any request for additional information regarding their purchases shall not affect his or her eligibility to receive reimbursement for up to ten (10) Products without proof of purchase. In other words, simply providing the additional information entitles Settlement Class Members' to receive reimbursement for up to ten (10) Products – there is no wrong answer that will reduce the settlement's benefits, as long as the Settlement Class Member is otherwise eligible to receive the benefits. On the Claim Form, the Settlement Class member must state the type of Product(s) purchased and the number of Product(s) purchased during the Class Period. The

Initial Claim Amount depends on the number of Products purchased and whether the additional information described in this section is provided, and is subject to a *pro rata* upward or downward adjustment pursuant to Section 4.4.

4.3 **Distribution to Authorized Settlement Class Members**

(a) The Settlement Administrator shall begin paying timely, valid, and approved Claims via first-class mail no later than ten (10) calendar days after the Effective Date.

(b) The Settlement Administrator shall have completed mailing the payments to Settlement Class Members who have submitted timely, valid, and approved Claims pursuant to the Claim Process no later than twenty (20) calendar days after the Effective Date.

4.4 **Excess or Insufficient Funds in the Settlement Fund**

(a) **Excess Funds.** If, after the payment of all valid Claims, Notice and Administration costs, Attorneys' Fees and Expenses, Service Awards, and any other claim, cost, or fee specified by this Agreement, value remains in the Settlement Fund, it shall be called the Residual Fund. Any value remaining in the Residual Fund shall increase eligible Settlement Class Members' relief on a *pro rata* basis until the Residual Fund is exhausted as follows:

(i) If Residual Funds Available. If there is a Residual Fund, then Settlement Class Members' relief shall be increased on a *pro rata* basis up to a maximum of five hundred percent (500%) of the Eligible Settlement Class Member's Initial Claim Amount. The Settlement Administrator shall determine each authorized Settlement Class member's *pro rata* share based upon each Settlement Class member's Claim Form and the

total number of valid Claims. Accordingly, the actual amount recovered by each Settlement Class Member will not be determined until after the Claim Period has ended and all Claims have been calculated.

(ii) If Excess Residual Funds Remain Available. If excess Residual Funds remain available in the Settlement Fund after the *pro rata* increase pursuant to section 4.4(a)(i) above, then the Parties will meet-and-confer regarding the best method for distributing the funds. The Parties will then seek Court approval for this method, which may include distribution of the funds *cy pres*.

(iii) No funds remaining after the calculations done pursuant to Section 4.4(a)(i)-(ii) or (b) will be returned to Defendant. If there are any funds remaining in the Settlement Fund following the calculations pursuant to the above Sections 4.4(a)(i)-(ii) or (b), including any checks or coupons that were not cashed or redeemed, then the Settlement Administrator shall distribute such remaining funds in the manner approved by the Court under Section 4.4(a)(ii.).

(b) Insufficient Funds. If the total amount of the timely, valid, and approved Claims submitted by Settlement Class members exceeds the funds available, considering any fees, payments, and costs set forth in this Agreement that must also be paid from the Settlement Fund pursuant to Section 4.1(a), each eligible Settlement Class member's Initial Claim Amount shall be proportionately reduced on a *pro rata* basis, such that the aggregate value of the cash payments distributed does not exceed the Settlement Fund balance after payment of all other costs. The Settlement Administrator shall determine each authorized Settlement Class member's *pro rata* share based upon each Settlement Class member's Claim Form and the total number of valid Claims. Accordingly, the actual amount recovered

by each Settlement Class member will not be determined until after the Claim Period has ended and all Claims have been calculated.

4.5 Injunctive Relief: Modification of Product Marketing and the Website

The primary venues for purchasing the Products are in retail stores, where the Products are displayed at a gondola or other in-store displays, or online, where the Product itself is prominently displayed, and the box may not be displayed at all. Accordingly, and in connection with this Agreement, Defendant will:

(i) ensure that the following explanatory statement, or a similar statement, is displayed on its Website and on in-store displays where the high-performance naturalsTM Products are sold: “Formulated with a blend of naturally-derived and other ingredients designed to perform. Visit www.Tartecosmetics.com/“xxx” to see what high-performance naturalstm means to us”;

(ii) create a separate web page located at www.Tartecosmetics.com/“xxx” that explains Tarte’s philosophy and definitions regarding its use of natural ingredients; and

(iii) abide by all regulatory labeling standards, where applicable, including but not limited to rules and regulations promulgated by the U.S. Food and Drug Administration (“FDA”), Federal Trade Commission (“FTC”), U.S. Department of Agriculture (“USDA”), U.S. Environmental Protection Agency (“EPA”), or other state or federal governmental agencies’ regulations, guidance or pronouncements.

The injunctive relief set forth in this Section will be superseded or otherwise modified to conform to any applicable statute, regulation, pronouncement, guidance, or other law issued or promulgated by FDA, FTC, USDA, EPA, or any other state or federal governmental entity or agency that conflicts with the provisions above or that expressly

permits the use of the terms “natural” and/or “high-performance naturalsTM” without the above restrictions.

Defendant shall make the modifications described above to the Product marketing and Website within ninety (90) days after Final Approval, but shall be able to continue to utilize existing marketing materials, and sell existing inventory of the Products, provided the marketing materials and inventory of the Products were in existence as of the date that is ninety (90) days after Final Approval.

4.6 **Other Injunctive Relief Terms and Conditions**

(a) Plaintiff and the members of the Settlement Class agree that the agreed modifications to the marketing of the Products are satisfactory to Plaintiff and the members of the Settlement Class and alleviate each and every alleged deficiency with regard to the labeling, packaging, advertising, and marketing of the Products and their ingredients (and similar deficiencies, if any, with regard to other of Defendant’s products that currently exist or that may exist in the future) set forth in or related to the Complaint, Related Actions or otherwise.

(b) **Expiration.** With respect to each Product or category of Products, as applicable, the injunctive relief requirements by which Defendant agrees to abide as part of this Settlement Agreement and as described in Sections 4.5 and 4.6 shall expire on the earliest of the following dates: (i) the date upon which there are changes to any applicable statute, regulation, pronouncement, guidance, or other law that Defendant reasonably believes would require a modification to any of the Product’s labeling in order to comply with the applicable statute, regulation, pronouncement, guidance, or other law; or (ii) the date upon which there are any changes to any applicable federal or state statutes or regulations

that would allow Defendant to label the Product “natural” or used the term “high performance” or “high-performance naturalsTM” without the labeling modifications and restrictions set forth in this Agreement, including but not limited to changes in FDA, FTC, USDA, EPA, and other state or federal governmental agencies’ regulations, guidance, or pronouncements.

4.7 Permitted Conduct

(a) Subject to the requirements to modify its marketing of the Products set forth in this Agreement, Defendant shall be permitted to label, market, and advertise its Products using the following language: “natural,” “high-performance naturalsTM,” as well as to use the marketing terms “rethink natural” and “remix natural,” in reference to products bearing the high-performance naturalsTM trademark on the label.

(b) Nothing in this Agreement shall prohibit or limit Defendant’s right or ability to use or permit others to use, in accordance with all applicable laws and regulations, their licenses, logos, taglines, product descriptors, or registered trademarks.

(c) Nothing in this Agreement shall preclude Defendant from making claims in accordance with applicable FDA, FTC, USDA and EPA regulations.

(d) The Parties specifically acknowledge that product packaging often changes. Nothing in this Agreement shall require Defendant to continue to use the current trademarks, taglines, and descriptions of its Products, and nothing in this Agreement shall preclude Defendant from making further disclosures or any labeling, marketing, advertising, or packaging changes that (i) Defendant reasonably believe are necessary to comply with any changes to any applicable statute, regulation, pronouncement, guidance, or other law of any kind (including but not limited to the Federal Food, Drug and Cosmetic Act, FDA

regulations, USDA regulations, FTC regulations, EPA regulations and/or state equivalents); (ii) are necessitated by product changes and/or reformulations to ensure that Defendant provides accurate product descriptions; or (iii) do not materially differ from the taglines and product descriptions agreed to in this Agreement.

V. NOTICE TO CLASS AND ADMINISTRATION OF PROPOSED SETTLEMENT

5.1 Duties and Responsibilities of the Settlement Administrator

Class Counsel and Defendant recommend and retain Angeion Group to be the Settlement Administrator for this Agreement. The Settlement Administrator shall abide by and shall administer the Settlement in accordance with the terms, conditions, and obligations of this Class Settlement Agreement and the Orders issued by the Court in this Action.

(a) **Class Notice Duties.** The Settlement Administrator shall, in cooperation with the Parties, be responsible for consulting on and designing the Class Notice, Summary Class Notice, and Claim Form. After the Court's Preliminary Approval of this Agreement and appointment of the Settlement Administrator, the Settlement Administrator shall also be responsible for disseminating the Class Notice, substantially in the form as described in the Notice Plan attached as Exhibit C to this Agreement, as specified in the Preliminary Approval Order, and as specified in this Agreement. The Class Notice and Summary Class Notice will comply with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution. Duties of the Settlement Administrator include, but are not limited to:

(i) consulting on, drafting, and designing the Class Notice, Summary Class Notice, and Claim Form. Class Counsel and Defendant's Counsel shall have

input and joint approval rights, which shall not be unreasonably withheld, over these Notices and the Claim Form or any changes to the Notices and the Claim Form;

(ii) developing a Notice Plan, attached as Exhibit C to this Agreement. Class Counsel and Defendant's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over this Notice Plan or changes to this Notice Plan;

(iii) implementing and arranging for the publication of the Summary Settlement Notice and Class Notice via various forms of electronic media, including implementing media purchases, all in substantial accordance with the Notice Plan, attached as Exhibit C. To the extent that the Settlement Administrator believes additional or different Notice should be undertaken than that provided for in the Notice Plan, Class Counsel and Defendant's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over any additional or different Notice;

(iv) establishing and publishing the Settlement Website, which shall contain the Class Notice and related documents, including a Claim Form capable of being completed and submitted on-line. The Settlement Website, including the Class Notice, shall remain available for 120 days after the Effective Date;

(v) sending the Class Notice and related documents, including a Claim Form, via electronic mail or regular mail, to any potential member of the Settlement Class who so requests;

(vi) responding to requests from Class Counsel and Defendant's Counsel; and

(vii) otherwise implementing and assisting with the dissemination of the Notice of the Settlement.

(b) **Class Action Fairness Act Notice Duties to State and Federal Officials.** No later than ten (10) calendar days after this Agreement is filed with the Court, the Settlement Administrator shall mail or cause the items specified in 28 U.S.C. § 1715(b) to be mailed to each State and Federal official, as specified in 28 U.S.C. § 1715(a).

(c) **Claims Process Duties.** The Settlement Administrator shall be responsible for implementing the terms of the Claims Process and related administrative activities, including communications with members of the Settlement Class concerning the Settlement, Claims Process, and the options they have. Claims Process duties include, but are not limited to:

(i) executing any mailings required under the terms of this Agreement;

(ii) establishing a toll-free voice response unit to which members of the Settlement Class may refer for information about the Action and the Settlement;

(iii) establishing a post office box for the receipt of Claim Forms, exclusion requests, and any correspondence;

(iv) receiving and maintaining on behalf of the Court all correspondence from any member of the Settlement Class regarding the Settlement, and forwarding inquiries from members of the Settlement Class to Class Counsel or their designee for a response, if warranted; and

(v) receiving and maintaining on behalf of the Court any correspondence with member of the Settlement Class regarding any objections, opt-out

requests, exclusion forms, or other requests to exclude himself or herself from the Settlement, and providing to Class Counsel and Defendant's Counsel a copy within five (5) calendar days of receipt. If the Settlement Administrator receives any such forms or requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide Class Counsel and Defendant's Counsel with copies.

(d) **Claims Review Duties.** The Settlement Administrator shall be responsible for reviewing and approving Claim Forms in accordance with this Agreement.

Claims Review duties include, but are not limited to:

(i) reviewing each Claim Form submitted to determine whether each Claim Form meets the requirements set forth in this Agreement and whether it should be allowed, including determining whether a Claim Form submitted by any member of the Settlement Class is timely, complete, and valid;

(ii) working with members of the Settlement Class who submit timely claims to try to cure any Claim Form deficiencies;

(iii) using all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, maintaining a database of all Claims Form submissions;

(iv) keeping an accurate and updated accounting via a database of the number of Claim Forms received, the amount claimed on each Claim Form, the name and address of the members of the Settlement Class who made the claim, the type of claim made, whether the claim has any deficiencies, and whether the claim has been approved as timely and valid; and

(v) otherwise implementing and assisting with the Claim review process and payment of the Claims, pursuant to the terms and conditions of this Agreement.

(e) **Periodic Updates.** The Settlement Administrator shall provide periodic updates to Class Counsel and Defendant's Counsel regarding Claim Form submissions beginning within seven (7) calendar days after the commencement of the dissemination of the Class Notice or the Summary Settlement Notice and continuing on a weekly basis thereafter and shall provide such an update at least ten (10) business days before the Final Approval Hearing. The Settlement Administrator shall also provide such updates to Class Counsel or Defendant's Counsel upon request, within a reasonable amount of time.

(f) **Claims Payment Duties.** The Settlement Administrator shall be responsible for sending payments to all eligible members of the Settlement Class with valid, timely, and approved Claims pursuant to the terms and conditions of this Agreement. Claims Payment duties include, but are not limited to:

(i) Within seven (7) days of the Effective Date, providing a report to Class Counsel and Defendant's Counsel calculating the amount and number of valid and timely claims that requested refunds, including any to be paid pursuant to the Residual Funds described in Section 4.4;

(ii) Pursuant to Sections 4.3, 4.4, and 4.5, once the Settlement Fund has been funded, sending checks to members of the Settlement Class who submitted timely, valid, and approved Claim Forms;

(iii) Once payments to the Settlement Class have commenced, pursuant to the terms and conditions of this Agreement, the Settlement Administrator shall

provide a regular accounting to Class Counsel and Defendant's Counsel that includes but is not limited to the number and the amount of claims paid.

(g) **Reporting to Court.** Not later than ten (10) calendar days before the date of the Fairness Hearing, the Settlement Administrator shall file a declaration or affidavit with the Court that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) describes the scope, methods, and results of the notice program.

(h) **Duty of Confidentiality.** The Settlement Administrator shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as confidential and shall not use or disclose any or all such documents, communications, or other information to any person or entity, except to the Parties or as provided for in this Agreement or by Court Order.

(i) **Right to Inspect.** Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

(j) **Failure to Perform.** If the Settlement Administrator misappropriates any funds from the Settlement Fund or makes a material or fraudulent misrepresentation to, or conceals requested material information from, Class Counsel, Defendant, or Defendant's Counsel, then the Party who discovers the misappropriation or concealment or to whom the misrepresentation is made shall, in addition to any other appropriate relief, have the right to demand that the Settlement Administrator immediately be replaced. If the Settlement Administrator fails to perform adequately on behalf of the Parties, the Parties may agree to remove the Settlement Administrator. Neither Party shall unreasonably withhold consent to

remove the Settlement Administrator. The Parties will attempt to resolve any disputes regarding the retention or dismissal of the Settlement Administrator in good faith. If unable to so resolve a dispute, the Parties will refer the matter to the Court for resolution.

VI. OBJECTIONS AND REQUESTS FOR EXCLUSION

6.1 A member of the Settlement Class may either object to this Agreement pursuant to Section 6.2 or request exclusion from this Agreement pursuant to Section 6.3.

6.2 Members of the Settlement Class shall have the right to object to this Settlement and to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval, pursuant to this paragraph:

(a) A member of the Settlement Class may object to this Agreement either on his or her own without an attorney, or through an attorney hired at his or her own expense;

(b) Any objection to this Agreement must be in writing, signed by the objecting member of the Settlement Class (and his or her attorney, if individually represented, including any former or current counsel who may be entitled to compensation for any reason related to the objection), filed with the Court, with a copy delivered to Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice, no later than thirty (30) days before the Fairness Hearing.

(c) Any objection regarding or related to this Agreement shall contain a caption or title that identifies it as "Objection to Class Settlement in *Patora v. Tarte, Inc.*"

(d) Any objection regarding or related to this Agreement shall contain information sufficient to identify and contact the objecting member of the Settlement Class (or his or her individually-hired attorney, if any), as well as a specific, clear and concise statement of his or her objection, the facts supporting the objection, the legal grounds and

authority on which the objection is based, and whether he or she intends to appear at the Final Approval Hearing, either with or without counsel.

(e) Any objection shall include documents sufficient to establish the basis for the objector's standing as a member of the Settlement Class, such as (i) a declaration signed by the objector under penalty of perjury, with language similar to that included in the Claim Form attached hereto as Exhibit A, including a statement that the member of the Settlement Class purchased at least one of the Products during the Class Period; or (ii) receipt(s) reflecting such purchase(s).

(f) 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.

(g) 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.

(h) If an objecting member of the Settlement Class chooses to appear at the hearing, no later than fifteen (15) days before the Fairness Hearing, a Notice of Intention

to Appear, either In Person or Through an Attorney, must be filed with the Court, listing the name, address and telephone number of the attorney, if any, who will appear.

(i) Any Settlement Class Member who fails to file and serve timely a written objection and notice of his/her intent to appear at the Final Approval 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.

6.3 Requests for Exclusion. Members of the Settlement Class shall have the right to elect to exclude themselves, or “opt out,” of the monetary portion of this Settlement, relinquishing their rights to cash compensation under this Class Settlement Agreement and preserving their claims for damages that accrued during the Class Period, pursuant to this paragraph:

(a) A member of the Settlement Class wishing to opt out of this Agreement must send to the Class Action Settlement Administrator by U.S. Mail a personally-signed letter including his or her name and address, and providing a clear statement communicating that he or she elects to be excluded from the Settlement Class.

(b) Any request for exclusion or opt out must be postmarked on or before the opt-out deadline date specified in the Preliminary Approval Order, which shall be no later than thirty (30) calendar days before the Final Approval Hearing (the Opt-Out Deadline). 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.

(c) The Class Action Settlement Administrator shall forward copies of any written requests for exclusion to Class Counsel and Defendant’s Counsel, and shall file a list

reflecting all requests for exclusion with the Court no later than ten (10) calendar days before the Settlement Hearing.

(d) The Request for Exclusion must be personally signed by the member of the Settlement Class.

6.4 Any member of the Settlement Class who does not file a timely written request for exclusion as provided in the preceding Section 6.3 shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the Release in this Action, even if he or she has litigation pending or subsequently initiates litigation against Defendant relating to the claims and transactions released in this Action.

6.5 Any member of the Settlement Class who does not request exclusion from the Settlement has the right to object to the Settlement. Members of the Settlement Class may not both object to and opt out of the Settlement. Any member of the Settlement Class who wishes to object must timely submit an objection as set forth in Section 6.2 above. If a member of a Settlement Class submits both an objection and a written request for exclusion, he or she shall be deemed to have complied with the terms of the procedure for requesting exclusion as set forth in Section 6.3 and shall not be bound by the Agreement if approved by the Court, and the objection will not be considered by the Court.

VII. RELEASES

7.1 Upon the Effective Date of this Class Settlement Agreement, Plaintiff and each member of the Settlement Class, and each of their successors, assigns, heirs, and personal representatives, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons. The Released Claims shall be construed as

broadly as possible to effect complete finality over this litigation involving the advertising, labeling, and marketing of the Products as set forth herein.

7.2 In addition, with respect to the subject matter of this Action, by operation of entry of the Final Order and Judgment, Plaintiff and each member of the Settlement Class, and each of their respective successors, assigns, legatees, heirs, and personal representatives, expressly waive any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including, without limitation, Section 1542 of the California Civil Code, which provides:

A General Release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In addition to the foregoing, by operation of entry of the Final Order and Judgment, Plaintiff and each member of the Settlement Class shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any foreign country, and any and all principles of common law that are similar, comparable, or equivalent in substance or intent to Section 1542 of the California Civil Code.

7.3 Plaintiff understands that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiff and Class Counsel to be true and nevertheless agree that this Class Settlement Agreement and the Release shall remain effective notwithstanding any such difference in facts.

7.4 To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary

to this Agreement, including but not limited to any Related Actions, or any other action or claim that arises out of the same factual predicate or same set of operative facts as this Action.

7.5 CLASS ENJOINED: On the Effective Date, all members of the Settlement Class who did not opt out of the Settlement Class (and any person or entity claiming by or through him, her, or it, as heir, administrator, devisee, predecessor, successor, attorney, representative of any kind, shareholder, partner, director or owner of any kind, affiliate, subrogee, assignee, or insurer) will be forever barred and permanently enjoined from directly, indirectly, representatively or in any other capacity, filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit, whether individually or on behalf of or as a member of any class, any other arbitration, or any other administrative, regulatory, or other proceeding against Defendant (and Defendant's current and former parents, subsidiaries, affiliates and controlled companies, officers, directors, members, managers, shareholders, employees, predecessors, successors, assigns, agents and attorneys) that arises out of or relates to the Released Claims; and all persons and entities shall be forever barred and permanently enjoined from filing, commencing, or prosecuting any other lawsuit, whether individually or as a class action, against Defendant (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class members who have not timely opted out of the Settlement Class if such other lawsuit is arises from or otherwise relates to the Released Claims.

VIII. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

8.1 Class Counsel agrees to make, and Defendant agrees not to oppose, an application for an award of Attorneys' Fees and Expenses in the Action that will not exceed an amount equal to one third (33.33...%) of the Settlement Fund. This amount shall be paid from the Settlement Fund and shall be the sole aggregate compensation paid by Defendant for Class Counsel representing the Class. The ultimate award of Attorneys' Fees and Expenses will be determined by the Court.

8.2 Class Counsel, in its sole discretion, shall allocate and distribute the Court's award of Attorneys' Fees and Expenses. Class Counsel shall indemnify Defendant and its attorneys against any disputes, including amongst lawyers working at the direction of or in conjunction with Class Counsel, relating to the allocation and distribution of Class Counsel's Attorneys' Fees and Expenses.

8.3 Class Counsel agrees that any award of Attorneys' Fees and Expenses will be sought solely and exclusively in the Action. Class Counsel agrees that they will not seek or accept more than Five Hundred Sixty-Six Thousand, Six Hundred Sixty-Six Dollars (\$566,666.00) in Attorneys' Fees and Expenses.

8.4 Defendant will not appeal from any order with respect to the award of Attorneys' Fees and Expenses provided that the order does not award Attorneys' Fees and Expenses in excess of the amount stated in Section 8.1. Defendant shall have the right to appeal in the event of an award of Attorneys' Fees and Expenses in excess of such amount. Defendant shall also have the right to withdraw from the Class Settlement Agreement in the event of an award of Attorneys' Fees and Expenses to Class Counsel is in excess of such amount.

8.5 Within five (5) days of the Effective Date, the Settlement Administrator shall cause the Attorneys' Fees and Expenses awarded by the Court to be paid to Class Counsel as directed by Class Counsel. In the event the Effective Date does not occur, all amounts paid to Class Counsel as Attorney's Fees and Expenses awarded by the Court shall be promptly returned to Defendant.

8.6 Within five (5) days after the Effective Date, the Settlement Fund shall pay a Service Award of two thousand five hundred dollars (\$2,500.00), or any such other amount that is Ordered by the Court, to Plaintiff.

IX. NO ADMISSION OF LIABILITY

9.1 Defendant has denied and continues to deny that the labeling, advertising, or marketing of the Products is false, deceptive, or misleading to consumers or violates any legal requirement, including but not limited to the allegations that Defendant engaged in unfair, unlawful, fraudulent, or deceptive trade practices, breached any implied or express warranty, was unjustly enriched or engaged in negligent misrepresentation, or violated the Magnusson Moss Warranty Act or any other statute, regulation, or common law or industry standard. Defendant is entering into this Agreement solely because it will eliminate the uncertainty, distraction, burden, and expense of further litigation. The provisions contained in this Agreement and the manner or amount of relief provided to members of the Settlement Class herein shall not be deemed a presumption, concession, or admission by Defendant of any fault, liability, or wrongdoing as to any facts or claims that have been, or might have been, or might be alleged or asserted in the Action, or in any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any person in any action or proceeding, whether civil, criminal, or administrative, for any purpose other than as provided expressly herein.

9.2 In the event that the Court does not approve this Agreement substantially in the form submitted (or in a modified form mutually acceptable to the Parties), or this Agreement is terminated or fails to become effective or final in accordance with its terms, Plaintiff and Defendant shall be restored to their respective positions in the Action as of the date hereof. In such event, the terms and provisions of this Agreement shall have no further force and effect and shall not be used in the Action or in any other proceeding or for any purpose, and the Parties will jointly make an application requesting that any Judgment entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

9.3 By entering into this Agreement, Defendant is not consenting to or agreeing to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action. The Parties agree that if the Court does not approve this Agreement substantially in the form submitted (or in a modified form mutually acceptable to the Parties), including, without limitation, if the Court grants a fee application that would cause the total award for Attorneys' Fees and Expenses to Class Counsel to exceed Five Hundred Sixty Six Thousand, Six Hundred Sixty-Six Dollars (\$566,666.00), or if this Agreement is terminated or fails to become effective or final in accordance with its terms, the Action shall proceed as if no Party had ever agreed to such settlement, without prejudice to the right of any Party to take any and all action of any kind in the Action.

X. ADDITIONAL PROVISIONS

10.1 Plaintiff and Class Counsel warrant and represent to Defendant that they have no present intention of initiating any other claims or proceedings against Defendant or any of its affiliates, or any entity that manufactures, distributes, or sells the Products or any other product that is marketed or labeled using the Tarte brand name or the high-performance naturals™

trademark, and, except for the claims hereby settled, Plaintiff and Class Counsel warrant and represent to Defendant that they have no present knowledge and are not presently aware of any factual or legal basis for any such claims or proceedings, other than claims or proceedings that may already be pending against Defendant.

10.2 The Parties agree that information and documents exchanged in negotiating this Agreement were exchanged pursuant to Federal Rule of Evidence 408, and that no such confidential information exchanged or produced by either side may be used for or revealed for any other purpose than this Settlement. This does not apply to publicly available information or documents.

10.3 The Parties agree to return or dispose of confidential documents and information exchanged in negotiating this Agreement within fifteen days of the Effective Date. This does not apply to publicly available information or documents.

10.4 The Parties agree that the terms of this Agreement were negotiated at arm's length and in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

10.5 The Parties and their respective counsel agree to use their best efforts and to cooperate fully with one another (i) in seeking preliminary and final Court approval of this Settlement Agreement; and (ii) in effectuating the full consummation of the Settlement Agreement provided for herein.

10.6 Each counsel or other person executing this Agreement on behalf of any Party hereto warrants that such person has the authority to do so.

10.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same

instrument. Executed counterparts shall be deemed valid if delivered by mail, courier, electronically, or by facsimile.

10.8 This Agreement shall be binding upon and inure to the benefit of the settling Parties (including all members of the Settlement Class), their respective agents, attorneys, insurers, employees, representatives, officers, directors, partners, divisions, subsidiaries, affiliates, associates, assigns, heirs, successors in interest, and shareholders, and any trustee or other officer appointed in the event of a bankruptcy, as well as to all Released Persons as defined in Section 2.26. The waiver by any Party of a breach of this Agreement by any other Party shall not be deemed a waiver of any other breach of this Agreement.

10.9 This Agreement and any exhibits attached to it constitute the entire agreement between the Parties and supersedes any prior agreements or understandings, whether oral, written, express, or implied between the Parties with respect to the subject matter of the Agreement.

10.10 No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing, signed by all Parties and their counsel, and approved by the Court.

10.11 The Parties each represent to the other that they have received independent legal advice from attorneys of their own choosing with respect to the advisability of making the settlement provided for in this Agreement, and with respect to the advisability of executing this Agreement, that they have read this Agreement in its entirety and fully understand its contents, and that each is executing this Agreement as a free and voluntary act.

10.12 Except as otherwise provided herein, all notices, requests, demands, and other communications required or permitted to be given pursuant to this Agreement shall be in writing

and shall be delivered personally, by facsimile, by e-mail, or by overnight mail, to the undersigned counsel for the Parties at their respective addresses.

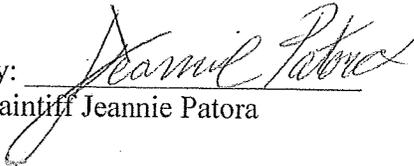
10.13 The titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the intent of any of its provisions. This Agreement shall be construed without regard to its drafter, and shall be construed as though the Parties participated equally in the drafting of it.

10.14 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement and the Parties to the Agreement submit to the jurisdiction of the Court for those purposes.

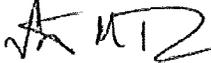
10.15 To the extent Class Counsel wish to issue any general or public communication about the settlement that is the subject of this Agreement, any such public statement shall be limited to publicly available information and documents filed in this action and/or in a form mutually agreed upon by Class Counsel and Defendant's Counsel.

IN WITNESS WHEREOF, Tarte, Inc., Jeannie Patora, on behalf of herself and all others similarly situated, and Plaintiff's Counsel, each intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below:

Dated: 12/12/18

By: 
Plaintiff Jeannie Patora

Dated: 12/6/18

TARTE, INC.
By: 
Name: SCOTT MCDONALD
Title: GM

THE SULTZER LAW GROUP

Dated: 12/12/18

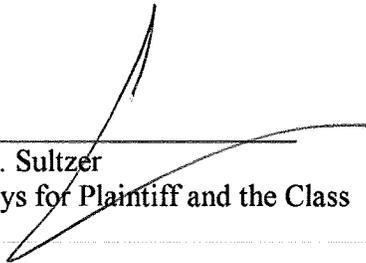
By: 
Jason P. Sultzer
Attorneys for Plaintiff and the Class

EXHIBIT A

**Your claim must
be submitted
online or
postmarked by:
DATE**

Patora v. Tarte, Inc., No. 18-cv-11760 (SDNY)
Settlement Claim Form

HPN-WEB
Instructions

IMPORTANT LEGAL MATERIALS

CLAIM FORM

GENERAL INSTRUCTIONS

This Claim Form should be filled out online or submitted by mail if you [claim definition].

Settlement Class Members who seek payment from the Settlement must complete and return this Claim Form. Claim Forms can be completed online at the Settlement Website, [website], or can be completed and mailed to the Settlement Administrator at [address]. **Claim Forms submitted by mail must be POSTMARKED OR SUBMITTED ONLINE NO LATER THAN [DATE], 2019, or they will be rejected.**

Before you complete and submit this Claim Form by mail or online, you should read and be familiar with the Class Notice (the "Notice") and the Settlement Agreement available at [website]. Defined terms (with initial capital letters) used in these General Instructions have the same meaning as set forth in the Notice and Settlement Agreement. By submitting this Claim Form, you acknowledge that you have read and understand the Notice, and you agree to the Release included as a material term of the Settlement Agreement.

If you fail to submit a timely Claim Form, your claim will be rejected and you will be precluded from any recovery from the Settlement Fund. If you are a member of the Settlement Class and you do not timely and validly seek exclusion from the Settlement Class, you will be bound by any judgment entered by the Court approving the Settlement even if you do not submit a Claim Form. To receive the most current information and regular updates, please visit the Settlement Website at [website]. You will also be able to submit your claim on the Settlement Website.

SECTION A: Claimant Information

SECTION B: For Each Product you have purchased during the Class Period, you may choose to fill out sections B1 or B2 (but not both), and you may also choose to fill out section C. However, you may not include the same purchases in more than one section. Completing Section B2 allows you to submit claims for up to ten (10) Products, but requires that you provide more information than in Section B1, which allows you to submit claims for up to five (5) Products.

SECTION B1: Include in Section B1 of this Claim Form the type(s), number of Products purchased and approximate dates of purchase. You may claim up to five (5) Products in this section. *If you claim products in this section, you may not claim products in Section B2.* You may also claim additional Products in Section C (with proof of purchase) but you may not include the same purchases in more than one section.

SECTION B2: Include in Section B2 of this Claim Form the type(s), number of Products purchased, retailer purchased from and location of purchase, approximate dates of purchase and satisfaction with the Product. You may claim up to ten (10) Products total under this Section. *If you claim products in this section, you may not claim products in Section B1.* You may also claim additional Products in Section C (with proof of purchase) but you may not include the same purchases in more than one section.

SECTION C: Include in Section C of this Claim Form purchases of Products you made during the Class Period for which you have retained proof of purchase. Proof of purchase means a receipt or other documentation reasonably establishing the fact of purchase, such as a loyalty/membership card print-out, or picture of UPC code for each eligible purchased product during the Settlement Class Period.

SECTION D: Certification Under Penalty of Perjury.

Claim Form Reminder Checklist
Before Submitting this Claim Form, please make sure you:

1. Complete all fields in Section A of this Claims Form.
2. Complete Sections B and C to report the products you purchased. You may choose Section B1 or B2, but not both. Do not include the same purchases in more than one section.
3. YOU MUST sign the certification under penalty of perjury in Section D of this Claim Form.

Your claim must be submitted online or postmarked by: DATE, 2019

Patora v. Tarte, Inc., No:18-cv-11760 (SDNY)
Settlement Claim Form

HPN-WEB

SECTION A. Claimant Information

Claimant Name: _____
First Name MI Last Name

Street Address: _____

Street Address2: _____

City: _____ State: _____ Zip Code: _____

Phone Number: (_____) _____ - _____

E-mail Address (if any): _____

It is your responsibility to notify the Claims Administrator of any changes to your contact information after the submission of your Claim Form.

SECTION B. No Proof of Purchase

Complete this section for any purchased Products for which you do not have Proof of Purchase. You may complete Section B1 or B2 but not both. Completing Section B2 allows you to submit claims for up to ten (10) Products, but requires that you provide more information than in Section B1, which allows you to submit claims for up to five (5) Products. You may also complete Section C, but may not include the same purchases in more than one section.

Section B1

The actual benefit you will receive will depend upon, among other things, how many Settlement Class Members submit a timely and complete claim form. You may receive \$5.00 per unit, or more or less, depending upon how many claims are actually submitted, for up to five (5) units claimed in this section.

Purchase Information

1. Please provide the following information regarding your purchase of up to five (5) of the Products:

Approx. Date Purchased (Month & Year)	Identify Which Product You Purchased

SECTION D. Certification Under Penalty of Perjury and Submission to Jurisdiction

By signing below, you are submitting to the jurisdiction of the United States District Court for the Southern District of New York, and are agreeing to the terms of the Release set forth in the Settlement Agreement.

I declare under penalty of perjury under the laws of the United States and the state where this Claim Form is signed that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that all information provided on this Claim Form is subject to verification and that I may be asked to provide supplemental information by the Settlement Administrator before my Claim will be considered complete and valid.

Signature: _____

Dated: _____

Print Name: _____

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

**If you purchased certain Tarte, Inc. (“Tarte”) Products
Between November 13, 2013 and [DATE], 2019**

You May be Eligible to Receive a Cash Payment from a Class Action Settlement.

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

- A proposed nationwide Settlement has been reached in a class action lawsuit involving certain Tarte products marketed as “high-performance naturals®.” The Settlement resolves litigation over whether the Defendant allegedly violated state and federal laws regarding the labeling, marketing, and advertising of these products.
- You may be eligible to participate in the proposed Settlement, if it is finally approved, if you purchased certain high-performance naturals®-branded products between November 13, 2013 and [Date], 2019.
- The Settlement will provide cash payments to those who qualify. You must file a Claim Form by [Date] to receive a payment from the Settlement.
- Your legal rights are affected whether you act, or don’t act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

SUBMIT A CLAIM FORM BY [DATE], 2019	This is the only way to get a payment.
EXCLUDE YOURSELF BY [DATE], 2019	Receive no payment from the Settlement. This is the only option that allows you to ever be, or continue to be, a part of any other lawsuit against the Defendant about the legal claims in this case.
OBJECT BY [DATE], 2019	Write to the Court about why you think the settlement is unfair, inadequate, or unreasonable by following the instructions in this notice.
GO TO A HEARING [DATE], 2019	Ask to speak in Court about the fairness of the Settlement. You do not need to attend the hearing to receive payment.
DO NOTHING	Get no payment. Give up rights to ever sue the Defendant about the claims in this case.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice. The deadlines may be moved, canceled, or otherwise modified, so please check the Settlement Website, [website], regularly for updates and further details.
- The Court in charge of this case has yet to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS:

BASIC INFORMATION

1. Why is there a notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?

WHO IS IN THE SETTLEMENT?

5. How do I know if I am in the Settlement?
6. Which Products are included in the Settlement?
7. What if I am still not sure if I am included in the Settlement?

SETTLEMENT BENEFITS

8. What does the Settlement provide?
9. What can I get from the Settlement?
10. What am I giving up to stay in the Class?

HOW TO GET A PAYMENT

11. How can I get a payment?
12. When will I get my payment?

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the Settlement?
14. If I don't exclude myself, can I sue the Defendant for the same thing later?
15. If I exclude myself, can I still get a payment?

OBJECTING TO THE SETTLEMENT

16. How can I tell the Court if I do not like the Settlement?
17. What is the difference between objecting and excluding?

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?
19. How will the lawyers be paid?

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve the Settlement?
21. Do I have to come to the hearing?
22. May I speak at the hearing?

IF YOU DO NOTHING

23. What happens if I do nothing at all?

GETTING MORE INFORMATION

24. How do I get more information?

BASIC INFORMATION

1. **Why is there a notice?**

This Notice relates to a proposed settlement of a class action lawsuit involving products sold by Tarte, Inc. (“Tarte”) and marketed as high-performance naturals®. You received this notice because you may be a Settlement Class Member able to receive payment from a proposed settlement of the class action lawsuit *Patora v. Tarte, Inc.*, Case No. 7:18-cv-11760. You have a right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement.

The Court in charge of this case is the United States District Court for the Southern District of New York (the “Court”). The individual who sued is called the Plaintiff, and the company she sued, Tarte, is called the Defendant.

2. **What is this lawsuit about?**

The lawsuit alleges that the Defendant violated certain laws in labeling, marketing, and advertising of certain Tarte products marketed as high-performance naturals®. The Defendant denies any and all wrongdoing of any kind whatsoever, and denies any liability to Plaintiff and to the Settlement Class.

3. **Why is this a class action?**

In a class action, one or more people, called “Class Representatives,” sue on behalf of people who have similar claims. All these people are in a “class” or “class members,” except for those who exclude themselves from the class. United States District Court Judge Kenneth M. Karas in the United States District Court for the Southern District of New York is in charge of this class action.

4. **Why is there a Settlement?**

The Defendant does not admit that it did anything wrong and both sides want to avoid the cost of further litigation. The Court has not decided in favor of the Plaintiff or the Defendant. The Class Representative and her attorneys think the Settlement is best for everyone who is affected. The Settlement provides Settlement Class Members with the opportunity to receive Settlement benefits.

WHO IS IN THE SETTLEMENT?

5. **How do I know if I am in the Settlement?**

The Settlement Class includes all persons and entities that, between November 13, 2013 and [date], both resided in the United States and purchased in the United States any of the high-performance naturals® branded products for personal use and not for resale. Excluded from the Settlement Class are: (a) Defendant’s board members or executive-level officers, including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with the procedures approved by the Court.

6. **Which Products are included in the Settlement?**

The Settlement covers all products marketed and sold by Tarte as high-performance naturals® between November 13, 2013 and [date].

7. **What if I am still not sure if I am included in the Settlement?**

If you are not sure whether you are a Settlement Class Member, or have any other questions about the Settlement Agreement, you should visit the Settlement Website, [website], or call the toll-free number, [phone].

SETTLEMENT BENEFITS

8. **What does the Settlement provide?**

The Settlement provides for the establishment of a Settlement Fund with a value of \$1,700,000.00 to pay (1) claims of eligible Settlement Class Members; (2) the costs of Class Notice and administration of the Settlement; (3) any Attorneys’ Fees and Expenses awarded by the Court; and (4) any Service Award made by the Court to Plaintiff. Settlement Class Members who timely submit valid Claim Forms are entitled to receive a cash payment from the Settlement Fund. The

actual amount recovered by each Settlement Class Member will not be determined until after the Claim Period has ended and all Claims have been calculated, and is explained further below.

9. What can I get from the Settlement?

If you submit a valid Claim Form by the deadline, you can get a payment from the Settlement Fund. If you have proof of purchase for the product that is the subject of your claim, you can receive a full refund for that product, without any limitation on the number of products, provided you purchased the products for personal use. If you do not have proof of purchase, you can receive up to five dollars per product purchased for up to five products by stating under penalty of perjury the type and number of products purchased, and the approximate dates. Alternately, if you do not have proof of purchase, you can receive up to five dollars per product purchased for up to ten products by stating under penalty of perjury the type and number of products purchased, and the approximate dates of the purchases, and providing additional information such as the location of purchase and your satisfaction with the product. If, after subtracting from the Settlement Fund the costs of Class Notice and Administration, any Attorneys' Fees and Expenses and Service Awards for the Class Representatives, the funds remaining in the Settlement Fund are insufficient to pay all of the Approved Claims, then Settlement Class Member payments will be reduced proportionately.

If, after the payment of all valid Claims, Notice and Settlement Administration costs, Attorneys' Fees and Expenses, and Service Awards, any monies remain in the Settlement Fund, Settlement Class Members' payments will be increased proportionately up to 500% of the Eligible Settlement Class Member's Initial Claim Amount.

10. What am I giving up to stay in the Class?

Unless you exclude yourself from the Settlement, you cannot sue the Defendant, continue to sue, or be part of any other lawsuit against the Defendant based on the issues in this case. It also means that you will be bound by the Settlement Agreement and any final judgment by the Court. The claims that Settlement Class members are releasing are described in Section 2.25 of the Settlement Agreement and the persons and entities being released from those claims are described in Section 2.26 of the Settlement Agreement. You must read these provisions to understand the legal claims that you give up if you stay in the Settlement Class. The Settlement Agreement is available at the Settlement Website, [[website](#)].

HOW TO GET A PAYMENT

11. How can I get a payment?

To be eligible to receive a payment from the Settlement, you must complete and submit a Claim Form by [date]. You can complete and submit your Claim Form online at the Settlement Website, [[website](#)]. The Claim Form can also be downloaded from the Settlement Website, or you can request a Claim Form be sent to you by sending a written request to the Settlement Administrator by mail or email, or by calling toll-free.

MAIL: HPN Class Action
Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

EMAIL: info@HPNSettlement.com

PHONE: 1-855-211-0656

Please read the instructions carefully, fill out the Claim Form, and mail it postmarked no later than [**Date**], 2019 to: Tarte Class Action, Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103, or submit your Claim Form online at the Settlement Website, www.HPNsettlement.com, by [**Date**], 2019.

If you do not submit a valid Claim Form by the deadline, you will not be able to receive a payment.

12. When will I get my payment?

Payments will be mailed to Settlement Class Members who send in valid and timely Claim Forms after the Court grants "final approval" to the Settlement and after any and all appeals are resolved. If the Court approves the Settlement after a hearing on [**Date**], 2019, there may be appeals. It's always uncertain whether these appeals can be resolved, and

resolving them can take time. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from the Settlement Fund, and you want to keep the right to sue or continue to sue the Defendant about the issues in this case, then you must take steps to remove yourself from the settlement. This is called excluding yourself or "opting out" of the Settlement Class.

13. How do I opt out of the Settlement?

To exclude yourself (or "Opt-Out") from the Settlement, you must complete and mail to the Settlement Administrator, by U.S. Mail, a written request that includes the following:

- Your name and address;
- The name of the case: *Patora v. Tarte, Inc.*, 7:18-cv-11760 (S.D.N.Y.);
- A clear statement that you want to be excluded from this Settlement; and
- Your own signature.

You must mail your exclusion request, postmarked no later than **[DATE]**, 2019 to:

HPN Class Action
Settlement Administrator
Attn: Exclusion Requests
P.O. Box 58220
1500 John F. Kennedy Blvd, Suite C31
Philadelphia, PA 19102

If you do not include the required information or do not submit your request for exclusion on time, you will remain a Settlement Class Member and, if the Settlement is finally approved, you will be bound by the Settlement and will not thereafter be able to sue the Defendant about the claims in this lawsuit.

14. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You may need to exclude yourself from this Settlement Class in order to continue your own lawsuit.

15. If I exclude myself, can I still get a payment?

No. You will not get any money from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not send in a Claim Form.

OBJECTING TO THE SETTLEMENT

16. How can I tell the Court if I do not like the Settlement?

If you are a Class Member, you can object to the Settlement or to Class Counsel's request for Attorneys' Fees and Expenses. To object, you must send a letter that includes the following:

- Your name, address, telephone number, and, if available, email address;
- The name, address, email address, and telephone number of your lawyer, if you have one, including any former or current counsel who may be entitled to compensation for any reason related to the objection;
- The name of the case: Objection to Class Settlement in *Patora v. Tarte, Inc.*, 7:18-cv-11760 (S.D.N.Y.);
- The factual and legal reason(s) why you object to the Settlement, accompanied by any support for your objection;
- A statement of whether you intend to appear at the Fairness Hearing, either with or without counsel;

- A statement of your membership in the Settlement Class, including all information required by the Claim Form;
- A detailed list of any other objections submitted by you or your counsel, to any class actions submitted in any court, whether federal, state or otherwise, in the United States in the previous five (5) years, or a statement that you have not objected to any class action settlement in any court in the United States in the previous five (5) years; and
- Your own signature and, if you have one, your lawyer's signature.

Your objection, along with any supporting material you wish to submit, must be filed with the Court, with copies delivered to Class Counsel and Defendant's Counsel no later than **[Date]**, 2019 at the following addresses:

Court	Class Counsel	Defense Counsel
The United States District Court for the Southern District of New York The Hon. Charles L. Brieant Jr. Federal Building and United States Courthouse 300 Quarropas Street White Plains, NY 10601	Adam Gonnelli Sultz Law Group 85 Civic Center Plaza Suite 104, Poughkeepsie, NY, 12601	Trenton Norris Arnold & Porter Kaye Scholer LLP 10th Floor Three Embarcadero Center San Francisco, CA 94111-4024

17. What is the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you cannot object to the Settlement because it no longer affects you.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

Yes. The Court has provisionally appointed lawyers as "Class Counsel," meaning that they were appointed to represent all Class Members: Adam Gonnelli of The Sultz Law Group.

You will not be charged for these lawyers; they will be paid out of the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

19. How will the lawyers be paid?

Class Counsel intends to file a motion on or before **[DATE]**, 2019 seeking an amount not to exceed \$566,666.00 in Attorneys' Fees and Expenses. The fees and expenses awarded by the Court will be paid from the Settlement Fund. The Court will determine the amount of Attorneys' Fees and Expenses to award. Class Counsel will also request that \$2,500.00 be paid from the Settlement Fund to the named Plaintiff, who helped the lawyers on behalf of and to the benefit of the Class.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on **[DATE]** at **[TIME]** at the United States District Court for the Southern District of New York, before the Honorable Kenneth M. Karas, United States District Judge, in Courtroom 521, in the Hon. Charles L. Brieant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, New York 10601.

The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website, www.HPNsettlement.com, for updates. At the Fairness Hearing, the Court will consider whether the Settlement Agreement is fair, reasonable, and adequate. The Court will also consider how much to pay Class Counsel and the Class Representative. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have, but you may come at your own expense. You don't need to attend the hearing in order to receive a payment. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time to the proper addresses, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file with the Court a "Notice of Intent to Appear." In your Notice, you must include the following:

- Your name, address, telephone number, and, if available, email address;
- The name, address, email address, and telephone number of any lawyer(s) who will be appearing on your behalf at the Fairness Hearing;
- The name of the case: *Patora v. Tarte, Inc.*, 7:18-cv-11760 (S.D.N.Y.); and
- Your own signature and, if you have one, your lawyer's signature.

Your Notice of Intent to Appear must be filed with the Court no later than [DATE].

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will not get a payment from the Settlement. Unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant about the issues in this case, ever again.

GETTING MORE INFORMATION

24. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can review a complete copy of Settlement Agreement and other information at the Settlement Website, www.HPNsettlement.com. If you have additional questions or want to request a Claim Form, you can visit the Settlement Website, www.HPNsettlement.com. You can also write to the Settlement Administrator by mail or email, or call toll-free.

MAIL: HPN Class Action
Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

EMAIL: info@HPNSettlement.com

PHONE: 1-855-211-0656

Updates will be posted at the Settlement Website as information about the Settlement process becomes available.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE CONCERNING THIS CASE.

EXHIBIT C

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

Jeannie Patora, individually on behalf of herself
and all others similarly situated,

Plaintiff,

v.

Tarte, Inc.,

Defendant.

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

**NOTICE PLAN AND
DECLARATION OF STEVEN
WEISBROT OF ANGEION
GROUP, LLC IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

I, Steven Weisbrot, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at the class action notice and settlement administration firm Angeion Group, LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my personal knowledge.

2. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved class action notice and administration programs and have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Class Action Notice Programs, as well as Class Action Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Class Action Claims Administration, and Notice Design in publications such as *Bloomberg*, *BNA Class Action Litigation Report*, *Law360*, the *ABA Class Action and Derivative Section Newsletter*.

3. I am a certified professional in digital media sales by the Interactive Advertising Bureau (“IAB”) and I am co-author of the Digital Media section of Duke Law’s *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23*.

4. I have given public comment and written testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, digital media

and print publication, in fulfilling Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the 2018 amendments to Rule 23 and suggest educational programs for the judiciary concerning class action notice procedures.

5. Prior to joining Angeion's executive team, I was employed as Director of Class Action services at Kurtzman Carson Consultants, an experienced class action notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

6. My notice work comprises a wide range of class action settlements that include product defect, false advertising, consumer fraud, employment, antitrust, tobacco, banking, firearms, insurance, and bankruptcy cases. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. For example, the Honorable Sarah Vance stated in her December 31, 2014 Order in *In Re: Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328:

To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web-based forms of communication in the plan.... The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process.

The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement.

As detailed below, courts have repeatedly recognized my work in the design of class action notice programs:

(a) On February 24, 2017, The Honorable Ronald B. Rubin in *James Roy et al. v. Titeflex Corporation et al.*, No. 384003V (Md. Cir. Ct.), noted when granting preliminary approval to the settlement:

What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to

be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make a decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite.*** (Emphasis added).

(b) *Likewise*, on May 12, 2016, in his Order granting preliminary approval of the settlement in *In Re Whirlpool Corporation Front Loading Washer Products Liability Litigation*, MDL No. 2001 (N.D. Ohio), the Honorable Christopher A. Boyko ruled:

The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

(c) In *In Re LG Front Load Washing Machine Class Action Litigation*, Civil Action No. 08-51 (MCA) (LDW) (D.N.J.), the Honorable Madeline Cox Arleo ruled:

This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and the joint motion for preliminary approval. The Court has reviewed the notices attached as exhibits to the Settlement, the plan for distributing the Summary Notices to the Settlement Class, and the plan for the Publication Notice's publication in print periodicals and on the internet, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy due process.

7. By way of background, Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims administration companies. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over \$10 billion to class members. The executive profiles as well as the company overview are available at http://www.angeiongroup.com/meet_the_team.htm.

8. This declaration will describe the notice program that Angeion has proposed to use in this Litigation, including certain considerations that informed the development of the notice program, and why it will provide due process of law to the Settlement Class.

OVERVIEW OF THE NOTICE PROGRAM

9. Angeion believes that the notice program is the best notice that is practicable under the circumstances and fully comports with due process and Rule 23 of the Federal Rules of Civil Procedure. The notice program features a robust media campaign consisting of state-of-the-art targeted internet banner notice and print publication to notify the Class. The notice program also includes an informational website and toll-free telephone line where Class Members can learn more about their rights and responsibilities in the litigation.

10. The digital portion of the notice program is designed to deliver an approximate 70% reach with an average frequency of 3.00 times. In practice, this means that 70% of our target audience is likely to see a digital advertisement concerning the Settlement an average of 3.00 times each. The 70% reach is separate and apart from the print media notice and social media efforts described in greater detail below.

11. In addition, Angeion will establish a dedicated website and toll-free line for this Settlement, both of which are difficult to measure in terms of reach percentage but will nonetheless aid in informing the class of their rights and responsibilities under the Settlement. Angeion will report to the court the number of visitors and/or page views the website garners.

12. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm.” Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges,” at 27 (3d Ed. 2010).

13. For the reasons described in greater detail below, it is my opinion that the notice program here is the best notice that is practicable under the circumstances and fully comports with due process and Rule 23 of the Federal Rules of Civil Procedure.

CLASS DEFINITION

14. Counsel for the Parties have informed me that the settlement class Plaintiff will seek to certify consists 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 (the “Settlement Class”). Excluded from the Settlement Class are: (a) Defendant’s board members or executive-level officers, including its attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and the Court’s staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with the procedures approved by the Court.

MEDIA NOTICE TARGET AUDIENCE

15. This matter contemplates a nationwide Settlement Class. To create the media notice program and verify its effectiveness, data from 2018 comSCORE//GfK MRI Media + Fusion was used to profile the class. As the *Tarte* brand is not a measured entity in MRI, the following target definition was used to profile Class Members:

- Department, Clothing, Shoes & Specialty Stores Shopped Last 3 Months [Sephora];
Or
- Department, Clothing, Shoes & Specialty Stores Shopped Last 3 Months [Ulta].

16. I have been advised by counsel that Sephora and Ulta are the two top retailers for the *Tarte* brand, accounting for over two-thirds of all retail sales. Based on the target definition, the potential Target Audience size is estimated to be 21,794,000. It is important to note that the

Target Audience is intentionally overinclusive—consisting of *all* purchasers at two major retailers where the Class Products are sold—based on objective syndicated data, and if were taken as standalone effort, would allow the Parties to report the reach and frequency to the Court with the confidence that the reach within the target audience and the number of exposure opportunities, complies with Due Process and exceeds the Federal Judicial Center’s threshold as to reasonableness in notification programs.

17. As it relates to the Target Audience, understanding the socio-economic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target.

Here, the Target Audience has the following characteristics:

- Women ages 18-54, with an average age of 43;
- 53.38% are married;
- 25.44% have a college degree;
- 61.27% live in households with a total income above \$75K; and
- 67.83% are employed, with 52.49% working full time

18. To identify the best vehicles to deliver messaging to the Target Audience, traditional media quintiles were reviewed, which measure the degree to which an audience uses a particular form of media relative to the general population. Here, objective syndicated data demonstrate that members of the target audience are “heavy” internet users, using the internet an average of 23 hours per week. Likewise, members of the Target Audience read an average of 6 newspapers per month.

19. Given the strength of our target audience’s internet use as well as their newspaper use, Angeion recommends utilizing print publication combined with a robust internet advertising campaign.

ONLINE NOTICE

20. Angeion utilizes advanced targeting, machine learning, and a known and verifiable target audience profile, to ensure that members of the target audience are reached online. Through this “programmatic” approach, Angeion’s focus will be on effectively reaching the prototypical

individual Class Member. Purchasing display and mobile inventory programmatically provides the highest reach, allows for numerous advanced targeting layers.

21. Specifically, multiple targeting layers will be implemented to help ensure delivery to the most appropriate users, inclusive of search targeting, category contextual targeting, keyword contextual targeting, and site retargeting. The banner advertisements will run on desktop and mobile devices to reach the most qualified audience on the websites where Class Members are likely to surf, shop and browse. Search terms will be relevant to the *Tarte* and the High-Performance Naturals brand. Moreover, Angeion will target users who are currently browsing or have recently browsed content in contextual categories such as ‘Tarte skincare’ and “High Performance Naturals” to help qualify impressions to ensure messaging is served to the most relevant audience. Additionally, where available, purchase data will be utilized to further qualify the audience.

22. Angeion also employs Lotame, a demand management platform (“DMP”), as well as Integral Ad Science (“IAS”), an online ad verification and security provider, to provide a greater quality of service to ad performance.

23. Lotame allows Angeion to learn more about the online audiences that are being reached. From this data, demographic profiles can be refined and leveraged for changes in targeting strategies to increase the overall performance of the digital campaign.

24. Angeion also utilizes IAS, the leading ad verification company, to recognize and foil fraudulent internet activity. IAS has received the Media Rating Council “MRC” accreditation for Sophisticated Invalid Traffic (“SIVT”) detection for desktop and mobile web traffic, which adds a critical level of safety to the notice program.

25. The internet banner notice portion of the notice program will be implemented using a 4-week desktop and mobile campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50 and 300x50). A 3x frequency cap will be imposed to maximize reach. The banner notice portion of the notice program is designed to result in serving approximately 45,767,000 impressions.

26. Further, to track campaign success, we will implement conversion pixels throughout the Settlement Website, to better understand audience behavior and identify those members of the Target Audience who are most likely to convert. The programmatic algorithm will change based on success and failure to generate conversions throughout the process. Successful conversion on the Claim Form Submission button will be the primary goal, driving optimization and results.

PUBLICATION NOTICE

27. In addition to the internet banner notice campaign described above, the notice program utilizes print publication notice to reach potential Class Members.

28. The notice plan will effectuate publication of the Summary Notice in four ¼ page ads in the California regional edition of *USA Today*, to run one time per week in four consecutive weeks. This choice of publication also satisfies the requirements of the California Consumers Legal Remedies Act (“CLRA”).

RESPONSE MECHANISMS

29. The notice program will implement the creation of a case-specific Settlement Website where Class Members can easily view general information about this class action, review relevant Court documents and view important dates and deadlines pertinent to the Settlement.

30. The Settlement Website will be designed to be user-friendly and make it easy for Class Members to find information about the Settlement or file a claim. The website will also have a Frequently Asked Questions tab, and a “Contact Us” page whereby Class Members can send an email with any additional questions to a dedicated email address.

31. Importantly, Class Members will be able to submit their Claim Form and supporting documentation online via the Settlement Website.

32. A toll-free hotline devoted to this case will be implemented to further apprise Class Members of the rights and options in the Settlement. The toll-free hotline will utilize an interactive voice response (“IVR”) system to provide Class Members with responses to

frequently asked questions and provide essential information regarding the Settlement. This hotline will be accessible 24 hours a day, 7 days a week.

REACH AND FREQUENCY

33. This declaration provides the reach and frequency evidence which courts systematically rely upon in reviewing class action notice programs for adequacy. It further provides the objective syndicated data source, from which the percentages are derived. The reach percentage and the number of exposure opportunities, meets or exceed the guidelines as set forth in the Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*.

34. Specifically, the media notice program is designed to deliver an approximate 70% reach with an average frequency of 3.00 times. This reach percentage is *not* inclusive of the publication notice described herein, nor does it include the Settlement website and toll-free telephone hotline, as those are not readily calculable in the reach percentage but will nonetheless substantially aid in informing the Class Members of their rights and options under the Settlement.

PLAIN LANGUAGE NOTICE DESIGN

35. The Settlement notices are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood, by Settlement Class Members. The design of the Notices follows principles embodied in the Federal Judicial Center's illustrative “model” notices posted at www.fjc.gov. The notice forms contain plain-language summaries of key information about Settlement Class members' rights and options. Consistent with normal practice, prior to published, all notice documents will undergo a final edit for accuracy.

36. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in “plain, easily understood language.” Angeion maintains a strong commitment to

adhering to this requirement, and it is my opinion that the notice forms here fully satisfy this requirement.

37. My colleagues and I have had the opportunity to review and edit the notice forms for this case. In my opinion, all the forms of notice are noticeable, clear, and concise, and are written in plain, easily understood language. The notice forms effectively communicate key information about the Settlement and are designed to alert the reader that the Notice is an important document and that the content may affect them.

CLAIMS PROCESSING AND DISTRIBUTION

38. Angeion will cause all electronic and hard copy claims to be processed, reviewed and de-duplicated prior to preparing the finalized Distribution List.

39. Once the finalized Distribution List has been prepared, Angeion will utilize traditional bank checks to distribute class members payments to the address that class members provided during the claims process.

40. In an effort to deliver checks to the intended Class Member recipients, the notice program provides that any checks returned as undeliverable by the USPS which have a forwarding address will be re-mailed to that forwarding address; any checks that are returned as undeliverable by the USPS without a forwarding address will be subject to address verification searches (“skip tracing”), utilizing a wide variety of data sources, including public records, real estate records, electronic directory assistance listings, etc. to locate updated addresses. Checks will then be re-mailed to updated addresses located through skip tracing.

CONCLUSION

41. In my opinion, the Notice Program will provide full and proper notice to Settlement Class Members before any claims, opt-out and objection deadlines.

42. It is my opinion that the Notice Program provides Class Members Due Process of Law and is the best notice that is practicable under the circumstances and is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

43. After effectuating the notice plan, Angeion will provide a final report verifying its effective implementation.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: January 24, 2019



STEVEN WEISBROT

EXHIBIT D

**IMPORTANT NOTICE FROM THE UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF NEW YORK**

If you purchased certain Tarte High-Performance Naturals (“HPN”) Products, you may be eligible to receive a cash payment from a class action Settlement.

If you purchased certain Tarte products marketed as high-performance naturals®, you may be eligible to receive a payment. There is a class action Settlement involving Tarte products marketed as high-performance naturals®. The Action alleged that Tarte violated state and federal laws regarding the labeling, marketing, and advertising of the high-performance naturals® product line. Tarte denies any and all wrongdoing of any kind whatsoever and denies any liability to Plaintiff and to the Settlement Class. The Court has not decided who is right. Both sides have agreed to settle the dispute. The Settlement provides an opportunity for payments and other benefits to Settlement Class Members.

WHO IS INCLUDED IN THE SETTLEMENT?

All persons and entities who, between November 13, 2013 and [date], resided in the United States and purchased in the United States for personal use and not for resale, any products marketed by Tarte as high-performance naturals®, are included in the Settlement Class. More information is available at the Settlement Website, [website], or by calling [number].

WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement provides a Settlement Amount of \$1,700,000.00 to pay (1) Claims of eligible Settlement Class Members; (2) the costs of Class Notice and administration; (3) Attorneys’ Fees and Expenses; and (4) any Service Award made by the Court to Plaintiff. Settlement Class Members who timely submit valid Claim Forms are entitled to receive a cash payment from the Settlement. The actual amount recovered by each Settlement Class Member will not be determined until after the Claim Period has ended and all claims have been calculated.

WHAT ARE MY RIGHTS?

1. Participate in the Settlement by Submitting a Claim. If you wish to participate in the Settlement and be eligible to receive benefits under the Settlement, you MUST fill out and submit a Claim Form by [Date], 2019. You can obtain a Claim Form by (1) Visiting the Settlement Website, www.HPNsettlement.com, where you can file your claim online or print a Claim Form to submit by mail; (2) Mailing a written request for a Claim Form to: HPN Class Action, Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103; (3) Emailing the Settlement Administrator at [email]; or (4) Calling Toll-Free [number]. If you do not timely submit a valid Claim Form and do not exclude yourself from the Settlement, you will be bound by the Settlement but will not receive any benefits of the Settlement.

2. You Can Object to the Settlement. If you do not agree with the Settlement or any part of it, you may submit a written objection to the Court. The deadline for submitting an objection is [Date], 2019.

3. You Can “Opt Out” of the Settlement. If you don’t want to be legally bound by the Settlement, you must exclude yourself by **[Date], 2019**, or you won’t be able to sue, or continue to sue, Tarte about the claims in this case. If you exclude yourself, you cannot get money from this Settlement. The detailed Class Notice, available at [website], explains how to exclude yourself or object.

4. If you do nothing you will be bound by the Court’s decisions. The Court will hold a hearing on **[Date], 2019 at [Time]** to consider whether to approve the Settlement, a request for Attorneys’ Fees and Expenses up to \$566,666.00, and Service Awards for the Plaintiff totaling \$2,500.00, from the Settlement Amount. You or your own lawyer may appear and speak at the hearing at your own expense.

FOR MORE INFORMATION:
Call Toll-Free **[number]** or visit **[website]**