



FILED  
ALAMEDA COUNTY

FEB 23 2018

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

JORDANA LEE KOPIN, individually and on behalf of all others similarly situated,

*Plaintiff,*

vs.

ORBIT BABY, INC., a Delaware Corporation; THE ERGO BABY CARRIER, INC., a Hawaii Corporation; and DOES 1-20, inclusive,

*Defendants.*

UNLIMITED JURISDICTION

CASE NO.: RG16813239

~~PROPOSED~~ PRELIMINARY APPROVAL ORDER:

- (1) CONDITIONALLY CERTIFYING CLASS;
- (2) PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT;
- (3) DIRECTING DISTRIBUTION TO CLASS OF NOTICE OF SETTLEMENT AND OPPORTUNITY TO "OPT-OUT" OR OBJECT TO SETTLEMENT; AND
- (4) SETTING HEARING FOR FINAL APPROVAL OF CLASS ACTION

Assigned for All Purposes to the Honorable Winifred Smith (Dept. 21)

Hearing

Date: February 9, 2018

Time: 11:00 a.m.

Dept.: 21

Action Filed: April 26, 2016

Trial Date: None Set

1 WHEREAS, Plaintiff Jordana Lee Kopin (“Plaintiff”) and Defendants Orbit Baby, Inc. and The  
2 ERGO Baby Carrier, Inc. (“Defendants”), (collectively, the “Parties”), entered into a class action  
3 settlement, the terms and conditions of which are set forth in their Joint Stipulation of Class Action  
4 Settlement and Release (“Settlement Agreement”), filed concurrently with Plaintiff’s Motion for  
5 Preliminary Approval of Class Action Settlement.

6 WHEREAS, the Parties have brought this matter before the Court by Plaintiff’s Motion for  
7 Preliminary Approval of Class Action Settlement, pursuant to California Code of Civil Procedure §382  
8 and California Rules of Court, rule 3.760 *et seq.*, seeking preliminary approval of a class action  
9 settlement, and directing the dissemination of class notice (the “Motion”);

10 WHEREAS, the Court, having reviewed the Settlement Agreement, Motion, and supporting  
11 exhibits, and having considered the arguments of counsel, makes the following findings and rulings;

12 IT IS HEREBY ORDERED:

13 1. This Preliminary Approval Order incorporates by reference the definitions in the  
14 Settlement Agreement, and all defined terms herein shall have the same meaning as set forth in the  
15 Settlement Agreement.

16 2. The proposed Settlement Agreement submitted with the Motion is preliminarily approved  
17 as being within the range of potential approval.

18 3. Based upon the submissions of the Parties, the Court conditionally makes the following  
19 findings:

- 20 a. The Settlement Class Members are so numerous as to make joinder impracticable;
- 21 b. There are questions of law and fact common to the Settlement Class, and such  
22 questions predominate over any questions affecting only individual Settlement Class  
23 Members;
- 24 c. Plaintiff’s claims and defenses thereto are typical of the claims of Settlement Class  
25 Members;
- 26 d. Plaintiff and her counsel can and have fairly and adequately protected the interests of  
27 the Settlement Class Members in this action;
- 28 e. A class action is superior to all other available methods for fair and efficient resolution

1 of this action.

2 4. For purposes of the Settlement only, the Court preliminarily approves Plaintiff as  
3 representative of the Class.

4 5. For purposes of the Settlement only, the Court conditionally certifies a Settlement Class  
5 comprised of:

6 Any person who, while residing in the State of California, purchased an Orbit Baby, Inc. infant  
7 or toddler car seat for personal use and not for resale at any time between April 26, 2012 through  
8 the date of entry of this preliminary approval order.

9 6. This action is preliminarily certified as a class action for settlement purposes only,  
10 pursuant to California Code of Civil Procedure §382 and California Rules of Court, rules 3.760 *et seq.*  
11 and 3.769. If the settlement does not receive final approval, Defendants retain the right to assert that this  
12 action may not be certified as a class action for liability purposes.

13 7. Heather F. Auyang and James M. Lee of LTL Attorneys LLP and Rana S. Ziaee of Ziaee  
14 Law (together, "Class Counsel") are appointed as Settlement Class Counsel.

15 8. This Court finds, upon preliminary review of the Settlement Agreement, that the  
16 Settlement Agreement appears to be fair, reasonable and adequate. The Court finds that the Settlement  
17 Agreement falls "within the range of possible approval." Manual of Complex Litigation (Third) §30.41.  
18 Accordingly, the Settlement Agreement is preliminarily approved, subject to a further determination to  
19 be made at or after the Final Approval Hearing, as defined below, and is sufficient to warrant sending  
20 notice to the Settlement Class.

21 9. The Court preliminarily approves Class Counsel's attorneys' fees of 33% of the gross  
22 settlement fund (\$328,350.00) and the enhancement awards to the Class Representative, as set forth in  
23 Section 7 of the Settlement Agreement.

24 10. The Court finds that the manner and content of Notices specified in the Settlement  
25 Agreement, attached as Exhibits 1A and 1B to the Settlement Agreement, incorporated herein by  
26 reference, will provide the best notice practicable to the Settlement Class under the circumstances.

27 11. The Court further finds that the manner of notice set forth in Section 4(a)-(f) of the  
28 Settlement Agreement meets the requirements of rule 3.766 of the California Rules of Court and

1 accurately informs the Settlement Class. The Claims Administrator shall send Notice to Identified Class  
2 Members (Exhibit 1A to the Settlement Agreement), Claim Forms and Requests for Exclusion (Exhibits  
3 2-3 to the Settlement Agreement) by first-class regular mail no later than fourteen (14) days after entry  
4 of this preliminary approval order, or March 8, 2018, pursuant to Section 4(b) of the Settlement  
5 Agreement.

6 12. A final approval and fairness determination hearing (the "Final Approval Hearing") shall  
7 be held before this Court on June 15, 2018 at 11 a.m., to determine whether: (a) this action meets each  
8 of the prerequisites for class certification set forth in California Code of Civil Procedure §382 and  
9 California Rules of Court, rules 3.760 *et seq.* and 3.769, and may properly be maintained as a class  
10 action on behalf of the Settlement Class under California Code of Civil Procedure  
11 §382; (b) the Settlement Agreement should receive final approval as fair, reasonable, adequate, and in  
12 the best interests of the Settlement Class; (c) orders granting final approval of the Settlement  
13 Agreement, entering final judgment and dismissing the action with prejudice ("Final Approval Order  
14 and Judgment"), as provided in the Settlement Agreement, should be entered; (d) the application of  
15 Class Counsel for payment of attorneys' fees and incentive fee for Plaintiff is reasonable and should be  
16 approved; and (e) the proposed plan of distribution is fair and reasonable.

17 13. The Final Approval Hearing may be postponed, adjourned or continued by further order  
18 of this Court, without further notice to the Settlement Class. The Court may approve the settlement with  
19 modifications as may be agreed by the settling parties, if appropriate, without further notice to the  
20 Settlement Class.

21 14. All Settlement Class Members shall be bound by all determinations and judgments in this  
22 action concerning the settlement, whether favorable or unfavorable to the Settlement Class.

23 15. Any member of the Settlement Class may enter an appearance in this action, at his or her  
24 own expense, individually or through counsel of his or her own choice. If they do not enter an  
25 appearance, they will be represented by Class Counsel.

26 16. All papers in support of the Settlement, requests for attorneys' fees and incentive awards  
27 to the Class Representative shall be filed by May 23, 2018.

28 17. At the Final Approval Hearing, the Court will consider and determine whether the

1 Settlement Agreement should be finally approved as fair, adequate and reasonable in light of any  
2 objections presented by Settlement Class Members and the Parties' responses to any such objections.

3 18. Any Settlement Class Member may object to the fairness, reasonableness or adequacy of  
4 the proposed settlement. Any member of the Settlement Class who so objects may appear at the Final  
5 Approval Hearing, in person or through counsel, to show cause why the proposed settlement should not  
6 be approved as fair, adequate and reasonable. Each Settlement Class Member who wishes to object to  
7 any term of the Settlement Agreement must do so in writing by filing a written objection with the Clerk  
8 of the Court and mailing it to the claims administrator. Any such objection must be filed with the Clerk  
9 of the Court and received by the claims administrator for the parties within sixty (60) days after the date  
10 of mailing of the Notices, or no later than May 7, 2018, if Notices are sent by March 8, 2018.

11 19. Any person included within the Settlement Class who wishes to be excluded from  
12 membership in the Settlement Class must do so in writing by mailing a Request for Exclusion from the  
13 Settlement to the Settlement Administrator, so that such request is postmarked no later than sixty (60)  
14 days after the date of mailing of the Notices, or by May 7, 2018, if Notices are sent by March 8, 2018.

15 20. If the Settlement Agreement is finally approved, the Court shall enter a separate order  
16 finally approving the Settlement Agreement, entering judgment. Such order and judgment shall be fully  
17 binding with respect to all Settlement Class Members.

18 21. In the event the proposed settlement provided for in the Settlement Agreement is not  
19 approved by the Court, or entry of the final order and judgment does not occur for any reason, then the  
20 Settlement Agreement, all drafts, negotiations, discussions, and documentation relating thereto, and all  
21 orders entered by this Court in connection therewith shall become null and void. In such event, the  
22 Settlement Agreement and all negotiations and proceedings relating thereto shall be withdrawn without  
23 prejudice to the rights of the Parties, who shall be restored to their respective positions as of the date of  
24 the execution of the Settlement Agreement.

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1 22. Accordingly, good cause appearing therefore, the Court hereby approves the proposed  
2 Notices and adopts the following dates and deadlines:

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| 3  |  |  |
| 4  | Notice to Class (¶4(a)-(f), within 14 days   |  |
| 5  | after the Court enters this Order)           | On or before March 8, 2018                   |
| 6  | Claims Submission Deadline (¶¶1(c), 4(j), 60 | May 7, 2018, if Notices are sent by March 8, |
| 7  | days following notice)                       | 2018   |
| 8  | Objections by Class Members to Settlement    | May 7, 2018, if Notices are sent by March 8, |
| 9  | (¶¶1(a), 11(b), 60 days following notice)    | 2018   |
| 10 | Opt-Out Deadline (¶¶1(a), 10 (a), 60 days    | May 7, 2018, if Notices are sent by March 8, |
| 11 | following notice)                            | 2018   |
| 12 | Motion for Final Approval, Motion            |  |
| 13 | Attorneys' Fees and Incentive Award (16      |  |
| 14 | court days before final approval hearing)    | March 23, 2018                               |
| 15 | Response to Objections (9 court days before  |  |
| 16 | final approval hearing)                      | June 4, 2018                                 |
| 17 | Final Approval Hearing                       | June 15, 2018 at 11:00 a.m.                  |
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22 DATED: February 23, 2018

23 By: Winifred J. Smith  
24 Hon. Winifred Smith