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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JUDY KO, individually and on behalf of all other persons similarly situated and on behalf of the general public,

Plaintiff,

v.

NATURA PET PRODUCTS, INC.; PETER ATKINS; and DOES 1 through 100 inclusive,

Defendants.

Case No. C 09-02619 JF

~~PROPOSED~~ AMENDED ORDER FOR PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT

WHEREAS, the Plaintiff Judy Ko, individually and on behalf of the Settlement Class Members she seeks to represent, brought a motion for an order preliminarily approving the settlement of the claims alleged against Defendant Natura Pet Products, Inc. and Peter Atkins (“Defendants”) in this litigation in accordance with the Settlement Agreement and Release (the “Agreement”), which, together with the annexed Exhibits, set forth the terms and conditions for a proposed settlement of the claims alleged against Defendants in this litigation and for dismissal of the litigation against Defendants with prejudice upon the terms and conditions set forth in the Agreement, which came regularly for a hearing on July 8, 2011; and the Court having read and

1 considered the Agreement and all of the papers and admissible evidence filed in support of the
2 motion and for good cause appearing:

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4 NOW, THEREFORE, IT IS HEREBY ORDERED:

5 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Agreement of
6 the Parties, the Court does hereby certify for purposes of settlement only a proposed settlement
7 class defined as follows: All persons residing in the United States who purchased any Natura
8 Product for personal, family, or household purposes (the “Class”) during the time period from
9 March 20, 2005 to July 8, 2011 (the “Class Period”). Excluded from the Class are all persons who
10 file timely Opt-Out/Request For Exclusion Statements; counsel of record (and their respective law
11 firms) for any of the parties; Natura Pet Products, Inc. and all of its employees, officers and
12 directors; the presiding judge in the Action and all members of his immediate family; and all
13 persons who entered into a settlement or release with one or more Defendants concerning the
14 Natura Product prior to the Effective Date. The Court finds that certification of this Class meets
15 the requirements of Rule 23 of the Federal Rules of Civil Procedure.
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18 2. The Court does hereby appoint Judy Ko as the Class Representative and appoints
19 Patrick N. Keegan, Esq. and Jason E. Baker, Esq. of Keegan & Baker, LLP, and Catherine J. MacIvor,
20 Esq. of Foreman Friedman, PA, as Class Counsel.

21 3. The Court does hereby find that the proposed settlement as described in the
22 Agreement appears to be fair, proper, falls within the range of reasonableness, and appears to be
23 presumptively valid subject only to any objections that may be raised at the Final Fairness Hearing
24 and hereby preliminarily approves the proposed settlement as set forth in the Agreement subject to
25 further consideration at the Final Fairness Hearing described below.
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1 4. A hearing (the “Final Fairness Hearing”) shall be held before this Court on February
2 17, 2012 at 9:00 a.m., in Courtroom 3 of the District Court for the Northern District of California,
3 located at 280 South 1st Street, San Jose, California 95113, to determine whether the proposed
4 settlement of the litigation on the terms and conditions provided for in the Agreement is fair, just,
5 reasonable and adequate to the Class and should be approved by the Court; whether judgment as
6 provided for in the Agreement should be entered; and to determine the amount of fees and
7 expenses that should be awarded to Class Counsel. The Court may reschedule the Final Fairness
8 Hearing to another date without further notice to members of the Class.
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10 5. The Court approves, as to form and content, the Long Form Notice of Pendency and
11 Settlement of Class Action (“Long Form Notice”), and the Summary Notice attached as Exhibits to
12 Document 71, the Affidavit of Gina M. Intrepido-Bowden, and finds that the e-mailing of the
13 Summary Notice, and posting on the dedicated internet website of the Long Form Notice, mailing
14 of the Summary Notice post-card, and newspaper and magazine publication of the Summary
15 Notice substantially in the manner as set forth in this Order meets the requirements of Rule 23 of
16 the Federal Rules of Civil Procedure, and due process, and is the best notice practicable under the
17 circumstances and shall constitute due and sufficient notice to all persons entitled to notice.
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20 6. Settlement Administrator Analytics, Inc. (the “Settlement Administrator”) is hereby
21 authorized to supervise and administer the notice procedure as more fully set forth below:
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23 (a) No later than July 20, 2011, the Settlement Administrator shall design, create and
24 administer a settlement website (www.petproductsettlemnt.com) that will post the settlement
25 documents (including but not limited to the Long Form Notice and the Claim Form), a list of
26 important dates, the contact information of the Settlement Administrator and Class Counsel, and
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1 any other information to which the parties may agree, and which shall allow Class members to
2 submit Proof of Claim forms electronically;

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4 (b) No later than July 20, 2011, Defendant Natura Pet Products, Inc. shall post a link on the
5 home page of its website (www.naturapet.com) to the above referenced settlement website
6 (www.petproductssettlement.com);

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8 (c) No later than July 22, 2011, the Settlement Administrator shall e-mail the Summary
9 Notice and Proof of Claim Form to the last known e-mail addresses of the Class members, to the
10 extent that such e-mail address exists in a database prepared from post cards submitted by
11 purchasers of Natura's products and is a valid e-mail address. The e-mails shall provide
12 information referring Class members to the settlement website (www.petproductssettlement.com).
13 The e-mail notification provided for in the Agreement shall be effected pursuant to this Order and
14 does not constitute a "commercial electronic message" as defined by 15 U.S.C. §7702(2);

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16 (d) No later than July 29, 2011, the Settlement Administrator shall mail a Summary Notice
17 in post-card form containing information regarding how to find the settlement website to members
18 of the Settlement Class to the extent that their address exists in a database prepared from post cards
19 submitted by purchasers of Natura's products or has been obtained by using that information plus
20 the National Change of Address Database (no mailing will be made to a particular Class member if
21 an e-mail notice was sent to that Settlement Class Member and was not returned as undeliverable);
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23 (e) No later than October 1, 2011, the Settlement Administrator shall cause a copy of the
24 Summary Notice, to be published one time, consistent with the Settlement Agreement, in the
25 following publications: Parade, U.S.A. Weekend, Better Homes & Gardens, National Geographic,
26 Relish, Dog Fancy, and Cat Fancy;

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28 (f) To comply with 28 U.S.C. §1715; and

1 (g) Should the number of Proof of Claims filed with the Settlement Administrator not
2 exceed the anticipated minimum by November 15, 2011 (116 days after the e-mailing of the Long
3 Form Notice and Proof of Claim Form, 109 days after the mailing of the Summary Notice postcard,
4 and 45 days after completion of the publication of the Summary Notice in above referenced
5 newspapers and magazines), the Claims Administrator shall commence the supplemental Internet
6 notice program by publication of the information contained in the Summary Notice from
7 November 21, 2011 to be completed by December 21, 2011, consistent with the Settlement
8 Agreement, on PR Newswire, and on the Internet in sponsored links on Google, Yahoo, Bing and
9 AOL, targeted content advertisements on Google Display Network, Banner Display
10 Advertisements on Yahoo and Facebook, and on a Facebook Settlement Page with posted links to
11 the settlement website (www.petproductssettlement.com).
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14 7. Class Members shall comply with the procedures set forth in the Long Form Notice.
15 All Proof of Claim Forms must be postmarked or electronically submitted by no later than January
16 8, 2012 (the “Claims Deadline”). Any Claim Form that is submitted or returned to the Claims
17 Administrator after the Claims Deadline will not be accepted or processed.
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19 8. Class Members who wish to object to the Settlement must file with the Court and
20 serve on Class Counsel and Defense Counsel a written statement objecting to the Settlement. Such
21 written statement must be filed with the Court and served on Class Counsel and Defense Counsel
22 and the Settlement Administrator no later than December 28, 2011 (the “Objection/Exclusion
23 Deadline Date”). No Class member shall be entitled to be heard at the final Settlement Hearing or
24 to object to the Settlement, and no written objections or briefs submitted by any Class member
25 shall be received or considered by the Court at the Settlement Hearing, unless written notice of the
26 Class member’s intention to appear at the Settlement Hearing, and copies of any written objections
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1 or briefs, shall have been filed with the Court and served on Class Counsel and Defense Counsel
2 and on the Settlement Administrator on or before the Objection/Exclusion Deadline Date. Class
3 members who fail to file and serve timely written objections in the manner specified above shall be
4 deemed to have waived any objections and shall be foreclosed from making any objection (whether
5 by appeal or otherwise) to the Settlement.
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7 9. Class members who wish to exclude themselves from the Class must submit a
8 written statement requesting exclusion from the Class on or before the Objection/Exclusion
9 Deadline Date. Such written request for exclusion must contain the name, address, and telephone
10 number of the person requesting exclusion, must be returned by mail to the Settlement
11 Administrator at a specified address and must be postmarked on or before the Objection/Exclusion
12 Deadline Date. The date of the postmark on the return mailing envelope shall be the exclusive
13 means used to determine whether a request for exclusion has been timely submitted. Any
14 individual who opts out of the Class will not be entitled to any recovery under the Settlement and
15 will not be bound by the Settlement or have any right to object, appeal or comment thereon. Class
16 members who fail to submit a valid and timely request for exclusion on or before the
17 Objection/Exclusion Deadline Date shall be bound by all terms of the Settlement and any Final
18 Judgment entered in this Class Action if the Settlement is approved by the Court, regardless of
19 whether they have requested exclusion from the Settlement.
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22 10. In the event the Settlement Agreement is not approved by the Court, or for any
23 reason the parties fail to obtain a Final Approval Order and Final Judgment as contemplated in the
24 Settlement Agreement, or the Settlement Agreement is terminated pursuant to its terms for any
25 reason, or if the Effective Date does not occur for any reason, then all orders and findings entered
26 in connection with the Settlement Agreement shall become null and void and have no force and
27 effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be
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1 admissible in this or any other proceeding.

2 11. All papers in support of the final approval of the settlement and Class Counsels' fee,
3 expense and Plaintiff's incentive award application shall be filed with the Court and served on or
4 before January 20, 2012.

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6 12. Pending final determination of whether the proposed settlement should be approved,
7 no Settlement Class Member directly, derivatively, in a representative capacity, or any other
8 capacity, shall commence or continue any action against any Released Persons (as that term is
9 defined in the Settlement Agreement) in any court or tribunal asserting any of the Released Claims
10 (as that term is defined in the Settlement Agreement).

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12 13. Where terms used in this order are defined in the Agreement, those terms shall have
13 the same meaning as defined in that Agreement unless otherwise defined herein.

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15 14. Class Counsel and Defendants' Counsel are authorized to use all reasonable
16 procedures in connection with approval and administration of the settlement that are not materially
17 inconsistent with this Order or the Court's Order entered on July 13, 2011 (Document 76) or the
18 Settlement Agreement, including making, without further approval of the Court, minor changes to
19 the form or content of any notice to the Settlement Class that they jointly agree are reasonable or
20 necessary.

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23 IT IS SO ORDERED.

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26 July 19, 2011

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JEREMY FOGEL
United States District Judge