

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

MARIO ALIANO and DUE FRATELLI, INC.,  
individually and on behalf of all others similarly  
situated,

*Plaintiffs,*

v.

PROXIMO SPIRITS, INC.,

*Defendant.*

Case No. 2014-CH-17429

**PRELIMINARY APPROVAL ORDER**

This matter having come before the Court on the motion for preliminary approval (the “Motion for Preliminary Approval”) of a proposed class action settlement of the above-captioned matter (the “Action”) between Plaintiffs Mario Aliano and Due Fratelli, Inc. (“Plaintiffs”) and Defendant Proximo Spirits, Inc. (“Proximo” or “Defendant”), pursuant to the Parties’ Class Action Settlement Agreement (the “Settlement Agreement” or “Settlement”), and having duly considered the papers and arguments of counsel, the Court hereby finds and orders as follows:

1. Unless defined herein, all defined terms in this Order shall have the respective meanings set forth in the Settlement Agreement.
2. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Settlement Agreement for purposes of its fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the Court finds that (i) there is cause to believe that the Settlement is fair, reasonable, and adequate, and within the range of possible approval, (ii) the Settlement has been negotiated in good faith at arm’s-length between experienced attorneys familiar with the legal and factual issues of this case, and (iii) the notice of the material terms of the Settlement to Settlement Class Members for their consideration and reaction is warranted. Therefore, the Court

grants preliminary approval of the Settlement.

3. Pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for settlement purposes only, the Court conditionally certifies the proposed Settlement Class, consisting of:

All persons and entities in the United States who purchased Tincup whiskey from July 1, 2013 to September 16, 2015.

4. For settlement purposes only, the Court hereby preliminarily approves the appointment of Plaintiffs Mario Aliano and Due Fratelli, Inc. as Class Representatives.

5. For settlement purposes only, the Court hereby preliminarily approves the appointment of Thomas A. Zimmerman, Jr., Eleonora P. Khazanova, Matthew C. De Re, and Nickolas J. Hagman of the law firm Zimmerman Law Offices P.C. as Class Counsel, and Randy J. Wilharber of Peddicord, Wharton, Spencer, Hook, Barron & Wegman, LLP as Steering Committee Counsel. The Steering Committee Counsel and Named Plaintiff submit to the jurisdiction of the Circuit Court of Cook County, IL for purposes of complying with any orders of this Court related to the proposed Settlement. On January 21, 2016 at 10:00 am or at such other date and time later set by Court Order, this Court will hold a Fairness Hearing on the fairness, adequacy, and reasonableness of the Settlement and to determine whether (i) final approval of the Settlement should be granted, and (ii) Class Counsel's application for attorneys' fees and expenses, and Incentive Awards to the Class Representatives and Named Plaintiff, should be granted, and in what amounts. No later than 7 days prior to the Fairness Hearing, Plaintiffs must file their papers in support of final approval of the Settlement and in response to any objections. Defendant may (but is not required to) file papers in support of final approval of the Settlement, so long as it does so no later than 7 days prior to the Fairness Hearing.

6. Pursuant to the Settlement Agreement, Dahl Administration, LLC is hereby appointed as Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order.

7. The Court approves the proposed Notice Plan for giving direct notice to the Settlement Class by E-Mail and U.S. mail, and through an online media campaign, establishing a Settlement Website, and posting of a hyperlink to the Settlement Website on Defendant's website, as more fully described in the Settlement Agreement. The Notice Plan, in form, method, and content, complies with due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan in accordance with the terms of the Settlement Agreement by no later than the Notice Date of October 16, 2015.

8. All persons who meet the definition of the Settlement Class and who wish to exclude themselves from the Settlement Class must submit their Request for Exclusion in writing, identifying the case name *Aliano et al. v. Proximo Spirits, Inc.*, Case No. 2014-CH-17429 (Cir. Ct. Cook County, Ill.) and stating the name and address of the Settlement Class Member(s) seeking exclusion. Each Request for Exclusion must also be physically signed by the Settlement Class Member(s) with a statement to the effect that: "I/We hereby request to be excluded from the proposed Settlement Class in *Aliano et al. v. Proximo Spirits, Inc.*" The request must be mailed to the Settlement Administrator at the address provided in the notice and postmarked no later than November 30, 2015. A Request for Exclusion that does not include all of the foregoing information, that is sent to an address other than the one designated in the Notice, or that is not received within the time specified, shall be invalid and any person(s) serving such a request shall be deemed a member of the Settlement Class, and shall be bound as

a Settlement Class Member(s) by the Settlement. The Settlement Administrator shall promptly forward copies of all Requests for Exclusion to Class Counsel and Defendant's Counsel.

9. Any member of the Settlement Class may comment in support of or in opposition to the Settlement; *provided, however*, that all comments and objections must be filed with the Court and received by either Class Counsel or Defendant's Counsel prior to the Fairness Hearing. A Settlement Class Member who objects to the Settlement need not appear at the Fairness Hearing for his, her or its comment to be considered by the Court; however, all papers, briefs, pleadings, or other documents that any objector would like the Court to consider ("Objections") must be filed with the Court, with a copy postmarked to either Class Counsel or Defendant's Counsel, no later than November 30, 2015. All Objections shall include the caption *Aliano et al. v. Proximo Spirits, Inc.*, Case No. 2014-CH-17429 (Cir. Ct. Cook County, Ill.) and provide: (i) the Settlement Class Member's full name, address, and telephone number; (ii) a signed statement promising that the following information is true and correct to the best of the Settlement Class Member's knowledge and belief: the Settlement Class Member purchased either a bottle of Tincup whiskey, or a drink containing Tincup whiskey on premise at a retail establishment, between July 1, 2013 and September 16, 2015; (iii) the specific grounds for the objection; (iv) all documents or writings that such Settlement Class Member desires the Court to consider; (v) the name and contact information of any and all attorneys representing, advising, or in any way assisting the Settlement Class Member in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (vi) a notice of intention to appear at the Fairness Hearing (if any).

10. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his, her or its objections and forever be barred from making any

such objections in this Action or in any other action or proceeding. While the declaration described in subparagraph 9(ii) is *prima facie* evidence that the objector is a member of the Settlement Class, Plaintiffs or Defendant or all of them may take discovery regarding the matter, subject to Court approval. If a Settlement Class Member does not submit a written comment on the proposed Settlement or the application of Class Counsel for Incentive Awards and attorneys' fees and expenses in accordance with the deadline and procedure set forth in the Notice, and the Settlement Class Member is not granted relief by the Court, such Settlement Class Member will be deemed to have waived his, her or its right to be heard at the Fairness Hearing.

11. The Settlement Agreement and the proceedings and statements made pursuant to the Settlement Agreement or papers filed relating to the approval of the Settlement Agreement, and this Order, are not and shall not in any event be construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or an admission of any kind by any of the Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in the Action, any other litigation, court of law or equity, proceeding, arbitration, tribunal, investigation, government action, administrative proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of the Parties. Defendant has denied and continues to deny the claims asserted by Plaintiffs. Nothing contained herein shall be construed to prevent the Parties from offering the Settlement Agreement into evidence for the purposes of enforcement of the Settlement Agreement.

12. In further aid of the Court's jurisdiction to review, consider, implement and enforce the Settlement, Plaintiffs and members of the Settlement Class are preliminarily enjoined and barred from commencing, prosecuting, or otherwise litigating, in whole or in part, either

directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority or forum wherever located, any contention, allegation, claim, cause of action, matter, lawsuit, or action (including actions pending as of the date of this Order), that concern or relate in any way to: (i) the claims that were or could have been asserted in the Actions. Any person or entity who knowingly violates such injunction shall pay the reasonable costs and attorneys' fees incurred by Class Counsel or Defendant as a result of such violation.

13. The certification of the Settlement Class shall be binding only with respect to the settlement of the Action. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in all material respects by the Court, or such approval is reversed, vacated, or modified in any material respect by this or any other court, the certification of the Settlement Class shall be deemed vacated, the Action shall proceed as if the Settlement Class had never been certified (including Defendant's right to oppose any subsequent motion for class certification), and no reference to the Settlement Class, the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose.

**IT IS SO ORDERED** this 16<sup>th</sup> day of September, 2015.

~~THE HONORABLE KATHLEEN M. PANTLE~~

