

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

LISA RANIERI and MEGAN CORNELIUS,
Individually and on Behalf of a Class of
Similarly Situated Persons,

v.

ADVOCARE INTERNATIONAL L.P.

Case No. 3:17-cv-00691-S

**[PROPOSED] ORDER GRANTING
PRELIMINARY SETTLEMENT CLASS
CERTIFICATION, PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, APPOINTMENT OF
CLASS COUNSEL, APPOINTMENT OF
CLASS REPRESENTATIVE,
APPROVAL OF CLASS NOTICE
PROGRAM, AND SCHEDULING
FAIRNESS HEARING**

WHEREAS, Plaintiff Megan Cornelius, individually and on behalf of a class of similarly situated persons (“**Plaintiff**” or “**Class Representative**”), and Defendant AdvoCare International L.P. (“**AdvoCare**” or “**Defendants**”) have entered into a Settlement Agreement dated January 25, 2021 (the “**Settlement Agreement**”), after lengthy arms-length negotiations; and

WHEREAS, the Court has received and considered the Settlement Agreement, including the accompanying exhibits; and

WHEREAS, Plaintiff has made an application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (the “**Rules**”), for an order preliminarily approving the settlement agreement of this class action; and

WHEREAS, the Court has reviewed Plaintiff’s application for such order, and has found good cause for the same.

NOW, THEREFORE, IT IS HEREBY ORDERED:

I. THE CLASS IS CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

1. The Court has jurisdiction over the subject matter and parties to this proceeding, including all members of the Class,¹ pursuant to 28 U.S.C. § 1332(d).

2. Venue is proper in this District.

3. Pursuant to the class action criteria of Rule 23(a) and 23(b), the Court provisionally certifies, for settlement purposes only, a class consisting of all AdvoCare Distributors who paid fees, purchased a “distributor kit,” and/or purchased products from AdvoCare between March 9, 2013, and May 17, 2016, who lost money from their participation in the AdvoCare alleged scheme, and whose distributorships were suspended without reinstatement or terminated by May 17, 2016. Distributors who made no purchases from AdvoCare after May 17, 2016, and paid no dues after May 17, 2016, will be considered terminated as of May 17, 2016. Distributors will be considered to have lost money if the sum of the fees they paid AdvoCare, the money they paid AdvoCare for sales aids, and the money they paid AdvoCare for product (net of refunded amounts), reduced by 65% of the amount paid for product, is greater than the money they received from AdvoCare (other than for product refunds). Distributors who meet this definition and do not opt out from membership in the Class are “**Class Members**” and individually each a “**Class Member.**” Excluded from the Class are Distributors who were not, at the time they were Distributors, residents of the United States or its territories or U.S. military stationed overseas.

4. The Court preliminarily finds that the Class meets the prerequisites for a class action under Rule 23(a) in that: (a) the Class is so numerous that joinder of all individual Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Class and those common questions of law and fact predominate over any individual questions; (c) the claims of the Plaintiff are typical of the

¹ Unless otherwise noted, capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

claims of the Class; and (d) Plaintiff and her counsel will fairly and adequately represent the interests of the Class.

5. The Court also preliminarily finds that the requirements for Rule 23(b)(3) are met in that common questions of law or fact common to the Class Members predominate over any questions affecting only individual Class Members, and that adjudicating the rights of the Class Members as a class is superior to other available methods for fairly and efficiently adjudicating the controversy. In making this finding, the Court has considered the Class Members' interests in individually controlling the prosecution of their claims against the Defendant; the fact that there appears to be no litigation concerning the controversy already begun by Class Members, other than this Action; that it is desirable to concentrate the litigation of all Class Members' claims before this Court; and the lack of difficulties in managing this Class Action under the procedures set forth in the Settlement.

6. Pursuant to Rule 23, the Court appoints Plaintiff as the Class Representative for the Settlement Class.

7. Having considered the factors set forth in Rule 23(g)(1), the Court appoints R. Adam Swick and J. Benjamin King of Reid Collins & Tsai LLP as class counsel.

II. THE COURT PRELIMINARILY APPROVES THE CONDITIONAL SETTLEMENT AND SCHEDULES THE FAIRNESS HEARING

8. The Court hereby preliminarily approves the Settlement and the terms and conditions of settlement set forth in the Settlement Agreement, subject to further consideration at the Fairness Hearing defined and described below.

9. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Settlement. Based on this evaluation, the Court preliminarily finds that the Settlement Agreement is fair, reasonable, and adequate, and within the range necessary for preliminary approval and that the Settlement Agreement appears to have been negotiated in good faith at arms' length between experienced attorneys familiar with the legal and factual issues of this case.

10. The Court therefore preliminarily approves the proposed Settlement.

11. Pursuant to Rule 23(e) the Court will hold a settlement hearing (the “**Fairness Hearing**”) on [INSERT], at [INSERT] in the Courtroom of the Honorable Karen Gren Scholer, United States District Court for the Northern District of Texas, Courtroom [INSERT], 1100 Commerce Street, Dallas TX 75242² for the following purposes:

a. Finally determining whether the Class meets all applicable requirements of Rule 23 and, thus, the Class should be certified for purposes of effectuating the settlement;

b. Finally determining whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court;

c. Considering any application of Class Counsel for an award of attorneys’ fees and expenses;

d. Considering any application of the Class Representative for a service award;

e. Considering whether the Court should enter the Proposed Final Approval of Class Action Settlement, Settlement Class Certification, and Judgment; and

f. Ruling upon such other matters as the Court may deem just and proper.

12. The Court may adjourn the Fairness Hearing and later reconvene such hearing without further notice to the Class Members.

13. The Parties may further modify the Settlement Agreement prior to the Fairness Hearing so long as such modifications do not materially change the terms of the settlement provided thereunder. The Court may approve the Settlement Agreement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Class Members.

² The Court may determine to hold the Fairness Hearing by ZOOM or other videoconference service.

III. THE COURT APPROVES THE FORM AND METHOD OF CLASS NOTICE

14. The Court determines that notice should be provided to members of the Class.

15. The Court approves, as to form and content, the proposed Settlement Notice and Claims Form, which are attached as Exhibits B and C to the Settlement Agreement.

16. The Court approves the designation of Analytics LLC to serve as the Court-appointed Settlement Administrator for the settlement. The Settlement Administrator shall disseminate the Settlement Notice and Claim Form and supervise and carry out the Notice Program, the processing of Claims, and other administrative functions described in the Settlement and this Order.

17. The Court directs AdvoCare to provide to the Settlement Administrator the Distributor Master List within fourteen (14) days of the Execution Date.

18. The Court approves the proposed Notice Program described in the Settlement Agreement for giving notice to the Class. The Notice Program, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Parties and the Settlement Administrator to send the initial electronic notices required by the Notice Program no later than 77 days prior to the Fairness Hearing.

19. Prior to the Fairness Hearing, Class Counsel will file with the Court proof that Notice was provided in accordance with the Settlement Agreement and this Order, as well as proof that notice was provided to the appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

20. The costs of the Class Notice, processing of Claims, creating and maintaining the Settlement Website, and all other Settlement Administrator and notice and claim administration expenses shall be paid out of the Settlement Fund in accordance with the applicable provisions of the Settlement Agreement. If the Settlement Agreement is not finally approved, Class Counsel and AdvoCare shall each pay 50% of the notice and administration costs previously incurred.

IV. PROCEDURE FOR CLASS MEMBERS TO PARTICIPATE IN THE SETTLEMENT AGREEMENT

21. All Class Members who do not opt out shall be bound by all determinations and judgments in the Action concerning the Settlement Agreement, whether favorable or unfavorable to the Settlement Class.

22. The Court approves the Parties' proposed form of the Claims Form. Any Class Member who does not opt out and wishes to receive a distribution from the settlement shall complete a Claims Form in accordance with the instructions contained therein and submit it to the Settlement Administrator via the Class Action Website, email, or U.S. Mail no later 75 days after the Settlement Administrator sends the initial Notices and Claims Forms. Claims Forms submitted by U.S. Mail must be postmarked by the Claims Deadline and received by the Settlement Administrator within 10 days of the Claims Deadline.

23. The Settlement Administrator shall have the authority to accept or reject Claims in accordance with the Settlement Agreement.

V. PROCEDURE FOR REQUESTING EXCLUSION FROM THE SETTLEMENT CLASS

24. Any person falling within the definition of the Class who desires to be excluded from the Class must request exclusion in writing to the Settlement Administrator no later than 21 days before the Fairness Hearing. The exclusion request must include the person's name, name at the time the person was an AdvoCare Distributor, telephone number, address, and a statement that you wish to be excluded from the Class.

25. Any Class Member who does not submit a written exclusion request will be deemed to be a Class Member for all purposes and will be bound by all further orders of the Court in this Action and by the terms of the Settlement, if finally approved by the Court.

26. All persons who submit valid and timely requests for exclusion in the manner set forth in the Settlement Agreement shall not be entitled to receive any award of cash, nor will such persons participate in the releases of the Defendant described in the Settlement.

27. A list reflecting all requests for exclusion shall be filed with the Court by the Settlement Administrator at or before the Fairness Hearing.

VI. PROCEDURE FOR OBJECTING TO THE SETTLEMENT

28. Any Class Member who desires to object to either the Settlement, Class Counsel’s request for an award of attorneys’ fees and expenses, or the Class Representative’s request for a service award, must timely file with the Clerk of this Court and timely serve on the Parties’ counsel identified below by hand or first-class mail a notice of the objection(s) and the grounds for such objections, no later than 21 days prior to the Fairness Hearing (the “**Objection Deadline**”).

29. A Class Member may not both object and request exclusion. If a Class Member submits both a request for exclusion and an objection, the request for exclusion will be controlling and the objection will be deemed improperly made.

30. The Court will consider such objection(s) and papers only if such papers are received on or before the Objection Deadline, by the Clerk of the Court and by Class Counsel and Defendants’ counsel. Such papers must be sent to each of the following persons:

Court	Class Counsel	Defense Counsel
Clerk of Court U.S. District Court for the Northern District of Texas 1100 Commerce Street Room 1452 Dallas, TX 75242	J. Benjamin King 1601 Elm St., Suite 4200 Dallas, Texas 75201 R. Adam Swick Reid Collins & Tsai LLP 1301 S. Capital of Texas Hwy Suite C300 Austin, TX 78746	Thomas M. Melsheimer Steven H. Stodghill John C.C. Sanders, Jr. Rex A. Mann Becca Loegering Winston & Strawn LLP 2121 N. Pearl Street, Suite 900 Dallas, TX 75201

31. All objections must include (a) a heading that refers to the Action, *Ranieiri, et al. v. AdvoCare International, LP*, Case No. 3:17-cv-00691 (N.D. Tex.); (b) the objector’s name, address, telephone number and, if represented by counsel, the address of his/her counsel; (c) a statement that the objector was an AdvoCare Distributor during the Class Period; and (d) a statement of such objection, as

well as the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention. No objection will be valid unless all of the information described above is included.

32. Class Members may object on their own or through counsel hired at their own expense.

33. All objections must be filed with the Clerk and served on the Parties' counsel as set forth above no later than the Objection Deadline. Objections received after the Objection Deadline will not be considered at the Fairness Hearing. A person's failure to submit a written objection in accordance with the procedure set forth above waives any right the person may have to object to the settlement, the award of attorneys' fees and expenses, or Plaintiff's service awards, or to appeal or seek other review of the Final Judgment and Order Approving Settlement.

34. Any Class Member who files a written objection and who wishes to be heard orally with respect to approval of the settlement, the application for an award of attorneys' fees and expenses, or the application for Plaintiff's service award, either in person or through counsel at that Class Member's expense, must deliver to Class Counsel and Defense Counsel and file with the Court by the date specified in the Settlement Notice, which will be no later than 14 days before the Fairness Hearing, or as the Court may otherwise direct, a notice of intention to appear and a statement identifying any documents the Class Member will seek to introduce or witnesses the Class Member will seek to call at the Fairness Hearing.

35. Class Members who do not oppose the settlement, the application for an award of attorneys' fees and expenses, or the application for Plaintiff's service award need not take any action to indicate their approval.

36. Class Counsel and Defense Counsel will promptly furnish each other with copies of any and all objections to the Settlement Agreement that might come into their possessions and that are not filed with the Court.

37. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement Agreement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice and Claims Form and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement Agreement with such modifications, if any, as may be agreed to by the parties without further notice to the members of the Settlement Class.

38. Accordingly, the following are the deadlines by which certain events must occur unless otherwise ordered:

77 days before the Fairness Hearing	Deadline for Settlement Administrator to provide initial notice to Class Members.
42 days before Fairness Hearing	Deadline for Class Counsel to move for an award of fees and expenses. Deadline for Plaintiff to move for a service award. Deadline for Plaintiff to move for final approval of Settlement Agreement.
21 days before Fairness Hearing	Deadline for Class Members to object to the Settlement Agreement, motion for fee award, and motion for service awards. Deadline for Putative Class Members to opt out of the Class.
14 days before Fairness Hearing	Deadline for Plaintiff to respond to objections to pending motions.
[DATE To be set by Court]	Fairness Hearing

IT IS SO ORDERED:

Dated: _____, 2021

United States District Judge