UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 19-22864-Civ-COOKE/GOODMAN

JUAN COLLINS and JOHN FOWLER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

QUINCY BIOSCIENCE, LLC,
a Wisconsin limited liability company,

Defendant.

_____/

DEFENDANT'S RESPONSE TO THE BRIEF OF AMICUS CURIAE TRUTH IN ADVERTISING, INC. IN OPPOSITION TO PROPOSED SETTLEMENT

Pursuant to this Court's October 27, 2020 Order (ECF No. 167), Defendant Quincy Bioscience, LLC ("Quincy" or "Defendant") respectfully submits this response to the *amicus curiae* brief filed by Truth in Advertising, Inc. ("TINA") filed on October 28, 2020 (ECF No. 168) in opposition to the pending Settlement ("Opposition") which was granted preliminary approval by this Court on July 21, 2020 (the "Settlement"). (ECF No. 158.)

PRELIMINARY STATEMENT

TINA's amicus brief relies exclusively (and blindly) on the *allegations* from an FTC/NYAG enforcement action which was filed nearly four years ago and is still pending (the "FTC Action"). But TINA is not a party to that action, nor is it a party to the seven class actions that were resolved in this action, and therefore is not privy to any of the discovery that has been exchanged regarding Quincy's substantiation for the challenged advertising. TINA's ignorance is crystal clear from its Opposition, which not only misconstrues the primary study behind the challenged advertising (the Madison Memory Study ("MMS")), but is blissfully ignorant of *all* of the other scientific material that Quincy has amassed over more than a decade to substantiate its claims. In fact, TINA admits that analyses of the MMS data actually demonstrate that Prevagen® *improved* cognitive performance in individuals with minimal or no cognitive impairment – the precise population to whom Prevagen is marketed. (ECF. No. 168 at 3 n.4.) Notably, the government agencies who *are* privy to Quincy's substantiation – including the FTC and NYAG – have *not* opposed the Settlement. The FTC and NYAG's lack of opposition is particularly telling since (as TINA acknowledges), they publicly opposed a *prior* class action settlement that was never finalized. (ECF. No. 168 at 3 n.5.)

TINA also misconstrues key provisions of the Settlement to fit its own self-serving narrative, raising questions about its own understanding of the Settlement and its motivation in filing its Opposition.

TINA poses its dissatisfaction with the Settlement as if it were an objection. Unlike members of the class (purchasers of Prevagen) who have standing to object to the Settlement, TINA lacks such standing. Only one purported member of the class at issue filed an objection. TINA's brief, unlike that objection, sets forth its dissatisfaction with the Settlement, not on behalf of any member of the class, but rather only on its own behalf in opposition to a Settlement that provides real benefits to the class.

Finally, TINA seems to forget that settlements are, by their very nature compromises. Indeed, as is true of most compromises, this Settlement likely reflects more than Quincy would have liked to pay and less than Plaintiffs would have liked to recover. But it is a compromise, and one that was reached after lengthy and hard-fought litigation with both sides evaluating the factors and risks of continued litigation. One of those factors relates to a jury trial of a similar case that was conducted earlier this year in the Northern District of California. That trial resulted in a hung jury and was declared a mistrial by the federal district court judge that presided over the trial. The certified class in that case was later decertified based on evidence developed during the trial. *See Racies v. Quincy Bioscience, LLC,* No. 15-cv-00292-HSG, 2020 WL 2113852 (N.D. Cal. May 4, 2020). TINA has no knowledge of the evidence in the record in this case and is not in a position to adequately evaluate those risks. Nevertheless, TINA accepts all of the FTC/NYAG's allegations as fact and assumes that Quincy's liability is a foregone conclusion. TINA's rote recitation of the FTC's *allegations* is not enough to even warrant this Court's consideration, much less sway the Court to reject the Settlement.

The Settlement is eminently fair, and the class's reaction has been overwhelmingly positive with very few putative class members who have opted out of the Settlement (including one individual who took the time to express her love for Prevagen and her willingness to "stand up with" Quincy and "fight [the plaintiffs] in every way possible") (attached hereto as Ex. A), and only one objection filed by professional objector Steven Helfand.

TINA's gripe with Quincy is not new. In fact, it has been writing about its dissatisfaction with Quincy for several years. This Settlement merely provides TINA with one more opportunity to take a swing at a company that it clearly does not like. TINA's voice, however, is not the voice to listen to. The voice to listen to – *i.e.,* the class – has been silent despite the fulsome notice plan approved by this Court and designed to provide full and complete notice to the approximately 3,000,000 purchasers of Prevagen®. Rather than object or opt-out, by their silence, the class has ratified the fairness and reasonableness of this Settlement.

I. TINA's Arguments Are Not Based In Any Evidence and Should Be Rejected

This Court "must independently evaluate whether the objections being raised suggest serious reasons why the proposal might be unfair. Only clearly presented objections by those who will be bound by the settlement will be considered." *See* § 1797.1 Settlement, Voluntary Dismissal, or Compromise of Class Actions—Factors Considered for Approval, 7B Fed. Prac. & Proc. Civ. § 1797.1 (3d ed.). TINA's arguments are entirely ignorant of the evidence in this case, and therefore cannot accurately consider the risks of continued litigation. Moreover, courts should not accept an objectors' arguments as fact, and should routinely assess the substance of the objections in deciding whether to approve the proposed settlement. *See Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1383 (S.D. Fla. 2007) (granting final approval of a settlement despite speculative objections and "inaccurate characterization[s]" of the settlement); *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1261 (S.D. Fla. 2016) (granting final approval where the objections were "directly contradicted" by evidence in the record). This Court should likewise assess TINA's Opposition in light of the evidence in the record as opposed to TINA's blatantly inaccurate assumptions about that evidence and its mischaracterizations of the terms of the Settlement as set forth herein.

II. The So-Called "Expanded" Class Ensures Equal Recovery for All Prevagen Consumers

TINA argues that the "expansion" of the Florida-only class originally sought in the *Collins* Action to the proposed nationwide class in the Settlement "prohibits every one of its customers from ever suing it for deceptively marketing Prevagen." (ECF No. 168 at 4.) This could not be further from the truth. TINA's concerns are unfounded at best and, in fact, the expansion of the settlement ensures equal recovery for Prevagen consumers across the county.

As an initial matter, TINA ignores that four of the seven cases being resolved by the proposed settlement (*Vanderwerff*, *Karathanos*, *Spath* and *Engert*) sought to certify a *nationwide* class, so the class is not actually being "expanded" by the settlement. The Settlement relates to already-pending actions filed seeking certification of nationwide classes. This fact alone belies TINA's argument.

In any event, there is nothing inherently suspect about the expansion of a single-state class to a nationwide class for purposes of settlement. In fact, courts routinely approve nationwide class settlements where the challenged practices are alleged to have occurred

nationwide. For example, in *Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411-YGR, 2017 WL 2902898, at *6 (N.D. Cal. July 7, 2017), *aff'd*, 737 F. App'x 341 (9th Cir. 2018), the Ninth Circuit affirmed the final approval of a settlement that "expanded the scope of the class from a California only to a nationwide class" in part because the named plaintiff and "other consumers around the country were all exposed to the same product and the same alleged misrepresentations." *Id*; *see also Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 232 (D.N.J. 2005) (approving a so-called expanded nationwide settlement where "the common factual and legal thread is an alleged nationwide scheme of uniform deceptive insurance sales practices").

Just as in *Kumar* and *Varacallo*, the plaintiffs in these seven actions allege that Prevagen was uniformly marketed nationwide. (*See, e.g.,* ECF No. 144-1 ¶ 1 ("For over a decade, Quincy has uniformly marketed Prevagen nationwide as being designed for one purpose: Prevagen Improves Memory.").) Thus, the proposed nationwide class ensures that all Prevagen consumers in the United States have the ability to recover equally. If the rule were otherwise, consumers lucky enough to reside in a state with pending litigation would have the opportunity to participate in a settlement potentially to the detriment of consumers who live in other states where no action has been (and may never be) filed.

TINA cites a single case questioning the expansion to a nationwide class definition – *Allen v. Similasan Corp.*, 318 F.R.D. 423, 425 (S.D. Cal. 2016) – which is plainly inapposite. While the settlement in *Allen* did expand the class definition from a California-only class to a nationwide class, it also "greatly expand[ed] the class beyond what was alleged" in the complaint to include "many more" of the defendant's products that were not the subject of the class certification order. *Id.* Most importantly, the settlement was an injunctive only settlement, meaning that the named plaintiffs and their counsel were the *only* parties receiving *any* monetary compensation from the settlement. *Id.* at 428. Given the breadth of the proposed releases, the court found it unfair that "all class members [were] giving up all of their non-personal injury monetary claims against Defendant *without receiving any compensation different from the public at large*." *Id.* (emphasis added). The proposed Settlement in this case (1) does not expand the number of products to be covered by the settlement, and (2) provides

monetary relief to *all* class members who elect to receive it, even those that have not retained any proof of purchase. Thus, the concerns in *Allen* do not apply.[1]

TINA also argues that the settlement "should be scrutinized for evidence of collusion or other conflicts of interest" because "a nationwide class has never been *certified*." (ECF No. 168 at 4 (emphasis added).) But TINA admits that a California class *was* certified (and later de-certified after a mistrial) in the *Racies* Action, and ignores that this Court has issued a Report and Recommendation in support of certification of a Florida class. (ECF No. 119.) These facts distinguish this case from the two Ninth Circuit cases TINA cites (*In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) and *Dennis v. Kellogg Co.*, 697 F.3d 858, 867 (9th Cir. 2012)), where the court considered and rejected settlements that had been negotiated before *any* class had been certified. Again, TINA's concerns about a pre-certification settlement simply do not apply to these facts.

III. The Settlement Provides for the "Best Practicable Notice"

TINA take two issues with respect to class notice: (1) that internet notice is not sufficient; and (2) that the notice improperly fails to advise of the pending FTC Action. Both positions are meritless.

First, TINA claims that notice in this case "will be ***solely*** in the form of internet notice." (ECF No. 168 at 5 (emphasis added).) This not true. As acknowledged by TINA, but buried in a foot note, a "subset of class members who purchased Prevagen online directly from Quincy will also get individualized notice." (ECF No. 168 at 5, n.8.) In fact, direct, individualized notice was indeed mailed and/or emailed to over 140,000 consumers who purchased Prevagen directly from Quincy. (ECF No. 162-2 ¶¶ 5-10.) In addition to the widespread internet notice and direct mail/email notice, the Settlement Administrator also established a settlement website which permitted consumers to review key litigation and settlement documents and submit claims online, as well as a toll-free telephone number that

[1] Also, in *Allen*, eight different Attorneys General filed *amicus curaiae* briefs urging the court to reject the proposed settlement. *See Allen*, 318 F.R.D. at 425. Here, not a single Attorney General has filed an objection, not even the New York Attorney General who has a separate enforcement action pending against Defendants.

consumers could call to ask questions about the Settlement. (ECF No. 162-2 ¶¶ 12-13.) Further, TINA itself publicized the settlement on its own website.[2]

Ignoring the multiple forms of notice being provided in this case, TINA then focuses exclusively on the alleged deficiency of internet notice because, according to TINA, "hundreds of thousands of class members will not learn about [the] settlement." (ECF No. 168 at 5.) TINA has failed to cite a single case supporting its position and, in fact, "[c]ourts have consistently recognized that . . . due process does not require that class members actually receive notice." *Juris v. Inamed Corp.*, 685 F.3d 1294, 1321 (11th Cir. 2012) (collecting cases). Rather, to satisfy due process, notice of a class settlement "must be the 'best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1261 (S.D. Fla. 2016) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)).

This is exactly what the internet notice does in this case, as the Court determined when it granted preliminary approval of that aspect of the notice plan. Indeed, as of October 26, 2020, over 111 million impressions have been served both on mobile and desktop devices. (ECF No. 172-1 ¶ 2.) Given that the internet notice in this case is targeted to reach the precise demographics of consumers that purchase Prevagen, TINA's concern that certain putative class members may not receive notice is unfounded.[3]

Moreover, the coronavirus pandemic has forced millions of Americans of all ages to turn to the internet to shop for necessities, meet with their doctors, stay entertained and connect with loved ones. Thus, even accepting TINA's unsworn and self-serving data about the senior population's use of the internet in 2019 (ECF No. 168 at 5), circumstances have changed drastically during the last eight months, resulting in a greater population of seniors using the internet than ever before and even more likely to see the class notice in this case. *See* https://www.bloomberg.com/news/features/2020-05-06/in-lockdown-seniors-are-becoming-more-tech-savvy (last visited November 9, 2020);

[2] *See* https://www.truthinadvertising.org/prevagen-products/. (Last accessed November 9, 2020.)

[3] TINA certainly failed to provide actionable support for this argument.

https://www.mobihealthnews.com/news/survey-shows-seniors-are-embracing-technology-and-telehealth-during-pandemic (last visited November 9, 2020).

TINA also argues that the class notice is flawed because it doesn't inform class members of material terms of the Settlement. For example, in *Shin v. Plantronics, Inc.*, No. 18-cv-05626-NC, 2019 WL 2515827, at *3 (N.D. Cal. June 17, 2019), the Northern District of California denied preliminary approval to a class action settlement where the short form notice failed to advise that, by staying in the class, class members were releasing all claims about the product at issue (headphones), and not the specific claims alleged in the complaint (that its battery life rapidly diminished and that it did not resist sweat and water as warranted). Likewise, in *Nat'l Super Spuds, Inc. v. N.Y. Mercantile Exch.*, 660 F.2d 9, 13 (2d Cir. 1981), the notice failed to mention that "the settlement agreement barr[ed] all claims of class members whether or not asserted" in the action. In contrast, the release in the Settlement is limited to claims "on the basis of, arising from, or relating to the claims alleged in the Action and the Prevagen Actions." (ECF No. 147-1 at § VI.)[4]

TINA also complains that the notice does not inform class members about the pending FTC Action.[5] There is no requirement to notify class members about other pending litigation, and TINA fails to cite a case that holds otherwise. Moreover, the FTC Action is still proceeding through the discovery phase, and any "notice" to class members about the potential for recovery at some point in the future would be purely speculative. The notice *does* advise putative class members, in plain language, that the release includes entities other than Quincy: "[i]f you do nothing, and the Court approves the settlement, you will be bound by the terms of the Settlement and will be unable to pursue claims against Defendants ***and other related entities*** concerning or relating to the allegations raised in this Action." (ECF No. 162-2 at p. 20 (emphasis added).)

Finally, neither the FTC nor the NYAG has opposed the Settlement on this (or any other) ground. TINA fails to explain why the FTC's position with respect to an earlier,

[4] The third case TINA cites for this point is barely worthy of discussion. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) is not even in the Rule 23 class action context, and instead involves "common fund" litigation under the New York Banking Law.

[5] The FTC has publicized that action on its own website: https://www.ftc.gov/enforcement/cases-proceedings/152-3206/quincy-bioscience-holding-company. (Last accessed November 9, 2020.)

"similar," and never finalized, settlement (ECF No. 168 at 6) warrants rejection of this settlement when the FTC and NYAG themselves have not opposed it despite the fact that both entities received notice of the Settlement.

IV. TINA's Concerns About Injunctive Relief Are Meritless

TINA's complaints about the proposed injunctive relief (ECF No. 168 at 7-10) again rely solely on the *allegations* from the FTC Action and ignore *all* of the other scientific material that Quincy has amassed to substantiate its marketing for Prevagen. TINA is neither a party to any of the pending litigations nor entitled to receive any of the hundreds of thousands of pages of discovery that Quincy has produced in these cases. Thus, it has absolutely no basis to either question Quincy's science or assess the value of the proposed injunctive relief.

For example, TINA's arguments about Quincy's "post hoc" analyses make no sense. All clinical study results are obtained through "post hoc" analyses – in other words, analyses after the study is complete. Moreover, TINA fails to mention that the "subgroups" referenced in the disclaimers required by the Settlement (made up of individuals who were cognitively normal or mildly impaired) are the exact population that the Madison Memory Study was designed to evaluate. Indeed, the "Research" Tab on Quincy's website expressly states that the Madison Memory Study "demonstrated the ability to improve aspects of cognitive function in participants with either *normal cognitive aging or very mild impairment* . . ." (Ex. B, https://www.prevagen.com/research/ (emphasis added) (last accessed November 9, 2020.). Thus, the so-called "post hoc" analyses simply reflect Quincy's intent in conducting the study from the outset, and the inclusion of individuals outside of Quincy's target population is no reason to discredit the study in its entirety. Nor has TINA cited any evidence that Quincy "sliced and diced" study results "in multiple overlapping ways" – there is none. (ECF No. 168 at 8 n.11.) Again, TINA is not privy to any of the discovery Quincy has produced, does not know what Quincy's science actually shows, and relies blindly on the FTC/NYAG's *allegations* from four years ago. TINA also fails to acknowledge that earlier this year Quincy tried a case to a jury in the *Racies* Action on nearly the exact claims raised in all of the class actions at issue in the Settlement. That trial ended with a jury unable to render a verdict after which Judge Gilliam declared a mistrial. Prior to the conclusion of the trial, Quincy filed a motion to decertify the previously-certified class based on evidence that it developed at trial and Judge Gilliam subsequently decertified that class. *Racies v. Quincy Bioscience, LLC,* No.

15-cv-00292-HSG, 2020 WL 2113852 (N.D. Cal. May 4, 2020). The parties later entered a stipulation dismissing that action. And finally, TINA has failed to cite a single case suggesting that "subgroup analyses" – whether "post hoc" or otherwise – cannot be used to accurately convey product information. In short, the two proposed disclaimers clarify what Quincy always intended to convey to its consumers about the benefits of Prevagen, and to prevent Quincy from doing so would violate its First Amendment right to commercial speech.

TINA's authority is easily distinguishable. In both *Pearson v. NBTY, Inc.*, 772 F. 3d 778, 784-785 (7th Cir. 2014), and *Vassalle v. Midland Funding LLC*, 708 F. 3d 747, 756 (6th Cir. 2013) (ECF No. 168 at 10), the proposed injunctive relief was temporary, and the defendant was free to resume the challenged conduct at some point in the not-so-distant future. In stark contrast, the injunctive relief in the Settlement is permanent. Thus, all class members continuing to purchase Prevagen, as well as potential future Prevagen consumers, will benefit from the injunctive relief contained in the Settlement.

V. The Monetary Component of the Settlement is Fair and Reasonable

TINA also complains that the monetary relief in the Settlement is disproportionate to both the "harm inflicted" on class members and Quincy's "ability to pay." (ECF No. 168 at 10-13.) Both claims are meritless.

As an initial matter, Quincy denies that any harm was inflicted on class members as a result of their purchases of Prevagen. With respect to the *alleged* harm suffered by class members, TINA forgets that "compromise is the essence of settlement." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). Accordingly, this Settlement reflects less than what the Plaintiffs hoped to recover and more than Quincy wanted to pay. It also reflects the realities and risks of further litigation, including the possibility that the Plaintiffs could proceed all the way to trial and receive nothing, which is exactly what occurred in the *Racies* Action in California. TINA's "unsupported belief that a better deal could be possible is not a basis to overturn a settlement." *Carter v. Forjas Taurus S.A.*, No. 1:13-CV-24583-PAS, 2016 WL 3982489, at *11 (S.D. Fla. July 22, 2016).[6]

[6] Despite TINA's concern that "[r]eceipts are likely to be discarded" (ECF No. 168 at 11 n.13), courts routinely approve two-tier settlement where class members with proof of purchase are able to recover more than those without. *See, e.g., Poertner v. Gillette Co.*, 618 Fed. App'x 624, 625-26 (11th Cir. 2015); *Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 81 (1st Cir. 2015); *Keil v. Lopez*, 862 F.3d 685, 691 (8th Cir. 2017).

Moreover, consumers "who have taken the supplement for more than a decade" (ECF No. 168 at 11) did so because they were *pleased* with Prevagen's performance and therefore are not aggrieved by their repeated purchases. For example, Beatrice Lydecker-Hayford, who opted out of the Settlement, took the time to write to Plaintiffs' counsel to express her opinion that Prevagen "is one of the finest products on the market which has saved the lives of [her]self and many of [her] clients." (Ex. A.) Even the reviews excerpted by TINA in its brief (ECF No. 168 at 11-12 n.15) demonstrate that long-term Prevagen consumers are *happy* with their purchases. (Ex. C, https://www.prevagen.com/prevagen-reviews/yolonda-shares-her-story/ ("The improvement to my memory was mind blowing!"); Ex. D, https://www.prevagen.com/prevagen-reviews/norm-shares-his-story/ (consumer and his wife "were really impressed" with Prevagen's results); Ex. E, https://www.prevagen.com/prevagen-reviews/trisha-shares-her-story/ (after using Prevagen, consumers "memory is sharper than it used to be"); Ex. F, https://www.prevagen.com/prevagen-reviews/les-shares-his-story/ (friends and family tell consumer that his "memory is incredible!").

TINA also takes issue with the use of a claims process. (ECF No. 168 at 10-11.) Claims processes are routinely used in class action litigation and are necessary in cases like this one. While Quincy does make some sales of Prevagen directly to consumers, the vast majority of Prevagen consumers, particularly in recent years, purchased Prevagen from third party retailers and Quincy has no way of identifying those consumers. (ECF No. 37 ¶¶ 7-8.) For example, from 2016 through the present, less than 5% of Quincy's sales of Prevagen in Florida were made through www.prevagen.com or over the phone. (ECF No. 37 ¶ 11.) This ratio is reflective of the nationwide sales trend. Moreover, while TINA complains about the claims process, it fails to offer any alternative method of identifying and compensating class members who purchased Prevagen from these independent retailers.

Finally, TINA has no knowledge of Quincy's ability to pay, and relies solely on a hearsay document apparently prepared by a company called Kantar Media without a business records certification or any other evidence suggesting that this document accurately reflects Quincy's advertising costs. (ECF No. 168 at 12-13.) And even if it does, Quincy's advertising costs have no bearing on Quincy's ability to pay a settlement, given that TINA has failed to proffer any information about Quincy's profits.

VI. The Release Provision of the Settlement Is Neither Overly Broad Nor Unfair

Finally, TINA makes a number of challenges to the release provision in the Settlement. (ECF No. 168 at 13.) TINA's concerns are unfounded and mischaracterize both the law and the terms of the Settlement.

First, TINA takes issue with the fact that the Settlement seeks to bind Prevagen consumers from a thirteen-year time period. This period of time actually extends to consumers who purchased Prevagen long-before the statute of limitations period applicable to the *Collins* Action or the FTC Action, allowing for broader recovery than if the cases had gone to trial. (*See* ECF No. 119 (recommending certification of a class of purchasers dating back four years from the filing of the complaint in 2019 under FDUTPA); 28 U.S.C. 2462 (an action to enforce a civil fine or penalty "shall not be entertained unless commenced within five years from the date when the claim first accrued.").)

Next, TINA argues that Prevagen's "downstream distribution channel" is free to continue marketing Prevagen in any way it sees fit. (ECF No. 168 at 13.) This is simply not true. If Quincy or any of its retailers advertise Prevagen in the future in a manner inconsistent with the Settlement (for example, by not including the disclaimers in Section IV.A.3 of the Settlement where appropriate), Quincy or the retailer would be subject to suit.

Third, TINA argues that "the class will be giving up their right to recover any monetary relief from the pending FTC/New York AG lawsuit against Quincy." (ECF No. 168 at 13.) Notably, neither the FTC nor the NYAG has objected to this Settlement, raising questions about TINA's motivations in doing so. Even more importantly, however, TINA fails to acknowledge that there is a case currently pending before the Supreme Court that questions whether the FTC even has the authority to seek restitution or other monetary relief under Section 13(b) of the Federal Trade Commission Act (the statute upon which the FTC Action is brought). *See AMG Capital Management, LLC v. Federal Trade Commission.* Indeed, the Third and Seventh Circuit Courts of Appeals have held that the FTC *lacks* the authority to seek monetary relief. *See FTC v. AbbVie Inc. et al,* Nos. 18-2621, 18-2748, and 18-2758, 2020 WL 5807873 (3d Cir. Sept. 30, 2020); *FTC v. Credit Bureau Ctr., LLC*, 937 F.3d 764 (7th Cir. 2019). TINA's suggestion that class members should be notified about potential recovery from the FTC Action could have the opposite result; *i.e.,* class members could opt out of the

Settlement in the hopes of recovering from the FTC, only to end up with nothing if the Supreme Court agrees with the Third and Seventh Circuits.

CONCLUSION

For the reasons set forth above, this Court should reject the speculative arguments in TINA's Opposition and grant final approval to the proposed Settlement.

Dated: November 9, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2020, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court for the United States District Court, Southern District of Florida, by using the CM/ECF system. I certify that all current participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system upon:

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EXHIBIT A

Beatrice Lydecker-Hayford

Bea Lydecker's Naturals

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September 4, 2020

To Whom It May Concern at Collins and attorneys:

I received your card in the mail informing me of a class action against Quincy Bioscience concerning Prevagen. As a consumer of Prevagen and as a retailer of said product, I am informing you that I will stand up for Quincy Bioscience in court if necessary as this is one of the finest products on the market which has saved the lives of myself and many of my clients. Before I found that product, I was becoming a raving idiot who couldn't remember what I was doing as I passed from one room to another. The mental forgetfulness and confusion I was experience was very frightening. I own a business and was getting so bad I was having trouble keeping my books and remembering what my customers wanted. It was very embarrassing. I found out about Prevagen and started taking it. Within two weeks my mind was clearing up and now at 82 I wouldn't be without the product. I am back working 5 days a week, running my business effectively, writing health newsletters and remembering what My customers need.

If you continue to try to destroy this company and remove that product from the market, you will devastate me and many of my clients who depend on it to continue to live productively. This is a false, trumped up lawsuit which is being perpetrated by someone who is jealous and wants to hog the market. I will be more than happy to stand up with them and fight you in every way possible and so will my loyal customers.

I am doing this strictly as a consumer and have no ties or benefits from Quincy Bioscience whatsoever for writing this letter except to keep my sanity and clarity of mind. As a consumer I am enraged at your unethical, blatant lying false accusations and tactics to destroy a good company helping so many of us.

I remain:

Beatrice Lydecker-Hayford

Beatrice Lydecker-Hayford

Bea Lydecker's Naturals
15443 S. Lakeview Loop
Oregon City, OR 97045
1-800-488-6539

PORTLAND OR 972

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Collins v Quincy Bioscience
Claims administrator
PO Box 43192
Providence, R.I. 02940-3192

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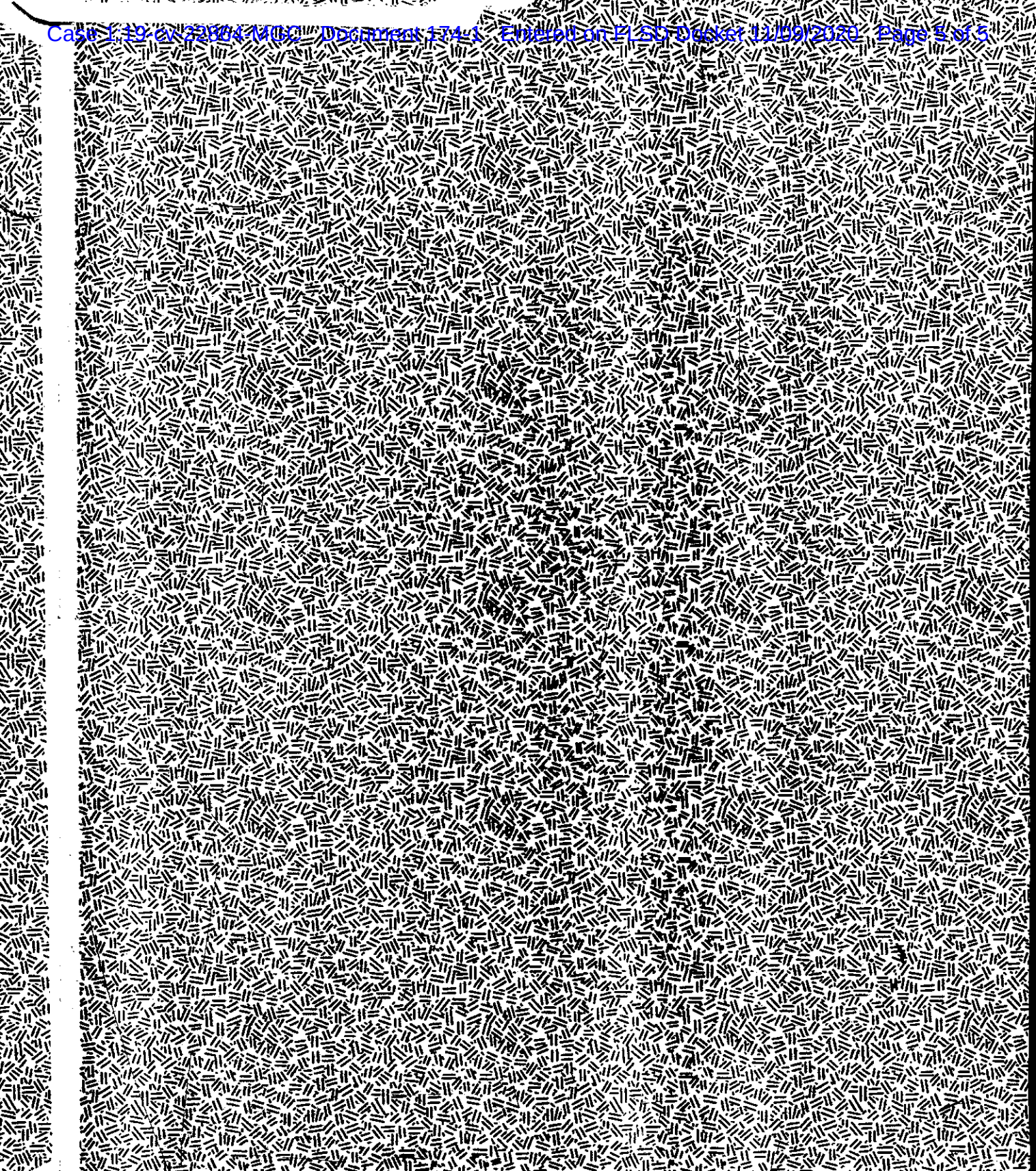


EXHIBIT B

The Science Behind Prevagen®

Learn more about the efficacy and safety of Prevagen

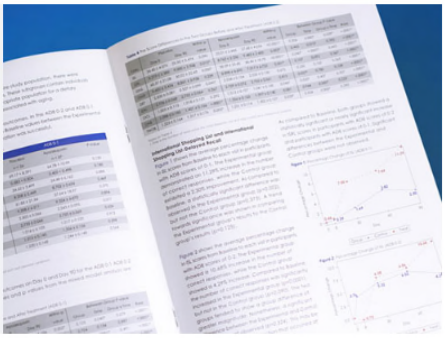
Research on Prevagen's Unique Ingredient

Some age related issues may be unwanted, such as the normal memory loss associated with aging. The unique ingredient in Prevagen, apoaequorin, was originally found in jellyfish and has been clinically shown to be safe and improve memory and support brain function based on the studies below.*

Madison Memory Study

In a double-blinded, placebo-controlled trial, Prevagen demonstrated the ability to improve aspects of cognitive function in participants with either normal cognitive aging or very mild impairment, as determined by pre-trial screening. The group of participants taking Prevagen improved certain aspects of cognitive function according to computer-based testing. The adults were over 40 years old and took one capsule daily (10 mg) for 90 days.

VIEW THE STUDY



Safety Study I

The unique ingredient in Prevagen, apoaequorin, was evaluated for safety using a toxicity study, a common method for evaluating dietary supplements. Apoaequorin has been found to be safely consumed in doses much higher than recommended dosage (4,000 times the recommended daily amount of Prevagen Regular Strength).

VIEW THE SUMMARY

Safety Study II

In a separate safety study, Apoaequorin has not shown to have any significant risk of allergic reactivity when ingested.

VIEW THE SUMMARY

Safety Study III

In a third study conducted on the safety of apoaequorin, the protocol followed was very similar to Safety Study I, however, in this instance, the dosage was increased. Apoaequorin has been found to be safely consumed in doses much higher than recommended dosage (16,000 times the recommended daily amount of Prevagen Regular Strength).

VIEW THE SUMMARY

EXHIBIT C

YOLONDA SHARES HER STORY

"The improvement to my memory was mind blowing!"

Yolonda, 57
Teacher

Yolonda is one of those people whose main job in their life is to take care of others. **It's a gift** for which everyone whose life Yolonda touches should probably say a prayer of thanks. She'd be sure to like that, since this Fifty Something lady from Houston is a **deeply spiritual soul** who counts herself a devout member of one of the the largest congregations of any church in America.

Which is to say, when it comes to practicing her religion, Yolonda's chosen church is in a league of its own.

Her full time job these past 15 years has been to teach at a child care center. **She loves her work. "I enjoy teaching and taking care of the kiddos,"** she says. **"It's so rewarding and enriching to work there."**

But youngsters aren't the only ones getting Yolonda's attention. She also takes care of other members of her family, including older relatives who can't take care of themselves. She travels out to California at least once a year to visit with other members of her large extended family.

This single caregiver also finds time to take care of herself. **She watches what she eats, works out at a local fitness center, takes walks in her suburban neighborhood, and gets in a swim and bike ride whenever she can.**

Yolonda credits her faith as the number one thing in her life. **"Being grounded spiritually is the key to everything in life, and family is important too, of course."** She adds , **"I believe in being kind to everyone in our life. We should be open to differences in people and not be judgemental."**

In addition to her lifestyle of caring for others and her spirituality, Yolanda decided when she first saw televised reports on Prevagen that **"I should give my brain some help too, in addition to my body and my soul."** That was about 12 years ago and **she's been using Prevagen ever since.**

"The improvement to my memory was mind blowing!" she reports.

For a person who has always taken such good care of her soul and her body, to know that her brain is also on a healthy path is a good reason to rejoice and say a little prayer of gratitude.

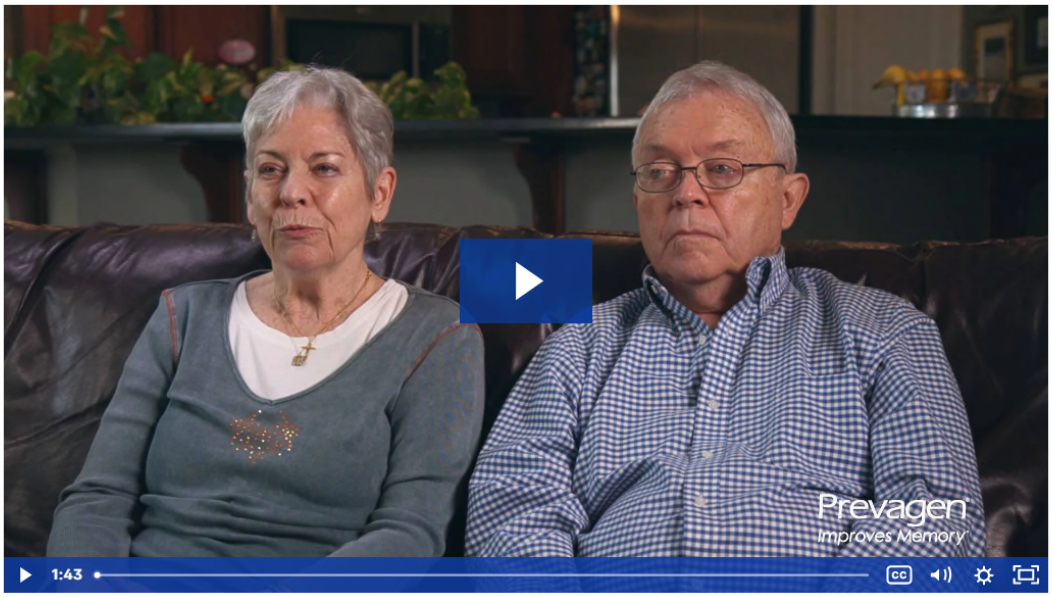
UP NEXT: FRANCES' STORY
BACK TO REVIEWS

†Per *Pharmacy Times* National Survey of Pharmacists 2019-2020.

* 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.

EXHIBIT D

NORM SHARES HIS STORY



The Past Helps Us Better Understand

Norm, 82 & Szasz, 75
Consultants
Writers
Prevagen Content Contributors

Norm Benedict is a story-teller and then some, a man of Missouri whose career as a professional communicator has taken him to places far removed from the Show Me State but whose heart and soul have never really left his hometown of Columbia and the campus of the University of Missouri where he earned an MBA degree in Journalism.

His widely praised memoir of growing up in Columbia during World War II and the years of prosperity that followed (Thumbs Up "V" For Victory, I Love You, published in 2011) is packed with memories of the small and not-so-small events of a life fully-lived, including such gems as this: "The girls we grew up with were fast becoming young women, while most of us pitiful males were still boys – creating not only a gulf but also a level of physical and mental anguish beyond description."

The true love of Norm's life turned out to be a woman named Wanda Joyce Szasz, herself another important part of this story. She was the daughter of a popular professional grappler named Al "The Mad Hungarian" Szasz, who at one time was the lightweight wrestling champion of the world, pleasing pro wrestling fans in Chicago, St. Louis and other venues.

Following their wedding in Columbia in 1991, Wanda willingly accepted Benedict as her new last name, but as the savvy marketing pro she is, kept her dad's distinctive last name, and is known to one and all as the memorably named Szasz Benedict. **The couple operates a communications and PR firm in Columbia, providing services to a wide range of clients in Missouri and beyond.** The firm's commitment to the Show Me State goes well beyond their business, as Norm has served as an adjunct member of the University of Missouri's prestigious School of Journalism faculty, president of the Mid-Missouri Tourism Council, president of Columbia's Metro Rotary Club, and other organizations.

Along the way, their business began focusing on the natural foods industry, and in 2007 the couple attended an industry expo in Baltimore where they stopped at an exhibitor's booth for the new dietary supplement Prevagen then just going on the market. **Norm was particularly drawn to the Prevagen story.** He says, **"I had begun to sense that my usually strong memory was slipping just a little bit as it can with normal and so both Szasz and I decided to start using the new product, and we were really impressed with the results. We are still using it today, more than 10 years after that chance encounter in Baltimore."**

"I've always had a strong curiosity and an awareness of the feelings of other people," says this seemingly ageless representative example of how today's Prevageneration is enjoying a healthy, balanced and fulfilling life. "As I've grown older," Norm says, **"I realize that the past helps us better understand the world as it changes all around us."**

UP NEXT: TOM'S STORY
BACK TO REVIEWS

EXHIBIT E

TRISHA SHARES HER STORY

Make something good out of the bad

Trisha, 70
Dental Hygienist
Gardener
Paid Testimonialist

Trisha is one of those people with the remarkable ability to make a wonderful life in a beautiful place even more wonderful and more beautiful. She lives in the sun-dappled community of Mill Valley nestled in the north end of San Francisco Bay, which all by itself is enough to satisfy anyone who aspires to life in a place most people are apt to think of as perfect.

But for this 70- year-old woman with a college minor in nutrition who enjoys being a part-time dental hygienist, her home in Mill Valley has long been like a well-tended garden filled with many friends and a healthy, active lifestyle that includes long walks and bike rides around a town that is frequently included on lists of good places to live in America.

She spends big chunks of time tending an actual garden around her home, where she leads "a calm and beautiful life" for which she credits a higher power. "God is the source of all the joy in my life," says this deeply spiritual woman who is able to quote scripture at the drop of her gardening hat.

Like just about everyone who has lived a long life and has aged well, Trisha has had her share of sadness and setbacks through the years, in particular the passing of her husband a couple years ago, leaving her a widow faced with the necessity to make her way on her own. **"Bad things happen to everyone, but you don't have to nurse it or curse it or rehearse it, you just make something good out of it,"** declares this fiercely independent and feisty woman who manages to convey her feelings in a calm and friendly way.

One of the points she willingly shares is her strongly held belief that her use of Prevagen has been a key to her ability to maintain a good memory as she has grown older. Her discovery and use of the product goes back at least ten years when her only way to obtain Prevagen was by ordering it on-line.

"I had just begun to notice my memory was slipping," Trisha reports. "And one day I was watching Doug Kaufman's program 'Know the Cause' on TV. He had as his guest the founder of the company that had just begun to offer Prevagen, and I was very impressed by his story of the research that had led him to the creation of Prevagen. I liked the way he talked about it as something that he knew could help people with their memory. **So I ordered the product and used it and sure enough it did begin to make a difference."**

She reports that a lot of her friends and others have noticed that her memory is sharper than it used to be.

Which is just another way Trisha has made a wonderful life even more wonderful.

UP NEXT: NORM & SZASZ'S STORY

BACK TO REVIEWS

EXHIBIT F

LES SHARES HIS STORY

"Friends and family say, 'Your memory is incredible!'"

Les, 79
Retired Business Executive

From wherever he finds himself these days, the view of this retired business executive is pretty good. Very good, actually, and he's earned every bit of it.

Whether Les is sitting on the deck of his beloved cabin on the shores of Big Lake deep in the woods of northern Maine, or taking one of his long walks in the woodland around his home in upper New Jersey, **Les can look back on a successful career in a leadership role of the real estate development activities of one of America's preeminent and most famous families.**

Now 79 years old, Les remains an avid outdoorsman who is still comfortable in a canoe casting for smallmouth bass in the clear waters of Big Lake, photographing the local wildlife, or tromping the woods with a shotgun, bird dog and a lifelong friend in search of ruffed grouse.

He is easy to talk with, clearly a man who knows himself as he tells the story of building a life for his family guided by a set of life lessons that are rooted in a boyhood as the son of an Irish immigrant mother and a father of strong moral fiber. **"My younger sister and I were blessed to be raised in a family that was guided by our religion and taught the importance of hard work and honesty in all things,"** he says. "I was a scout, an altar boy, the whole nine yards, and I took those boyhood values into my adult life in the business world."

"You know, one of the things I learned is that always telling the truth is important, which is a real advantage in the high-stakes investment business where taking risks and making decisions are what you are called on to do. **One of the things I've learned is that the advantage in always telling the truth is you can usually sense when the other person isn't**," he says, pausing to let that bit of truth sink in like an old lure cast to an unsuspecting bass.

Les is full of old truths and good stories, like the one he tells about finding this cabin in the Maine woods. Turns out the place came on the market when its original owner decided to go live somewhere a lot warmer. That owner was a former celebrity known to anyone who remembers the early days of TV. Turns out the celebrity was none other than Howdy Doody's on-screen partner, Buffalo Bob Smith himself. Les admits that he's made some improvements to Buffalo Bob's property over the years, **but in sharing the story behind the cabin he brings a good old memory to life** and you almost expect to see Howdy and Buffalo Bob walk out onto the deck and take a seat.

Les knows the value of taking in every moment, so when his own memory began to slip a bit about five years ago as can happen with age, he decided to give Prevagen a try. **Over the years, he's sometimes tried other products but always came back to Prevagen.** His family and friends have noticed.

"They say things like, 'Your memory is incredible!'" he reports.

For a fellow with so much to enjoy in a long, good life, that's music to his ears, no matter where he may be.

UP NEXT: DEBORAH'S STORY

BACK TO REVIEWS