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15 [*Additional Counsel Appear On Signature Page*]

16 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

19 LUIS LERMA, an Individual, and
 20 NICK PEARSON, an Individual, On
 Behalf of Themselves and All Others
 Similarly Situated,

21 Plaintiffs,

22 v.

23 SCHIFF NUTRITION
 24 INTERNATIONAL, INC., a Delaware
 Corporation, and SCHIFF NUTRITION
 25 GROUP, INC., a Utah Corporation

26 Defendants

Case No.: 3:11-CV-01056-CAB (MDD)

**PLAINTIFFS' NOTICE OF
 UNOPPOSED MOTION AND
 MOTION FOR PRELIMINARY
 APPROVAL OF SETTLEMENT**

Hon. Cathy Ann Bencivengo
 Magistrate Judge: Mitchell D. Dembin

1 PLEASE TAKE NOTICE, that, in accordance with Rule 23, Federal Rules of
2 Civil Procedure, Plaintiffs Luis Lerma, Nick Pearson and Muriel Jayson (“Plaintiffs”)
3 will and do hereby move for an order: (1) preliminarily approving the Settlement
4 Agreement as being fair, reasonable, and adequate; (2) approving the Notice Plan as
5 set forth in the Declaration of Gina Intrepido-Bowden; (3) setting the date and time of
6 the Fairness Hearing; (4) provisionally certifying the Class under Rule 23 of the
7 Federal Rules of Civil Procedure for settlement purposes only (“Settlement Class”);
8 (5) provisionally appointing Plaintiffs as representatives of the Settlement Class.

9 Additionally, Plaintiffs move for an order provisionally appointing Elaine A.
10 Ryan (Bonnett, Fairbourn, Friedman & Balint, P.C.), Stewart M. Weltman (Stewart
11 M. Weltman, LLC), and Jeffrey Carton (Denlea & Carton LLP) as Class Counsel. As
12 set forth in the accompanying memorandum, Plaintiffs’ counsel meet each of the
13 requirements of Rule 23(g)(1).

14 This motion is based upon this notice of motion, the accompanying
15 memorandum of law, the evidentiary submissions, and such other evidence and
16 argument as may be presented at or before the hearing of this motion.

17 DATED: March 25, 2014

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FRIEDMAN & BALINT, P.C.

19 *s/ Patricia N. Syverson*

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list. I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 25, 2014.

/s/Patricia N. Syverson
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 (MDD)

**PLAINTIFFS' MEMORANDUM
 IN SUPPORT OF UNOPPOSED
 MOTION FOR PRELIMINARY
 APPROVAL OF SETTLEMENT**

Hon. Cathy Ann Bencivengo
 Magistrate Judge Mitchell D. Dembin

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1 Pursuant to Fed. R. Civ. P. 23, Plaintiffs Luis Lerma, Nick Pearson and Muriel
2 Jayson (“Plaintiffs”), by their counsel Bonnett, Fairbourn, Friedman & Balint, P.C.,
3 Stewart M. Weltman, LLC, and Denlea & Carton LLP respectfully submit the
4 following Memorandum in Support of their Unopposed Motion for Preliminary
5 Approval of Class Settlement and move for an Order: (1) preliminarily approving the
6 Settlement Agreement as being fair, reasonable, and adequate; (2) approving the
7 Notice Plan as set forth in the Declaration of Gina Intrepido-Bowden attached hereto
8 (“Intrepido-Bowden Decl.”); (3) setting the date and time of the Fairness Hearing;
9 (4) provisionally certifying the Class under Rule 23 of the Federal Rules of Civil
10 Procedure for settlement purposes only (“Settlement Class”); (5) provisionally
11 appointing Plaintiffs as representatives of the Settlement Class; and (6) provisionally
12 appointing Elaine A. Ryan (Bonnett, Fairbourn, Friedman & Balint, P.C.), Stewart M.
13 Weltman (Stewart M. Weltman, LLC), and Jeffrey Carton (Denlea & Carton LLP) as
14 Class Counsel.¹

15 **I. INTRODUCTION**

16 Plaintiffs and Defendants Schiff Nutrition International, Inc., Schiff Nutrition
17 Group, Inc., and their affiliates (collectively, “Defendants” and, with Plaintiffs, the
18 “Parties”) have entered into a Settlement Agreement in the above-referenced matter.
19 (Exhibit 1 hereto)². Although both sides believe their respective positions in the
20 action are meritorious, Plaintiffs have concluded that, due to the uncertainties and
21 expense of protracted litigation, it is in the best interest of Plaintiffs, and the best
22

23

24

24 ¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to
25 them in the Settlement Agreement. To the extent there is any conflict between the
26 definitions of those terms, the definitions in the Settlement Agreement will control.

26 ² All the parties have approved of the Settlement Agreement. However, the parties
27 intend to shortly file an Addendum to the Settlement Agreement submitting a final
28 signature from Defendant Schiff.

28

1 interests of the putative Settlement Class, to resolve this action on the terms provided
2 in the Settlement Agreement.

3 **II. PROCEDURAL HISTORY**

4 This action is the first filed of two currently pending actions³ involving various
5 joint health products manufactured by Defendants or one of their affiliates. The joint
6 health products are sold under various “Schiff” brand names as well as under the
7 various brand names of certain retailers not affiliated with Defendants. A complete list
8 of the joint health products covered by the Settlement Agreement (the “Covered
9 Products”) is attached thereto as Ex. 1-B. On May 13, 2011, a putative class action
10 relating to the joint health products was filed against Schiff Nutrition International,
11 Inc. captioned, *Luis Lerma v. Schiff Nutrition International, Inc.*, No. 3:11-cv-01056-
12 CAB-MDD (S.D. Cal.). On September 16, 2011, Schiff Nutrition Group, Inc. was
13 added as a Defendant, and on March 12, 2012, Nick Pearson was added as a Plaintiff
14 (the “Lerma Litigation”). The Lerma Litigation sought, in the alternative, a
15 nationwide class, a California class and an Illinois class.

16 On February 20, 2013, a putative class action relating to the joint health
17 products was filed against Schiff Nutrition International, Inc. and Schiff Nutrition
18 Group, Inc., captioned *Jayson v. Schiff Nutrition International, Inc., et al.*, No. 0:13-
19 cv-60400-RSR (S.D. Fla.) (the “Jayson Litigation”). The Jayson Litigation sought a
20 Florida class.

21 Plaintiffs in the Lerma Litigation and the Jayson Litigation have alleged, *inter*
22 *alia*, that certain claims made on the labeling and packaging of the Covered Products
23 are false, deceptive and/or misleading and, in the Lerma Litigation, that the labeling

24
25 ³ Over the last several months two new actions have been filed against Defendants
26 relating to their joint health products, namely, *Flowers v. Schiff Nutrition, et al.*, Case
27 No. 2:13-cv-09406 (C.D. Cal. filed Dec. 20, 2013) and *Mitchell v. Schiff Nutrition*
28 *International, Inc., et al.*, Case No. 14-cv-0387 (S.D. Cal. filed Feb. 21, 2014). These
cases were, of course, filed six months or more after the Parties had reached an
agreement to settle the case before this Court.

1 and packaging failed to warn that the Covered Products can cause potentially harmful
2 side effects. Plaintiffs brought their claims, *inter alia*, under various state consumer
3 protection, unfair competition, breach of warranty and, in the Lerma Litigation, also
4 under personal injury/negligence laws. The core issue in each of these cases is that
5 Plaintiffs contest the veracity of the joint health benefit representations made about the
6 Covered Products.

7 The Settlement Agreement was reached after an early neutral evaluation
8 conference with Magistrate Judge Mitchell Dembin, followed by five separate
9 protracted, arms'-length mediation sessions conducted over the course of a year,
10 before a neutral mediator, the Honorable Howard B. Weiner, Justice of the California
11 Court of Appeals, Retired.

12 At the time of execution of the Settlement Agreement, the parties in the Lerma
13 Litigation had engaged in discovery and exchanged initial and rebuttal expert reports.
14 Discovery, along with the exchange of expert reports, has provided the Plaintiffs and
15 their counsel a fulsome record upon which to base their settlement negotiations.

16 In the interests of achieving a global resolution of all of these similar cases
17 pending across the United States, the Parties agreed to centralize settlement in this
18 Court.

19 **III. THE PROPOSED SETTLEMENT**

20 The proposed Settlement provides the following:

21 **A. Certification of the Proposed Settlement Class**

22 Plaintiffs request that the Court, for the purposes of settlement only, certify a
23 Settlement Class defined as:

24 All residents of the United States who purchased for personal use,
25 and not resale or distribution, a Covered Product between January
1, 2005 and the Preliminary Approval Date.

26 Specifically excluded from the Settlement Class are the following
27 Persons:

- 28 i. Schiff and its respective affiliates, employees, officers,
directors, agents, and representatives and their immediate

- 1 family members;
- 2 ii. Settlement Class Counsel; and
- 3
- 4 iii. The judges who have presided over the Litigation and their
immediate family members.

5 **B. Class Relief**

6 **1. Monetary Relief - Claims Paid To Settlement Class
7 Members**

8 Each Settlement Class Member shall be entitled to seek monetary
9 compensation.⁴ Settlement Class Members who have Adequate Proof of Purchase
10 (e.g., receipts, intact boxes or bottles that display a readable UPC code and readable
11 lot number, or similar documentation that identifies the Covered Product and date and
12 location of purchase) shall be entitled to reimbursement of \$5 for each purchased
13 bottle of the Covered Products up to ten (10) bottles per household. Settlement Class
14 Members who do not have any adequate proof of purchase will be entitled to
15 reimbursement of \$3 per bottle of the Covered Products purchased up to a maximum
16 of four (4) bottles per household. Each Class Member seeking monetary compensation
17 must submit a Claim Form, which will require a sworn declaration that identifies the
18 Covered Product(s) purchased, the approximate date of purchase, the location of the
19 purchase and/or includes Adequate Proof of Purchase.⁵ There is no ceiling on the
20 amount of monies that Defendants may have to pay for Valid Claims. Defendants
21 have agreed to pay all Valid Claims.

22 The Settlement Agreement also provides for a minimum payment/floor of at
23 least \$2.0 million to be paid out by Defendants to Settlement Class Members who
24 make Valid Claims. The payment to each Settlement Class Member who submits a
25 Valid Claim with Adequate Proof of Purchase shall be increased *pro rata* up to a

26 _____
27 ⁴ It is estimated that in excess of 50 million products were sold.

28 ⁵ Although the Claim Form must be signed under penalty of perjury, the Claim Form
will not require notarization.

1 maximum of triple of what he or she would be entitled to under the Settlement
2 Agreement. If, after that increase, the total payments still do not reach \$2.0 million,
3 then the payment to each Settlement Class Member who submits a valid claim without
4 Adequate Proof of Purchase shall be increased *pro rata* up to a maximum of double
5 what he or should would be entitled to under the Settlement Agreement. If after that
6 increase, the total payments do not reach \$2.0 million, any residual amounts up to \$2.0
7 million are to be divided *pro rata* among the Settlement Class Members who have
8 submitted Valid Claims.

9 **2. Injunctive Relief - Labeling Changes**

10 During settlement negotiations, the Parties reviewed the various label claims
11 being made by Defendants and agreed to the removal of certain labeling claims from
12 all of the Covered Products currently being manufactured or sold by Defendants.⁶
13 There are dozens of different products that will be impacted by these label changes.
14 The Settlement Agreement provides that for a period of twenty four (24) months
15 commencing six (6) months after the Effective Date, Defendants will not make the
16 following statements in the packaging or marketing of the Covered Products: “repair
17 joints,” “repair cartilage,” “rebuild joints,” rebuild cartilage,” “rejuvenate joints” or
18 “rejuvenate cartilage.”

19 Defendants have an incentive to keep these labeling changes in place after the
20 24-month period expires, in that the Settlement Agreement provides that, to the extent
21 that and for as long as the label changes are kept in place after the 24-month period,
22 no Settlement Class Member who purchases such product after the 24-month period
23 can sue Defendants on any claim that was or could have been asserted in the litigation.

24 The Settlement Agreement does provide, however, that Defendants may resume
25 making some or all the statements identified above if, subsequent to the Effective

26
27 ⁶ Some of the Covered Products are no longer manufactured by Defendants. As to
28 those products, monetary relief will be the only remedy provided by the proposed
Settlement.

1 Date, Defendants possess and rely upon an independent, well-conducted, published
2 clinical trial that substantiates the representations.

3 **C. Incentive Awards to Class Representatives**

4 The Settlement Agreement provides Plaintiffs will apply collectively for
5 Incentive Awards not to exceed \$10,000 for the three Plaintiffs. Defendants agree not
6 to object to the Plaintiffs' application for such Incentive Awards and to pay any
7 Incentive Awards (not to exceed \$10,000) that are awarded by the Court. The
8 payment of these Incentive Awards will be separate and apart from, and will not
9 diminish or erode, the payment of claims to Settlement Class Members as set forth
10 above.

11 **D. Attorneys' Fees and Expenses**

12 The Settlement Agreement provides that the Defendants agree to pay and will
13 not object to the Court awarding the firms of Bonnett, Fairbourn, Friedman & Balint,
14 P.C., Stewart M. Weltman LLC and Denlea & Carton an aggregate fees and expenses
15 award of \$3.0 million. All attorneys' fees and expenses are to be paid separate and
16 apart from, and will not diminish or erode, the payment of claims to Settlement Class
17 Members as set forth above.

18 **IV. THE SETTLEMENT CLASS SHOULD BE PROVISIONALLY**
19 **CERTIFIED; THE SETTLEMENT SHOULD BE PRELIMINARILY**
20 **APPROVED; THE FORM AND METHOD OF NOTICE TO THE**
21 **CLASS MEMBERS SHOULD BE APPROVED; AND A HEARING**
22 **REGARDING FINAL APPROVAL OF THE SETTLEMENT SHOULD**
23 **BE SCHEDULED**

24 The Ninth Circuit recognizes the propriety of certifying a settlement Class to
25 resolve consumer lawsuits. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.
26 1998). When presented with a proposed settlement, a court must first determine
27 whether the proposed settlement class satisfies the requirements for class certification
28 under Federal Rule of Civil Procedure 23. *Id.* However, where a court is evaluating
the certification question in the context of a proposed settlement class, questions
regarding the manageability of the case for trial purposes are not considered. *Wright*

1 *v. Linkus Enterps., Inc.*, 259 F.R.D. 468, 474 (E.D. Cal. 2009) (citing *Amchem Prods.,*
 2 *Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-
 3 only class certification, a district court need not inquire whether the case, if tried,
 4 would present intractable management problems . . . for the proposal is that there be
 5 no trial.”)). Here, the provisional certification of the Settlement Class is appropriate
 6 for purposes of settlement because all the requirements of Rule 23 have been met.⁷

7 **A. The Settlement Class Satisfies Federal Rule of Civil Procedure 23(a)**

8 Rule 23(a) enumerates four prerequisites for class certification, referred to as:
 9 (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. In light of the
 10 Settlement, the Parties agree that each of these requirements is met.

11 **1. Numerosity**

12 Rule 23(a)(1) requires that “the class is so numerous that joinder of all members
 13 is impracticable.” Fed. R. Civ. P. 23(a); *Wiener v. Dannon Co., Inc.*, 255 F.R.D. 658,
 14 664 (C.D. Cal. 2009). Here, the numerosity requirement is readily met because it is
 15 difficult or inconvenient to join all members of the proposed Class. *Id.*; *Tchoboian v.*
 16 *Parking Concepts, Inc.*, No. SACV 09-422, 2009 WL 2169883, at *4 (C.D. Cal. July
 17 16, 2009) (citing *Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 (9th Cir. 1982),
 18 *vacated on other grounds*, 459 U.S. 810 (1982)). Here, Defendants are nationwide
 19 manufacturers of the Covered Products and have sold these products nationwide
 20 during the class period. Accordingly, the numerosity requirement is satisfied. *See*
 21 *Reynoso v. S. County Concepts*, No. 07-373, 2007 WL 4592119, at *2 (C.D. Cal. Oct.
 22 15, 2007) (“The sheer number of potential class members justifies the Court’s finding
 23 that the class in this case meets the numerosity requirement.”).

24 _____
 25 ⁷ As made clear in the Settlement Agreement, Defendants have agreed to a settlement
 26 in this case, but continue to stand behind the efficacy of the Covered Products and to
 27 deny all of the allegations in both the Lerma Litigation and the Jayson Litigation.
 28 Defendants specifically deny that they have engaged in any wrongdoing whatsoever,
 that they made any false or misleading statements and that the cases can probably be
 maintained as a class action for purposes other than for settlement.

1 2. **Commonality**

2 “Commonality requires the plaintiff to demonstrate that the class members have
3 suffered the same injury . . . Their claims must depend upon a common contention . . .
4 That common contention, moreover, must be of such a nature that it is capable of
5 class-wide resolution – which means that determination of its truth or falsity will
6 resolve an issue that is central to the validity of each one of the claims in one stroke.”
7 *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Still, “[t]he existence of
8 shared legal issues with divergent factual predicates is sufficient [to satisfy
9 commonality], as is a common core of salient facts coupled with disparate legal
10 remedies within the class.” *Hanlon*, 150 F.3d at 1019; *In re First Alliance Mortg. Co.*,
11 471 F.3d 977, 990-91 (9th Cir. 2006). The commonality requirement is construed
12 “permissively.” *Hanlon*, 150 F.3d at 1019; *Wiener*, 255 F.R.D. at 664. This
13 prerequisite is readily met in this case. To quote *Wiener*: “The proposed class
14 members clearly share common legal issues regarding [Defendant’s] alleged
15 deception and misrepresentations in its advertising and promotion of the Products.”
16 255 F.R.D. at 664-65; *see also Johnson v. General Mills, Inc.*, 275 F.R.D. 282, 287
17 (C.D. Cal. 2011) (plaintiff’s claims presented common, core issues of law and fact,
18 including “whether General Mills communicated a representation [] that YoPlus
19 promoted digestive health” and “whether YoPlus does confer a digestive health
20 benefit that ordinary yogurt does not”); *Fine v. ConAgra Foods, Inc.*, NO. 10-01848,
21 2010 WL 3632469 at *3 (C.D. Cal. Aug. 26, 2010) (“Since Plaintiff’s claims and the
22 proposed class are based on the same misleading label on the boxes of popcorn, the
23 Court finds that Plaintiff has sufficiently demonstrated commonality pursuant to Rule
24 23(a)(2).”). Here, as well, the core issue for each Settlement Class Member’s claim is
25 whether the Covered Products efficaciously provide the joint health benefits promised
26 in the advertising and labeling. Third Amended Complaint, ¶¶ 25-32; *see also* Ex. 2
27 (exemplar collection of print advertisements, packaging and labeling for the
28

1 Products); Ex. 3, Report of Thomas J. Schnitzer MD, PhD. Representative examples
2 of the packaging and labeling for the Products appear as follows:



10 The common factual and legal issues include:

- 11
- 12 • Whether the representations or omissions discussed herein that
13 Defendants made about the Covered Products were or are misleading, or likely to
14 deceive;
 - 15 • Whether Plaintiffs and the Class members were deceived in some
16 manner by Defendants' representations;
 - 17 • Whether the alleged conduct constitutes violations of the laws
18 asserted herein;
 - 19 • Whether Plaintiffs and Class members have been injured and the
20 proper measure of their losses as a result of those injuries;
 - 21 • Whether Plaintiffs and Class members are entitled to an award of
22 compensatory/actual damages; and
 - 23 • Whether Plaintiffs and the Class are entitled to injunctive,
24 declaratory or other equitable relief.

25 Thus, the determination of the truth or falsity of Defendants' advertising claims
26 will resolve this central issue in one stroke. Accordingly, the commonality
27 requirement is satisfied.
28

1 3. **Typicality**

2 Rule 23(a)(3) typicality is satisfied where the plaintiff’s claims are “reasonably
3 co-extensive” with absent class members’ claims; they need not be “substantially
4 identical.” *Hanlon*, 150 F.3d at 1020; *see also Wiener*, 255 F.R.D. at 665. The test
5 for typicality “is whether other members have the same or similar injury, whether the
6 action is based on conduct which is not unique to the named Plaintiffs, and whether
7 other class members have been injured by the same course of conduct.” *Hanon v.*
8 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Thus, “[t]he purpose of the
9 typicality requirement is to assure that the interest of the named representative aligns
10 with the interests of the class.” *Id.* For example, in *Keilholtz v. Lennox Health*
11 *Prods., Inc.*, 268 F.R.D. 330 (N.D. Cal. 2010), in certifying UCL and CLRA claims,
12 the court found that the typicality requirement was satisfied because: “Plaintiffs’
13 claims are all based on Defendants’ sale of allegedly dangerous fireplaces without
14 adequate warnings.” *Id.* at 337.

15 Typicality is met here as Plaintiffs and the proposed Settlement Class assert the
16 same claims, arising from the same course of conduct – Defendants’ allegedly
17 uniform, deceptive marketing campaign. Plaintiffs allege that the labeling and
18 advertising of the Covered Products all misrepresented the products’ effectiveness in
19 providing joint health benefits. Plaintiffs further allege that they and all members of
20 the Settlement Class were injured when they paid money to purchase the Covered
21 Products. *See, e.g., Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th 310, 344 (2011) (“[I]n the
22 eyes of the law, a buyer forced to pay more than he or she would have is harmed at the
23 moment of purchase, and further inquiry into such subsequent transactions, actual or
24 hypothesized, ordinarily is unnecessary.”).⁸ Under the claims alleged, Plaintiffs and
25

26 ⁸ *Accord Johns v. Bayer Corp.*, 280 F.R.D. 551, 557 (S.D. Cal. 2012) (“[This
27 litigation] is about point-of-purchase loss. Plaintiffs and class members were allegedly
28 injured when they paid money to purchase the Men’s Vitamins.”); *Guido v. L’Oreal,*
USA, Inc., 284 F.R.D. 468, 482 (C.D. Cal. 2012) (same).

1 the Settlement Class also seek the same relief for the same alleged wrongful conduct,
2 *i.e.*, misrepresenting the effectiveness of the Covered Products. Since Plaintiffs and
3 the Settlement Class' claims arise from the same alleged misrepresentations that
4 purportedly injured them all alike, typicality is satisfied. The District Court's opinion
5 in *Johns v. Bayer Corp.*, is instructive:

6 [T]he Men's Vitamin packages purchased by Plaintiffs and all class
7 members prominently and repeatedly featured the identical 'supports
8 prostate health' claim. Plaintiffs and class members thus were all exposed
9 to the same alleged misrepresentations on the packages and
10 advertisements. The Court therefore finds that Plaintiffs have satisfied
11 both the typicality and adequacy requirements.

12 *Johns*, 280 F.R.D. at 557 (holding that typicality is met because plaintiffs and the
13 proposed class "assert exactly the same claim, arising from the same course of
14 conduct – [Defendant's] marketing campaign."); *see also Weeks v. Kellogg Co.*, No.
15 09-08102, 2013 WL 6531177, at *7 (C.D. Cal. Nov. 23, 2013) (case involved false
16 and misleading statements on cereal packages wherein the court held "the named
17 plaintiffs, like all class members, contend they were injured by defendants' false and
18 misleading immunity claims. Consequently the typicality requirement is met.").

19 4. Adequacy of Representation

20 Rule 23(a)(4) requires that "the representative parties will fairly and adequately
21 protect the interests of the class." In the Ninth Circuit, adequacy is satisfied where: (i)
22 counsel for the class is qualified and competent to vigorously prosecute the action, and
23 (ii) the interests of the proposed class representatives are not antagonistic to the
24 interests of the class. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 957 (9th Cir. 2003);
25 *Hanlon*, 150 F.3d at 1020; *Molski v. Gleich*, 318 F.3d 937, 955 (9th Cir. 2003),
26 *overruled on other grounds in Dukes v. Wal Mart Stores, Inc.*, 603 F.3d 571 (9th Cir.
27 2010); *Wiener*, 255 F.R.D. at 667.

28 The adequacy requirement is met here. First, the interests of Plaintiffs and
members of the Settlement Class are fully aligned and conflict free: Plaintiffs and
members of the Settlement Class are seeking redress from what is essentially the same

1 alleged injury and there are no disabling conflicts of interest. Second, Class Counsel
2 for the Settlement Class are qualified and experienced in class action litigation, and
3 meet the requirements of Fed. R. Civ. P. 23(g). Ex. 4 (firm resumes). Through
4 qualified Class Counsel, Plaintiffs have performed extensive work to date in
5 identifying and investigating potential claims in this action, establishing the factual
6 basis for the claims sufficient to prepare a detailed class action complaint, pursuing
7 and reviewing document discovery, engaging and submitting expert reports and in
8 successfully mediating and negotiating the proposed Settlement. *See In re Emulex*
9 *Corp.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) (court evaluating adequacy of counsel’s
10 representation may examine “the attorneys’ professional qualifications, skill,
11 experience, and resources . . . [and] the attorneys’ demonstrated performance in the
12 suit itself”).

13 **B. The Settlement Class Should Be Provisionally Certified Under**
14 **Federal Rule of Civil Procedure 23(b)(3)**

15 Plaintiffs seek certification of a Settlement Class under Rule 23(b)(3).
16 Certification under Rule 23(b)(3) is appropriate “whenever the actual interests of the
17 parties can be served best by settling their difference in a single action.” *Hanlon*, 150
18 F.3d at 1022 (*quoting* 7A C.A. Wright, A.R. Miller, & M. Kane, *Federal Practice &*
19 *Procedure* §1777 (2d ed. 1986)). There are two fundamental conditions to
20 certification under Rule 23(b)(3): (1) questions of law or fact common to the members
21 of the class predominate over any questions affecting only individual members; and
22 (2) a class action is superior to other available methods for the fair and efficient
23 adjudication of the controversy. Fed. R. Civ. P. 23(b)(3); *Local Joint Exec. Bd. of*
24 *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162-63 (9th
25 Cir. 2001); *Hanlon*, 150 F.3d at 1022; *Wiener*, 255 F.R.D. at 668. As such, Rule
26 23(b)(3) encompasses those cases “in which a class action would achieve economies
27 of time, effort, and expense, and promote . . . uniformity of decision as to persons
28

1 similarly situated, without sacrificing procedural fairness or bringing about other
2 undesirable results.” *Amchem*, 521 U.S. at 615; *Wiener*, 255 F.R.D. at 668.

3 1. Common Questions Predominate Over Individual Issues

4 The Rule 23(b)(3) predominance inquiry “tests whether proposed classes are
5 sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at
6 623; *Hartless v. Clorox Co.*, 273 F.R.D. 630, 638 (S.D. Cal. 2011). “Predominance is
7 a test readily met in certain cases alleging consumer . . . fraud” *Amchem*, 521
8 U.S. at 623. “When common questions present a significant aspect of the case and
9 they can be resolved for all members of the class in a single adjudication, there is clear
10 justification for handling the dispute on a representative rather than on an individual
11 basis.” *Fed. Prac. & Proc.*, §1778; *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S.
12 147, 158 n.13 (1982) (noting that commonality and typicality tend to merge).

13 The predominance requirement is satisfied here. As discussed above, Plaintiffs
14 allege that the Class members are entitled to the same legal remedies premised on the
15 same alleged wrongdoing. Plaintiffs allege that all of the advertisements, including
16 the packaging and related materials, convey the same advertising message – that the
17 Covered Products are effective in providing joint health benefits. *See* Ex. 2
18 (exemplars of the Covered Products labeling). Thus, the central issues for every
19 claimant are whether Defendants’ claims that the Covered Products provided
20 clinically proven joint health benefits were false or deceptive and whether
21 Defendants’ alleged misrepresentations regarding the effectiveness of the Covered
22 Products was likely to deceive a reasonable consumer. *See Johns*, 280 F.R.D. at 557
23 (“the predominating common issues include whether Bayer misrepresented that the
24 Men’s Vitamins ‘support prostate health’ and whether the misrepresentations were
25 likely to deceive a reasonable consumer”). These issues predominate and are together
26 the “heart of the litigation” because they would be decided in every trial brought by
27 individual members of the Settlement Class and can be proven or disproven with the
28 same class-wide evidence.

1 Under these circumstances, predominance under Rule 23(b)(3) is satisfied.
 2 *Hartless*, 273 F.R.D. at 638-39 (predominance established where all class members
 3 were exposed to the same alleged misrepresentations); *Wiener*, 255 F.R.D. at 669
 4 (predominance satisfied when alleged misrepresentation of product’s health benefits
 5 were displayed on every package).⁹

6 2. A Class Action Is The Superior Method to Settle This 7 Controversy

8 Rule 23(b)(3) sets forth the relevant factors for determining whether a class
 9 action is superior to other available methods for the fair and efficient adjudication of
 10 the controversy. These factors include: (i) the interest of members of the Settlement
 11 Class in individually controlling separate actions; (ii) the extent and nature of any
 12 litigation concerning the controversy already begun by or against members of the
 13 Settlement Class; (iii) the desirability or undesirability of concentrating the litigation
 14 of the claims in the particular forum; and (iv) the likely difficulties in managing a
 15 class action. Fed. R. Civ. P. 23(b)(3); *see Zinser v. Accufix Research Inst., Inc.*, 253
 16 F.3d 1180, 1190-92 (9th Cir. 2001). “[C]onsideration of these factors requires the
 17 court to focus on the efficiency and economy elements of the class action so that cases
 18 allowed under subdivision (b)(3) are those that can be adjudicated most profitably on
 19 a representative basis.” *Zinser*, 253 F.3d at 1190 (citations omitted); *see also*
 20 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (finding the
 21 superiority requirement satisfied where granting class certification “will reduce
 22 litigation costs and promote greater efficiency”).
 23
 24

25 ⁹ *See also, e.g., In re POM Wonderful LLC Mktg. and Sales Practices*, No. ML 10-
 26 02199, 2012 WL 4490860, *1 (C.D. Cal. Sept. 28, 2012) (certifying labeling claims);
 27 *Johns*, 280 F.R.D. 551 (same); *In re Ferrero*, 278 F.R.D. 552, 556 (S.D. Cal. 2011)
 28 (same); *Johnson v. General Mills, Inc.*, 276 F.R.D. 519, 521 (C.D. Cal. 2011) (same);
Zeisel v. Diamond Foods, Inc., No. C 10-01192, 2011 WL 2221113, *1 (N.D. Cal.
 June 7, 2011) (same); *Chavez v. Blue Sky Natural Beverage Co.*, 268 F.R.D. 365, 380
 (N.D. Cal. 2010) (same).

1 Application of the Rule 23(b)(3) “superiority” factors shows that a class action
2 is the preferred procedure for this Settlement. The damages at issue for each member
3 of the Settlement Class are not large. *Zinser*, 253 F.3d at 1191; *Wiener* 255 F.R.D. at
4 671. It is neither economically feasible, nor judicially efficient, for members of the
5 Settlement Class to pursue their claims against Defendants on an individual basis.
6 *Hanlon*, 150 F.3d at 1023; *Deposit Guaranty Nat’l Bank v. Roper*, 445 U.S. 326, 338-
7 39 (1980); *Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 808 (1971); *Amchem*, 521 U.S. at 617
8 (“The policy at the very core of the class action mechanism is to overcome the
9 problem that small recoveries do not provide the incentive for any individual to bring
10 a solo action prosecuting his or her rights”). Additionally, the fact of settlement
11 eliminates any potential difficulties in managing the trial of this action as a class
12 action. *See Amchem*, 521 U.S. at 620 (when “confronted with a request for
13 settlement-only class certification, a district court need not inquire whether the case, if
14 tried, would present intractable management problems . . . for the proposal is that
15 there be no trial”). As such, under the circumstances presented here, a class action is
16 clearly superior to any other mechanism for adjudicating the case. The requirements
17 of Rule 23(b)(3) are satisfied.

18 **C. Plaintiffs Should Be Appointed Class Representatives And Class**
19 **Counsel Should Be Appointed For The Settlement Class**

20 The Parties also request that the Court designate Plaintiffs Louis Lerma, Nick
21 Pearson and Muriel Jayson as Class Representatives for the Settlement Class. As
22 discussed above, Plaintiffs will fairly and adequately protect the interests of the
23 Settlement Class.

24 Additionally, Rule 23(g)(1) requires the Court to appoint class counsel to
25 represent the interests of the Settlement Class. *See In re Rubber Chems. Antitrust*
26 *Litig.*, 232 F.R.D. 346, 355 (N.D. Cal. 2005). As set forth above, Bonnett, Fairbourn,
27 Friedman & Balint, P.C., Stewart M. Weltman, LLC and Denlea & Carton LLP are
28 experienced and well equipped to vigorously, competently and efficiently represent

1 the proposed Settlement Class. Accordingly, the Court should accordingly appoint
2 Elaine A. Ryan (Bonnett, Fairbourn, Friedman & Balint, P.C.), Stewart M. Weltman
3 (Stewart M. Weltman, LLC), and Jeffrey Carton (Denlea & Carton LLP), as Class
4 Counsel for the Settlement Class.

5 **D. The Settlement Should Be Preliminarily Approved**

6 At the preliminary approval stage, the Court need only “make a preliminary
7 determination of the fairness, reasonableness and adequacy of the settlement” so that
8 notice of the Settlement may be given to the Settlement Class and a fairness hearing
9 may be scheduled to make a final determination regarding the fairness of the
10 Settlement. *See* 4 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*,
11 §11.25 (4th ed. 2002); David F. Herr, *Annotated Manual for Complex Litigation*
12 (“*Manual*”) §21.632 (4th ed. 2008). In so doing, the Court reviews the Settlement to
13 determine that it is not collusive and, “taken as a whole, is fair, reasonable and
14 adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm.*, 688 F.2d 615,
15 625 (9th Cir. 1982); *see also Rodriguez v. West Publ’g Co.*, 563 F.3d 948, 965 (9th
16 Cir. 2009).

17 Settlements of class actions are strongly favored. *Class Plaintiffs v. Seattle*, 955
18 F.2d 1268, 1276 (9th Cir. 2004) (noting “strong judicial policy that favors settlements,
19 particularly where complex class action litigation is concerned”); *see also Churchill*
20 *Village, LLC v. Gen. Elec. Co.*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Pacific Enter.*
21 *Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). By their very nature, because of the
22 uncertainties of outcome, difficulties of proof, and lengthy duration, class actions
23 readily lend themselves to compromise. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d
24 943, 950 (9th Cir. 1976) (public interest in settling litigation is “particularly true in
25 class action suits...which frequently present serious problems of management and
26 expense”). Moreover, the Court should give a presumption of fairness to arm’s-length
27 settlements reached by experienced counsel with the assistance of a mediator.
28 *Rodriguez*, 563 F.3d at 965 (“We put a good deal of stock in the product of an arms-

1 length, non-collusive, negotiated resolution.”). Rule 23(e) sets forth a “two-step
 2 process in which the court first determines whether a proposed class action settlement
 3 deserves preliminary approval and then, after notice is given to class members,
 4 whether final approval is warranted.” *Nat’l Rural Telecomms. Coop v. DIRECTV,*
 5 *Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

6 On preliminary approval, the court does not make a full and final determination
 7 regarding fairness. “Because class members will subsequently receive notice and
 8 have an opportunity to be heard,” the court “need not review the settlement in detail at
 9 this juncture.” *In re M.L. Stern Overtime Litig.*, No. 07-CV-0118, 2009 WL 995864,
 10 at *3 (S.D. Cal. Apr. 13, 2009). “[I]nstead, preliminary approval is appropriate so
 11 long as the proposed settlement falls ‘within the range of possible judicial approval.’”
 12 *Id.* (quoting *Newberg on Class Actions*, §11.25 (4th ed. 2002)); *see also Manual for*
 13 *Complex Litigation* (4th ed. 2009) §§ 21.632, 21.633. At this stage, the Court need
 14 only conduct a *prima facie* review of the relief provided by the Stipulation of
 15 Settlement to determine whether notice should be sent to the settlement Class
 16 members. *In re M.L. Stern*, 2009 WL 995864, at *3.

17 The Court’s review is “limited to the extent necessary to reach a reasoned
 18 judgment that the agreement is not the product of fraud or overreaching by, or
 19 collusion between, the negotiating parties, and that the settlement, taken as a whole, is
 20 fair, reasonable and adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625;
 21 *accord Hanlon*, 150 F.3d at 1027. This is a minimal threshold:

22 [I]f the proposed settlement appears to be the product of serious,
 23 informed, non-collusive negotiations, has no obvious deficiencies, does
 24 not improperly grant preferential treatment to class representatives or
 segments of the class, and ***falls within the range of possible approval***,
 then the court should direct that the notice be given to the Class members
 of a formal fairness hearing

25 *Young v. Polo Retail, LLC*, No. C-02-4546, 2006 WL 3050861, at *5 (N.D. Cal. Oct.
 26 25, 2006) (emphasis added and citations omitted).

27 The Ninth Circuit has articulated six factors to use in evaluating the fairness of
 28

1 a class action settlement at the preliminary approval stage: (1) the strength of
 2 plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further
 3 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the
 4 consideration offered in settlement; (5) the extent of discovery completed, and the
 5 stage of the proceedings; and (6) the experience and views of counsel. *Jack v.*
 6 *Hartford Fire Ins. Co.*, No. 3:09-cv-1683, 2011 WL 4899942, at *4 (S.D. Cal. Oct.
 7 13, 2011), citing *Molski v. Gleich*, 318 F.3d at 954 (9th Cir. 2003); *Hanlon*, 150 F.3d
 8 at 1026 (the court's task is to "balance a number of factors," including "the risk,
 9 expense, complexity, and likely duration of further litigation," "the extent of discovery
 10 completed and the stage of the proceedings," and "the amount offered in settlement").

11 Here, the proposed Settlement plainly satisfies the standard for preliminary
 12 approval, as there is no question as to its fairness, reasonableness and adequacy,
 13 placing it squarely within the range of possible approval.

14 1. **The Strengths of Plaintiffs' Case and Risks Inherent in Continued**
 15 **Litigation and in Securing Certification Favor Preliminary**
Approval

16 Settlements resolve the inherent uncertainty on the merits, and are therefore
 17 strongly favored by the courts, particularly in class actions. *See Van Bronkhorst*, 529
 18 F.2d at 950; *United States v. McInnes*, 556 F.2d 436, 441 (9th Cir. 1977). This action
 19 is not unique in this regard – the parties disagree about the merits, and there is
 20 substantial uncertainty about the ultimate outcome of this litigation.

21 Assuming that litigation was to proceed, the hurdles that Plaintiffs face prior to
 22 certification and trial are substantial. As a preliminary matter, while Plaintiffs believe
 23 that these cases are appropriate for class certification, Defendants vigorously contest
 24 that class certification is appropriate, and there is the possibility that Defendants
 25 would prevail and the Court could rule otherwise. And even if the Court were to
 26 certify a class, Plaintiffs have no doubt that Defendants would aggressively pursue
 27 any and all appellate options. Likewise, while Plaintiffs feel that their substantive
 28 claims are meritorious, Defendants again contest the merits of Plaintiffs' claims, and

1 there is a possibility that a fact finder could find otherwise as to all or a part of
2 Plaintiffs' claims.

3 **2. The Risk, Complexity, Expense, and Duration of the**
4 **Litigation Favor Preliminary Approval**

5 In addition to the substantial risks and uncertainty inherent in continued
6 litigation, the Parties face the certainty that further litigation would be expensive,
7 complex, and time consuming. The Court would be required to resolve difficult and
8 complicated issues of statutory interpretation and state law.

9 Here, the proposed Settlement specifically addresses the alleged deceptive
10 conduct by providing economic benefits to all Settlement Class Members who submit
11 Valid Claims. The proposed Settlement is able to provide these benefits without the
12 risk and delays of continued litigation, trial and appeal. As important, the Settlement
13 provides for meaningful labeling changes, requiring Defendants to not make any of
14 the following statements in the packaging or marketing of the Covered Products:
15 "repair joints," "repair cartilage," "rebuild joints," rebuild cartilage," "rejuvenate
16 joints" or "rejuvenate cartilage." The expense, complexity and duration of litigation,
17 including satisfying any judgment, are significant factors considered in evaluating the
18 reasonableness of a settlement. Litigating this class action through trial would
19 undoubtedly be time-consuming and expensive. As with most class actions, this
20 action is complex. Indeed, to date, over 350,000 pages of documents have been
21 produced in the Lerma Litigation and Jayson Litigation, and continued litigation
22 would require numerous additional depositions of Plaintiffs, Defendants, their experts
23 and non-parties. The question of whether the Defendants' products are effective and
24 the marketing message conveyed by the advertisements and labeling is vigorously
25 disputed by the Parties. At a minimum, absent settlement, litigation would likely
26 continue for years before Plaintiffs or the Settlement Class would see recovery, if any.
27 That a settlement would eliminate the delay and expenses strongly weighs in favor of
28 approval. *See Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y 1984).

1 By reaching this Settlement, the Parties will avoid protracted litigation and will
2 establish a means for prompt resolution of the claims of members of the Settlement
3 Class and provide important labeling relief. The avenue of relief provided by the
4 Settlement ensures meaningful benefits to the Settlement Class and furthers important
5 consumer protection goals through the labeling changes. Given the alternative of long
6 and complex litigation before this Court, the risks involved in such litigation and the
7 possibility of further appellate litigation, the availability of prompt relief under the
8 Settlement is highly beneficial to the Class.

9 3. **The Substantial Relief Provided by the Settlement Agreement**
10 **Favors Preliminary Approval**

11 The Settlement Agreement provides real relief for the Settlement Class.
12 Members of the Settlement Class who purchased the Covered Products may submit
13 Claim Forms and choose to receive monetary payments. Nevertheless, in evaluating
14 the fairness of the consideration offered in settlement, it is not the role of the court to
15 second-guess the negotiated resolution of the parties. “[T]he court’s intrusion upon
16 what is otherwise a private consensual agreement negotiated between the parties to a
17 lawsuit must be limited to the extent necessary to reach a reasoned judgment that the
18 agreement is not the product of fraud or overreaching by, or collusion between, the
19 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
20 adequate to all concerned.” *Hanlon*, 150 F.3d at 1027 (quoting *Officers for Justice*,
21 688 F.2d at 625); *accord Rodriguez*, 563 F.3d at 965. The issue is not whether the
22 settlement could have been better in some fashion, but whether it is fair: “Settlement
23 is the offspring of compromise; the question we address is not whether the final
24 product could be prettier, smarter or snazzier, but whether it is fair, adequate and free
25 from collusion.” *Hanlon*, 150 F.3d at 1027.
26
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1 Here, counsel for Defendants and Plaintiffs each zealously negotiated on behalf
2 of their clients' best interests. From the beginning of the negotiations until the end,
3 the parties engaged the services of Hon. Howard Weiner (Retired), an experienced and
4 skilled mediator, who assisted the parties to arrive at a settlement after five mediation
5 sessions. Fees and expenses were not discussed nor negotiated until the substantive
6 provisions of monetary and injunctive relief were finalized. By the time the mediation
7 sessions were completed in 2013, Plaintiffs' Counsel, who are experienced in
8 prosecuting complex class action claims, had "a clear view of the strengths and
9 weaknesses" of their case and were in a strong position to make an informed decision
10 regarding the reasonableness of a potential settlement. *In re Warner Commc'ns Sec.*
11 *Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985); *see also Vasquez v. Coast Valley*
12 *Roofing, Inc.*, 266 F.R.D. 482, 489-90 (E.D. Cal. 2010). After having reached a
13 settlement with the assistance of Justice Weiner, the Parties began the painstaking
14 process of negotiating the language of the Stipulation of Settlement and its many
15 details. For almost a year following the last formal mediation session with Justice
16 Weiner, the Parties negotiated on each and every detail of the Settlement and its
17 exhibits. The fact that a highly regarded and experienced mediator was heavily
18 involved in the settlement negotiations is one factor that demonstrates the Settlement
19 was anything but collusive. *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F.
20 Supp. 2d 848, 852 (N.D. Cal. 2010) ("The arms-length negotiations, including a day-
21 long mediation before Judge Lynch, indicate that the settlement was reached in a
22 procedurally sound manner."); *In re M.L. Stern*, 2009 WL 995864, at *5 (granting
23 preliminary approval and stating that "the settlement was reached with the supervision
24 and assistance of an experienced and well-respected independent mediator").

25 The proposed Settlement is fair to all members of the Settlement Class because
26 it provides them with monetary relief after submitting online (or by mail) a simplified
27 claim form that requires nothing else to receive up to \$12 for undocumented purchases
28 and up to \$50 for documented purchases. Furthermore, labeling changes are a key

1 component of this Settlement. Defendants have agreed to not make the following
2 statements in the packaging or marketing of the Covered Products: “repair joints,”
3 “repair cartilage,” “rebuild joints,” rebuild cartilage,” “rejuvenate joints” or
4 “rejuvenate cartilage.” Further, the Named Plaintiffs do not receive any unduly
5 preferential treatment under the Settlement. With the exception of modest service
6 awards – \$10,000 collectively for all three Plaintiffs who filed a class action to
7 account for their willingness to step forward and represent other consumers and to
8 compensate them for their time and effort devoted to prosecuting the common claims
9 – Plaintiffs are treated the same as every other Settlement Class Member. Such
10 service awards are “fairly typical in class actions.” *Rodriguez*, 563 F.3d at 958; *see*
11 *also In re Simon v. Toshiba America*, No. C 07-06202, 2010 WL 1757956, at *5
12 (N.D. Cal. Apr. 30, 2010); *Williams v. Costco Wholesale Corp.*, No. 02cv2003, 2010
13 WL 761122, at *3 (S.D. Cal. Mar. 4, 2010) (“Although [plaintiff] seeks a \$5,000
14 service fee for himself which is not available to other class members, the fee appears
15 to be reasonable in light of [plaintiff’s] efforts on behalf of the class members.”); *In re*
16 *M.L. Stern Overtime Litig.*, No. 07-cv-0118, 2009 WL 3272872, at *4 (S.D. Cal. Oct.
17 9, 2009) (granting final approval and awarding class representative class enhancement
18 awards of \$15,000 per class representative).

19 Beyond the substantial involvement and assistance of a highly-qualified
20 mediator, the experience of Class Counsel¹⁰ and Defendants’ Counsel as longstanding
21 class action attorneys, and the fair result reached are illustrative of the arms-length
22 negotiations that led to the Settlement. *See also* Newberg, at §11.41 (The initial
23 presumption of fairness of a class settlement may be established by showing: (1) that
24 the settlement has been arrived at by arm’s length bargaining; (2) that sufficient
25 discovery has been taken or investigation completed to enable counsel and the court to

26
27 ¹⁰ Counsel for Plaintiffs are experienced complex class action and consumer fraud
28 litigation firms, as demonstrated in the firm biographies of Class Counsel attached as
Ex. 4. It is their opinion that the settlement is in the best interest of the Class.

1 act intelligently; and (3) that the proponents of the settlement are counsel experienced
2 in similar litigation.).

3 Accordingly, the Settlement is well within the “range of possible approval” and
4 should thus be preliminarily approved. Thus, the central issue facing the Court at this
5 stage is whether the proposed Settlement falls within the range of what ultimately
6 might be approved as fair, reasonable, and adequate, so as to justify providing notice
7 to the Class and scheduling a final hearing. The Court is not required at this juncture
8 to make a final determination that the Settlement is fair, reasonable, and adequate, nor
9 will any Class members’ substantive rights be prejudiced by preliminary approval. “If
10 the preliminary evaluation of the proposed settlement does not disclose grounds to
11 doubt its fairness or other obvious deficiencies ... and appears to fall within the range
12 of possible approval,” the Court should grant preliminary approval and direct notice
13 and schedule a final approval hearing. *Manual for Complex Litigation*, Third § 30.41,
14 at 237 (1995).¹¹

15 Here, the Settlement Agreement strikes a compromise that affords fair
16 recompense to Class Members who submit a claim, and meaningful injunctive relief
17 to all Class Members—even those who submit no claim. The proposed Settlement
18 provides for consumers who have some form of proof of purchase to obtain
19 compensation for approximately 20% of their purchase price per bottle for up to ten
20

21 ¹¹ The *Manual For Complex Litigation* sets forth the procedures for preliminary
22 approval of settlements:

23 If the preliminary evaluation of the proposed settlement does not disclose
24 grounds to doubt its fairness or other obvious deficiencies, such as
25 unduly preferential treatment of class representatives or of segments of
26 the class, or excessive compensation for attorneys, and appears to fall
27 within the range of possible approval, the court should direct that notice
28 under Rule 23(e) be given to the class members of a formal fairness
hearing, at which arguments and evidence may be presented in support
of and in opposition to the settlement.

Manual, § 21.632.

1 (10) purchases and consumers who have no such documentation to obtain
2 compensation for approximately 12% of their purchase price for up to four (4)
3 purchases. There is no cap to the amount of monies or claims that Defendants will
4 pay to Class Members with Valid Claims. The notice plan is robust, involving the
5 payment by Defendants of up to \$1.5 million dollars for notice and administration
6 costs and having an anticipated reach of close to 80% of the Class Members. *See*
7 *generally*, Declaration of Gina Intrepido-Bowden, Ex. 5 hereto.

8 Furthermore, the Settlement provides for meaningful injunctive relief in the
9 form of labeling/marketing changes for dozens of different products. Statements that
10 the Covered Products “repair joints,” “repair cartilage,” “rebuild joints,” rebuild
11 cartilage,” “rejuvenate joints” or “rejuvenate cartilage” – representations which
12 currently are prominently featured on the labels – will not be made by Defendants for
13 a period of 24 months.

14 Moreover, the labeling/marketing relief will provide an important consumer
15 benefit both for members of the Settlement Class in connection with any future
16 purchases they may make and future new purchasers. Since consumer protection is
17 the touchstone of all consumer fraud laws (*see, e.g., Duhl v. Nash Realty Inc.*, 102 Ill.
18 App. 3d 483, 495 (1981) (The IFCA sections “clearly expand the consumers’ rights
19 beyond those of the common law, and provide broader consumer protection than does
20 the common law action of fraud. There is a clear mandate from the Illinois legislature
21 that the courts of this State utilize the Act to the utmost degree in eradicating all forms
22 of deceptive and unfair business practices and grant appropriate remedies to injured
23 parties.”) (citations omitted); *Kwikset Corp.*, 51 Cal. 4th at 344 (California’s UCL’s
24 “purpose ‘is to protect both consumers and competitors by promoting fair competition
25 in commercial markets for goods and services’” and “[i]n service of that purpose, the
26 Legislature framed the UCL’s substantive provisions in “‘broad, sweeping language’”
27 (citations omitted); and *Tuckish v. Pompano Motor Co.*, 337 F. Supp.2d 1313, 1319
28 (S.D. Fla. 2004) (The FDUTPA is “a consumer protection law intended to protect the

1 consuming public and legitimate business enterprises from those who engage in unfair
2 methods of competition, or unconscionable, deceptive, or unfair acts or practices in
3 the course of any trade or commerce.”), the injunctive relief provided in the
4 Settlement Agreement is a significant and meaningful part of this Settlement.

5 There is an initial presumption of fairness because the Settlement is the product
6 of arm’s length negotiations conducted by experienced counsel who are fully familiar
7 with all aspects of class action litigation. *In re General Motors Pick-Up Truck Fuel*
8 *Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir.), *cert. denied*, 516 U.S. 824 (1995)
9 (“This preliminary determination establishes an initial presumption of fairness when
10 the court finds that: (1) the negotiations occurred at arm’s length... [and] (3) the
11 proponents of the settlement are experienced in similar litigation. . . .”); *see also*
12 *Newberg on Class Actions* § 11.4; *Manual for Complex Litigation* (Third) § 30.42
13 (1995); *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 662 (N.D. Fla.
14 2011).

15 Based upon the foregoing, Plaintiffs respectfully submit that the proposed
16 Settlement “falls within the range of what ultimately might be approved as fair,
17 reasonable, and adequate” and that preliminary approval should be granted.

18 **E. The Notice Plan**

19 The threshold requirement concerning class notice is whether the means
20 employed to distribute the notice was reasonably calculated to apprise the Class of the
21 pendency of the action, of the proposed Settlement and of the Class Members’ rights
22 to opt out or object. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Mullane*
23 *v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). The mechanics of the
24 notice process are left to the discretion of the court, subject only to the broad
25 “reasonableness” standards imposed by due process. In this Circuit, it has long been
26 the case that a notice of settlement will be adjudged “satisfactory if it ‘generally
27 describes the terms of the settlement in sufficient detail to alert those with adverse
28 viewpoints to investigate and to come forward and be heard.’” *Rodriguez*, 563 F.3d at

1 962 (quoting *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir.
2 2004)); *Hanlon*, 150 F.3d at 1025 (notice should provide each absent class member
3 with the opportunity to opt-out and individually pursue any remedies that might
4 provide a better opportunity for recovery). The notice should also present information
5 “neutrally, simply, and understandably,” including “describ[ing] the aggregate amount
6 of the settlement fund and the plan for allocation.” *Rodriguez*, 563 F.3d at 962.

7 The notice here is fully compliant with due process in that it informs the
8 members of the Settlement Class of their right to opt-out or exclude themselves from
9 the Settlement, appear through their own counsel, object to the terms of the Settlement
10 along with the form that the objection must take, the deadlines for opt-out/exclusion or
11 objection, the date of the final approval hearing, the scope of the claims released if a
12 member of the Settlement Class does not opt-out and remains in the Settlement Class,
13 and the amount of potential Plaintiffs’ Incentive Award and Attorneys’ Fee Award.
14 Ex. 5, Intrepido-Bowden Decl. at Ex. 1. KCC Class Action Services, LLC (“KCC”)¹²
15 has been identified as the third-party Settlement Administrator. Intrepido-Bowden
16 Decl. at Ex. 1. The notice plan was based upon an analysis by Gina Intrepido-
17 Bowden, Director of Legal Notification Services at KCC, who has been recognized as
18 an expert in legal notification. Intrepido-Bowden Decl. at ¶¶ 6-13. Based upon Ms.
19 Intrepido-Bowden’s analysis of publications likely to reach the proposed Settlement
20 Class, seven national magazines were chosen for publication notice. *Id.* at ¶¶ 18-22.
21 Further, to fulfill the notice requirements set forth in California’s Consumer Legal
22 Remedies Act, notice will also be published once a week for four consecutive weeks
23 in the *San Diego Union Tribune*. *Id.* at ¶14. In addition to print notice, notices will be
24 placed on a selection of internet networks: Google Display, Google Search, Microsoft
25 Display, Yahoo RMX and Facebook. *Id.* at ¶¶ 23-24.

26
27
28 ¹² <http://www.kccllc.com>.

1 In *Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 786 (7th Cir. 2004), the
 2 Seventh Circuit approved a publication notice for a nationwide class that consisted of
 3 publication in one publication of national circulation and the posting of the notice on a
 4 website set up by a settlement administrator. *See also Cohen v. Chilcott*, 522 F. Supp.
 5 2d 105 (D.D.C. 2007) (approving notice plan consisting of publication in USA Today
 6 and an Internet campaign targeted to the demographics of the class members); *In re*
 7 *Kentucky Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 280 F.R.D. 364
 8 (N.D. Ill. 2011) (approving of notice plan consisting of publication in Parade, internet
 9 advertising, the maintenance of a website containing the notice, and targeted on-line
 10 advertising and sponsored key-word search advertisements).

11 Here, the notice plan goes far beyond these threshold requirements. The plan
 12 provides for multiple publications in several national magazines, several of the largest
 13 internet sites, and the largest social media tool. Finally, the amount of money set
 14 aside (and to be paid by Defendants) for notice and settlement administration is
 15 significant, up to \$1.5 million (Settlement Agreement at ¶ V(D)), and will not erode or
 16 diminish the benefits available to the Class.

17 **V. CONCLUSION**

18 Based upon the foregoing, and because the proposed Settlement is fair,
 19 reasonable, and sufficient to warrant that the notice plan be approved and a final
 20 approval hearing be held, Plaintiffs respectfully request that the Court enter the
 21 preliminary approval order that accompanies this motion and memorandum, as Ex. 1-
 22 C.

23 DATED: March 25, 2014

BONNETT, FAIRBOURN
 FRIEDMAN & BALINT, P.C.

s/Patricia N. Syverson

Elaine A. Ryan (*Admitted pro hac vice*)

Patricia N. Syverson (Bar No. 203111)

Lindsey Gomez-Gray (*Admitted pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list. I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 25, 2014.

/s/Patricia N. Syverson
Patricia N. Syverson (203111)
BONNETT FAIRBOURN FRIEDMAN &
BALINT
2325 E Camelback Road, Ste. 300
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EXHIBIT 1

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release is entered into between Named Plaintiffs Luis Lerma, Nick Pearson and Muriel Jayson and Defendants Schiff Nutrition International, Inc. and Schiff Nutrition Group, Inc. in order to effect a full and final settlement and dismissal with prejudice of all claims against Schiff as alleged in the cases captioned *Lerma v. Schiff Nutrition International, Inc., et al.*, No. 3:11-cv-01056-CAB-MDD (S.D. Cal. filed May 13, 2011), and *Jayson v. Schiff Nutrition International, Inc., et al.*, No. 0:13-cv-60400-RSR (S.D. Fla. filed Feb. 20, 2013), on the terms set forth below and to the full extent reflected herein, subject to approval of the Court. Capitalized terms shall have the meaning ascribed to them in Section II of this Settlement Agreement.

I. RECITALS

A. Schiff, along with certain affiliated entities, manufactures and sells joint health products, which are sold both under various Schiff brand names as well as under the various brand names of Retailers not affiliated with Schiff.

B. On May 13, 2011, a putative class action complaint relating to the Covered Products was filed against Schiff Nutrition International, Inc. in the United States District Court for the Southern District of California, namely, *Lerma v. Schiff Nutrition International, Inc.* On September 16, 2011, Schiff Nutrition Group, Inc. was added as a Defendant, and on March 12, 2012, Nick Pearson was added as a Plaintiff.

C. Subsequently, on February 20, 2013, another putative class action complaint relating to the Covered Products was filed against Schiff in the United States District Court for the Southern District of Florida, namely, *Jayson v. Schiff Nutrition International, Inc., et al.*

D. In the Litigation, the Named Plaintiffs allege, *inter alia*, that certain claims made on the labeling and packaging of the Covered Products are false, deceptive and/or misleading and

that the labeling and packaging failed to warn that the Covered Products can cause potentially harmful side effects. Based upon these and other allegations, they assert claims under, *inter alia*, various state consumer protection, unfair competition, breach of warranty and personal injury/negligence laws.

E. Schiff denies all material allegations in the Litigation and has asserted a variety of affirmative defenses. Schiff specifically denies that it has engaged in any wrongdoing whatsoever, that it has any liability in connection with the claims asserted or that could have been asserted in the Litigation and further denies that the claims in the Litigation can properly be maintained as a class action, other than for the purposes of settlement.

F. The Named Plaintiffs and Settlement Class Counsel have conducted an extensive examination of the facts and documents relating to the Litigation, including documents produced by Schiff and responses to written discovery requests. The Parties have also exchanged initial and rebuttal written reports of experts related to the potential liability and damages.

G. This Settlement was reached after an early neutral evaluation conference with Magistrate Judge Mitchell Dembin, followed by five separate protracted, arms'-length mediation sessions conducted over a year, before a neutral mediator, the Honorable Howard B. Weiner, Justice of the California Court of Appeals, Retired.

H. The Litigation, if it were to continue, would likely result in expensive and protracted litigation, appeals and continued uncertainty as to outcome.

I. The Named Plaintiffs and Settlement Class Counsel have concluded that this Settlement provides substantial benefits to the Named Plaintiffs and to the Settlement Class and resolves all issues that were or could have been raised in the Litigation without prolonged litigation and the risks and uncertainties inherent in litigation.

J. The Named Plaintiffs and Settlement Class Counsel have concluded that this Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

K. Schiff continues to deny each and every allegation of wrongdoing, liability and damages that were or could have been asserted in the Litigation and further continues to deny that the claims in the Litigation would be appropriate for class treatment if the Litigation were to proceed through litigation and trial. Nonetheless, without admitting or conceding any wrongdoing, liability or damages or the appropriateness of the Named Plaintiffs' claims or similar claims for class treatment, Schiff consents to the Settlement solely to avoid the expense, inconvenience and inherent risk of litigation as well as the concomitant disruption of its business operations.

L. Nothing in this Settlement or Settlement Agreement shall be construed as an admission or concession by Schiff of the truth of any allegations raised in the Litigation or of any fault, wrongdoing, liability or damages of any kind.

M. This Settlement Agreement, its terms, documents related to it and the negotiations or proceedings connected with it shall not be offered or received into evidence in the Litigation or in any other action or proceeding to establish any liability or admission by Schiff.

N. **NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants, promises and general releases set forth below and subject to preliminary and final approval of the Court, the Parties hereby agree as follows:

II. DEFINITIONS

A. As used herein, the following terms have the meanings set forth below.

B. "Adequate Proof of Purchase" means: (i) cash register receipt reflecting the purchase of a Covered Product; (ii) intact box or bottle for a Covered Product that displays a readable UPC code and a readable lot number; or (iii) similar documentation that identifies the Covered Product and date and location of purchase.

C. “Attorneys’ Fee Award” means the Court-approved award to Settlement Class Counsel as defined in Section VI Paragraph A.

D. “Cash Award” means the cash compensation that Settlement Class Members who submit Valid Claims shall be entitled to receive as detailed in Section IV Paragraphs A-B.

E. “Claim Deadline” means one hundred twenty (120) Days after the Preliminary Approval Date, which date will be specified in the Class Notice.

F. “Claim Form” means the claim form that Settlement Class Members must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein, which document shall be substantially in the form of Exhibit A hereto. The Claim Form requires a sworn signature under penalty of perjury, but does not require a notarization. Additional requirements relating to the completion of Claim Forms are set forth in Section V. Claim Forms will be processed after the Effective Date.

G. “Class Notice” means the Court-approved forms of notice to the Settlement Class, which will notify members of the Settlement Class of entry of the Preliminary Approval Order and the scheduling of the Fairness Hearing, among other things.

H. “Court” means the United States District Court for the Southern District of California.

I. “Covered Products” means the joint health products manufactured by Schiff and/or its affiliates as identified in Exhibit B – List of Covered Products.

J. “Days” means calendar days, except that when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Furthermore, when computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period

so computed shall be included, unless it is a Saturday, a Sunday or a Federal or State of California legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State of California legal holiday.

K. “Effective Date” means the date defined in Section XI.

L. “Fairness Hearing” means the hearing at which the Court orders final approval of the Settlement.

M. “Final” means final as defined in Section XI Paragraph B.

N. “Final Order and Judgment” means the order defined in Section IX. Any reduction in the Attorneys’ Fee Award or Incentive Award shall not be considered a material alteration.

O. “Incentive Award” means the Court-approved award as defined in Section VI Paragraph B.

P. “Litigation” means the actions captioned *Luis Lerma v. Schiff Nutrition International, Inc. et al.*, No. 3:11-cv-01056-CAB-MDD (S.D. Cal. filed May 13, 2011) and *Jayson v. Schiff Nutrition International, Inc., et al.*, No. 0:13-cv-60400-RSR (S.D. Fla. filed on Feb. 20, 2013).

Q. “Named Plaintiffs” means Luis Lerma, Nick Pearson and Muriel Jayson. Individually, Mr. Lerma, Mr. Pearson and Ms. Jayson are each considered a “Named Plaintiff.”

R. “Notice And Administration Costs” means any and all reasonable and authorized costs and expenses of notice and administration relating to this Settlement.

S. “Notice Date” means the first day on which the Settlement Administrator begins disseminating the Class Notice, and shall be no later than sixty (60) Days after the Preliminary Approval Date.

T. “Opt-Out” shall refer to a member of the Settlement Class who properly and timely submits a request for exclusion from the Settlement Class as set forth in Section VII Paragraph D. An Opt-Out may rescind a request for exclusion by submitting a Claim Form to the Settlement Administrator to obtain benefits of the Settlement.

U. “Opt-Out List” shall refer to the list compiled by the Settlement Administrator pursuant to Section VII Paragraph G, identifying those who properly and timely submit a request for exclusion from the Settlement Class and become Opt-Outs.

V. “Opt-Out and Objection Date” means the date by which a request for exclusion must be filed with the Settlement Administrator in order for a member of the Settlement Class to be excluded from the Settlement Class, and the date by which Settlement Class Members must file objections, if any, to the Settlement. The Opt-Out and Objection Date shall be no later than one hundred and twenty (120) Days after the Preliminary Approval Date.

W. “Parties” means Named Plaintiffs and Settlement Class Members together with Schiff. Named Plaintiffs and Settlement Class Members shall be collectively referred to as one “Party,” with Schiff as the other “Party.”

X. “Person” means an individual, corporation, partnership, limited partnership, limited liability company, association, member, joint stock company, estate, legal representative, trust, unincorporated association, any business or legal entity and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives and assignees.

Y. “Preliminary Approval Date” means the date the Preliminary Approval Order has been executed and entered by the Court and received by counsel for the Parties.

Z. “Preliminary Approval Order” means the order defined in Section VIII and attached hereto without material alteration as Exhibit C.

AA. “Release” means the release and discharge, as of the Effective Date, by the Named Plaintiffs and all Settlement Class Members (and their respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors) who have not excluded themselves from the Settlement Class of the Released Persons and shall include the agreement and commitment by the Named Plaintiffs and all Settlement Class Members to not now or hereafter initiate, maintain or assert against the Released Persons or any of them any and all causes of action, claims, rights, demands, actions, claims for damages, equitable, legal and/or administrative relief, interest, demands or rights, including without limitation, claims for damages of any kind, including those in excess of actual damages, whether based on federal, state or local law, statute, ordinance, regulation, contract, common law or any other sources that have been, could have been, may be or could be alleged or asserted now or in the future by the Named Plaintiffs or any Settlement Class Members against the Released Persons, or any of them, in the Litigation or in any other court action or before any administrative body (including any regulatory entity or organization), tribunal, arbitration panel or other adjudicating body arising out of or related to the Released Claims.

BB. “Released Claims” means any and all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, negligence claims, claims for breach of contract, breach of the duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, violation of elder abuse and dependent adult civil protection acts, unfair business or trade practices, false advertising, restitution, rescission, compensatory and punitive damages, injunctive or declaratory relief, attorneys’ fees, interests, costs, penalties and any other claims, whether known or unknown,

alleged or not alleged in the Litigation, suspected or unsuspected, contingent or matured, under federal, state or local law, which the Named Plaintiffs and/or any Settlement Class Member had, now have or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions or oral or written statements or occurrences on or prior to the Preliminary Approval Date arising from or relating to the Covered Products, including, without limitation, the causes of action and allegations made by the Named Plaintiffs in the Litigation as well as claims and allegations that the Released Persons made false and deceptive representations and warranties and/or omitted material information about the Covered Products, including, without limitation, causes of action for violation of the Consumers Legal Remedies Act, violation of the California Business & Professions Code, violation of the Illinois Consumer Fraud Act, violation of the Florida Deceptive and Unfair Trade Practices Act, and similar claims under the consumer protection and/or deceptive trade practices acts and common law of the other states and the District of Columbia as well as for negligence and breaches of express warranties.

CC. “Released Persons” means: (i) Schiff; (ii) any Reckitt Benckiser global corporate entity, including but not limited to Reckitt Benckiser Pharmaceuticals, Inc., Reckitt Benckiser (North America) LLC, Reckitt Benckiser LLC, Airborne, Inc., LRC North America, Inc., Reckitt Benckiser Investments (2012) LLC, Reckitt Benckiser USA (2012) LLC, Reckitt Benckiser US (2013) LLC, Reckitt Benckiser USA General Partnership, SSL Holdings (USA) Inc., The French’s Food Company LLC; (iii) any Person or entity in the chain of distribution of the Covered Products, including but not limited to (a) raw material suppliers (including but not limited to Unigen, Inc. and VDF FutureCeuticals Inc.), (b) distributors and (c) Retailers, (iv) any Person or entity that manufactured or sold the Covered Products from which Schiff or its affiliates acquired assets or contracts, (v) the affiliates of any of the foregoing Persons or entities described in (i) – (iv) of this

Paragraph and (vi) each of the respective past, present and future direct and indirect predecessors, successors, assigns, parents, subsidiaries, affiliates, joint venturers, partnerships, limited liability companies, corporations, unincorporated entities, divisions, groups, directors, officers, shareholders, members, employees, partners, agents, insurers and attorneys of any of the foregoing entities and Persons described in (i) – (v) of this Paragraph.

DD. “Releasing Persons” means the Named Plaintiffs, on behalf of themselves and all Settlement Class Members, all Settlement Class Members, and the respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors of each of the Named Plaintiffs and Settlement Class Members.

EE. “Retailers” means Persons and entities and their affiliates that sell or have sold the Covered Products manufactured by Schiff and/or its affiliates, including but not limited to: Costco Wholesale Corporation; CVS Caremark Corporation; Publix Super Markets, Inc.; Rite Aid Corporation; Safeway Inc.; Sam’s Club; Target Corporation, Wal-Mart Stores Inc.; The Kroger Co.; Meijer, Inc.; and Walgreen Company.

FF. “Schiff” means Defendants Schiff Nutrition International, Inc. and Schiff Nutrition Group, Inc.

GG. “Schiff’s Counsel” means Latham & Watkins LLP.

HH. “Settlement” means the settlement set forth in this Settlement Agreement.

II. “Settlement Administrator” means KCC Class Action Services, LLC, which will administer Class Notice, maintain the Settlement Website, administer the Settlement in accordance with this Settlement Agreement and engage in any other tasks directed by the Court, Settlement Class Counsel or Schiff’s Counsel.

JJ. “Settlement Agreement” means this Settlement Agreement and General Release, including all exhibits hereto.

KK. “Settlement Class” means all Persons who fall within the definition of the class identified in Section III Paragraph A.

LL. “Settlement Class Counsel” means Elaine A. Ryan of Bonnett, Fairbourn, Friedman & Balint, P.C., Stewart M. Weltman of Stewart M. Weltman, LLC and Jeffrey Carton of Denlea & Carton LLP.

MM. “Settlement Class Members” means all Persons in the Settlement Class who do not exclude themselves (*i.e.*, become Opt-Outs) pursuant to Section VII Paragraph D.

NN. “Settlement Website” means the dedicated website created and maintained by the Settlement Administrator and will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Class Notice and the Claim Form.

OO. “Valid Claim” means a timely and fully completed Claim Form that includes Adequate Proof of Purchase, if applicable, submitted by a Settlement Class Member as more fully described in Section V.

PP. The plural of any defined term includes the singular, and vice versa, as made necessary in context.

III. PROPOSED CLASS FOR SETTLEMENT PURPOSES

A. Pursuant to Fed. R. Civ. P. 23, the Parties hereto agree to certification, for settlement purposes only, of the following Settlement Class:

All residents of the United States who purchased for personal use, and not resale or distribution, a Covered Product between January 1, 2005 and the Preliminary Approval Date.

Specifically excluded from the Settlement Class are the following Persons:

- (i) Schiff and its respective affiliates, employees, officers, directors, agents, and representatives and their immediate family members;
- (ii) Settlement Class Counsel; and
- (iii) The judges who have presided over the Litigation and their immediate family members.

B. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the entering an order preliminarily certifying the Settlement Class, appointing Luis Lerma, Nick Pearson and Muriel Jayson as representatives of the Settlement Class and appointing the following as counsel for the Settlement Class:

Elaine A. Ryan
BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100

Stewart M. Weltman
STEWART M. WELTMAN, LLC
53 West Jackson Boulevard, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033

Jeffrey I. Carton
DENLEA & CARTON LLP
One North Broadway, Suite 509
White Plains, N.Y. 10601
Telephone: (914) 920-7400

C. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order appointing KCC Class Action Services, LLC as the Settlement Administrator.

D. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, the Parties stipulate to the Court entering an order preliminarily finding that the Named Plaintiffs and Settlement Class Counsel are adequate representatives of the Settlement Class.

E. Schiff does not agree to the certification of the Settlement Class or to the appointment or adequacy of the Named Plaintiffs or Settlement Class Counsel for any purpose other than to effectuate the Settlement and Settlement Agreement.

F. In the event that the Settlement Agreement is terminated pursuant to its terms or is not approved in any material respect by the Court, or such approval is reversed, vacated, or modified in any material respect by the Court or by any other court, the certification of the Settlement Class shall be deemed vacated, the Litigation shall proceed as if the Settlement Class had never been certified and no reference to the Settlement Class, this Settlement Agreement or any documents, communications or negotiations related in any way thereto shall be made for any purpose in the Litigation or in any other action or proceeding.

G. Upon execution of this Settlement Agreement, the Parties shall immediately and jointly move for a complete stay of the Litigation.

IV. BENEFITS TO THE CLASS

A. **Payment Of Claims.** Settlement Class Members who submit Valid Claims shall be entitled to receive Cash Awards as follows:

(i) Settlement Class Members who submit Valid Claims accompanied by Adequate Proof of Purchase shall receive \$5.00 per bottle of Covered Product, up to a maximum of ten (10) bottles per household.

(ii) Settlement Class Members who submit Valid Claims without Adequate Proof of Purchase shall receive \$3.00 per bottle of Covered Product, up to a maximum of four (4) bottles per household.

(iii) The details, requirements, terms and limits of the claims' process are further defined in Section V.

B. **Minimum Total Payment To Claimants.** If the total dollar value of Valid Claims submitted pursuant to Paragraphs A(i) and (ii) above is less than \$2.0 million:

(i) First, the payment to each Settlement Class Member who submits a Valid Claim under Paragraph A(i) shall be increased *pro rata* up to a maximum of triple what he or she would otherwise be entitled to under Paragraph A(i) above.

(ii) If, after the increase identified in Paragraph B(i) above is made, the total payments still do not reach \$2.0 million, then the payment to each Settlement Class Member who submits a Valid Claim under Paragraph A(ii) shall be increased *pro rata* up to a maximum of double what he or she would otherwise be entitled to under Paragraph A(ii) above.

(iii) If, after the payments identified in Paragraphs A(i) and (ii) and B(i) and (ii) are made, the total Cash Awards to Settlement Class Members do not reach \$2.0 million, any residual amounts up to \$2.0 million are to be divided among the Settlement Class Members who have submitted Valid Claims *pro rata*.

C. **Labeling Changes.** Without admitting wrongdoing or liability and solely to avoid the cost and disruption of further litigation, Schiff agrees that for a period of twenty four (24) months commencing six (6) months after the Effective Date, and except as described herein, it will not make the following statements in the packaging or marketing of the Covered Products: “repair joints,” “repair cartilage,” “rebuild joints,” rebuild cartilage,” “rejuvenate joints” or “rejuvenate cartilage.” The only statements that Schiff is agreeing not to use in the packaging and advertising of Covered Products are the statements listed above.

(i) The labeling change described in this Paragraph is not an admission by Schiff regarding the claims in the Litigation or the propriety of statements used or omitted on other versions of the packaging of the Covered Products.

(ii) Schiff shall have six (6) months from the Effective Date to begin shipping Covered Products with labels and/or packaging that conform to the terms of the Settlement.

(iii) Schiff shall not be required to recall, remove from shelves or pull from distribution or inventory any Covered Products that have been manufactured or shipped by Schiff prior to the date commencing six (6) months after the Effective Date.

(iv) If, after the date of Final Approval, Schiff becomes aware of an independent, well-conducted, published clinical trial substantiating that the Covered Products “repair joints,” “repair cartilage,” “rebuild joints,” rebuild cartilage,” “rejuvenate joints” and/or “rejuvenate cartilage,” Schiff may seek the agreement of Settlement Class Counsel to modify this Paragraph of the Settlement Agreement. If the Parties are not able to agree, Schiff may seek relief from the Court.

V. CLAIMS’ PROCESS

A. Notice And Submission Of Claims. The Class Notice shall provide information regarding the filing of Claim Forms. Claim Forms shall be available from the Settlement Administrator and on the Settlement Website. To file a Valid Claim, Settlement Class Members must: (1) complete a Claim Form, providing all of the information and documentation required by the Settlement Agreement and the Claim Form; (2) sign the Claim Form and state under penalty of perjury the number of bottles of Covered Products purchased, the names of the Covered Products purchased and the approximate dates and locations of the purchases; (3) indicate whether he or she is enclosing Adequate Proof of Purchase with his or her Claim Form and, if so, provide the same with the completed Claim Form; and (4) return the completed and signed Claim Form and Adequate Proof of Purchase, if any, to the Settlement Administrator no later than one hundred twenty (120) Days after the Preliminary Approval Date, *i.e.*, the Claim Deadline. Only Settlement Class Members who submit Valid Claims shall be entitled to a Cash Award.

B. Determination Of Validity. The Settlement Administrator shall be responsible for reviewing all claims to determine their validity.

(i) Any claim that is not substantially in compliance with the instructions on the Claim Form or the terms of this Settlement Agreement or is postmarked or submitted electronically later than the Claim Deadline, shall be rejected.

(ii) Following the Claim Deadline, the Settlement Administrator shall provide a report of any rejected claims to Schiff's Counsel and Settlement Class Counsel. If Settlement Class Counsel do not agree with the rejection of a claim, they shall bring it to the attention of Schiff's Counsel, and the Parties shall meet and confer and attempt, in good faith, to resolve any dispute regarding the rejected claim. Following their meet and confer, the Parties will provide the Settlement Administrator with their positions regarding the disputed, rejected claim. The Settlement Administrator, after considering the positions of the Parties, will make the final decision in its sole discretion.

C. **Fraudulent Filings.** At any time during the claims' process, if the Settlement Administrator has a reasonable suspicion of fraud, the Settlement Administrator shall immediately notify both Settlement Class Counsel and Schiff's Counsel of that fact and the basis for its suspicion. Settlement Class Counsel and Schiff's Counsel shall endeavor to reach an agreed appropriate solution to any suspected fraud and, if necessary, Schiff may suspend the claims' process, and the Parties will promptly seek assistance from the Court.

D. **Timing Of Schiff's Payment Obligations.** Schiff shall have no obligation to make any payments under this Settlement Agreement until the Court enters a Preliminary Approval Order.

(i) After entry of the Preliminary Approval Order, Schiff shall pay reasonable Notice and Administration Costs arising under this Settlement Agreement by making such payments directly to the Settlement Administrator (or to such other party incurring such costs) as

those costs are incurred and payment becomes due. Schiff shall pay Notice and Administration costs of up to \$1,500,000. If Notice and Administration Costs exceed \$1,500,000, Schiff may, in its sole discretion, elect to withdraw from the Settlement Agreement.

(ii) Except as otherwise provided herein, all payments to Settlement Class Members who submit Valid Claims will be made within one hundred twenty (120) Days after the Effective Date.

(iii) Schiff shall pay any Attorneys' Fee Award and any Incentive Award awarded by the Court, up to the maximums specified in Section VI Paragraph A, within fourteen (14) Days after the Effective Date.

VI. ATTORNEYS' FEES AND COSTS AND INCENTIVE AWARD

A. **Attorneys' Fee Award.** The law firms of BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.; DENLEA & CARTON LLP and STEWART M. WELTMAN, LLC will apply to the Court for an aggregate award of attorneys' fees and actual expenses (including their court costs) in an amount not to exceed \$3,000,000. Schiff will not oppose application(s) for an Attorneys' Fee Award of up to an aggregate amount of \$3,000,000, to be paid by Schiff separate and apart from, and without diminishing or eroding, the payment of Cash Awards to Settlement Class Members described in Section IV Paragraphs A-B. Settlement Class Counsel agrees that upon payment by Schiff of the Attorneys' Fee Award as directed by the Court, Schiff's obligations to Settlement Class Counsel shall be fully satisfied and discharged, and Settlement Class Counsel shall have no further or other claim against Schiff, including but not limited to a claim for enforcement of any attorneys' lien.

B. **Incentive Awards.** The Named Plaintiffs will apply collectively for Incentive Awards not to exceed \$10,000. Schiff agrees not to object to the Named Plaintiffs' application for such Incentive Award and to pay any Incentive Award (not to exceed \$10,000) that is awarded by

the Court, separate and apart from, and without diminishing or eroding, the payment of Cash Awards to Settlement Class Members described in Section IV Paragraphs A-B.

C. **Attorneys' Fee Award and Incentive Award.** Any order or proceedings relating to the applications for the Attorneys' Fee Award and the Incentive Award, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the finality of Final Order and Judgment approving the Settlement Agreement and the Settlement.

VII. SETTLEMENT NOTICE, OBJECTIONS AND OPT-OUT RIGHTS

A. The Settlement Administrator will work under the direction of Settlement Class Counsel and Schiff's Counsel.

B. The Parties will seek a determination from the Court regarding the best practicable notice procedure ("Settlement Class Notice Program") as described in the Motion for Preliminary Approval and in the exhibits thereto.

C. Any Settlement Class Member who intends to object must do so on or before the Opt-Out and Objection Date. In order to object, the Settlement Class Member must include in the objection submitted to the Court and served on Settlement Class Counsel and Schiff's Counsel: (a) the name, address, telephone number of the Person objecting and, if represented by counsel, of his/her counsel; (b) a signed declaration stating that he or she is a member of the Settlement Class and purchased one or more of the Covered Products; (c) a statement of all objections to the Settlement; and (d) a statement of whether he or she intends to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of his or her counsel who will attend. Any Settlement Class Member who fails to file and serve timely a written objection and notice of his or her intent to appear at the Fairness Hearing pursuant to this Paragraph and as detailed in the Class Notice, shall not be permitted to object to the approval of the Settlement at the Fairness

Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

D. A member of the Settlement Class who wishes to opt-out of the Settlement Class must complete and send to the Settlement Administrator a request for exclusion that is post-marked no later than the Opt-Out and Objection Date. The request for exclusion must be personally signed by the member of the Settlement Class requesting exclusion, contain a statement that indicates his or her desire to be excluded from the Settlement Class and contain a statement that he or she is otherwise a member of the Settlement Class and purchased one or more of the Covered Products. A member of the Settlement Class may opt-out on an individual basis only; so-called “mass” or “class” opt-outs shall not be allowed.

E. Except for those members of the Settlement Class who timely and properly file a request for exclusion, all members of the Settlement Class will be deemed to be Settlement Class Members for all purposes under the Settlement Agreement, and upon the Effective Date, will be bound by its terms, regardless of whether they file a Claim Form or receive any monetary relief.

F. Any member of the Settlement Class who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Litigation or relating to the Settlement; (b) be entitled to relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement.

G. The Settlement Administrator shall provide Settlement Class Counsel and Schiff’s Counsel with the Opt-Out List within seven (7) Days after the Opt-Out and Objection Date.

VIII. SETTLEMENT APPROVAL PROCESS

After execution of this Settlement Agreement, the Parties shall promptly move the Court to enter the Preliminary Approval Order that is without material alteration from Exhibit C hereto, which:

- A. Preliminarily approves this Settlement Agreement;
- B. Preliminarily certifies the Settlement Class;
- C. Finds that the proposed Settlement is sufficiently fair, reasonable and adequate to warrant providing notice to the Settlement Class;
- D. Schedules a Fairness Hearing on final approval of this Settlement and Settlement Agreement to consider the fairness, reasonableness and adequacy of the proposed Settlement and whether it should be finally approved by the Court, such Fairness Hearing to take place not less than one hundred forty (140) Days after the Preliminary Approval Date;
- E. Appoints the Settlement Administrator in accordance with in accordance with Section III Paragraph C of this Settlement Agreement;
- F. Approves the Class Notice, and directs the Settlement Administrator to disseminate the Class Notice in accordance with the Settlement Class Notice Program;
- G. Finds that the Settlement Class Notice Program: (i) is the best practicable notice, (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Litigation and of their right to object to or to exclude themselves from the proposed settlement, (iii) is reasonable and constitutes due, adequate and sufficient notice to all Persons entitled to receive notice, and (iv) meets all requirements of applicable law;
- H. Requires the Settlement Administrator to file proof of compliance with the Settlement Class Notice Program at or before the Fairness Hearing;

I. Approves the Claim Form, the content of which is without material alteration from Exhibit A to this Settlement Agreement, and sets a Claim Deadline;

J. Approves the creation of the Settlement Website in accordance with the terms of this Settlement Agreement;

K. Requires any member of the Settlement Class who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no later than the Opt-Out and Objection Date, or as the Court may otherwise direct, to the Settlement Administrator at the address on the Class Notice;

L. Orders that any member of the Settlement Class who does not submit a timely, written request for exclusion from the Settlement Class (*i.e.*, becomes an Opt-Out) will be bound by all proceedings, orders and judgments in the Litigation, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release;

M. Requires any Settlement Class Member who does not become an Opt-Out and who wishes to object to the fairness, reasonableness or adequacy of this Settlement or Settlement Agreement to file with the Court and serve on Settlement Class Counsel and Schiff's Counsel no later than the Opt-Out and Objection Date, or as the court may otherwise direct, a statement of the objection signed by the Settlement Class Member containing all of the following information:

- (i) The objector's full name, address, and telephone number;
- (ii) A signed declaration that he or she is a member of the Settlement Class and purchased the Covered Product(s);
- (iii) A written statement of all grounds for the objection;

(iv) A statement of whether the objector intends to appear at the Fairness Hearing; and

(v) If the objector intends to appear at the Fairness Hearing through counsel, the objection must also identify the attorney representing the objector who will appear at the Fairness Hearing;

N. Any response to an objection shall be filed with the Court no later than seven (7) Days prior to the Fairness Hearing;

O. Specifies that any Settlement Class Member who does not file a timely written objection to the Settlement or who fails to otherwise comply with the requirements of Section VII Paragraph C of this Settlement Agreement shall be foreclosed from seeking any adjudication or review of this Settlement by appeal or otherwise;

P. Requires that any attorney hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement, the Attorneys' Fee Award or the Incentive Award and who intends to make an appearance at the Fairness Hearing to provide to the Settlement Administrator (who shall forward it to Settlement Class Counsel and Schiff's Counsel) and to file with the Clerk of the Court a notice of intention to appear no later than the Opt-Out and Objection Date or as the Court may otherwise direct;

Q. Requires any Settlement Class Member who files and serves a written objection and who intends to make an appearance at the Fairness Hearing shall so state in their objection papers or as the Court otherwise may direct;

R. Directs the Settlement Administrator to establish a post office box in the name of the Settlement Administrator to be used for receiving requests for exclusion and any other communications, and providing that only the Settlement Administrator, Settlement Class Counsel,

Schiff's Counsel, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in this Settlement Agreement;

S. Directs that Settlement Class Counsel shall file their applications for the Attorneys' Fee Award and Named Plaintiffs' Incentive Award in accordance with the terms set forth in Section VI Paragraph A of this Settlement Agreement;

T. Orders the Settlement Administrator to provide the Opt-Out List to Settlement Class Counsel and Schiff's Counsel no later than seven (7) Days after the Opt-Out and Objection Date, and then file with the Court the Opt-Out List with an affidavit attesting to the completeness and accuracy thereof no later than five (5) Days thereafter or on such other date as the Parties may direct;

U. Preliminarily enjoins all members of the Settlement Class unless and until they have timely excluded themselves from the Settlement Class from (i) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims; (ii) filing, commencing, participating in or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any member of the Settlement Class who has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims; and (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to or arising out of the claims and causes of action or the facts

and circumstances giving rise to the Litigation and/or the Released Claims. Any Person who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by Schiff and/or any other Released Person and Settlement Class Counsel as a result of the violation. This Settlement Agreement is not intended to prevent members of the Settlement Class from participating in any action or investigation initiated by a state or federal agency; and

V. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement and the proposed settlement.

IX. FINAL ORDER AND JUDGMENT AND RELEASES

A. **Final Order.** If this Settlement Agreement (including any modification thereto made with the consent of the Parties as provided for herein) is approved by the Court following the Fairness Hearing scheduled by the Court in its Preliminary Approval Order, the Parties shall request the Court to enter a Final Order and Judgment pursuant to the Federal Rules of Civil Procedure and all applicable laws that, among other things:

(i) Finds that the Court has personal jurisdiction over the Named Plaintiffs and all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement and Settlement Agreement and all exhibits thereto;

(ii) Certifies a Settlement Class solely for purposes of this Settlement;

(iii) Grants final approval to this Settlement Agreement as being fair, reasonable and adequate as to all Parties and consistent and in compliance with all requirements of due process and applicable law, as to and in the best interests of all Parties and directs the Parties and their counsel to implement and consummate this Settlement Agreement in accordance with its terms and provisions;

(iv) Declares this Settlement Agreement and the Final Order and Judgment to be binding on and have *res judicata* and preclusive effect in all pending and future lawsuits or

other proceedings encompassed by the Release maintained by or on behalf of the Named Plaintiffs and all Settlement Class Members, as well as their respective present, former and future administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors-in-interest and successors;

(v) Finds that the Settlement Class Notice Program: (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Litigation, of their right to object to or exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing and of their right to seek monetary and other relief, (iii) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice, and (iv) met all requirements of due process and any other applicable law;

(vi) Approves the Claim Form that was distributed to the Settlement Class, the content of which was without material alteration from Exhibit A to this Settlement Agreement;

(vii) Finds that Settlement Class Counsel and the Named Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and Settlement Agreement;

(viii) Dismisses the Litigation now pending before the Court on the merits and with prejudice and without fees or costs except as provided herein, in accordance with the terms of the Final Order and Judgment;

(ix) Adjudges that the Named Plaintiffs and the Settlement Class have conclusively compromised, settled, dismissed and released any and all Released Claims against Schiff and the Released Persons;

(x) Approves payment of the Attorneys' Fee Award and the Named Plaintiffs' Incentive Award;

(xi) Without affecting the finality of the Final Order and Judgment for purposes of appeal, reserves jurisdiction over the Settlement Administrator, Schiff, the Named Plaintiffs and the Settlement Class Members as to all matters relating to the administration, consummation, enforcement and interpretation of the terms of the Settlement, the Settlement Agreement and Final Order and Judgment and for any other necessary purposes;

(xii) Provides that upon the Effective Date, the Named Plaintiffs and all Settlement Class Members, whether or not they return a Claim Form within the time and in the manner provided for, shall be barred from asserting any Released Claims against Schiff and/or any Released Persons, and any such Settlement Class Members shall have released any and all Released Claims as against Schiff and all Released Persons;

(xiii) Determines that the Settlement Agreement and the Settlement provided for therein and any proceedings taken pursuant thereto are not and should not in any event be offered or received as evidence of, a presumption, concession or an admission of liability or of any misrepresentation or omission in any statement or written document approved or made by Schiff or any Released Persons or of the suitability of these or similar claims to class treatment in active litigation and trial; provided, however, that reference may be made to this Settlement Agreement and the Settlement provided for therein in such proceedings solely as may be necessary to effectuate the Settlement Agreement;

(xiv) Bars and permanently enjoins all Settlement Class Members from (i) filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based

on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims, and (ii) organizing Settlement Class Members who have not excluded themselves from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency;

(xv) States that any Person who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by Schiff and/or any other Released Persons and Settlement Class Counsel as a result of the violation;

(xvi) Approves the Opt-Out List and determines that the Opt-Out List is a complete list of all members of the Settlement Class who have timely requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Order and Judgment, except for Opt-Outs who subsequently elect to submit Claim Forms during the Claim Period; and

(xvii) Authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Settlement Agreement and all exhibits hereto as (i) shall be consistent in all material respects with the Final Order and Judgment and (ii) do not limit the rights of the Parties or Settlement Class Members.

B. **Release Provisions.** As of the Effective Date, the Releasing Persons are deemed to have fully released and forever discharged the Released Persons of and from all Released Claims by operation of entry of the Final Order and Judgment.

(i) Subject to Court approval, all Settlement Class Members who have not excluded themselves from the Settlement Class shall be bound by this Settlement Agreement and the Release and all of their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Litigation or this Settlement.

(ii) Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements incurred by Settlement Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation, the Settlement, the administration of such Settlement and/or the Released Claims as well as any and all claims for the Incentive Award to the Named Plaintiffs and the Attorneys' Fee Award to Settlement Class Counsel.

(iii) The Releasing Persons and the Released Persons expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, 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 MIGHT HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Notwithstanding California or other law, the Releasing Persons and the Released Persons hereby expressly agree that the provisions, rights and benefits of Section 1542 and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction that may be applicable herein are hereby knowingly and voluntarily waived, released and relinquished to the fullest extent

permitted by law solely in connection with unknown claims that are the same as, substantially similar to, or overlap the Released Claims, and the Releasing Persons and the Released Persons hereby agree and acknowledge that this is an essential term of the Releases. In connection with the Release, the Releasing Persons and the Released Persons acknowledge that they are aware that they may hereafter discover claims presently unknown and unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to matters released herein, and that such claims, to the extent that they are the same as, substantially similar to, or overlap the Released Claims, are hereby released, relinquished and discharged.

(iv) Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

C. **Continuation Of Label Changes.** Schiff may elect, in its sole discretion, to continue the label changes identified in Section IV Paragraph C beyond the twenty-four (24) month required period. For as long as Schiff continues to comply with the terms of Section IV Paragraph C beyond the twenty-four (24) month required period, no Releasing Party may sue any Released Party based on any claim that was or could have been asserted in the Litigation.

D. **Additional Releases.** Except as to the rights and obligations provided for under this Agreement, Schiff releases and forever discharges as of the Effective Date the Named Plaintiffs, Settlement Class, and Settlement Class Counsel from any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, which the Released Persons may now have, own or hold or which the

Released Persons at any time may have, own, or hold, against the Named Plaintiffs, Settlement Class, or Settlement Class Counsel arising out of the Litigation and/or the Settlement.

X. WITHDRAWAL FROM OR TERMINATION OF SETTLEMENT

A. Within fifteen (15) Days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from the Settlement and terminate this Settlement Agreement:

(i) If the Court fails to approve the Settlement Agreement as written or if on appeal the Court's approval is reversed or modified;

(ii) If the Court materially alters any of the terms of the Settlement Agreement, except that a reduction in the Attorneys' Fee Award or the Incentive Award shall not be deemed to be a material alteration; or

(iii) If the Preliminary Approval Order, as described in Section VIII, or the Final Order and Judgment, as described in Section IX, is not entered by the Court or is reversed or modified on appeal, or otherwise fails for any reason.

B. In the event of a withdrawal pursuant to Paragraph A above, any certification of a Settlement Class will be vacated, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted in the Litigation to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Settlement Agreement.

C. If members of the Settlement Class properly and timely submit requests for exclusion from the Settlement Class as set forth in Section VII Paragraph D, thereby becoming Opt-Outs, are in a number more than the confidential number submitted to the Court by the Parties under seal at the time of filing the Motion for Preliminary Approval, then Schiff may elect in its sole discretion to withdraw from the Settlement and terminate this Settlement Agreement. In that

event, all of Schiff's obligations under this Agreement shall cease to be of any force and effect; the certification of the Settlement Class shall be vacated without prejudice to Schiff's position on the issue of class certification; and Schiff shall be restored to its litigation position existing immediately before the execution of this Settlement Agreement. In order to elect to withdraw from the Settlement and terminate this Settlement Agreement on the basis set forth in this Paragraph, Schiff must notify Settlement Class Counsel in writing of its election to do so within fourteen (14) Days after the Opt-Out List has been served on the Parties. In the event that Schiff exercises such right, Settlement Class Counsel shall have fourteen (14) Days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number on the Opt-Out List subsequently becomes and remains fewer than the number submitted to the Court under seal at the time of filing the Motion For Preliminary Approval, Schiff shall withdraw its election to withdraw from the Settlement and terminate the Settlement Agreement. In no event, however, shall Schiff have any further obligation under this Agreement to any Opt-Out unless he or she withdraws his or her request for exclusion. For purposes of this Paragraph, Opt-Outs shall not include (i) Persons who are specifically excluded from the Settlement Class under Section VII Paragraph D of the Settlement Agreement; (ii) Opt-Outs who elect to withdraw their request for exclusion; and (iii) Opt-Outs who agree to sign an undertaking that they will not pursue an individual claim, class claim or any other claim that would otherwise be a Released Claim as defined in this Settlement Agreement.

D. If Notice and Administration Costs exceed \$1,500,000, Schiff may, in its sole discretion, elect to withdraw from the Settlement Agreement.

E. In the event of withdrawal by any Party in accordance with the terms set forth in this Section X, the Settlement Agreement shall be null and void, shall have no further force and

effect with respect to any Party in the Litigation and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to Schiff, the Named Plaintiffs and the Settlement Class Members and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter or proposition of law and shall not be used in any manner for any purpose, and the Parties to the Litigation shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court.

XI. EFFECTIVE DATE

A. The Effective Date of this Settlement Agreement shall be the date when each and all of the following conditions have occurred:

(i) This Settlement Agreement has been fully executed by all Parties and their counsel;

(ii) Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement and approving the forms of Class Notice and Claim Form, all as provided above;

(iii) The Settlement Class Notice Program has been executed in accordance with the Preliminary Approval Order;

(iv) The Court has entered a Final Order and Judgment finally approving this Agreement, as provided above; and

(v) The Final Order and Judgment has become Final as defined in Paragraph B below.

B. “Final,” when referring to a judgment or order means that (i) the judgment is a final, appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the judgment having been commenced, the date by which such appeal or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of *certiorari*, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects.

C. If, for any reason, this Settlement Agreement fails to become Final pursuant to the foregoing Paragraph B, the orders, judgment and dismissal to be entered pursuant to this Settlement Agreement shall be vacated, and the Parties will be returned to the status *quo ante* with respect to the Litigation as if this Settlement Agreement had never been entered into.

XII. NOTICES

A. All Notices (other than the Class Notice and CAFA Notices) required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All Notices to Settlement Class Counsel shall be sent to Settlement Class Counsel, c/o:

Elaine A. Ryan
BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100

Jeffrey I. Carton
DENLEA & CARTON LLP
One North Broadway, Suite 509
White Plains, N.Y. 10601
Telephone: (914) 920-7400

All Notices to Schiff’s Counsel provided herein shall be sent to Schiff’s Counsel, c/o:

Mark S. Mester
Kathleen P. Lally
Latham & Watkins LLP
233 South Wacker Drive, Suite 5800
Chicago, Illinois 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

B. The notice recipients and addresses designated above may be changed by written notice.

C. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of comments, objections, requests for exclusion, or other documents or filings received as a result of the Class Notice.

XIII. MISCELLANEOUS PROVISIONS

A. **Interpretation.** This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior discussions, agreements or understandings among them as well as any and all prior drafts of this Settlement Agreement. All terms are contractual. For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that the Settlement Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party, and the Parties further agree that any prior drafts may not be used to construe or interpret this Settlement Agreement.

B. **Binding Effect.** The terms are and shall be binding upon each of the Parties hereto, their administrators, agents, assigns, attorneys, executors, heirs, partners, representatives, predecessors-in-interest and successors as well as upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Settlement Class Members.

C. **Headings.** The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

D. **No Rescission on Grounds of Mistake.** The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, the Parties agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake. Moreover, the Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

E. **Amendment.** This Settlement Agreement may be amended or modified only by a written instrument signed by the Parties or their counsel. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

F. **Integration Of Exhibits.** The exhibits to this Settlement Agreement are an integral and material part of the Settlement and are hereby incorporated and made a part of the Settlement Agreement.

G. **Jurisdiction.** The United States District Court for the Southern District of California has jurisdiction over the Parties to this Settlement Agreement and the Settlement Class.

H. **No Admission.** Neither this Settlement Agreement nor any of its provisions, its exhibits or related documents (including but not limited to drafts of the Settlement Agreement, the Preliminary Approval Order or the Final Order and Judgment), its negotiation or any proceedings

relating in any way to the Settlement shall be construed as or deemed to be evidence of an admission or concession by any person, including Schiff, and shall not be offered or received in evidence, or subject to discovery, in this or any other action or proceeding except in an action brought to enforce its terms or except as may be required by law or Court order. The provisions of this Paragraph shall become effective when this Settlement Agreement has been signed by the Parties and shall be binding on the Parties and their counsel regardless of whether the Settlement Agreement is approved by this Court or any other court and regardless of whether the Settlement Agreement is otherwise rendered null and void pursuant to Section X.

I. **Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of California.

J. **Counterparts.** This Settlement Agreement may be executed in counterparts and may be executed by facsimile, and as so executed shall constitute one agreement.

K. **No Media Statements.** Subject to the Preliminary Approval Order issued by the Court, neither the Named Plaintiffs nor Settlement Class Counsel or any other counsel acting on behalf of the Named Plaintiffs shall issue any press release, or make any statement to any media or press of any sort, regarding this Settlement, including any references on websites maintained by the Named Plaintiffs or Settlement Class Counsel, other than to state that the Litigation has been resolved on terms satisfactory to the Parties and contained in this Settlement Agreement. Settlement Class Counsel will be permitted to provide a link to the Settlement Website on their website with accompanying language to be reviewed and approved by Schiff and Schiff's Counsel, such approval not to be unreasonably withheld, before posting of the same.

L. **Confidentiality.** All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

M. **Return Of Material.** Within thirty (30) Days after the Effective Date, Settlement Class Counsel and Schiff's Counsel will return all material produced by one to the other in discovery or otherwise in connection with the Litigation.

N. **No Assignment.** The Named Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against the Released Persons that the Named Plaintiffs, or any of them, have or may have arising out of any allegations made in any of the actions comprising the Litigation or pertaining to any of the Released Claims, and no portion of any recovery or settlement to which the Named Plaintiffs, or any of them, may be entitled, has been assigned, transferred, or conveyed by or for the Named Plaintiffs, or any of them, in any manner; and no Person other than the Named Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of the Named Plaintiffs.

O. **Stay.** The Parties stipulate to stay all proceedings in the Litigation until the approval of this Settlement Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve final judicial approval of this Settlement Agreement.


P. **Dismissal of *Jayson v. Schiff International, Inc., et al.*** Upon entry of the Final Approval Order, Class Counsel and Named Plaintiff Muriel Jayson will seek a dismissal with prejudice of *Jayson v. Schiff Nutrition International, Inc., et al.*, No. 0:13-cv-60400-RSR (S.D. Fla. filed Feb. 20, 2013).

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

Plaintiffs:

Luis Lerma

By: _____



3/13/2014

Nick Pearson

By: _____

Muriel Jayson

By: _____

Approved as to form:

**BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.**

By: _____

Elaine A. Ryan
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100
Facsimile: (602) 274-1199

STEWART M. WELTMAN, LLC

By: _____

Stewart M. Weltman
53 West Jackson Boulevard, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

Plaintiffs:

Luis Lerma

By: _____

Nick Pearson

By:  _____

Muriel Jayson

By: _____

Approved as to form:

**BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.**

By: _____

Elaine A. Ryan
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100
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STEWART M. WELTMAN, LLC

By: _____

Stewart M. Weltman

53 West Jackson Boulevard, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

Plaintiffs:

Luis Lerma

By: _____

Nick Pearson

By: _____

Muriel Jayson

By: Muriel Jayson

Approved as to form:

**BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.**

By: _____

Elaine A. Ryan
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100
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STEWART M. WELTMAN, LLC

By: _____

Stewart M. Weltman

53 West Jackson Boulevard, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

Plaintiffs:

Luis Lerma

By: _____

Nick Pearson

By: _____

Muriel Jayson

By: _____

Approved as to form:

**BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.**

By:  _____

Elaine A. Ryan
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
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STEWART M. WELTMAN, LLC

By: _____

Stewart M. Weltman

53 West Jackson Boulevard, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized representatives below.

Plaintiffs:

Luis Lerma

By: _____

Nick Pearson

By: _____

Muriel Jayson

By: _____

Approved as to form:

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.

By: _____

Elaine A. Ryan
2325 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Telephone: (602) 274-1100
Facsimile: (602) 274-1199


STEWART M. WELTMAN, LLC

By:  _____

Stewart M. Weltman

53 West Jackson Boulevard, Suite 364
Chicago, Illinois 60604
Telephone: (312) 588-5033

DENLEA & CARTON LLP

By: 
Jeffrey I. Carton
One North Broadway, Suite 509
White Plains, N.Y. 10601
Telephone: (914) 920-7400
Facsimile: (914) 761-1900

Settlement Class Counsel

Defendants:

SCHIFF NUTRITION INTERNATIONAL, INC.

By: _____

Its: _____

SCHIFF NUTRITION GROUP, INC.

By: _____

Its: _____

Approved as to form:

LATHAM & WATKINS LLP

By: _____
Mark S. Mester
Kathleen P. Lally
233 South Wacker Drive, Suite 5800
Chicago, Illinois 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

Counsel for Defendants

DENLEA & CARTON LLP

By: _____
Jeffrey I. Carton
One North Broadway, Suite 509
White Plains, N.Y. 10601
Telephone: (914) 920-7400
Facsimile: (914) 761-1900

Settlement Class Counsel

Defendants:

SCHIFF NUTRITION INTERNATIONAL, INC.

By: _____

Its: _____

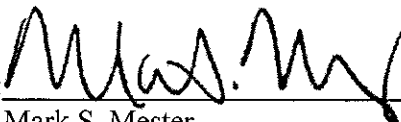
SCHIFF NUTRITION GROUP, INC.

By: _____

Its: _____

Approved as to form:

LATHAM & WATKINS LLP

By:  _____
Mark S. Mester
Kathleen P. Lally
233 South Wacker Drive, Suite 5800
Chicago, Illinois 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

Counsel for Defendants

EXHIBIT A

CLAIM FORM

Luis Lerma v. Schiff Nutrition International, Inc., et al., No. 3:11-cv-01056-CAB-MDD (S.D. Cal.)

Jayson v. Schiff Nutrition International, Inc., et al., No. 0:13-cv-60400-RSR (S.D. Fla.)

Use this Claim Form if are a resident of the United States and purchased for personal use, and not resale or distribution, a Move Free, Move Free Advanced, Pain Free, Lubriflex, Great American Nutrition, Metaform, Muscle Tribe, Victory, Schiff, Kirkland, Member's Mark or Spring Valley brand joint health product listed as a Covered Product on the settlement website [www. .com] between January 1, 2005 and [PRELIMINARY APPROVAL DATE].

**YOU MUST SUBMIT YOUR CLAIM FORM NO LATER THAN , 201 TO:
SETTLEMENT ADMINISTRATOR
[ADDRESS]**

A. PERSONAL INFORMATION

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

() _____ () _____

Area Code Daytime Phone No. Area Code Evening Telephone No.

Email Address: _____

** If you move or your name changes before you receive your payment, please send your new contact information to the Settlement Administrator at the address listed above.

B. CLAIM INFORMATION (Check All That Apply)

- I am a resident of the United States.
- I purchased one or more of the Covered Products between January 1, 2005 and [Preliminary Approval Order Date].
- These Covered Products were not purchased for purposes of resale or distribution.
- I am not (i) an officer, director, employee, agent, representative, or attorney of Schiff or its respective affiliates; (ii) an immediate family member of someone in subparagraph (i); or (iii) a judge or an immediate family member of a judge assigned to *Luis Lerma v. Schiff Nutrition International, Inc., et al., No. 3:11-cv-01056 (S.D. Cal.)* or *Jayson v. Schiff Nutrition International, Inc., et al., No. 0:13-cv-60400-RSR (S.D. Fla.)*.

C. SELECTION OF BENEFITS (Check All That Apply)

You may submit a claim to receive a Cash Award for Covered Products for which you *have* Adequate Proof of Purchase and for Covered Products for which you *do not* have Adequate Proof of Purchase by checking the appropriate boxes and completing the appropriate sections below. "Adequate Proof of Purchase" includes: (i) cash register receipts reflecting the purchase of a Covered Product; (ii) intact box or bottle for a Covered Product that displays a readable UPC code and a readable lot number; or (iii) similar documentation that identifies the Covered Product and date and location of purchase.

- I am making a claim based upon **Adequate Proof of Purchase**, which I have enclosed with this Claim Form (\$5 Per Bottle, Maximum of 10 Bottles per Household)

Questions? Call the Settlement Administrator at [1-800- -] or visit _____.

Mark the number of Adequate Proofs of Purchase you are enclosing:

- 1 2 3 4 5 6 7 8 9 10

- I am making a claim **without** Adequate Proof of Purchase (\$3 Per Bottle, Maximum of 4 Bottles per Household)

For each Covered Product *without* Adequate Proof of Purchase, please complete the table below:

1	Product Name: _____	Approx. Date of Purchase: _____	Store Name: _____	Store Location (City/State): _____
2	Product Name: _____	Approx. Date of Purchase: _____	Store Name: _____	Store Location (City/State): _____
3	Product Name: _____	Approx. Date of Purchase: _____	Store Name: _____	Store Location (City/State): _____
4	Product Name: _____	Approx. Date of Purchase: _____	Store Name: _____	Store Location (City/State): _____

D. CERTIFICATION

I state under penalty of perjury under the laws of the State in which this Certification is executed and the United States of America that I have not requested exclusion from the Settlement, and if I have requested exclusion from the Settlement, I acknowledge that the submission of this Claim Form rescinds my request for exclusion and reinstates me as a Settlement Class Member. I further state that I have read this Claim Form. The foregoing statements made and information provided in this Claim Form, and the information, documentation or letters I may submit in support of my claim, are true, correct and complete to the best of my knowledge and belief.

Dated: _____

Signature: _____

Printed Name: _____

THIS CLAIM FORM MUST BE POSTMARKED NO LATER THAN [DATE].

Please keep a copy of your completed Claim Form and any Adequate Proof of Purchase for your records.

Mail your completed Claim Form to: **SETTLEMENT ADMINISTRATOR [ADDRESS]**

If you fail to provide all the requested information your claim may be denied and you will not receive a Cash Award from this Settlement.

Questions? Call the Settlement Administrator at [1-800-____-____] or visit _____.

EXHIBIT B

EXHIBIT A – LIST OF COVERED PRODUCTS			
Brand	Products	Dates of Sale	Geographic Location
Move Free	Move Free	2005 to [PA Date]	U.S.
Move Free	Move Free Apple Cinnamon Bar	2005 to [PA Date]	U.S.
Move Free	Move Free Chocolate Crunch Bar	2005 to [PA Date]	U.S.
Move Free	Move Free Bite Sized Chocolate Crunch Bar	2005 to [PA Date]	U.S.
Move Free	Move Free Double Strength	2005 to [PA Date]	U.S.
Move Free	Move Free Gelcaps	2005 to [PA Date]	U.S.
Move Free	Move Free Gummies	2005 to [PA Date]	U.S.
Move Free	Move Free Lean	2005 to [PA Date]	U.S.
Move Free	Move Free Maintains & Repairs	2005 to [PA Date]	U.S.
Move Free	Move Free Nighttime	2005 to [PA Date]	U.S.
Move Free	Move Free Osteo Care	2005 to [PA Date]	U.S.
Move Free	Move Free One	2005 to [PA Date]	U.S.
Move Free	Move Free Plus Calcium	2005 to [PA Date]	U.S.
Move Free	Move Free Plus Collagen	2005 to [PA Date]	U.S.
Move Free	Move Free Plus Energy	2005 to [PA Date]	U.S.
Move Free	Move Free Plus Gelatin	2005 to [PA Date]	U.S.
Move Free	Move Free Plus MSM	2005 to [PA Date]	U.S.
Move Free	Move Free Plus SAME	2005 to [PA Date]	U.S.
Move Free	Move Free Repair	2005 to [PA Date]	U.S.
Move Free	Move Free with Shark Cartilage	2005 to [PA Date]	U.S.
Move Free	Move Free Triple Strength	2005 to [PA Date]	U.S.
Move Free	Move Free Ultra	2005 to [PA Date]	U.S.
Move Free	Move Free Ultra Omega	2005 to [PA Date]	U.S.
Move Free	Move Free Ultra with Type II Collagen & Hyaluronic Acid	2005 to [PA Date]	U.S.
Move Free	Move Free Ultra with UC II & Hyaluronic Acid	2005 to [PA Date]	U.S.
Move Free	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005 to [PA Date]	U.S.
Move Free Advanced	Move Free Advanced	2005 to [PA Date]	U.S.
Move Free Advanced	Move Free Advanced 2 Per Day	2005 to [PA Date]	U.S.
Move Free Advanced	Move Free Advanced Plus MSM	2005 to [PA Date]	U.S.
Move Free Advanced	Move Free Advanced Plus MSM & Vitamin D	2005 to [PA Date]	U.S.
Move Free Advanced	Move Free Advanced Triple Strength	2005 to [PA Date]	U.S.
Move Free Advanced	Move Free Advanced Triple Strength Plus MSM & Vitamin D	2005 to [PA Date]	U.S.
Move Free Advanced	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005 to [PA Date]	U.S.
Pain Free	Pain Free	2005 to [PA Date]	U.S.
Pain Free	Pain Free Extra Strength	2005 to [PA Date]	U.S.
Pain Free	Pain Free Glucosamine Chondroitin Sulfate Complex	2005 to [PA Date]	U.S.
Pain Free	Pain Free Plus MSM	2005 to [PA Date]	U.S.
Pain Free	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex	2005 to [PA Date]	U.S.

	(regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)		
Schiff	Schiff Chondroitin Sulfate 500 mg	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine Complex 500 mg	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine Complex 1000 mg	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine Complex 1 g Joint Builder	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine 1000 mg	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine 1500 mg	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine 2000 mg	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine HCl 1500 mg	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine HCl 2000 mg	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine HCl 2000 mg with Joint Fluid	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine Plus MSM	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine HCl Plus MSM	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine HCl Plus MSM Shellfish Free & Vegetarian	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine HCl Plus Vitamin D	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine HCl Plus Vitamin D with Joint Fluid	2005 to [PA Date]	U.S.
Schiff	Schiff Glucosamine MSM Complex	2005 to [PA Date]	U.S.
Schiff	Schiff Joint Care Plus	2005 to [PA Date]	U.S.
Schiff	Schiff Joint Free Plus	2005 to [PA Date]	U.S.
Schiff	Schiff Joint Free Plus Collagen Glucosamine Chondroitin MSM	2005 to [PA Date]	U.S.
Schiff	Schiff Joint Free Plus Glucosamine	2005 to [PA Date]	U.S.
Schiff	Schiff Joint Free Plus MSM	2005 to [PA Date]	U.S.
Schiff	Schiff MSM 500	2005 to [PA Date]	U.S.
Schiff	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005 to [PA Date]	U.S.
Lubrifix	Lubrifix ³	2005 to [PA Date]	U.S.
Lubrifix	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005 to [PA Date]	U.S.
Great American Nutrition	Move Free	2005 to [PA Date]	U.S.
Great American Nutrition	Pain Free	2005 to [PA Date]	U.S.
Great American Nutrition	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005 to [PA Date]	U.S.
Metaform	Pain Free	2005 to [PA Date]	U.S.
Metaform	Pain Free +	2005 to [PA Date]	U.S.
Metaform	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005 to [PA Date]	U.S.
Muscle Tribe	Pain Free Plus	2005 to [PA Date]	U.S.
Muscle Tribe	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005 to [PA Date]	U.S.
Victory	Glucosamine	2005 to [PA Date]	U.S.

Victory	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005 to [PA Date]	U.S.
Kirkland	Kirkland Signature Clinical Strength Glucosamine 1500 mg Chondroitin 1200 mg	2010-[PA Date]	WA, ID, AK, MT, UT, OR, CA, NV, HI
Kirkland	Kirkland Signature Extra Strength Glucosamine HCl 1500 mg Chondroitin Sulfate 1200 mg	2010-[PA Date]	WA, ID, AK, MT, UT, OR, CA, NV, HI
Kirkland	Kirkland Signature Extra Strength Glucosamine HCl 1500 mg with MSM 1500 mg	2008-[PA Date]	WA, ID, AK, MT, UT, OR, CA, NV, HI, AZ, CO, NM
Member's Mark	Member's Mark Glucosamine HCl	2008-2011	U.S.
Member's Mark	Member's Mark Glucosamine HCl + MSM	2008-2011	U.S.
Member's Mark	Member's Mark Triple Strength Glucosamine Chondroitin	2009-2011	U.S.
Member's Mark	Member's Mark Triple Strength Glucosamine Chondroitin Complex	2005	U.S.
Spring Valley	Spring Valley Double Strength Glucosamine Chondroitin	2005-2007	U.S.
Spring Valley	Spring Valley Triple Strength Glucosamine Chondroitin	2005-2011	U.S.
Spring Valley	Spring Valley Triple Strength Glucosamine Chondroitin Plus MSM	2005-2010	U.S.
Spring Valley	Spring Valley Triple Strength Glucosamine Chondroitin Plus MSM & Vitamin D3	2010-2011	U.S.

EXHIBIT C

1 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
2 Elaine A. Ryan (*Admitted pro hac vice*)
Patricia N. Syverson (203111)
3 2325 E. CAMELBACK ROAD, Suite 300
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5
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9 Attorneys for Plaintiffs

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14 Mark.Mester@lw.com
Kathleen.Lally@lw.com

15 Attorneys for Defendants
16 SCHIFF NUTRITION INTERNATIONAL, INC.
and SCHIFF NUTRITION GROUP, INC.

17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA

19
20 LUIS LERMA, an Individual, and
NICK PEARSON, and Individual, On
21 Behalf of Themselves and All Others
Similarly Situated,

22 Plaintiffs,

23 v.

24 SCHIFF NUTRITION
INTERNATIONAL, INC., a Delaware
25 Corporation, and SCHIFF
NUTRITION GROUP, INC., a Utah
26 Corporation

27 Defendants.
28

CASE NO. 3:11-cv-01056-CAB-MDD

CLASS ACTION

[PROPOSED] PRELIMINARY
APPROVAL ORDER

1 Plaintiffs Luis Lerma, Nick Pearson and Muriel Jayson (collectively,
2 “Named Plaintiffs”) and Defendants Schiff Nutrition International, Inc. and Schiff
3 Nutrition Group, Inc. (collectively, “Schiff”) have entered into a Settlement
4 Agreement and General Release (“Settlement Agreement”) to settle this Litigation
5 and the Named Plaintiffs have filed an Unopposed Motion for Entry of Preliminary
6 Approval Order (“Motion for Preliminary Approval”). The Settlement Agreement,
7 the exhibits thereto and the exhibits to the Motion for Preliminary Approval, set
8 forth the terms and conditions for a proposed Settlement and dismissal with
9 prejudice of this Litigation.

10 Having reviewed the Settlement Agreement and its exhibits, the
11 Motion for Preliminary Approval, the pleadings and other papers on file in this
12 action, and statements of counsel, the Court finds that the Motion for Preliminary
13 Approval should be GRANTED and that this Preliminary Approval Order should
14 be entered. Terms and phrases used in this Preliminary Approval Order shall have
15 the same meaning ascribed to them in the Settlement Agreement.

16 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

17 1. The Court preliminarily approves the Settlement Agreement subject to
18 the Fairness Hearing for purposes of deciding whether to grant final approval to the
19 Settlement.

20 2. For settlement purposes only, the Court conditionally certifies the
21 following Settlement Class:

22 All residents of the United States who purchased for personal use, and not
23 resale or distribution, a Covered Product between January 1, 2005 and the
Preliminary Approval Date.

24 Specifically excluded from the Settlement Class are the following persons:

- 25 (i) Schiff and its respective affiliates, employees, officers, directors,
26 agents, and representatives and their immediate family members;
27 (ii) Settlement Class Counsel; and
28 (iii) The judges who have presided over the Litigation and their immediate
family members.

1 3. The Court expressly reserves the right to determine, should the
2 occasion arise, whether the Named Plaintiffs' proposed claims may be certified as
3 a class action for purposes other than settlement, and Schiff hereby retains all
4 rights to assert that the Named Plaintiffs' proposed claims may not be certified as a
5 class action except for settlement purposes.

6 4. For settlement purposes only, the Court appoints the following
7 attorneys to act as Settlement Class Counsel:

8 Elaine A. Ryan
9 BONNETT, FAIRBOURN,
10 FRIEDMAN & BALINT, P.C.
11 2325 East Camelback Road, Suite
12 300
13 Phoenix, Arizona 85016
14 Telephone: (602) 274-1100

 Stewart M. Weltman
 STEWART M. WELTMAN, LLC
 53 West Jackson Boulevard, Suite 364
 Chicago, Illinois 60604
 Telephone: (312) 588-5033

 Jeffrey I. Carton
 DENLEA & CARTON LLP
 One North Broadway, Suite 509
 White Plains, N.Y. 10601
 Telephone: (914) 920-7400

15 5. For settlement purposes only, the Court appoints the Named Plaintiffs
16 as representatives of the Settlement Class.

17 6. The Court finds that the proposed Settlement is sufficiently fair,
18 reasonable and adequate to warrant providing notice to the Settlement Class. This
19 determination permitting notice to the Settlement Class is not a final finding, but a
20 determination that there is probable cause to submit the proposed Settlement
21 Agreement to the Settlement Class and to hold a Fairness Hearing to consider the
22 fairness, reasonableness, and adequacy of the proposed Settlement.

23 7. The Court schedules a Fairness Hearing on final approval of the
24 Settlement and Settlement Agreement to consider the fairness, reasonableness and
25 adequacy of the proposed Settlement and whether it should be finally approved by
26 the Court, such Fairness Hearing to take place on _____, 201_, at ____
27 a.m./p.m.
28

1 8. The Court appoints KCC Class Action Services as Settlement
2 Administrator in accordance with Section III Paragraph C of the Settlement
3 Agreement.

4 9. The Court approves the Class Notice, the content of which is without
5 material alteration from Attachment B to Exhibit 1 to the Declaration of Gina
6 Intrepido-Bowden, and directs the Settlement Administrator to publish the Class
7 Notice in accordance with the Settlement Class Notice Program provided for in the
8 Declaration of Gina Intrepido-Bowden.

9 10. The Court finds the Settlement Class Notice Program implemented
10 pursuant to the Settlement Agreement (i) is the best practicable notice, (ii) is
11 reasonably calculated, under the circumstances, to apprise the Settlement Class of
12 the pendency of the Litigation and of their right to object to or to exclude
13 themselves from the proposed settlement, (iii) is reasonable and constitutes due,
14 adequate and sufficient notice to all persons entitled to receive notice, and
15 (iv) meets all requirements of applicable law.

16 11. The Court orders the Settlement Administrator to file proof of
17 compliance with the Settlement Class Notice Program at or before the Fairness
18 Hearing.

19 12. The Court approves the Claim Form, the content of which is without
20 material alteration from Exhibit A to the Settlement Agreement, and directs that
21 the Claim Form be available for request (either by letter or telephone) from the
22 Settlement Administrator and downloadable from the Settlement Website.

23 13. The Court orders that any Settlement Class Member who wishes to
24 receive benefits under the Settlement must sign and return a complete and timely
25 Claim Form in compliance with the process set forth in the Settlement Agreement
26 no later than one-hundred twenty (120) Days from the entry of this Order. Any
27 Settlement Class Member who does not submit a complete and timely Claim Form
28 in compliance with the Settlement Agreement shall not be entitled to any benefits

1 under the Settlement, but nonetheless shall be barred by the Release and provisions
2 of the Settlement Agreement and the Final Order and Judgment.

3 14. The Court approves the creation and maintenance of the Settlement
4 Website that shall include, at a minimum, downloadable copies of the Class
5 Notice, Claim Form and Settlement Agreement and shall be maintained in
6 accordance with terms of the Settlement Agreement.

7 15. The Court orders any members of the Settlement Class who wish to
8 exclude themselves from the Settlement Class to submit appropriate, timely
9 requests for exclusion in accordance with the procedures outlined in the Settlement
10 Agreement and Class Notice, postmarked no later than one hundred twenty (120)
11 Days from the entry of this Order, or as the Court may otherwise direct, and sent to
12 the Settlement Administrator at the address on the Class Notice.

13 16. The Court orders that any member of the Settlement Class who does
14 not submit a timely, written request for exclusion from the Settlement Class (*i.e.*,
15 become an Opt-Out) on or before one hundred twenty (120) Days from the entry of
16 this Order will be bound by all proceedings, orders and judgments in the Litigation,
17 even if such Settlement Class Member has previously initiated or subsequently
18 initiates individual litigation or other proceedings encompassed by the Release (as
19 set forth in Section II Paragraphs Z-CC of the Settlement Agreement).

20 17. The Court orders that any Settlement Class Member who does not
21 become an Opt-Out and who wishes to object to the fairness, reasonableness, or
22 adequacy of the Settlement or Settlement Agreement to file with the Court and
23 serve on Settlement Class Counsel and Schiff's Counsel no later than one hundred
24 twenty (120) Days from the entry of this Order, or as the Court may otherwise
25 direct, a statement of the objection signed by the Settlement Class Member
26 containing all of the following information:

27 a. The objector's full name, address, and telephone number;
28

- 1 b. A signed declaration that he or she is a member of the
- 2 Settlement Class and purchased Covered Product(s);
- 3 c. A written statement of all grounds for the objection;
- 4 d. A statement of whether the objector intends to appear at the
- 5 Fairness Hearing; and
- 6 e. If the objector intends to appear at the Fairness Hearing through
- 7 counsel, the objection must also identify the attorney
- 8 representing the objector who will appear at the Fairness
- 9 Hearing.

10 18. The Court orders that any response to an objection shall be filed with

11 the Court no later than seven (7) days prior to the Fairness Hearing

12 19. The Court orders that any Settlement Class Member who does not file

13 a timely written objection to the Settlement or who fails to otherwise comply with

14 the requirements of Section VII Paragraph C of the Settlement Agreement shall be

15 foreclosed from seeking any adjudication or review of the Settlement by appeal or

16 by any other means.

17 20. The Court orders that any attorney hired by a Settlement Class

18 Member for the purpose of objecting to the proposed Settlement, the Attorneys’

19 Fee Award or the Incentive Award and who intends to make an appearance at the

20 Fairness Hearing to provide to the Settlement Administrator (who shall forward it

21 to Settlement Class Counsel and Schiff’s Counsel) and to file with the Clerk of the

22 Court a notice of intention to appear no later than one hundred twenty (120) Days

23 from the entry of this Order or as the Court may otherwise direct. Counsel who do

24 not adhere to these requirements will not be heard at the Fairness Hearing.

25 21. The Court directs the Settlement Administrator to establish a post

26 office box in the name of the Settlement Administrator to be used for receiving

27 requests for exclusion, and any other communications, and providing that only the

28 Settlement Administrator, Settlement Class Counsel, Schiff’s Counsel, the Court,

1 the Clerk of the Court and their designated agents shall have access to this post
2 office box, except as otherwise provided in the Settlement Agreement.

3 22. The Court directs that Settlement Class Counsel shall file their
4 applications for the Attorneys' Fee Award and Named Plaintiffs' Incentive Award
5 one hundred ten (110) Days from the entry of this Order in accordance with the
6 terms set forth in Section VI Paragraph A of the Settlement Agreement.

7 23. The Court orders the Settlement Administrator to provide the Opt-Out
8 List to Settlement Class Counsel and Schiff's Counsel no later than seven (7) Days
9 after the Opt-Out and Objection Date, and then file with the Court the Opt-Out List
10 with an affidavit attesting to the completeness and accuracy thereof no later than
11 five (5) Days thereafter or on such other date as the Parties may direct.

12 24. The Court preliminary enjoins all members of the Settlement Class
13 unless and until they have timely excluded themselves from the Settlement Class
14 from (i) filing, commencing, prosecuting, intervening in or participating as
15 plaintiff, claimant or class member in any other lawsuit or administrative,
16 regulatory, arbitration or other proceeding in any jurisdiction based on, relating to
17 or arising out of the claims and causes of action or the facts and circumstances
18 giving rise to the Litigation and/or the Released Claims; (ii) filing, commencing or
19 prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding
20 as a class action on behalf of any member of the Settlement Class who has not
21 timely excluded himself or herself (including by seeking to amend a pending
22 complaint to include class allegations or seeking class certification in a pending
23 action), based on, relating to or arising out of the claims and causes of action or the
24 facts and circumstances giving rise to the Litigation and/or the Released Claims;
25 and (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or
26 administrative, regulatory, arbitration or other proceeding based on, relating to or
27 arising out of the claims and causes of action or the facts and circumstances giving
28 rise to the Litigation and/or the Released Claims. Any person or entity who

1 knowingly violates such injunction shall pay the attorneys' fees and costs incurred
2 by Schiff and/or any other Released Person and Settlement Class Counsel as a
3 result of the violation. The Settlement Agreement is not intended to prevent
4 members of the Settlement Class from participating in any action or investigation
5 initiated by a state or federal agency.

6 25. The Court reserves the right to adjourn or continue the Fairness
7 Hearing, or any further adjournment or continuance thereof, without further notice
8 other than announcement at the Fairness Hearing or at any adjournment or
9 continuance thereof, and to approve the Settlement with modifications, if any,
10 consented to by the Settlement Class Counsel and Schiff's Counsel without further
11 notice.

12 26. All pretrial proceedings in the Litigation are stayed and suspended
13 until further order of this Court.

14 27. In the event that the Settlement Agreement is terminated pursuant to
15 its terms or is not approved in all material respects by the Court, or such approval
16 is reversed, vacated, or modified in any material respect by the Court or by any
17 other court, the certification of the Settlement Class shall be deemed vacated, the
18 Litigation shall proceed as if the Settlement Class had never been certified, and no
19 reference to the Settlement Class, the Settlement Agreement, or any documents,
20 communications, or negotiations related in any way thereto shall be made for any
21 purpose in the Litigation or in any other action or proceeding.

22 28. Neither the Settlement Agreement, nor any of its provisions, nor any
23 of the documents (including but not limited to drafts of the Settlement Agreement,
24 this Preliminary Approval Order or the Final Order and Judgment), negotiations, or
25 proceedings relating in any way to the Settlement, shall be construed as or deemed
26 to be evidence of an admission or concession by any person, including Schiff, and
27 shall not be offered or received in evidence, or subject to discovery, in this or any
28

1 other action or proceeding except in an action brought to enforce its terms or
2 except as may be required by law or Court order.

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4 **Dated:** _____

_____ **Hon. Mitchell D. Dembin**

U.S. District Judge

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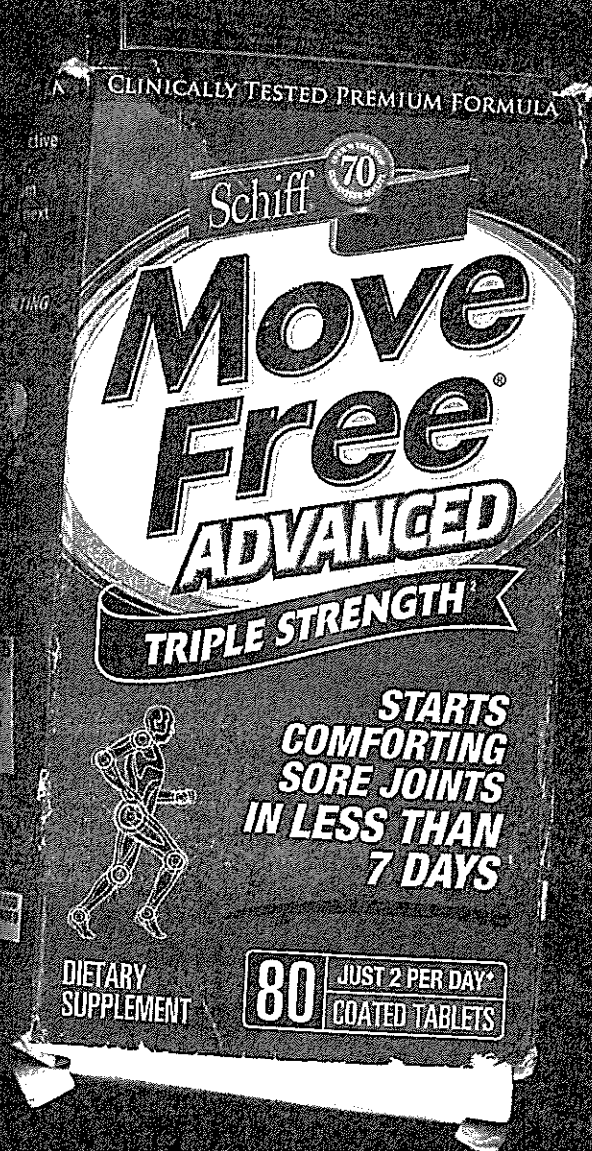
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EXHIBIT 2



CLINICALLY TESTED PREMIUM FORMULA

At Schiff®, we're dedicated to finding the most effective ways to help people move better and feel better. Move Free® Advanced's clinically tested premium formula takes Glucosamine/Chondroitin to the next level by adding our advanced ingredients. *So, it actually helps improve your joint health.*

MOVE FREE® ADVANCED STARTS COMFORTING SORE JOINTS IN LESS THAN 7 DAYS.¹

We're also dedicated to making our tablets easy to swallow, which is why Move Free® Advanced has smaller tablets than other leading joint care brands.² Our exclusive Schiff® state-of-the-art technology allows us to pack the same amounts of our powerful ingredients into a smaller, easy-to-swallow tablet.



PROUD SPONSOR
of the



Schiff®, the maker of Move Free®, is proud to support the Arthritis Foundation's efforts to help people take control of arthritis. For information about arthritis, contact the Foundation at 800-568-4045 or www.arthritis.org

¹ Human clinical study (Los Angeles, 2008).

² Refers to the amount of key ingredients in each individual tablet.

³ Move Free® Advanced tablets are smaller than other leading joint care products containing the combination of glucosamine and chondroitin.

*** THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.**



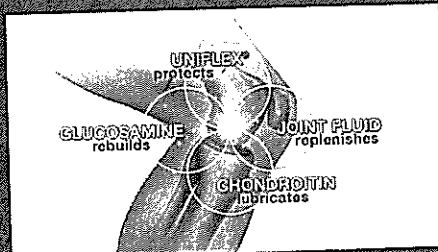
Schiff's SURE DISSOLVE tablets are formulated to disintegrate within one hour.

CLINICALLY TESTED PREMIUM FORMULA

Our Schiff's Move Free® Advanced Triple Strength formula contains advanced, premium-quality ingredients to comfort your sore joints *with just two tablets* per day*:

UNIFLEX® – A ground-breaking dual bioflavonoid antioxidant system that protects joints from harmful oxidants that accelerate the breakdown of cartilage and joint tissues.*

JOINT FLUID – Helps to lubricate, rejuvenate, re-hydrate and repair joints.* Clinical studies show that oral hyaluronic acid is absorbed into joints. (Balogh, L. et al., *J Ag Food Chem* 2008)



GLUCOSAMINE – Helps by strengthening, protecting and rebuilding joints.*

CHONDROITIN – Assists in lubricating and cushioning joints.*

For more information visit www.MoveFreeAdvanced.com

Move Better, Feel Better®
with Move Free.®

Directions: For best results this product needs to be taken consistently at the recommended dose. For the first two weeks, take two (2) tablets twice a day with food (four (4) tablets daily).
 *After the two week loading phase, take two (2) tablets once a day with food.

Supplement Facts

Serving Size Two (2) Tablets
 Servings Per Container 40

Amount Per Serving	% Daily Value
Glucosamine Hydrochloride	1.5 g (1500 mg) *
Chondroitin Sulfate	200 mg *
Uniflex Proprietary Extract	250 mg *
Chinese Scullcap (<i>Scutellaria baicalensis</i>)(root), Black Catechu (<i>Acacia catechu</i>)(bark) and Maltodextrin	
Joint Fluid (Hyaluronic Acid)	3.3 mg *

*Daily Value not established.

Other Ingredients: Cellulose, coating (hydroxypropyl methylcellulose, modified corn starch, titanium dioxide, polyethylene glycol, magnesium trisilicate, glycerin), croscarmellose sodium, magnesium stearate, silicon dioxide, hydroxypropyl cellulose.

Contains soy and shellfish (shrimp, crab, lobster and crayfish).

Manufactured by: SCHIFF NUTRITION GROUP, INC.
 SALT LAKE CITY, UT 84104 USA
 For information call: 1-800-526-6251 (8am-5pm MST M-F)
www.MoveFreeAdvanced.com

Chondroitin Sulfate is derived from bovine and porcine sources.

Note: If pregnant, lactating or on prescribed medication, consult your physician before using.

GUARANTEED: No added sugar (sucrose, fructose, lactose), salt (sodium chloride), yeast, wheat, gluten or milk. No preservatives or artificial flavors.

KEEP OUT OF REACH OF CHILDREN.
 STORE IN A COOL, DRY PLACE WITH LID TIGHTLY CLOSED.

Start Earning Points with

**Schiff.
Loyalty Rewards**

It's Easy! Simply visit
www.SchiffLoyaltyRewards.com
and follow the on-screen directions to
enter the code located on top of the bottle cap.
Valid for U.S. residents only.





Free* Advanced starts comforting sore joints
in less than 7 days and it's clinically tested.†

Free* Advanced - A ground-breaking dual bioflavonoid
system that protects joints from harmful
enzymes that accelerate the breakdown of cartilage and
bone.

Free* Advanced - Helps to lubricate, rejuvenate, re-hydrate and
protect joints. Clinical studies show that oral hyaluronic acid
helps lubricate joints. (Balogh, L. et al., / *Ag Food Chem* 2008)

Free* Advanced - Helps by strengthening, protecting and
cushioning joints.

Free* Advanced - Assists in lubricating and cushioning joints.

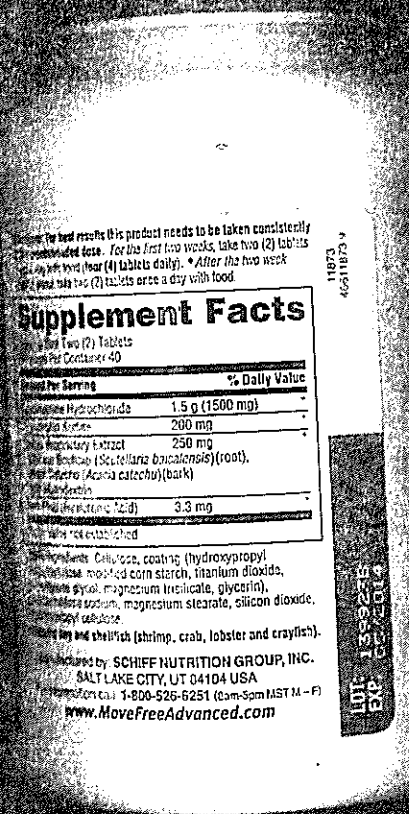
Free* Advanced STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD
AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED
TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.

Free* Advanced contains Gelatin derived from bovine and porcine sources.
If you are pregnant, lactating or on prescribed medication, consult your
physician before using.

Free* Advanced - **KEEP OUT OF REACH OF CHILDREN.**
Store in a cool, dry place with lid tightly closed.

See the back of the bottle for details.
*Amount of key ingredients in each individual tablet.

CLINICALLY TESTED PREMIUM FORMULA



For best results this product needs to be taken consistently at the recommended dose. For the first two weeks, take two (2) tablets with each meal (four (4) tablets daily). After the two week period, take two (2) tablets once a day with food.

Supplement Facts

Two (2) Tablets
Per Container 40

Amount Per Serving	% Daily Value
Glucosamine Hydrochloride	1.5 g (1500 mg)
Chondroitin Sulfate	200 mg
Non-proprietary Extract	250 mg
Green Tea Extract (Sesellaria baicalensis)(root),	
Green Tea Extract (Acacia catechu)(bark)	
MSM	
Benfonic Acid	3.3 mg

Other Ingredients: Cellulose, coating (hydroxypropyl methylcellulose, croscarmellose sodium, polyethylene glycol, magnesium stearate, titanium dioxide, croscarmellose sodium, magnesium stearate, silicon dioxide, hydroxypropyl cellulose).

Contains shellfish (shrimp, crab, lobster and crayfish).
Manufactured by SCHIFF NUTRITION GROUP, INC.
SALT LAKE CITY, UT 84104 USA
For more information call 1-800-526-6251 (8am-5pm MST M-F)
www.MoveFreeAdvanced.com

11873
4611873

LOT: 130626
BO: 03/10/14

Earn Points with
Schiff
Loyalty Rewards
4/11/12 CAR 8
CODE INSIDE
PEEL HERE

Proud sponsor of the
ARTHRITIS
FOUNDATION®

**THE FORMULA
9 OUT OF 10 DOCTORS PREFER**

CLINICALLY TESTED FORMULA!

**STARTS COMFORTING
SORE JOINTS
IN LESS THAN 7 DAYS**

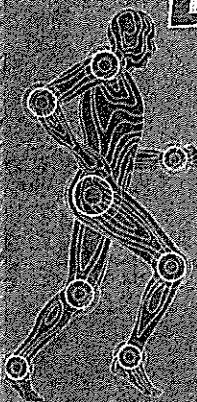
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↑ TO OPEN TEAR HERE



Schiff ⁷⁰
**Move Free®
ADVANCED**
GLUCOSAMINE • CHONDROITIN
UNIFLEX® • JOINT FLUID

TRIPLE STRENGTH



**SMALLER TABLET
THAN OTHER LEADING
JOINT CARE BRANDS***

EASIER TO SWALLOW



ACTUAL
SIZE

*BASED ON STATE OF THE ART TECHNOLOGY

JUST 2 PER DAY*
140 COATED TABLETS

DIETARY
SUPPLEMENT

THE FORMULA 9 OUT OF 10 DOCTORS PREFER²

Proud sponsor of the
ARTHRITIS
FOUNDATION

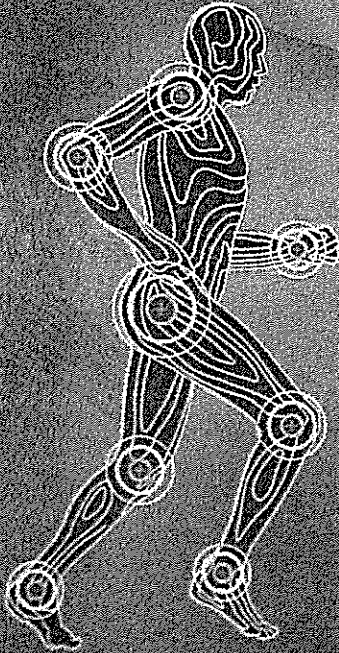
Schiff



Move Free[®] ADVANCED

GLUCOSAMINE • CHONDROITIN
UNIFLEX[®] • JOINT FLUID

TRIPLE STRENGTH
PLUS MSM &
VITAMIN D



CLINICALLY TESTED!

**STARTS
COMFORTING
SORE JOINTS
IN LESS THAN
7 DAYS¹**

DIETARY
SUPPLEMENT

JUST 2 TABLETS PER DAY*

80 COATED TABLETS

FREE! STARTER PACK • NOT FOR RETAIL SALE

Proud sponsor of the **ARTHRITIS FOUNDATION**

Schiff **70+**

Move Free[®] ADVANCED

GLUCOSAMINE • CHONDROITIN
UNIFLEX[®] • JOINT FLUID

TRIPLE STRENGTH

DIETARY SUPPLEMENT

28 COATED TABLETS

CLINICALLY TESTED!
STARTS COMFORTING SORE JOINTS IN LESS THAN 7 DAYS

WITH THE ADVANTAGE OF **4** UNIFLEX[®] JOINT FLUID GLUCOSAMINE CHONDROITIN

UNIFLEX[®] protects*
GLUCOSAMINE rebuilds*
CHONDROITIN lubricates*
JOINT FLUID replenishes*

3 **ARTHRITS** **ADVANCED** **Clinically Tested Premium Formula**

Schiff
SINCE 1936

Move Free
ADVANCED

SMALLER TABLET
THAN OTHER LEADING
JOINT CARE BRANDS



TRIPLE STRENGTH

Starts comforting
sore joints in
less than 7 days



DIETARY SUPPLEMENT 160 COATED TABLETS

THIS STATEMENT HAS NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

100% GUARANTEE OR MONEY BACK

USP

Supplement Facts

Amount Per Serving	% Daily Value
Glucosamine HCL (500mg)	100%
Chondroitin Sulfate (500mg)	100%
MSM (500mg)	100%
Other Ingredients	

FOR MORE INFORMATION VISIT www.schiff.com/advances

EARN POINTS

Schiff
Loyalty Rewards

Earn points for valuable rewards. See cap sticker for details.

What is Small, Red, Powerful and Supports Cardiovascular Health?

Compare to Fish Oil

- Just 1 Small Softgel Per Day
- Powerful Antioxidants
- No Fishy Odor or Aftertaste

For more information visit
www.MoveFreeAdvanced.com
 or call 1-800-526-6251



Why just mast joint discomfort when you can actually improve your joint health?

- Starts Comforting Sore Joints in Less Than 7 Days
- Clinically Tested Premium Formula
- Quality Inspected Ingredients
- Trusted Brand that Works

For more information visit
www.MoveFreeAdvanced.com
 or call 1-800-526-6251



MILITARY COUPON EXPIRES 6-30-2011

FH11

\$5 OFF
 on Schiff® MegaRed
 Krill Oil product



Retailer Price:
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Side effects may include an increased passion for life.

Want to improve your joint health?

Feel like you can do anything with Move Free® Advanced. It starts comforting sore joints in less than 7 days.¹ Clinically-tested Move Free® Advanced has the formula with the Advantage of 4[®], so it actually helps improve your joint health. And having healthier joints allows you to do the things you've always loved to do.

For more information, visit www.MoveFreeAdvanced.com or call 1-800-526-6251

THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.

1 Independent human clinical study (Los Angeles, 2008)

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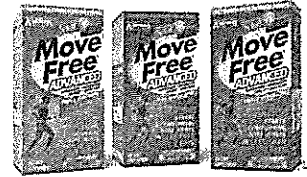
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SCHIFF-00184062

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20 UNITED STATES DISTRICT COURT

21 SOUTHERN DISTRICT OF CALIFORNIA

22 LUIS LERMA, an Individual, and NICK
23 PEARSON, an Individual, On Behalf of
Themselves and All Others Similarly
Situating,

24 Plaintiffs,

25 v.

26 SCHIFF NUTRITION INTERNATIONAL,
27 INC., a Delaware Corporation, and SCHIFF
NUTRITION GROUP, INC., a Utah
Corporation

28 Defendants.

CASE NO.: 11-CV-01056-CAB-MDD

CLASS ACTION

**EXPERT REPORT OF
DR. THOMAS J. SCHNITZER M.D.,
PH.D**

1 pharmaceutical companies, assisting in the design of clinical research studies in the areas
2 of osteoarthritis and pain and the interpretation of the data collected from such studies.

3 2. A copy of my curriculum vitae is attached as Exhibit A, setting forth my
4 publications for the last ten years. I have not testified either at trial or by deposition in
5 any matter in the last four years.
6

7 3. I have been retained to provide expert analysis and expert testimony in this
8 matter, and I am being compensated at my usual rates of \$500 for analysis, \$600 per hour
9 for deposition testimony and \$700 for trial testimony. My compensation is in no way
10 dependent on the outcome of this litigation.
11

12 4. As a consequence of my interest and expertise in osteoarthritis clinical
13 research, I have had involvement with an extremely broad range of therapeutic agents that
14 were being evaluated for efficacy and safety in the treatment of people with osteoarthritis
15 and/or joint pain. These agents included all of the newer oral non-steroidal anti-
16 inflammatory drugs (NSAIDs) that have been most recently developed (selective cox-2
17 inhibitors, such as celecoxib and rofecoxib), many of the older NSAIDs (naproxen,
18 ibuprofen, diclofenac, piroxicam and others) as well as topical agents (NSAIDs,
19 capsaicin), intra-articular therapies (various hyaluronans, other agents) and other orally
20 available analgesic agents, including acetaminophen and opioids, and over-the-counter
21 glucosamine and/or chondroitin sulfate products. Most recently, I have worked with
22 some of my basic science colleagues at Northwestern to study the placebo response after
23 administration of oral agents to people with musculoskeletal pain.
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1 5. I have been asked to provide my opinions regarding the Move Free line of
2 dietary supplements with regards to the efficacy of these products, when used by people
3 either with or free of arthritis, who have purchased them. Specifically, I have been asked
4 to provide my opinion regarding the statements appearing on the labeling of the various
5 Move Free products during the four years preceding the filing of this action up to and
6 including the present day, including that : (1) glucosamine hydrochloride's ability to
7 strengthen, protect and rebuild joints; (2) chondroitin sulfate's ability to assist in
8 "lubricating and cushioning joints"; (3) vitamin D promoting "healthier joint cartilage";
9 (4) oral hyaluronic acid (which the labeling calls "Joint Fluid") helping "lubricate,
10 rejuvenate, re-hydrate and repair joints"; (5) its "Uniflex Proprietary Extract" (comprised
11 of Chinese Scullcap, Black Catechu and Maltodextrin) as a "grounding-breaking dual
12 bioflavinoid antioxidant system that protects joints from harmful oxidants that accelerate
13 the breakdown of cartilage and joint tissues" ; (6) that its Uniflex Proprietary Extract and
14 Joint Fluid "when added to glucosamine, doubled the effectiveness vs. glucosamine and
15 chondroitin alone"; (7) that the products were "clinically tested" and "2X more effective
16 at comforting sore joints"; (8) that the products were "clinically tested" to work in just 1-
17 2 weeks (with 83% of people improving joint comfort, 78% improving daily activities,
18 and 72% improving physical functioning); and (9) an apparently new version of "Uniflex"
19 with "FruitX-B Calcium Fructoborate) that "protects and comforts sore joints."

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24 6. These representations noted above address providing relief for groups of
25 symptoms that are commonly considered to constitute the clinical condition of
26 osteoarthritis. Furthermore, almost all of the clinical studies done with the ingredients
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1 included in Move Free have been done in people suffering from knee, hip or back
2 osteoarthritis. Knee studies have predominated, primarily because the knee is the most
3 common large joint to be affected in osteoarthritis, thus permitting timely implementation
4 of adequately controlled and conducted trials. However, it should be noted that the knee
5 serves as a good proxy for other joints and forms of osteoarthritis and musculoskeletal
6 pain, and that systemic products that have shown efficacy at the knee have been found to
7 be effective at other joint sites and for improvement in a wide range of symptoms
8 associated with musculoskeletal pain.
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11 7. From a scientific viewpoint, the demonstration of efficacy of a product
12 requires evidence of superiority to placebo, or in some cases non-inferiority (strictly
13 defined in statistical terms) to another known effective agent. Thus, the litmus test of
14 efficacy of a product requires presence of confirmatory data from well-designed and well-
15 implemented placebo-controlled clinical trials. Additionally, the effect that is
16 demonstrated in these trials has to meet standards of clinical significance and not simply
17 statistical significance, that is, the magnitude of the benefit has to be great enough to be
18 perceptible and meaningful to the patient and not simply reflect small, inconsequential
19 differences.¹
20
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22 8. The earliest clinical trials with glucosamine were undertaken in Europe
23 during the early 1980s and 1990s and involved almost exclusively glucosamine sulfate.
24 These were small trials and the majority focused simply on pain relief.²⁻⁷ All reported
25 positive results, with several reporting pain relief of such a magnitude as to raise questions
26 regarding study conduct. A few studies done during the period also evaluated effects on
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1 cartilage, evaluated by measurement of joint space width, and also reported positive
2 results with glucosamine.^{8,9} Many of these studies done during this period, however,
3 failed to meet the well-recognized standards for good clinical practice; there were
4 significant methodological limitations, as well as small sample sizes, which significantly
5 reduce the confidence one can have in the outcomes reported. This lack of confidence in
6 the data was accepted within the scientific community at the time and expressed in the
7 conclusions of a review and meta-analysis published at the time which called for
8 additional well designed and well conducted studies to be undertaken by investigators
9 independent of the manufacturers.¹⁰

12 9. Apparently based largely on these previously discussed early European
13 trials, a number of manufacturers, including the manufacturer of Move Free, began
14 producing and selling products containing glucosamine, as the hydrochloride salt (for
15 which there were extremely limited data) or glucosamine sulfate, alone or in combination
16 with chondroitin sulfate, for joint difficulties and symptoms of osteoarthritis. Once
17 products like Move Free and others with similar constituents became more widely used in
18 the United States, they came under greater scrutiny by scientists and clinical investigators.
19 It was evident, as has been pointed out, that few appropriately designed and well
20 conducted studies about these products existed. Because of the lack of high quality
21 studies with glucosamine and chondroitin, a number of clinical investigators initiated
22 studies in the early 2000's to provide more data with which one could have greater
23 confidence. Results of these studies involving glucosamine hydrochloride alone or in
24 combination with chondroitin sulfate showed no clinical benefit over placebo.^{3,11}

1 Nevertheless, because of the earlier positive studies with glucosamine sulfate, there
2 remained a degree of uncertainty regarding if glucosamine or chondroitin compounds
3 could provide benefit.

4
5 10. At this time, the safety concerns of nonsteroidal anti-inflammatory drugs,
6 both regarding gastrointestinal safety (prominent in NSAIDs like naproxen and ibuprofen,
7 available over-the-counter and by prescription) and cardiovascular safety (initially
8 predominantly involving selective cox-2 inhibitors like Vioxx and Celebrex), had risen to
9 prominence, and there was a great desire to re-evaluate any agent for osteoarthritis which
10 could be taken safely. Because glucosamine hydrochloride and chondroitin sulfate had
11 not been shown to have any significant side effects, these compounds were then subject to
12 yet another round of investigation. The largest of these trials was funded by the National
13 Institute of Health and was carefully designed by biostatisticians and clinical investigators
14 and rigorously conducted at a number of sites across the United States.¹² The study was
15 given the acronym GAIT based on its title: Glucosamine/Chondroitin Arthritis
16 Intervention Trial. I was one of the investigators participating in the trial and also an
17 author of the main publication presenting the major outcomes of the study. The study was
18 a randomized double-blind trial that evaluated glucosamine hydrochloride alone,
19 chondroitin sulfate alone, and the combination of the two versus placebo and also had an
20 arm that received celecoxib as a means of validating the study. 1583 participants were
21 studied over 24 weeks in order to examine longer term efficacy and safety of these
22 compounds on pain, and a subgroup of these participants were treated for 24 months in
23 total to evaluate even longer-term effects on pain and cartilage (joint space width –
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1 JSW).^{13,14} The conclusion of the primary 24 week study stated: “Glucosamine and
2 chondroitin sulfate alone or in combination did not reduce pain.” An exploratory analysis
3 of the data, not prespecified but done post-hoc, suggested the possibility that the
4 combination of glucosamine hydrochloride and chondroitin sulfate may be effective in
5 participants with moderate to severe OA and recommended further studies to support or
6 refute this possibility. However, further study of the same group of participants over the
7 full 2 years found no evidence for benefit in this subset and no further studies of the
8 combination have been reported. In regard to effects on cartilage, in this study “At 2
9 years, no treatment reached a predefined threshold of clinically significant difference in
10 JSW loss as compared to placebo.” Thus, neither glucosamine hydrochloride nor
11 chondroitin sulfate, alone or in combination, was clinically better than placebo for either
12 symptom relief or cartilage maintenance.
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16 11. It is my opinion that this study is the most definitive study of glucosamine
17 and chondroitin sulfate, used alone and in combination, and provides the most reliable
18 data regarding the clinical effects of these agents in people with osteoarthritis. It is my
19 opinion that based on this study alone, the weight of scientific evidence supports the
20 lack of efficacy of glucosamine hydrochloride and chondroitin sulfate, used alone or in
21 combination for providing benefits for joint health. Thus, the scientific evidence is clear
22 that Move Free is not effective at producing the joint health benefits that appear on its
23 package labels.
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1 12. The GAIT study is not the only credible evidence to support my conclusion
2 that Move Free is not effective at providing joint health benefits. Since the GAIT study,
3 there have been other high-quality clinical trials which have come to similar conclusions
4 regarding putative benefits of both glucosamine and chondroitin sulfate for pain relief or
5 maintenance of cartilage and joint integrity.¹⁵⁻¹⁸ Thus, the vast weight of high-quality,
6 credible evidence supports that glucosamine hydrochloride fails to provide joint health
7 benefits, and similarly, the vast weight of high-quality, credible evidence supports that
8 chondroitin sulfate fails to provide joint health benefits.
9

10
11 13. The GAIT trial and many of the others have studied people with knee OA
12 for the reasons outlined above. However, as with other systemic treatments, these results
13 can be extrapolated to reflect a lack of expected joint benefit at other sites in the body.
14 Additionally, the results of the studies in osteoarthritis are considered as reasonable
15 proxies for what might be expected in people having general musculoskeletal pain and
16 discomfort.
17

18 14. Move Free denotes a line of products, some of which contain other
19 components in addition to glucosamine hydrochloride and/or chondroitin sulfate. These
20 additional constituents include “Uniflex Proprietary Extract” (250 Mg) (consisting of
21 Chinese Scullcap, Black Catechu and Maltodextrin), methylsulfonylmethane (MSM),
22 hyaluronic acid (HA), vitamin D or vitamin D3, and a new “Uniflex” formula consisting
23 of Calcium Fructoborate.
24

25
26 15. Uniflex Proprietary extract contains 2 herbal extracts (Chinese scullcap and
27 black catechu). No studies of their efficacy for joint health have been reported.
28

1 However, studies with Limbrel, a product containing a proprietary mixture derived from
2 scullcap, have claimed efficacy in people with OA, but the studies are of poor quality and
3 thus the results lack credibility. The largest study¹⁹ was open-label and uncontrolled; a
4 comparison trial with naproxen^{20,21} failed to use the appropriate statistical test to
5 demonstrate equivalence of the two treatments (primary outcome) and reported that over
6 90% of people in both treatment groups had significant improvement during the study, an
7 outcome that has not been reported in any other OA trial I am familiar with involving any
8 prescription or over the counter medication and raising serious questions about the
9 study's quality. It should be noted that 2 cases of hepatotoxicity were reported in 2010²²
10 in people taking a MoveFree product containing Uniflex ,and an additional 4 cases of
11 liver toxicity with flavocoxid have been reported in 2012²³. It appears that sometime
12 subsequent to the 2010 report, the Uniflex formula in Move Free products was changed
13 and Chinese scullcap and black catechu were removed, from some Move Free products,
14 and replaced by Calcium fructoborate (discussed below). I have been informed by
15 counsel for Plaintiffs that a Move Free product containing the old Uniflex formula is still
16 being sold at retail outlets. In my opinion, the Uniflex formula containing Chinese
17 Scullcap and Black Catechu had no beneficial effect on joint health and has been shown
18 to result in potential for serious harm.

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23 16. Calcium fructoborate provides a source of boron. Boron has been investigated in a
24 wide variety of medical conditions.. Studies in osteoarthritis with this formulation^{24,25}
25 report no statistical or clinical difference in efficacy compared to placebo. In my many
26 years of treating patients for OA, I have never heard of a compound of this nature being
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1 recommended for use to manage the symptoms of OA. In my opinion, the Uniflex formula
2 containing calcium fructoborate has no beneficial effect on joint health.

3 17. For MSM, another ingredient used in some preparations of Move Free, there
4 are no credible, high-quality studies demonstrating benefit in joint health, and a significant
5 number of studies have either demonstrated no benefit in pain relief or other symptom
6 benefits (e.g. a lack of efficacy) or have been methodologically flawed.²⁶⁻²⁸ In my
7 opinion, MSM provides no joint health benefits.
8

9 18. Hyaluronic acid is another constituent in some Move Free products. When
10 injected into the joint, several preparations of hyaluronic acid have been approved by
11 regulatory agencies, including the FDA, for pain relief in knee osteoarthritis. However, it
12 is difficult to conceive how oral hyaluronic acid preparations could show joint health
13 benefits as it would be expected to be rapidly degraded during digestion to its
14 constituents, two common sugars available in our normal diet. Therefore, its use in Move
15 Free products will not provide any of the joint health benefits claimed.
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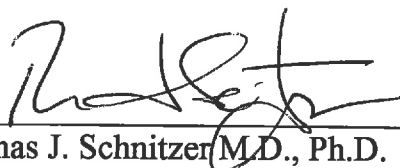
18 19. Other constituents included in various Move Free products include vitamin
19 D and vitamin D3. In my opinion, these constituents of Move Free products are not
20 effective in the relief of symptoms of osteoarthritis and provide no joint health benefits.
21

22 20. It is my opinion based on the considerable body of high-quality scientific
23 evidence available that Move Free does not provide any of the joint health benefits listed
24 in paragraph 5 above. A vast weight of evidence supports that the ingredients in Move
25 Free (either alone or in combination) work no better than placebo and that people who
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1 bought Move Free would have been just as well off having taken a simple sugar pill
2 (placebo).

3 21. It is my opinion, based on the scientific evidence, that there is a high
4 placebo response rate (percentage of treated individuals reporting improvement) for all
5 treatments directed at musculoskeletal pain.^{29,30} Furthermore, the magnitude of the pain
6 relief from placebo may be similar to what may be observed with known, effective agents.
7 The basis for such placebo responses has been extensively investigated, and recent
8 scientific studies have provided a neurophysiologic basis for this response.³¹
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11 22. Because of the nature of the placebo response in the clinical setting of pain,
12 it is to be expected that any product, even if completely ineffective, will result in
13 perceived symptomatic improvement in a significant proportion of affected people,
14 generally in the range of 30-40% with an oral agents and 40-50% and higher with
15 injectable agents.^{29,31} Thus, it is of no surprise that an agent such as Move Free , when
16 marketed with the representations made, would be perceived by many individuals as
17 providing pain relief, just as placebo would be.³⁰ It is my opinion that this underlies the
18 wide use of glucosamine- and chondroitin-containing dietary supplements in general, and
19 Move Free in this case, for joint symptoms.
20
21

22
23 By: 
24 Thomas J. Schnitzer M.D., Ph.D.

25
26 Dated: January 8, 2013
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Endnotes

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EXHIBIT 4



ABOUT THE FIRM

Bonnett, Fairbourn, Friedman & Balint, P.C. is an AV rated firm of 28 lawyers. Our clients include many individuals and local businesses, as well as major national and international companies in a wide range of civil litigation in both federal and state courts.

The firm has developed a recognized practice in the area of complex commercial litigation, including major class actions and is widely regarded as the preeminent firm in Arizona representing plaintiffs in class action proceedings. Over the last twenty years, the firm has successfully handled more than 100 class action lawsuits. We have represented consumers and victims in a wide range of class action proceedings, including actions alleging antitrust claims, securities fraud, civil rights claims and consumer fraud.

Our antitrust practice includes the prosecution of class claims on behalf of direct purchasers of products as well as indirect purchaser claims. These antitrust cases include, among others, class actions against Microsoft, MasterCard, Apple Computer and sellers of products such as polyester and rubber chemicals, waste management services, financial products and other industries. In addition to our class action practice, the firm also has represented plaintiffs in individual litigation asserting antitrust claims, including Culligan International.

Bonnett, Fairbourn, Friedman & Balint has taken a leading role in numerous important actions on behalf of consumers and investors, and we have been responsible for many outstanding results that have yielded dozens of multi-million dollar recoveries for class members in Arizona and throughout the United States.

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PRACTICE AREAS

CLASS ACTION

Bonnett, Fairbourn, Friedman & Balint represents consumers and investors in major class action cases in federal and state courts throughout the United States. Under the direction of Andrew S. Friedman, the firm's class action section represents plaintiff classes in the following areas:

Securities Fraud: Protects institutional shareholders and individual investors from corporate fraud and mismanagement.

Consumer Protection: Protects consumers from defective products and fraudulent marketing practices.

Antitrust: Protects individuals and businesses from price fixing, unfair business practices and other anticompetitive conduct.

Civil Rights and Employment: Protects employees and consumers against unfair practices and racial, age, gender, and other forms of discrimination.

Insurance and Health Care: Represents victims of fraud and unfair sales practices by life insurance companies and HMOs.

Tobacco: Seeks redress for fraudulent marketing of "Light" cigarettes as a less toxic version of "Full Flavor" varieties.

False Claims and Whistleblowers: Provides for awards to individuals who uncover false claims for payment submitted to the federal government.

SECURITIES

Bonnett, Fairbourn, Friedman & Balint has extensive experience in plaintiffs' class action securities cases in and out of the State of Arizona. Its attorneys have recovered substantial verdicts and settlements in various high-profile cases representing bondholders who have suffered significant losses due to the criminal activities of individuals in the securities and banking industries, including victimized investors in the Lincoln Savings scandal.

APPELLATE LITIGATION

Bonnett, Fairbourn, Friedman & Balint has extensive appellate experience at all levels of the state and federal court systems. Attorneys from the firm have appeared before the Arizona Court of Appeals, the Arizona Supreme Court, and numerous U.S. Circuit Courts. Decisions to appeal a matter are not made lightly by the firm; we carefully analyze the likelihood of a positive result for the client against the potential cost of an unfavorable outcome. Although we draw on the clerking and practical experience of many of our attorneys in making this analysis, a fully informed client is always an integral part of this process.



ELAINE A. RYAN is a firm shareholder. Her practice has focused on complex litigation, including class action litigation, since the early 1990's.

Ms. Ryan has represented millions of retail consumers, holders of automobile and health insurance policies, credit card customers, and debit card holders. She practices in both state and federal courts throughout the country.

Ms. Ryan was trial counsel in *Smith v. American Family Insurance Company*, a Missouri class action, wherein after a 3 and a half week jury trial, a unanimous jury awarded plaintiffs \$17.4 million in damages. Ms. Ryan was also trial counsel in *Lebrilla v. Farmers Insurance Group, Inc.*, a multi-state class action which settled on terms favorable to the class after a month long trial and just before closing arguments. Also, Ms. Ryan was involved in obtaining a settlement in *White v. State Farm Mut. Auto. Ins. Co.* (exceeding \$2.25 million) in Arizona state court.

Ms. Ryan has represented millions of purchasers of consumer products, including food, vitamin supplements and over-the-counter drugs, cosmetics and sunscreen products, and fitness apparel, in state and federal courts throughout the United States in cases arising out of various unfair business practices and false and deceptive advertising claims made by manufacturers and retailers, including: Procter & Gamble, Chattem, General Mills, Kellogg, Bayer, Clorox, WD-40, Dean Foods, Mead Johnson, Pharmavite, NBTY/Rexall, Schiff, Neutrogena, Maybelline, Walgreen Co., Wal-Mart, CVS, Groupon, Living Social, Reebok and Sketchers. Ms. Ryan assumed a leadership role in many of these cases, and was appointed Co-Lead Plaintiffs' Counsel in *In re: Hydroxycut Marketing and Sales Practices Litigation*, No. 09-02087 (S.D. Cal.). Ms. Ryan had an instrumental role in reaching settlements with many of the above retailers and manufacturers, resulting in millions of dollars of relief to the class members, including the following: *Hartless v. Clorox Company*, 3:06-cv-02705-CAB (S.D. Cal.) (final approval Jan. 20, 2011); *In re: Enfamil Lipil Marketing and Sales Practices Litig.*, 11-MD-02222 (S.D. Fla.) (final approval Dec. 19, 2011); *Godec v. Bayer Corp.*, 1:10-cv-00224-JG (N.D. Ohio) (final approval March 14, 2013); *Duffer v. Chattem*, 3:11-cv-02735-W-WVG (S.D. Cal.) (final approval July 10, 2013).

Ms. Ryan has extensive experience litigating against life, auto and health insurance carriers on behalf of consumers. Her experience litigating against auto insurance companies includes representing policyholders whose cars were repaired with imitation parts, who were not compensated for necessary repairs and were not paid for their diminished value loss against a number of major insurers, including State Farm, Geico, Farmers, American Family, SafeCo, Hartford, Nationwide, Esurance and Allstate. Ms. Ryan also has represented policyholders in "vanishing premium" life insurance actions and medical providers in lawsuits against health insurers.

Ms. Ryan also has represented consumer credit card holders against several major retailers, and debit cardholders against major lending institutions. She was designated Team Co-Leader in *In re: Checking Account Overdraft Litigation, Larsen v. Union Bank* and *Dee v. Bank of the West*, MDL No. 2036 (S.D. Fl.).

Ms. Ryan also has been involved in precedent-setting appellate decisions in areas which include consumer and insurance law and class action procedure. These appellate decisions include *State ex rel. American Family Mut. Ins. Co. v. Clark*, 106 S.W.3d 483 (Mo. 2003) (automobile insurance and class action procedure); and *Lebrilla v. Farmers Group, Inc.*, 119 Cal. App. 4th 1070 (2004) (automobile insurance and class actions procedure).

Ms. Ryan is admitted to practice in the states of Arizona, Texas, Kansas, Missouri, Washington, Colorado, Utah and Idaho as well as the United States District Court for the District of Arizona, District of Eastern Michigan, District of Idaho, Western District of Wisconsin, and Northern District of Illinois. Ms. Ryan received her Juris Doctor from Duke University in 1989 and her Bachelor of Science with honors in Economics and Political Science from the University of Iowa in 1986.



PATRICIA N. SYVERSON is a firm shareholder. Her practice has focused on complex litigation, including class action litigation, since the early 2000's.

Ms. Syverson has represented millions of retail consumers, holders of automobile insurance policies, and credit card and debit card customers. She practices in both state and federal courts throughout the country.

Ms. Syverson was trial counsel in *Smith v. American Family Insurance Company*, a Missouri class action, wherein after a 3 and a half week jury trial, a unanimous jury awarded plaintiffs \$17.4 million in damages. Ms. Syverson was also trial counsel in *Lebrilla v. Farmers Insurance Group, Inc.*, a multi-state class action which settled on terms favorable to the class after a month long trial and just before closing arguments. Also, Ms. Syverson was involved in obtaining a settlement in *White v. State Farm Mut. Auto. Ins. Co.* (exceeding \$2.25 million) in Arizona state court.

Ms. Syverson has represented millions of purchasers of consumer products, including food, vitamin supplements and over-the-counter drugs, cosmetics and sunscreen products, and fitness apparel, in state and federal courts throughout the United States in cases arising out of various unfair business practices and false and deceptive advertising claims made by manufacturers and retailers, including: Procter & Gamble, Chattem, General Mills, Kellogg, Bayer, Clorox, WD-40, Dean Foods, Mead Johnson, Pharmavite, NBTY/Rexall, Schiff, Neutrogena, Maybelline, Walgreen Co., Wal-Mart, CVS, Groupon, Living Social, Reebok and Sketchers. Ms. Syverson was involved in reaching settlements with many of the above retailers and manufacturers, resulting in millions of dollars of relief to the class members, including the following: *Hartless v. Clorox Company*, 3:06-cv-02705-CAB (S.D. Cal.) (final approval Jan. 20, 2011); *In re: Enfamil Lipil Marketing and Sales Practices Litig.*, 11-MD-02222 (S.D. Fla.) (final approval Dec. 19, 2011); *Duffer v. Chattem*, 3:11-cv-02735-W-WVG (S.D. Cal.) (final approval July 10, 2013).

Ms. Syverson also has represented consumer credit card holders against several major retailers, and debit cardholders against major lending institutions, including assuming a leadership role in *In re: Checking Account Overdraft Litigation, Larsen v. Union Bank* and *Dee v. Bank of the West*, MDL No. 2036 (S.D. FL.).

Ms. Syverson has extensive experience litigating against auto insurance carriers on behalf of policyholders whose cars were repaired with imitation parts, who were not compensated for necessary repairs and were not paid for their diminished value loss against a number of major insurers, including State Farm, Geico, Farmers, American Family, SafeCo, Hartford, Nationwide, Esurance and Allstate.

Ms. Syverson has been involved in precedent-setting appellate decisions in areas which include consumer and insurance law and class action procedure. These appellate decisions include *State ex rel. American Family Mut. Ins. Co. v. Clark*, 106 S.W.3d 483 (Mo. 2003) (automobile insurance and class action procedure); and *Lebrilla v. Farmers Group, Inc.*, 119 Cal. App. 4th 1070 (2004) (automobile insurance and class actions procedure).

Ms. Syverson also has worked on numerous complex class action litigation matters involving annuity policies marketed and sold to senior citizens, insurer kickbacks known as "contingent commissions" in the insurance brokerage industry and discriminatory mortgage lending policies.

Ms. Syverson received her Bachelor of Arts in Political Science and Urban Studies and Planning from the University of California at San Diego in 1996 and received her law degree in 1999 from California Western School of Law. Ms. Syverson was admitted to the Bar of the State of California in 1999 and the State of Arizona in 2000, and is admitted to practice before the United States District Court for the District of Arizona, the Southern, Central, Eastern and Northern Districts of California, and the Northern District of Illinois.

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.

ATTORNEYS

JERRY C. BONNETT, born Canton, Illinois, April 3, 1946; admitted to bar, 1973, Arizona; 1977, United States Supreme Court; U.S. Court of Appeals, Seventh, Eighth and Ninth Circuits; U.S. District Court, District of Arizona, and U.S. Tax Court. Education: University of Illinois (B.S., with highest honors, 1969; LL.M., 1974); Arizona State University (J.D., *magna cum laude*, 1973). Author and Articles Editor, Arizona State Law Journal, 1972-1973. Judge Pro Tem, Arizona Court of Appeals, Division One, 1986 and 1992.

WILLIAM G. FAIRBOURN, born Salt Lake City, Utah, April 21, 1947; admitted to bar, 1973, Arizona; U.S. District Court, District of Arizona. Education: University of Utah (B.S., 1970); Arizona State University (J.D., 1973). Member: Maricopa County Bar Association (Member, Board of Directors, 1984-1986); Arizona Association of Defense Counsel (Member, Board of Directors, 1981-1989; President, 1986); National Association of Railroad Trial Counsel; American Board of Trial Advocates (President Phoenix Chapter, 1994); Arizona State Bar Certified Specialist in Personal Injury and Wrongful Death.

ANDREW S. FRIEDMAN, born Plainfield, New Jersey, September 26, 1953; admitted to bar, 1978, Arizona; U.S. Court of Appeals, Ninth Circuit; U.S. District Court, District of Arizona; U.S. Supreme Court. Education: University of Rochester (B.A., with high distinction, 1975); Duke University (J.D., with high distinction, 1978). Order of the Coif. Member: State Bar Committee on Civil Practice and Procedure (1980-1984); State Bar Committee on Bench-Bar Relations (1991); State Bar Bankruptcy Section; National Association of Commercial Trial Attorneys (1991-present); American Bar Association, Trial Practice Committee, Subcommittees and Class and Derivative Actions.

FRANCIS J. BALINT, JR., born Pittsburgh, Pennsylvania, January 9, 1957; admitted to bar, 1982, Virginia and District of Columbia; 1983, Arizona; U.S. District Court, Districts of Arizona and Virginia; U.S. Court of Appeals, Fourth and Ninth Circuits; U.S. Supreme Court. Education: University of Virginia (B.A., with high distinction, 1979; J.D., 1982). Former President and Current Director: Arizona Association of Defense Counsel (Member of Board of Directors 1988 through 2001; president 1999-2000).

VAN BUNCH, born Chattanooga, Tennessee, April 28, 1957; admitted to bar, 1984, Arizona; 2007, West Virginia; U.S. District Court, District of Arizona. Education: Vanderbilt University (B.A., 1979); University of Tennessee at Knoxville (J.D., with high honors, 1984). Order of the Coif. Member: State Bar of Arizona Bankruptcy Section.

MICHAEL N. WIDENER, born Mt. Ranier, Maryland, June 10, 1950; admitted to bar, 1983, Arizona and Tennessee; United States Supreme Court; U.S. Court of Appeals, Ninth Circuit; U.S. District Court, District of Arizona. Education: University of Virginia (B.A., with distinction, 1972); University of Illinois (M.S., 1974); University of Arizona (J.D., 1982). Author and Articles Editor, Arizona Law Review, 1980-1982. Law Clerk to Hon. James Duke Cameron, Supreme Court of Arizona, 1982-1983. (Certified Specialist, Real Estate Law, Arizona Board of Legal Specialization).

ROBERT J. SPURLOCK, born Janesville, Wisconsin, November 23, 1954; admitted to Arizona bar, 1984; U.S. District Court, District of Arizona. Education: University of Wisconsin-Madison (B.S., with honors, 1976), Arizona State University (J.D., 1984). Law Clerk to the Honorable D.L. Greer, Arizona Court of Appeals, 1984-1985; Member: Phoenix Association of Defense Counsel; State Bar Bankruptcy Section; Defense Research Institute; Arizona Association of Defense Counsel; American Bankruptcy Institute.

C. KEVIN DYKSTRA, born Phoenix, Arizona, March 30, 1964; admitted to Arizona bar, 1989; U.S. Court of Appeals, Ninth Circuit; U.S. District Court, District of Arizona. Education: Northern Arizona University (B.S., 1986); California Western School of Law (J.D., 1989). Director: Arizona Association of Defense Counsel.

ELAINE A. RYAN, born Emmetsburg, Iowa, June 15, 1963; admitted to Arizona bar, 1989; Texas bar, 2008; Kansas bar, 2010; Missouri bar, 2010; Washington bar, 2010; Colorado bar, 2011; Utah bar, 2011; Idaho bar, 2011; U.S. District Court, District of Arizona; U.S. District Court, District of Eastern Michigan; U.S. District Court, District of Idaho; U.S. District Court, Western District of Wisconsin; U.S. District Court, Northern District of Illinois. Education: University of Iowa (B.S., with distinction, 1986); Duke University (J.D., 1989).

WENDY J. HARRISON, born Walnut Creek, California, May 24, 1965; admitted to California bar, 1990, Arizona bar, 1992; U.S. Court of Appeals, First, Third, Fifth, Sixth and Ninth Circuits; U.S. District Court, District of Arizona; U.S. District Court, Central, Northern and Southern Districts of California. Education: University of California, Berkeley (B.A., with honors, 1987); University of Southern California Law Center (J.D., 1990).

ANDREW Q. EVERROAD, born Phoenix, Arizona, August 8, 1969; admitted to Arizona bar, 1995; U.S. District Court, District of Arizona. Education: University of Arizona (B.A., 1992); University of London – Bloomsburg, 1990; Arizona State University (J.D., 1995). Law clerk to the Honorable Thomas C. Kleinschmidt, Arizona Court of Appeals, 1995-1996.

KATHRYN A. HONECKER, born Naples, Florida, May 9, 1973; admitted to Illinois bar, 1998; Arizona bar, 2001; U.S. Court of Appeals, Tenth Circuit; U.S. District Court, District of Arizona; U.S. District Court, Northern District of Illinois; U.S. District Court, District of Colorado. Education: Carthage College (B.A., *cum laude*, 1995); Creighton University (J.D., *cum laude*, 1998).

PATRICIA N. SYVERSON, born San Diego, California, July 16, 1975; admitted to California bar, 1999; Arizona bar, 2000; U.S. District Court, Southern, Central, Eastern and Northern Districts of California; U.S. District Court, District of Arizona; U.S. District Court, Northern District of Illinois. Education: University of California at San Diego (B.A., 1996); California Western School of Law (J.D., 1999).

JONATHAN S. WALLACK, born Huntington, New York, June 7, 1975; admitted to Arizona bar, 2001; U.S. District Court, District of Arizona. Education: University of Arizona (B.A., 1998); University of Arizona (J.D., *cum laude*, 2001).

GUY A. HANSON, born Baltimore, Maryland, November 12, 1952; admitted to Arizona bar, 1991; U.S. District Court, District of Arizona. Education: University of Florida (B.S., 1976); University of Florida (J.D., 1990).

KIMBERLY C. PAGE, born Washington, D.C., February 16, 1968; admitted to Georgia bar, 1993; Alabama bar, 1993; Arizona bar, 2004; U.S. District Court, Northern, Middle and Southern Districts of Alabama; U.S. Court of Appeals, Eleventh Circuit. Education: Miami University (B.A., 1990); Cumberland School of Law of Samford University (J.D., *magna cum laude*, 1993).

CHRISTINA L. BANNON, born Ames, Iowa, September 16, 1968; admitted to Arizona bar, 1995; U.S. Court of Appeals, Ninth Circuit, 1997; U.S. District Court, District of Arizona. Education: Arizona State University (B.A., *summa cum laude*, 1989); Arizona State University College of Law (J.D., *cum laude*, 1995). Associate Articles Editor, Arizona State University Law Journal, 1994-1995. Law Clerk to Hon. E. G. Noyes, Jr., Arizona Court of Appeals, 1995-1996.

MANFRED P. MUECKE, born Inglewood, California, August 28, 1971; admitted to California bar, 2002; U.S. District Court, Southern District of California. Education: California State University Northridge (B.A., 1996); University of San Diego (J.D., 2002).

WILLIAM F. KING, born Phoenix, Arizona, October 21, 1978; admitted to Arizona bar, 2005; U.S. District Court, District of Arizona. Education: Rockhurst College (B.A., 2001); Creighton University School of Law (J.D., *cum laude*, 2005).

TONNA K. FARRAR, born Sedalia, Missouri, April 9, 1972; admitted to Missouri bar, 1997; Kansas bar, 1998, California bar, 2005; U.S. District Court, Eastern and Western Districts of Missouri; U.S. District Court, District of Kansas; U.S. District Court, Central, Eastern, Northern and Southern Districts of California. Education: University of Missouri, Columbia (B.A. 1994); University of Missouri, Kansas City School of Law (J.D. 1997).

T. BRENT JORDAN, born Urbana, Illinois, November 21, 1967; admitted to Minnesota bar, 1993, Pennsylvania bar, 2003; U.S. District Court, Eastern District of Pennsylvania. Education: University of Illinois (B.A., B.S., *magna cum laude*, 1990); University of Minnesota Law School (J.D., *cum laude*, 1993). Judicial clerkship: United States Magistrate Judge Raymond L. Erickson, United States District Court, District of Minnesota, 1993-1995.

ANDREW M. EVANS, born Hanover, New Hampshire, September 26, 1973; admitted to Arizona bar, 2006. Education: University of Colorado at Boulder (B.S., *cum laude*, 1997); Arizona State University College of Law (J.D., 2006).

TY D. FRANKEL, born Phoenix, Arizona, November 13, 1983; admitted to Arizona bar, 2009; U.S. District Court, District of Arizona. Education: Boston College (B.A., Dean's List, 2006); Boston College Law School (J.D., *cum laude*, 2009).

LINDSEY M. GOMEZ-GRAY, born San Leandro, California, June 24, 1984; admitted to Arizona bar, 2009; U.S. District Court, District of Arizona. Education: Arizona State University (B.A., *magna cum laude*, 2006); Arizona State University College of Law (J.D., *cum laude*, 2009).

KEVIN R. HANGER, born Chandler, Arizona, September 1, 1983; admitted to Arizona bar, 2009; U.S. District Court, District of Arizona. Education: University of Arizona (B.S., *cum laude*, 2006); University of Oklahoma College of Law (J.D., with honors, 2009).

ERIC D. ZARD, born Brainerd, Minnesota, April 4, 1984; admitted to Arizona bar, 2009; U.S. District Court, District of Arizona. Education: University of Minnesota (B.S., 2006); University of Saint Thomas, Minneapolis (J.D., 2009).

BARRETT N. LINDSEY, born Phoenix, Arizona, May 14, 1985; admitted to Arizona bar, 2011. Education: Arizona State University (B.S., *magna cum laude*, 2007); Creighton University (J.D., *magna cum laude*, 2010). Law Clerk to the Honorable Richard E. Dorr, United States District Court, Western District of Missouri, 2010-2012.

KENDALL K. WILSON, born Tacoma, Washington, August 7, 1981; admitted to Arizona bar, 2009; U.S. District Court, District of Arizona. Education: Brigham Young University (B.S., 2006); Arizona State University College of Law (J.D., *summa cum laude*, 2009).

STEWART M. WELTMAN, LLC

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Mr. Weltman has been a complex litigator for over thirty-three years, leading and trying complex litigation matters in both Federal and State courts throughout the United States. Mr. Weltman was formerly a partner with Much Shelist and an Antitrust and Securities litigation partner with the Washington D.C. based litigation boutique formerly known as Cohen Milstein Hausfeld & Toll P.L.L.C.

Mr. Weltman has been a lead and trial counsel in numerous complex litigation matters for both plaintiffs and defendants, ranging from antitrust, accounting malpractice, legal malpractice, securities fraud, patent issues, contract actions, and consumer fraud.

While much of his practice has centered on pursuing claims on behalf of individuals and classes who have been injured as the result of fraud, consumer fraud or antitrust violations, Mr. Weltman has also successfully defended complex matters.

He has been lead counsel in numerous consumer fraud class actions, the most recent being *Hohman v. Matrixx Initiatives Inc. et. al*, (N.D. Ill.).

Mr. Weltman was one of the lead trial counsel in *In re Carbon Black Antitrust Litigation* (D.C. Mass.), which settled for \$20 million. He was a lead counsel and one of the members of the trial preparation team *In Re EPDM Antitrust Litigation* (D.C. Conn.), in which three defendants settled claims for a total of \$81 million.

He formerly served as lead counsel in *In re PCP Antitrust Litigation* (D.C. Conn.), which settled for \$80 million and was lead counsel in *In Re Pressure Sensitive Labelstock Antitrust Litigation* (M.D. Pa.).

Mr. Weltman was a member of the trial team in *In re Vitamins Antitrust Litigation* (D.D.C.), which resulted in a verdict in favor of the plaintiffs and the class of \$148.5 million after trebling.

In addition to his antitrust experience, Mr. Weltman also acted as lead attorney or lead counsel in several securities fraud matters. He was the lead attorney for his client Pacific Life Insurance Company in individual actions brought against various underwriter defendants arising out of (1) the WorldCom frauds and (2) the RepublicBank frauds.

INTRODUCTION

Denlea and Carton LLP was formed in January 2013, by a group of six attorneys with over a century of combined experience between them. Although newly-formed, the attorneys at Denlea & Carton have substantial litigation experience in complex consumer fraud and class action cases. We have successfully prosecuted a myriad of class action cases throughout the country. In addition to our class action practice, we also represent clients in trial and appellate courts and arbitral forums in a variety of complex commercial matters.

The firm's attorneys have been on the cutting edge of consumer fraud and class action practice throughout the country. Jeffrey Carton recently argued before the Massachusetts Supreme Judicial Court in the landmark case of Tyler v. Michaels Stores, Inc., which held that the collection of zip codes in connection with credit card purchases violates Massachusetts General Laws ch. 93, §105 prohibiting the collection of personal identification information in connection with credit card transactions. Jeff also successfully argued before the New Jersey Supreme Court the leading consumer fraud case in New Jersey, Lee v. Basic Research, et. al., which resulted in the unanimous 9-0 opinion reversing two lower courts' decisions denying class certification in a consumer fraud class action. Jeff has successfully prosecuted consumer fraud class actions against, among others, Costco, Sam's Club, The Gap, Empire Blue Cross, Shell, Bayer and Ticketmaster, recovering tens of millions of dollars for consumers.

Similarly, Peter Freiberg spearheaded an extremely complex class action in a New York federal district court in which he represented commercial lobstermen from New York and Connecticut whose livelihoods were decimated by a massive die-off of lobsters caused by pesticides, which resulted in a very favorable settlement for the class. Robert Berg has been lead counsel or co-lead counsel in numerous securities and consumer fraud cases that have recovered hundreds of millions of dollars for aggrieved investors and consumers, and was trial counsel in one of the rare class action cases to go to trial.

Our attorneys graduated from some of the best colleges and law schools in the country, including Columbia University, Dartmouth College, Amherst College, University of Pennsylvania, University of Chicago, and Tulane University. We have also trained at some of the finest law offices in the country, including Cravath, Swaine & Moore, DLA Piper, Thacher Proffit & Wood, Proskauer, Skadden Arps, Bernstein Liebhard, and the offices of the Manhattan and Westchester County District Attorneys.

Our attorneys are ranked at the top of their profession, and have been recognized by Super Lawyers, US News & World Reports' "Best Lawyers", Martindale-Hubbell, the Million Dollar Advocates Forum, the American Bar Foundation, and Litigation Counsel of America as amongst the most experienced and well-qualified attorneys in the country.

REPRESENTATIVE CLASS ACTION CASES

Denlea & Carton's attorneys have been certified as class counsel and/or have successfully prosecuted numerous class actions including:

Llanos v. Shell Oil Company And Shell Oil Products US, No. SU-2006-009404 (N.Y. Sup. Ct.). State-wide class action alleging that Shell improperly imposed monthly inactivity or dormancy fees on Shell Gift Cards in violation of New York Gen. Bus. L. § 349 and Shell's contracts with its customers. The court certified the class and approved a settlement on March 31, 2010.

Argento v. Wal-Mart Stores, No. 22850/06 (N.Y. Sup. Ct.). On October 2, 2009, the New York Appellate Division granted plaintiff's motion for certification of a statewide class of consumers alleging that Sam's Club violated state consumer protection laws and its membership contracts by backdating membership renewals. The court subsequently approved a settlement in June, 2012.

Dupler v. Costco Wholesale Corporation, Civ. No. 06-3141 (E.D.N.Y.). Class action alleging that Costco backdated membership renewals purchased after the prior membership period's expiration date, in violation of state consumer protection laws and Costco's membership contracts. Class certification was granted on January 31, 2008 and a nationwide class settlement was approved on April 20, 2010.

In re Ticketmaster Sales Practices Litigation, No. 09-0912 (C.D. Cal.). Court appointed counsel interim co-lead counsel pursuant to Federal Rule of Civil Procedure 23(g) on July 17, 2009. On February 13, 2012, the court granted final approval for a settlement.

In re Bayer Corp. Combination Aspirin Products Marketing and Sales Practices Litigation, No. 09-2023 (E.D.N.Y.). On June 8, 2009, the court appointed Jeffrey I. Carton to Plaintiff's Executive Committee in this Multidistrict Litigation in which plaintiffs allege that Bayer Healthcare LLC violated state consumer protection and warranty laws in connection with the deceptive marketing and sales of Bayer combination aspirin products.

Luks v. Empire Blue Cross/Blue Shield, Index No. 03/64337 (N.Y. Sup. Ct. N.Y. Cty.). Statewide class action brought on behalf of more than 1,000 surgeons that compelled insurer to revoke its policy, commonly referred to as the "single incision" policy, of refusing to cover certain medically appropriate surgical procedures. The action was resolved on a class-wide basis, providing millions of dollars in reimbursement to New York physicians.

Breedlove v. Window Rock Ent., Inc., 04-00610 (Cal. Super. Ct. Orange Cty.). Consumer class action challenging false and deceptive advertising for the popular diet supplement CortiSlim. The case was resolved on a nationwide class basis.

Costa v. Kerzner International, 11-60663 (S.D.Fla.). Class action challenging Atlantis' Resorts practice of collecting a mandatory housekeeping gratuity. A final class settlement was approved.

Fox v. Cheminova, Inc., 00-5145 (E.D.N.Y.). Class action brought against pesticide manufacturers on behalf of commercial lobstermen on Long Island Sound, alleging destruction of lobster stock. The court certified the class and approved a settlement.

Aggarwal v. Magicjack LP, No. 50 2011 CA 009521 (Fla. Cir. Ct. Palm Beach Cty.). Class action alleging consumers' renewal dates for computer based telephone services were unlawfully backdated. Final approval of a nationwide class action settlement was granted on July 23, 2012.

Held v. AAA Southern New England, 3:11-cv-105-SRU (D. CT.). Class action alleging that the AAA did not adequately disclose its policy of using a member's prior expiration date as the commencement date for renewal memberships. On August 6, 2013, the court provided its final approval of a settlement.

Jennings v. NBTY, Inc., et al., 11 CV 07972 (N.D. Ill.). Consumer fraud class action challenging false and deceptive advertising for glucosamine/chondroitin products. A nationwide settlement involving approximately 10 million consumers was approved on January 22, 2014.

Tyler v. Michaels Stores, Inc., 1:11-cv-10920 (D. Mass.) Court appointed co-lead counsel in class action challenging illegal collections of personal identification information during credit card transactions in violation of Massachusetts privacy law. The Court has granted preliminary approval of the settlement.

In re: GNC Manufactured Products Marketing and Sales Practices Litigation, MDL Docket No. 14-2491 (D. MD.) Court appointed lead counsel in multi-state consumer fraud class action challenging GNC's labeling and advertising of its glucosamine/chondroitin products.

JEFFREY I. CARTON

Education:

Dartmouth College, B.A., cum laude
Columbia Law School, J.D.

Bar Admissions:

New York State
Connecticut State
United States District Courts for the Southern, Eastern and Northern Districts of
New York and the District of Connecticut
United States Courts of Appeals for the Second, Third, Fifth and Ninth Circuits
United States Supreme Court

Honors and Achievements:

Top 25 Super Lawyers in Westchester County, New York 2007-present
U.S News and World Reports Best Lawyers in America, Commercial Litigation
2013
Elite Lawyers of America
Multimillion Dollar Advocates Forum
Fellow, American Bar Foundation
Fellow, Litigation Counsel of America

For the past seven years, Jeff has been recognized annually by his peers as one of the Top 25 New York "Super Lawyers" in Westchester County and has recently been chosen as one of US News & World Report's "Best Lawyers in America" in the area of commercial litigation. He has also been selected as a lifetime member of "Elite Lawyers in America," "The Multi-Million Dollar Advocates Forum," and "Top Trial Lawyers in America," and inducted as a Fellow into both the prestigious Litigation Counsel of America and the venerable American Bar Association Foundation.

Jeff's versatility in the Courtroom and dexterity with a wide array of subject matters has led to his handling of many high profile, difficult cases. Among other matters, Jeff successfully led the defense in federal court of a boat-builder wrongfully implicated in the "Ethan Allen" tragedy on Lake George in which twenty persons perished, winning summary judgment on the client's behalf; argued before the New Jersey Supreme Court the landmark consumer fraud class action, Lee v. Basic Research, which resulted in a unanimous, 9-0 opinion overturning the lower courts' decisions denying class certification; and successfully prosecuted the highly publicized "Borgata Babes" employment discrimination action against the Borgata Casino in Atlantic City. Jeff's reputation for excellent results and dogged preparation, make him a formidable adversary.

Jeff has also successfully tried to verdict a diverse number of matters, including securing a defense verdict for Madison Square Garden and Amtrak in a

federal jury trial in the Eastern District of New York; winning a multi-million dollar jury award in a state court breach of contract action in White Plains; prevailing in a nine month real estate fraud arbitration in New York City in which he recovered a multi-million dollar judgment; and obtaining a \$4.5 million jury verdict in Columbia County against Rensselaer Polytechnic Institute (RPI).

Jeff's experience in the sports, media and entertainment industries has also allowed for his successful handling of a variety of matters including claims of copyright infringement, trademark infringement, breach of television Executive Production Agreements, royalty disputes, and artist-management conflicts. Jeff has advised television broadcast journalists, senior media executives and executive producers on a wide range of issues concerning non-competes, first amendment rights, and compensation and severance disputes.

Jeff led the successful prosecution of the wrongful death action of Baltimore Orioles' pitcher Steve Bechler, helped extricate former light heavyweight World Champion boxer Reggie Johnson from an onerous promoter's contract, and counseled the Estate of Tito Puente, the Latin Salsa King, in a misappropriation of name and likeness litigation. Jeff also spearheaded the successful prosecution of the United States Tennis Association's (USTA) multimillion dollar breach of contract action against a sponsor of the US Open, and successfully defended Heineken in a breach of contract action arising from a marketing services agreement. Jeff regularly counsels media and entertainment clients in contract negotiations, severance disputes, and intellectual property matters.

Jeff is a cum laude graduate of Dartmouth College, a graduate of Columbia Law School and began his career as a litigator at Cravath Swaine & Moore.

PETER N. FREIBERG

Education:

University of Pennsylvania, B.A.

Tulane University School of Law, J.D., cum laude

Bar Admissions:

New York State

Louisiana State

Connecticut State

New Jersey State

United States District Courts for the Southern District of New York, the District of Connecticut, and the Eastern, Middle and Western Districts of Louisiana, and the District of New Jersey

United States Courts of Appeals for the Second, Third, Fifth, Sixth and Eleventh Circuits.

Honors and Achievements:

Adjunct Professor of Trial Advocacy, Tulane University School of Law
Frequent Speaker at Continuing Legal Education Seminars sponsored by
the National Business Institute
Co-Chair of Inspector General Task Force for the City of New Orleans
Martindale-Hubbell A-V Rated
Super Lawyers

Peter graduated from the University of Pennsylvania and received his law degree from Tulane University School of Law, *cum laude*. After graduating from law school, Peter served as an Assistant District Attorney with the Manhattan District Attorneys' Office, where he learned the fundamentals of trial practice. While serving as a prosecutor, he tried approximately 40 cases to verdict, most of them jury trials, and handled countless grand jury presentations and pre-trial hearings. Since leaving the District Attorneys' office, Peter has actively litigated a wide variety of cases on behalf of a diverse group of clients, representing both plaintiffs and defendants. He regularly appears in state and federal trial and appellate courts, and is rated by his peers through Martindale-Hubbell as A-V Preeminent, which is the best peer ranking available for attorneys signifying the highest level of professional and ethical excellence.

Peter's diverse experiences as an attorney have entailed a wide range of cases. Over his career, he has prosecuted and defended large mass tort, toxic tort and class action lawsuits; successfully litigated high-end personal injury cases; handled a variety of admiralty and maritime tort and commercial matters; litigated environmental damage claims, including insurance coverage aspects of environmental damages; successfully prosecuted employment discrimination cases; and prosecuted and defended general commercial and securities matters, including shareholder and partnership disputes, corporate dissolutions and fraud cases.

Peter's more notable cases include:

Representing a group of commercial fishermen in a class action that resulted in a substantial settlement against pesticide manufacturers;

Successfully litigating property damage cases against large multi-national oil companies, resulting in settlements which provided for monetary compensation to his clients and the clean-up of contaminated properties;

Defending petrochemical companies and railroad companies against sprawling class action and mass tort cases, including at trial;

Litigating complicated environmental insurance coverage case involving large corporate insureds;

Representing insureds in efforts to obtain coverage under different types of insurance policies;

Representing parties in two separate inter-family corporate disputes, both of which were decided by juries in his clients' favor;

Securing a favorable jury verdict in a federal employment discrimination case.

In addition, Peter often handles real estate and general commercial matters. He conducts real estate closings, prepares commercial leases, drafts shareholder and limited liability company operating agreements, and handles the various commercial needs of his clients. Peter also handles many physicians' commercial needs.

Peter served as an Adjunct Professor of Trial Advocacy at Tulane Law School for ten years, where he taught trial practice to third year law students. He has served as a frequent speaker at continuing legal education seminars, and also co-chaired a task force that advised an incoming Mayor of the City of New Orleans on how to implement an Inspector General department into city government.

ROBERT J. BERG

Education:

Amherst College, B.A. *cum laude*

University of Chicago Law School, J.D.

University of Chicago Booth School of Business, M.B.A.

Bar Admissions:

New York State

New Jersey State

United States District Courts for the Southern, Eastern and Northern Districts of New York, and the District of New Jersey

United States Courts of Appeals for the Second, Third, Fourth and Federal Circuits

Bob is an experienced class action lawyer, who has achieved hundreds of millions of dollars in recoveries for aggrieved consumers and investors over the past twenty-five years. Bob litigates class actions in the federal and state courts nationwide, where he represents plaintiffs in consumer fraud, securities, and antitrust class actions.

In 2009, Bob was trial counsel for plaintiffs, the Auto Body Association of Connecticut and several Connecticut independent auto body shops, against a leading auto insurer. Following a rare two-month long jury trial of a class action, the jury returned a verdict awarding plaintiffs compensatory damages of \$14.85

million. The jury found that the insurer had violated Connecticut's Unfair Trade Practices Act by illegally suppressing the labor rates paid to the auto body shops in the State of Connecticut. The judge awarded \$20 million in punitive damages and permanent injunctive relief. The case is now on appeal before the Connecticut Supreme Court.

Bob has served as sole lead or co-lead counsel for plaintiffs on many landmark securities and consumer class action cases. In a nationwide class action against AT&T alleging consumer fraud in connection with the sale of a top-selling business telephone system, Bob achieved the then-largest settlement of a consumer class action in New Jersey history – a settlement which the court valued at over \$90 million. Bob has obtained innovative settlements in consumer class actions against Volvo (valued at over \$30 million) and Saab (\$4.75 million) where the low-profile tires on certain automobile models blew out prematurely, causing tire and rim damage.

While a partner at another leading plaintiffs' class action firm, Bob was co-lead counsel in a securities fraud class action against Deutsche Telekom AG, where he obtained a settlement of \$120 million for certain purchasers of Deutsche Telekom stock on the U.S. stock exchanges. Bob also was a co-lead counsel for selling shareholders of Bankers Trust in a securities fraud class action against Deutsche Bank which settled for \$58 million just days before trial. In the largest and most complex consolidated securities fraud class action ever litigated – the Initial Public Offerings Securities Litigation, consisting of 309 separate class actions – Bob was a member of Plaintiffs' Executive Committee and a court-appointed Liaison Counsel. That action settled for \$586 million in cash. Bob was also co-trial counsel for plaintiff in a significant age and sex discrimination and wrongful discharge arbitration proceeding against a major investment bank, reaching a settlement after three days of trial.

Prior to joining the firm, Bob maintained his own firm for two years, specializing in prosecuting unfair trade practice class actions. He had been a partner for many years at a major plaintiffs' class action firm in New York City. Earlier in his career, Bob was a litigator with two leading corporate law firms, Skadden Arps, LLP and Dewey LeBoeuf, LLP.

Bob is the First Vice President and Executive Board Member of the Scarsdale Forum and a Director and former President of the Crane-Berkeley Neighborhood Association. Bob is a U.S. Coast Guard licensed captain, a PADI-certified open water diver, and a former International Game Fishing Association world record holder.

He served as Derivative Plaintiffs' Lead Counsel in a securities fraud and derivative/breach of fiduciary duty case in which a \$33 million settlement was reached with the former directors and officers of the Public Service Company of New Mexico. He was co-lead counsel in a securities fraud class action that resulted in a combined settlement of \$31 million against a law firm and a national accounting firm arising out of the Sunderman Limited Partnerships.

Mr. Weltman served as co-lead counsel in *Benfield v. Steindler and General Electric Co.* (S.D. Ohio), a derivative action in which a settlement of \$21 million was reached. He was also co-lead counsel for a class of 1,500 homeowners in South Florida and obtained a \$15 million settlement arising out of defective construction claims.

He has argued before the Illinois Appellate Court, the Seventh, Fifth and Federal Circuit Courts of Appeals. He has appeared before the United States Supreme Court as both counsel of record and as amicus counsel.

Mr. Weltman graduated from Roosevelt University with a B.A. in English Literature in 1975 and from the John Marshall Law School (J.D., *High Distinction* 1978), where he was a member of the Law Review.

EXHIBIT 5

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LUIS LERMA, an Individual, and NICK
PEARSON, and Individual, On Behalf of
Themselves and All Others Similarly Situated,

Plaintiffs,

v.

SCHIFF NUTRITION INTERNATIONAL,
INC., a Delaware Corporation, and SCHIFF
NUTRITION GROUP, INC., a Utah
Corporation

Defendants.

CASE NO. 3:11-cv-01056-CAB-MDD

CLASS ACTION

**DECLARATION OF GINA M.
INTREPIDO-BOWDEN ON
SETTLEMENT NOTICE PROGRAM**

I, Gina M. Intrepido-Bowden, declare as follows:

1. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct. I am a Director of Legal Notification Services at Kurtzman Carson Consultants, LLC (“KCC”). I specialize in the design and implementation of legal notification campaigns supported by evidence-based reach calculations relating to the adequacy of notice distribution to the Settlement Class. I work with Carla A. Peak, also a Director of Legal Notification Services at KCC, who specializes in the design and implementation of plain language legal notice documents. Together, we ensure that class members are adequately reached with notices that capture their attention and are easily understood. Ms. Peak and I have been involved in many of the largest and most complex class action notice programs, including all aspects of notice dissemination.

2. This declaration will describe our experience, as well as the notice program (the “Notice Plan” or “Notice Program”) that we propose for this case, including how the Notice Plan was developed and why we believe it will be effective. Our Notice Plan, which details all aspects of the proposed form, method and dissemination of notice, is attached as **Exhibit 1**.

OVERVIEW

3. The Notice Program we developed uses a combination of notice placements in leading consumer magazines and on a variety of websites to effectively reach the Settlement Class

1 (the “Class”) in *Lerma*. To fulfill the notice requirement of California’s Consumer Legal Remedies
2 Act (“CLRA”), the notice program also includes four placements, once a week for four
3 consecutive weeks in *San Diego Union Tribune*. The Notice Plan will reach at least 80% of likely
4 Class members, on average 1.7 times each.¹ Coverage will be further enhanced by the CLRA
5 notice placements.

6 4. The reach of the Notice Program is consistent with other effective court-approved
7 notice programs, and is designed to meet due process requirements. The Federal Judicial Center’s
8 (FJC) *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (the
9 FJC Checklist) considers 70-95% reach among class members reasonable.

10 5. We have worked with the parties to develop various forms of notice for Court
11 approval. All forms of notice are designed to be noticeable, clear and concise, and written in plain,
12 easily understood language. Draft forms of Notice are included as **Attachment B** to **Exhibit 1**.

13 EXPERIENCE RELEVANT TO THIS CASE

14 6. Our curriculum vitae, included as **Attachment A** to **Exhibit 1**,² identifies over a
15 hundred cases Ms. Peak and I have been involved with, including the dissemination of notice
16 around the globe in more than 35 languages. It contains numerous judicial comments citing cases
17 we have worked on, as well as articles we have written and speaking engagements where we have
18 discussed the adequacy and design of legal notice efforts.

19 7. Some consumer case examples in which Ms. Peak and I have been involved
20 include: *Poertner v. The Gillette Co. and The Procter & Gamble Co.*, No. 6:12-cv-00803 (M.D.
21 Fla.), national false advertising settlement involving consumers who purchased Duracell Ultra
22 Advanced, Ultra Power AA and AAA batteries; *Beck-Ellman v. Kaz USA, Inc.*, No. 3:10-cv-02134
23 (S.D. Cal.), state-wide false advertising settlement involving California residents who purchased a
24 Kaz-manufactured/distributed electric heating pad; *Shames v. The Hertz Corporation*, No. 3:07-cv-
25 02174 (S.D. Cal.), a national antitrust settlement involving several million class members who
26 rented vehicles from a variety of car rental companies; *In Re: Uponor, Inc.*, F1807 Plumbing

27 ¹ The reach or net reach of a notice program is defined as the percentage of a class that was exposed to a notice net of
28 any duplication among people who may have been exposed more than once. The average “frequency” of notice
exposure is the average number of times that those reached by a notice would be exposed to a notice.

² Includes work performed by Ms. Peak and myself while employed at other firms.

1 Fittings Products Liability Litigation, No. 11-MD-2247 (D. Minn.), a national products liability
2 settlement providing reimbursement, repair and replacement of affected plumbing components; *Ko*
3 *v. Natura Pet Products, Inc.*, No. 5:09-cv-2619 (N.D. Cal.), a \$2.15 million national false
4 advertising settlement involving people who purchased Natura brand dog or cat food products; *In*
5 *re Trans Union Corp. Privacy Litigation*, MDL No. 1350 (N.D. Ill.), perhaps the largest
6 discretionary class action notice campaign involving virtually every adult in the United States and
7 informing them about their rights in the \$75 million data breach settlement; *In re TJX Companies,*
8 *Inc., Customer Data Security Breach Litigation*, MDL No. 1838 (D. Mass.), one of the largest U.S.
9 and Canadian retail consumer security breach notice programs; *Grays Harbor Adventist Christian*
10 *School v. Carrier Corp.*, No. 05-05437 (W.D. Wash.), *Donnelly v. United Technologies Corp.* No.
11 06-CV-320045CP (Ont. S.C.J.) and *Wener v. United Technologies Corp.* 500-06-000425-088 (QC.
12 Super. Ct.), product liability class action settlements involving secondary heat exchangers in high
13 efficiency gas furnaces, affecting class members throughout the U.S. and Canada; and *In re*
14 *Residential Schools Litigation*, No. 00-CV-192059 (Ont. S.C.J.), the largest and most complex
15 class action in Canadian history incorporating a groundbreaking notice program to disparate,
16 remote aboriginal persons qualified to receive benefits in the multi-billion dollar settlement.

17 8. As noted in our c.v., we have written numerous articles, as well as presented about
18 notice and due process. We believe notice and due process depend upon clear communication with
19 the people affected. Our articles include: Carla Peak and Steven Weisbrot, *How to Design Your*
20 *Notice to Minimize Professional Objectors*, CLASS ACTION LAWSUIT DEFENSE: CLASS ACTION
21 DEFENSE NEWS, Developments and Commentary provided by BAKERHOSTETLER
22 (www.classactionlawsuitdefense.com) (2012); Carla Peak, *Is your legal notice designed to be*
23 *noticed?* WESTLAW JOURNAL CLASS ACTION Vol.18 Issue 10 (2011); John B. Isbister, Todd B.
24 Hilsee, & Carla A. Peak, *Seven Steps to a Successful Class Action Settlement*, AMERICAN BAR
25 ASSOCIATION, SECTION OF LITIGATION, CLASS ACTIONS TODAY 16 (2008); Todd B. Hilsee, Gina
26 M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The “Desire to*
27 *Inform” Requirement for Effective Class Notice is Highlighted by Katrina*, 80 TULANE L. REV.
28 1771 (June 2006); Gina M. Intrepido, *Notice Experts May Help Resolve CAFA Removal Issues*,

1 *Notification to Officials*, 6 CLASS ACTION LITIG. REP. 759 (2005); and Todd B. Hilsee, Shannon R.
2 Wheatman & Gina M. Intrepido, *Do You Really Want Me to Know My Rights? The Ethics Behind*
3 *Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually*
4 *Inform*, 18 GEO. J. LEGAL ETHICS 1359 (Fall 2005).

5 9. Our speaking engagements regarding notice include: *The Fundamentals of*
6 *Settlement Administration*, accredited CLE Program, presented by Carla Peak and Steven Weisbrot
7 at DLA Piper LLP in Philadelphia (August 2013), presented by Carla Peak and Robert DeWitte at
8 Locke Lord LLP in Chicago and broadcast to offices in California, Georgia, New York, Texas and
9 London (April 2013), presented by Gina Intrepido-Bowden and Robert DeWitte at Skadden, Arps,
10 Slate, Meagher & Flom LLP and Wexler Wallace LLP in Chicago (January 2013), presented by
11 Gina Intrepido-Bowden and Robert DeWitte at Hinshaw & Culbertson LLP in Chicago (October
12 2012), and presented by Gina Intrepido-Bowden and Robert Taylor-Manning at Spector Roseman
13 Kodroff & Willis, P.C. in Philadelphia (December 2011); *Designing a Settlement and Notice*
14 *Program to Minimize Scrutiny and Objections*, Gina Intrepido-Bowden presenter/panelist,
15 AMERICAN CONFERENCE INSTITUTE (ACI), 16th National Conference on Consumer Finance Class
16 Actions & Litigation (July 2013); *Pitfalls of Class Action Notice and Settlement Administration*,
17 Gina Intrepido-Bowden and Robert DeWitte presenters/panelists, PRACTISING LAW INSTITUTE
18 (PLI), Class Action Litigation 2013 (July 2013); *Ethics in Legal Notification*, CLE Program,
19 presented by Gina Intrepido-Bowden, Carla Peak & Steven Weisbrot at Morgan Lewis & Bockius
20 in New York (December 2012); *Class Action Settlement Administration Tips & Pitfalls on the*
21 *Path to Approval*, accredited CLE program, presented by Carla Peak, Gina Intrepido-Bowden &
22 Robert DeWitte at Jenner & Block in Chicago and broadcast to offices in Washington DC, New
23 York and Los Angeles (October 2012); *Perspectives from Class Action Claims Administrators:*
24 *Innovations in Notification*, Gina Intrepido-Bowden, presenter/panelist, CLE INTERNATIONAL, 8th
25 Annual Class Actions Conference (May 2012); *Innovations in Notification*, Carla Peak, presenter,
26 CHICAGO BAR ASSOCIATION, Class Litigation Committee Spring Seminar (May 2012); *Ethical*
27 *Considerations in Canadian Class Actions*, accredited CLE Program, presented by Gina Intrepido-
28 Bowden and Robert Taylor-Manning at Rochon Genova, LLP in Toronto (April 2012); *Reaching*

1 *Class Members & Driving Take Rates*, Gina Intrepido-Bowden, presenter/panelist, CONSUMER
2 ATTORNEYS OF SAN DIEGO, 4th Annual Class Action Symposium (October 2011); *Legal Notice*
3 *Ethics*, accredited CLE Program, presented by Gina Intrepido-Bowden, Carla Peak & Elizabeth
4 Grande at Heins Mills & Olson, P.L.C., Lockridge Grindal Nauen P.L.L.P., and Chestnut
5 Cambronne in Minneapolis (January 2011), at Berger & Montague, P.C., Anapol Schwartz, Lundy
6 Law and Dechert LLP, in Philadelphia, and broadcast to Dechert offices in California, New Jersey,
7 New York, North Carolina, Texas, Washington D.C., and London and sent via video to their office
8 in China (October 2010); *Class Actions 101: Best Practices and Potential Pitfalls in Providing*
9 *Class Notice*, CLE Program, presented by Brian Christiansen, Gina Intrepido & Richard Simmons
10 to the KANSAS BAR ASSOCIATION (March 2009).

11 10. We have been recognized by courts for our opinion as to which method of
12 notification is appropriate for a given case and whether a certain method of notice represents the
13 best notice practicable under the circumstances. Our judicial recognition includes notice programs
14 targeting consumer class members. For example:

15 a. Judge Gregory A. Presnell, *Poertner v. The Gillette Co. and The Procter &*
16 *Gamble Co.*, (November 5, 2013) No. 6:12-CV-00803 (M.D. Fla.):

17 *The proposed Class Notice and Claim Form are approved as to form and*
18 *content. The Court finds that the content of the Class Notice and the Claim*
19 *Form satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P.*
20 *23(e)(1), and due process and accordingly approves them...The Court finds*
21 *that compliance with the Notice Plan is the best practicable notice under the*
22 *circumstances and constitutes due and sufficient notice of this Order to all*
23 *persons entitled thereto and is in full compliance with the requirements of*
24 *Rule 23, applicable law, and due process.*

25 b. Judge Marilyn L. Huff, *Beck-Ellman v. Kaz USA, Inc.* (June 11, 2013) No.
26 3:10-cv-02134 (S. D. Cal.):

27 *The Notice Plan has now been implemented in accordance with the Court's*
28 *Preliminary Approval Order. The Publication Notice was designed to*
provide potential class members with information about the Settlement and
their rights, in easy-to-comprehend language... The Notice Plan was
specially developed to cause class members to see the Publication Notice or
see an advertisement that directed them to the Settlement Website. KCC
identified that the class members belong to a demographic group known as
"Pain Relief Users." The Heating Pads are considered a Pain Relief
product. The publications that KCC's Notice Plan used are publications and

1 *websites whose viewers and readers include a high percentage of Pain*
2 *Relief product users...The Court concludes that the Class Notice fully*
3 *satisfied the requirements of Rule 23(c)(2) of the Federal Rules of Civil*
4 *Procedure and all due process requirements.*

5 (January 7, 2013): *The proposed Class Notice, Publication Notice, and*
6 *Settlement Website are reasonably calculated to inform potential Class*
7 *members of the Settlement, and are the best practicable methods under the*
8 *circumstances... Notice is written in easy and clear language, and provides*
9 *all needed information, including: (1) basic information about the lawsuit;*
10 *(2) a description of the benefits provided by the settlement; (3) an*
11 *explanation of how Class members can obtain Settlement benefits; (4) an*
12 *explanation of how Class members can exercise their rights to opt-out or*
13 *object; (5) an explanation that any claims against Kaz that could have been*
14 *litigated in this action will be released if the Class member does not opt out;*
15 *(6) the names of Class Counsel and information regarding attorneys' fees;*
16 *(7) the fairness hearing date and procedure for appearing; and (8) the*
17 *Settlement Website and a toll free number where additional information,*
18 *including Spanish translations of all forms, can be obtained. After review of*
19 *the proposed notice and Settlement Agreement, the Court concludes that the*
20 *Publication Notice and Settlement Website are adequate and sufficient to*
21 *inform the class members of their rights. Accordingly, the Court approves*
22 *the form and manner of giving notice of the proposed settlement.*

23 c. Judge Tom A. Lucas, *Stroud v. eMachines, Inc.*, (March 27, 2013) No. CJ-
24 2003-968 L (D. Ct. Cleveland Cnty, Okla.):

25 *The Notices met the requirements of Okla. Stat. tit. 12 section 2023(C), due*
26 *process, and any other applicable law; constituted the best notice*
27 *practicable under the circumstances; and constituted due and sufficient*
28 *notice to all persons and entities entitled thereto. All objections are stricken.*
Alternatively, considered on their merits, all objections are overruled

(December 21, 2012): *The Plan of Notice in the Settlement Agreement as*
well as the content of the Claim Form, Class Notice, Post-Card Notice, and
Summary Notice of Settlement is hereby approved in all respects. The Court
finds that the Plan of Notice and the contents of the Class Notice, Post-Card
Notice and Summary Notice of Settlement and the manner of their
dissemination described in the Settlement Agreement is the best practicable
notice under the circumstances and is reasonably calculated, under the
circumstances, to apprise Putative Class Members of the pendency of this
action, the terms of the Settlement Agreement, and their right to object to the
Settlement Agreement or exclude themselves from the Certified Settlement
Class and, therefore, the Plan of Notice, the Class Notice, Post-Card Notice
and Summary Notice of Settlement are approved in all respects. The Court
further finds that the Class Notice, Post-Card Notice and Summary Notice
of Settlement are reasonable, that they constitute due, adequate, and
sufficient notice to all persons entitled to receive notice, and that they meet
the requirements of due process.

1 d. Honorable Michael M. Anello, *Shames v. The Hertz Corporation*,
2 (November 5, 2012) No. 3:07-cv-02174 (S.D. Cal.):

3 *...the Court is satisfied that the parties and the class administrator made*
4 *reasonable efforts to reach class members. Class members who did not*
5 *receive individualized notice still had opportunity for notice by publication,*
6 *email, or both...The Court is satisfied that the redundancies in the parties'*
7 *class notice procedure—mailing, e-mailing, and publication—reasonably*
8 *ensured the widest possible dissemination of the notice...The Court*
9 *OVERRULES all objections to the class settlement...*

10 (May 22, 2012): *The Court approves, as to form and content, the Notice of*
11 *Proposed Settlement of Class Action, substantially in the forms of Exhibits*
12 *A-1 through A-6, as appropriate, (individually or collectively, the*
13 *"Notice"), and finds that the e-mailing or mailing and distribution of the*
14 *Notice and publishing of the Notice substantially in the manner and form set*
15 *forth in ¶ 7 of this Order meet the requirements of Federal Rule of Civil*
16 *Procedure 23 and due process, and is the best notice practicable under the*
17 *circumstances and shall constitute due and sufficient notice to all Persons*
18 *entitled thereto.*

19 e. Judge Ann D. Montgomery, *In Re: Uponor, Inc., F1807 Plumbing Fittings*
20 *Products Liability Litig.*, (July 9, 2012) No. 11-MD-2247 (D. Minn.):

21 *The objections filed by class members are overruled; The notice provided to*
22 *the class was reasonably calculated under the circumstances to apprise*
23 *class members of the pendency of this action, the terms of the Settlement*
24 *Agreement, and their right to object, opt out, and appear at the final*
25 *fairness hearing;...*

26 (January 18, 2012): *The Notice Plan detailed by KCC in the Affidavit of*
27 *Gina M. Intrepido-Bowden provides the best notice practicable under the*
28 *circumstances and constitutes due and sufficient notice of the Settlement*
Agreement and the Final Fairness Hearing to the Classes and all persons
entitled to receive such notice as potential members of the Class...The
Notice Plan's multi-faceted approach to providing notice to Class Members
whose identity is not known to the Settling Parties constitutes 'the best
notice that is practicable under the circumstances' consistent with Rule
23(c)(2)(B)...Notice to Class members must clearly and concisely state the
nature of the lawsuit and its claims and defenses, the Class certified, the
Class member's right to appear through an attorney or opt out of the Class,
the time and manner for opting out, and the binding effect of a class
judgment on members of the Class. Fed. R. Civ. P. 23(c)(2)(B). Compliance
with Rule 23's notice requirements also complies with Due Process
requirements. 'The combination of reasonable notice, the opportunity to be
heard, and the opportunity to withdraw from the class satisfy due process
requirements of the Fifth Amendment.' Prudential, 148 F.3d at 306. The
proposed notices in the present case meet those requirements.

1 f. Judge Jeremy Fogel, *Ko v. Natura Pet Products, Inc.*, (June 24, 2011) No.
2 5:09cv2619 (N.D. Cal.):

3 *The Court approves, as to form and content, the Long Form Notice of*
4 *Pendency and Settlement of Class Action (“Long Form Notice”), and the*
5 *Summary Notice attached as Exhibits to the Settlement Agreement, and finds*
6 *that the e-mailing of the Summary Notice, and posting on the dedicated*
7 *internet website of the Long Form Notice, mailing of the Summary Notice*
8 *post-card, and newspaper and magazine publication of the Summary Notice*
substantially in the manner as set forth in this Order meets the requirements
of Rule 23 of the Federal Rules of Civil Procedure, and due process, and is
the best notice practicable under the circumstances and shall constitute due
and sufficient notice to all persons entitled to notice.

9 11. Additional court comments referencing our work are included in our c.v.

10 12. In forming my opinions, I draw from my in-depth class action case experience, as
11 well as my educational and related work experiences. I graduated Summa Cum Laude with a B.A.
12 in Advertising from Penn State University and received formal media training at one of New
13 York’s largest advertising agency media departments, BBDO. At BBDO I devised sophisticated,
14 multi-million dollar media campaigns for large consumer clients such as Gillette, HBO, DuPont,
15 and GE. I have applied my experience to the legal notification field for more than a decade. I have
16 been directly responsible for all of the media planning in this case, including analysis of the media
17 audience data and determining the most effective mixture of media required to reach the greatest
18 practicable number of Class members.

19 13. Ms. Peak worked with the parties to draft the notice documents that will be
20 disseminated to Class members in this case. With over a decade of industry experience, she has an
21 extensive knowledge of drafting and developing class action notice documents. She also has
22 extensive experience managing all aspects of notice dissemination in state and federal courts,
23 including in numerous countries and languages around the world. She has designed the notice
24 documents in this case to be noticeable, concise, and well understood.

25 **NOTICE PLAN SUMMARY**

26 14. Our proposed Notice Plan uses a combination of notice placements in well-read
27 consumer publications and on a variety of websites to effectively reach Class members. To fulfill
28 the CLRA notice requirement, the notice program also includes four placements, once a week for

1 four consecutive weeks in *San Diego Union Tribune*. The overall Notice Program will reach at
2 least 80% of likely Class members with Notices that they will understand and be able to act upon,
3 if they so choose. Coverage will be further enhanced by the CLRA notice placements.

4 *Class Target*

5 15. The Class consists of all residents of the United States who purchased for personal
6 use, and not resale or distribution, a Covered Product between January 1, 2005 and the Preliminary
7 Approval Date. Covered Products are joint health products manufactured by Schiff and include,
8 but are not limited to, Schiff Move Free[®] products. It is our understanding that Schiff Move Free[®]
9 products consist of a formula of, among other things, glucosamine/chondroitin to improve joint
10 movement. Therefore, to verify the notice program's effectiveness, GfK MediaMark Research &
11 Intelligence, LLC ("MRI")³ data was studied among adults who use glucosamine as a vitamin or
12 dietary supplement ("Glucosamine Consumers"). This broad, over inclusive target group best
13 represents the Schiff Move Free[®] Class⁴. In addition, program effectiveness will also be verified
14 among supplement users aged 35 years or older ("Adult 35+ Supplement Consumers").

15 16. Knowing the characteristics, interests, and habits of a target group aids in the media
16 selection process. Demographic highlights of Glucosamine Consumers include the following:
17 90.9% have graduated from high school and 63.6% have attended college or beyond; 90.5% live in
18 a household consisting of 1-4 people and 81.1% live in a household consisting of two or more
19 people; 89.1% are 35 years of age or older, 80.2% are 45 years of age or older and 61.0% are 55
20 years of age or older; 86.0% live in a metropolitan CBSA;⁵ 86.0% are white; 81.4% have a

21 ³ GfK MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage,
22 and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of nearly 6,000
23 product and service brands across 550 categories, along with readership of hundreds of magazines and newspapers,
24 internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure.
Based on a yearly face-to-face interview of 26,000 consumers in their homes, MRI's Survey of the American
Consumer[™] is the primary source of audience data for the U.S. consumer magazine industry and the most
comprehensive and reliable source of multi-media audience data available.

25 ⁴ Although Schiff is measured by MRI, the demographic and media usage data is unstable due to a small sample base;
therefore, a broader, stable, measurable Glucosamine Consumer target has been used.

26 ⁵ The Office of Management and Budget defines metropolitan and micropolitan statistical areas (metro and micro
27 areas) as geographic entities for use by Federal statistical agencies in collecting, tabulating, and publishing Federal
28 statistics. The term "Core Based Statistical Area" (CBSA) is a collective term for both metro and micro areas. A metro
area contains a core urban area of 50,000 or more population, and a micro area contains an urban core of at least
10,000 (but less than 50,000) population. Each metro or micro area consists of one or more counties and includes the
counties containing the core urban area, as well as any adjacent counties that have a high degree of social and
economic integration (as measured by commuting to work) with the urban core

1 household income of \$30,000 or more, 72.2% have a household income of \$40,000 or more, and
 2 54.5% have a household income of \$60,000 or more; 79.9% own a home; 72.9% have lived at their
 3 current address for five or more years; 68.8% own a home valued at \$100,000 or more; 61.9% are
 4 married; and 58.7% are women.

5 17. Also important is the fact that, compared to the general adult population,
 6 Glucosamine Consumers are: 2.16 times more likely to be 65 years of age or older and 51.2%
 7 more likely to be 55-64 years old; 70.9% more likely to own a home valued at \$500,000 or more;
 8 42.6% more likely to live in a household consisting of two people and 34.3% more likely to live
 9 alone; 26.8% more likely to have lived at their current address for five or more years; 26.6% more
 10 likely to not be employed; 26.1% more likely to have a household income of \$150,000 or more;
 11 26.0% more likely to have graduated from college or beyond; 21.7% more likely to reside in the
 12 West Census Region; 17.7% more likely to own a home; 15.3% more likely to be married; 13.7%
 13 more likely to be women; and 13.3% more likely to be white.

14 *Consumer Publications*

15 18. To establish a reach base, we recommend placing notices in leading consumer
 16 publications.

17 Publication	Issuance	Notice Size	# of Insertions
18 <i>Arthritis Today</i>	Bi-Monthly	Half Page	1
19 <i>First for Women</i>	Tri-Weekly	Half Page	1
20 <i>Parade</i>	Weekly	2/5 Page (Digest)	1
21 <i>People</i>	Weekly	Half Page	1
22 <i>Prevention</i>	Monthly	Full Page (Digest)	1
23 <i>Reader's Digest</i>	Monthly	Full Page (Digest)	1
24 <i>Woman's World</i>	Weekly	Half Page	1
TOTAL			7

25 19. The recommended publications include leading publications among Glucosamine
 26 Consumers, as well as Adult 35+ Supplement Consumers. For instance, *Parade* reaches 32.2% of
 27 Glucosamine Consumers and 31.5% of Adult 35+ Supplement Consumers; *People* reaches 16.3%
 28 of Glucosamine Consumers and 18.1% of Adult 35+ Supplement Consumers; *Reader's Digest*

1 reaches 14.9% of Glucosamine Consumers and 13.6% of Adult 35+ Supplement Consumers;
2 *Prevention* reaches 7.6% of Glucosamine Consumers and 6.2% of Adult 35+ Supplement
3 Consumers; *Woman's World* reaches 4.8% of Glucosamine Consumers and 4.2% of Adult 35+
4 Supplement Consumers; *Arthritis Today* reaches 3.2% of Glucosamine Consumers and 2.9% of
5 Adult 35+ Supplement Consumers; and *First for Women* reaches 2.7% of Glucosamine Consumers
6 and 2.4% of Adult 35+ Supplement Consumers.

7 20. The recommended publications also offer a high concentration of Glucosamine
8 Consumers and Adult 35+ Supplement Consumers, as compared to the general adult population.
9 For instance, readers of *Prevention* are 2.05 times more likely to be Glucosamine Consumers and
10 67.5% more likely to be Adult 35+ Supplement Consumers; readers of *Arthritis Today* are 80.4%
11 more likely to be Glucosamine Consumers and 60.2% more likely to be Adult 35+ Supplement
12 Consumers; readers of *Woman's World* are 63.0% more likely to be Glucosamine Consumers and
13 44.3% more likely to be Adult 35+ Supplement; readers of *First For Women* are 59.3% more
14 likely to be Glucosamine Consumers and 40.4% more likely to be Adult 35+ Supplement
15 Consumers; readers of *Reader's Digest* are 46.4% more likely to be Glucosamine Consumers and
16 33.8% more likely to be Adult 35+ Supplement Consumers, *Parade* are 27.5% more likely to be
17 Glucosamine Consumers and 24.6% more likely to be Adult 35+ Supplement Consumers

18 21. In addition, the recommended publications provide a variety of editorial formats,
19 such as health, women's interest, general interest and entertainment to help extend reach among
20 the various demographic segments of the Class.

21 22. All publications placements will be tracked to ensure that they appear exactly as
22 planned as well as meet our high standards in terms of quality and positioning.
23

24 ***Internet Banners***

25 23. Internet usage is heavy among likely Class members—83.5% of Glucosamine
26 Consumers and 79.6% of Adult 35+ Supplement Consumers have access to the internet at home
27 using a computer. 78.3% of Glucosamine Consumers and 75.0% of Adult 35+ Supplement
28 Consumers have looked at or used the internet in the past 30 days. In addition, as compared to the

1 general population, Glucosamine Consumers are 5.7% more likely to have access to the internet at
 2 home using a computer. As a result, to further extend reach among the Class, more than 95 million
 3 Adult 35+ impressions will be purchased over a one month period on a selection of internet
 4 networks. A one-time frequency cap will be applied to Google Display, Microsoft Display, Yahoo!
 5 RMX, and Facebook activity (frequency caps cannot be applied to Google Search).

Network	# of Adult 35+ Impressions
Google Display	10,000,000
Google Search	412,300
Microsoft Display	5,000,000
Yahoo! RMX	10,000,000
Facebook	70,000,000
TOTAL	95,412,300

13 24. The text ads and display banners will allow access to the case website through an
 14 embedded hyperlink.

15 *CLRA Notice Requirements*

16 25. To fulfill California's Consumer Legal Remedies Act notice requirement, we
 17 propose placing four eighth-page notices (3.96" x 6.75"), once a week for four consecutive weeks,
 18 in the *San Diego Union Tribune*.

19 *Response Mechanisms*


20 26. An informational website will be established, allowing Class members the ability to
 21 obtain additional information and documents about the settlement. The website address will be
 22 prominently displayed in all printed notice materials and accessible through a hyperlink embedded
 23 in the internet banner notices.

24 27. A toll-free number will be established to allow a simple way for Class members to
 25 learn more about the settlement in the form of frequently asked questions and answers and to
 26 request to have more information mailed directly to them. The toll-free number will be
 27 prominently displayed in all printed notice materials.

1 I declare under the penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

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Executed this 17 day of March, 2014, in Philadelphia, PA.


Gina M. Intrepido-Bowden

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Exhibit 1



Legal Notification Services

Settlement Notice Plan

Lerma v. Schiff Nutrition International, Inc.

Case No. 3:11-cv-01056-CAB-MDD

Southern District of California

Prepared: February 27, 2014

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Attachment A – Legal Notice c.v.

Attachment B – Draft Forms of Notice

Legal Notification Services

KCC's Legal Notice experts, Gina M. Intrepido-Bowden and Carla A. Peak, specialize in the design and implementation of class action notice programs devised to reach class members with clear, concise, plain language notices. With over a decade of legal notice consulting experience, Ms. Intrepido-Bowden and Ms. Peak have been directly responsible for more than 100 effective and efficient notice programs, including some of the largest and most complex in history, reaching class members or claimants around the globe and providing notice in over 35 languages.

Their programs satisfy due process requirements, as well as all applicable state and federal laws. Judges, including in published decisions, have recognized the reach calculation methodology and notice design strategies they use. Their notices follow the principles in the Federal Judicial Center's (FJC) illustrative model notices, which were written and designed to embody the satisfaction of the plain language requirements of Federal Rule of Civil Procedure 23(c)(2).

Our Experts

Consistent with the judicial standards set forth by *Daubert* and *Kumho* and as illustrated in the FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, KCC's experts utilize the same practices and statistical analyses that are relied upon in the advertising industry when they design and measure the effectiveness of the notice programs they develop. Gina M. Intrepido-Bowden and Carla A. Peak have personally designed the "Notice Plan" (Plan) and proposed notice documents (Notice or Notices) that follow, and will directly oversee its implementation.

Gina Intrepido-Bowden

With more than 20 years of media research, planning and buying experience, Gina brings substantive expertise to her role as Director, Legal Notification Services. A leading expert, she is responsible for the design and implementation of evidence-based legal notice campaigns.

Gina has personally designed more than 80 media campaigns across the United States and Canada for antitrust, consumer and other class action matters. As an expert witness, she provides Courts with the reach evidence they need to determine the adequacy of notice. In addition, she has successfully critiqued other notice plans causing Courts to modify programs to better meet due process obligations.

She began her advertising career working for one of New York's largest advertising agency media departments. Gina is a frequent author and speaker on class notice issues including effective reach, notice dissemination as well as noticing trends and innovations. She earned a Bachelor of Arts in Advertising from Penn State University, graduating summa cum laude.

Carla Peak

With over a decade of industry experience, Carla specializes in the design of plain language legal notice documents to effectively address the challenges of communicating complex information to class members in a manner that they can understand.

Carla's notices satisfy the plain language requirements of Rule 23 and adhere to the guidelines set forth in the Manual for Complex Litigation, Fourth and by the Federal Judicial Center (FJC), as well as applicable state laws. She has successfully provided notice in both U.S. and international markets including communications in more than 35 languages.

She has presented on and written numerous articles about class notification programs, the design of effective notice documents as well as industry trends and innovations. Carla holds a Bachelor of Arts in Sociology from Temple University, graduating cum laude.

Relevant Case Experience¹

Our experts have designed and implemented numerous notice programs targeting Consumer Class members, for example:

- *Poertner v. The Gillette Co. and The Procter & Gamble Co.*, No. 6:12-CV-00803 (M.D. Fla.)
 - Judge Gregory A. Presnell (November 5, 2013): *The proposed Class Notice and Claim Form are approved as to form and content. The Court finds that the content of the Class Notice and the Claim Form satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process and accordingly approves them...The Court finds that compliance with the Notice Plan is the best practicable notice under the circumstances and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Rule 23, applicable law, and due process.*
- *Beck-Ellman v. Kaz USA, Inc.*, No. 3:10-cv-02134 (S. D. Cal.)
 - Judge Marilyn L. Huff (June 11, 2013): *The Notice Plan has now been implemented in accordance with the Court's Preliminary Approval Order. The Publication Notice was designed to provide potential class members with information about the Settlement and their rights, in easy-to-comprehend language... The Notice Plan was specially developed to cause class members to see the Publication Notice or see an advertisement that directed them to the Settlement Website. KCC identified that the class members belong to a demographic group known as "Pain Relief Users." The Heating Pads are considered a Pain Relief product. The publications that KCC's Notice Plan used are publications and websites whose viewers and readers include a high percentage of Pain Relief product users...The Court concludes that the Class Notice fully satisfied the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure and all due process requirements.*
- *Stroud v. eMachines, Inc.*, No. CJ-2003-968 L
 - Judge Tom A. Lucas (March 27, 2013): *The Notices met the requirements of Okla. Stat. tit. 12 section 2023(C), due process, and any other applicable law; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto. All objections are stricken. Alternatively, considered on their merits, all objections are overruled.*

See **Attachment A** for additional recognition and example cases.

¹ Includes work performed by our experts when employed at other firms.

Expert Services

Our Legal Notification Services include:

Pre-Settlement Consulting

- Review and advise clients of any potential obstacles relative to class definition or legal notification processes
- Develop a noticing plan strategy
- Provide judicial decisions that are relevant to the case or terms of the settlement

Demographic Analysis

- Define the target audience through research and analysis of class demographics
- Identify the geographic location of potential class members giving specific consideration to the class period
- Research class member media usage to define the communication channels that will be most effective

Notice Programs

- Create custom notice programs that incorporate media such as newspapers, magazines, trade journals, radio, television and the internet to meet due process requirements
- Develop press releases, broadcast public service announcements (PSAs), and a content-rich, case-specific website, as needed
- Track media activity to verify the adequacy of placements

Plain Language Communication

- Consider audience's level of understanding and devise communications strategy accordingly
- Design, draft and distribute plain-language notices that capture attention and are easily understood by class members
- Incorporate response mechanisms, such as a toll-free number, case website address, and/or QR code into notice documents

Expert Testimony

- Provide defensible opinions and testimony from subject-matter experts to verify the effectiveness of notice programs
- Supply proof of performance for each notice served, as required by the Courts
- Provide evidence and judicial decisions to overcome objections

Media Terms

The following provides the meaning of media terms highlighted throughout the Notice Plan:

Audience: Net number of persons or different persons exposed to a media vehicle. It is larger than a publication's circulation because it includes pass-along readers who may obtain the publication second hand (e.g., from a reception room, neighbor, friend).

Circulation: Total number of publication copies sold through all channels of distribution (e.g. subscriptions, newsstand, bulk).

Frequency: Estimated average number of times a population group is exposed to a media vehicle or combination of media vehicles containing a notice within a given period of time.

Impressions or Exposures: Total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. It is a gross or cumulative number that may include the same person more than once. Impressions can exceed the population size.

Reach or Coverage: Net percentage of a specific population group exposed to a media vehicle or a combination of media vehicles containing a notice at least once within a given period of time. Reach factors out duplication, representing the total different/net persons

Selectivity Index: Shows the concentration of a specific population group relative to the general adult population. For example, a publication selectivity index of 175 among men indicates that the publication's readers are 75% more likely to be men as compared to the general adult population.

Media Resources

The resources we use to quantify our plan approach include the same resources used by media professionals to guide the billions of dollars of advertising we see today:

Alliance for Audited Media (AAM)

AAM is a nonprofit organization that connects North America's leading media companies, advertisers and ad agencies. Founded in 1914 as the Audit Bureau of Circulations, the AAM is the preeminent source of cross-media verification and information services, providing standards, audit services and data critical to the advertising industry. The organization independently verifies print and digital circulation, mobile apps, website analytics, social media, technology platforms and audience information for newspapers, magazines and digital media companies in the U.S. and Canada.

GfK Mediamark Research & Intelligence, LLC (MRI)

MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of nearly 6,000 product and service brands across 550 categories, along with the readership of hundreds of magazines and newspapers, internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 26,000 consumers in their homes, MRI's *Survey of the American Consumer*[™] is the primary source of audience data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-media audience data available.

Telmar

Telmar is the world-leading supplier of computer based advertising media information services. Its software provides for survey analysis, data integration, media planning and optimization. With over 5,000 users in 85 countries, Telmar's clients include many of the world's leading advertising agencies, publishers, broadcasters and advertisers.

Program Overview

Objective

To design a notice program that will effectively reach Class members and capture their attention with notices communicated in clear, concise, plain language so that their rights and options may be fully understood. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers 70-95% reach among class members reasonable.

Class Definition

The Class (or Class members) consists of all residents of the United States who purchased for personal use, and not resale or distribution, a Covered Product between January 1, 2005 and the Preliminary Approval Date. Covered Products are joint health products manufactured by Schiff and include, but are not limited to, Schiff Move Free[®] products.

Case Analysis

The following known factors were considered when determining our recommendation:

1. Class members are unknown consumers who must be reached through a consumer media campaign.
2. Class members are located throughout the U.S., including large cities and rural areas.
3. Effective reach and notice content is vital to convey the importance of the information affecting Class members' rights, as well as to withstand challenge and collateral review.
5. Multiple exposures to notice are desirable so that Class members are reminded to act before deadlines approach.

Target Audience

It is our understanding that Schiff Move Free[®] products consist of a formula of, among other things, glucosamine/chondroitin to improve joint movement. Therefore, to verify the notice program's effectiveness, GfK MediaMark Research & Intelligence, LLC (MRI) data was studied among adults who use glucosamine as a vitamin or dietary supplement ("Glucosamine Consumers"). This broad, over inclusive target group best represents the Schiff Move Free[®] Class. In addition, program effectiveness will also be verified among supplement users aged 35 years or older ("Adult 35+ Supplement Consumers").

Strategies

A schedule of paid notices in leading consumer magazines and on a variety of websites will provide the necessary reach among the Class. To fulfill the notice requirement of California's Consumer Legal Remedies Act (CLRA), the notice program also includes four placements, once a week for four consecutive weeks the *San Diego Union Tribune*.

Plan Delivery

The notice effort will reach approximately 81.2% of Glucosamine Consumers on average 1.7 times each and 80.9% of Adult 35+ Supplement Consumers on average 1.7 times each. Coverage will be further enhanced by CLRA notice placements.

Notice Design

The Notices have been designed to provide a clear, concise, plain language statement of Class members' legal rights and options. To ease response, the toll-free number and website address has been provided in all printed notice documents. In addition, the internet banners contain an embedded hyperlink to the settlement website. The ad units are adequately sized to attract attention to the notice:

- Half-page units in standard sized publications
- Full-page units in digest sized publications
- Standard digest size units in tabloid newspaper supplements
- Standard pixel banner notices

Notice Schedule

The tentative notice schedule below is based on receiving preliminary court approval sometime between April 17 and April 30; thereby allowing an exclusion and objection deadline of August 14 (approximately 30 days from the last notice appearance and within 120 days of preliminary approval).

Notice Traffic	Issued	Week of 5/25	Week of 6/1	Week of 6/8	Week of 6/15	Week of 6/22	Week of 6/29	Week of 7/6	Week of 7/13
<i>Arthritis Today</i>	Bi-Monthly				6/17				
<i>First For Women</i>	Tri-Weekly								7/14
<i>Parade</i>	Weekly		6/1						
<i>People</i>	Weekly	5/30							
<i>Prevention</i>	Monthly				6/17				
<i>Reader's Digest</i>	Monthly								7/15
<i>Woman's World</i>	Weekly						6/30		
<i>San Diego Union Tribune</i>	Daily	5/27	6/3	6/10	6/17				
Internet Banner Notices									
Case Website	Constant								

Blocks indicate when readers first receive publications (the on-sale date, not the issue/cover date). All media subject to change based on availability at the time of placement.

Target Analysis

Knowing the characteristics, interests, and habits of a target group aids in the media selection process.

Demographic Highlights

Demographic highlights of Glucosamine Consumers include the following:

- 90.9% have graduated from high school and 63.6% have attended college or beyond;
- 90.5% live in a household consisting of 1-4 people and 81.1% live in a household consisting of two or more people;
- 89.1% are 35 years of age or older, 80.2% are 45 years of age or older and 61.0% are 55 years of age or older;
- 86.0% live in a metropolitan CBSA;²
- 86.0% are white;
- 81.4% have a household income of \$30,000 or more, 72.2% have a household income of \$40,000 or more, and 54.5% have a household income of \$60,000 or more;
- 79.9% own a home;
- 72.9% have lived at their current address for five or more years;
- 68.8% own a home valued at \$100,000 or more;
- 61.9% are married; and
- 58.7% are women.

Compared to the general adult population, Glucosamine Consumers are:

- 2.16 times more likely to be 65 years of age or older and 51.2% more likely to be 55-64 years old;
- 70.9% more likely to own a home valued at \$500,000 or more;
- 42.6% more likely to live in a household consisting of two people and 34.3% more likely to live alone;
- 26.8% more likely to have lived at their current address for five or more years;
- 26.6% more likely to not be employed;
- 26.1% more likely to have a household income of \$150,000 or more;
- 26.0% more likely to have graduated from college or beyond;
- 21.7% more likely to reside in the West Census Region;
- 17.7% more likely to own a home;
- 15.3% more likely to be married;
- 13.7% more likely to be women; and
- 13.3% more likely to be white.

² The Office of Management and Budget defines metropolitan and micropolitan statistical areas (metro and micro areas) as geographic entities for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics. The term "Core Based Statistical Area" (CBSA) is a collective term for both metro and micro areas. A metro area contains a core urban area of 50,000 or more population, and a micro area contains an urban core of at least 10,000 (but less than 50,000) population. Each metro or micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core.

Media Selection

To create the optimal notice program, we evaluated the strengths and weaknesses of the various media, as well as their reach and frequency potential, composition, format/content and efficiencies. Our recommended media mix provides:

- Broad national coverage into the largest cities as well as the smallest towns throughout the nation;
- A large percentage of likely Class members to be reached via the measurable paid media alone;
- Repeat notice exposures as a result of the overlapping media audiences;
- Efficient placements in approximately 644 newspapers nationwide via the newspaper supplement, *Parade*;
- A written summary of key information that may be easily referred to or passed on to others as a result of placements in some of the largest and most well-read publications in the country;
- A variety of editorial formats to extend reach among different Class demographic segments;
- A direct link to the case website through the internet banner notices; and
- Easy access to the notice documents through an established case website.

Consumer Publications

Consumer Magazine	Issuance	Notice Size	# of Insertions
<i>Arthritis Today</i>	Bi-Monthly	Half Page	1
<i>First For Women</i>	Tri-Weekly	Half page	1
<i>Parade</i>	Weekly	2/5 page (digest)	1
<i>People</i>	Weekly	Half page	1
<i>Prevention</i>	Monthly	Full page (Digest)	1
<i>Reader's Digest</i>	Monthly	Full page (Digest)	1
<i>Woman's World</i>	Weekly	Half page	1
TOTAL			7

- Includes leading publications among Glucosamine Consumers, as well as Adult 35+ Supplement Consumers
- Includes publications with a high concentration of Glucosamine Consumers, as well as Adult 35+ Supplement Consumers, as compared to the general adult population
- Provides a variety of editorial formats (e.g. health, women's interest, general interest, entertainment) to reduce duplication among readers and extend reach among different demographic segments
- Includes half page notices (full page in the digest and tabloid size publication) to attract attention and enhance readership with adequately sized text
- Includes some of the largest circulating publications in the country
- Positioning will be sought opposite articles, cover stories, or editorial features with documented high readership
- All placements will be tracked to ensure that they appear exactly as planned as well as meet our high standards in terms of quality and positioning

The following provides details for each of the recommended consumer publications:

Arthritis Today

- Circulation: 727,493
- Adult Audience: 4,342,000
- Bi-monthly magazine issued by the Arthritis Foundation
- Targets the health-conscious adult market, extending reach among those actively seeking to improve arthritis health
- Reaches 3.2% of Glucosamine Consumers and 2.9% of Adult 35+ Supplement Consumers
- Readers are 80.4% more likely to be Glucosamine Consumers and 60.2% more likely to be Adult

35+ Supplement Consumers, as compared to the general population

First *for women*

- Circulation: 1,211,794
- Adult Audience: 3,936,000
- Issued 17 times per year
- Provides information on health and nutrition, beauty and fitness, and home and family, extending reach among women 25-54
- Reaches 2.7% of Glucosamine Consumers and 2.4% of Adult 35+ Supplement Consumers
- Readers are 59.3% more likely to be Glucosamine Consumers and 40.4% more likely to be Adult 35+ Supplement Consumers, as compared to the general population

PARADISE

- Circulation: 26,128,743
- Adult Audience: 58,727,000
- Provides the single largest readership of any publication
- Reaches 32.2% of Glucosamine Consumers and 31.5% of Adult 35+ Supplement Consumers
- Readers are 27.5% more likely to be Glucosamine Consumers and 24.6% more likely to be Adult 35+ Supplement Consumers, as compared to the general population
- Carried in approximately 664 newspapers serving major urban and suburban markets in the U.S.

People

- Circulation: 3,542,185
- Adult Audience: 42,356,000
- Weekly entertainment magazine featuring celebrity news, biographies and gossip
- Reaches 16.3% of Glucosamine Consumers and 18.1% of Adult 35+ Supplement Consumers
- Provides a large number of pass along readers

Prevention

- Circulation: 2,884,542
- Adult Audience: 8,632,000
- Monthly healthy lifestyle magazine targeting people who want to be proactive about their health
- Reaches 7.6% of Glucosamine Consumers and 6.2% of Adult 35+ Supplement Consumers
- Readers are 2.05 times more likely to be Glucosamine Consumers and 67.5% more likely to be

Adult 35+ Supplement Consumers, as compared to the general population

Reader's Digest

- Circulation: 5,241,484
- Adult Audience: 23,618,000
- Monthly general interest and family magazine
- Reaches 14.9% of Glucosamine Consumers and 13.6% of Adult 35+ Supplement Consumers
- Readers are 46.4% more likely to be Glucosamine Consumers and 33.8% more likely to be Adult 35+ Supplement Consumers, as compared to the general population
- Audience skews slightly older



- Circulation: 1,240,741
- Adult Audience: 6,817,000
- Weekly magazine written for the traditional family-oriented working woman
- Reaches 4.8% of Glucosamine Consumers and 4.2% of Adult 35+ Supplement Consumers
- Readers are 63.0% more likely to be Glucosamine Consumers and 44.3% more likely to be Adult 35+ Supplement Consumers, as compared to the general population

Internet Banners

Internet usage is heavy among likely Class members— 83.5% of Glucosamine Consumers and 79.6% of Adult 35+ Supplement Consumers have access to the internet at home using a computer. 78.3% of Glucosamine Consumers and 75.0% of Adult 35+ Supplement Consumers have looked at or used the internet in the past 30 days. In addition, compared to the general population, Glucosamine Consumers are 5.7% more likely to have access to the internet at home using a computer. As a result, to further extend reach among the Class, more than 95 million Adult 35+ impressions will be purchased over a one month period on a selection of internet networks. A one-time frequency cap will be applied to Google Display, Microsoft Display, Yahoo! RMX, and Facebook activity (frequency caps cannot be applied to Google Search).

Network	# of Adult 35+ Impressions
Google Display	10,000,000
Google Search	412,300
Microsoft Display	5,000,000
Yahoo! RMX	10,000,000
Facebook	70,000,000
TOTAL	95,412,300

The text ads and display banners will allow access to the case website through an embedded hyperlink.

The recommended internet activity:

- Generates approximately 95 million adult impressions over a one month period
- Allows access to the case website through an embedded hyperlink
- Uses 728 x 90 pixel and 300 x 250 pixel banner notices
- Will be rotated on a variety of web properties

CLRA Notice Requirement

To fulfill California's Consumer Legal Remedies Act notice requirement, four eighth-page notices (3.96" x 6.75") will appear, once a week for four consecutive weeks, in the *San Diego Union Tribune*.

Newspaper	Daily Circulation
<i>San Diego Union Tribune</i>	221,281

Source: ABC Report

Additional Support

A website, toll-free number, and Facebook page will be established to allow the Class verifiable opportunities to solicit information and communicate about the case.

Case Website

- Allows Class members the ability to obtain additional information and documents including the Claim Form, Detailed Notice, Summary Notice, Settlement Agreement, Complaint, and any other information that the parties may agree to provide or that the Court may require
- Prominently displayed in all printed notice materials and accessible through a hyperlink embedded in the internet banner ads

Toll-Free Telephone Support

- Provides a simple way for Class members to obtain additional information about the settlement
- Allows Class members the opportunity to learn more about the case in the form of frequently asked questions and answers
- Allows Class members to request to have more information mailed directly to them
- Prominently displayed in all printed notice materials

Facebook webpage

- Enables Class members to learn more about the class action settlement through the popular social media site

Notice Design Strategies

The design and content of all of the notice materials are consistent with the FJC's "illustrative" forms of model plain language notices, available at www.fjc.gov.

Summary Notice

- Bold headline captures attention and speaks directly to Class members, alerting them that they should read the Notice and why it is important
- Prominent notice size promotes attention, readership, and comprehension
- Legal significance is highlighted to ensure readers that the communication carries legitimate information from the court and not commercial advertising
- Concise plain language without "legalese" enhances comprehension
- Content includes all critical information in simple format
- Toll-free number and case website invite response, allowing Class members the opportunity to obtain additional information

Detailed Notice

- Prominent "Your Rights and Options" table on first page immediately informs readers of their rights and options in the case
- Bold headline captures attention and speaks directly to Class members, alerting them that they should read the Notice and why it is important
- Concise plain language without "legalese" enhances comprehension
- Provides more detailed information than that of a Summary Notice
- Content includes all essential information in simple format
- Toll-free number and case website invite response, allowing Class members the opportunity to obtain additional information

Internet Banner Notices

- Simple rotating message alerts Class members about the litigation
- An embedded link allows immediate access to the case website

Draft Forms of Notice

Attachment B contains the draft forms of the following notice documents:

- The **Detailed Notice** that will be mailed to all known Class members that can be reasonably identified, those who call the toll-free number to request one, as well as made available at the website.
- The **Summary Notice** as it will appear in the publications identified in this Notice Plan.
- The **Internet Banners** that will be posted on a variety of web properties.

Conclusion

Our recommended Notice Plan:

- Was designed by experts who are trained and experienced in their specific area of expertise
- Is consistent with other effective settlement notice programs
- Is consistent with the "desire to actually inform" due process communications standard of *Mullane*
- Provides the best notice practicable
- Meets due process requirements
- Provides the same reach and frequency evidence that Courts have approved, is recommended by the FJC, and that has withstood appellate scrutiny, other expert critiques, as well as collateral review
- Leaves no holes or vulnerabilities that would leave the parties open to challenge

Attachment A



Legal Notification Services

KCC's Legal Notification Services team provides expert legal notice services in class action, mass tort and bankruptcy settings. We specialize in the design and implementation of notice programs with plain language notices; expert opinions and testimony on the adequacy of notice; and critiques of other notice programs and notices. With over a decade of experience, our legal noticing team has been involved in more than a hundred effective and efficient notice programs reaching class members and claimants in almost every country, dependency and territory in the world, and providing notice in over 35 languages. Our programs satisfy due process requirements, as well as all applicable state and federal laws. Some case examples our experts have been involved with include:

- ***Shames v. The Hertz Corporation***, No. 3:07-cv-02174 (S.D. Cal.) A national antitrust settlement involving several million class members who rented vehicles from a variety of car rental companies.
- ***In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation***, No. 11-MD-2247 (D. Minn.) A national products liability settlement providing reimbursement, repair and replacement of affected plumbing components.
- ***In re Trans Union Corp. Privacy Litigation***, MDL No. 1350 (N.D. Ill.) Perhaps the largest discretionary class action notice campaign involving virtually every adult in the United States and informing them about their rights in the \$75 million data breach settlement.
- ***In re TJX Companies, Inc., Customer Data Security Breach Litigation***, MDL No. 1838 (D. Mass.) One of the largest U.S. and Canadian retail consumer security breach notice programs.
- ***Grays Harbor Adventist Christian School v. Carrier Corp.***, No. 05-05437 (W.D. Wash.), ***Donnelly v. United Technologies Corp.*** No. 06-CV-320045CP (Ont. S.C.J.) and ***Wener v. United Technologies Corp.*** 500-06-000425-088 (QC. Super. Ct.) Product liability class action settlements involving secondary heat exchangers in high efficiency gas furnaces, affecting class members throughout the U.S. and Canada.
- ***In re Residential Schools Litigation***, No. 00-CV-192059 (Ont. S.C.J.) The largest and most complex class action in Canadian history incorporating a groundbreaking notice program to disparate, remote aboriginal persons qualified to receive benefits in the multi-billion dollar settlement.

Our Experts

Gina M. Intrepido-Bowden

With more than 20 years of media research, planning and buying experience, Gina M. Intrepido-Bowden brings substantive expertise to her role as Director, Legal Notification Services. A leading expert, she is responsible for the design and implementation of evidence-based legal notice campaigns.

Gina has designed more than 75 judicially approved media campaigns across the United States and Canada for antitrust, consumer and other class action matters. As a legal notice expert, she provides Courts with the reach evidence they need to determine the adequacy of notice. In addition, she has successfully critiqued other notice plans, causing Courts to modify programs to better meet due process obligations.

She began her advertising career working for one of New York's largest advertising agency media departments. Gina is a frequent author and speaker on class notice issues including effective reach, notice dissemination as well as noticing trends and innovations. She earned a Bachelor of Arts in Advertising from Penn State University, graduating summa cum laude. Gina can be reached at gintrepidobowden@kccllc.com.

Carla A. Peak

With over a decade of industry experience, Carla A. Peak specializes in the design of plain language legal notice documents to effectively address the challenges of communicating complex information to class members in a manner that they can understand.

Carla's notices satisfy the plain language requirements of Rule 23 and adhere to the guidelines set forth in the Manual for Complex Litigation, Fourth and by the Federal Judicial Center (FJC), as well as applicable state laws. She has successfully provided notice in both U.S. and international markets including communications in more than 35 languages.

She has presented on and written numerous articles about class notification programs, the design of effective notice documents as well as industry trends and innovations. Carla holds a Bachelor of Arts in Sociology from Temple University, graduating cum laude. Carla can be reached at cpeak@kccllc.com.

Judicial Recognition

Following are some judicial comments recognizing the work of our expert(s):

Judge Gregory A. Presnell, *Poertner v. The Gillette Co. and The Procter & Gamble Co.*, (November 5, 2013) No. 6:12-CV-00803 (M.D. Fla.):

The proposed Class Notice and Claim Form are approved as to form and content. The Court finds that the content of the Class Notice and the Claim Form satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process and accordingly approves them...The Court finds that compliance with the Notice Plan is the best practicable notice under the circumstances and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of Rule 23, applicable law, and due process.

Honorable Jose L. Linares, *In re Hypodermic Products Antitrust Litigation*, (November 4, 2013) No. 2:05-CV-01602 (D. N.J.):

Upon reviewing Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification and Approval of Notice Plan and the Declarations of Karin E. Fisch, Esq. and Carla A. Peak and the documents

attached thereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:...Proposed forms of Notice are attached hereto as Exhibit A. The Court finds that the form fairly and adequately: (i) describes the terms and effect of the Settlement Agreement and of the Settlement; (ii) notifies the Indirect Purchaser Class concerning the proposed plan of allocation and distribution; (iii) notifies the Indirect Purchaser Plaintiffs' Lead Counsel will seek attorneys' fees not to exceed one-third of the Settlement Fund, reimbursement of expenses and incentive fees; (iv) gives notice to the Indirect Purchaser Class of the time and place of the Fairness Hearing; and (v) describes how the recipients of the Notice may submit a claim, exclude themselves from the Settlement or object to any of the relief requested.

Judge Marilyn L. Huff, Beck-Ellman v. Kaz USA, Inc., (June 11, 2013) No. 3:10-cv-02134 (S. D. Cal.):

The Notice Plan has now been implemented in accordance with the Court's Preliminary Approval Order. The Publication Notice was designed to provide potential class members with information about the Settlement and their rights, in easy-to-comprehend language... The Notice Plan was specially developed to cause class members to see the Publication Notice or see an advertisement that directed them to the Settlement Website. KCC identified that the class members belong to a demographic group known as "Pain Relief Users." The Heating Pads are considered a Pain Relief product. The publications that KCC's Notice Plan used are publications and websites whose viewers and readers include a high percentage of Pain Relief product users...The Court concludes that the Class Notice fully satisfied the requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure and all due process requirements.

Judge Tom A. Lucas, Stroud v. eMachines, Inc., (March 27, 2013) No. CJ-2003-968 L (D. Ct. Cleveland Cnty, Okla.):

The Notices met the requirements of Okla. Stat. tit. 12 section 2023(C), due process, and any other applicable law; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto. All objections are stricken. Alternatively, considered on their merits, all objections are overruled.

Judge Marilyn L. Huff, Beck-Ellman v. Kaz USA, Inc. (January 7, 2013) No. 3:10-cv-02134 (S. D. Cal.):

The proposed Class Notice, Publication Notice, and Settlement Website are reasonably calculated to inform potential Class members of the Settlement, and are the best practicable methods under the circumstances... Notice is written in easy and clear language, and provides all needed information, including: (1) basic information about the lawsuit; (2) a description of the benefits provided by the settlement; (3) an explanation of how Class members can obtain Settlement benefits; (4) an explanation of how Class members can exercise their rights to opt-out or object; (5) an explanation that any claims against Kaz that could have been litigated in this action will be released if the Class member does not opt out; (6) the names of Class Counsel and information regarding attorneys' fees; (7) the fairness hearing date and procedure for appearing; and (8) the Settlement Website and a toll free number where additional information, including Spanish translations of all forms, can be obtained. After review of the proposed notice and Settlement Agreement, the Court concludes that the Publication Notice and Settlement Website are adequate and sufficient to inform the class members of their rights. Accordingly, the Court approves the form and manner of giving notice of the proposed settlement.

Judge Tom A. Lucas, Stroud v. eMachines, Inc., (December 21, 2012) No. CJ-2003-968 L (D.

Ct. Cleveland Cnty, Okla.):

The Plan of Notice in the Settlement Agreement as well as the content of the Claim Form, Class Notice, Post-Card Notice, and Summary Notice of Settlement is hereby approved in all respects. The Court finds that the Plan of Notice and the contents of the Class Notice, Post-Card Notice and Summary Notice of Settlement and the manner of their dissemination described in the Settlement Agreement is the best practicable notice under the circumstances and is reasonably calculated, under the circumstances, to apprise Putative Class Members of the pendency of this action, the terms of the Settlement Agreement, and their right to object to the Settlement Agreement or exclude themselves from the Certified Settlement Class and, therefore, the Plan of Notice, the Class Notice, Post-Card Notice and Summary Notice of Settlement are approved in all respects. The Court further finds that the Class Notice, Post-Card Notice and Summary Notice of Settlement are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and that they meet the requirements of due process.

Honorable Michael M. Anello, Shames v. The Hertz Corporation, (November 5, 2012) No. 3:07-cv-02174 (S.D. Cal.):

...the Court is satisfied that the parties and the class administrator made reasonable efforts to reach class members. Class members who did not receive individualized notice still had opportunity for notice by publication, email, or both...The Court is satisfied that the redundancies in the parties' class notice procedure—mailing, e-mailing, and publication—reasonably ensured the widest possible dissemination of the notice...The Court OVERRULES all objections to the class settlement...

Judge Ann D. Montgomery, In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation, (July 9, 2012) No. 11-MD-2247 (D. Minn.):

The objections filed by class members are overruled; The notice provided to the class was reasonably calculated under the circumstances to apprise class members of the pendency of this action, the terms of the Settlement Agreement, and their right to object, opt out, and appear at the final fairness hearing;...

Judge Ann D. Montgomery, In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation, (June 29, 2012) No. 11-MD-2247 (D. Minn.):

After the preliminary approval of the Settlement, the parties carried out the notice program, hiring an experienced consulting firm to design and implement the plan. The plan consisted of direct mail notices to known owners and warranty claimants of the RTI F1807 system, direct mail notices to potential holders of subrogation interests through insurance company mailings, notice publications in leading consumer magazines which target home and property owners, and earned media efforts through national press releases and the Settlement website. The plan was intended to, and did in fact, reach a minimum of 70% of potential class members, on average more than two notices each...The California Objectors also take umbrage with the notice provided the class. Specifically, they argue that the class notice fails to advise class members of the true nature of the aforementioned release. This argument does not float, given that the release is clearly set forth in the Settlement and the published notices satisfy the requirements of Rule 23(c)(2)(B) by providing information regarding: (1) the nature of the action class membership; (2) class claims, issues, and defenses; (3) the ability to enter an appearance through an attorney; (4) the procedure and ability to opt-out or object; (5) the process and instructions to make a claim; (6) the binding effect of the class judgment; and (7) the specifics of the final fairness hearing.

Honorable Michael M. Anello, *Shames v. The Hertz Corporation*, (May 22, 2012) No. 3:07-cv-02174 (S.D. Cal.):

The Court approves, as to form and content, the Notice of Proposed Settlement of Class Action, substantially in the forms of Exhibits A-1 through A-6, as appropriate, (individually or collectively, the "Notice"), and finds that the e-mailing or mailing and distribution of the Notice and publishing of the Notice substantially in the manner and form set forth in ¶ 7 of this Order meet the requirements of Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

Judge Anthony Powell, *Molina v. Intrust Bank, N.A.*, (May 21, 2012) No. 10-CV-3686 (18th J.D. Ct., Kan.):

The form, content, and method of dissemination of Class Notice given to the Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceeding to all persons entitled to such notice, and said notice fully satisfied the requirements of K.S.A. § 60-223 and due process.

Judge Ronald L. Bauer, *Blue Cross of California Website Securities Litigation*, (April 5, 2012) No. JCCP 4647 (Super. Ct. Cal.):

The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Person entitled to such notice, and said notice satisfied the requirements of California Rules of Court, Rule 3,766(e) and (f), and due process.

Judge Ann D. Montgomery, *In Re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation*, (January 18, 2012) No. 11-MD-2247 (D. Minn.):

The Notice Plan detailed by KCC in the Affidavit of Gina M. Intrepido-Bowden provides the best notice practicable under the circumstances and constitutes due and sufficient notice of the Settlement Agreement and the Final Fairness Hearing to the Classes and all persons entitled to receive such notice as potential members of the Class...The Notice Plan's multi-faceted approach to providing notice to Class Members whose identity is not known to the Settling Parties constitutes 'the best notice that is practicable under the circumstances' consistent with Rule 23(c)(2)(B)...Notice to Class members must clearly and concisely state the nature of the lawsuit and its claims and defenses, the Class certified, the Class member's right to appear through an attorney or opt out of the Class, the time and manner for opting out, and the binding effect of a class judgment on members of the Class. Fed. R. Civ. P. 23(c)(2)(B). Compliance with Rule 23's notice requirements also complies with Due Process requirements. 'The combination of reasonable notice, the opportunity to be heard, and the opportunity to withdraw from the class satisfy due process requirements of the Fifth Amendment.' Prudential, 148 F.3d at 306. The proposed notices in the present case meet those requirements.

Judge Jeffrey Goering, *Molina v. Intrust Bank, N.A.*, (January 17, 2012) No. 10-CV-3686 (18th J.D. Ct. Ks.):

The Court approved the form and content of the Class Notice, and finds that transmission of the Notice as proposed by the Parties meets the requirements of due process and Kansas law, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

Judge Charles E. Atwell, *Allen v. UMB Bank, N.A.*, (October 31, 2011) No. 1016-CV34791 (Cir. Ct. Mo.):

The form, content, and method of dissemination of Class Notice given to the Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure and due process.

Judge Charles E. Atwell, *Allen v. UMB Bank, N.A.*, (June 27, 2011) No. 1016-CV34791 (Cir. Ct. Mo.):

The Court approves the form and content of the Class Notice, and finds that transmission of the Notice as proposed by the Parties meets the requirements of due process and Missouri law, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

Judge Jeremy Fogel, *Ko v. Natura Pet Products, Inc.*, (June 24, 2011) No. 5:09cv2619 (N.D. Cal.):

The Court approves, as to form and content, the Long Form Notice of Pendency and Settlement of Class Action ("Long Form Notice"), and the Summary Notice attached as Exhibits to the Settlement Agreement, and finds that the e-mailing of the Summary Notice, and posting on the dedicated internet website of the Long Form Notice, mailing of the Summary Notice post-card, and newspaper and magazine publication of the Summary Notice substantially in the manner as set forth in this Order meets the requirements of Rule 23 of the Federal Rules of Civil Procedure, and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled to notice.

Judge M. Joseph Tiemann, *Billieson v. City of New Orleans*, (May 27, 2011) No. 94-19231 (Civ. D. Ct. La.):

The plan to disseminate notice for the Insurance Settlements (the "Insurance Settlements Notice Plan") which was designed at the request of Class Counsel by experienced Notice Professionals Gina Intrepido-Bowden and Carla A. Peak... IT IS ORDERED as follows: 1. The Insurance Settlements Notice Plan is hereby approved and shall be executed by the Notice Administrator; 2. The Insurance Settlements Notice Documents, substantially in the form included in the Insurance Settlements Notice Plan, are hereby approved.

Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litig.*, (February 11, 2009) MDL No. 1796 (D.C.):

The Court approves the proposed method of dissemination of notice set forth in the Notice Plan, Exhibit 1 to the Settlement Agreement. The Notice Plan meets the requirements of due process and is the best notice practicable under the circumstances. This method of Class Action Settlement notice dissemination is hereby approved by the Court.

Judge Louis J. Farina, *Soders v. General Motors Corp.*, (December 19, 2008) No. CI-00-04255 (C.P. Pa.):

The Court has considered the proposed forms of Notice to Class members of the settlement and the plan for disseminating Notice, and finds that the form and manner of notice proposed by the parties and approved herein meet the requirements of due process, are the best notice practicable under the circumstances, and constitute sufficient notice to all persons entitled to notice.

Judge Robert W. Gettleman, *In Re Trans Union Corp.*, (September 17, 2008) MDL No. 1350 (N.D. Ill.):

The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law...Accordingly, all objections are hereby OVERRULED.

Judge William G. Young, *In re TJX Companies*, (September 2, 2008) MDL No. 1838 (D. Mass.):

...as attested in the Affidavit of Gina M. Intrepido...The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.

Judge David De Alba, *Ford Explorer Cases*, (May 29, 2008) JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved -- submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.

Judge Kirk D. Johnson, *Hunsucker v. American Standard Ins. Co. of Wisconsin*, (August 10, 2007) No. CV-2007-155-3 (Cir. Ct. Ark.):

Having admitted and reviewed the Affidavits of Carla Peak and Christine Danielson concerning the success of the notice campaign, including the fact that written notice reached approximately 86% of the potential Class Members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but failed to do so...Specifically, the Court received and admitted affidavits from Carla Peak and Christine Danielson, setting forth the scope and results of the notice campaign. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice and settlement website as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order was the best

notice practicable under the circumstances to all members of the Settlement Class.

Speaking Engagements

Designing a Settlement and Notice Program to Minimize Scrutiny and Objections, AMERICAN CONFERENCE INSTITUTE (ACI), 16th National Conference on Consumer Finance Class Actions & Litigation, Gina Intrepido-Bowden presenter/panelist (July 2013).

Pitfalls of Class Action Notice and Settlement Administration, PRACTISING LAW INSTITUTE (PLI), Class Action Litigation 2013, Gina Intrepido-Bowden and Robert DeWitte presenters/panelists (July 2013).

The Fundamentals of Settlement Administration accredited CLE Program, Carla Peak and Steven Weisbrot, presented in Philadelphia at DLA Piper LLP (August 2013); Carla Peak and Robert DeWitte, presented in Illinois at Locke Lord LLP and broadcast to offices in California, Georgia, New York, Texas and London (April 2013); Gina Intrepido-Bowden and Robert DeWitte, presented in Illinois at Skadden, Arps, Slate, Meagher & Flom LLP and Wexler Wallace LLP (January 2013); Gina Intrepido-Bowden and Robert DeWitte, presented in Illinois at Hinshaw & Culbertson LLP (October 2012); Gina Intrepido-Bowden and Rob Taylor-Manning, presented in Pennsylvania at Spector Roseman Kodroff & Willis, P.C. (December 2011).

Ethics in Legal Notification, accredited CLE Program, Gina Intrepido-Bowden, Carla Peak & Steven Weisbrot, presented in New York at Morgan Lewis & Bockius (December 2012).

Class Action Settlement Administration Tips & Pitfalls on the Path to Approval accredited CLE Program, Carla Peak, Gina Intrepido-Bowden & Robert DeWitte, presented in Illinois at Jenner & Block and broadcast to offices in Washington DC, New York and California (October 2012).

Perspectives from Class Action Claims Administrators: Innovations in Notification, CLE INTERNATIONAL, 8th Annual Class Actions Conference, Gina Intrepido-Bowden, presenter/panelist (May 2012).

Innovations in Notification, CHICAGO BAR ASSOCIATION, Class Litigation Committee Spring Seminar, Carla Peak, presenter (May 2012).

Ethical Considerations in Canadian Class Actions, accredited CLE Program, Gina Intrepido-Bowden and Robert Taylor-Manning, presented in Canada at Rochon Genova, LLP (April 2012).

Reaching Class Members & Driving Take Rates, CONSUMER ATTORNEYS OF SAN DIEGO, 4th Annual Class Action Symposium, Gina Intrepido-Bowden, presenter/panelist (October 2011).

Legal Notice Ethics, accredited CLE Program, Gina Intrepido-Bowden, Carla Peak & Elizabeth Grande, presented in New York at Cohen Milstein Sellers & Toll PLLC and Milberg LLP (May 2010), in Illinois at Miller Law LLC (May 2010), in Pennsylvania at Berger & Montague, P.C., Anapol Schwartz, Lundy Law, and Dechert LLP, which was broadcast to offices in California, New Jersey, New York, North Carolina, Texas, Washington D.C., and London and sent via video to their office in China (October 2010), and in Minnesota at Heins Mills & Olson, P.L.C., Lockridge Grindal Nauen P.L.L.P., and Chestnut Cambronne (January 2011).

Class Actions 101: Best Practices and Potential Pitfalls in Providing Class Notice, accredited CLE Program, Brian Christensen, Gina Intrepido & Richard Simmons, presented to Kansas Bar Association (March 2009).

Articles

Carla Peak and Steven Weisbrot. *How to Design Your Notice to Minimize Professional Objectors*, Class Action Lawsuit Defense: Class Action Defense News, Developments and Commentary provided by BakerHostetler (www.classactionlawsuitdefense.com) (July 20, 2012).

Carla Peak, *Is your legal notice designed to be noticed?* WESTLAW JOURNAL CLASS ACTION Vol.18 Issue 10 (2011).

John B. Isbister, Todd B. Hilsee & Carla A. Peak, *Seven Steps to a Successful Class Action Settlement*, AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION, CLASS ACTIONS TODAY 16 (2008).

Todd B. Hilsee, Gina M. Intrepido & Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The "Desire-to-Inform" Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV. 1771 (2006); reprinted in course materials for: AMERICAN BAR ASSOCIATION, 10th Annual National Institute on Class Actions (2006); NATIONAL BUSINESS INSTITUTE, Class Action Update: Today's Trends & Strategies for Success (2006); CENTER FOR LEGAL EDUCATION INTERNATIONAL, Class Actions: Prosecuting and Defending Complex Litigation (2007).

Gina M. Intrepido, *Notice Experts May Help Resolve CAFA Removal Issues, Notification to Officials*, 6 CLASS ACTION LITIG. REP. 759 (2005).

Todd B. Hilsee, Shannon R. Wheatman, & Gina M. Intrepido, *Do You Really Want Me to Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually Inform*, 18 GEORGETOWN JOURNAL LEGAL ETHICS 1359 (2005).

Legal Notice Case Examples

Following is a list of cases in which our expert(s) have been involved in the design and implementation of the notice program and/or notice documents:

<i>Naef v. Masonite Corp (Hardboard Siding)</i>	Cir. Ct. Ala., CV-94-4033
<i>Williams v. Weyerhaeuser Co. (Hardboard Siding)</i>	Cal. Super. Ct., CV-995787
<i>In re Babcock and Wilcox Co. (Asbestos Related Bankruptcy)</i>	E.D. La., 00-10992
<i>Brown v. Am. Tobacco</i>	Cal. Super. Ct., J.C.C.P. 4042 No. 711400
<i>Microsoft I-V Cases (Antitrust Litig. Mirroring Justice Dept.)</i>	Cal. Super. Ct., J.C.C.P. No. 4106
<i>Scott v. Blockbuster, Inc. (Extended Viewing Fees)</i>	136 th Tex. Jud. Dist., No. D 162-535
<i>Talalai v. Cooper Tire & Rubber Co. (Tire Layer Adhesion)</i>	N.J. Super. Ct., No. MID-L-8839-00 MT
<i>Thompson v. Metropolitan Life Ins. Co. (Race Related Sales Practices)</i>	S.D. N.Y., No. 00-CIV-5071 HB
<i>Ervin v. Movie Gallery Inc. (Extended Viewing Fees)</i>	Tenn. Ch. Fayette Co., No. CV-13007
<i>Walker v. Rite Aid of PA, Inc. (PA Act 6)</i>	C.P. Pa., No. 99-6210
<i>Myers v. Rite Aid of PA, Inc. (PA Act 6)</i>	C.P. Pa., No. 01-2771
<i>Baker v. Jewel Food Stores, Inc. & Dominick's Finer Foods, Inc. (Milk Price Fixing)</i>	Cir. Ct. Ill. Cook Co., No. 00-L-9664
<i>In re Columbia/HCA Healthcare Corp. (Billing Practices Litig.)</i>	M.D. Tenn., MDL No. 1227
<i>Soders v. General Motors Corp. (Marketing Initiative)</i>	C.P. Pa., No. CI-00-04255
<i>Nature Guard Cement Roofing Shingles Cases</i>	Cal. Super. Ct., J.C.C.P. No. 4215
<i>Defrates v. Hollywood Entertainment Corp. (Extended Viewing Fees)</i>	Cir. Ct. Ill., St. Clair. Co., No. 02L707

West v. G&H Seed Co. (Crawfish Farmers)	27 th Jud. D. Ct. La., No. 99-C-4984-A
Baiz v. Mountain View Cemetery (Burial Practices)	Cal. Super. Ct., No. 809869-2
Richison v. American Cemwood Corp. (Roofing Durability)	Cal. Super. Ct., No. 005532
Friedman v. Microsoft Corp. (Antitrust)	Ariz. Super. Ct., No. CV 2000-000722
Davis v. Am. Home Prods. Corp. (Norplant Contraceptive)	Civ. D. Ct. La., Div. K, No. 94-11684
Gordon v. Microsoft Corp. (Antitrust)	D. Minn., No. 00-5994
Fisher v. Virginia Electric & Power Co.	E.D. Va., No 3:02-CV-431
Bardessono v. Ford Motor Co. (15 Passenger Vans Outreach)	Wash. Super. Ct., No. 32494
Gardner v. Stimson Lumber Co. (Forestex Siding)	Wash. Super. Ct., No. 00-2-17633-3SEA
Nichols v. SmithKline Beecham Corp. (Paxil)	E.D. Pa., No. 00-6222
In re Educ. Testing Serv. PLT 7-12 Test Scoring	E.D. La., 2:04md1643
In re Serzone Products Liability	S.D. W. Va., 02-md-1477
Ford Explorer Cases	Cal. Super. Ct., JCCP Nos. 4226 & 4270
In re Lupron Marketing & Sales Practices	D. Mass., MDL No.1430
Morris v. Liberty Mutual Fire Ins. Co.	D. Okla., NO. CJ-03-714
Thibodeaux v. Conoco Philips Co.	D. La., No. 2003-481
Morrow v. Conoco Inc.	D. La., No. 2002-3860
Tobacco Farmer Transition Program	U.S. Dept. of Agric.
Froeber v. Liberty Mutual Fire Ins. Co.	Cir. Ct. Ore., No. 00C15234
Carnegie v. Household Int'l, Inc.	N. D. Ill., No. 98-C-2178
In re Royal Ahold Securities and "ERISA"	D. Md., 1:03-md-01539
First State Orthopaedics et al. v. Concentra, Inc., et al.	E.D. Pa., No. 2:05-CV-04951-AB
Meckstroth v. Toyota Motor Sales, U.S.A., Inc.	24th Jud. D. Ct. La., No. 583-318
In re High Sulfur Content Gasoline Products Liability	E.D. La., MDL No. 1632
Desportes v. American General Assurance Co.	Ga. Super. Ct., No. SU-04-CV-3637
In re Residential Schools Litigation	Ont. Super. Ct., 00-CV-192059 CPA
Turner v. Murphy Oil USA, Inc.	E.D. La., No. 2:05-CV-04206-EEF-JCW
Carter v. North Central Life Ins. Co.	Ga. Super. Ct., No. SU-2006-CV-3764-6
Spence v. Microsoft Corp. (Antitrust Litig.)	Cir. Ct. Wis., No. 00-CV-003042
Ciabattari v. Toyota Motor Sales, U.S.A., Inc.	N.D. Cal., No. C-05-04289-BZ
Peek v. Microsoft Corporation	Cir. Ct. Ark., No. CV-2006-2612
Reynolds v. The Hartford Financial Services Group, Inc.	D. Ore., No. CV-01-1529 BR
Zarebski v. Hartford Insurance Co. of the Midwest	Cir. Ct. Ark., No. CV-2006-409-3
In re Parmalat Securities	S.D. N.Y., 1:04-md-01653 (LAK)
Beasley v. The Reliable Life Insurance Co.	Cir. Ct. Ark., No. CV-2005-58-1
Sweeten v. American Empire Insurance Company	Cir. Ct. Ark., No. 2007-154-3
Gunderson v. F.A. Richard & Associates, Inc. (FARA)	14th Jud. D. Ct. La., No. 2004-2417-D

<i>Gunderson v. F.A. Richard & Associates, Inc. (Focus)</i>	14th Jud. D. Ct. La., No. 2004-2417-D
<i>Hunsucker v. American Standard Ins. Co. of Wisconsin</i>	Cir. Ct. Ark., No., CV-2007-155-3
<i>Burgess v. Farmers Insurance Co., Inc.</i>	D. Okla., No. CJ-2001-292
<i>Grays Harbor v. Carrier Corporation</i>	W.D. Wash., No. 05-05437-RBL
<i>Donnelly v. United Technologies Corp.</i>	Ont. S.C.J., 06-CV-320045CP
<i>Wener v. United Technologies Corp.</i>	QC. Super. Ct., 500-06-000425-088
<i>Brookshire Bros. v. Chiquita (Antitrust)</i>	S.D. Fla., No. 05-CIV-21962
<i>Johnson v. Progressive</i>	Cir. Ct. Ark., No. CV-2003-513
<i>Bond v. American Family Insurance Co.</i>	D. Ariz., CV06-01249-PXH-DGC
<i>Angel v. U.S. Tire Recovery (Tire Fire)</i>	Cir. Ct. W. Va., No. 06-C-855
<i>In re TJX Companies Retail Security Breach</i>	D. Mass., MDL No. 1838
<i>Webb v. Liberty Mutual Insurance Co.</i>	Cir. Ct. Ark., No. CV-2007-418-3
<i>Shaffer v. Continental Casualty Co. (Long Term Care Insurance)</i>	C.D. Cal., SACV06-2235-PSG (PJWx)
<i>Palace v. DaimlerChrysler (Neon Head Gaskets)</i>	Cir. Ct. Ill., Cook Co., No. 01-CH-13168
<i>Beringer v. Certegy Check Services, Inc. (Data Breach)</i>	M.D. Fla., No. 8:07-cv-1657-T-23TGW
<i>Lockwood v. Certegy Check Services, Inc. (Data Breach)</i>	M.D. Fla., No. 2:07-CV-587-FtM-29-DNF
<i>Sherrill v. Progressive Northwestern Ins. Co.</i>	18th D. Ct. Mont., No. DV-03-220
<i>Gunderson v. F.A. Richard & Associates, Inc. (AIG)</i>	14th Jud. D. Ct. La., No. 2004-2417-D
<i>Jones v. Dominion Transmission, Inc.</i>	S.D. W. Va., No. 2:06-cv-00671
<i>Gunderson v. F.A. Richard & Associates, Inc. (Wal-Mart)</i>	14th Jud. D. Ct. La., No. 2004-2417-D
<i>In re Trans Union Corp. Privacy (Data Breach)</i>	N.D. Ill., MDL No. 1350
<i>Gunderson v. F.A. Richard & Associates., Inc. (Amerisafe)</i>	14th Jud. D. Ct. La., No. 2004-002417
<i>Bibb v. Monsanto Co. (Nitro)</i>	Cir. Ct. W.Va., No. 041465
<i>Carter v. Monsanto Co. (Nitro)</i>	Cir. Ct. W.Va., No. 00-C-300
<i>In re U.S. Department of Veterans Affairs (VA) Data Breach</i>	D. D.C., MDL 1796
<i>In re Countrywide Financial Corp. Customer Data Security Breach</i>	W.D. Ky., MDL No. 1998
<i>Dolen v. ABN AMRO Bank N.V. (Callable CDs)</i>	Nos. 01-L-454 & 01-L-493
<i>Griffin v. Dell Canada Inc.</i>	Ont. Super. Ct., No. 07-CV-325223D2
<i>Plubell v. Merck & Co., Inc.</i>	Cir. Ct. Mo., No. 04CV235817-01
<i>Billieson v. City of New Orleans</i>	Civ. D. Ct. La., No. 94-19231
<i>Anderson v. Government of Canada</i>	Sup. Ct. NL, No. 2008NLTD166
<i>Ko v. Natura Pet Products, Inc.</i>	N.D. Cal., No. 5:09cv02619
<i>Allen v. UMB Bank, N.A.</i>	Cir. Ct. Mo., No. 1016-CV34791
<i>Blue Cross of California Website Security Cases</i>	Sup. Ct. Cal., No. JCCP 4647
<i>Alvarez v. Haseko Homes, Inc.</i>	Cir. Ct. HI., No. 09-1-2691-11
<i>LaRocque v. TRS Recovery Services, Inc.</i>	D. Maine, No. 2:11cv00091

<i>In re: Zurn Pex Plumbing Products Liability Litig.</i>	D. Minn., MDL No. 08-1958
<i>Molina v. Intrust Bank, N.A.</i>	18 th Jud. D. Ct., 10-cv-3686
<i>In Re: Uponor, Inc., F1807 Products Liability Litigation</i>	D. Minn, MDL No. 2247
<i>Shames v. The Hertz Corporation</i>	S.D. Cal., No. 07cv2174-MMA
<i>Wells v. Abbott Laboratories, Inc.</i>	Sup. Ct. Cal., No.BC389753
<i>Stroud v. eMachines, Inc.</i>	D. Ct. Cleveland Cnty, Okla., No. CJ-2003-968-L
<i>Holman v. Experian Information Solutions, Inc.</i>	N.D. Cal., No. 4:11cv00180
<i>Beck-Ellman v. Kaz USA Inc.</i>	S.D. Cal., No. 10cv2134
<i>Lee v. Stonebridge Life Insurance Company</i>	N.D. Cal., No. 3:11-cv-00043
<i>Dunstan v. comScore, Inc.</i>	N.D. Ill., No. 11-cv-5807
<i>Steinfeld v. Discover Financial Services</i>	N.D. Cal., No. 3:12-cv-01118
<i>Cappalli v. BJ's Wholesale Club, Inc.</i>	D. R.I., No. 1:10cv00407
<i>Poertner v. The Gillette Co. and The Procter & Gamble Co.</i>	M.D. Fla., No. 6:12-CV-00803
<i>In re Hypodermic Products Antitrust Litigation</i>	D. N.J., No. 2:05-CV-01602

Following is a list of cases in which our expert(s) were involved with a critique of the notice program and/or notices:

<i>Barbanti v. W.R. Grace and Co. (Zonolite/Asbestos Litig.)</i>	Wash. Super. Ct., 00201756-6
<i>In re W.R. Grace Co. (Asbestos Related Bankruptcy)</i>	Bankr. D. Del., No. 01-3293-JCS
<i>In re USG Corp. (Asbestos Related Bankruptcy)</i>	Bankr. D. Del., No. 01-02094-RJN
<i>Johnson v. Ethicon, Inc. (Product Liability Litigation)</i>	Cir. Ct. W. Va., Nos. 01-C-1530, 1531, 1533, 01-C-2491 to 2500
<i>Parsons/Currie v. McDonalds</i>	Ont. S.C.J., No. 02-CV-235958CP/No. 02-CV-238276
<i>Chambers v. DaimlerChrysler Corp. (Neon Head Gaskets)</i>	N.C. Super. Ct., No. 01:CVS-1555
<i>West v. Carfax, Inc.</i>	Ohio C.P., No. 04-CV-1898 (ADL)
<i>Perrine v. E.I. Du Pont De Nemours & Co.</i>	Cir. Ct. W. Va., No. 04-C-296-2
<i>Clark v. Pfizer, Inc. (Neurontin)</i>	C.P. Pa. Phila. Co., No. 9709-3162
<i>In re Motor Fuel Temperature Sales Practices Litig.</i>	D. Kan., MDL No. 1840
<i>Gallucci v. Boiron, Inc.</i>	S.D. Ca., No. 3:11-cv-02039
<i>Tchoboian v. FedEx Office and Print Services, Inc.</i>	C.D. Cal., No.10-CV01008
<i>In re Vitamin C Antitrust Litigation</i>	E.D. N.Y., No. 1:06-md-1738

Attachment B

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

If you bought a joint health product, you could get money from a class action settlement.

Includes Move Free, Move Free Advanced, Pain Free, Lubriflex, Great American Nutrition, Metaform, Muscle Tribe, Victory, Schiff, Kirkland, Member's Mark and Spring Valley brand products

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- A Settlement has been proposed in a class action lawsuit against Schiff Nutrition International, Inc. Schiff Nutrition Group, Inc., Reckitt Benckiser LLC and their affiliates ("Schiff") about the labeling and packaging of certain joint health products they manufactured.
- If you are included in the Settlement, your rights will be affected and you may be able to get benefits from it.
- You can get \$3-5 for each qualifying joint health product you purchased depending on whether you are able to provide proof of purchase. Payments will generally range between \$3-\$50, but could be more if the total amount of Valid Claims submitted is less than \$2,000,000.
- Your legal rights are affected whether or not you act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM (by _____, 201_)	Remain in the settlement—get a payment from it. Give up right to be part of another lawsuit, arbitration or proceeding against Schiff for the same legal claims resolved by this Settlement.
EXCLUDE YOURSELF (by _____, 201_)	Get <u>out</u> of the Settlement—keep right to be part of another lawsuit, arbitration or proceeding against Schiff for the same legal claims resolved by this Settlement. Give up right to get a payment now.
OBJECT (by _____, 201_)	Remain in the Settlement—write to the Court about why you do not like it. Give up right to be part of another lawsuit, arbitration or proceeding against Schiff for the same legal claims resolved by this Settlement.
GO TO THE FAIRNESS HEARING (on _____, 201_)	Remain in the Settlement—ask to speak to the Court about the fairness of it. Give up right to be part of another lawsuit, arbitration or proceeding against Schiff for the same legal claims resolved by this Settlement.
DO NOTHING	Remain in the Settlement. Do not get a payment. Give up your right to be part of another lawsuit, arbitration or proceeding against Schiff for the same legal claims resolved by this Settlement.

- Your rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this Settlement still has to decide whether to approve the Settlement.
- Payments will be made if the Court approves the Settlement and after any appeals are resolved.

Questions? Call the Claims Administrator at [1-800-____-____] or visit _____.

BASIC INFORMATION

1. What is this Notice and why should I read it?

This Notice is to inform you of the proposed Settlement of two class action lawsuits and about all of your rights and options before the Court decides whether to approve it. This Notice describes the lawsuits, the proposed Settlement, your legal rights, what benefits are available and who can get them.

Judge Cathy Ann Bencivengo of the United States District Court for the Southern District of California is overseeing the proposed Settlement, *Lerma v. Schiff Nutrition International, Inc., et al.*, No. 3:11-cv-01056-CAB-MDD. The proposed Settlement will resolve all of the claims made in *Lerma v. Schiff Nutrition International, Inc., et al.*, No. 3:11-cv-01056-CAB-MDD (S.D. Cal.), and *Jayson v. Schiff Nutrition International, Inc., et al.*, No. 0:13-cv-60400-RSR (S.D. Fla.). The people who sued are called the Named Plaintiffs. The companies they sued, Schiff Nutrition International, Inc. and Schiff Nutrition Group, Inc. are called the Defendants or Schiff.

2. What is a class action?

In a class action, one or more people, called Named Plaintiffs or Class Representatives (in this case Luis Lerma, Nick Pearson and Muriel Jayson), sue for all people who have similar claims. The people included in the Settlement of these class actions are called a Settlement Class or Settlement Class Members. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement.

3. What are the lawsuits about?

The lawsuits claim that the labeling and packaging of Move Free, Move Free Advanced, Pain Free, Lubriflex, Great American Nutrition, Metaform, Muscle Tribe, Victory, Schiff, Kirkland, Member's Mark and Spring Valley brand joint health products contain false, deceptive and misleading statements and do not warn consumers about their potentially harmful side effects.

Schiff denies each and every allegation of wrongdoing, liability and damages that was or could have been made in the lawsuits. Schiff denies the claims made in the lawsuits and denies that it has done anything wrong. Schiff stands by these joint health products, their labels and packaging, and their safety and efficacy.

4. Why is there a Settlement?

The Court did not decide in favor of either the Named Plaintiffs or Schiff. Instead, both sides have agreed to settle the lawsuits. Schiff is settling to avoid the substantial cost, inconvenience and disruption of litigation. The Named Plaintiffs and Settlement Class Counsel believe that the Settlement is in the best interests of the Settlement Class because it provides an appropriate recovery for Settlement Class Members now while avoiding the substantial risk, expense and delay of pursuing the case through trial and any additional appeals.

5. How do I know if I am included in the Settlement Class?

The Settlement Class includes all residents of the United States who purchased for personal use, and not resale or distribution, one of the following "Covered Products" between January 1, 2005 and [Preliminary Approval Date].

Brand	Product	Dates Sold	Brand	Product	Dates Sold
Move Free	Move Free	2005-[PA Date]	Schiff	Schiff Glucosamine 1000 mg	2005-[PA Date]
Move Free	Move Free Apple Cinnamon Bar	2005-[PA Date]	Schiff	Schiff Glucosamine 1500 mg	2005-[PA Date]

Brand	Product	Dates Sold	Brand	Product	Dates Sold
Move Free	Move Free Chocolate Crunch Bar	2005-[PA Date]	Schiff	Schiff Glucosamine 2000 mg	2005-[PA Date]
Move Free	Move Free Bite Sized Chocolate Crunch Bar	2005-[PA Date]	Schiff	Schiff Glucosamine HCl 1500 mg	2005-[PA Date]
Move Free	Move Free Double Strength	2005-[PA Date]	Schiff	Schiff Glucosamine HCl 2000 mg	2005-[PA Date]
Move Free	Move Free Gelcaps	2005-[PA Date]	Schiff	Schiff Glucosamine HCl 2000 mg with Joint Fluid	2005-[PA Date]
Move Free	Move Free Gummies	2005-[PA Date]	Schiff	Schiff Glucosamine Plus MSM	2005-[PA Date]
Move Free	Move Free Lean	2005-[PA Date]	Schiff	Schiff Glucosamine HCl Plus MSM	2005-[PA Date]
Move Free	Move Free Maintains & Repairs	2005-[PA Date]	Schiff	Schiff Glucosamine HCl Plus MSM Shellfish Free & Vegetarian	2005-[PA Date]
Move Free	Move Free Nighttime	2005-[PA Date]	Schiff	Schiff Glucosamine HCl Plus Vitamin D	2005-[PA Date]
Move Free	Move Free Osteo Care	2005-[PA Date]	Schiff	Schiff Glucosamine HCl Plus Vitamin D with Joint Fluid	2005-[PA Date]
Move Free	Move Free One	2005-[PA Date]	Schiff	Schiff Glucosamine MSM Complex	2005-[PA Date]
Move Free	Move Free Plus Calcium	2005-[PA Date]	Schiff	Schiff Joint Care Plus	2005-[PA Date]
Move Free	Move Free Plus Collagen	2005-[PA Date]	Schiff	Schiff Joint Free Plus	2005-[PA Date]
Move Free	Move Free Plus Energy	2005-[PA Date]	Schiff	Schiff Joint Free Plus Collagen Glucosamine Chondroitin MSM	2005-[PA Date]
Move Free	Move Free Plus Gelatin	2005-[PA Date]	Schiff	Schiff Joint Free Plus Glucosamine	2005-[PA Date]
Move Free	Move Free Plus MSM	2005-[PA Date]	Schiff	Schiff Joint Free Plus MSM	2005-[PA Date]
Move Free	Move Free Plus SAME	2005-[PA Date]	Schiff	Schiff MSM 500	2005-[PA Date]
Move Free	Move Free Repair	2005-[PA Date]	Schiff	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]
Move Free	Move Free with Shark Cartilage	2005-[PA Date]	Lubrifix	Lubrifix ³	2005-[PA Date]

Brand	Product	Dates Sold	Brand	Product	Dates Sold
Move Free	Move Free Triple Strength	2005-[PA Date]	Lubrifax	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]
Move Free	Move Free Ultra	2005-[PA Date]	Great American Nutrition	Move Free	2005-[PA Date]
Move Free	Move Free Ultra Omega	2005-[PA Date]	Great American Nutrition	Pain Free	2005-[PA Date]
Move Free	Move Free Ultra with Type II Collagen & Hyaluronic Acid	2005-[PA Date]	Great American Nutrition	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]
Move Free	Move Free Ultra with UC II & Hyaluronic Acid	2005-[PA Date]	Metaform	Pain Free	2005-[PA Date]
Move Free	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]	Metaform	Pain Free +	2005-[PA Date]
Move Free Advanced	Move Free Advanced	2005-[PA Date]	Metaform	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]
Move Free Advanced	Move Free Advanced 2 Per Day	2005-[PA Date]	Muscle Tribe	Pain Free Plus	2005-[PA Date]
Move Free Advanced	Move Free Advanced Plus MSM	2005-[PA Date]	Muscle Tribe	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]

Brand	Product	Dates Sold	Brand	Product	Dates Sold
Move Free Advanced	Move Free Advanced Plus MSM & Vitamin D	2005-[PA Date]	Victory	Glucosamine	2005-[PA Date]
Move Free Advanced	Move Free Advanced Triple Strength	2005-[PA Date]	Victory	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]
Move Free Advanced	Move Free Advanced Triple Strength Plus MSM & Vitamin D	2005-[PA Date]	Kirkland	Kirkland Signature Clinical Strength Glucosamine 1500 mg Chondroitin 1200 mg	2010-[PA Date] Only sold in: AK, CA, HI, ID, MT, NV, OR, UT, WA,
Move Free Advanced	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]	Kirkland	Kirkland Signature Extra Strength Glucosamine HCl 1500 mg Chondroitin Sulfate 1200 mg	2010-[PA Date] Only sold in: AK, CA, HI, ID, MT, NV, OR, UT, WA,
Pain Free	Pain Free	2005-[PA Date]	Kirkland	Kirkland Signature Extra Strength Glucosamine HCl 1500 mg with MSM 1500 mg	2008-[PA Date] Only sold in: AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA,
Pain Free	Pain Free Extra Strength	2005-[PA Date]	Member's Mark	Member's Mark Glucosamine HCl	2008-2011
Pain Free	Pain Free Glucosamine Chondroitin Sulfate Complex	2005-[PA Date]	Member's Mark	Member's Mark Glucosamine HCl + MSM	2008-2011
Pain Free	Pain Free Plus MSM	2005-[PA Date]	Member's Mark	Member's Mark Triple Strength Glucosamine Chondroitin	2009-2011

Brand	Product	Dates Sold	Brand	Product	Dates Sold
Pain Free	All Products containing Glucosamine, Chondroitin, Hyaluronic Acid, MSM, Vitamin D, and/or Uniflex (regardless of delivery form, e.g., tablet, capsule, gelcap, liquid, etc.)	2005-[PA Date]	Member's Mark	Member's Mark Triple Strength Glucosamine Chondroitin Complex	2005
Schiff	Schiff Chondroitin Sulfate 500 mg	2005-[PA Date]	Spring Valley	Spring Valley Double Strength Glucosamine Chondroitin	2005-2007
Schiff	Schiff Glucosamine Complex 500 mg	2005-[PA Date]	Spring Valley	Spring Valley Triple Strength Glucosamine Chondroitin	2005-2011
Schiff	Schiff Glucosamine Complex 1000 mg	2005-[PA Date]	Spring Valley	Spring Valley Triple Strength Glucosamine Chondroitin Plus MSM	2005-2010
Schiff	Schiff Glucosamine Complex 1 g Joint Builder	2005-[PA Date]	Spring Valley	Spring Valley Triple Strength Glucosamine Chondroitin Plus MSM & Vitamin D3	2010-2011

6. Are there exceptions to being included?

Yes, excluded from the Settlement Class are the following persons: (i) Schiff and its respective affiliates, employees, officers, directors, agents and representatives and their immediate family members; (ii) Settlement Class Counsel; and (iii) the judges who have presided over one of the lawsuits and their immediate family members.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

Settlement Class Members who submit a timely and valid Claim Form will receive a payment that, at a minimum, will range between \$3-50. Payments will vary based on the number of Covered Products purchased between January 1, 2005 and [Preliminary Approval Date] and whether proof of those purchases is provided. In addition, Schiff has agreed to modify the labeling of its Covered Products. For example, Schiff will remove the following statements from the labels, packaging and marketing of the Covered Products: "repair joints," "repair cartilage," "rebuild joints," "rebuild cartilage," "rejuvenate joints" or "rejuvenate cartilage."

8. What can I get from the Settlement?

Settlement Class Members who submit a timely and valid Claim Form *with* proof of purchase, such as a cash register receipt, the box or bottles of a Covered Product containing a readable UPC code and lot number, or documentation showing purchase of the Covered Product and the date and location of that purchase, may claim \$5 per bottle of Covered Product for up to ten bottles (a total of up to \$50). Settlement Class Members who submit a timely and valid Claim Form *without* proof of purchase may claim \$3 per bottle of a Covered Product for up to four bottles (a total of up to \$12). You may submit a claim for the Covered Products you have a proof of purchase and for those you do not.

9. Could I get more money than the amount provided on my Claim Form?

Yes. The amount of cash paid on a claim may be greater than the amount provided on the valid Claim Form depending on the total number and total dollar amount of valid Claim Forms received. For example: (a) if the total dollar value of timely and valid Claim Forms submitted is less than \$2,000,000, the payment to each Settlement Class Member who submitted a timely and valid Claim Form *with* proof of purchase will increase (up to triple the amount of the original claim); (b) if, after increasing the payment for timely and valid Claim Forms submitted with proof of purchase, the total payment of all claims is still less than \$2,000,000, the payment to each Settlement Class Member who submitted a timely and valid Claim Form *without* proof of purchase will increase (up to double the amount of the original claim); (c) if, after increasing the payment for valid Claim Forms submitted with and without proof of purchase, the total payment of all claims is still less than \$2,000,000, the balance will be distributed *pro rata* (divided proportionally based on the total number of claims received and the dollar amount of those claims) among all Settlement Class Members who submit a timely and valid Claim Form.

10. How do I get a payment?

To make a claim and be eligible for a cash payment from the Settlement, you must complete and submit a Claim Form. Claim Forms must be completed in full, include proof of purchase to support your claim (if any), and submitted online or be mailed to the Settlement Administrator by [redacted], 201 [redacted].

Claim Forms may be submitted online or downloaded at [Settlement Website]. Claim Forms are also available by writing to the Settlement Administrator at [redacted] or by calling toll-free [redacted].

The Court still has to decide whether to approve the Settlement. Cash payments will be made if the Court approves the Settlement and after any appeals are resolved.

11. What am I giving up in exchange for the Settlement?

Unless you exclude yourself, you are staying in the Settlement Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. You won't be able to sue, continue to sue, or be part of any other lawsuit against the Released Persons for the legal issues and claims resolved by this Settlement. The specific rights you are giving up are called Released Claims (see Question 12).

12. What are the Released Claims?

"Released Claims" generally refers to any and all claims, whether known or unknown that could have been asserted by you in a lawsuit against any of the Released Persons (Schiff Nutrition International, Inc. and Schiff Nutrition Group, Inc., Reckitt Benckiser Pharmaceuticals, Inc., Reckitt Benckiser North America, LLC, any person or entity in the chain of distribution of the Covered Products, including but not limited to raw material suppliers such as Unigen, Inc. and VDF FutureCeuticals Inc., distributors and retailers such as Costco Wholesale Corporation, CVS Caremark Corporation, Publix Super Markets, Inc., Rite Aid Corporation, Safeway Inc., Sam's Club, Target Corporation, Wal-Mart Stores Inc., The Kroger Co., Meijer, Inc., and Walgreen Company, and any person or entity (and their affiliates) that manufactured or sold the Covered Products) arising from or relating to the false and deceptive representations and warranties and omitted material information about the Covered Products.

The Released Claims are fully described in section IX of the Settlement Agreement and General Release, which is available at [Settlement Website].

EXCLUDE YOURSELF, OBJECT OR DO NOTHING

13. What does it mean to Exclude Yourself from the Settlement?

If you want to keep the right to sue or continue to sue Schiff about the legal claims in the lawsuits, and you don't want a payment from this Settlement, you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or opting out of the Settlement.

14. How do I get out of the Settlement?

If you wish to be excluded from the Settlement Class, you must send a request for exclusion to the Settlement Administrator postmarked no later than **[Insert Opt-Out and Objection Date]** to the following address: **[Settlement Administrator address]**. Your request for exclusion must (1) be signed by you, (2) contain a statement that you want to be excluded from the Settlement Class, and (3) contain a statement that you are a member of the Settlement Class and have purchased one or more of the Covered Products. If you have any questions concerning these procedures, please contact the Settlement Administrator at **[1-800- -]** or **[insert website]**.

"Mass" or "Class" Opt-Outs are not allowed.

15. If I exclude myself, will I still get a payment from this Settlement?

No. If you exclude yourself, you are telling the Court that you don't want to be part of the Settlement Class in this Settlement. You can only get a payment if you stay in the Settlement Class and submit a timely and valid Claim Form as described above. If you submit a request for exclusion and a Claim Form, your request for exclusion will be withdrawn.

16. If I don't exclude myself, can I sue Schiff for the same things later?

No. Unless you exclude yourself, you are giving up the right to sue the Defendants for the claims that this Settlement resolves. You must exclude yourself from *this* Settlement Class to start or continue with your own lawsuit or be part of any other lawsuit.

17. How do I object or tell the Court if I don't like the Settlement?

If you are a Settlement Class Member and you do not ask to be excluded, you may object to the terms of the Settlement, the Attorneys' Fee Award or the Incentive Award. The Court will consider your views before making a decision. To object, you must provide: (1) your name, address and telephone number and, if represented by an attorney, their name address and telephone number; (2) a signed declaration stating that you are a member of the Settlement Class and you purchased a Covered Product; (3) a statement of all objections to the Settlement; and (4) a statement of whether you intend to appear at the Fairness Hearing, either with or without your personal counsel, and if with counsel, their name. Your objection must be submitted to all three addresses below and be postmarked by **[Insert Date - Opt-Out and Objection Deadline]**.

Clerk of the Court	Settlement Class Counsel	Schiff's Counsel
U.S. District Court for the Southern District of California Attn: Clerk of the Court 880 Front Street, #4290 San Diego, California 92101	Elaine A. Ryan BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. 2325 East Camelback Road, Suite 300 Phoenix, Arizona 85016	Mark S. Mester Kathleen P. Lally LATHAM & WATKINS LLP 233 South Wacker Drive, Suite 5800 Chicago, Illinois 60606

18. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class (do not exclude yourself). If you object, you can still file a Claim Form to receive a payment from the Settlement. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you cannot object or receive a payment because the Settlement no longer affects you.

19. What happens if I do nothing?

If you do nothing you won't get a payment from this Settlement. If the Court approves the Settlement, you will be bound by its terms, and you will give up your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Schiff about the legal issues or claims resolved by this Settlement.

THE LAWYERS REPRESENTING THE SETTLEMENT CLASS

20. Who represents the Settlement Class?

For purposes of the Settlement, the Court has approved the appointment of the following as Settlement Class Counsel to work on behalf of the Settlement Class:

Elaine A. Ryan BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. 2325 East Camelback Road, Suite 300 Phoenix, Arizona 85016 Telephone: (602) 274-1100	Stewart M. Weltman STEWART M. WELTMAN, LLC 53 West Jackson Boulevard, Suite 364 Chicago, Illinois 60604 Telephone: (312) 588-5033	Jeffrey I. Carton Robert J. Berg DENLEA & CARTON LLP One North Broadway, Suite 509 White Plains, New York 10601 Telephone: (914) 920-7400
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You will not be charged for the services of Settlement Class Counsel. If you want to be represented by your own lawyer, you may hire counsel at your own expense.

21. How will the lawyers be paid?

Settlement Class Counsel has not been paid any attorneys' fees and they have not been reimbursed for any of their out-of-pocket expenses. As payment for their work in the lawsuits and in obtaining the Settlement, Settlement Class Counsel will ask the Court to approve a payment of Attorneys' Fee Award of up to \$3,000,000. They will also ask the Court to approve an Incentive Award of up to \$10,000 to be paid to the Named Plaintiffs for the time and effort they contributed to the lawsuits and Settlement. If the Court approves these fees and expenses and the Incentive Award, they will be paid separately by Schiff and will not reduce the amount of money available to Settlement Class Members.

22. When and where will the Court decide whether to give final approval to the Settlement?

The Settlement has already been preliminarily approved by the Court. However, the Court will hold a hearing to decide whether to give final approval to the Settlement. You may attend and you may ask to speak at the hearing, but you don't have to.

The final fairness hearing will be held before Judge Cathy Ann Bencivengo on [REDACTED], 201[REDACTED] at [REDACTED] a.m./p.m. at 880 Front St #4290, San Diego, California 92101. At the hearing, the Court will decide whether the proposed Settlement is fair, reasonable and adequate and decide whether to final approval to it. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing (see Question 23). The Court may also decide the amount of fees, costs and expenses to award Settlement Class Counsel and whether to approve the Incentive Award.

23. Do I have to come to the Court's hearing?

No. You do not need to attend the final fairness hearing. Settlement Class Counsel will answer any questions the Court may have. If you file an objection to the Settlement, you don't have to come to Court to talk about it, unless the Court requires you to do so. As long as you filed and delivered your written objection on time, signed it and provided all of the required information (see Question 17) the Court will consider it. If you file an objection and the Court requires you or your attorney's attendance at the hearing, you or your attorney will be notified by the Court or Settlement Class Counsel. If you wish, you or your own counsel may attend the final fairness hearing, at your own expense, but it is not required.

24. May I speak at the Court's hearing?

Yes. As long as you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file a written request with the Court saying that it is your "Notice of Intent to Appear at the Fairness Hearing" or have stated that you intend to appear in your objection. You must include your name, address, phone number, and signature. If you plan to have your own attorney speak for you at the hearing, you must also include the name, address and telephone number of the attorney who will appear. Your written request must be sent to the Settlement Administrator (address provided in Question 14) and the Clerk of the Court (address provided in Question 17) by **[Insert Date – Opt-Out and Objection Deadline]**. The time, date and location of the hearing may be changed by the Court without additional notice. If you plan to attend the hearing, you should confirm its time, date and location on the Settlement Website, [_____].

25. How can I get additional information?

This Notice, the Settlement Agreement, and other documents related to this Settlement are posted on the Settlement Website, [_____], and are also available by contacting the Settlement Administrator at [Settlement Administrator address] or [1-800-____-_____].

**Direct any inquiries to the Settlement Administrator.
Do not contact the Clerk of Court or the Judge except as directed in this Notice.**

LEGAL NOTICE

If you bought a joint health product, you could get money from a class action settlement.

Includes Move Free, Move Free Advanced, Pain Free, Lubriflex, Great American Nutrition, Metaform, Muscle Tribe, Victory, Schiff, Kirkland, Member's Mark and Spring Valley brand products

A Settlement has been reached in class action lawsuits against Schiff Nutrition International, Inc., Schiff Nutrition Group, Inc., Reckitt Benckiser LLC and their affiliates (Schiff) regarding their joint health products. The lawsuits claim that the labeling and packaging of these joint health products contain false, deceptive and misleading statements and do not warn consumers about the potentially harmful side effects. Schiff denies all of the claims in the lawsuits and any wrongdoing. The Court has not decided who is right.

WHO IS INCLUDED? You are included in the Settlement Class if you are a resident of the United States who purchased for personal use, and not for resale or distribution, a Move Free, Move Free Advanced, Pain Free, Lubriflex, Great American Nutrition, Metaform, Muscle Tribe, Victory, Schiff, Kirkland, Member's Mark or Spring Valley brand joint health product between January 1, 2005 and [Preliminary Approval]. A complete list of all joint health products included in the Settlement ("Covered Products") is available at [www.\[redacted\].com](http://www.[redacted].com).

WHAT DOES THE SETTLEMENT PROVIDE? Settlement Class Members who submit a timely and valid Claim Form with proof of purchase, such as a cash register receipt, the box or bottles of a Covered Product containing a readable UPC code and lot number, or documentation showing purchase of the Covered Product and the date and location of that purchase, may claim \$5 per bottle of Covered Product for up to ten bottles (up to \$50 total). Settlement Class Members who submit a timely and valid Claim Form without proof of purchase may claim \$3 per bottle of a Covered Product for up to four bottles (up to \$12 total). If the total dollar value of valid Claim Forms submitted is less than \$2,000,000, the payment to each Settlement Class Member who submitted a valid Claim Form with proof of purchase will increase (up to triple the amount of the original claim). If, after increasing these payments, the total payment amount is still less than \$2,000,000, the payment to each Settlement Class Member who submitted a valid Claim Form without proof of purchase will increase (up to double the amount of the original claim). If, after increasing the payment for all valid claims, the total payment amount is still less than \$2,000,000, the balance will be distributed on a *pro rata* basis (divided proportionately among the number of Claim Forms submitted and the dollar amount of those claims) to all Settlement Class Members who submitted a timely and valid Claim Form. In

addition to payments, Schiff has agreed to remove "repair joints," "repair cartilage," "rebuild joints," "rebuild cartilage," "rejuvenate joints" or "rejuvenate cartilage" from the packaging and labeling of the Covered Products.

HOW DO YOU GET A PAYMENT? You must submit a timely and valid Claim Form by [redacted], 201[redacted]. Complete and submit your Claim Form online at [www.\[redacted\].com](http://www.[redacted].com), download a Claim Form from the website or get one by calling [1-[redacted]], or by writing to [address].

YOUR OTHER OPTIONS? If you do nothing, your rights will be affected and you will not get a settlement payment. If you do not want to be legally bound by the Settlement, you must exclude yourself from it. The deadline to exclude yourself is [redacted], 201[redacted]. Unless you exclude yourself, you will not be able to sue or continue to sue Schiff for any claim resolved by this Settlement or released in the Settlement Agreement. If you exclude yourself, you cannot get a payment from the Settlement. If you stay in the Settlement (*i.e.*, don't exclude yourself), you may object to it by [redacted], 201[redacted]. More information is in the detailed notice and Settlement Agreement available at [www.\[redacted\].com](http://www.[redacted].com).

THE COURT'S FAIRNESS HEARING. The U.S. District Court for the Southern District of California, located at 880 Front Street #4290, San Diego, California 92101 will hold a hearing in this case (*Lerma v. Schiff Nutrition International, Inc., et al.*, No. 3:11-cv-01056-CAB-MDD), on [redacted], 201[redacted] to consider whether to approve: (1) the proposed Settlement; (2) Settlement Class Counsel's request for attorneys' fees and costs of up to \$3,000,000; and (3) a payment of up to \$10,000 for the Named Plaintiffs' (Luis Lerma, Nick Pearson and Muriel Jayson). If approved, these fees, costs, and payments will be paid separately by Schiff. You may appear at the hearing or hire an attorney, at your expense, to appear or speak for you at the hearing, but you do not have to.

WANT MORE INFORMATION? Go to the website, call or write to [Settlement Administrator address].

[1-000-000-0000]

[www.\[redacted\].com](http://www.[redacted].com)

Facebook Display Text & Internet Banners

Facebook Display Text

Joint Health Products Settlement
[CaseWebsite.com]



If you bought a joint health product, you could get money from a class action settlement.

Leaderboard – 728 x 90

If you bought a joint health product, you could get money from a class action settlement.

Includes Move Free, Move Free Advanced, Pain Free, LubriFlex, Great American Nutrition, Metaform, Muscle Tribe, Victory, Schiff, Kirkland, Member's Mark and Spring Valley brand

File your Claim

Medium Rectangle – 300 x 250

If you bought a joint health product, you could get money from a class action settlement.

Includes Move Free, Move Free Advanced, Pain Free, LubriFlex, Great American Nutrition, Metaform, Muscle Tribe, Victory, Schiff, Kirkland, Member's Mark and Spring Valley brand

File your Claim

Wide Skyscraper – 160 x 600

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*Includes
Move Free,
Move Free Advanced,
Pain Free,
LubriFlex,
Great American
Nutrition,
Metaform,
Muscle Trbe,
Victory, Schiff,
Kirkland,
Member's Mark
and Spring Valley
brand*

**File your
Claim**