

AMENDMENT TO SETTLEMENT AGREEMENT

WHEREAS, on December 14, 2018, Jeannie Patora (“Plaintiff”), on behalf of herself and a putative nationwide class, filed a lawsuit against Tarte, Inc. (“Defendant”) in the United States District Court for the Southern District of New York, captioned *Patora v. Tarte, Inc.*, 7:18-cv-11760 (ECF 1);

WHEREAS, on December 14, 2018, the Parties filed a Notice of a Settlement indicating that they had reach an agreement that, if approved by the Court, would resolve the matter on a classwide basis (ECF 5);

WHEREAS, the Settlement Agreement was filed as an exhibit to the Declaration of Jason Sultzer In Support of Plaintiff’s Motion For Preliminary Approval (ECF 21-1);

WHEREAS, after the hearing on the Motion for Preliminary Approval of August 22, 2019, the Parties agreed to amend the Settlement Agreement in certain respects:

NOW THEREFORE, the Parties hereby agree as follows:

1. The following sentence shall be added to the end of Section 2.5: In the event that the Court Orders the Parties to provide Notice via email, and the Claim Period is scheduled to end within 30 days of the date the Notice is to be sent via email, then the Claim Period will be extended to the date that is 30 days after the date that the email Notice is sent.

2. The definition of “Class Period” in Section 2.10 shall be modified to be: “the period from November 13, 2013, to the end of the Claim Period.”

3. The following sentence shall be added to the end of Section 2.25: “Provided, however, nothing in this section shall be construed to prohibit Class Members from participating in or receiving benefits from any government or regulatory-initiated enforcement action.”

4. Section 4.4(a)(ii) shall be deleted and replaced with the following: “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, including from any checks that were not cashed, then the Settlement Administrator shall distribute the remaining Residual Funds to the non-profit organization Consumer Reports.”

5. An Amended Settlement Agreement, reflecting the changes above, is attached hereto as **Exhibit 1**.

6. The Parties have also agreed to make conforming changes to the long form Class Notice, and to make certain non-substantive changes to the Settlement Agreement and long form Class Notice. These are shown in **Exhibit 2**, which is a redline showing the differences between the Settlement Agreement and the Amended Settlement Agreement.

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 Amendment to the Settlement Agreement as of the dates set forth below:

Dated: 9/24/19

By: Jeannie Patora
Plaintiff Jeannie Patora

Dated: 9/24/19

TARTE, INC.
By: [Signature]
Name: Scott McDonald
Title: GM

Dated: 9/24/19

THE SULTZER LAW GROUP
By: [Signature]
Jason P. Sultzer
Attorneys for Plaintiff and the Class

EXHIBIT 1

AMENDED 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 Sultzer 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. In the event that the Court Orders the Parties to provide Notice via email, and the Claim Period

is scheduled to end within 30 days of the date the Notice is to be sent via email, then the Claim Period will be extended to the date that is 30 days after the date that the email Notice is sent.

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 end of the Claim Period.

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. Provided, however, nothing in this section shall be construed to prohibit Class Members from participating in or receiving benefits from any government or regulatory-initiated enforcement action.

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 Sultz 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, including from any checks that were not cashed, then the Settlement Administrator shall distribute the remaining Residual Funds to the non-profit organization Consumer Reports.

(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 naturalsTM 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: _____

By: _____
Plaintiff Jeannie Patora

TARTE, INC.

Dated: _____

By: _____
Name:
Title:

THE SULTZER LAW GROUP

Dated: _____

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