

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

MONIQUE SALERNO and KRISTA
MENDOZA, individually and on behalf of
all others similarly situated,

Plaintiffs,

-against-

KIRK'S NATURAL LLC,

Defendant.

Case No. 1:21-cv-04987-BMC

FINAL APPROVAL ORDER AND JUDGMENT

Upon consideration of Plaintiffs Monique Salerno and Krista Mendoza's Unopposed Motions for Final Approval of Class Action Settlement (ECF No. 39) and for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Class Representatives (ECF No. 40), the final approval hearing before this Court, and the entire record herein, the Court grants final approval of the Settlement, upon the terms and conditions set forth in this Order, and plaintiffs' motion for attorneys' fees, costs, and service awards. Capitalized terms and phrases in this Order shall have the same meaning ascribed to them in the Settlement Agreement (ECF No. 33). The Court makes the following findings:

FINDINGS OF FACT

1. On August 16, 2022, this Court granted the motion to Plaintiffs for preliminary approval of the Settlement Agreement and certification of the Settlement Class (as defined below). *See* ECF No. 35.

2. Commencing on September 15, 2022 pursuant to the notice requirements in the Settlement Agreement and the Preliminary Approval Order, Angeion Group (the "Settlement Administrator") began providing notice to Settlement Class Members in compliance with the Settlement Agreement and Notice Plan; due process; and, Federal Civil Procedure Rule 23. The notice:

- a. Fully informed Settlement Class Members about the Action and the existence and terms of the Settlement Agreement;
- b. Advised Settlement Class Members of their right to request exclusion from the Settlement and provided sufficient information so that Settlement Class Members were able to decide whether to accept the settlement, opt-out and pursue their own remedies, or object to the proposed settlement;
- c. Provided procedures for Settlement Class Members to file written objections to the proposed settlement, to appear at the Final Approval Hearing, and to state objections to the proposed settlement; and

d. Provided the time, date, and place of the Final Approval Hearing.

3. On January 30, 2023, the Court held a final Approval Hearing to determine whether the proposed settlement is fair, reasonable, and adequate and whether judgment should be entered dismissing this Action with prejudice. The Court reviewed the Motion for Final Approval and all supporting materials, including but not limited to the Settlement Agreement. Based on this review and the findings below the Court finds good cause to grant the Motion for Final Approval.

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

1. The Court has jurisdiction over the subject matter of this Action, all claims raised therein, and all Parties thereto, including the Settlement Class.

2. The Settlement Agreement is fair, reasonable, adequate and in the best interests of Settlement Class Members. The Settlement Agreement was negotiated at arm's length, in good faith and without collusion, by capable and experienced counsel, with full knowledge of the facts, the law, and the risks inherent in litigating the Action, and with the active involvement of the Parties. Moreover, the Settlement Agreement confers substantial benefits on the Settlement Class Members, is not contrary to the public interest, and will provide the Parties with repose from litigation. The Parties faced significant risks, expense, and uncertainty from continued litigation of this matter, which further supports the Court's conclusion that the settlement is fair, reasonable, adequate and in the best interests of the Settlement Class Members.

3. The Court grants final approval of the Settlement Agreement in full, including but not limited to the releases therein and the procedures for distribution of the Settlement Fund. All Settlement Class Members who have not excluded themselves from the Settlement Class are bound by this Final Approval Order and Judgment.

4. The Parties shall carry out their respective obligations under the Settlement Agreement in accordance with its terms. The relief provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim forms, pursuant to the terms and conditions in the Settlement Agreement. The Settlement Agreement is incorporated herein in its entirety as if fully set forth herein and shall have the same force and effect of an order of this Court.

OBJECTIONS AND REQUESTS FOR EXCLUSION

5. There were no objections to the Settlement. All persons who did not object to the Settlement in the manner set forth in the Settlement Agreement are deemed to have waived any objections, including but not limited to by appeal, collateral attack, or otherwise.

6. There was only one person – Ali Ratzel - who made a valid and timely request to be excluded from the Settlement and the Settlement Class (the “Opt-Out Member”). The Opt-Out Member is not bound by the Settlement Agreement and this Final Approval Order and shall not be entitled to any of the benefits afforded to Settlement Class Members under the Settlement Agreement.

CERTIFICATION OF THE SETTLEMENT CLASS

7. Solely for purposes of the Settlement Agreement and this Final Approval Order and Judgment, the Court hereby certifies the following Settlement Class:

All persons who, from September 3, 2015 to August 12, 2022, purchased one or more South of France products for personal or household use and not for resale in the United States.

The Settlement Class specifically excludes: (a) the directors, officers, employees, and attorneys of Defendant, its parents and subsidiaries; (b) governmental entities; (c) the Court, the Court’s immediate family, and Court staff; (d) the Honorable Wayne Andersen (Ret.) and his immediate

family; and (d) any person that timely and properly excluded himself or herself from the Settlement Class in accordance with the procedures approved by the Court.

8. The Court incorporates its preliminary conclusions in the Preliminary Approval Order (ECF No. 35) regarding the satisfaction of Federal Rules of Civil Procedure 23(a) and 23(b).

9. The Court grants final approval to the appointment of Plaintiffs Monique Salerno and Krista Mendoza as the Class Representatives and concludes that they have fairly and adequately represented the Settlement Class and shall continue to do so.

10. The Court grants final approval to the appointment of Michael R. Reese and Charles D. Moore from Reese LLP as counsel for the Settlement Class. Class Counsel have fairly and adequately represented the Settlement Class and shall continue to do so.

NOTICE TO THE CLASS

11. The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class Members to exclude themselves from the Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

12. The Court finds that Defendant has satisfied the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.

ATTORNEYS' FEES AND COSTS, SERVICE AWARDS

13. Class Counsel has applied for an award of attorneys' fees and costs incurred in this Action in the amount of \$360,895.25 in attorneys' fees and \$24,104.75 in costs. The Court finds these amounts to be fair and reasonable, and Class Counsel's request for attorney's fees and costs is granted. The Court approves payment of \$360,895.25 to Class Counsel for attorneys' fees and payment of \$24,104.75 for costs. Payment shall be made pursuant to Sections 5.1 and 5.9 of the Settlement Agreement.

14. Plaintiffs have applied for awards of service payments as Class Representatives in the amount of \$3,000 to each Class Representative. The Court finds this amount is justified by Plaintiffs' service to the Settlement Class, and Plaintiffs' requests for the Service Awards are granted as follows: \$3,000 is awarded to Monique Salerno and \$3,000 is awarded to Krista Mendoza for a total of \$6,000. Payment of the Service Awards shall be made pursuant to Sections 5.2 and 5.10 of the Settlement Agreement.

RELEASES

15. The Court releases and forever discharges the Released Persons from each of the Released Claims, as provided in the Settlement Agreement. The Releasers are permanently barred and enjoined from instituting, maintaining, or prosecuting, either directly or indirectly, any litigation that asserts the Released Claims. This permanent bar and injunction is necessary to protect and effectuate the Settlement Agreement, this Final Approval Order, and the Court's authority to effectuate the Settlement Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments. The Released Claims shall be construed as broadly as possible to ensure complete finality over this Action involving the advertising, labeling, and marketing of the Products as set forth herein. No Settlement Class Member may circumvent the release by seeking

to join in any way together with any other Settlement Class Members in any action whatsoever, including any mass or class action under the Class Action Fairness Act or otherwise, that asserts such Released Claims. The full terms of the release described in this paragraph are set forth in Sections 2.31–2.32, and 7.1–7.3 of the Settlement Agreement and are specifically approved and incorporated herein by this reference.

OTHER PROVISIONS

16. Pursuant to Section III of the Settlement Agreement, Defendant shall cause to be paid through the Settlement Administrator up to, and no more than, six hundred fifty thousand dollars and no cents (\$650,000.00), to Claimants who have submitted timely, valid, and approved Claims in accordance with the Settlement Agreement. The Settlement Administrator shall either mail settlement checks to Claimants at their last known addresses via first class United States mail or send payments as requested in the Claim Form. If the total amount of valid claims exceeds \$650,000, payments to Claimants who submitted timely, valid, and approved Claims shall be prorated in accordance with the terms of the Settlement Agreement.

17. The Court approved use of Angeion Group, LLC as the Settlement Administrator. The Court hereby approves fees and costs to be paid to the Settlement Administrator in the amount of two hundred nineteen thousand dollars and no cents (\$219,000.00) to be used to pay (a) all costs and expenses associated with disseminating notice to the Settlement Class, including but not limited to, the Class Notice and summary Settlement Notice; and (b) all costs and expenses associated with the administration of the Settlement, including but not limited to, processing claims and fees of the Settlement Administrator. Payment shall be made pursuant to Section 3.13 of the Settlement Agreement.

18. The Settlement Agreement and this Final Approval Order, and all documents, supporting materials, representations, statements and proceedings relating to the Settlement Agreement, are not, and shall not be construed as, used as, or deemed evidence of, any admission by or against Defendant of: (a) liability, fault, wrongdoing, or violation of any law; (b) the validity or certifiability for litigation purposes of the Settlement Class; (c) the strength of any of the claims or allegations in the Complaint or any other claims that could have been asserted in the Action; or, (d) the infirmity of any defenses to Plaintiff's claims or allegations.

19. The Settlement Agreement and this Final Approval Order, and all documents, supporting materials, representations, statements and proceedings relating to the Settlement shall not be offered or received into evidence, and are not admissible into evidence, in any action or proceeding, except that the Settlement Agreement and this Final Approval Order may be filed in any action by Defendant or the Settlement Class Members seeking to enforce the Settlement Agreement or the Final Approval Order. This Final Approval Order and the Settlement Agreement may be pleaded as a full and complete defense to any action, suit, or other proceedings that has been or may be instituted, prosecuted or attempted against the Released Parties in such capacity with respect to any of the Released Claims, and may be filed, offered, received into evidence, and otherwise used for such defense.

20. The Court hereby dismisses the Action in its entirety with prejudice, and without fees or costs except as otherwise provided for herein.

21. Without affecting the finality of this Final Approval Order, the Court will retain jurisdiction over this Action and the Parties with respect to the interpretation, implementation and enforcement of the Settlement Agreement for all purposes.

22. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, there is no just reason for delay in the entry of this Final Approval Order and Judgment and immediate entry by the Clerk of the Court is expressly directed.

NOW, THEREFORE, the Court hereby enters judgment in this matter pursuant to Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED

Brooklyn, New York
January 31, 2023

Brian M. Cogan

HONORABLE BRIAN M. COGAN
United States District Court Judge

