		Case 3:09-cv-01088-BTM-KSC Docume	ent 311 Filed 04/21/14 Page 1 of 4					
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HURS ⁻	15	UNITED STATES DISTRICT COURT						
BLOOD	16 17		RICT OF CALIFORNIA					
B	17 18 19	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION	Case No.: 3:09-MD-02087-BTM(KSC)					
	 20 21 22 23 24 25 26 27 20 	ANDREW DREMAK, on Behalf of Himself, All Others Similarly Situated and the General Public, Plaintiff, vs. IOVATE HEALTH SCIENCES GROUP, INC., <i>et al.</i> , Defendants.	Case No.: 3:09-CV-01088-BTM(KSC) NOTICE OF MOTION AND JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT Date: TBD Time: TBD Courtroom: 15 Judge: Hon. Barry T. Moskowitz					
{000718	28 21.V1}	NOTICE OF AND JOINT MOTION FOR PRELIMI	No. 3:09-MD-02087-BTM(KSC) No. 3:09-CV-01088-BTM(KSC) NARY APPROVAL OF CLASS ACTION SETTLEMENT					

PLEASE TAKE NOTICE that Plaintiff Andrew Dremak and defendants 1 2 Iovate Health Sciences Inc., Iovate Health Sciences U.S.A., Inc., and Kerr 3 Investment Holding Corp. ("Iovate") Company request that this Court enter the 4 [Proposed] Order Preliminarily Approving Class Action Settlement, which is 5 attached as Exhibit 5 to the concurrently submitted Stipulation of Settlement, and (1) grant preliminary approval of the Settlement reached by the Parties, (2) 6 conditionally certify the Class, (3) conditionally designate Plaintiff Andrew 7 8 Dremak as the Class Representative, (4) appoint Timothy G. Blood of Blood 9 Hurst & O'Reardon, LLP and Elaine A. Ryan of Bonnett, Fairbourn, Friedman & 10 Balint, P.C. as Class Counsel for the Settlement Class, (5) approve the Parties' 11 proposed form, method, and schedule for disseminating Class Notice to the 12 Class, (6) establish deadlines for the Settlement Class Members to submit claims, 13 object to, or request exclusion from the Settlement, (7) appoint Epiq Systems and 14 Boston Financial Data Services to serve as the Settlement Administrators, and 15 (8) set a date for the Final Approval Hearing.

This joint motion is based upon this notice, the memorandum in support,
the Declaration of Timothy G. Blood, the Declaration of Cameron R. Azari, the
Declaration of Elaine A. Ryan, upon all papers and pleadings on file herein, and
further evidence and argument as the Court may choose to entertain.

Respectfully submitted,

BLOOD HURST & O'REARDON, LLP 21 Dated: April 21, 2014 TIMOTHY G. BLOOD 22 LESLIE E. HURST THOMAS J. O'REARDON II 23 24 Bv: <u>s/ Thomas J. O'Reardon II</u> THOMAS J. O'REARDON II 25 701 B Street, Suite 1700 San Diego, CA 92101 Telephone: (619) 338-1100 26 Facsimile: (619) 338-1101 27 tblood@bholaw.com lhurst@bholaw.com 28 {00071821.V1} 1 No. 3:09-MD-02087-BTM(KSC) No. 3:09-CV-01088-BTM(KSC) NOTICE OF AND JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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		NOTICE OF AND JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

CERTIFICATE OF SERVICE I hereby certify that on April 21, 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 certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed April 21, 2014. s/ Thomas J. O'Reardon II THOMAS J. O'REARDON II BLOOD HURST & O'REARDON, LLP 701 B Street, Suite 1700 **BLOOD HURST & O'REARDON, LLP** San Diego, CA 92101 Telephone: 619/338-1100 619/338-1101 (fax) toreardon@bholaw.com

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BLO	17	SOUTHERN DISTR	RICT OF CALIFORNIA						
	18 19	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION	Case No.: 3:09-MD-02087-BTM(KSC)						
	 20 21 22 23 24 25 26 27 	ANDREW DREMAK, on Behalf of Himself, All Others Similarly Situated and the General Public, Plaintiff, vs. IOVATE HEALTH SCIENCES GROUP, INC., <i>et al.</i> , Defendants.	Case No.: 3:09-CV-01088-BTM(KSC) PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT Date: TBD Time: TBD Courtroom: 15 Judge: Hon. Barry T. Moskowitz						
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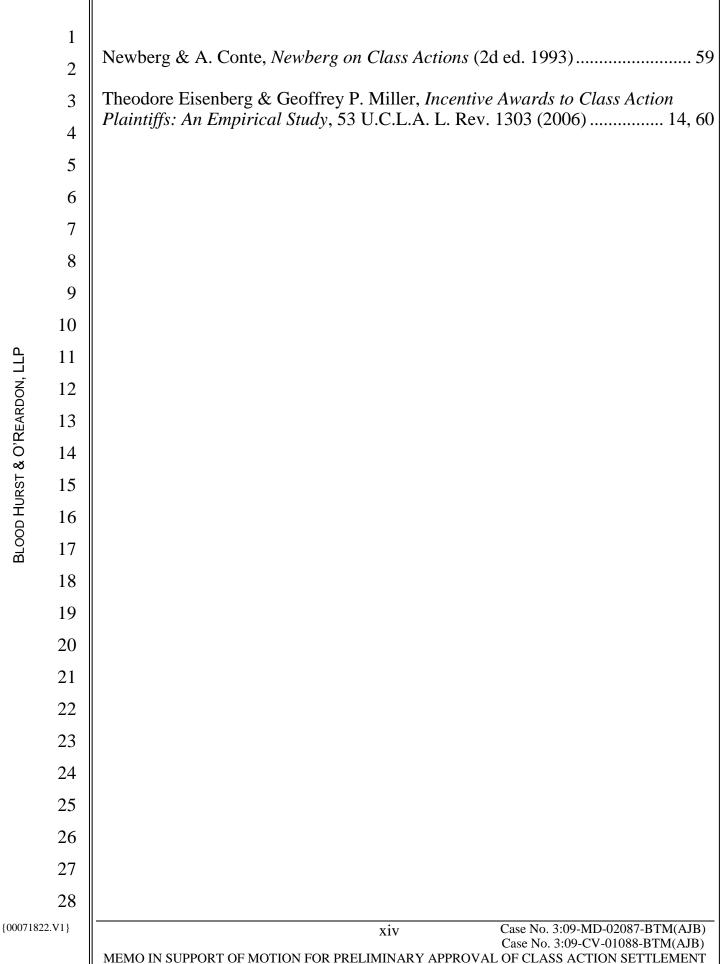
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Plaintiff Andrew Dremak, on behalf of himself and all others similarly 1 2 situated, respectfully submits this memorandum in support of the Motion for 3 Preliminary Approval of Class Action Settlement ("Motion") and entry of the 4 [Proposed] Order Preliminarily Approving Class Action Settlement. 5 Conditionally Certifying the Settlement Class, and Providing for Notice and Scheduling Order, attached as Exhibit 5 to the concurrently filed Stipulation of 6 Settlement ("Stipulation" or "Settlement"). 7

8

I. INTRODUCTION

9 Plaintiff seeks preliminary approval of the proposed nationwide Settlement 10 of this multidistrict consumer class action against defendants Iovate Health 11 Sciences, Inc.; Iovate Health Sciences U.S.A., Inc.; Kerr Investment Holding Corp. ("Iovate"); and GNC Corporation; Wal-Mart Stores, Inc.; Walgreens 12 13 Company; CVS Caremark Corp.; Vitamin Shoppe Industries, Inc.; NBTY, Inc.; BJ's Wholesale Club, Inc.; Kmart Corporation, and Rite-Aid Corporation 14 15 (collectively the "Retailer Defendants") (Iovate and the Retailer Defendants are referred to collectively as "Defendants"). The class action arises out of the 16 17 advertising and sale of Hydroxycut-branded weight loss supplements (the "Hydroxycut Products").² 18

19The Settlement provides cash payments of \$15.00 per purchase (more than20half the approximate retail price of Hydroxycut Products), with award increases21up to \$50 (twice the approximate average retail price), if sufficient money

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¹ All capitalized terms herein have the same meaning as set forth in the Stipulation of Settlement.

The Hydroxycut Products are: Hydroxycut Regular Rapid Release Caplets; Hydroxycut Caffeine-Free Rapid Release Caplets; Hydroxycut Hardcore Liquid Caplets; Hydroxycut Max Liquid Caplets; Hydroxycut Regular Drink Packets; Hydroxycut Caffeine-Free Drink Packets; Hydroxycut Hardcore Drink Packets (Ignition Stix); Hydroxycut Max Drink Packets; Hydroxycut Liquid Shots; Hydroxycut Hardcore RTDs (Ready-to-Drink); Hydroxycut Max Aqua Shed; Hydroxycut 24; Hydroxycut Carb Control; and Hydroxycut Natural. This definition expressly excludes Hydroxycut-branded products containing ephedra and Hydroxycut-branded products available for purchase prior to December 1, 2004 or after May 1, 2009.

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remains in the settlement fund. No proof of purchase is required for up to three 1 2 purchases (more than the average number of units purchased). With evidence of 3 purchase, an unlimited number of reimbursements may be claimed. 4 Alternatively, at the Class Member's option, a Class Member may choose a 5 current Iovate product equal to at least the retail average retail value of a Hydroxycut Product (\$25.00). Class Members choosing this option may choose 6 7 reimbursement in the form of Iovate products for up to three purchases of 8 Hydroxycut Product without proof of purchase, and a reimbursement of 9 unlimited number of purchases with evidence of the purchases. The current 10 Iovate products offered do not contain any of the ingredients alleged to be 11 dangerous and ineffective.

On average, Class Members bought a Hydroxycut Product 2.2 times. Therefore, allowing Class Members to seek reimbursement for up to 3 purchases without evidence of those purchases beyond submitting a claim provides generous compensation.

16 Under the proposed Settlement, a \$14 million non-reversionary Settlement 17 Fund will be created to reimburse Settlement Class Members. From this fund, which consists of \$7 million in cash ("Cash Component") and \$7 million in 18 19 product ("Product Component"), purchasers of Hydroxycut Products may elect 20 between receiving cash refunds that potentially far exceed the products' average 21 retail price or free products consisting of Iovate's best-selling products. Notice and administration costs, service awards and attorneys' fees and expenses 22 23 incurred by plaintiffs' counsel will be paid from the \$7 million cash fund. The 24 parties do not anticipate there will be any cash remaining after all claims are 25 made. Nonetheless, if any cash remains, it will be distributed to ChangeLab 26 Solutions pursuant to the *cy pres* doctrine. Any remaining Iovate product will be 27 distributed to Iovate purchasers pursuant to the *cy pres* doctrine.

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1 This Settlement will resolve all claims alleged in all of the actions styled 2 as class actions in this MDL proceeding. The proposed Settlement Class is 3 defined as:

> All persons who purchased in the United States any of the Hydroxycut Products between May 9, 2006 and May 1, 2009, inclusive.

Excluded from the Settlement Class are: (i) those who purchased Hydroxycut Products for the purpose of resale; (ii) Iovate and its officers, directors and employees; (iii) any person who files a valid and timely Request for Exclusion; and (iv) the Judge(s) to whom this Action is assigned and any members of their 10 immediate families.

11 Class Notice advising potential Settlement Class Members of their 12 Settlement benefits and their rights will be published in various nationwide 13 publications and posted on the Settlement Website and Class Counsel's websites, 14 in accordance with a media plan designed by experts in the field specifically targeting Settlement Class Members. The Class Notice also will be emailed to 15 16 individuals for whom Iovate has contact information, and mailed directly to those 17 Settlement Class Members who previously submitted a claim in response to the 18 previously-proposed settlement of this Action.

19 At the preliminary approval stage, the Court need only "make a 20 preliminary determination of the fairness, reasonableness and adequacy of the 21 settlement" so that notice of the Settlement may be given to the Class and a fairness hearing may be scheduled to make a final determination regarding the 22 23 fairness of the Settlement. See 4 Herbert B. Newberg & Alba Conte, Newberg on 24 Class Actions, §11.25 (4th ed. 2002); David F. Herr, Annotated Manual for Complex Litigation ("Manual") §21.632 (4th ed. 2008). In so doing, the Court 25 26 reviews the Settlement to determine that it is not collusive and, "taken as a whole, 27 is fair, reasonable and adequate to all concerned." Officers for Justice v. Civil

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Serv. Comm., 688 F.2d 615, 625 (9th Cir. 1982); see also Rodriguez v. West
 Publ'g Co., 563 F.3d 948, 965 (9th Cir. 2009).

As detailed below, the proposed Settlement plainly meets the standard for 3 4 preliminary approval. Thus, Plaintiff respectfully requests that the Court enter 5 the [Proposed] Order re: Preliminarily Approval of Class Action Settlement that, among other things: (1) conditionally certifies the Settlement Class for settlement 6 7 purposes; (2) conditionally designates Plaintiff Andrew Dremak as Class 8 Representative; (3) appoints Blood Hurst and O'Reardon, LLP and Bonnett, 9 Fairbourn, Friedman & Balint, P.C. as Class Counsel for the Settlement Class; (4) 10 grants preliminary approval of the Settlement; (5) approves the proposed Class Notice plan; and (6) schedules a Final Approval Hearing for the Settlement. 11

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II. HISTORY OF THE LITIGATION

A. Pleadings and Motions

1. The 2009 Hydroxycut Product Recall, and the Filing of Plaintiff's Original Complaint

16 In May 2009, Plaintiffs' Counsel began investigating the veracity of the advertising and product labeling claims Iovate made about the safety and 17 18 efficacy of the Hydroxycut Products. These investigations coincided with 19 Iovate's announcement on May 1, 2009, that it was recalling the Hydroxycut 20 Products, but not providing restitution to consumers. Iovate's recall followed 21 announcements by the Food and Drug Administration ("FDA") and Health 22 Canada that ingestion of the Hydroxycut Products was associated with numerous 23 adverse reactions. On April 30, 2009, the FDA informed Iovate that it 24 "concluded that the ingestion of the dietary supplement Hydroxycut presents a severe potentially life-threatening hazard to some users." Further, the FDA 25 "strongly advise[d]" consumers of "the potential risk of severe liver injury" 26 27 associated with consumption of the products and urged that they discontinue use 28 of the Hydroxycut Products. See FTS-HHS FDA, "Hydroxycut Dietary

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1 Supplement FDA Warns Consumers To Stop Using Hydroxycut Products Risk Of 2 *Liver Injury,*" Transcript Dated 5/1/09. Consumers were not provided 3 reimbursement for their economic losses through the recall.

On May 19, 2009, Andrew Dremak filed a class action against Iovate for false advertising, including that the Hydroxycut Products were not effective for weight-loss purposes and that the Hydroxycut Products were unsafe. A number of other similar class actions were filed around the country shortly thereafter. With respect to the original complaint in *Dremak*, Iovate filed a motion for a more definite statement pursuant to Fed. R. Civ. P. 12(e), and a motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) this original complaint, which motions were fully briefed by the time of transfer and consolidation. (See Dremak, Case No. 3:09-cv-01088-BTM(KSC), D.E. Nos. 19, 20, 26, 29.) Likewise, BFFB, who filed the original complaint in the related class action entitled Coleman v. Iovate Health Sciences USA, Inc., Case No. 3:09-cv-00988-BTM(KSC), fully briefed Defendants' motion for a more definite statement as to the original complaint in Coleman. (See Coleman, D.E. Nos. 10-11, 20, 22.)

2. The MDL Transfer Motion, and Order Appointing Class Counsel

On October 6, 2009, upon a Motion for Coordination and Transfer, the Judicial Panel on Multidistrict Litigation transferred sixteen of the pending 22 actions to the Southern District of California and assigned them to the Honorable Barry Ted Moskowitz for coordinated or consolidated pretrial proceedings. The 23 24 action was captioned, In re Hydroxycut Marketing and Sales Practices Litigation, MDL No. 2087 ("the Action"). Thereafter, additional related class 25 26 actions were transferred to Judge Moskowitz as tag-along cases. This 27 multidistrict litigation consists of two types of lawsuits: a series of individual

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personal injury actions and consumer protection "economic loss" class actions. 1 2 This Settlement resolves only the class actions.

On February 3, 2010, Plaintiffs Andrew Dremak, Randall Shortridge, 3 Nicholas Torres, Raymond Ortiz, II, Melissa Reed, and Courtney Walker 4 5 submitted a motion to appoint Timothy G. Blood of Blood, Hurst & O'Reardon, LLP ("BHO"), and Andrew S. Friedman of Bonnett, Fairbourn, Friedman, & 6 Balint, P.C. ("BFFB") as Co-Lead Class Counsel. (D.E. No. 72.³) On March 8, 7 8 2010, the Court issued an order appointing BHO and BFFB as Co-Lead Class 9 Counsel pursuant to Fed. R. Civ. P. 23(g). (D.E. No. 112.)

> 3. The First Consolidated Amended Class Action Complaint, and Defendants' Motions to Dismiss

12 On December 22, 2009, the class action lawsuits were consolidated for 13 pretrial purposes into a First Consolidated Amended Class Action Complaint, 14 which named as Plaintiffs Nicholas Atelevich, Sara Sue Carreon, Jerome Davis, 15 Herman Ferrer, Marcos A. Flores, Rhonda M. Hawkins, Alejandro Jimenez, Robert Manley, Raymond Ortiz II, Enjoli Pennier, Joseph Pickett, Melissa Reed, 16 17 Tonya Rhoden, Byron J. Ronan, Randall Scott Shortridge, Nicholas Torres, 18 Courtney Walker, Traczjubruthais Walquer, and Connie L. Williams, in addition 19 to Andrew Dremak. (D.E. No. 28.)

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4. 12(b)(6) Motions Dismiss the First The Rule to **Consolidated Amended Class Action Complaint**

23 On February 12, 2010, Iovate and the Retailer Defendants moved to 24 dismiss the First Consolidated Amended Class Action Complaint ("FAC"). 25 (D.E. Nos. 83-84.) On April 9, 2010, 2010, Plaintiffs filed their opposition brief. 26 (D.E. No. 161.) On January 31, 2011 and May 9, 2011, Plaintiffs filed

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 - Unless stated otherwise, all "D.E. No." references are to docket entry 28 numbers in the MDL docket. Case No. 3:09-MD-02087. 6

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supplemental authority in support of their opposition, to which Defendants filed
 an opposition. (D.E. Nos. 469, 685, 695.)

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On May 31, 2011, the Court issued a 23-page opinion that granted in part 3 4 and denied in part the motion to dismiss. (D.E. No. 718.) The Court held that 5 Plaintiffs have Article III standing and suffered injury by purchasing falsely advertised Hydroxycut Products. (Id. at 8.) However, the Court ruled that 6 7 Plaintiffs' consumer protection claims, set forth in Counts I-XIV of the FAC, 8 "failed to plead fraud with particularity as required by Fed. R. Civ. P. 9(b)," and 9 granted leave to amend to include more factual details. (Id. at 12, 14.) Likewise, 10 the Court ruled that Plaintiffs' breach of express warranty claim failed to 11 sufficiently plead which affirmations or promises formed the basis of the 12 bargain. (Id. at 15.) The Court also held that a breach of express and implied 13 warranty and pre-suit notice was adequately alleged, but that certain warranty 14 claims failed based on the privity requirements of particular states. (Id. at 15-15 19.) The Court held that adding factual specificity would remedy the problems 16 with Plaintiffs' unjust enrichment count. (Id. at 20-21.) As to the Retailers, the 17 Court held that "Plaintiffs have not alleged sufficient facts to state a claim under 18 the various state consumer protection laws or to state claims for breach of 19 express warranty or unjust enrichment." (Id. at 21.) The Court held that, with 20 the potential exception of allegations against GNC, the FAC failed to allege 21 actionable misconduct against the Retailers:

Because the FAC fails to allege facts showing that (1) the Retailer Defendants participated in, controlled, or adopted as their own, representations made by Iovate, or (2) made their own representations regarding the Products that Plaintiffs relied on in purchasing the Products, the Court dismisses the consumer protection claims, express warranty claim, and unjust enrichment claims as to the Retailer Defendants.

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1 (Id. at 22.) The Court granted Plaintiffs leave to amend their claims against the 2 Retailers. (*Id.*)

5. Kerr's Rule 12(b)(2) Motion to Dismiss for Lack of **Personal Jurisdiction**

5 On February 12, 2010, defendant Kerr Investment Holding Corp. f/k/a Iovate Health Sciences Group Inc. ("Kerr") (a Canadian entity and the parent 6 7 corporation for the Iovate-related entities) filed a motion to dismiss for lack of 8 personal jurisdiction relating to the consolidated class action arguing that it did 9 not have sufficient minimum contacts with the United States. (D.E. No. 83.) In 10 response to the jurisdictional motion to dismiss, Plaintiffs propounded several 11 sets of written discovery requests. (Blood Preliminary Approval Decl.), ¶10.⁴) Through extensive meet and confer efforts, Plaintiffs received and reviewed 12 13 approximately 23,000 pages of documents in response to their jurisdictional discovery requests. (Id.) Following several discovery conferences with the 14 15 Court, on April 14 and 15, 2010, Plaintiffs deposed two corporate designees of 16 Kerr in Toronto, Canada, pursuant to Fed. R. Civ. P. 30(b)(6), relating to 17 jurisdictional issues. (Id.) On September 3, 2010, Plaintiffs submitted a 50-page 18 memorandum in opposition to Kerr's jurisdictional motion to dismiss. (D.E. No. 19 343.) Two hundred and fifty-three exhibits were submitted in support of their opposition. (D.E. No. 343-01.) The Parties then briefed Kerr's motion to strike 20 over 150 of these exhibits. (D.E. Nos. 360, 365.) On October 13, 2010, the 21 22 Court held a hearing on Kerr's jurisdictional motion to dismiss and ordered the 23 Parties to submit further briefing regarding the long-arm statutes, the alter ego 24 doctrine, and agency laws from the various states implicated by Kerr's motion to 25 dismiss. (D.E. No. 369.) In response to the order for additional briefing, on 26 November 18, 2010, the Parties provided a comprehensive 70-page state-by-state

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- ⁴ "Blood Preliminary Approval Decl." refers to the concurrently filed Declaration of Timothy G. Blood in Support of Motion for Preliminary Approval of Class Action Settlement. 28 8

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1 analysis of each relevant jurisdiction's long-arm statute and an overview of each 2 relevant jurisdiction's alter ego and agency theories of liability. (D.E. No. 402.) On March 11, 2011, the Court granted in part Plaintiffs' objections to the 3 4 confidentiality of documents submitted in connection Kerr's motion to dismiss, 5 resulting in the public filing of much of the briefing and many of the exhibits. (D.E. Nos. 540, 547, 577, 602, 605.) On June 20, 2011, Plaintiffs filed 6 7 supplemental authority in opposition to Kerr's motion to dismiss, to which Kerr 8 responded on June 29, 2011. (D.E. Nos. 766, 794.)

9 On July 12, 2011, the Court issued a detailed, 32-page decision denying 10 Kerr's motion to dismiss for lack of personal jurisdiction. (D.E. No. 821.) The 11 Parties then submitted contested briefing on sealing portions of the Court's order denying Kerr's motion to dismiss. (D.E. Nos. 842, 846.) On August 25, 2011, 12 13 the Court issued an order granting in part Kerr's application to seal portions of 14 the order denying Kerr's motion to dismiss. (D.E. No. 887.)

6. Consolidated Amended Action The Second Class **Complaint and Defendants' Motions to Dismiss**

18 On August 8, 2011, Class Counsel filed the Second Consolidated 19 Amended Class Action Complaint (the "SAC"). (D.E. No. 865.) On September 20 1, 2011, the Court issued an order regarding the Parties' contested briefing on Kerr's application to seal portions of the SAC. (D.E. Nos. 882, 884, 890, 898.) 21 22 On January 13, 2012, the Parties filed briefing regarding the SAC, which outlined their respective positions on potential Fed. R. Civ. P. Rule 12 issues, 23 24 including Defendants' arguments that (1) Plaintiffs' class allegations should be 25 stricken, (2) the claims sounded in fraud and failed to meet the particularity 26 requirements, and (3) the warranty claims failed because the alleged promises or 27 affirmations were not detailed and privity did not exist as to the Retailers. (D.E. 28 No. 1019.)

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1 On March 9, 2012, Iovate filed a Fed. R. Civ. P. Rule 12(b)(6) motion to 2 dismiss Counts I, VII, and IX of the SAC and the Retailer Defendants filed a 3 Fed. R. Civ. P. Rule 12(b)(6) motion to dismiss Counts I-XV of the SAC. (D.E. Nos. 1097-1099.) On March 27, 2012, Plaintiffs filed their oppositions to Iovate 4 5 and Retailers' motions to dismiss. (D.E. Nos. 1143-1144.) On April 6, 2012, Iovate and the Retailers filed their reply briefs in support of their motions to 6 7 dismiss. (D.E. Nos. 1163-1165.)

8 On December 16, 2013, the Parties submitted supplemental briefing 9 regarding the motions to dismiss submitted by the Iovate Defendants and the 10 Retailer Defendants. (D.E. Nos. 1737-1738 (Plaintiffs' supplemental briefing), 11 1739 (Defendants' supplemental briefing).)

12 On January 27, 2014, the Court issued a lengthy opinion that denied 13 Iovate's and the Retailer Defendants' motions to dismiss, but ordered Plaintiff to 14 provide a more definite statement. (D.E. No. 1786.) The Court held that Rule 23 15 governed Plaintiffs' claims and were not subject to dismissal based on the state 16 statutes prohibiting class actions. (*Id.* at 8, 19.) For the Retail Defendants, the 17 Court held that aside from three plaintiffs (Ortiz, Torres, and Walquer), the SAC 18 did not satisfy the pleading requirements of Rule 9(b). (Id. at 8.) The Court also 19 held that the Plaintiffs failed to allege "facts supporting an inference of 20 knowledge as to all of the state consumer claims." (Id. at 17.) Likewise, the Court ruled that Plaintiffs' breach of express warranty claim failed because the 21 22 SAC failed to "identify representations by the Retailer Defendants that led to Plaintiffs' purchase of Hydroxycut Products." (Id. at 18.) The Court also held 23 24 Plaintiffs' unjust enrichment claim failed because it was premised on the 25 consumer protection claims, which were not pled with the requisite specificity. 26 (*Id.* at 18.) The Court gave Plaintiffs 30 days to file a more definite statement to 27 address the issues raised in the Order concerning the Retailer Defendants. (Id. at 28 20.) Within 20 days of filing a more definite statement, Retailer Defendants can

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answer or file a notice of intention to file a motion to dismiss. (Id.) The Court 1 2 set a trial date of October 14, 2014, and a pretrial conference for September 15, 3 2014. (D.E. No. 1741.)

The ruling on the Retailer Defendants' motion to dismiss dealt a blow to the ability of the Class to collect on any class judgment in their favor. The remaining defendants were either Canadian citizens, making collection efforts difficult and prolonged, or the U.S. subsidiary of a Canadian defendant. Under similar circumstances, the Canadian defendants placed the previous U.S. subsidiary into bankruptcy to avoid paying judgments.

Serving Iovate's President, Paul Gardiner, Through the Hague B. Convention

13 Following the Court's order denying the Iovate parent corporation's motion to dismiss for lack of personal jurisdiction, and in connection with the SAC, Plaintiffs named as defendants Paul Gardiner, the President of Kerr and the Iovate-related entities, as well as The Toronto Oak Trust, the entity that owns Kerr. Both Paul Gardiner and The Toronto Oak Trust are citizens of and located in Canada. On January 6, 2012, Plaintiffs accomplished service of the SAC on Paul Gardiner and The Toronto Oak Trust through the Hague Convention process. (D.E. No. 1061.) 20

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C. Discovery

22 Starting in November 2009, the Parties have engaged in a substantial 23 amount of discovery. Iovate and the Retailers have provided numerous 24 witnesses for depositions and have produced millions of pages of documents. 25 Discovery has included productions from both hard-copy files and electronic 26 files. Electronically stored information ("ESI") was retrieved from a variety of 27 network sources and encompassed more than one hundred document custodians. Class Counsel also obtained substantial discovery through third-parties 28

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subpoenas, the Freedom of Information Act ("FOIA") and state "sunshine law"
 requests. Class Counsel also propounded and obtained responses to hundreds of
 discovery requests propounded on Iovate and the Retailers.

4 In August 2009 (before the related lawsuits were consolidated by the 5 JPML), and in response to Kerr's original Rule 12(b)(2) motion filed in *Dremak* 6 v. Iovate Health Sciences Group, Inc., No. 09-1088 (S.D. Cal.), BHO filed and 7 fully briefed a motion for leave to take jurisdictional discovery. (See Dremak, 8 No. 3:09-CV-01088-BTM(KSC), D.E. Nos. 27, 32, 34.) On November 5, 2009, the Court granted Plaintiff's motion. (D.E. No. 9.) Thus, in November 2009, 9 10 Plaintiffs served Kerr with their first sets of discovery requests, including interrogatories, requests for admissions and document requests aimed at 11 12 jurisdictional discovery related to Kerr's Rule 12(b)(2) motion to dismiss. 13 (Blood Preliminary Approval Decl., ¶18.) Plaintiffs also served a Fed. R. Civ. P. 14 30(b)(6) deposition notice on Kerr, and a notice of deposition for Jo-Ann 15 Heikkila, Trademark Agent and Senior Corporate Law Clerk for Iovate Health Sciences Research Inc. (Id.) Thereafter, the Parties held several meet and confer 16 17 sessions regarding Kerr's discovery responses. Id. In March 2010, Plaintiffs 18 served Kerr with second sets of discovery requests, including interrogatories, 19 requests for admissions and document request, regarding personal jurisdiction. 20 (*Id.*) In response to Plaintiffs' jurisdictional discovery requests, Kerr produced 21 approximately 23,000 pages of documents. (Id.) On April 14, 2010, Plaintiffs took the deposition of Ms. Heikkila, and on April 15, 2010, Plaintiffs deposed 22 23 Kerr's corporate designee and the Finance Director of Iovate Health Sciences, 24 Inc., John Pica. (Id.) On April 12, 2011, Plaintiffs also deposed Iovate's 25 Director of Regulatory Affairs, John Doherty. (Id.)

The Parties held substantial negotiations relating to the production of ESI. On March 29, 2010, the Court ordered the Parties to meet and confer on all issues relating to the disclosure and discovery of ESI, including the form of

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1 production, archive and legacy data at issue, onsite inspection and sampling, 2 keywords, and the likely universe and identity of witnesses. (D.E. No. 136.) 3 Accordingly, beginning in April 2010, the Parties began discussions relating to 4 the ESI network structures, and key custodians relevant to the Action. As part of 5 the meet and confer process, and pursuant to the guidance provided by the Court, Iovate provided detailed network and organizational structure and retention 6 policy information. (Blood Preliminary Approval Decl., ¶19.) Likewise, the 7 8 Retailer defendants provided key custodian and network structure information. 9 (*Id.*) The Parties also negotiated a document preservation order and a protective 10 order, which was twice amended by the Parties. (D.E. Nos. 432, 1214.) The 11 Parties also engaged in substantial negotiations over tiered, defendant-specific keywords for the production of ESI. (Blood Preliminary Approval Decl., ¶19.) 12 13 Likewise, the Parties negotiated a phased ESI production from prioritized 14 custodians. As a result of these extensive meet and confer efforts, Iovate 15 produced approximately 2,000,000 pages of documents from its network folders 16 and the files of approximately 80 current and former employees. (Id.) The 17 Retailers also each made document productions. (Id.) Wal-Mart, GNC, and Walgreens produced approximately 34,000, 14,000, and 1,228 pages of 18 19 documents, respectively. (Id.) Class Counsel created a dedicated document 20 database for the discovery obtained and then coded and analyzed these productions over the course of months. They then used these documents 21 22 throughout the litigation, including for amended complaint, deposition and 23 preparation of the briefing and related documents for class certification. (*Id.*)

Plaintiffs served substantial amounts of discovery on Iovate and the nine
Retailer defendants. In May 2011, Plaintiffs served a first set of interrogatories,
requests for admissions and document requests on each of the nine Retailer
defendants. (*Id.*, ¶20.) In March 2012, Plaintiffs served a second set of
interrogatories on each of the nine Retailer defendants. (*Id.*) In March 2012,

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Plaintiffs also served non-jurisdictional interrogatories and document requests on
 the Iovate defendants. (*Id.*) These written discovery requests were also the
 subject of meet and confer sessions between Plaintiffs and Iovate and the Retailer
 defendants.

5 Plaintiffs deposed corporate designees from Iovate's two largest retailers, defendants GNC and Wal-Mart. In March 2012, Plaintiffs served Fed. R. Civ. P. 6 7 30(b)(6) deposition notices on the nine Retailer defendants. (Id., ¶21) These 8 deposition notices required the Retailer defendants to designate individuals 9 knowledgeable to testify on a comprehensive list of relevant subject matter areas, 10 including, *inter alia*, the Retailer defendant's corporate organization, business operations, corporate management, financial and distribution agreements, 11 12 product sales, geographic distribution of the Products, marketing strategies, and 13 scientific testing. In May 2012, Plaintiffs served a Fed. R. Civ. P. 30(b)(6) 14 deposition notice on Iovate relating to advertising and marketing subject matters. 15 (*Id.*) On May 17, 2012, Plaintiffs took the Fed. R. Civ. P. 30(b)(6) deposition of 16 defendant GNC on topics relating to Hydroxycut Products' sales and profits, marketing, and scientific substantiation. (Id.) On May 23, 2012, Plaintiffs took 17 18 the Fed. R. Civ. P. 30(b)(6) deposition of defendant Wal-Mart on topics relating 19 to Hydroxycut Products' sales and profits, marketing, and scientific 20 substantiation. (*Id.*)

21 Class Counsel also obtained substantial discovery from third-parties subpoenas, as well as FOIA and state "sunshine law" requests. In May 2011, 22 23 Class Counsel served a subpoena for documents on Chief Media, a third-party 24 retained by Iovate to assist in advertising the Hydroxycut Products. (Id., ¶22.) 25 As a result of numerous meet and confers, which occurred frequently over a four-26 month period, Chief Media and Class Counsel negotiated a detailed production 27 agreement culminating in Chief Media's production of approximately 12,275 28 pages of documents, including information related to advertising substantiation

1 for the Hydroxycut Products. (Id.) In January 2012, Class Counsel served a 2 subpoena for documents on one of the key ingredient manufacturers, and an 3 entity involved in the purported scientific substantiation for the Hydroxycut 4 Products, InterHealth Nutraceuticals ("InterHealth"). (Id.)Plaintiff held 5 numerous meet and confers with counsel for InterHealth, and InterHealth also made significant document productions starting in February 2012. In April 2012, 6 7 Class Counsel also served subpoenas for documents and deposition testimony on 8 Dr. Harry Preuss. (Id.) In response to the document subpoena, which sought 9 draft and final study reports and raw data for his studies relating to the primary 10 ingredients in the Hydroxycut Products, Dr. Preuss produced approximately 11 (Id.)Additionally, Class Counsel obtained 1,100 pages of documents. 12 documents from the Food and Drug Administration and conducted an onsite 13 Sunshine Law review at the offices of the Missouri Attorney General. During 14 the Sunshine Law review, which was conducted on February 16-17, 2012, in 15 Jackson City, Missouri, several attorneys from the Class Counsel's offices 16 reviewed approximately 20 boxes of documents relating to the Missouri AG's 17 investigation and subsequent lawsuit involving the Hydroxycut Products' 18 predecessor formulation. This onsite review resulted in the collection of a substantial number of documents and Iovate employee deposition transcripts 19 20 relevant to this Action. (*Id.*)

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D. Settlement Negotiations

At the same time the Parties were engaging in extensive briefing and discovery efforts, including preparing for class certification, they were also engaging in hard-fought and protracted settlement negotiations. After engaging in preliminary negotiations, the Parties agreed to mediation with the Honorable John K. Trotter (Ret.) of JAMS. The Parties engaged in numerous, arm's-length mediations sessions beginning in January 2011. Class Counsel's first mediation session with Justice Trotter was held on May 12, 2011. A second session with

1 Justice Trotter was held on October 18, 2011. (Blood Preliminary Approval 2 Decl., ¶23.)

Following the third formal mediation session with Justice Trotter, the 4 parties began taking new approaches to attempt to reach resolution. On March 5 27, 2012, the Parties informally met for a day-long discussion regarding potential settlement options. Finally, at that session, the Parties tentatively reached a 6 7 generally agreeable framework for settlement. Following that session, the Parties 8 believed it would be helpful to hold another formal session with a private 9 mediator. Accordingly, on April 20, 2012, the parties met with Martin Quinn, 10 Esq. of JAMS. That last formal mediation session was followed by numerous 11 telephonic and in-person meetings to finalize the terms of that settlement and 12 negotiate the terms of the agreement memorializing the previously submitted 13 settlement. (Id., $\P24.$)

14 On November 19, 2013, the Court denied final approval of the previous 15 settlement. (D.E. No. 1731.) Following the order, the Parties began preparing for motions for class certification and summary judgment due in May 2014. 16 Likewise, as explained above, the Parties submitted supplemental briefing 17 18 concerning Defendants' motions to dismiss the second amended complaint. See 19 §II.A.6, above. At the same time, the Parties continued to engage in settlement discussions, both telephonically and in-person. (Blood Preliminary Approval 20 21 Decl., ¶25.) On January 28, 2014, the Parties reached agreement on the current settlement, the terms of which are memorialized in the concurrently submitted 22 23 Stipulation. (*Id.*)

24 Every aspect of this Settlement was heavily negotiated, including the 25 overall dollar amount of the Settlement and each aspect of the Settlement 26 Agreement and exhibits, including the release, the amounts available to 27 individual settlement class members making claims, the claims process and the 28 Class Member notice and outreach program. (*Id.*, ¶26.)

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III. THE PROPOSED SETTLEMENT

A. **The Settlement Class**

The Settlement Agreement defines a national Settlement Class under Rule 23(b)(3) composed of all Persons in the United States who purchased any of the Hydroxycut Products from May 9, 2006 through May 1, 2009. Excluded from 6 the Settlement Class are: (i) those who purchased Hydroxycut Products for the purpose of resale; (ii) Iovate and its officers, directors and employees; (iii) any 8 person who files a valid and timely Request for Exclusion; and (iv) the Judge(s) 9 to whom this Action is assigned and any members of their immediate families. 10 (Stipulation of Settlement, at §II.A.47.)

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B. **Relief to Settlement Class Members**

12 The Settlement provides for cash payments or free products (at the option 13 of the claimant) for Settlement Class Members who submit valid claims. Under the Settlement, Iovate will create a fund of \$14 million consisting of \$7 million 14 15 in cash ("Cash Component") and \$7 million in product ("Product Component") 16 to provide benefits to Settlement Class Members for their purchases of the 17 Hydroxycut Products. (Stipulation of Settlement, at §IV.B.)

18 *Cash Payments:* Settlement Class Members who elect to receive a cash 19 payment from the Cash Component, will initially receive \$15.00 for each 20 Hydroxycut Product they purchased, representing 60% of the average retail price 21 of \$25 for the Hydroxycut Products. As explained below, if money remains in 22 the Cash Component, each cash claim will be increased up to \$50 for each 23 Hydroxycut Product purchased. No evidence of purchase is required to receive 24 payment for up to three units of Hydroxycut Product purchased. Therefore, a 25 Class Member who purchased three units of Hydroxycut Product could receive 26 \$150 without proof of purchase, but paid only \$75. The average Settlement 27 Class Member purchased 2.2 units of Hydroxycut Product. Requests for payments for more than three units requires Proof of Purchase, which means 28

documentation or other evidence reasonably establishing the purchase of a
Hydroxycut Product, and can include receipts for the purchase of Hydroxycut
Products, UPC codes from containers of Hydroxycut Products, credit card or
bank statements or loyalty program records showing purchase of Hydroxycut
Products. (Stipulation of Settlement, at §II.A.41.) If claims for cash exceed the
money available, claimants' awards will be reduced *pro rata*. (Stipulation of
Settlement, at §IV.C.3.a.)

8 **Product Units:** Alternatively, Settlement Class Members may elect to 9 receive free products, known as Product Units, from the Settlement's Product 10 Component. Authorized Claimants requesting an award of up to three Product 11 Units will automatically be sent the Product Units without Proof of Purchase. A 12 request for more than three Product requires Proof of Purchase from the 13 Settlement Class Member. The Iovate Product Units will consist of various 14 products from Iovate's line of nutrition and fitness supplements available for 15 retail purchase at the time of the settlement implementation which have an aggregate retail price of at least \$25. (Stipulation of Settlement, at §IV.B.3.) 16 17 The Settlement Class Members electing to receive Product Units will be able to 18 choose from Iovate's best-selling products. For each Product Unit award, 19 Settlement Class Members may choose one of any of the following: (1)20 Hydroxycut Pro Clinical (72 count); (2) Hydroxycut Hardcore (60 count); (3) 21 Hydroxycut Caffeine Free (72 count) and (4) Hydroxycut Max (60 count). 22 Additionally, Claimants choosing Product Units will not be responsible for the 23 costs of shipping the Product Units. (Id. at §IV.B.4; Stipulation, Ex. 2 (Claim 24 Form).)

To obtain either their cash payments or Iovate Product Units, Settlement
Class Members need only fill out and return a simple Claim Form providing their
name and address, the amount claimed and affirmation that they purchased
Hydroxycut Products during the Class Period. The simplified Claim Form is

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1 available for download and submission the Settlement Website at 2 (www.DietSupplementSettlement.com) or it may be submitted by U.S. mail. 3 (Stipulation of Settlement, at §V.B.) Settlement Class Members submitting 4 Proof of Purchase may also do so through the Settlement Website or by U.S. 5 mail. (*Id.*) Based on prior experience, more than 95% of Claimants will choose to submit claims online. 6

7 Settlement Class Members who submitted an Eligible Claim for either 8 cash or product from the previous settlement will receive payment according to 9 the terms of this settlement for the number of products claimed under the 10 previous settlement pursuant to a valid claim. In addition, these "Current Eligible Claimants" will receive notice via direct mail of this Settlement, 11 including their rights to obtain additional benefits from this Settlement. For 12 13 example, a Current Eligible Claimant who previously submitted a cash payment 14 claim for one unit of Hydroxycut Product will be mailed a notice and claim form 15 tailored to these claimants, informing them of the right to submit cash or product 16 claims for up to three units of Hydroxycut Products purchased without proof of 17 purchase. (Stipulation of Settlement, at §IV.A and Ex. 8.)

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C. Residual Settlement Fund Amounts Will Not Revert to Defendants

None of \$14 million Settlement Fund will revert to Iovate. Any amounts
remaining in the Cash Component (after payment of Eligible Cash Claims,
Notice and Claim Administration Expenses, Attorneys' Fees and Expenses, taxes
and tax expenses, and service awards to Plaintiffs), including after award
increases, will be distributed to ChangeLab Solutions under the *cy pres* doctrine.
The Parties do not expect any money will remain to be paid to ChangeLab
Solutions.

ChangeLab is a non-profit organization with nationwide outreach, which is
made up of in-house attorneys, city planners, and policy analyst who partner with

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government agencies and community leaders to provide practical solutions to 2 public health problems. (See D.E. No. 1609-9 (Declaration of Marice Ashe, CEO and Founder of ChangeLab Solutions), ¶¶4-5.) ChangeLab combats the 3 4 bombardment of false and misleading information about food and nutrition, 5 including though its "Food and Beverage Marketing practice area devoted to exposing and analyzing the legal implications of practices that food companies 6 engage in to market low-nutrient, high-calorie food." (Id., ¶6.) "ChangeLab 7 8 Solutions' work to combat false and misleading advertising, especially food advertising, dovetails with [its] efforts to improve other aspects of the food 9 10 'environment' and address skyrocketing rates of obesity and related chronic 11 disease. ChangeLab Solutions works closely with nationally-renowned scholars to ensure this work is anchored in science, and develops publications and tools to 12 13 support policymakers, public health officials, and the general public." (Id.) 14 ChangeLab's mission includes conducting cutting edge legal research 15 "spann[ing] the legal landscape of food marketing." (*Id.*)

16 Thus, taking money from Hydroxycut that is left over from the Cash 17 Component and using it to fund ChangeLab's efforts to combat false adverting through the education of U.S. consumers about a health and nutritious lifestyle, 18 19 including its work devoted to obesity prevention provides the "driving nexus 20 between the plaintiff class and the cy pres beneficiaries." Nachshin v. AOL, LLC, 663 F.3d 1034, 1038 (9th Cir. 2011). Educating consumers misled by false 21 22 advertising further fulfills a primary function of state consumer protection laws. See Consumers Union of U.S., Inc. v. Alta-Dena Certified Dairy, 4 Cal. App. 4th 23 24 963, 975 (1992) ("the power to prevent the use or employment of false 25 advertising and unfair business practices [through the UCL] necessarily includes 26 the power to correct false impressions built up by prior advertising, and the 27 power to deter future violations").

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1 Any amounts remaining in the Product Component will be distributed 2 nationwide pursuant to the *cy pres* doctrine in the form of free additional product 3 at the time of purchase by the consumer. The additional product will consist of 4 Iovate's best-selling product, Pro Clinical Hydroxycut. The product containing 5 Additional Product will be offered at the retail price at which that product is ordinarily offered, including discounts, sales, "Bonus size" amounts, "buy 2 get 1 6 free" promotions and any other promotions, without increase for the addition of 7 8 Additional Product. Further, the Additional Product will not replace or be in lieu 9 of any promotion, additional product or discounting occasionally offered by 10 Iovate. (Stipulation of Settlement, at §IV.C.6.d.) To calculate the amount of 11 Additional Product to be distributed, the value of Additional Product shall be calculated at the manufacturers' suggested retail price of the regular size 12 13 Hydroxycut-branded product, less 15%. For example, if the manufacturers' suggested retail price for the Additional Product is \$10, Iovate will be given 14 credit for distributing \$8.50 worth of Additional Product. Iovate will distribute 15 this Additional Product over an eighteen-month period, and when concluded, 16 17 will provide under oath a report detailing its compliance with the terms of the 18 Settlement's Additional Product details. (*Id.*, at §§IV.C.6.d., IV.C.6.h.)

19 20

Notice and Administration Costs, Attorneys' Fees and Expenses D. and Plaintiff Service Awards

21 The costs of class notice and claims administration will be paid by Iovate 22 from the Cash Component of the Settlement Fund. Iovate agrees to not oppose 23 Plaintiffs' Counsel's application for reasonable attorneys' fees not to exceed 24 \$3,500,000 and for expenses not to exceed \$300,000. Plaintiffs' Counsel's 25 attorneys' fees and expenses will be paid from the Cash Component of the 26 Settlement Fund. Iovate also agrees not to oppose any request for Court-awarded 27 service awards to Plaintiff, Consolidated Complaint Plaintiffs or Other Class

Plaintiffs up to \$2,000 per plaintiff, which will also be paid from the Cash 1 2 Component of the Settlement Fund. (Stipulation of Settlement, at §X.C.)

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E. **The Class Notice Program**

The Parties have developed a Notice Program with the help of Epiq Systems, a firm that specializes in developing class action notice plans. Because the Hydroxycut Products were sold over the counter at retail stores. Iovate does not have contact information except for a relatively small number of Settlement Class Members. Therefore, the Notice Program focuses primarily on publishing 9 the Publication Notice in targeted periodicals and on Internet sites. However, 10 Class Notice (including the Current Eligible Claimant Notice and Current Eligible Claimant Claim Form) will be mailed directly to those who previously submitted settlement claims. The details of the notice program, including the methodology underlying its design, are further explained in the concurrently 14 submitted Declaration of Cameron Azari on Notice Plan and Notices ("Azari Decl."). 15

The Publication Notice is designed to provide potential Class Members 16 17 with information regarding the Settlement and to inform them about their rights. The Publication Notice contains a general description of the lawsuit, the 18 19 Settlement relief, including how a claim can be filed, and a general description of 20 Settlement Class Members' legal rights. The Publication Notice also directs 21 Settlement Class Members to a website dedicated to the Settlement (www.DietSupplementSettlement.com) and a toll-free number the Settlement 22 23 Class Members may use to obtain a copy of the detailed Class Notice, the Claim 24 Form and other information. The Publication Notice is attached to the Stipulation of Settlement as Exhibit 4. 25

26 The Publication Notice will appear in various sources chosen based on 27 market research on the demographics of consumers who purchase Hydroxycut

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1 Products. As set forth in the Stipulation, Ex. 6, the Publication Notice will be

2 published as follows:

4/10/2014 Notice plan reaches an	estimated 81.1% of Adults who take an	over the counter r	emedy for weight loss, an estima		IFICATIO
	Media	Frequency	Distribution	Space & Material Close	Ad Unit
Newspaper Inserts					
	Parade	Weekly	National	30 days prior to issue date	3/10 page
1	USA Weekend	Weekly	National	30 days prior to issue date	1/4 page
Magazine					
MaBazille	Life & Style	Weekly	National	30 days prior to issue date	1/3 page
	Men's Fitness	10/year	National	60 days prior to issue date	1/3 page
	OK! Magazine	Weekly	National	30 days prior to issue date	1/3 page
	US Weekly	Weekly	National	30 days prior to issue date	1/3 page
Online					
	Facebook	Real-time	165,000,000 impressions	10 days prior to live date	100x80
	Conversant (formally Valueclick)	Real-time	85,000,000 impressions	10 days prior to live date	468x60
Press Release					
	PR Newswire	One-time	National	2 days prior to issue date	600 word m

See also Azari Decl., ¶¶ 14-18 and Exhibits 2-3 thereto.

14 Complementing the Publication Notice is the Class Notice. The Class 15 Notice contains detailed information about the lawsuits, the Settlement benefits, the release and how to opt-out, object and exercise other rights under the 16 17 Settlement. Also provided with the Class Notice is the Claim Form. The Longform Class Notice is attached to the Stipulation of Settlement as Exhibit 3. The 18 19 Long-form Class Notice will be available on the Settlement Website established 20 for this case and will be mailed or emailed to callers who request a copy. In 21 addition, to the extent Iovate has a current electronic mail address for a Class Member, that individual will receive the Long-form Class Notice via direct email 22 23 notice.

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IV. THE PROPOSED SETTLEMENT MEETS THE CRITERIA FOR PRELIMINARY APPROVAL

26 Settlements of class actions are strongly favored. Class Plaintiffs v. 27 Seattle, 955 F.2d 1268, 1276 (9th Cir. 2004) (noting "strong judicial policy that favors settlements, particularly where complex class action litigation is 28

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concerned"); see also Churchill Village, LLC v. Gen. Elec. Co., 361 F.3d 566, 1 2 576 (9th Cir. 2004); In re Pacific Enter. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 3 1995). By their very nature, because of the uncertainties of outcome, difficulties 4 of proof, and lengthy duration, class actions readily lend themselves to 5 compromise. Van Bronkhorst v. Safeco Corp., 529 F.2d 943, 950 (9th Cir. 1976) (public interest in settling litigation is "particularly true in class action 6 suits...which frequently present serious problems of management and expense"). 7 8 Moreover, the Court should give a presumption of fairness to arm's-length 9 settlements reached by experienced counsel. *Rodriguez*, 563 F.3d at 965 ("We 10 put a good deal of stock in the product of an arms-length, non-collusive, 11 negotiated resolution."). Rule 23(e) sets forth a "two-step process in which the 12 court first determines whether a proposed class action settlement deserves 13 preliminary approval and then, after notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms. Coop v. DIRECTV, Inc., 14 15 221 F.R.D. 523, 525 (C.D. Cal. 2004).

16 On preliminary approval, the court does not make a full and final determination regarding fairness. "Because class members will subsequently 17 receive notice and have an opportunity to be heard," the court "need not review 18 19 the settlement in detail at this juncture." In re ML. Stern Overtime Litig., No. 07-20 CV-0118-BTM (JMA), 2009 U.S. Dist. LEXIS 31650, at *9 (S.D. Cal. Apr. 13, 21 2009). "[I]nstead, preliminary approval is appropriate so long as the proposed 22 settlement falls 'within the range of possible judicial approval." Id. at *9-*10 23 (quoting Newberg on Class Actions, §11.25 (4th ed. 16 2002)); see also Manual 24 for Complex Litigation (4th ed. 2009) §§21.632, 21.633. At this stage, the Court 25 need only conduct a *prima facie* review of the relief and notice provided by the 26 Stipulation of Settlement to determine whether notice should be sent to the 27 settlement Class members. In re ML Stein, 2009 U.S. Dist. LEXIS 31650, at *9-10. The Court's review is "limited to the extent necessary to reach a reasoned 28

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judgment that the agreement is not the product of fraud or overreaching by, or
collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*,
688 F.2d at 625; *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir.
1998). This is a minimal threshold:

[I]f the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does 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

Young v. Polo Retail, LLC, No. C-02-4546 (VRW), 2006 U.S. Dist. LEXIS 81077, at *12-13 (N.D. Cal. Oct. 25, 2006) (emphasis added).

12 The Ninth Circuit has articulated six factors to use in evaluating the 13 fairness of a class action settlement at the preliminary approval stage: (1) the 14 strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration 15 of further litigation; (3) the risk of maintaining class action status throughout the 16 trial; (4) the consideration offered in settlement; (5) the extent of discovery 17 completed, and the stage of the proceedings; and (6) the experience and views of 18 counsel. Jack v. Hartford Fire Ins. Co., No. 3:09-cv-1683 MMA (JMA), 2011 19 U.S. Dist. LEXIS 118764, at *11 (S.D. Cal. Oct. 13, 2011), citing Molski v. 20 Gleich, 318 F.3d 937, 954 (9th Cir. 2003) (overruled in part on other grounds); Hanlon, 150 F.3d at 1026 (the court's task is to "balance a number of factors," 21 including "the risk, expense, complexity, and likely duration of further 22 litigation," "the extent of discovery completed and the stage of the proceedings," 23 24 and "the amount offered in settlement").

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

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A. The Strengths of Plaintiffs' Case and Risks Inherent in Continued Litigation and in Securing Certification Favor Preliminary Approval

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

9 Assuming that litigation was to proceed, the hurdles that Plaintiffs face 10 prior to certification and trial are substantial. On August 8, 2011, Plaintiffs filed 11 the SAC. (D.E. No. 865.) The Parties once again engaged in protracted motions 12 to dismiss briefing. (§II.A.6, above.) Defendants argued that the SAC's class 13 allegations should be stricken because: (1) the nationwide class allegations, 14 implicating nearly all 50 states' consumer laws precludes any possibility that 15 common issues of law would predominate; (2) the claims of some Plaintiffs and 16 absent Class members are time barred; (3) common issues of fact would not 17 predominate because necessary, individualized inquiries include (a) which of the 18 14 Hydroxycut Products was purchased, (b) from which of the nine Retailer 19 defendants the products were purchased, (c) what advertising representation was 20 made, and (d) whether the class member relied on the advertising representation; 21 (4) the class definition is overbroad because it includes uninjured and satisfied 22 persons; and (5) the SAC lacks adequate class representatives for out-of-state 23 class members. (D.E. No. 1019 (Joint Status Report Regarding SAC).) 24 Moreover, the Court has already ruled that for several reasons, plaintiffs failed to 25 state claims against the Retailers, including because it continues to "lump 26 multiple [retailer] defendants together." (D.E. No. 718 (5/31/11 Motion to 27 Dismiss Order) at 7:4-7.) The Court also determined plaintiffs from some states 28 could not show privity existed with some defendants. (D.E. No. 1019.)

1 Defendants also planned to make jurisdictional challenges to the newly-named 2 Canadian defendants, Paul Gardiner and The Toronto Oak Trust.

While Plaintiffs believe that the SAC remedies prior deficiencies and 4 properly states claims against the nine Retailer defendants, Paul Gardiner, and the Toronto Oak Trust, there was substantial risk involved with proving those allegations and ultimately collecting a judgment. In its May 31, 2011 order, the 6 Court previously dismissed Plaintiffs' claims against the retailers, and agreed 8 with Defendants that "Plaintiffs must establish that the Retailer defendants 9 somehow participated in, controlled, or adopted the deceptive advertising." 10 (D.E. No. 718 (5/31/11 Motion to Dismiss Order) at 21.) That is, the Court held that retailers needed to do something more than place the falsely advertised Hydroxycut Products on the shelf and fail to disclaim Iovate's representations in 12 13 order to be liable under state consumer laws. (*Id.*)

14 On January 27, 2014, the Court issued an order that the SAC's claims against the Retailer Defendants were insufficient and ordered Plaintiffs to file a 15 more definite statement as to the Retailer Defendants. (D.E. No. 1786.) The 16 17 order states that "Plaintiffs must allege that each Retailer Defendant made, 18 adopted, or controlled representations that Plaintiffs heard or saw prior to 19 purchasing the products." (Id. at 10.) The Court's order included requirements 20 that Plaintiffs clarify their theories of liability, including the underlying facts 21 against each of the Retailer Defendants, and specify the level of participation or control of each Retailer Defendant in the representations to which Plaintiffs were 22 23 exposed. The January 27, 2014 order effectively eliminated claims against the 24 Retailer Defendants, and with those claims, the ability to collect on any class 25 judgment in a reasonable and timely manner.

26 Based on prior conduct by Iovate's corporate predecessors, if Plaintiffs did 27 not succeed in keeping the retailers in the litigation, there was a legitimate risk 28 that they would be left without a defendant from whom a judgment could be

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collected. Gardiner has a history of pushing his U.S. companies into bankruptcy to avoid satisfying judgments. Further, as Canadian citizens, Gardiner and the Toronto Oak Trust (which is controlled by Gardiner) have numerous 4 opportunities to shield their wealth from a judgment entered by a U.S. court. Further, since the money is controlled by an individual, and not a large, 6 publically traded company. Gardiner is far more capable of hiding assets to avoid a judgment. Collecting any judgment could be a timing consuming and lengthy 8 process with no guarantee of success.

On the merits, Defendants contend that their claims regarding the 9 10 effectiveness of the Hydroxycut Products are backed by numerous studies and 11 years of scientific research, including by distinguished professors at universities 12 such as Georgetown University and that their warnings were sufficient. 13 Plaintiffs challenge conduct involving the 14 Hydroxycut Products, three Iovate 14 entities, Paul Gardiner, the Toronto Oak Trust, and nine different retailers. If 15 these Actions were to be tried, Defendants would likely argue that varying state 16 laws should apply depending on the state in which the advertising and purchase 17 occurred. In addition, circumstances surrounding each Plaintiff's purchase may present affirmative defenses that preclude Plaintiffs' success at trial. 18

Given these considerations, preliminary approval of the Settlement 19 20 Agreement is appropriate to avoid the uncertainties of continued litigation.

> The Risk, Complexity, Expense, and Duration of the Litigation **B**. **Favor Preliminary Approval**

24 In addition to the substantial risks and uncertainty inherent in continued 25 litigation, the Parties face the certainty that further litigation would be expensive, 26 complex, and time consuming. The Court would be required to resolve difficult 27 and complicated issues of statutory interpretation and state law.

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1 Here, the proposed Settlement specifically addresses the alleged deceptive 2 conduct by providing carefully-tailored economic benefits to all Settlement Class 3 Members who submit eligible claims. The proposed Settlement is able to 4 provide these benefits without the risk and delays of continued litigation, trial 5 and appeal. The expense, complexity and duration of litigation, including satisfying any judgment, are significant factors considered in evaluating the 6 7 reasonableness of a settlement. Litigating this class action through trial would 8 undoubtedly be time-consuming and expensive. As with most class actions, this 9 action is complex. Indeed, to date, approximately *two million* pages of 10 documents have been produced, and continued litigation would require more 11 than fifty additional depositions of Plaintiffs, Defendants and non-parties. The 12 question of whether the Hydroxycut Products are safe and effective and the 13 marketing message conveyed by the advertisements and labeling is vigorously 14 disputed by the Parties and would require analysis by numerous experts for both 15 Parties. In this type of case, the Parties also utilize marketing, consumer 16 behavior and damages experts. At a minimum, absent settlement, litigation 17 would likely continue for years before Plaintiffs or the Class would see any 18 recovery. That a settlement would eliminate the delay and expenses strongly 19 weighs in favor of approval. See Milstein v. Huck, 600 F. Supp. 254, 267 20 (E.D.N.Y 1984). This is particularly true in a case like this, where Class 21 Member addresses are not known, forcing Class Members to claim in to receive payment. The more time that goes by, the more difficult it is to both identify 22 23 class members and cause them to participate in any resolution.

24 By reaching this Settlement, the Parties will avoid protracted litigation and will establish a means for prompt resolution of Class Members' claims. The 25 26 avenue of relief provided by the Settlement ensures meaningful benefits to 27 Settlement Class Members. Given the alternative of long and complex litigation 28 before this Court (and multiple transferor courts once pre-trial litigation ends),

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the risks involved in such litigation and the possibility of further appellate
 litigation, the availability of prompt relief under the Settlement is highly
 beneficial to the Class.

C. The Substantial Relief Provided by the Settlement Agreement Favors Preliminary Approval

The Settlement Agreement provides real relief for the Class. Settlement Class Members who purchased the Hydroxycut Products may submit Claims and choose to receive cash refunds or Iovate Product Units.

9 Nevertheless, in evaluating the fairness of the consideration offered in 10 settlement, it is not the role of the court to second-guess the negotiated resolution 11 "[T]he court's intrusion upon what is otherwise a private of the parties. 12 consensual agreement negotiated between the parties to a lawsuit must be limited 13 to the extent necessary to reach a reasoned judgment that the agreement is not the 14 product of fraud or overreaching by, or collusion between, the negotiating 15 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."" Hanlon, 150 F.3d at 1027 (quoting Officers for Justice, 688 16 17 F.2d at 625); accord Rodriguez, 563 F.3d at 965. The issue is not whether the 18 settlement could have been better in some fashion, but whether it is fair: 19 "Settlement is the offspring of compromise; the question we address is not 20 whether the final product could be prettier, smarter or snazzier, but whether it is 21 fair, adequate and free from collusion." Hanlon, 150 F.3d at 1027.

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D. The Stage of the Proceedings Favors Preliminary Approval; Experience and Views of Counsel

As for conducting relevant discovery, Plaintiffs' Counsel's efforts were more than sufficient. This litigation has been pending for about four years. During this time period, the Parties have engaged in substantial formal and informal discovery necessary to facilitate and evaluate the strengths and

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weaknesses of the case. Defendants have produced over two million pages of 2 documents responsive to Plaintiffs' document requests. Defendants also 3 provided Plaintiffs with responses to multiple sets of interrogatories and requests 4 for admissions. Plaintiffs deposed corporate representatives of both Iovate and 5 the Retailer Defendants. Plaintiffs also obtained substantial information through 6 subpoenas issued to relevant non-parties involved in the marketing and science at 7 issue. Plaintiffs also obtained and analyzed publicly-available scientific studies 8 and research. Finally, and not to be discounted, was the many hours Plaintiffs' 9 Counsel's worked to code the enormous document productions, then gather 10 exhibits and draft the motion for class certification and related appendices. As a result of these efforts, Plaintiffs' Counsel was able to seriously analyze the 11 12 strengths and weaknesses of the case.

13 Accordingly, the Parties were able to assess the relative strengths and 14 weaknesses of their respective positions, including the value of the potential 15 damage claims, and to compare the benefits of the proposed Settlement to further 16 litigation. Class Counsel, who have substantial experience in litigating class 17 actions, and the Court are therefore adequately informed to evaluate the fairness 18 of the proposed Settlement.

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The Settlement Was Reached After Serious, Informed and Non-Е. **Collusive Arms-Length Negotiations and Mediation**

21 The Parties' extensive arm's-length settlement negotiations and participation in numerous mediation sessions with two different mediators 22 23 further demonstrates the fairness of the Settlement that was reached, and that the 24 Settlement is not a product of collusion. Typically, "[t]here is a presumption of 25 fairness when a proposed class settlement, which was negotiated at arm's-length 26 by counsel for the class, is presented for Court approval." Newberg, §11.41; see 27 also White v. Experian Info. Solutions, Inc., 803 F. Supp. 2d 1086, 1099 (C.D. 28 Cal. 2011).

1 Here, Counsel for Defendants and Plaintiffs each zealously negotiated on 2 behalf of their clients' best interests. The Parties first extensively discussed 3 settlement on their own. They then engaged the services of Hon. John Trotter 4 (Retired), an experienced and skilled mediator, who assisted the parties with 5 multiple mediation sessions. (Blood Preliminary Approval Decl., ¶23.) By the time the mediation sessions began in January 2011, Plaintiffs' Counsel, who are 6 7 experienced in prosecuting complex class action claims, had "a clear view of the 8 strengths and weaknesses" of their case and were in a strong position to make an 9 informed decision regarding the reasonableness of a potential settlement. In re 10 Warner Commc'ns Sec. Litig., 618 F. Supp. 735, 745 (S.D.N.Y. 1985); see also 11 Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489-90 (E.D. Cal. 2010). 12 The initial mediation sessions with Justice Trotter were followed by months of 13 detailed and contentious negotiations between the Parties. (Blood Preliminary 14 Approval Decl., ¶24.) In April 2012, the Parties engaged another experienced 15 and skilled mediator, Martin Quinn of JAMS, who further assisted the parties in attempting resolution. (Id.) However, even then, the Parties did not reach a 16 17 resolution. Beginning April 2012 and continuing for several months, the Parties 18 continued extensive negotiations before memorializing the previously proposed 19 settlement. (Id.) Following the Court's November 19, 2013, order denying final 20 approval of the previous settlement, the Parties engaged in settlement 21 conferences, both telephonically and in-person. (Id., ¶25.) On January 28, 2014, the Parties agreed on the terms of the Settlement. (Id.) Subsequently, the Parties 22 23 have heavily negotiated the terms of the Stipulation and each of its exhibits. (Id., 24 ¶26.)

The fact that two experienced mediators were heavily involved in the settlement negotiations is one factor that demonstrates the Settlement was anything but collusive. *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) ("The arms-length negotiations, including a

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MEMO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

day-long mediation before Judge Lynch, indicate that the settlement was reached
in a procedurally sound manner."); *In re M.L. Stern Overtime Litig.*, No. 07-cv0118-BTM(JMA), 2009 U.S. Dist. LEXIS 31650, at *13 (S.D. Cal. April 13,
2009) (granting preliminary approval and stating that "the settlement was
reached with the supervision and assistance of an experienced and well-respected
independent mediator").

7 The proposed Settlement is fair to all Settlement Class Members because it 8 provides them with relief after submitting online (or by mail) a simplified claim form that requires nothing else to receive a payment of up to \$50 for each unit of 9 Hydroxycut Product purchased. Additionally, the Settlement provides relief 10 11 without any proof of purchase requirement for up to three units of Hydroxycut 12 Product purchased. This exceeds the average number of times each Settlement Class Member purchased the Hydroxycut Products -2.2. Further, the named Plaintiffs do not receive any unduly preferential treatment under the Settlement. With the exception of modest service awards – \$2,000 to each Plaintiff who filed a class action to account for their willingness to step forward and represent other consumers and to compensate them for their time and effort devoted to prosecuting the common claims, Plaintiffs are treated the same as every other Settlement Class Member. Such service awards are "fairly typical in class actions." Rodriguez, 563 F.3d at 958; see also In re Simon v. Toshiba America, 21 No. C 07-06202 MHP, 2010 U.S. Dist. LEXIS 42501, at *12-13 (N.D. Cal. Apr. 22 30, 2010); Williams v. Costco Wholesale Corp., No. 02cv2003 IEG (AJB), 2010 23 U.S. Dist. LEXIS 19674, at *10 (S.D. Cal. Mar. 4, 2010) ("Although [plaintiff] 24 seeks a \$5,000 service fee for himself which is not available to other class 25 members, the fee appears to be reasonable in light of [plaintiff's] efforts on 26 behalf of the class members."); In re M.L. Stern Overtime Litig., No. 07-cv-27 0118-BTM (JMA), 2009 U.S. Dist. LEXIS 94671, at *11 (S.D. Cal. October 9,

2009) (granting final approval and awarding class representative class
 enhancement awards of \$15,000 per class representative).

Beyond the substantial involvement and assistance of two highly-qualified mediators, and the equal treatment and substantial benefits available for all Settlement Class Members, the nature of the subsequent negotiations between the Parties (which resulted in the exchange and rejection of countless settlement proposals), the experience of Class Counsel and Defendants' Counsel as longstanding class action attorneys, and the fair result reached are illustrative of the arms-length negotiations that led to the Settlement.

Accordingly, the Settlement is well within the "range of possible approval" and should thus be preliminarily approved.

V. THE PROPOSED CLASS NOTICE PROGRAM SHOULD BE APPROVED

15 The threshold requirement concerning class notice is whether the means 16 employed to distribute the notice was reasonably calculated to apprise the class 17 of the pendency of the action, of the proposed settlement and of the class 18 members' rights to opt out or object. Eisen v. Carlisle & Jacquelin, 417 U.S. 19 156, 173 (1974); Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 315 20 (1950). The mechanics of the notice process are left to the discretion of the court, subject only to the broad "reasonableness" standards imposed by due 21 process. In this Circuit, it has long been the case that a notice of settlement will 22 be adjudged "satisfactory if it 'generally describes the terms of the settlement in 23 24 sufficient detail to alert those with adverse viewpoints to investigate and to come 25 forward and be heard."" Rodriguez, 563 F.3d at 962 (quoting Churchill Village, 26 L.L.C. v. General Electric, 361 F.3d 566, 575 (9th Cir. 2004)); Hanlon, 150 F.3d 27 at 1025 (notice should provide each absent class member with the opportunity to 28 opt-out and individually pursue any remedies that might provide a better

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opportunity for recovery). The notice should also present information "neutrally, simply, and understandably," including "describ[ing] the aggregate amount of the settlement fund and the plan for allocation." *Rodriguez*, 563 F.3d at 962.

The proposed Notices more than satisfy these requirements. The Parties have negotiated and drafted a Class Notice, which is written in simple terminology and includes: (1) basic information about the lawsuit; (2) a description of the benefits provided by the Settlement; (3) an explanation of how Settlement Class Members can obtain settlement benefits; (4) an explanation of how Settlement Class Members can exercise their right to opt-out or object to the Settlement; (5) an explanation that any claims against Defendants that could have been litigated in this action will be released if the Class Member does not opt out from the settlement; (6) the names of counsel for the Class and information regarding attorneys' fees, expenses, and service awards; (7) the fairness hearing date; (8) an explanation of eligibility for appearing at the fairness hearing; and (9) the Settlement Website address and a toll free number where additional information can be obtained.

17 The contents of the proposed Class Notice are more than adequate, and 18 comply with the Federal Judicial Center's model class action notices. See 19 www.fjc.gov; In re Skechers Toning Shoe Prods. Liab. Litig., No. 11-2308, 2012 20 U.S. Dist. LEXIS 113641, at *46-47 (W.D. Ky. Aug. 13, 2012) (approving class notices that "comply with the Federal Judicial Center's illustrative class action 21 The Notice provides Settlement Class Members with sufficient 22 notices"). information to make an informed and intelligent decision whether to object to the 23 24 settlement. As such, it satisfies the content requirements of Rule 23. See In re 25 Compact Disc. Minimum Advertised Price Antitrust Litig., 216 F.R.D. 197, 203 26 (D. Me. 2003) ("notice must describe fairly, accurately and neutrally the claims 27 and parties in the litigation . . . entitled to participate, including the right to exclude themselves from the class."); see also Skilstaf, Inc. v. CVS Caremark 28

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Corp., 669 F.3d 1005 (9th Cir. 2012) (enforcing judgment and settlement 1 2 agreement in prior related action against plaintiff did not violate plaintiff's due 3 process rights where plaintiff who was a party to the prior suit and was provided 4 full notice of the release and covenant not to sue provisions of the settlement 5 agreement and rejected opt out opportunity).

Additionally, the proposed dissemination of the Class Notice satisfies all due process requirements. The Settlement provides that Iovate will provide notice to the Class after preliminary approval of the Settlement by the Court. These are small dollar, over-the-counter retail purchases, and there is no way to reasonably identify the vast majority of individual Class members. Therefore, the Notice Program consists of publishing the Publication Notice in targeted sources most likely to be read by Class members. See Azari Decl., ¶13-18. Additionally, Class Notice will be available through Class Counsel's websites. 14 Further, Class Notice will be provided by direct mail to those Settlement Class Members who submitted claims into the previous settlement. And, to the extent Iovate does have email addresses for potential Class members, the Class Notice and Claim Forms will be emailed directly to those individuals.

In sum, the contents and dissemination of the proposed Class Notice constitutes the best notice practicable under the circumstances and fully complies 20 with the requirements of Rule 23.

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VI. THE PROPOSED CLASS SHOULD BE CONDITIONALLY CERTIFIED

24 The Ninth Circuit recognizes the propriety of certifying a settlement Class 25 to resolve consumer lawsuits. *Hanlon*, 150 F.3d at 1019. When presented with a 26 proposed settlement, a court must first determine whether the proposed 27 settlement class satisfies the requirements for class certification under Federal Rule of Civil Procedure 23. Id. However, where a court is evaluating the 28

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1 certification question in the context of a proposed settlement class, questions 2 regarding the manageability of the case for trial purposes are not considered. 3 Wright v. Linkus Enterps., Inc., 259 F.R.D. 468, 474 (E.D. Cal. 2009) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997) ("Confronted with a 4 5 request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems 6 7 for the proposal is that there be no trial.")). Here, the conditional certification of 8 the Settlement Class is appropriate for purposes of settlement because all the 9 requirements of Rule 23 have been met.

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

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

1. Numerosity

17 Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a); Wiener v. Dannon Co., Inc., 18 19 255 F.R.D. 658, 664 (C.D. Cal. 2009). Here, the numerosity requirement is 20 readily met because it is difficult or inconvenient to join all members of the 21 proposed Class. Id.; Tchoboian v. Parking Concepts, Inc., No. SACV 09-422 22 JVS (ANx), 2009 U.S. Dist. LEXIS 62122, at *12 (C.D. Cal. July 16, 2009) (citing Jordan v. Los Angeles County, 669 F.2d 1311, 1319 (9th Cir. 1982), 23 24 vacated on other grounds, 459 U.S. 810 (1982)). Here, Iovate is a nationwide 25 manufacturer of nutritional supplement products and have sold the Hydroxycut 26 Products nationwide during the class period. Accordingly, the numerosity 27 requirement is satisfied. See Reynoso v. S. County Concepts, No. 07-373, 2007 U.S. Dist. LEXIS 95691, at *5-6 (C.D. Cal. Oct. 15, 2007) ("The sheer number 28

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MEMO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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of potential class members justifies the Court's finding that the class in this case
 meets the numerosity requirement.").

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2. Commonality

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

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the weight-loss benefits promised in the advertising and labeling. (Second
Amended Complaint, ¶¶ 72-76, 78-80; *see also* Blood Preliminary Approval
Decl., Ex. B (collection of the print advertisements, packaging and labeling for
the Hydroxycut Products), Ex. C (collection of television advertisement scripts
for the Hydroxycut Products).) Representative examples of the packaging and
labeling for the Hydroxycut Products appear as follows

nent Facts Hydroxycut® Works Fast!* America's #**1** SELLING nyaroxycute works reast-hydroxycute kameria's ha selling weight-loss supplement⁴⁴ for a reason – it works fast! That's going to help you lose weight so you con sculpt a better body faster than ever before, then look no further than hydroxycute⁴⁴. Hydroxycute¹⁶ is Doctor formulated⁴⁴ Inguistication is uncertaintial and a sophisticated Rapid-Release Caplets, Hydroxycut[®] is doctor formulated[®] with scientifically proven ingredients that will help you get the results you've clways dreamed of Combined with diet and exercise, the total mechane companies with sint abr thic acid acids dreamed of. Combined with diet and exercise, the total package complete with light abs, defined arms, and sculpted legs can finally be yours! In fact, studies show that the key ingredients in hydroxycut[®] can help you lose up to 4,5 times the weight than diet and exercise alone. With that kind of power your dream body will soon be a reality!* e - 92 mg EC stechins, 15% EGCG INCREASE ENERGY* BURN CALORIES* aream oody will soon be a reality!* America's #1 Selling Weight-loss Supplement** Don't take chances by settling for anything but the best. Count on the proven power of the key ingredients in Hydraxycut* and join the countiess men and wamen all across America who have used hydraxycut* and make it your #3 choice for weight loss.* nsis) ()eal) s, 25% catechins, 15% EGCG CLINICALLY PROVEN **CONTROL APPETITE*** 150 RAPID NER INGREDIENTS: MICROCRYSTALLINE CELLULOSE, HYDROX Lulusse, odating (polynam, Alchol, Tranum, Verhynene Rouch, Tralo, Crossannelloss, Soduk, (p. sp. Leng acd, Marnesun, Stearate, Suica, Adesul Fane Poliassi Leng acd, Marnesun, Stearate, Suica, Adesul Fane Poliassi PEEL RELEASE FOR NORE **DIETARY SUPPLEMENT** CAPLETS

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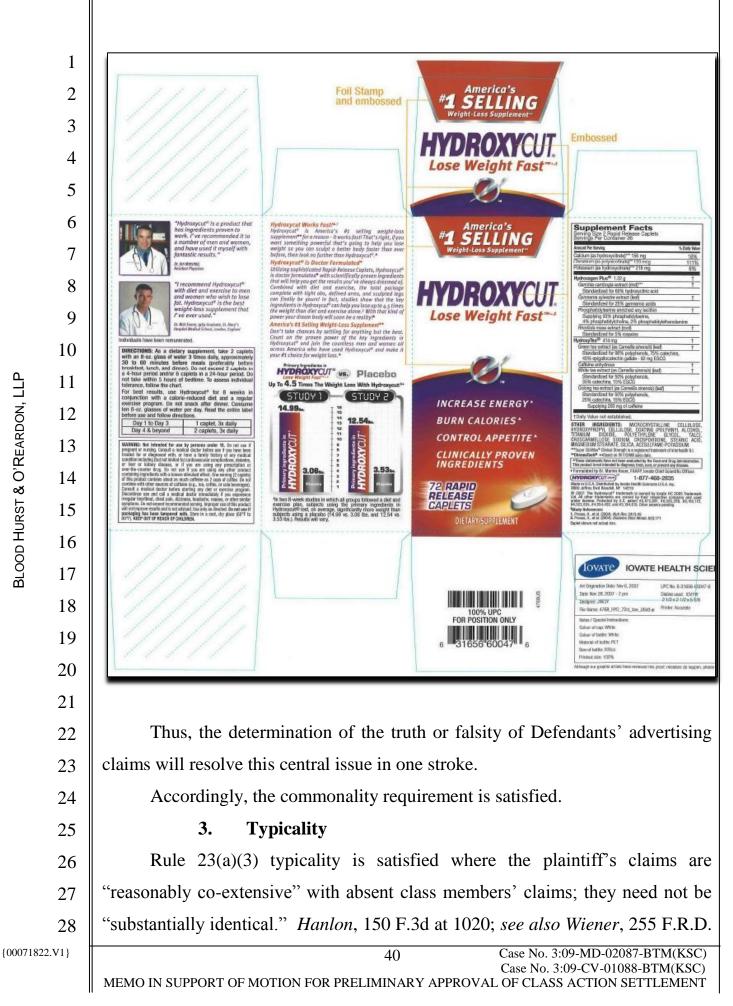
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at 665. The test for typicality "is whether other members have the same or 1 2 similar injury, whether the action is based on conduct which is not unique to the 3 named Plaintiffs, and whether other class members have been injured by the 4 same course of conduct." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th 5 Cir. 1992). Thus, "[t]he purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." Id. 6 7 For example, in *Keilholtz v. Lennox Health Prods.*, Inc., 268 F.R.D. 330 (N.D. 8 Cal. 2010), in certifying UCL and CLRA claims, the court found that the typicality requirement was satisfied because: "Plaintiffs' claims are all based on 9 10 Defendants' sale of allegedly dangerous fireplaces without adequate warnings." 11 Id. at 337.

12 Typicality is met here as Plaintiff and the proposed Class assert the same 13 claims, arising from the same course of conduct – Defendants' uniform, 14 deceptive marketing campaign. The labeling and advertising of the Hydroxycut 15 Products all misrepresented the products' safety and effectiveness as a weightloss supplement. Plaintiff, like every Class member, was injured when he paid 16 17 money to purchase the Hydroxycut Products. See D.E. No. 718 (5/31/11 MTD Order) at 8 ("the injury to Plaintiffs occurred at the time they purchased the 18 19 Hydroxycut Products and did not receive the benefit of their bargain"). Under 20 the claims alleged, Plaintiff and Class Members also seek the same relief for the 21 same alleged wrongful conduct, *i.e.*, misrepresenting the safety and effectiveness 22 of the Hydroxycut Products. Plaintiff's claims are the same as those of other Class members. See Johns v. Bayer Corp., 280 F.R.D. 551, 557 (S.D. Cal. 23 24 2012). Therefore, the typicality requirement is met.

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4. Adequacy of Representation

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." In the Ninth Circuit, adequacy is satisfied where (i) counsel for the class is qualified and competent to vigorously

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prosecute the action, and (ii) the interests of the proposed class representatives
 are not antagonistic to the interests of the class. *See, e.g., Staton v. Boeing*, 327
 F.3d 938, 957 (9th Cir. 2003); *Hanlon*, 150 F.3d at 1020; *Molski v. Gleich*, 318
 F.3d at 955, *overruled on other grounds in Dukes v. Wal Mart Stores*, *Inc.*, 603
 F.3d 571 (9th Cir. 2010); *Wiener*, 255 F.R.D. at 667.

The adequacy requirement is met here. First, the interests of Plaintiff and 6 Class members are fully aligned and conflict free: Plaintiff and Class members 7 8 are seeking redress from what is essentially the same injury and there are not 9 disabling conflicts of interest. Second, as the Court has already determined, 10 Class Counsel for the Settlement Class are qualified and experienced in class 11 action litigation, and meet the requirements of Fed. R. Civ. P. 23(g). (D.E. No. 112 (March 8, 2010, order appointing Co-Lead Class Counsel); Blood 12 13 Preliminary Approval Decl., Ex. A (Blood Hurst & O'Reardon, LLP Firm 14 Resume); Ryan Preliminary Approval Decl., Ex. 1 (Bonnett, Fairbourn, 15 Friedman, & Balint, P.C. Firm Resume).) Through qualified Class Counsel, the proposed Class Representative and other Plaintiffs have performed extensive 16 17 work to date in identifying and investigating potential claims in this action, establishing the factual basis for the claims sufficient to prepare a detailed class 18 19 action complaint, pursuing document discovery, subpoenas and depositions, and 20 in successfully mediating and negotiating the proposed Settlement. See In re 21 *Emulex Corp.*, 210 F.R.D. 717, 720 (C.D. Cal. 2002) (court evaluating adequacy of counsel's representation may examine "the attorneys' professional 22 qualifications, skill, experience, and resources . . . [and] the attorneys' 23 24 demonstrated performance in the suit itself").

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B. The Settlement Class Should Be Preliminarily Approved Under Federal Rule of Civil Procedure 23(b)(3)

Plaintiff seeks certification of a Settlement Class under Rule 23(b)(3).
Certification under Rule 23(b)(3) is appropriate "whenever the actual interests of

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the parties can be served best by settling their difference in a single action." 1 2 Hanlon, 150 F.3d at 1022 (quoting 7A C.A. Wright, A.R. Miller, & M. Kane, 3 *Federal Practice & Procedure* §1777 (2d ed. 1986)). There are two fundamental 4 conditions to certification under Rule 23(b)(3): (1) questions of law or fact 5 common to the members of the class predominate over any questions affecting only individual members; and (2) a class action is superior to other available 6 7 methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 8 23(b)(3); Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas 9 Sands, Inc., 244 F.3d 1152, 1162-63 (9th Cir. 2001); Hanlon, 150 F.3d at 1022; 10 *Wiener*, 255 F.R.D. at 668. As such, Rule 23(b)(3) encompasses those cases "in 11 which a class action would achieve economies of time, effort, and expense, and 12 promote ... uniformity of decision as to persons similarly situated, without 13 sacrificing procedural fairness or bringing about other undesirable results." 14 Amchem, 521 U.S. at 615; Wiener, 255 F.R.D. at 668.

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1. Common Questions Predominate Over Individual Issues

16 The Rule 23(b)(3) predominance inquiry "tests whether proposed classes" 17 are sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 623; Hartless v. Clorox Co., 273 F.R.D. 630, 638 (S.D. Cal. 2011). 18 19 "Predominance is a test readily met in certain cases alleging consumer . . . fraud . 20 ..." Amchem, 521 U.S. at 623. "When common questions present a significant 21 aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a 22 23 representative rather than on an individual basis." Fed. Prac. & Proc., §1778; 24 Gen. Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 158 n.13 (1982) (noting that 25 commonality and typicality tend to merge).

The predominance requirement is satisfied here. As discussed above, Plaintiffs allege that the Class members are entitled to the same legal remedies premised on the same alleged wrongdoing. Plaintiffs allege that all of the

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1 advertisements, including the packaging and related materials, convey the same 2 advertising message – that the Hydroxycut Products are safe and effective for 3 weight-loss purposes. (Blood Preliminary Approval Decl., Exs. B-C (exemplars 4 of Hydroxycut Products advertising and labeling).) Thus, the central issues for 5 every claimant are whether Defendants' claims that the Hydroxycut Products had clinically proven weight loss abilities were false or deceptive, whether the 6 7 Hydroxycut Products were dangerous, whether Defendants failed to properly 8 warn of potential dangers, and whether Defendants' misrepresentations regarding 9 the effectiveness of the Hydroxycut Products was likely to deceive a reasonable 10 consumer. See Johns, 280 F.R.D. at 557 ("the predominating common issues" 11 include whether Bayer misrepresented that the Men's Vitamins 'support prostate 12 health' and whether the misrepresentations were likely to deceive a reasonable 13 consumer."). These issues predominate and are together the "heart of the litigation" because they would be decided in every trial brought by individual 14 15 Class members and can be proven or disproven with the same Class-wide evidence. 16

17 Common issues predominate for this nationwide Class even though some 18 Class members' home state consumer protection laws may differ from that of 19 California because all Class members suffered a common injury caused by 20 Defendants' common course of conduct. Hartless, 273 F.R.D. at 638. 21 Accordingly, any "idiosyncratic differences between state consumer protection laws are not sufficiently substantive to predominate over the shared claims." 22 23 Hanlon, 150 F.3d at 1022-23; In re Prudential Ins. Co. Am. Sales Practice Litig. 24 Agent Actions, 148 F.3d 283, 315 (3d Cir. 1998) (variations in the rights and 25 remedies available to injured class members under the various laws of the fifty 26 states do not defeat commonality and predominance).

Under these circumstances, predominance under Rule 23(b)(3) is satisfied. *Hartless*, 273 F.R.D. at 638-39 (predominance established where all class

members were exposed to the same alleged misrepresentations); *Weiner*, 255
 F.R.D. at 669 (predominance satisfied when alleged misrepresentation of
 product's health benefits were displayed on every package).⁵

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

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

Application of the Rule 23(b)(3) "superiority" factors shows that a class action is the preferred procedure for this settlement. The damages at issue for

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 5</sup> See also e.g., In re POM Wonderful LLC Mktg. & Sales Practices Litig.,

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 No. 10-2199, 2012 U.S. Dist. LEXIS 141150, at *15-16 (C.D. Cal. Sept. 28,

 2012) (certifying labeling claims); Johns, 280 F.R.D. at 558 (same); In re

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 Ferrero, 278 F.R.D. at 556 (same); Johnson v. General Mills, Inc., 276 F.R.D.

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 2011 U.S. Dist. LEXIS 60608, at *30-32 (N.D. Cal. June 7, 2011) (same);

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

18 VII. PLAINTIFF SHOULD BE APPOINTED CLASS REPRESENTATIVE AND CO-LEAD CLASS COUNSEL SHOULD BE APPOINTED CLASS COUNSEL FOR THE SETTLEMENT CLASS

The Parties also requests that the Court designate Plaintiff Andrew
 Dremak as Class Representative for the Settlement Class. As discussed above,
 Plaintiff will fairly and adequately protect the interests of the Settlement Class.

Additionally, Rule 23(g)(1) requires the Court to appoint class counsel to represent the interests of the Class. *See In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 355 (N.D. Cal. 2005). Blood Hurst & O'Reardon, LLP ("BHO") and Bonnett, Fairbourn, Friedman & Balint, P.C. ("BFFB"), were appointed by the Court as Co-Lead Class Counsel in the Court's March 8, 2010 Order. D.E.

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1 No. 112. For the same reasons BHO and BFFB were appointed Co-Lead Class 2 Counsel for litigation of the class actions, the Parties respectfully request that 3 BHO and BFFB be appointed Class Counsel for the Settlement Class. As set 4 forth above, BHO and BFFB are experienced and well equipped to vigorously, 5 competently and efficiently represent the proposed Settlement Class. Accordingly, the Court should accordingly appoint Timothy G. Blood of BHO 6 7 and Elaine A. Ryan of BFFB as Class Counsel for the Settlement Class.

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VIII. PLAINTIFF'S FEE AND EXPENSE APPLICATION SHOULD BE APPROVED

Plaintiffs' Counsel also submits this memorandum in support of the motion for an award of attorneys' fees and reimbursement of expenses. Approval of such an award will be requested in connection with final approval of this Settlement.

Plaintiffs' Counsel's Attorneys' Fee Request is Reasonable A.

16 Plaintiff seeks an award of attorneys' fees of \$3.5 million, representing a 17 multiplier of 1.09 to Class Counsel's lodestar of \$3.2 million (not even taking into account the time spent by additional Plaintiff's Counsel), and which is 25% 18 19 of the \$14 million Settlement Fund.

20 In diversity actions, as here, state law applies to questions surrounding the 21 appropriateness of a requested fee award. Mangold v. Cal. Pub. Utils. Comm'n, 22 67 F.3d 1470, 1478 (9th Cir. 1995). In this multidistrict litigation, the contract at 23 issue (the Settlement Agreement) expressly states that California law governs. (Stipulation of Settlement, at §XV.B.)⁶ "Under California law, the primary 24

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In any event, application of the choice of law tests from the transferor 26 courts demonstrates that California law applies. In re Volkswagen & Audi Warranty Extension Litig., 692 F.3d 4, 18-20 (1st Cir. 2012) (analyzing which state's law applies in an MDL to determine the reasonableness of attorneys' fees 27 where there was no choice of law provision in the class action settlement 28 agreement). That is because California has the most significant relationship to {00071822.V1} Case No. 3:09-MD-02087-BTM(KSC) 47 Case No. 3:09-CV-01088-BTM(KSC)

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method for determining the amount of reasonable attorneys' fees is the lodestar 1 2 method." Hartless v. Clorox Co., 273 F.R.D. 630, 642-43 (S.D. Cal. 2011) 3 (citing In re Consumer Privacy Cases, 175 Cal. App. 4th 545, 556 n.13 (2009) 4 (awarding fees in national class action settlement under C.C.P. §1021.5)); see 5 also Graciano v. Robinson Ford Sales, Inc., 144 Cal. App. 4th 140, 154 (2006) (same); Serrano v. Priest, 20 Cal. 3d 25, 48-49 (1977) ("Serrano") ("The starting 6 7 point of every fee award...must be a calculation of the attorney's services in 8 terms of the time he has expended on the case.").

9 "In cases in which the class benefit can be monetized with a reasonable 10 degree of certainty, a percentage of the benefit approach may be used to cross-11 check the lodestar calculation." Hartless, 273 F.R.D. at 642 (citing In re Consumer Privacy Cases, 175 Cal. App. 4th at 557-58); see also Suzuki v. 12 13 Hitachi Global Storage Tecs., Inc., 434 Fed. Appx. 695, 696 (9th Cir. May 26, 2011) (affirming fee award, stating "[t]he district correctly began with the 14 15 lodestar method of calculating attorneys' fees and then permissibly used the 16 percentage of common fund crosscheck to arrive at a reasonable fee award under 17 California law"); Reed v. 1-800 Contracts, Inc., No. 12-2359, 2014 U.S. Dist. LEXIS 255, at *22-23 (S.D. Cal. Jan. 2, 2014) (same). Nevertheless, "[w]hile 18 19 the court has the discretion to [perform cross-check the lodestar in comparison to 20 a percentage of common fund] it is not required." In re Consumer Privacy 21 *Cases*, 175 Cal. App. 4th at 557.

Using these applicable standards, the proposed award is fair and reasonable.

the transaction and parties – it was the place where settlement negotiations and contracting took place, numerous actions were originally filed in California, the action was litigated in California, and the Judicial Panel on Multidistrict Litigation held that this Court was "an appropriate transferee forum for this litigation" – and it is the "lex loci contractus" and the place where the settlement agreement was made under Cal. Civ. Code §1646.
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B. The Requested Fractional Multiplier Fee Award is Reasonable Under the Lodestar Method

Under the two-step lodestar/multiplier method, trial courts first calculate 3 the lodestar, consisting of "all the hours reasonably spent, including those 4 relating solely to the fee," times reasonable hourly rates. *Ketchum v. Moses*, 24 5 Cal. 4th 1122, 1133 (2001) (emphasis in original); see also Hensley v. Eckhart, 6 461 U.S. 424, 433 (1983). Although the lodestar figure is "presumptively a 7 reasonable fee award," that figure may be augmented or multiplied to reflect 8 additional factors in determining a reasonable attorney fee award. Hensley, 461 9 U.S. at 429; Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975); 10 *Ketchum*, 24 Cal. 4th at 1138 ("the unadorned lodestar reflects the general local 11 hourly rate for a *fee-bearing* case; it does *not* include any compensation for 12 contingent risk, extraordinary skill, or any other factors a trial court may 13 consider") (emphasis in original). When determining the multiplier, trial courts 14 should consider all factors relevant to a given case. *Lealao*, 82 Cal. App. 4th at 15 40. The purpose of using the lodestar/multiplier method is to mirror the legal 16 marketplace: counsel will not handle cases on straight hourly fees that are 17 payable only if they win, so an enhancement helps determine a fee that is 18 commensurate with what attorneys could expect to be compensated for similar 19 service in these circumstances. San Bernardino Valley Audubon Soc'y v. San 20 Bernardino, 155 Cal. App. 3d 738, 755 (1984) (award must be large enough "to 21 entice competent counsel to undertake difficult public interest cases"); Lealao, 22 82 Cal. App. 4th at 50 (adjusted lodestar should not be significantly different 23 from the percentage fee freely negotiated in comparable litigation). In 24 determining the multiplier, courts have considered a range of relevant factors. 25 Lealao, 82 Cal. App. 4th at 40. The factors California courts have looked to 26 include: 27

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the benefits obtained or the results achieved (City of Oakland v.

Oakland Raiders, 203 Cal. App. 3d 78, 80 (1988); Lealao, 82 Cal.

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	1	App. 4th at 41; <i>Thayer v. Wells Fargo Bank</i> , 92 Cal. App. 4th 819, 838 (2001));			
	2 3	• the novelty and difficulty of the questions involved and the skill displayed in presenting the issues (<i>Serrano III</i> , 20 Cal. 3d at 49);			
BLOOD HURST & O'REARDON, LLP	4	• the contingencies involved in prosecuting the action and obtaining fees (<i>id.; Graham v. Daimler Chrysler Corp.</i> , 34 Cal. 4th 553,583 (2004));			
	5	 the delay in receiving fees (<i>Graham</i>, 34 Cal. 4th at 583; <i>City of Oakland</i>, 203 Cal. App. at 85); 			
	6 7	 the promptness of resolution (<i>Lealao</i>, 82 Cal. App. 4th at 52; <i>In re Vitamin Cases</i>, 110 Cal. App. 4th 1041, 1058-59 (2003)); 			
	8	• the multiplier that will result in a reasonable percentage of the value of the settlement (<i>Chavez</i> , 162 Cal. App. 4th at 63); and			
	9	• the "public service element and motivation to represent consumers and enforce laws." <i>State v. Meyer</i> , 174 Cal. App. 3d 1061, 1073 (1985); <i>Thayer</i> , 92 Cal. App. 4th at 839 (meager fee awards will discourage able counsel from engaging in public			
	10 11	awards will discourage able counsel from engaging in public interest litigation, which should be encouraged).			
	12	"Multipliers can range from 2 to 4, or even higher." <i>Wershba</i> , 91 Cal.			
	13	App. 4th at 255. The court in <i>Glendora Cmty. Redev. Agency v. Demeter</i> , 155			
	14	Cal. App. 3d 465, 479 (1984), approved a multiplier of 12. See also Steiner v.			
	15	Am. Broad. Co., Inc., 248 Fed. Appx. 780, 2007 U.S. App. LEXIS 21061, at *8			
	16	(9th Cir. Aug. 29, 2007) ("this multiplier [of 6.85] falls well within the range of			
	17	multipliers that courts have allowed"); SternwestCorp. v. Ash, 183 Cal. App. 3d			
	18	74, 76 (1986) (case remanded with directions "to enhance the lodestar award by			
	19	such factor (two, three, four or otherwise) that the court, in its discretion shall			
	20	deem proper"); Vizcaino, 290 F.3d at 1051 (multiplier of 3.65); Keith v. Volpe,			
	21	501 F. Supp. 403, 414 (C.D. Cal. 1980) (multiplier of 3.5); Buccellato v. AT&T			
	22	Operations, Inc., No. 10-463, 2011 U.S. Dist. LEXIS 85699, at *5 (N.D. Cal.			
	23	June 30, 2011) (collecting cases and approving multiplier of 4.3).			
	24	In this case, Plaintiffs' Counsel are seeking a significant reduction in			
	25	lodestar in order to increase the cash to the Class so this litigation may end. The			
	26	lodestar of Class Counsel alone is \$3,224,155.50 based on over 8,645.75hours of			
	27	work as of April 11, 2014. (See Blood Preliminary Approval Decl., ¶29;			
28		Declaration of Elaine A. Ryan in Support of Motion for Preliminary Approval of			
{000718	22.V1}	50 Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC) MEMO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT			

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("Ryan Preliminary Approval Decl."), 1 Class Action Settlement ¶6.) 2 Accordingly, based on just Class Counsel's time a \$3.5 million fee would 3 represent a modest multiplier of 1.09. In fact, this does not even take into 4 account the lodestar of the other Plaintiffs' Counsel. Taking into account the 5 lodestar of Milberg LLP, the firm that performed the most work at the direction of Class Counsel other than Class Counsel, the \$3.5 million fee represents an 6 7 even smaller 0.81 fractional multiplier. (D.E. No. 1637-6 (Declaration of John 8 R. S. McFarlane, at ¶5 (\$1,121,342.50 lodestar).) In light of the exceptional results obtained, the efficiency with which the case was litigated, the risk, 9 10 difficulty and the public service rendered by this action and the work on the 11 approval process, settlement and *cy pres* administration, and potential appeals 12 still to be performed, the requested fee is fair and reasonable.

13

a. The Hourly Rates Are Reasonable

14 Plaintiffs' Counsel are entitled to the hourly rates charged by attorneys of 15 comparable experience, reputation and ability for similar litigation. *Ketchum*, 24 16 Cal. 4th at 1133. Typically, the court looks to prevailing market rates in the 17 community in which the court sits. Schwartz v. Sec'y of Health & Human Servs., 18 73 F.3d 895, 906 (9th Cir. 1995). Payment at full market rates is essential to 19 fulfill the goal of enticing well-qualified counsel to undertake difficult consumer 20 interest litigation, such as this. San Bernardino, 155 Cal. App. 3d at 755. The 21 background and experience of Class Counsel are set forth in their attached 22 declarations and firm resumes. Class Counsel have excellent reputations as class 23 action litigators, with specialized experience in false advertising and consumer class action law. Their hourly rates are well within the range of rates billed by 24 25 comparable attorneys in this market and are the standard rates they charge to all of their clients.⁷ 26

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- 28 {00071822.V1} 7 An attorney's actual billing rate for similar work is presumptively appropriate. See Wershba, 91 Cal. App. 4th at 254-55; People Who Care v. 51 Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC) MEMO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Moreover, Plaintiffs' Counsel's lodestar is calculated using rates that have 1 2 been accepted in numerous other class action cases. See, e.g., Blood Preliminary 3 Approval Decl., ¶28; Ryan Preliminary Approval Decl., ¶7; *Hartless*, 273 F.R.D. 4 at 644 (in case involving BHO and BFFB, stating that "based on the Court's 5 familiarity with the rates charged by other firms in the San Diego area, the Court finds the rates charged by the attorneys and paralegals in this action reasonable"); 6 7 Dennis v. Kellogg Co., No. 09-cv-1786-L (WMC), 2013 U.S. Dist. LEXIS 8 163118, at *22-23 (S.D. Cal. Nov. 14, 2013) (J. Lorenz) (approving hourly rates 9 of BHO and BFFB as "fall[ing] within typical rates for attorneys of comparable 10 experience"); Johnson v. General Mills, Inc., No. 10-61, 2013 U.S. Dist. LEXIS 11 90338, at *19-21 (C.D. Cal. June 17, 2013) (approving hourly rates and time 12 spent by BHO, stating "[t]he Court has considered class counsel's rates and finds 13 they are reasonable because of the experience of the attorneys and prevailing market rates") (citing BHO's firm resume); POM Wonderful, LLC v. Purely Juice, Inc., No. 07-2633, 2008 U.S. Dist. LEXIS 110460, at *11-13 (C.D. Cal. Sept. 22, 2008) (partner rates of \$750 to \$450 and associate rates of \$425 to \$275 were reasonable). Plaintiffs' Counsel's rates also compare very favorably with rates approved by other trial courts in class action litigation.⁸ Finally, Plaintiffs' Counsel have submitted sworn declarations attesting to their hourly rates and

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 - Rockford Bd. of Educ., 90 F.3d 1307, 1310 (7th Cir. 1996). "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a 22 rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407 23 (9th Cir. 1990).
 - Lingenfelter v. Astrue, No. SA CV-03-00264-VBK, 2009 U.S. Dist. 24 Lingenfelter V. Astrue, No. SA CV-05-00204-VBK, 2009 U.S. Dist. LEXIS 87685, at *11 (C.D. Cal. Sep. 3, 2009) (\$600 is "reasonable"); *POM Wonderful, LLC v. Purely Juice, Inc.*, No. CV-07-2633-CAS, 2008 U.S. Dist. LEXIS 110460, at *11-12 (C.D. Cal. Sept. 22, 2008) (approving partner rates of \$750-\$450 and associate rates of \$425-\$275); *Love v. Mail on Sunday*, No. CV-05-7798-ABC(PJWX), 2007 U.S. Dist. LEXIS 97061, at *25 (C.D. Cal. Sept. 7, 2007) (approving partner rates of \$540-\$690 and associate rates of \$305-\$485); *Housing Rights Ctr. v. Sterling*, No. CV 03-859 DSF, 2005 U.S. Dist. LEXIS 31872 at *10 (C.D. Cal. Nov. 1, 2005) (noting hourly rates may run up to \$1,000) 25 26 27 31872, at *10 (C.D. Cal. Nov. 1, 2005) (noting hourly rates may run up to \$1,000 28 per hour in Los Angeles, with \$125 to \$650 routine in California). Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC)

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total hours devoted to the case, their experience, and describing their efforts to
 prosecute this case. (D.E. Nos. 1637-2, 1637-5 – 1637-30 ("Plaintiffs' Counsel's
 Declarations").)

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b. The Hours Expended Are Reasonable

5 The number of hours spent by Class Counsel is reasonable. The resulting consolidated litigation in this Court has lasted well over three years and involved 6 7 hard-fought litigation involving significant motion practice and discovery, 8 including millions of pages of documents. (See Blood Preliminary Approval 9 Decl., ¶3.) The 8,645.75 total hours spent by Class Counsel is reasonable given 10 the extensive motion practice and discovery involved in this litigation. (See §II, above; Blood Preliminary Approval Decl., ¶¶3, 29, 31; Ryan Preliminary 11 12 Approval Decl., ¶4-6.) Further, Class Counsel spent a significant amount of 13 time negotiating the Settlement in principle and then finalizing the actual terms 14 of the Settlement with a Defendant that scrutinized and bargained virtually every provision of the Stipulation.⁹ (Blood Preliminary Approval Decl., ¶¶25-26.) 15 16 Moreover, Class Counsel's work is not yet done. Class Counsel still need to: (1) 17 prepare for and attend the final approval hearing, including the research and 18 drafting of the reply papers and response to objectors, if any; (2) oversee the 19 claims administration process, including addressing any claim review issues and 20 monitoring payments to the Settlement Class; (3) handle any appeals; and (4) 21 disburse service awards and Plaintiffs' Counsel's fees and expenses. Often, as 22 seen in this case, responding to objectors involves obtaining written discovery,

⁹ Counsel need only submit summaries of their hours incurred; submission of billing records are not required. *Wershba*, 91 Cal. App. 4th at 254-55; *Chavez*, 162 Cal. App. 4th at 64 ("timesheets are not required of class counsel to support fee awards in class action cases."); *Lobatz v. U.S. W. Cellular of Cal., Inc.*, 222 F.3d 1142, 1148-49 (9th Cir. 2000) (the court may rely on summaries of the total number of hours spent by counsel); *POM Wonderful*, 2008 U.S. Dist. LEXIS 110460, at *11; *Hemphill v. S.D. Ass 'n of Realtors, Inc.*, 225 F.R.D. 616, 623-24 (S.D. Cal. 2004) (declining review of detailed time records where no evidence of collusion); *see also In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 284 (3d Cir. 2009) (finding district court's reliance on time summaries of counsel proper).

1 deposition testimony, or both from the objectors. And if there are appeals, 2 hundreds of thousands of dollars of additional attorney time may be incurred in post-judgment motions (such as appeal bond requests) and in defending the 3 4 Settlement on appeal to the Ninth Circuit. None of this additional time will be 5 compensated. Yet, as Class Counsel's lodestar inevitably increases, the multiplier will decrease, all of which further supports the reasonableness of the 6 7 requested fee award. Accordingly, the requested, modest multiplier justified in 8 light of the contingent nature of this action, the work performed to date, and the 9 significant amount of additional work Class Counsel will have to undertake in the future. 10

The Plaintiffs' Counsel report a collective lodestar of \$6,245,000.00. (Blood Preliminary Approval Decl., ¶29; Ryan Preliminary Approval Decl., ¶6; D.E. Nos. 1637-5 – 1637-6, 1637-8 – 1637-30.) For purposes of a lodestar 14 analysis, even if this time were not included, the time reasonably spent by Class 15 Counsel would justify the requested fee. With Plaintiffs' Counsels' time, the 16 lodestar is even higher. This time covers counsel who brought more than 20 class actions that comprise this MDL.

The Requested Fees Are Reasonable in Light of the c. Kerr Factors

In considering the reasonableness of attorneys' fees under a lodestar calculation, courts consider the novelty and complexity of the litigation, skill and experience of counsel and the results obtained. Kerr, 526 F.2d at 70; Blum, 465 U.S. at 898-900; Foos v. Ann, Inc., No. 11-2794, 2013 U.S. Dist. LEXIS 136918, at *11-12 (S.D. Cal. Sept. 24, 2013) ("After computing the 'lodestar,' the district court may then adjust the figure upward or downward taking into consideration [Kerr's] twelve 'reasonableness' factors").

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As demonstrated in the detailed complaints, and the Parties' motion to
 dismiss briefing dealing with complex issues of personal jurisdiction, retailer
 liability, *Shady Grove*, and choice-of-law principles, this litigation concerned
 myriad complex legal and factual issues.

5 In addition, as demonstrated in the firm resumes attached to Class Counsel's Declarations, Class Counsel are experienced and skilled class action 6 7 attorneys specifically in consumer litigation. Prosecuting nationwide consumer 8 class actions such as this one requires counsel with experience in class action 9 litigation, and state consumer protection laws. Here, Class Counsel have 10 extensive experience in these areas. For example, Mr. Blood's practice focuses 11 on plaintiffs' class actions and false advertising claims concerning the advertised 12 scientific substantiation for the health claims, in this case, that the Hydroxycut 13 Products provide proven weight-loss benefits. Mr. Blood has worked with the 14 Federal Trade Commission on false advertising lawsuits, resulting in two unique and historic settlements. Likewise, Ms. Ryan's practice focuses on plaintiffs' 15 16 class actions, including cases involving falsely advertised consumer goods 17 manufactured by General Mills, Procter & Gamble, Bayer, Clorox, WD-40 and others. Indeed, Mr. Blood and Ms. Ryan's experience and expertise gained in 18 19 other deceptive advertising litigations and nationwide settlements contributed to 20 counsel's ability to research and understand the purported scientific basis for 21 Iovate's advertised claims prior to filing the complaint, and to quickly and efficiently coordinate Plaintiffs' Counsel from the approximately 20 related class 22 23 actions, and then jointly resolve the claims without further litigation. (See Blood 24 Preliminary Approval Decl., Ex. A (BHO Firm Resume) (listing recent false 25 advertising cases including *Fitzpatrick v. General Mills, Inc.*, No. 10-11064 26 (11th Cir. 2011); In re Skechers Toning Shoes Prods. Liab. Litig., MDL No. 27 2308 (W.D. Ky. 2013); In re Reebok Easytone Litig., No. 4:10-cv-11977-FDS (D. Mass. 2012); Johnson v. General Mills, Inc., No. 8:1-cv-61-CJC (C.D. Cal. 28

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2013); Gemelas v. Dannon, No. CV-08-236 (N.D. Ohio 2010); Smith v. Wrigley, 2 No. 09-60646-Civ-Cohn/Seltzer (S.D. Fla. 2010); and Hartless v. Clorox, No. 3:06-CV-02705-CAB (S.D. Cal. 2010)); Ryan Preliminary Approval Decl., Ex. 1 4 (BFFB Firm Resume).)

The skill and competence of opposing counsel should be considered and cannot be doubted. See, e.g., In re Equity Funding Corp. Sec. Litig., 438 F. Supp. 1303, 1337 (C.D. Cal. 1977) (noting that plaintiff's counsel faced "established and skillful defense lawyers"). Iovate is represented by a team of experienced attorneys from the San Francisco and San Diego offices of Morrison & Foerster LLP, a firm skilled in class action defense. The Morrison & Foerster team was headed by Arturo Gonzalez, Co-Chair of Morrison & Foerster's Litigation Department, and William Tarantino, a partner in their San Francisco office who focuses on consumer class action and false advertising litigation.

14 Furthermore, in light of the risks and uncertain outcome, the results 15 obtained for the Class in the form of monetary compensation potentially exceeding the typical Settlement Class Member's damages is exemplary. 16 17 Therefore, an award of \$3,500,000, leaving aside the expenses incurred to date, 18 is reasonable and should be approved.

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d. The Requested Fees Are Reasonable in Light of the Value of the Settlement to Class Members

21 Percentages in the range of 25% of the value of the recovery are typical. 22 Six Mex. Workers, 904 F.2d at 1311; Glendale City Employees' Ass'n, 15 Cal. 3d 23 328, 341 n.19 (1975) (approving award of 25% of the recovery); Sanders v. City 24 of L.A., 3 Cal. 3d 252, 261 (1970) (approving award of 25%); Bell v. Farmers 25 Ins. Exch., 115 Cal. App. 4th 715, 726 (2004) (noting fee award of 25%); 26 Steinberg v. Allstate Ins. Co., 226 Cal. App. 3d 216, 220 n.2 (1990) (affirming 27 award of 20% of the common fund); Parker v. Los Angeles, 44 Cal. App. 3d 556, 28 567-68 (1974) (affirming award of 33%); Chavez, 162 Cal. App. 4th at 66 n.11

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("Empirical studies show that, regardless whether the percentage method or the 1 2 lodestar method is used, fee awards in class actions average around one-third of recovery.").¹⁰ While 25% is the benchmark, district courts have granted and the 3 Ninth Circuit has affirmed awards of attorneys' fees at or above a 30% fee. See 4 5 *e.g.*, In re Mego Fin. Corp. Secs. Litig., 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming fee award of 33 1/3% of fund); In re Pacific Enters. Sec. Litig., 47 6 7 F.3d 373, 379 (9th Cir. 1995) (award of 33% of settlement fund as fees 8 affirmed); McPhail v. First Command Fin. Planning, Inc., No. 05cv179-IEG-9 JMA, 2009 U.S. Dist LEXIS 26544, at *10 (S.D. Cal. Mar. 30, 2009) (30% for 10 first \$10 million and 25% for additional \$2 million settlement). Importantly, in 11 determining the amount of the benefit conferred, the appropriate measure is the 12 total recovery available for the class, not the amount actually claimed by class 13 members. Boeing Co. v. Van Gemert, 444 U.S. 472, 480-81 (1980); see also 14 Williams v. MGM-Pathe Commc'ns Co., 129 F.3d 1026, 1027 (9th Cir. 1997). 15 This method recognizes that the efforts of class counsel established the entire 16 settlement, including non-monetary benefits, for the benefit of the entire class. 17 Masters v. Wilhelmina Model Agency, Inc., 473 F.3d 423, 437 (2d Cir. 2007) 18 (citing Williams, 129 F.3d at 1027); Vizcaino v. Microsoft Corp., 290 F.3d 1043,

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²⁰ 10 See also In re Cal. Indirect Purchases, No. 960886, 1998 WL 1031494, at *9 (Alameda Super. Ct. Oct. 22, 1998) (recognizing that numerous California trial courts have awarded fees in excess of 30%, citing *In re Milk Antitrust Litig.*, No. BC070061 (L.A. Super. Ct. 1998) (33 1/3% fee award)); *In re Facsimile Paper Antitrust Litig.*, Nos. 963598, 964899 and 967137 (S.F. Super. Ct. 1997) 21 22 (33 1/3% fee award); In re Liquid Carbon Dioxide Cases, J.C.C.P. 3012 (S.D. Super. Ct. 1996) (33 1/3% fee award); In re Cal. Indirect-Purchaser Plasticware Antitrust Litig., Nos. 961814, 963201 and 963590 (S.F. Super. Ct. 1995) (33 23 24 1/3% fee award); Abzug v. Kerkorian, No. CA-000981 (L.A. Super. Ct. 1990) (45% fee award); *Haitz v. Meyer, et al.*, No. 572968-3 (Alameda Sup. Ct. 1990) (45% fee award); *Steiner v. Whittacker Corp.*, No. CA 000817 (L.A. Super. Ct. 1989) (35% fee award fee); *Andrews v First Interstate Bank of California*, Case 25 26 No. 953575 (S.F. Super. Ct. 1997) (30% fee award); In re Cal. Indirect-Purchaser Infant Formula Antitrust Class Action Litig., J.C.C.P. No. 2557 (L.A. Super. Ct. 1993) (30% fee award); Fang, et al. v. United Bank, et al., No. 873365 27 (S.F. Super. Ct. 1992) (30% fee award); Sconce/Lamb Cremation Cases, J.C.C.P. 28 No. 2085 (L.A. Super. Ct. 1989) (30% fee award)). Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC)

1 1049 (9th Cir. 2002) ("Incidental or nonmonetary benefits conferred by the
 2 litigation are a relevant circumstance.").

Class Counsel requests a fee award of 25% of the settlement value created through plaintiffs' counsels' efforts (at least \$14 million). Further, Class Counsel achieved this Settlement after hard-fought motion practice and significant amounts of discovery, but without trial and extended litigation, which would only have increased the costs ultimately borne by the Class. Counsel should be justly rewarded for obtaining relief in a timely and efficient manner.

9

C. Plaintiffs' Expenses Are Reasonable and Compensable

10 Class Counsel also request reimbursement for the reasonable and necessary expenses advanced by Plaintiffs' Counsel to prosecute this litigation 11 12 since its inception in 2009. Both the Ninth Circuit and California state courts 13 allow recovery of pre-settlement litigation costs in the context of class action 14 settlements. See Staton, 327 F.3d at 974; Serrano III, 20 Cal. 3d at 35; Rider v. 15 San Diego, 11 Cal. App. 4th 1410, 1424 n.6 (1992); see also H. Newberg & A. 16 Conte, Newberg on Class Actions, §12.08, at 50-51 (2d ed. 1993); In re Rent-17 Way Sec. Litig., 305 F. Supp. 2d 491, 519 (W.D. Pa. 2003) ("There is no doubt 18 that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of ... reasonable litigation expenses from that fund."). 19 20 "Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." In re Omnivision Techs., 559 F. 21 22 Supp. 2d 1036, 1048 (N.D. Cal. 2007); see also Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994). 23

Plaintiffs' Counsel have submitted declarations attesting to the expenses
incurred in this litigation – in the aggregate, a moderate \$201,115.98 was
invested over the nearly five years spent on this litigation. (*See* Blood
Preliminary Approval Decl., ¶¶34-35; Ryan Preliminary Approval Decl., ¶8; and
Plaintiffs' Counsel's Declarations.) Thus, the amount requested is actually

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\$98,884.02 less than the \$300,000, which Iovate agreed to not oppose. Class 1 2 Counsel, and as detailed in their declarations, Plaintiffs' Counsel, incurred these 3 costs for mediation fees, filing fees, travel, computer research, photocopies, 4 postage, and telephone charges. All of these expenses were reasonably and 5 necessarily incurred, and are of the sort that would typically be billed to paying clients in the marketplace. See In re Immune Response Sec. Litig., 497 F. Supp. 6 7 2d 1166, 1177-78 (S.D. Cal. 2007) (awarding as reasonable and necessary, 8 reimbursement for "1) meals, hotels, and transportation; 2) photocopies; 3) 9 postage, telephone, and fax; 4) filing fees; 5) messenger and overnight delivery; 10 6) online legal research; 7) class action notices; 8) experts, consultants, and 11 investigators; and 9) mediation fees"); Beane v. Bank of N.Y. Mellon, No. 07-9444, 2009 U.S. Dist. LEXIS 25704, at *25-26 (S.D.N.Y. Mar. 31, 2009) 12 13 (awarding as "properly chargeable to the Settlement Fund" because they "are the type for which the paying, arms' length market reimburses attorneys" 14 15 reimbursement for court fees, photocopying and reproduction, deposition transcripts, postage and messenger services, transportation and lodging, 16 17 telephone bills, and expert and electronic litigation database support).

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D. The Service Awards Are Reasonable

19 Service awards "are fairly typical in class action cases." Rodriguez, 563 20 F.3d at 958; Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to* 21 Class Action Plaintiffs: An Empirical Study, 53 U.C.L.A. L. Rev. 1303, 1303 22 (2006) (28% of class actions include incentive awards to class representatives). 23 Such awards "serve an important function in promoting class action settlements." 24 Sheppard v. Cons. Edison Co. of N.Y., Inc., No. 94-CV-0403(JG), 2002 U.S. 25 Dist. LEXIS 16314, at *16 (E.D.N.Y. Aug. 1, 2002). The Ninth Circuit has 26 recognized that service awards "are intended to compensate class representatives" 27 for work done on behalf of the class, to make up for financial or reputational risk 28 undertaken in bringing the action, and, sometimes, to recognize their willingness

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1 to act as a private attorney general." *Rodriguez*, 563 F.3d at 958-59. Service 2 awards are committed to the sound discretion of the trial court and should be awarded based upon the court's consideration of, *inter alia*, the amount of time 3 4 and effort spent on the litigation, the duration of the litigation and the degree of 5 personal gain obtained as a result of the litigation. See Van Vranken v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). 6

Here, Class Counsel respectfully request that the Court approve a modest 8 service award of \$2,000 for each of the Consolidated Complaint Plaintiffs and 9 the Other Class Plaintiffs, in recognition of their contributions toward the successful prosecution of this case. They reviewed relevant pleadings and kept 10 in constant communication with their counsel throughout the litigation. They 12 were also willing to provide both deposition and trial testimony as needed. (See 13 Blood Preliminary Approval Decl., ¶27; Ryan Preliminary Approval Decl., ¶15-18; and Plaintiffs' Counsel's Declarations.) Iovate does not oppose the payment 14 15 of these service awards. (Stipulation of Settlement, at §X.C.)

16 The requested service awards fall below amounts awarded in comparable 17 cases. See, e.g., In re Mego Fin., 213 F.3d at 463 (approving \$5,000 incentive 18 awards); Garner v. State Farm Mut. Auto. Ins. Co., No. CV-08-1365-CW(EMC), 19 2010 U.S. Dist. LEXIS 49477, at *47 (N.D. Cal. Apr. 22, 2010) (service award 20 of \$20,000 was "well justified" given plaintiffs' efforts on behalf of the class) 21 (compiling cases); Pelletz v. Weyerhaeuser Co., 592 F. Supp. 2d 1322, 1330 22 (W.D. Wash. 2009) ("When compared to service awards in other cases, the 23 \$7,500 payments requested here are justified."); In re Ins. Brokerage Antitrust Litig., No. 04-5184-GEB, 2007 U.S. Dist. LEXIS 40729, at *68 (D.N.J. June 5, 24 25 2007) (approving incentive award of \$10,000); Van Vranken, 901 F. Supp. at 300 26 (approving service award of \$50,000).

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IX. THE PROPOSED SCHEDULE OF EVENTS

The key settlement-related dates, such as the time to complete publication of the Short-form Notice or to opt-out or object, are based on when preliminary 3 4 approval of the Settlement is granted and the Final Approval Hearing date. The 5 settlement-related dates calculated in accordance with the provisions of the Settlement are: 6

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8	Event	Date	
8 9	Notice dissemination to the Class begins	Not later than 15 calendar days after entry of the Preliminary Approval Order	
10 11	Notice dissemination substantially completed	Not later than 60 days before the Final Approval Hearing	
12	Last day for exclusions or objections to the Settlement	Postmarked no later than 30 days before the Final Approval Hearing	
13 14	Parties to file briefs in support of final approval and in response to objections	Not later than 45 days before the Final Approval Hearing	
	objections		
15	Parties to file supplemental briefs in support of final approval and	Not later than 7 days prior to the Final Approval Hearing	
16	in response to objections.	-Philippine monthly	
17	First day Final Approval Hearing can be set	No earlier than 120 days after entry of Preliminary Approval Order	
18			

19 Accordingly, the Parties request that the Court schedule the Final 20 Approval Hearing 120 days after entry of its order granting preliminary approval. 21 or as soon thereafter as the Court's schedule permits.

22 X.

CONCLUSION

23 For the reasons set forth above, the parties respectfully request the Court: 24 (1) conditionally certify the Settlement Class; (2) appoint Plaintiff Andrew 25 Dremak as Class Representative for the Settlement Class; (3) appoint Timothy G. 26 Blood of BHO and Elaine A. Ryan of BFFB as Class Counsel for the Settlement 27 Class; (4) grant preliminary approval of the Settlement; (5) approve the proposed 28 Class Notice plan; and (6) schedule a final approval hearing for the Settlement. Case No. 3:09-MD-02087-BTM(KSC) 61

BLOOD HURST & O'REARDON, LLP

	С	case 3:09-cv-01088-BTM-KSC	Document 311-1 Filed 04/21/14 Page 77 of 78		
	1	Respectfully submitte	ed,		
	2				
	3	Dated: April 21, 2014	BLOOD HURST & O'REARDON, LLP TIMOTHY G. BLOOD LESLIE E. HURST		
	4		LESLIE E. HURST THOMAS J. O'REARDON II		
	5		- /		
	6		<u>Bv:</u> <u>s/ Thomas J. O'Reardon II</u> THOMAS J. O'REARDON II		
	7		701 B Street, Suite 1700		
	8 9		701 B Street, Suite 1700 San Diego, CA 92101 Telephone: (619) 338-1100 Facsimile: (619) 338-1101 tblood@bholaw.com		
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	18				
	19		Co-Lead Class Counsel and Proposed Class Counsel for the Settlement Class		
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		MEMO IN SUPPORT OF MOTION F	Case No. 3:09-CV-01088-BTM(KSC) OR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT		

	C	Case 3:09-cv-01088-BTM-KSC Document 311-1 Filed 04/21/14 Page 78 of 78					
	1	CERTIFICATE OF SERVICE					
	2	I hereby certify that on April 21, 2014, I electronically filed the foregoing					
	3	with the Clerk of the Court using the CM/ECF system which will send					
	4	notification of such filing to the e-mail addresses denoted on the Electronic Mail					
	5	Notice List.					
	6	I certify under penalty of perjury under the laws of the United States of					
	7	America that the foregoing is true and correct. Executed April 21, 2014.					
	8						
	9	<u>s/ Thomas J. O'Reardon II</u> THOMAS J. O'REARDON II					
	10	BLOOD HURST & O'REARDON, LLP					
LLP	11	701 B Street, Suite 1700 San Diego, CA 92101 Telephone: 619/338-1100 619/338-1101 (fax)					
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		MEMO IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT					

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1 2 3 4 5 6 7 8 9 10 11 12 13	BLOOD HURST & O'REARDON, L' TIMOTHY G. BLOOD (149343) LESLIE E. HURST (178432) THOMAS J. O'REARDON II (24795) 701 B Street, Suite 1700 San Diego, CA 92101 Telephone: (619) 338-1100 Facsimile: (619) 338-1101 tblood@bholaw.com lhurst@bholaw.com toreardon@bholaw.com BONNETT, FAIRBOURN, FRIEDM. & BALINT, P.C. ANDREW S. FRIEDMAN (AZ 00542 ELAINE A. RYAN (AZ 012870) PATRICIA N. SYVERSON (CA 203111; AZ 020191) 2325 E. Camelback Road, Suite 300 Phoenix, AZ 85016 Telephone: (602) 274-1100 Facsimile: (602) 798-5860 afriedman@bffb.com eryan@bffb.com psyverson@bffb.com	AN
14	Class Counsel	
15		S DISTRICT COURT
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10	SOUTHERN DIST	RICT OF CALIFORNIA
17 18	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION	Case No.: 3:09-MD-02087-BTM(KSC)
17	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION	
17 18	IN RE HYDROXYCUT MARKETING AND SALES	Case No.: 3:09-MD-02087-BTM(KSC)
17 18 19	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION	Case No.: 3:09-MD-02087-BTM(KSC) Case No.: 3:09-CV-01088-BTM(KSC)
17 18 19 20	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION ANDREW DREMAK, on Behalf of Himself, All Others Similarly Situated and the General Public,	Case No.: 3:09-MD-02087-BTM(KSC) Case No.: 3:09-CV-01088-BTM(KSC) STIPULATION OF SETTLEMENT Dept.: 15
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 17 18 19 20 21 22 	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION ANDREW DREMAK, on Behalf of Himself, All Others Similarly Situated and the General Public, Plaintiff, VS. IOVATE HEALTH SCIENCES GROUP, INC., et al.,	Case No.: 3:09-MD-02087-BTM(KSC) Case No.: 3:09-CV-01088-BTM(KSC) STIPULATION OF SETTLEMENT Dept.: 15
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STIPULATION C	OF SETTLEN	IENT	

I. RECITALS

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A. This Stipulation of Settlement is entered into by and among plaintiff Andrew Dremak, on behalf of himself and the Settlement Class Members, and defendants Iovate Health Sciences International Inc., Iovate Health Sciences U.S.A., Inc., and Kerr Investment Holding Corp. ("Iovate") and resolves in full each of the class action lawsuits that are a part of this multidistrict litigation. Capitalized terms used herein are defined in Section II of this Agreement or 8 indicated in parentheses elsewhere in this Agreement. Subject to Court approval as required by the applicable Federal Rules of Civil Procedure, and as provided 10 herein, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the entry by the 12 Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the Action shall be settled and compromised upon the 14 terms and conditions contained herein.

15 Β. WHEREAS, on May 19, 2009, Andrew Dremak filed a class action 16 complaint against Iovate in the United States District Court for the Southern 17 District of California captioned Andrew Dremak, et al. v. Iovate Health Sciences Group, Inc., et al., No. 3:09-cv-1088-BTM-KSC (Dremak), on behalf of himself 18 19 and all other consumers who purchased Hydroxycut-branded products; and

20 С. WHEREAS, twenty other consumer class action cases arising out of 21 the same facts and circumstances as alleged in *Dremak* were also filed in district 22 courts throughout the country. In addition, persons alleging personal injuries 23 caused by use of Hydroxycut Products filed numerous individual actions; and

24 D. WHEREAS, in June 2009, plaintiffs in certain of the class actions 25 moved the Judicial Panel on Multidistrict Litigation ("MDL Panel") for 26 consolidation and transfer of all related actions to one forum. On September 24, 27 2009, oral arguments were heard before the MDL Panel for In re Hydroxycut Marketing and Sales Practices Litigation (MDL No. 2087), both opposing 28

consolidation and also requesting consolidation and transfer to various district
 courts; and

E. WHEREAS, on October 6, 2009, the MDL Panel issued an order finding that for pretrial purposes the class cases were related and transferring them to the Southern District of California before United States District Court Judge Barry T. Moskowitz, as well as transferring other individual personal injury cases. Subsequently, other related class actions were transferred to Judge Moskowitz as tag-along cases; and

F. WHEREAS, on December 22, 2009, the class action matters were consolidated for pretrial purposes into a First Amended Consolidated Class Action Complaint, which named as plaintiffs Sara Sue Carreon, James Faherty, Herman Ferrer, Marcos A. Flores, Rhonda M. Hawkins, Alejandro Jimenez, Patrice Major, Robert Manley, Raymond Ortiz II, Enjoli Pennier, Joseph Pickett, Melissa Reed, Tonya Rhoden, Byran J. Ronan, Randall Scott Shortridge, Nicholas Torres, Courtney Walker, Traczjubruthais Walquer, and Connie L. Williams in addition to Andrew Dremak; and

G. WHEREAS, the First Amended Consolidated Class Action
Complaint also named as defendants GNC Corporation, Wal-Mart Stores, Inc.,
Walgreens Company, CVS Caremark Corp., Vitamin Shoppe Industries, Inc.,
NBTY, Inc., BJ's Wholesale Club, Inc., Kmart Corporation, and Rite Aid
Corporation ("Retailers"); and

H. WHEREAS, on March 8, 2010, Judge Moskowitz appointed
Timothy G. Blood, of the law offices of Blood Hurst & O'Reardon, LLP, and
Andrew S. Friedman, of the law offices of Bonnett, Fairbourn, Friedman, &
Balint, P.C., as interim class counsel pursuant to Fed. R. Civ. P. 23(g) for
purposes of the class action matters consolidated in the multidistrict litigation;
and

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I. WHEREAS, Iovate and Retailers moved to dismiss the First Consolidated Amended Class Action Complaint on February 12, 2010, and, on May 31, 2011, the Court issued a 23-page opinion that granted in part and denied in part the motion to dismiss, and

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J. WHEREAS, defendant Kerr Investment Holding Corp. separately filed a motion to dismiss the class action complaint for lack of personal jurisdiction. Based upon discovery obtained by Plaintiff on the jurisdictional issue, including document requests and depositions, followed by briefing and hearing on the motion, on July 12, 2011, the Court issued a 32-page opinion denying the motion to dismiss; and

WHEREAS, on August 8, 2011, Plaintiff and the Consolidated K. Complaint Plaintiffs filed a Second Amended Consolidated Class Action Complaint naming as plaintiffs the Consolidated Complaint Plaintiffs (defined below), which Iovate and the Retailers moved to dismiss on March 9, 2012, and that motion remains pending; and

16 L. WHEREAS, on January 27, 2014, the Court issued an order denying 17 Iovate Defendants' motion to dismiss, ordering a more definite statement as to claims against the Retailer Defendants, and denying Retailer Defendants' motion 18 19 to dismiss; and

20 WHEREAS, Iovate and the Retailers have provided substantial M. 21 amounts of discovery consisting of numerous depositions and millions of pages 22 of documents produced from the hard-copy and electronic files from network 23 sources and more than one hundred document custodians. Class Counsel also 24 obtained substantial discovery from third-party subpoenas, as well as Freedom of 25 Information Act ("FOIA") and Sunshine Law requests. Iovate and the Retailers 26 have also provided written initial and supplemental responses to hundreds of 27 discovery requests. In connection with a negotiated exchange of network 28 systems and employee information, Class Counsel extensively met and conferred 3

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regarding electronic discovery protocols, resulting in more than one hundred document custodians and thousands of tiered keyword combinations that were separately negotiated and tailored for Iovate and the Retailers. Based on the negotiated electronic discovery protocols, Iovate produced nearly 2,000,000 pages of documents from its network systems and the files of approximately 80 6 current and former employees. Additionally, each of the Retailers provided document productions, including production of approximately 34,000, 14,000, 8 and 1,228 pages of documents from Wal-Mart, GNC, and Walgreens, respectively. Class Counsel deposed five corporate representatives of the 10 defendants. Class Counsel also received tens of thousands of pages of documents pursuant to subpoen s sent to third-parties that had significant roles 12 relating to the manufacture of ingredients, the marketing and the science relating 13 to the Hydroxycut Products. Additionally, Class Counsel obtained documents 14 from the Food and Drug Administration and conducted an onsite Sunshine Law 15 review at the offices of the Missouri Attorney General, which resulted in the number of 16 collection of a substantial documents and deposition transcripts. Class Counsel created a dedicated document database for the 18 discovery obtained and coded and analyzed these productions; and

19 N. WHEREAS, numerous settlement negotiation sessions were 20 conducted in-person and telephonically, including mediation sessions in 2011 21 with Judge John K. Trotter (ret.) and in 2012 with Martin Quinn of JAMS; and

22 О. WHEREAS, counsel for all Parties have reached the resolution set 23 forth in this Agreement, providing for, among other things, the settlement of the 24 Action between and among Plaintiff, on behalf of himself and the Settlement 25 Class, and Iovate, on the terms and subject to the conditions set forth below; and 26 P. WHEREAS, Class Counsel have determined that a settlement of the 27 Action on the terms reflected in this Agreement is fair, reasonable, adequate, and 28 in the best interests of Plaintiff and the Settlement Class; and 4

STIPULATION OF SETTLEMENT

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O. WHEREAS, Iovate, to avoid the costs, disruption and distraction of 2 further litigation, and without admitting the truth of any allegations made in the 3 Action, or any liability with respect thereto, has concluded that it is desirable that 4 the claims against it be settled and dismissed on the terms reflected in this 5 Agreement;

R. NOW, THEREFORE, this Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and the Parties agree that: (1) upon the Effective Date, the Action and all Released Claims shall be settled and compromised as between Plaintiff and the Settlement Class on the one hand, and Iovate on the other hand; and (2) upon final approval of the Agreement, the Final Judgment and Order Approving Settlement, substantially in the form attached hereto as Exhibit 1, shall be entered dismissing the Action with prejudice and releasing all Released Claims against Plaintiff, Iovate, and all Released Parties, on the following terms and conditions:

II. DEFINITIONS

A. As used in this Agreement and the attached exhibits (which are an integral part of the Agreement and are incorporated in their entirety by reference), the following terms shall have the meanings set forth below, unless this Agreement specifically provides otherwise:

"Action" means the consolidated class action, Dremak, et al. 20 1. v. Iovate Health Sciences Group Inc., et al., No. 3:09-CV-01088-BTM-KSC 21 22 (S.D. Cal.), pending before Judge Moskowitz.

23 "Agreement" means this Stipulation of Settlement (including 2. 24 all Exhibits attached hereto).

25 3. "Attorneys' Fees and Expenses" means such funds as may be 26 awarded by the Court based on the stipulation described herein to compensate 27 Class Counsel and all other Plaintiffs' Counsel as determined by the Court, as described more particularly in Section X of this Agreement. 28

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"Authorized Claimant" means any Settlement Class Member 4. 2 who timely submits a valid Claim Form.

3 "Award" means the relief obtained by Settlement Class 5. Members pursuant to Section III.C.A. of this Agreement, and which includes 4 5 either monetary payment or an Iovate Product Unit, at Settlement Class 6 Members' option.

"Cash Component" means the \$7 million component of the 6. 8 Settlement Fund used to pay Notice and Claim Administration Expenses, Attorneys' Fees and Expenses, taxes and tax expenses, service awards to 10 Plaintiff, Consolidated Complaint Plaintiffs, or Other Class Plaintiffs, and Eligible Cash Claims.

7. "Claim" means a request for relief submitted by a Settlement Class Member on a Claim Form submitted to the Settlement Administrator in accordance with the terms of the Agreement.

"Claim Form" means the form to be used by a Settlement 8. Class Member to submit a Claim to the Settlement Administrator. The proposed Claim Form is subject to Court approval and attached hereto as Exhibit 2.

"Claims Deadline" means the date by which all Claim Forms 18 9. 19 must be postmarked or submitted online to the Settlement Administrator to be 20 considered timely. The Claims Deadline shall be stated in the Class Notice, the Settlement Website, and in the Claim Form, and shall be 30 days after the date 21 22 first set by the Court for the Final Approval Hearing.

23 "Claims Protocol" means the protocol for reviewing and 10. 24 approving claims, attached as Exhibit 7.

25 11. "Class Notice" or "Notice" means the forms of notice to be 26 disseminated to Settlement Class Members informing them about the settlement 27 Agreement. Copies of each of the proposed Notices are attached as Exhibits 3, 4 28 and 8.

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12. "Class Representative" means plaintiff Andrew Dremak.

13. "Class Counsel" means Timothy G. Blood of Blood Hurst &O'Reardon, LLP, and Elaine Ryan of Bonnett, Fairbourn, Friedman, & Balint,P.C.

14. "Consolidated Complaint Plaintiffs" means the named plaintiffs in the Second Amended Consolidated Class Action Complaint: Nicholas Atelevich, Sara Sue Carreon, Jerome Davis, Andrew Dremak, Herman Ferrer, Marcos A. Flores, Rhonda M. Hawkins, Alejandro Jimenez, Robert Manley, Raymond Ortiz II, Enjoli Pennier, Joseph Pickett, Melissa Reed, Tonya Rhoden, Byran J. Ronan, Randall Scott Shortridge, Nicholas Torres, Courtney Walker, Traczjubruthais Walquer, and Connie L. Williams, each of whom has agreed to the terms of this Agreement.

15. "Court" means the United States District Court for the Southern District of California, the Honorable Barry T. Moskowitz presiding.

15 16. "Current Eligible Claimant" means Settlement Class
Members who submitted Eligible Cash Claims or Eligible Product Claims in
response to the notice informing them of the settlement memorialized in the
Stipulation of Settlement filed in this Action on November 2, 2012 (Dkt. 188 in
Case No. 3:09-cv-01088) as modified by the Amended Stipulation of Settlement
filed in this action on August 1, 2013 (Dkt. 238 in Case No. 3:09-cv-01088).

21 17. "Defendant" or "Iovate" means Iovate Health Sciences
22 International Inc., Iovate Health Sciences U.S.A. Inc., and Kerr Investment
23 Holding Corp.

18. "Effective Date" means either: (a) the date of entry of the
Final Judgment and Order Approving Settlement, if no timely motions for
reconsideration and/or no appeals or other efforts to obtain review have been
filed; or (b) in the event that an appeal or other effort to obtain review has been
initiated, the date after such appeal or other review has been finally concluded
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and is no longer subject to review, whether by appeal, petitions for rehearing,
 petitions for rehearing en banc, petitions for writ of certiorari, or otherwise.

3 19. "Eligible Cash Claims" means the aggregate amount of
4 eligible claims submitted by Authorized Claimants against the Cash Component.

20. "Eligible Product Claims" means the aggregate amount of eligible claims submitted by Authorized Claimants against the Product Component.

8 21. "Escrow Agent" means the escrow agent agreed upon by the
9 parties and approved by the Court to hold funds pursuant to the terms of this
10 Agreement.

22. "Final Approval Hearing" means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement.

14 23. "Final Judgment and Order Approving Settlement" means,
15 collectively, the Judgment and Final Order Approving Settlement to be entered
16 by the Court approving the settlement, as fair, adequate, and reasonable,
17 confirming the certification of the Settlement Class, and issuing such other
18 findings and determinations as the Court and/or the Parties deem necessary and
19 appropriate to implement the Settlement Agreement. The Order Approving
20 Settlement shall be substantially in the form of Exhibit 1.

"Hydroxycut Products" means the fourteen Hydroxycut-21 24. 22 branded products at issue in this litigation sold in the United States prior to May 23 Specifically, "Hydroxycut Products" means: Hydroxycut Regular 1. 2009. 24 Rapid Release Caplets; Hydroxycut Caffeine-Free Rapid Release Caplets; 25 Hydroxycut Hardcore Liquid Caplets; Hydroxycut Max Liquid Caplets; 26 Hydroxycut Regular Drink Packets; Hydroxycut Caffeine-Free Drink Packets; 27 Hydroxycut Hardcore Drink Packets (Ignition Stix); Hydroxycut Max Drink Packets; Hydroxycut Liquid Shots; Hydroxycut Hardcore RTDs (Ready-to-28 Case No. 3:09-MD-02087-BTM(KSC) 8 Case No. 3:09-CV-01088-BTM(KSC)

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Drink); Hydroxycut Max Aqua Shed; Hydroxycut 24; Hydroxycut Carb Control;
 and Hydroxycut Natural. This definition expressly excludes Hydroxycut branded products containing ephedra, and Hydroxycut-branded products
 available for purchase prior to December 1, 2004 or after May 1, 2009.

5 25. "MDL Class Actions" means the following actions, which 6 were filed as class actions and transferred by the Panel on Multidistrict Litigation 7 to the Court: David Chancellor v. Iovate Health Sciences, U.S.A., Inc., et al., No. 8 2:09-438 (M.D. Ala.); Amy Baker v. MuscleTech Research and Development, 9 Inc., et al., No. 2:09-872 (N.D. Ala.); Kyle Davis, et al. v. Iovate Health 10 Sciences, U.S.A., Inc., et al., No. 2:09-896 (N.D. Ala.); Christopher Lopez, et al. 11 v. Iovate Health Sciences, Inc., et al., No. 2:09-1473 (E.D Cal.); Robert Manley, 12 et al. v. Iovate Health Sciences, Inc., et al., No. 3:09-2517 (N.D. Cal.); Cody 13 Coleman, et al. v. Iovate Health Sciences, U.S.A., Inc., et al., No. 3:09-988 (S.D. 14 Cal.); Connie L. Williams v. Iovate Health Sciences, Inc., et al., No. 3:09-1020 15 (S.D. Cal.); Andrew Dremak v. Iovate Health Sciences Group, Inc., No. 3:09-16 1088 (S.D. Cal.); Patricia Major, et al. v. Iovate Health Sciences, Inc., et al., No. 17 1:09-21501 (S.D. Fla.); Enjoli Pennier v. Iovate Health Sciences, U.S.A., Inc., et 18 al., No. 2:09-3533 (E.D. La.); James Faherty v. Iovate Health Sciences, U.S.A., 19 Inc., et al., No. 1:09-10732 (D. Mass.); Clifford Kafka v. Iovate Health Sciences, 20 Inc., et al., No. 2:09-2163 (D.N.J.); Raymond Ortiz, II, et al. v. Iovate Health 21 Sciences, U.S.A., Inc., et al., No. 2:09-2424 (D.N.J.); Patricia Akins, et al. v. 22 Iovate Health Sciences, U.S.A., Inc., et al., No. 3:09-450 (M.D. Tenn.); Sarah 23 Kwon v. Iovate Health Sciences USA, Inc., et al., No 3:09-02522 (C.D. Cal.); 24 Vincent Tornambe v. Iovate Health Sciences USA, Inc., et al., No. 09-1620 (S.D. 25 Cal.); Hawkins v. Iovate Health Sciences, Inc., No. 3:09-02474 (S.D. W. Va.); 26 Gunn v. Iovate Health Sciences Group, Inc., et al., No. 3:09-2337 (S.D. Cal.); 27 Michael Williams, et al. v. Iovate Health Sciences, U.S.A., Inc., et al., No. 8:10-28 cv-246 (C.D. Cal.); Jerome Davis, et al. v. Iovate Health Sciences USA, Inc., et Case No. 3:09-MD-02087-BTM(KSC) 9 Case No. 3:09-CV-01088-BTM(KSC)

al., No. 1:10-2017 (N.D. III.); Bryan J. Ronan v. Iovate Health Sciences U.S.A., 1 2 *Inc., et al.*, No. 2:09-cv-5523 (D.N.J.).

3 "Motion for Preliminary Approval of Settlement" means the 26. 4 motion, to be filed jointly by the Parties, for Preliminary Approval of this 5 Agreement.

"Net Settlement Fund" means the amount from the Cash 6 27. Component needed to pay Notice and Claim Administration Expenses, taxes and 8 tax expenses, and Eligible Cash Claims.

"Notice and Claim Administration Expenses" means all costs 28. and expenses incurred by the Settlement Administrator, including all notice expenses, the cost of administering the Notice Program and the costs of processing all Claims made by Settlement Class Members.

"Notice Date" means the date by which the Settlement 13 29. 14 Administrator completes dissemination of the Class Notice as provided in the 15 Agreement and shall be substantially accomplished no later than 60 days before the date first set for the Final Approval Hearing. 16

17 30. "Objection Date" means the date by which Settlement Class Members must file and serve objections to the settlement and shall be no later 18 19 than thirty (30) days before the date first set for the Final Approval Hearing.

"Opt Out Date" means the postmark date by which a Request 20 31. 21 for Exclusion must be submitted to the Settlement Administrator in order for a 22 Settlement Class Member to be excluded from the Settlement Class, and shall be 23 no later than thirty (30) days before the date first set for the Final Approval 24 Hearing. Those Settlement Class Members who previously filed a valid Request 25 for Exclusion to the settlement memorialized in the Stipulation of Settlement filed in this Action on November 2, 2012 (Dkt. 188 in Case No. 3:09-cv-01088) 26 27 as modified by the Amended Stipulation of Settlement filed in this action on August 1, 2013 (Dkt. 238 in Case No. 3:09-cv-01088), shall be sent Class Notice 28 Case No. 3:09-MD-02087-BTM(KSC) 10

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by U.S. mail to the address provided on their Request for Exclusion providing
 them opportunity to take any and all action with respect to this Settlement.

3 32. "Other Class Plaintiffs" means those persons, other than the
4 Plaintiff and Consolidated Complaint Plaintiffs, who were named as a plaintiff in
5 the MDL Class Actions.

33. "Parties" means plaintiff Andrew Dremak and defendantsIovate Health Sciences Inc., Iovate Health Sciences U.S.A., Inc., and KerrInvestment Holding Corp.

34. "Personal Injury Claimants" means those persons who have lawsuits pending in federal or state courts as of September 1, 2012, or who have executed tolling agreements as of September 1, 2012, where the plaintiff or individual who executed the tolling agreement alleges personal injury resulting from the ingestion of one or more Hydroxycut Products.

35. "Plaintiff" means Andrew Dremak, signatory to this Agreement.

"Plaintiffs' Counsel" means the following counsel of record: 16 36. 17 Blood Hurst & O'Reardon, LLP; Bonnett, Fairbourn, Friedman, & Balint, P.C.; Lite Depalma Greenberg, LLC; The Wright Law Office, P.A.; Wood Law Firm 18 19 LLC; Greg Davis, LLC; Milberg LLP; Wilner Hartley & Metcalf, P.A.; Whatley 20 Drake & Kallas, LLC; D'Angelo & Hashem, LLC; Hewell Law Firm; The Law Office of Howard W. Rubinstein; Law Offices of Gregory P. DiLeo; Berniard 21 22 Law Firm, LLC; Madro Bandaries, PLC; Brandner Law Firm, LLC; Aylstock 23 Witkin Kreis & Overholtz, PLLC; Joseph G. Stewart, Jr., PC; Baum Hedlund 24 Aristei & Goldman PC; Stonebarger Law, APC; Patterson Law Group; Aylstock Witkin Kreis & Overholtz, PLLC; Harke & Clasby; Carella, Byrne, Cecchi, 25 Olstein, Brody & Agnello, PC; Scott & Scott LLP; The Bell Law Firm, PLLC; 26 27 Initiative Legal Group APC; The Law Offices of Woods & Woods; Law Offices 28 of Alexander M. Shack; Jonathan Nachsin, P.C.

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"Preliminary Approval Order" means the order to be entered 37. by the Court, substantially in the form of Exhibit 5, conditionally certifying the Settlement Class, preliminarily approving the Settlement, setting the date of the Final Approval Hearing, appointing Class Counsel, approving the Notice Program, Class Notice, and Claim Form, and setting the Opt Out Date, Objection Date, and Notice Date.

"Product Unit" means a unit of an Iovate product that an 38. 9 Authorized Claimant may select as an Award. The contents of Product Units 10 shall be approved by the Court, listed on the Settlement Website and in the Class Notice, and shall consist of products that are being sold at retail in the United 12 States at the time the Product Units are distributed to Authorized Claimants and from production lots that are otherwise suitable for retail distribution.

14 39. "Product Unit Shipping Expenses" means the actual amount 15 paid to a common carrier to ship the Product Units to Authorized Claimants who 16 select Product Units as an Award.

17 40. "Product Component" means the \$7 million component of the Settlement Fund used to pay Eligible Product Claims. 18

"Proof of Purchase" means documentation or other written 19 41. 20 evidence reasonably establishing the purchase of a Hydroxycut Product.

"Released Claims" and "Released Parties" means those 21 42. claims and parties released from liability under Section IX. 22

23 "Request for Exclusion" means the written communication 43. 24 that must be submitted to the Settlement Administrator and postmarked on or before the Opt Out Date by a Settlement Class Member who wishes to be 25 26 excluded from the Settlement Class.

27 "Residual Settlement Amount" means the funds remaining in 44. the Cash Component after payment of Notice and Claims Administration 28 12

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Expenses, Attorneys' Fees and Expenses, taxes and tax expenses, service awards
 to Plaintiff, Consolidated Complaint Plaintiffs, or Other Class Plaintiffs, and
 Eligible Cash Claims.

4 45. "Retailers" means the retailers of Hydroxycut Products
5 named as defendants in this Action: GNC Corporation, Wal-Mart Stores, Inc.,
6 Walgreens Company, CVS Caremark Corp., Vitamin Shoppe Industries, Inc.,
7 NBTY, Inc., BJ's Wholesale Club, Inc., Kmart Corporation, and Rite Aid
8 Corporation.

9 46. "Settlement Administrator" means the entity(ies) retained by
10 the Parties and approved by the Court to design and implement the program for
11 disseminating Notice to the Class, administer the claims portion of this
12 settlement, and perform overall administrative functions.

47. "Settlement Class" and "Settlement Class Member(s)" each
means those persons who purchased in the United States any of the Hydroxycut
Products between May 9, 2006 and May 1, 2009, inclusive. Excluded from the
Settlement Class are: (i) those who purchased Hydroxycut Products for the
purpose of resale; (ii) Iovate and its officers, directors, and employees; (iii) any
person who files a valid and timely Request for Exclusion; and (iv) the Judge(s)
to whom this Action is assigned and any members of their immediate families.

48. "Settlement Fund" means the amount of \$14 million and
comprised of the Cash Component and the Product Component.

49. "Settlement Website" means the Internet website to be
established for this settlement by the Settlement Administrator to provide
information to the public and the Settlement Class about this Agreement and to
permit Settlement Class Members to submit Claims online.

B. Other capitalized terms used in this Agreement but not defined in
Section II.A. shall have the meanings ascribed to them elsewhere in this
Agreement.

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III. CERTIFICATION OF THE SETTLEMENT CLASS AND FILING OF THE AMENDED COMPLAINT

A. Certification of the Settlement Class

1. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation by Plaintiff or Consolidated Complaint Plaintiffs, or of any defense asserted by Iovate, in the Action; or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Settlement Class Member, or their respective counsel.

2. As part of the Motion for Preliminary Approval of Settlement, Plaintiff will seek certification of the Settlement Class. Iovate hereby consents, solely for purposes of the Agreement, to the certification of the Settlement Class, to the appointment of Class Counsel, and to the approval of Plaintiff as a suitable representative of the Settlement Class; provided, however, that if the Court fails to approve this Agreement or the Agreement otherwise fails to be consummated, then Iovate shall retain all rights it had immediately preceding the execution of this Agreement to object to the maintenance of the Action as a class action.

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B. Filing of Amended Complaint

The Consolidated Complaint Plaintiffs shall file a Third Amended 21 Consolidated Class Action Complaint ("Third Amended Complaint"). The Third 22 Amended Complaint will be substantially in the form of the Second Amended 23 Consolidated Class Action Complaint with the exception that it will contain a 24 new class definition to conform to this Agreement and will not name as 25 defendants Paul Gardiner or The Toronto Oak Trust f/k/a Paul Gardiner Family 26 Trust. These two defendants shall be dismissed with prejudice after entering into 27 a tolling agreement that permits them to be renamed in subject lawsuits in the 28

event of nonperformance under this Agreement.

IV. SETTLEMENT RELIEF

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A. Current Eligible Claimants

4 1. Current Eligible Claimants shall be provided direct Notice of
5 the Settlement as set forth in Section VII.B.2 below.

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2. The Current Eligible Claimant's previously submitted, authorized Eligible Cash Claim or Eligible Product Claim shall be deemed submitted for purposes of this Settlement. For example, if a Current Eligible Claimant previously submitted an Eligible Cash Claim for up to three units of Hydroxycut Product, and that person does not affirmatively state that he or she does not want to participate in this Settlement, that person will automatically receive payment, as set forth in Section IV.B.2 below. Furthermore, Current Eligible Claimants will be provided the opportunity to submit claims relating to any eligible purchases of Hydroxycut Product that were not identified on a previous claim form. For example, a Current Eligible Claimant who previously submitted an Eligible Cash Claim for one unit of Hydroxycut Product may submit a new claim for up to three units of Hydroxycut Product without Proof of Purchase.

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B. Cash Payments or Product Units

For each unit of Hydroxycut Product purchased, Settlement
 Class Members may choose to receive either a cash payment or a Product Unit.
 To receive the cash payment or the Product Unit (or both types of awards if more
 than three units of Hydroxycut Product was purchased by the Settlement Class
 Member), the Settlement Class Member must timely submit a Claim Form.

25 2. Cash Payment: Settlement Class Members may receive cash
 26 payments for Hydroxycut Product of \$15 per unit, subject to the potential
 27 Settlement Class Member Cash Award Increases as set forth in Section IV.C.3.b.
 28 below. Authorized Claimants requesting a cash payment for up to three units of
 15 Case No. 3:09-MD-02087-BTM(KSC)
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1 Hydroxycut Product will automatically be paid without Proof of Purchase. A 2 request for a cash payment for more than three units of Hydroxycut Product 3 requires Proof of Purchase from the Settlement Class Member.

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3. Product Units: For each unit of Hydroxycut Product purchased, Settlement Class Members may instead elect to receive a Product Unit. Each Product Unit shall have an aggregate retail price of not less than \$25. Authorized Claimants requesting an award of up to three Product Units will automatically be provided with the Product Unit without Proof of Purchase. A request for more than three Product Units requires Proof of Purchase from the Settlement Class Member.

4. The Product Units shall be drawn from Iovate's product line of nutrition and fitness supplements available for retail purchase at the time of settlement implementation and agreeable to Class Counsel, whose agreement will not be unreasonably withheld. A description of the Product Units that identifies the specific products, including the amount of each product, will be approved by the Court and included in the Notice and on the Settlement Website. The value of the Product Units will be calculated based on the manufacturer's ordinary suggested retail price for those products. Iovate will mail the Iovate Product Units directly to the Authorized Claimants without cost to Authorized Claimants.

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C. **Disbursements from the Settlement Fund**

22 1. In accordance with the payment schedule set forth in Section 23 IV.D. below, money from the \$7 million Cash Component shall be applied first 24 to pay Notice and Claim Administration Expenses; next, to pay any necessary 25 taxes and tax expenses; next, to pay Attorneys' Fees and Expenses; next, to pay 26 service awards to Plaintiff, Consolidated Complaint Plaintiffs, or Other Class 27 Plaintiffs; and then to pay Eligible Cash Claims.

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1 Claim Administration Expenses, taxes and tax expenses, Attorneys' Fees and 2 Expenses, service awards to Plaintiff, Consolidated Complaint Plaintiffs and 3 Other Class Plaintiffs, and Eligible Cash Claims is the "Net Settlement Fund." 4 3. Adjustments and Remaining Funds 5 If the aggregate Eligible Cash Claims exceed the Net a. 6 Settlement Fund, Eligible Cash Claims will be reduced pro rata. 7 b. Settlement Class Member Cash Award Increases: If the 8 total of the Eligible Cash Claims submitted is less than the Net Settlement Fund, 9 each eligible Settlement Class Member's Eligible Cash Claim award shall be 10 increased on a *pro rata* basis up to \$50 for each eligible unit claimed. 11 4. For each Product Unit delivered to an Authorized Claimant. 12 the Product Component will be reduced by \$25 plus the Product Unit Shipping 13 Expenses. If the aggregate Eligible Product Claims exceed the amount available 14 in the Product Component, Iovate shall supplement the Product Component as 15 necessary to satisfy all Eligible Product Claims. 16 5. Cash Component – Remaining Funds 17 In accordance with the *cy pres* doctrine, any amount a. 18 remaining in the Net Settlement Fund after payment of Eligible Cash Claims 19 shall, subject to Court approval, be paid to ChangeLab Solutions or some other 20 similar organization as the Court determines, pursuant to the *cy pres* doctrine. 21 6. Product Component – Remaining Funds 22 Any amounts remaining in the Product Component a. 23 after payment of Eligible Product Claims, and Product Unit Shipping Expenses 24 shall be provided by Iovate to the general public pursuant to the *cy pres* doctrine 25 in the form of Additional Product. 26 b. Additional Product shall be Pro Clinical Hydroxycut, 27 or such other products that are top-selling throughout the United States that 28 reasonable and customary market research has shown are purchased by those Case No. 3:09-MD-02087-BTM(KSC) 17 Case No. 3:09-CV-01088-BTM(KSC) STIPULATION OF SETTLEMENT

who purchased Hydroxycut weight loss products such as the Hydroxycut
Products. Additional Product shall be distributed nationwide in approximately
the same proportion to the distribution of the sale of Hydroxycut Products in the
United States and shall consist of different ingredient formulations as compared
to the Hydroxycut Products.

c. To maximize the value of the Additional Product, for purposes of calculating the amount of Additional Product to be distributed the value of Additional Product shall be calculated at the manufacturers' suggested retail price of the regular size Hydroxycut-branded product, less 15%. For example, if the manufacturers' suggested retail price for the Additional Product is \$10, Iovate shall be given credit for distributing \$8.50 worth of Additional Product.

13 d. The product containing Additional Product will be 14 offered at the retail price at which that product is ordinarily offered, including 15 discounts, sales, "Bonus size" amounts, "buy 2 get 1 free" promotions and any other promotions, without increase for the addition of Additional Product. 16 17 Further, the Additional Product will not replace or be in lieu of any promotion, additional product or discounting occasionally offered by Iovate. Distribution of 18 19 Additional Product shall be on a timeline that is commercially practicable in light 20 of packaging and distribution constraints. Defendants must receive the agreement of Class Counsel or an order from the Court to distribute Additional 21 22 Product over a time period greater than 18 months.

e. Within 60 days of the Effective Date, Iovate shall
provide Class Counsel with a distribution plan, which shall contain at least the
following information:

26	i. The types of products to which Additional Product will
27	be added, including unit size, categorized by volume of
28	product and unit size of each product;
	18 Case No. 3:09-MD-02087-BTM(KSC)

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1	ii. The expected distribution of products containing
2	Additional Product;
3	iii. The amount of Additional Product to be added to each
4	product and unit size; and
5	iv. The expected time of distribution of product containing
6	Additional Product.
7	f. On the first business day of every other month until the
8	Additional Product is fully and finally distributed, Iovate shall provide Class
9	Counsel with a bimonthly distribution report detailing the distribution of
10	Additional Product showing:
11	i. The amount and distribution area of Additional
12	Product;
13	ii. The amount of product containing Additional Product
14	sold, less returns of such product;
15	iii. The retail value of product containing Additional
16	Product sold, less returns of such product; and
17	iv. The value of the Additional Product distributed, less
18	returns of such product, calculated pursuant to this
19	Agreement.
20	g. Additional Product shall be distributed pursuant to the
21	terms of this Agreement until all Additional Product required to be distributed
22	pursuant to this Agreement has been distributed.
23	h. Within 30 days of the completion of the distribution of
24	Additional Product, Iovate shall submit a declaration under penalty of perjury
25	detailing its compliance with the Additional Product distribution program in
26	accordance with the terms of this Agreement. The declaration shall include the
27	amount distributed in Additional Product and an affirmation that the Additional
28	Product distributed was in addition to any ordinary promotional, sales or 19 Case No. 3:09-MD-02087-BTM(KSC)
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marketing of the product containing the Additional Product, with ordinary 1 2 promotional, sales or marketing of the product containing the Additional Product 3 meaning promotional, sales or marketing conducted by Iovate for the product 4 containing Additional Product since January 1, 2008. In the event a good faith 5 dispute arises over the distribution of Additional Product, Class Counsel shall 6 meet and confer with counsel for Defendants and attempt to resolve the dispute. 7 If meet and confer efforts are unsuccessful, Class Counsel may request that the 8 Court order an audit of the Additional Product distribution to ensure compliance 9 in accordance with the terms of this Agreement. If the Court orders an audit of 10 the Additional Product distribution, the audit shall be paid for by Iovate.

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D. Schedule of Payments into the Settlement Fund

1. The Cash Component: Within 3 days of the entry of the Preliminary Approval Order, Iovate shall deposit seven million dollars (\$7,000,000) of the Cash Component into an interest-bearing escrow account held by the Escrow Agent, which amount shall be used to pay Notice and Claim Administration Expenses, Attorneys' Fees and Expenses, taxes and tax expenses, service awards to Plaintiff, Consolidated Complaint Plaintiffs, or Other Class Plaintiffs, and Eligible Cash Claims.

19 2. The Product Component: Iovate shall pay out the Product 20 Component in an amount not to exceed \$7 million, except as provided herein, in accordance with the following schedule: 21

22 After distribution of all Product Units to those who a. 23 submitted Eligible Product Claims, the Product Component shall be credited with 24 \$25 for each Product Unit so distributed and the total Product Unit Shipping 25 Expenses; and

26 b. The amount, if any, remaining between \$7 million and 27 the credits applied pursuant to Sections IV.D.2.a. above shall be provided by 28 Iovate to the general public in the form of Additional Product, commencing no Case No. 3:09-MD-02087-BTM(KSC) 20

later than 90 days after the completion of distribution of such amount to 1 2 Authorized Claimants with distribution completed within 12 months thereafter, 3 or as the parties may otherwise reasonably agree in light of manufacturing, 4 distribution and packaging constraints.

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V. CLAIM FORM SUBMISSION AND REVIEW

A. Settlement Class Members may submit a Claim for settlement relief and the Settlement Administrator shall review and process the Claim pursuant to the Claims Protocol, which is attached hereto as Exhibit 7.

Claim Forms will be distributed as part of the Notice Program as Β. described below, available for on-line submission from the Settlement Website, available for download from the Settlement Website, and upon request will be mailed or emailed to Settlement Class Members by the Settlement Administrator. The Claim Form will also be available for download, at their option, from Class Counsel's websites. In addition, the Claim Forms will be mailed directly to Current Eligible Claimants by the Settlement Administrator.

The Settlement Administrator shall provide periodic updates to the 16 C. 17 Class Counsel and Iovate regarding Claim Form submissions beginning not later than one week before the Final Approval Hearing date and continuing on a 18 19 monthly basis thereafter.

20 The Settlement Administrator shall begin to pay Authorized D. Claimants who elected a cash payment not before ten (10) days after the Claims Deadline, as long as this date is after the issuance of the Court's Final Judgment and Order Approving Settlement, which, at Iovate's discretion, can occur prior to the occurrence of the Effective Date. Not later than thirty (30) days after either 25 the occurrence of the Effective Date or the Claims Deadline, at Iovate's 26 discretion, the Settlement Administrator shall have completed the cash payments 27 to Authorized Claimants, provided, further however, that Iovate may, at its discretion, commence this payment period after final approval of the settlement 28 Case No. 3:09-MD-02087-BTM(KSC) 21

by the Court, but before the attainment of the Effective Date.

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E. In the event that Authorized Claimants select Iovate Product Units as an Award, Iovate shall fulfill those Awards and mail Iovate Product Units to Authorized Claimants. The Settlement Administrator shall provide a list to Iovate and Class Counsel identifying Authorized Claimants who selected an

6 Iovate Product Unit within ten (10) days of the Claims Deadline. The list will include the Authorized Claimants' mailing addresses and identify the Product 7 8 Units that they have selected. Iovate will calculate the actual amount paid for 9 mailing the Product Units ("Product Unit Shipping Expenses") and inform the 10 Settlement Administrator and Class Counsel of these itemized amounts. Not 11 later than thirty (30) days after either the occurrence of the Effective Date or the 12 Claims Deadline, at Iovate's discretion, Iovate shall have completed the product 13 distribution to Authorized Claimants, provided, further however, that Iovate may, 14 at its discretion, commence this distribution period before the attainment of the 15 Effective Date.

F. All Notice and Claim Administration Expenses, shall be paid from
the Cash Component of the Settlement Fund and not reimbursed to Iovate,
whether or not the Final Judgment and Order Approving Settlement is entered
and even if the Final Judgment and Order Approving Settlement is not upheld on
appeal.

21 **VI. RETENTION OF THE SETTLEMENT ADMINISTRATOR**

A. Class Counsel shall, subject to the approval of Iovate, retain a
Settlement Administrator to help implement the terms of the proposed
Agreement. All costs associated with the Settlement Administrator, including
costs of providing notice to the Settlement Class Members and processing
claims, shall be paid from the Cash Component of the Settlement Fund.

B. The Settlement Administrator(s) shall assist with various
administrative tasks, including, without limitation, (1) mailing or arranging for

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the mailing, emailing or other distribution of the Class Notice and Claim Forms 1 2 to Settlement Class Members, (2) arranging for publication of the Short-form 3 Notice, (3) handling returned mail and email not delivered to Settlement Class 4 Members, (4) attempting to obtain updated address information for Settlement 5 Class Members and for any notices returned without a forwarding address or an 6 expired forwarding address, (5) making any additional mailings required under 7 the terms of this Agreement, (6) answering written inquiries from Settlement 8 Class Members and/or forwarding such inquiries to Class Counsel or their 9 designee, (7) receiving and maintaining on behalf of the Court and the Parties 10 any Settlement Class Member correspondence regarding requests for exclusion 11 from the settlement, (8) establishing the Settlement Website that posts notices, 12 Claim Forms and other related documents, (9) establishing a toll-free telephone 13 number that will provide settlement-related information to Settlement Class 14 Members, (10) receiving and processing claims and distributing payments to 15 Settlement Class Members, and (11) otherwise assisting with administration of 16 the Stipulation.

C. The contract(s) with the Settlement Administrator(s) shall obligate
the Settlement Administrator to abide by the following performance standards:

The Settlement Administrator shall accurately and neutrally
 describe, and shall train and instruct its employees and agents to accurately and
 objectively describe, the provisions of this Agreement in communications with
 Settlement Class Members; and

23 2. The Settlement Administrator shall provide prompt, accurate
24 and objective responses to inquiries from Class Counsel or their designee, Iovate,
25 and/or Iovate's counsel.

26 **VII. NOTICE TO THE SETTLEMENT CLASS**

- 27 28
- A. Notice

 1.
 No later than 60 days after the entry by the Court of an order

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1 granting Preliminary Approval, the Settlement Administrator shall cause the 2 Class Notice to be disseminated to potential Settlement Class Members. The 3 Parties agree that notice by a combination of national publication and e-mail is 4 the best means under the circumstances of this case to provide notice to the 5 Settlement Class and that the Notice Program outlined in Exhibit 6 comports 6 with the requirements of due process. Notice shall be disseminated pursuant to 7 the Notice Program set forth in Exhibit 6 on or before the Notice Date and as set 8 forth in Section VII.C.5. below. Copies of the proposed forms of Class Notice 9 and the Notice Program are attached as Exhibits 3, 4 and 6.

At or prior to the Final Approval Hearing, the Settlement
 Administrator shall provide the Court with an affidavit attesting that Notice was
 disseminated pursuant to the Notice Program set forth below.

B. Notice Program

Long-form Notice: The Class Notice delivered to Settlement
 Class Members shall be in substantially the form of Exhibit 3, attached hereto.
 At a minimum, the Long-form Notice shall:

a. include a short, plain statement of the background of
the Action and the proposed Agreement;

b. describe the proposed settlement relief as set forth in
this Agreement;

c. inform Settlement Class Members that, if they do not
exclude themselves from the Settlement Class, they may be eligible to receive
relief;

d. describe the procedures for participating in the
settlement, including all applicable deadlines, and advise Settlement Class
Members of their rights, including their right to submit a Claim to receive an
Award under the Agreement by submitting the enclosed Claim Form;

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2 f. state that any Award to Settlement Class Members 3 under the Agreement is contingent on the Court's final approval of the 4 Agreement;

5 state the identity of Class Counsel and the amount g. 6 sought in attorneys' fees and expenses and plaintiff service awards;

7 h. explain the procedures for opting out of the Settlement 8 Class including the applicable deadline for opting out;

9 explain the procedures for objecting to the Agreement i. 10 including the applicable deadline; and

į. explain that any judgment or orders entered in the 12 Action, whether favorable or unfavorable to the Settlement Class shall include and be binding on all Settlement Class Members who have not been excluded, 14 even if they have objected to the proposed Agreement and even if they have 15 another claim, lawsuit, or proceeding pending against Iovate.

16 2. Current Eligible Claimant Notice: The Class Notice delivered 17 to Settlement Class Members who are Current Eligible Claimants shall be in 18 substantially the form of Exhibit 8, attached hereto. At a minimum, the Current 19 Eligible Claimant Notice shall contain the information listed in Section 20 VII.B.1.a.-j. above, and explain the process for Current Eligible Claimants to opt-out of the Settlement, opt-out of the previously selected award, or update the 21 22 previous claim through timely submission of a new Claim Form.

23 3. Short-form Notice: The Settlement Administrator shall cause 24 to be published in accordance with the terms set forth below, a short form of the 25 Class Notice. The Short-form Notice shall be in substantially the form attached 26 hereto as Exhibit 4 and shall at a minimum, include the web address of the 27 Settlement Website and a telephone number for the Settlement Administrator, the class definition, a brief description of relief available to the Settlement Class 28 Case No. 3:09-MD-02087-BTM(KSC) 25 Case No. 3:09-CV-01088-BTM(KSC)

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1 Members, and the right to object and/or opt-out of the Class and the deadlines to 2 exercise these rights.

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Dissemination of the Class Notice C.

1. Direct Notice to Current Eligible Claimants: No later than 30 days from entry of a preliminary approval order, the Settlement Administrator shall mail the Current Eligible Claimant Notice (including the Claim Form) to the Current Eligible Claimants at the address listed on their previously submitted claim form. The Settlement Administrator shall perform reasonable address updates for all Current Eligible Claimant Notices returned as undeliverable. No later than 35 days from the initial mailed notice, the Settlement Administrator shall complete the re-mailing of Current Eligible Notices to those Current Eligible Claimants whose new addresses were identified as of that time through address updating.

14 2. E-Mail Notice: The Settlement Administrator shall email the 15 Long-form Notice (including the Claim Form) to those Settlement Class Members who made complaints or directed inquiries about the safety and/or 16 17 efficacy of the Hydroxycut Products to Iovate, and for whom Iovate can provide 18 an e-mail address. The Settlement Administrator shall also email the Long-form 19 Notice (including the Claim Form) to identified Settlement Class Members to the 20 extent Iovate has electronic mail addresses. The Settlement Administrator shall 21 have no obligation to provide direct notice to claimants whose claims were 22 deemed ineligible following customary fraud review.

23 3. Publication Notice: The Short-form Notice shall be published 24 in accordance with the Notice Program set forth in Exhibit 6 no later than 60 25 days from an Order of Preliminary Approval. As set forth in Exhibit 6, 26 publication will include print and online media.

27 4. Posting of the Notice: No later than 10 days from an Order of Preliminary Approval, the Settlement Administrator will post the Long-form 28 26

1 Notice and Claim Form on the Settlement Website. The Long-form Notice and 2 Claim Form shall remain available by these means until the Effective Date. The 3 Long-form Notice and/or the Short-form Notice and the Claim Form may also be 4 posted on the websites of Class Counsel at their option.

5. Upon Request: The Class Notice and the Claim Form shall also be sent via electronic mail or regular mail to Settlement Class Members who so request.

6. Notice to Settlement Class Members with Claims For 9 Personal Injuries: The Settlement Administrator shall send via U.S. mail the 10 Long-form Notice (including the Claim Form) to all Class Members known to have claims for personal injuries. For those Class Members known to have 12 personal injuries who are represented by counsel, such notice shall be sent to their counsel.

VIII. OBJECTIONS AND REQUESTS FOR EXCLUSION

Objections A.

Any Settlement Class Member who intends to object to the 16 1. 17 fairness of the Settlement must do so in writing no later than the Objection Date. 18 The written objection must be filed with the Court and served on the Class 19 Counsel identified in the Notice and Iovate's counsel no later than the Objection 20 Date. The written objection must include: (a) a heading which refers to the 21 Action; (b) the objector's name, address, telephone number and, if represented by 22 counsel, the name, address, and telephone number of his/her counsel; (c) a 23 statement that the objector purchased Hydroxycut Products during the class 24 period; (d) a statement whether the objector intends to appear at the Final 25 Approval Hearing, either in person or through counsel; (e) a statement of the 26 objection and the grounds supporting the objection; (f) copies of any papers, 27 briefs, or other documents upon which the objection is based; and (g) the 28 objector's handwritten, dated signature (the signature of objector's counsel, an Case No. 3:09-MD-02087-BTM(KSC) 27

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electronic signature, and the annotation "/s" or similar annotation will not 1 2 suffice).

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2. Any Settlement Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including attorneys' fees. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must serve a notice of intention to appear on the Class Counsel identified in the Class Notice and to Iovate's counsel, and file the notice of appearance with the Court, no later than twenty (20) days before the Final Approval Hearing, or as the Court may otherwise direct.

3. Any Settlement Class Member who fails to comply with the provisions of Section VIII.A above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all of the terms of this Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release, in the Action.

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Requests for Exclusion B.

19 1. Any member of the Settlement Class may request to be 20 excluded from the Settlement Class. A Settlement Class Member who wishes to 21 opt out of the Settlement Class must do so no later than the Opt Out Date. In 22 order to opt out, a Settlement Class Member must send to the Settlement 23 Administrator a written Request for Exclusion that is post-marked no later than 24 the Opt Out Date. The Request for Exclusion must be personally signed by the 25 Settlement Class Member requesting exclusion and contain a statement that 26 indicates a desire to be excluded from the Settlement Class.

27 2. Any Settlement Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, 28

orders and the Final Judgment and Order Approving Settlement in this Action,
 even if he or she has pending, or subsequently initiates, litigation, arbitration, or
 any other proceeding against defendants relating to the Released Claims.

3. Any Settlement Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the Agreement; (b) be entitled to an Award from the Settlement Fund, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Agreement.

4. The Settlement Administrator shall provide Class Counsel and Iovate's counsel with a final list of all timely Requests For Exclusion within fifteen (15) business days after the Opt Out Date. Iovate shall file the final list of all timely Requests for Exclusion prior to or at the Final Approval Hearing.

IX. RELEASES

15 A. The Agreement shall be the sole and exclusive remedy for any and 16 all Released Claims of all Releasing Parties against all Released Parties. No 17 Released Party shall be subject to liability of any kind to any Releasing Party 18 with respect to any Released Claim. Upon the Effective Date, each and every 19 Releasing Party shall be permanently barred and enjoined from initiating, 20 asserting, and/or prosecuting any Released Claim against any Released Party in 21 any court or any forum. In the event of a material breach of this Agreement, the 22 release shall be null and void.

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BLOOD HURST & O'REARDON, LLP

B. The following terms have the meanings set forth herein:

1. "Released Claims" means any and all actions, claims,
demands, rights, suits, and causes of action of whatever kind or nature against
the Released Persons, including damages, costs, expenses, penalties, and
attorneys' fees, known or unknown, suspected or unsuspected, in law or equity
arising out of or relating to the claim that the Hydroxycut Product labeling,

advertising, and/or marketing was false, misleading, or deceptive, and which
have been asserted or which could reasonably have been asserted by the
Settlement Class in the Action. Notwithstanding the above, Released Claims
does not include claims for personal injury related to the use of Hydroxycut
Products.

2. "Released Party" means Paul Gardiner, the Toronto Oak Trust, Iovate and the Retailers, including all of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stock-holders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, subrogees, and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

3. "Releasing Party" means Plaintiff and each Settlement Class Member.

C. Upon the Effective Date each Releasing Party shall be deemed to
have released and forever discharged each Released Party of and from any and
all liability for any and all Released Claims.

19 D. With respect to any and all Released Claims, and upon the Effective 20 Date without further action, for good and valuable consideration, Plaintiff, on 21 behalf of himself and the Settlement Class and as the representative of the 22 Settlement Class, shall expressly, and Releasing Parties shall be deemed to, and 23 by operation of the Final Judgment and Order Approving Settlement shall, to the 24 fullest extent permitted by law, fully, finally, and forever expressly waive and 25 relinquish with respect to the Released Claims, any and all provisions, rights, and 26 benefits of Section 1542 of the California Civil Code and any and all similar 27 provisions, rights, and benefits conferred by any law of any state or territory of 28 the United States or principle of common law that is similar, comparable, or Case No. 3:09-MD-02087-BTM(KSC) 30

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STIPULATION OF SETTLEMENT

equivalent to Section 1542 of the California Civil Code, 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 must have materially affected his or her settlement with the debtor."

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E. Additional Mutual Releases

1. On the Effective Date, each of the Released Parties shall be deemed to have fully, finally, and forever released, relinquished and discharged the Releasing Parties from all claims of every nature and description, known and unknown, relating to the initiation, assertion, prosecution, non-prosecution, settlement, and/or resolution of the Action or the Released Claims.

2. On the Effective Date, each of the Releasing Parties shall be deemed to have fully, finally, and forever released, relinquished and discharged the Released Parties from all claims of every nature and description, including unknown claims, relating to the defense, settlement, and/or resolution of the Action or the Released Claims.

3. Except as to the rights and obligations provided for under this Agreement, Iovate and its attorneys and all of their respective past, present, and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, including their respective past, present, and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, hereby release and forever discharge Dremak, Class Counsel, the Consolidated Complaint Plaintiffs and their counsel of record, and the Other Class Plaintiffs and their counsel of record from any and all charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, which Iovate may now have, own or hold or which Iovate at any time may have, own, or hold, against Dremak, Class Counsel, the Consolidated Complaint Plaintiffs and their counsel
of record, and the Other Class Plaintiffs and their counsel of record by reason of
any matter, cause or thing whatsoever occurred, done, omitted, or suffered from
the beginning of time to the date of this Agreement.

F. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties and the Settlement Class Members to interpret and enforce the terms, conditions, and obligations under the Agreement.

X. ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF SERVICE AWARDS

A. Class Counsel shall make, and Iovate agrees not to oppose, an application for an award of attorneys' fees not to exceed 25% of the Settlement Fund and for an award of out-of-pocket expenses not to exceed three hundred thousand dollars (\$300,000). The award of Attorneys' Fees and Expenses will be paid out of the Settlement Fund as set forth in Section IV.C.1. above. The application for an award of attorneys' fees and expenses will be made by Class Counsel on behalf of themselves and the other Plaintiffs' Counsel. Class Counsel shall be responsible for distributing and allocating the attorneys' fees and expense award to Plaintiffs' Counsel in their sole discretion.

B. Within three (3) business days of the entry of the Final Judgment
and Order Approving Settlement, Iovate shall deposit the attorneys' fees and
expenses awarded by the Court into an escrow account held by the Escrow
Agent. The Escrow Agent shall release the attorney's fees and expenses to Class
Counsel one (1) business day after the Effective Date. In the event the Court
awards attorneys' fees in an amount lower than requested by Class Counsel, the
amount remaining shall be added to the Settlement Fund.

C. Iovate agrees not to oppose an application for plaintiff service
awards in the amount of three thousand dollars (\$2,000) to each of the
Consolidated Complaint Plaintiffs and the Other Class Plaintiffs, to be paid from

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the Settlement Fund. The service awards to these plaintiffs will be in addition to
 the other consideration to the Settlement Class Members as set forth in Section
 IV above.

D. Iovate will pay the service awards approved by the Court up to the amount identified above in addition to the benefits that these plaintiffs are entitled to receive as Settlement Class Members and Authorized Claimants. Iovate will pay the service awards within ten (10) days of the Effective Date.

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XI. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for the purposes of this settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Final Judgment and Order Approving Settlement shall be in substantially the form attached hereto as Exhibit 1.

XII. REPRESENTATIONS AND WARRANTIES

18 Iovate represents and warrants: (1) that it has the requisite corporate A. 19 power and authority to execute, deliver, and perform the Agreement and to 20 consummate the transactions contemplated hereby; (2) that the execution, 21 delivery and performance of the Agreement and the consummation by it of the 22 actions contemplated herein have been duly authorized by necessary corporate 23 action on the part of Iovate; and (3) that the Agreement has been duly and validly 24 executed and delivered by Iovate and constitutes its legal, valid and binding 25 obligation.

B. Plaintiff represents and warrants that he is entering into the
Agreement on behalf of himself individually and as a proposed representative of
the Settlement Class Members, of his own free will and without the receipt of

STIPULATION OF SETTLEMENT

any consideration other than what is provided in the Agreement or disclosed to, 2 and authorized by, the Court. Plaintiff represents and warrants that he has 3 reviewed the terms of the Agreement in consultation with Class Counsel and 4 believes them to be fair and reasonable, and covenants that he will not file a Request for Exclusion from the Settlement Class or object to the Agreement. 6 Class Counsel represent and warrant that they are fully authorized to execute the Agreement on behalf of Plaintiff.

8 C. The Parties warrant and represent that no promise, inducement or 9 consideration for the Agreement has been made, except those set forth herein.

XIII. NO ADMISSIONS, NO USE

The Agreement and every stipulation and term contained in it is 11 12 conditioned upon final approval of the Court and is made for settlement purposes 13 only. Whether or not consummated, this Agreement shall not be: (a) construed 14 as, offered in evidence as, received in evidence as, and/or deemed to be, evidence 15 of a presumption, concession or an admission by Plaintiff, Iovate, any Settlement 16 Class Member or Releasing or Released Party, of the truth of any fact alleged or 17 the validity of any claim or defense that has been, could have been, or in the 18 future might be asserted in any litigation or the deficiency of any claim or 19 defense that has been, could have been, or in the future might be asserted in any 20 litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or (b) 21 construed as, offered in evidence as, received in evidence as, and/or deemed to 22 be, evidence of a presumption, concession or an admission of any liability, fault 23 or wrongdoing, or in any way referred to for any other reason, by Plaintiff, 24 Iovate, any Releasing Party or Released Party in the Action or in any other civil, 25 criminal or administrative action or proceeding other than such proceedings as 26 may be necessary to effect uate the provisions of the Agreement.

27 **XIV. TERMINATION OF THIS AGREEMENT**

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STIPULATION OF SETTLEMENT

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Any Party may terminate this Agreement by providing written

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notice to the other Parties hereto within ten (10) days of any of the following
events:

3 1. The Court does not enter an order granting Preliminary
4 Approval that conforms in material respects to Exhibit 5 hereof; or

2. The Court does not enter a Final Judgment and Order Approving Settlement conforming in material respects to Exhibit 1, or if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court.

9 Β. In the event that this Agreement terminates for any reason, all 10 Parties shall be restored to their respective positions as of immediately prior to 11 the date of execution of this Agreement. Upon termination, Sections III.A., XIII, 12 and XV.E. herein shall survive and be binding on the Parties, but this Agreement 13 shall otherwise be null and void. In that event, within five (5) business days after 14 written notification of such event is sent by Iovate's counsel or Class Counsel to 15 the Escrow Agent, the Settlement Fund (including accrued interest), less 16 expenses and any costs which have been disbursed or are determined to be 17 chargeable as Notice and Claims Administration Expenses, shall be refunded by 18 the Escrow Agent to Iovate's counsel. In such event, Iovate shall be entitled to 19 any tax refund owing to the Settlement Fund. At the request of Iovate, the 20 Escrow Agent or its designee shall apply for any such refund and pay the 21 proceeds, after deduction of any fees or expenses incurred in connection with 22 such application(s) for a refund, to Iovate. In no event will Iovate be entitled to 23 recover any funds spent for Notice and Claims Administration Expenses prior to 24 termination of this Agreement.

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XV. MISCELLANEOUS PROVISIONS

A. Entire Agreement: The Agreement, including all Exhibits hereto,
shall constitute the entire Agreement among the Parties with regard to the
Agreement and shall supersede any previous agreements, representations,

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communications and understandings among the Parties with respect to the
subject matter of the Agreement. The Agreement may not be changed, modified,
or amended except in a writing signed by one of Class Counsel and one of
Iovate's counsel and, if required, approved by the Court. The Parties
contemplate that the Exhibits to the Agreement may be modified by subsequent
agreement of Iovate and Class Counsel, or by the Court.

B. Governing Law: The Agreement shall be construed under and governed by the laws of the State of California, applied without regard to laws applicable to choice of law.

C. Execution in Counterparts: The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail shall be treated as original signatures and shall be binding.

D. Notices: Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class US Mail and email to:

1. If to Plaintiff or Class Counsel:
Timothy G. Blood BLOOD HURST & O'REARDON, LLP 701 B Street, Suite 1700 San Diego, California 92101 Tel: 619-338-1100 tblood@bholaw.com
2. If to Iovate or Iovate's counsel:
Arturo J. Gonzalez William F. Tarantino MORRISON & FOERSTER LLP 425 Market Street San Francisco, California 94105-2482 Tel: 415-268-7000
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STIPULATION OF SETTLEMENT

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wtarantino@mofo.com

E. Publicity: To the extent Iovate or Plaintiff make any public statements regarding the settlement of this Action, any such statements shall be limited to what is available in the public record. Notwithstanding the foregoing, Iovate may make such disclosures regarding the terms of this Agreement as necessary to its auditors or as otherwise required by state or federal law.

F. Stay of Proceedings: Upon the execution of this Agreement, all discovery and other proceedings in the Action shall be stayed until further order of the Court, except for proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Settlement Agreement.

G. Good Faith: The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

H. Protective Orders: All orders, agreements and designations 17 regarding the confidentiality of documents and information ("Protective Orders") 18 remain in effect, and all Parties and counsel remain bound to comply with the 19 Protective Orders, including the provisions to certify the destruction of 20 "Confidential" documents. Notwithstanding such provision in the Protective 21 Order, Iovate's counsel and Class Counsel may retain copies of all deposition 22 transcripts and exhibits and all documents submitted to the Court, but those 23 documents must be kept confidential to the extent they were designated as 24 "Confidential," and will continue to be subject to the Protective Order. 25

I. Binding on Successors: The Agreement shall be binding upon, and
 inure to the benefit of, the heirs, and Released Parties.

J. Arms-Length Negotiations: The determination of the terms and

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conditions contained herein and the drafting of the provisions of this Agreement 2 has been by mutual understanding after negotiation, with consideration by, and 3 participation of, the Parties hereto and their counsel. This Agreement shall not 4 be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities 6 are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this 8 Agreement has been a mutual undertaking.

9 Waiver: The waiver by one Party of any provision or breach of the Κ. 10 Agreement shall not be deemed a waiver of any other provision or breach of the 11 Agreement.

Variance: In the event of any variance between the terms of this L. Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

M. Exhibits: All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

No opinion concerning the tax consequences of the 17 N. Taxes: 18 Agreement to any Settlement Class Member is given or will be given by Iovate, 19 Iovate's counsel, Class Counsel, or Plaintiffs' Counsel; nor is any Party or their 20 counsel providing any representation or guarantee respecting the tax 21 consequences of the Agreement as to any Settlement Class Member. Each 22 Settlement Class Member is responsible for his/her tax reporting and other 23 obligations respecting the Agreement, if any.

24 О. Implementation Before Effective Date: The Parties may agree in 25 writing to implement the Agreement or any portion thereof after the entry of the 26 Final Judgment and Order Approving Settlement, but prior to the Effective Date. 27 This provision shall not limit Iovate's discretionary right to pay claims prior to the Effective Date, as set forth in Sections V.D. and V.E. 28

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P. 1 Modification in Writing: This Agreement may be amended or 2 modified only by written instrument signed by one of Class Counsel and one of 3 Iovate's counsel. Amendments and modifications may be made without 4 additional notice to the Settlement Class Members unless such notice is required 5 by the Court.

Q. Integration: This Agreement represents the entire understanding and agreement among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings related to the subject matter of this The Parties acknowledge, stipulate and agree that no covenant, Agreement. obligation, condition, representation, warranty, inducement, negotiation or undertaking concerning any part or all of the subject matter of this Agreement has been made or relied upon except as set forth expressly herein.

R. Retain Jurisdiction: The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Agreement embodied in this Agreement.

17 IN WITNESS WHEREOF, each of the Parties hereto has caused the S. 18 Agreement to be executed on its behalf by its duly authorized counsel of record, 19 all as of the day set forth below.

20	Dated: April 16, 2014	MORRISON & FOERST WILLIAM F. TARANTI		
21		Rin D. A		
22		By:		
23		WILLIAM F. TA	ARANTINO	
24		425 Market Street San Francisco, CA 94105	5-7487	
25		San Francisco, CA 94105 Telephone: (415) 268-700 wtarantino@mofo.com	00	
26		\bigcirc		
27		<i>Attorneys for Defendants</i> IOVATE HEALTH SCIE IOVATE HEALTH SCIE	NCES INC.	
28		KERR INVESTMENT H	OLDING CORP.	
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STIPULATION OF SETTLEMENT				

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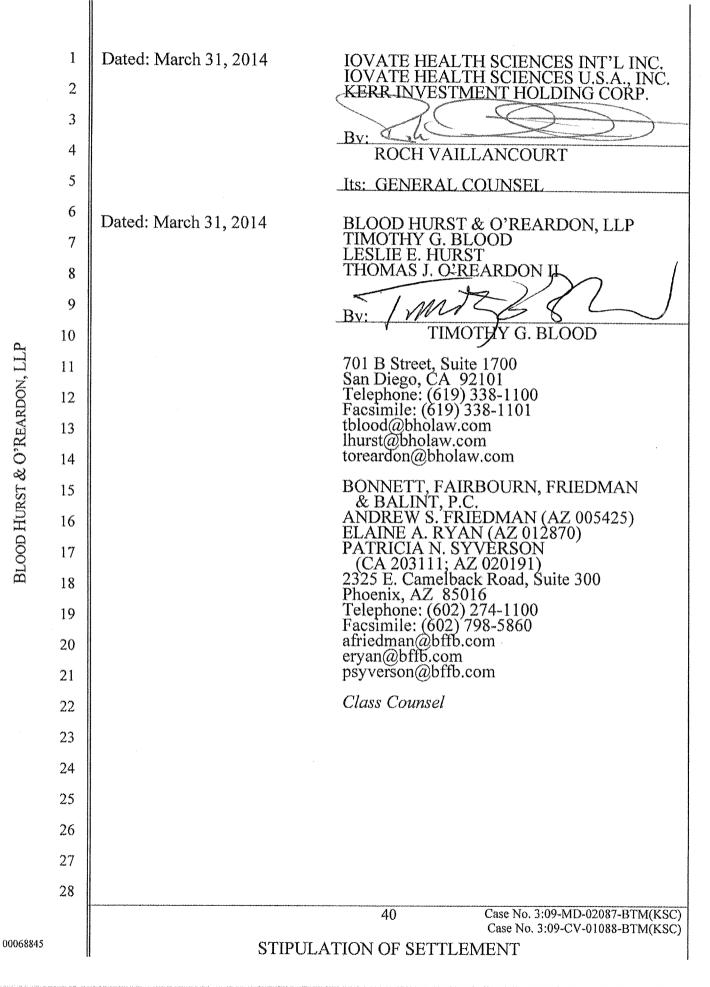
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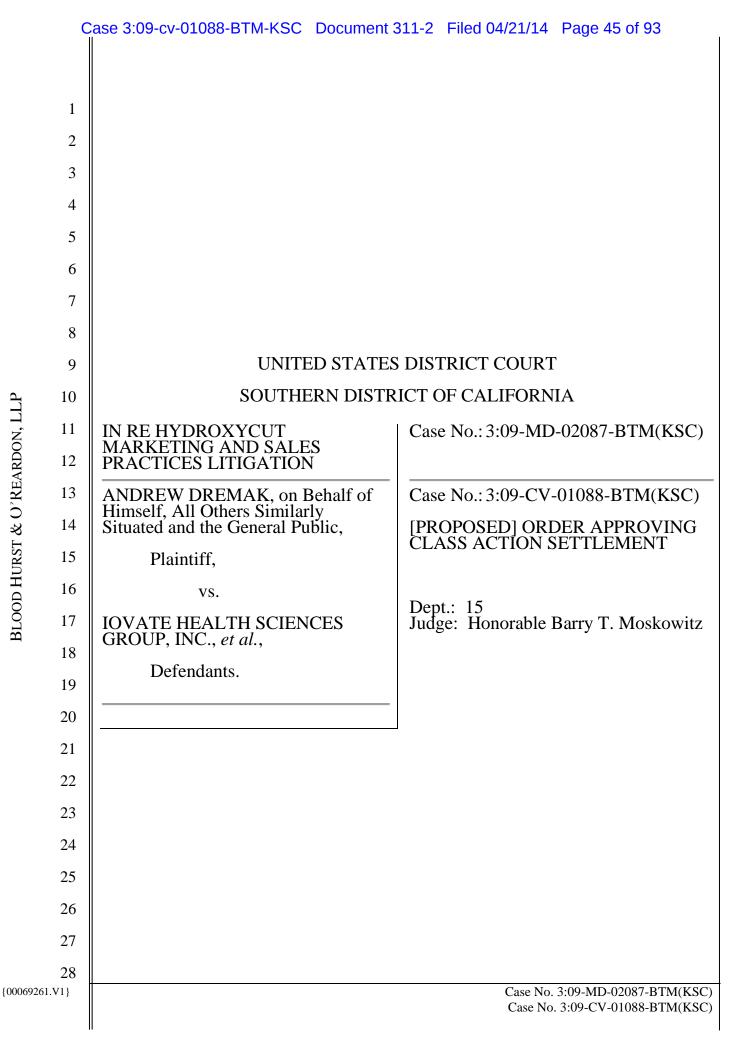
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BLOOD HURST & O'REARDON, LLP

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EXHIBIT 1



This matter came on for hearing on _____, 2014 at _____. The Court has considered the Stipulation of Settlement filed April 21, 2014 ("Stipulation"), Dkt. No. ____, oral and/or written objections and comments received regarding the proposed settlement, the record in the action and the arguments and authorities of counsel. Good cause appearing,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation unless set forth differently herein. The terms of the Stipulation are fully incorporated in this judgment as if set forth fully here.

2. The Court has jurisdiction over the subject matter of this action and all Parties to the action, including all Settlement Class Members.

3. The Court approves the settlement as set forth in the Stipulation and finds that the settlement is in all respects fair, reasonable, adequate and just to the Settlement Class Members.

4. Pursuant to Federal Rules of Civil Procedure, Rule 23(c), the Court
hereby finally certifies the following Settlement Class:

All persons who purchased in the United States any of the Hydroxycut Products between May 9, 2006 and May 1, 2009.

Excluded from the Settlement Class are: (i) those who purchased Hydroxycut Products for the purpose of resale; (ii) Iovate and its officers, directors, and employees; (iii) any person who files a valid and timely Request for Exclusion; and (iv) the Judge(s) to whom this Action is assigned and any members of their immediate families.

5. The Hydroxycut Products covered by this judgment are: Hydroxycut Regular Rapid Release Caplets; Hydroxycut Caffeine-Free Rapid Release Caplets; Hydroxycut Hardcore Liquid Caplets; Hydroxycut Max Liquid Caplets;

Hydroxycut Regular Drink Packets; Hydroxycut Caffeine-Free Drink Packets;
 Hydroxycut Hardcore Drink Packets (Ignition Stix); Hydroxycut Max Drink
 Packets; Hydroxycut Liquid Shots; Hydroxycut Hardcore RTDs (Ready-to Drink); Hydroxycut Max Aqua Shed; Hydroxycut 24; Hydroxycut Carb Control;
 and Hydroxycut Natural.

6 6. Pursuant to Federal Rules of Civil Procedure, Rule 23(c)(3), all such
7 Persons who satisfy the Class definition above, except those Persons who timely
8 and validly excluded themselves from the Class, are Settlement Class Members
9 bound by this Order.

7. Pursuant to Federal Rules of Civil Procedure, Rule 23(a), the Court finds that the Plaintiff Andrew Dremak is a member of the Class, his claims are typical of the Class claims, and he fairly and adequately protected the interests of the Class throughout the proceedings in the Action. Accordingly, the Court hereby appoints Andrew Dremak as the Class Representative.

8. The Court finds that the Class meets all requirements of Federal Rules of Civil Procedure, Rule 23(a) and (b)(3) for certification of the class claims alleged in the operative complaint, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class representative and Class Counsel; (e) predominance of common questions of fact and law Class; and (f) superiority.

9. Having considered the factors set forth in Federal Rules of Civil
 Procedure, Rule 23(g)(1), the Court finds that Class Counsel have fairly and
 adequately represented the Class for purposes of entering into and implementing
 the settlement, and thus, hereby appoints Timothy G. Blood of Blood Hurst &
 O'Reardon, LLP, and Elaine Ryan of Bonnett, Fairbourn, Friedman, & Balint,
 P.C. as Class Counsel to represent the Settlement Class Members.

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10. The list of Persons excluded from the Class because they filed valid requests for exclusion is attached hereto as Exhibit A. The Persons listed in Exhibit A are not bound by this Judgment or the terms of the Stipulation.

11. The Court directed that Class Notice be given to Settlement Class Members pursuant to the notice program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, the Claims Administrator and the Notice Administrator caused the Class Notice to be disseminated as ordered. The Declaration of Cameron Azari, attesting to the dissemination of the Class Notice demonstrates this compliance. The Class Notice advised Settlement Class Members of the terms of the settlement; of the Final Approval Hearing, and their right to appear at such hearing; of their rights to remain in, or opt out of, the Class and to object to the settlement; procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The Class Notice was also sent via U.S. mail to all Current Eligible Claimants and Class Members known to have claims for personal injuries.

17 12. The distribution of the Class Notice constituted the best notice
18 practicable under the circumstances, and fully satisfied the requirements of
19 Federal Rules of Civil Procedure, Rule 23, the requirements of due process, 28
20 U.S.C. §1715, and any other applicable law.

13. Pursuant to Federal Rules of Civil Procedure, Rule 23(e)(2), the
Court finds after a hearing and based upon all submissions of the Parties and
other interested persons, that the settlement proposed by the Parties is fair,
reasonable, and adequate. The terms and provisions of the Stipulation are the
product of lengthy, arms-length negotiations conducted in good faith and with
the assistance of two experienced mediators, Judge John K. Trotter (ret.) and
Martin Quinn of JAMS. Approval of the Stipulation will result in substantial

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savings of time, money and effort to the Court and the Parties, and will further 1 2 the interests of justice.

All Settlement Class Members who have not timely and validly filed 14. 3 opt-outs are thus Settlement Class Members who are bound by this Judgment and 4 by the terms of the Stipulation. 5

The Stipulation and this Order are not admissions of liability or fault 15. by defendants or the Released Parties, or a finding of the validity of any claims in the Action or of any wrongdoing or violation of law by defendants or the 8 Released Parties. Neither this Judgment, nor any of its terms or provisions, nor 9 10 any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or 12 administrative action or proceeding to establish any liability of, or admission by defendants, the Released Parties, or any of them. Notwithstanding the foregoing, 13 nothing in this Final Judgment shall be interpreted to prohibit the use of this 14 Judgment in a proceeding to consummate or enforce the Stipulation or Judgment, 15 or to defend against the assertion of Released Claims in any other proceeding, or 16 as otherwise required by law.

18 16. The Court has considered the submissions by the Parties and all 19 other relevant factors, including the result achieved and the efforts of Class Counsel in prosecuting the claims on behalf of the Class. Plaintiff initiated the 20 Action, acted to protect the Class, and assisted his counsel. The efforts of Class 21 22 Counsel have produced the Stipulation entered into in good faith, and which provides a fair, reasonable, adequate and certain result for the Class. Class 23 Counsel have made application for an award of attorneys' fees and expenses in 24 connection with the prosecution of the Action on behalf of themselves and other 25 Plaintiffs' Counsel. The Court hereby awards \$_____ as attorneys' fees 26 and \$_____ in costs, which the Court finds to be a fair, reasonable and 27

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justified attorneys' fee and expense award under the circumstances. Class
 Counsel shall be responsible for distributing and allocating the attorneys' fees
 and expense award to Plaintiffs' Counsel in their sole discretion.

17. Plaintiff Dremak, the Consolidated Complaint Plaintiffs, and the Other Class Plaintiffs, who have agreed to the terms of the Stipulation, and whose claims will be finally and fully resolved by this Judgment, are each entitled to service awards in the amount of \$_____.

18. As of the Effective Date, the Class Representative and all
Settlement Class Members shall be forever barred from bringing or prosecuting,
in any capacity, any of the Released Claims against any Released Party and shall
conclusively be deemed to have released and forever discharged the Released
Parties from all Released Claims.

19. The Class Representative and all Settlement Class Members shall, 13 as of the Effective Date, conclusively be deemed to have acknowledged that the 14 Released Claims may include claims, rights, demands, causes of action, 15 liabilities, or suits that are not known or suspected to exist as of the Effective 16 17 Date. The Class Representatives and all Settlement Class Members nonetheless 18 release all such Released Claims against the Released Parties. Further, as of the Effective Date, the Class Representatives and all Settlement Class Members shall 19 be deemed to have waived any and all protections, rights and benefits of 20 California Civil Code section 1542 and any comparable statutory or common law 21 22 provision of any other jurisdiction.

23 20. The Court hereby dismisses with prejudice the Action and the MDL 24 Class Actions, and all Released Claims against each and all Released Parties and 25 without costs to any of the Parties as against the others. Notwithstanding the 26 foregoing, this Order does not dismiss any claims that have been or may be

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5 Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC) asserted in the future by any persons or entities who have validly and timely
 requested exclusion from the Settlement Class.

3 21. Without affecting the finality of the Judgment, the Court reserves
4 jurisdiction over the implementation, administration and enforcement of this
5 Order, the Judgment and the Stipulation, and all matters ancillary thereto.

22. The Court finding that no reason exists for delay in ordering final judgment pursuant to Federal Rules of Civil Procedure, Rule 54(b), the clerk is hereby directed to enter the Judgment forthwith.

23. The Parties are hereby authorized without needing further approval from the Court, to agree to and adopt such modifications and expansions of the Stipulation, including without limitation, the forms to be used in the claims process, which are consistent with this Judgment and do not limit the rights of Settlement Class Members under the Stipulation.

All other relief not expressly granted to the Settlement Class Members is denied.

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R	15	denied.		
DHI Q	16	IT IS SO ORDERED.		
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щ	18	DATED:	HON BAR	RY T. MOSKOWITZ
	19		U.S. DISTR	RICT COURT JUDGE
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{0006926	1.V1}		6	Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC)
		CTION SETTLEMENT		

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EXHIBIT 2

Hydroxycut Class Action Settlement CLAIM FORM			
Use this claim form only if you bought one or more of the eligible Hydroxycut products listed below Between May 9, 2006 and May 1, 2009, inclusive. Please complete and mail this form to:			
Hydroxycut Settlement [Settlement Administrator Address] [City, State, ZIP]			
You may also complete and submit a claim form electronically at <u>www.DietSupplementSettlement.com</u> .			
All claim forms must be electronically submitted or postmarked no later than [DATE], 2014.			
Eligible Hydroxycut Products			
Hydroxycut Regular Rapid Release Caplets	• Hydroxycut Caffeine-Free Rapid Release Caplets		
Hydroxycut Hardcore Liquid Caplets	Hydroxycut Max Liquid Caplets		
Hydroxycut Regular Drink Packets	Hydroxycut Caffeine-Free Drink Packets		
• Hydroxycut Hardcore Drink Packets (Ignition Stix)	Hydroxycut Max Drink Packets		
Hydroxycut Liquid Shots	Hydroxycut Hardcore RTDs		
• Hydroxycut Max Aqua Shed	• Hydroxycut 24		
Hydroxycut Carb Control	Hydroxycut Natural		
Instructions			

- For **each unit** of Hydroxycut Product you purchased, you may choose to receive **either** a Product Unit or a cash payment.
- Each Product Unit will be worth at least \$25 and will contain at your choice any bottle of Hydroxycut Caffeine Free – 72 tablets, Pro Clinical Hydroxycut – 72 tablets, Hydroxycut Hardcore – 60 tablets, or Hydroxycut Max – 60 tablets. Cash payments will vary depending on, among other factors, the number of valid cash claims by all Settlement Class Members and other adjustments and deductions as specified in the Settlement Agreement. The amount for each unit could be more (up to more than two times the approximate average retail price), the same, or less than \$15 for each unit of Hydroxycut Product.
- If you request an award of **up to three** Product Units, no Proof of Purchase is necessary.
- For an award of **more than three** Product Units, you must provide Proof of Purchase.
- If you request a cash award for **up to three units** of Hydroxycut Product, no Proof of Purchase is necessary.
- For a cash award for **more than three units**, you must provide Proof of Purchase.

Please provide the information requested on the following page.

If needed, attach your Proof of Purchase to your claim form.

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Class Member Information		
Name:		
Mailing Address:		
City: State: Zip Code:		
Daytime Telephone: () Evening Telephone: ()		
E-Mail Address:		
Products Purchased and Requested Award		
I purchased units of eligible Hydroxycut Products between May 9, 2006 and May 1, 2009. For each unit purchased, I would like to receive my settlement award as follows (you may only select one option):		
A cash award for units (you must include proof of purchase if more than 3 units)		
A Product Unit award for units (you must include proof of purchase if more than 3 units)		
For each Product Unit, select one of the listed products. For example, if you chose an award of two Product Units, select 2 of the below listed products.		
Hydroxycut Pro Clinical – 72 tablets Hydroxycut Caffeine Free – 72 tablets		
Hydroxycut Hardcore – 60 tablets Hydroxycut Max – 60 tablets		
Signature: Date:		
Payment amounts to eligible Settlement Class Members will vary depending upon, among other factors, the number of valid claims by all Settlement Class Members and other adjustments and deductions as specified in the Settlement Agreement.		
Claim Forms must be electronically submitted or postmarked no later than [DATE], 2014.		
Questions? Visit www.DietSupplementSettlement.com or call, toll-free, (xxx)-xxx-xxxx.		

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EXHIBIT 3

If You Purchased Hydroxycut Products Between May 9, 2006 and May 1, 2009, You May Be Entitled To Settlement Benefits

The United States District Court for the Southern District of California authorized this notice. This is not a solicitation from a lawyer.

This Notice advises you of a proposed class action settlement. The settlement concerns alleged misrepresentations regarding certain Hydroxycut products. You legal rights are affected whether you act or don't act. You should read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT			
SUBMIT A CLAIM FORM	Get a cash refund or free products.		
EXCLUDE YOURSELF	Get out of the lawsuit. Get no settlement benefits.		
Object	Write to the Court about why you don't like the settlement.		
DO NOTHING	Get no cash refund or free products. Give up your rights to separately sue.		

Your rights and options - and the deadlines to exercise them - are explained in this notice.

The Court in charge of this case 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. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION	3 -
WHO IS IN THE SETTLEMENT	3 -
THE SETTLEMENT BENEFITS—WHAT YOU GET	4 -
THE LAWYERS REPRESENTING YOU	5 -
EXCLUDING YOURSELF FROM THE SETTLEMENT	5 -
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BASIC INFORMATION

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed a class action lawsuit claiming that defendants misrepresented that certain Hydroxycut weight loss products were clinically proven to be safe and effective for weight loss. In courts throughout the United States, twenty other lawsuits with similar claims were also filed. Defendants deny all allegations and are entering into this settlement to avoid burdensome and costly litigation. The settlement is not an admission of wrongdoing.

The defendants are the companies that marketed and sold the Hydroxycut products. The defendants that are settling the lawsuit are: Kerr Investment Holding Corp. f/k/a Iovate Health Sciences Group, Inc.; Iovate Health Sciences, Inc.; and Iovate Health Sciences U.S.A. Inc ("Iovate").

The parties have agreed to settle the lawsuit on the terms explained in this notice. The settlement will resolve this case and the other related class action cases.

WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called Class Representatives (in this case Andrew Dremak), sue on behalf of people who have alleged similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class. United States District Court Judge Barry Moskowitz is in charge of this class action.

WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and settlement benefits go to the Class Members. The Class Representative and the attorneys think the settlement is best for the Class Members.

WHO IS IN THE SETTLEMENT

To see if you are eligible for benefits, you first have to determine whether you are a Class Member.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

You may be a member of the Class if you purchased one of the Hydroxycut weight loss products listed below in the United States between May 9, 2006 and May 1, 2009, inclusive:

- Hydroxycut Regular Rapid Release Caplets
- Hydroxycut Caffeine-Free Rapid Release Caplets
- Hydroxycut Hardcore Liquid Caplets
- Hydroxycut Max Liquid Caplets
- Hydroxycut Regular Drink Packets

- Hydroxycut Max Drink Packets
- Hydroxycut Liquid Shots
- Hydroxycut Hardcore RTDs (Ready-to-Drink)
- Hydroxycut Max Aqua Shed
- Hydroxycut 24

Questions? Visit www.DietSupplementSettlement.com or Call 1-800-xxx-xxxx

- Hydroxycut Caffeine-Free Drink Packets
- Hydroxycut Hardcore Drink Packets (Ignition Stix)
- Hydroxycut Carb Control
- Hydroxycut Natural

This settlement only covers the economic loss for the purchase of the products listed above.

THE SETTLEMENT BENEFITS—WHAT YOU GET

A CASH REFUND OR A PRODUCT UNIT IF YOU SUBMIT A CLAIM

Iovate has agreed to provide a total settlement fund of \$14 million (\$7 million in cash and \$7 million in product) (the "Fund") in full settlement of the claims of the Settlement Class. The Fund will be used to pay eligible claims, notice and claim administration expenses, as well as Class Counsel's attorneys' fees and expenses and any service awards to the Plaintiffs (discussed below). Defendants will not be obligated to pay any additional amounts of any kind in connection with this Settlement. The settlement distribution process will be administered by an independent settlement administrator ("Settlement Administrator") approved by the Court.

WHAT CAN I GET FROM THE SETTLEMENT?

For **each unit** of Hydroxycut Product you purchased, you may choose to receive **either** a Product Unit or a cash payment.

Each Product Unit will be worth at least \$25 and will contain at your choice any bottle of Hydroxycut Caffeine Free (72 count), Hydroxycut Pro Clinical (72 count), Hydroxycut Hardcore (60 count), or Hydroxycut Max (60 count). Cash payments will vary depending on, among other factors, the number of valid cash claims by all Settlement Class Members and other adjustments and deductions as specified in the Settlement Agreement. The amount for each unit could be more (up to more than two times the approximate average retail price), the same, or less than \$15 for each unit of Hydroxycut Product.

If you request an award of **up to three** Product Units, no Proof of Purchase is necessary.

If you request an award of more than three Product Units, you must provide Proof of Purchase.

If you request a cash award for **up to three units** of Hydroxycut Product, no Proof of Purchase is necessary.

If you request a cash award for **more than three units** of Hydroxycut Product, you must provide Proof of Purchase.

Any monies remaining in the Fund after paying valid claims and expenses will be distributed to ChangeLab Solutions or some other similar organization as the Court determines pursuant to the *cy pres* doctrine, and any product remaining in the Fund after satisfying valid Product Unit claims will be distributed to the Hydroxycut purchasers in the form of additional product.

HOW CAN I GET A CASH PAYMENT OR PRODUCT UNIT?

To receive cash or Product Unit(s), you must complete and return a Claim Form **no later than**_____,2014.

A Claim Form is included with this Notice. Claim Forms are also available online at <u>www.DietSupplementSettlement.com</u> or by calling 1.xxx.xxx.

WHEN WOULD I GET MY SETTLEMENT AWARD?

The Court will hold a hearing on **[date]** at _____ **a.m./p.m.**, to decide whether to approve the settlement. If Judge Moskowitz approves the settlement, there may be appeals. The appeal process can take time, perhaps more than a year. Please be patient.

IN RETURN FOR THESE SETTLEMENT BENEFITS, WHAT AM I GIVING UP?

If the Court approves the proposed settlement and you do not request to be excluded from the Class, you must release (give up) all claims concerning defendants' alleged misrepresentation of the Hydroxycut products covered by this settlement, and the case will be dismissed on the merits and with prejudice. If you remain in the Class, you may not assert any of those claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress. However, you do not release claims for personal injuries through this settlement. The judgment and orders entered in this case, whether favorable or unfavorable, will bind all Class Members who do not request to be excluded.

The full terms of the Release are contained in the Stipulation of Settlement that is available at www.DietSupplementSettlement.com, or in the public court records on file in this action.

THE LAWYERS REPRESENTING YOU

DO I HAVE A LAWYER IN THIS CASE?

The Court appointed the law firms of Blood Hurst & O'Reardon, LLP and Bonnett Fairbourn Friedman & Balint, P.C. to represent you and other Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense and enter an appearance through your own counsel.

HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to award attorneys' fees not to exceed 25% of the Fund, plus provide reimbursement of expenses incurred not to exceed \$300,000. These amounts will be paid by defendants from the Fund.

In addition, the Class Representative in this case, the Consolidated Complaint Plaintiffs, and the Other Plaintiffs in the other related class actions will ask the Court to award them service awards of \$2,000 for their time and effort acting as plaintiffs in the lawsuits.

Defendants have agreed to not to oppose these awards.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue defendants, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself—or is sometimes referred to as opting out of the Settlement Class.

HOW DO I GET OUT OF THE SETTLEMENT?

If you do not wish to be included in the Class and receive a refund for your purchases of Hydroxycut, you must send a letter stating that you want to be excluded from *Dremak v. Iovate Health Sciences Group, Inc.*, No. 3:09cv01088 (S.D. Cal). Be sure to include your name, address, telephone number, your signature, and a statement that you purchased one of the Hydroxycut products covered by this settlement. You must mail your exclusion request post-marked no later than [date] to:

Settlement Administrator [address]

You can't exclude yourself on the phone or by fax or e-mail. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. However, you will not be legally bound by anything that happens in this lawsuit and you will keep your right to separately pursue claims against the defendants relating to the subject matter of this lawsuit.

IF I DON'T EXCLUDE MYSELF, CAN I SUE DEFENDANTS FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue defendants for the claims that this settlement resolves. You must exclude yourself from *this* Class to pursue your own lawsuit. Remember, your exclusion must be postmarked on or before **[date]**.

IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?

No. If you exclude yourself, you will not receive any money. Do not send in a Claim Form. But, you will not lose any right you may have to sue, continue to sue, or be part of a different lawsuit against defendants about the legal issues in this case.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

How do I tell the Court that I do not like the settlement?

If you are a Class Member, you can object to the settlement if you do not like any part of it and the Court will consider your views. The deadline for Class Members who have not filed a lawsuit for personal injuries has passed. Therefore, this objection opportunity is limited to those Class Members who also have claims for personal injuries. To object, you must send a letter with your handwritten, dated signature to the Court and the parties saying that you object to the settlement in *Dremak v. Iovate Health Sciences Group, Inc.*, No. 3:09cv01088 (S.D. Cal). Be sure to include your name, address, telephone number, your signature, and all the reasons you object to the settlement. You must also affirm under penalty of perjury that you are a Class Member or provide other proof of Class membership.

Your objection *must be mailed to and actually received* at these three different places no later than [date]. Send your objection to:

Clerk of the Court United States District Court, Southern District of California 333 West Broadway, Suite 420 San Diego, CA 92101 Timothy G. Blood Blood Hurst & O'Reardon, LLP 701 B Street, Suite 1700 San Diego, CA 92101

Arturo J. Gonzalez Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105

WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. You cannot request exclusion **and** object to the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. Class Members who do exclude themselves may, if they wish, enter an appearance through their own counsel.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you don't have to.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Final Approval Hearing at [time] on [date] at the United States District Court, Southern District of California, Edward J. Schwartz U.S. Courthouse, 221 West Broadway, San Diego, California, 92101. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Moskowitz will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement. The Court may also consider how much to award Class Counsel and the amount of the service award for Plaintiffs. We do not know how long this decision will take.

DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions Judge Moskowitz may have. But, you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you delivered your written objection on time, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

MAY I SPEAK AT THE HEARING?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file with the Court a "Notice of Intention to Appear." Be sure to include your name, address, telephone number, and your signature. You may also be required to provide proof that you are a Class Member. Your Notice of Intention to

Questions? Visit www.DietSupplementSettlement.com or Call 1-800-xxx-xxxx

Appear must be filed no later than [**date**], and must also be served on the Clerk of the Court, Class Counsel and Defense Counsel at the three addresses listed on page 6 above. You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will be part of the settlement Class. You will not receive a cash payment or free products from the settlement unless you file a valid and timely Claim Form. You won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against defendants about the legal issues in this case.

GETTING MORE INFORMATION

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The Stipulation of Settlement contains the complete terms. You can get a copy of the Stipulation of Settlement at www. hydroxycutsettlement.com, or by reviewing the records on file in the court clerk's office. The Claim Form and other information are also available at <u>www.DietSupplementSettlement.com</u>. Remember to return a Claim Form to participate in the settlement benefits.

PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.

/s/ The Honorable Barry T. Moskowitz

DATED: _____

UNITED STATES DISTRICT JUDGE

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EXHIBIT 4

LEGAL NOTICE

If You Purchased Hydroxycut Products Between May 9, 2006 and May 1, 2009, You May Be Entitled To Settlement Benefits

Para información en español, visite la página web, www.DietSupplementSettlement.com

What Is This About?

A class action lawsuit about certain Hydroxycut® branded products sold through May 1, 2009 has been settled. Consumers who bought the products may be entitled to choose either a cash refund or free products by submitting a claim. The lawsuit alleges the products were misrepresented as clinically proven to be safe and effective for weight loss. The defendants deny any allegations. The settlement is not an admission of wrongdoing. The United States District Court for the Southern District of California authorized this notice and will have a hearing to decide whether to approve the settlement.

To view the product list or submit a claim, visit www.DietSupplementSettlement.com.

Am I a Member of the Class?

You're a Class Member if you purchased for personal, family or household purposes certain Hydroxycut products between May 9, 2006 through May 1, 2009, inclusive.

What Does the Settlement Provide?

Each Class Member who submits a valid claim may choose to receive \$15 or Hydroxycut products worth up to \$25 for each eligible unit of Hydroxycut product purchased. The cash award could increase (up to two times the approximate average retail price of the Hydroxycut Products) or decrease depending on various factors, including the number of valid claims. Class Members may obtain an award for up to three units of Hydroxycut Products purchased by submitting a Claim Form under penalty of perjury. Class Members may receive an award for more than three units purchased by submitting proof of purchase for each unit. Iovate has agreed to provide a total Settlement Fund of \$14 million (\$7 million in cash and \$7 million in product) in full settlement of the claims of the Settlement Class to pay the claims of Class Members, to pay for the costs of notice and settlement Fund, plus reimbursement of expenses incurred not exceeding \$300,000, and service awards to each Consolidated Complaint Plaintiff and Other Class Plaintiff of \$2,000. Any monies remaining in the cash component of the Settlement Fund after paying the aforementioned claims and expenses will be paid to one or more non-profit organizations. Any product remaining in the Settlement Fund after satisfying valid product claims will be distributed to Hydroxycut purchasers nationwide in the form of additional product.

What Are My Options?

To claim a cash payment or free product, you must submit a Claim Form online or by mail by **Month Day, 2014**. If you do not want a payment and you do not want to be legally bound by the Settlement, you must postmark your request to exclude yourself by **Month Day, 2014**, or you won't be able to sue, or continue to sue, defendants about the legal claims in this case. If you stay in the Class, you may object to the settlement. Objections must be filed with the Court by **Month Day, 2014**. Visit **www.DietSupplementSettlement.com** for important information about these options.

Hearing on the Proposed Settlement

The Court will hold a hearing in this case (*Dremak v. Iovate Health Sciences Group, Inc.*, No. 3:09cv01088 (S.D. Cal.)) on **Month Day, 2014 at _____ a.m./p.m.** to determine whether the settlement is fair, reasonable, and adequate, to approve attorneys' fees and expenses, and any service awards for the plaintiffs. The hearing date may be changed by the Court, and you should check **www.DietSupplementSettlement.com** for updates. The Final Approval Hearing will take place at U.S. District Court, Southern District of California, 221 West Broadway, San Diego, CA 92101. You do not have to attend the hearing.

This Notice is a summary only. To get additional information, including a copy of the detailed Notice and Claim Form, visit **www.DietSupplementSettlement.com** or call 1-800-xxx-xxxx.

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EXHIBIT 5

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9	UNITED STATES	S DISTRICT COURT
10	SOUTHERN DISTR	RICT OF CALIFORNIA
11 12	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION	Case No.: 3:09-MD-02087-BTM(KSC)
13		Case No.: 3:09-CV-01088-BTM(KSC)
14	ANDREW DREMAK, on Behalf of Himself, All Others Similarly Situated and the General Public,	[PROPOSED] ORDER PRELIMINARILY APPROVING
15	Plaintiff,	PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT
16	VS.	
17	IOVATE HEALTH SCIENCES	Dept.: 15
18	GROUP, INC., <i>et al.</i> ,	Judge: Honorable Barry T. Moskowitz
19	Defendants.	
20	This Document Relates to DREMAK	
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28 {00069372.V1}		Case No. 3:09-MD-02087-BTM(KSC)
	[PROPOSED] PRELIMI	Case No. 3:09-CV-01088-BTM(KSC) NARY APPROVAL ORDER

1	WHEREAS, Plaintiff Andrew Dremak in this action entitled Dremak v.	
2	Iovate Health Sciences Group, Inc., et al., No. 3:09cv1088 and Defendants	
3	Iovate Health Sciences Inc., Iovate Health Sciences U.S.A., Inc., and Kerr	
4	Investment Holding Corp. have entered into a Stipulation of Settlement	
5	("Stipulation"), filed April 21, 2014, after substantial discovery and lengthy	
6	arms-length settlement discussions;	
7	AND, WHEREAS, the Court has received and considered the Stipulation,	
8	including the accompanying exhibits, and the record in this Action;	
9	AND, WHEREAS, the Parties have made an application, pursuant to	
10	Federal Rules of Civil Procedure, Rule 23(e), for an order preliminarily	
11	approving the settlement of this Action, and for its dismissal with prejudice	
12	upon the terms and conditions set forth in the Stipulation;	
13	AND, WHEREAS, the Court has reviewed the Parties' application and the	
14	supporting memorandum for such order, and has found good cause for same.	
15	NOW, THEREFORE, IT IS HEREBY ORDERED:	
16	The Settlement Class Is Preliminarily Certified	
17	1. If not otherwise defined herein, all capitalized terms have the same	
18	meanings as set forth in the Stipulation of Settlement.	
19	2. Pursuant to Federal Rules of Civil Procedure, Rule 23, and for	
20	settlement purposes only, the Court hereby preliminarily certifies this Action as a	
21	class action on behalf of the following Settlement Class:	
22	All persons who purchased in the United States any of the	
23	Hydroxycut Products between May 9, 2006 and May 1, 2001, inclusive.	
24	3. Excluded from the Settlement Class are: (i) those who purchased	
25	Hydroxycut Products for the purpose of resale; (ii) Iovate and its officers,	
26	directors and employees; (iii) any person who files a valid and timely Request for	
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28 {00069372.V1}	1 Case No. 3:09-MD-02087-BTM(KSC)	
[00007572. 11]	1 Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC) [PROPOSED] PRELIMINARY APPROVAL ORDER	
I		

Exclusion; and (iv) the Judge(s) to whom this Action is assigned and any
 members of their immediate families.

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4. Certification of the Settlement Class shall be solely for settlement purposes and without prejudice to the Parties in the event that the Stipulation is not finally approved by this Court or otherwise does not take effect. Certification of the Settlement Class shall be vacated and shall have no effect in the event that the Stipulation is not finally approved by this Court or otherwise does not take effect.

9 With respect to the Settlement Class, the Court preliminarily 5. 10 finds the prerequisites for a class action under Rules 23(a) and (b)(3) of the 11 Federal Rules of Civil Procedure have been met, in that: (a) the Settlement Class is so numerous that joinder of all individual Settlement Class 12 13 Members is impracticable; (b) there are questions of law and fact common to 14 the Settlement Class and those common questions of law and fact predominate 15 over any individual questions; (c) the claims of the class representative are typical of the claims of the Class; (d) the class representative and Class 16 17 Counsel will fairly and adequately represent the interests of the Settlement 18 Class; and (e) a class action is superior to other available methods for the fair 19 and efficient adjudication of the controversy.

20 6. Class Counsel and the Class Representative are hereby found to be 21 adequate representatives of the Settlement Class pursuant to Rule 23 of the 22 Federal Rules of Civil Procedure. The Court hereby appoints the Andrew 23 Dremak as the class representative of the Settlement Class. The Court hereby 24 designates Timothy G. Blood of Blood Hurst & O'Reardon, LLP and Elaine 25 Ryan of Bonnett, Fairbourn, Friedman, & Balint, P.C., whom the Court finds are 26 experienced and adequate counsel having considered the factors set forth in Rule 27 23(g)(1), are hereby designated as Class Counsel.

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The Stipulation Is Preliminarily Approved and Final Approval Schedule Set

7. The Court hereby preliminarily approves the Stipulation and the terms and conditions of settlement set forth therein, subject to further consideration at the Final Approval Hearing.

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8. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Stipulation, and hereby finds that the settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed settlement as set forth in the Stipulation.

9. Pursuant to of the Federal Rules of Civil Procedure, Rule 23(e) the
Court will hold a final approval hearing on ______, 2014, at
______a.m./p.m., in the Courtroom of the Honorable Barry T. Moskowitz,
United States District Court for the Southern District of California, 940 Front
Street, San Diego, CA 92101, for the following purposes:

(a) finally determining whether the Settlement Class meets
all applicable requirements of Federal Rules of Civil Procedure, Rule 23 and,
thus, the Settlement Class claims should be certified for purposes of effectuating
the settlement; determining whether the proposed settlement of the Action on
the terms and conditions provided for in the Stipulation is fair, reasonable and
adequate and should be approved by the Court;

(b) considering the application of Class Counsel for an award
of attorneys' fees and expenses as provided for under the Stipulation;

23 (c) considering the application for service awards to Plaintiff,
24 Consolidated Complaint Plaintiffs, or Other Class Plaintiffs as provided for
25 under the Stipulation;

26 (d) considering whether the Court should enter the [Proposed]
27 Final Judgment and Order Approving Settlement;

1 whether the release by the Settlement Class Members of the (e) 2 Released Claims as set forth in the Stipulation should be provided; and

3 (f) ruling upon such other matters as the Court may deem just 4 and appropriate.

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10. The Court may adjourn the Final Approval Hearing and later reconvene such hearing without further notice to the Settlement Class Members.

7 11. Any Settlement Class Member may enter an appearance in the 8 Action, at his or her own expense, individually or through counsel. All 9 Settlement Class Members who do not enter an appearance will be represented 10 by Class Counsel.

11 12. The Parties may further modify the Stipulation prior to the Final 12 Approval Hearing so long as such modifications do not materially change the 13 terms of the settlement provided therein. The Court may approve the Stipulation 14 with such modifications as may be agreed to by the Parties, if appropriate, 15 without further notice to Settlement Class Members.

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13. Opening papers in support of final approval of the Stipulation and 17 any application for attorneys' fees and expenses and/or plaintiff service awards 18 must be filed with the Court and served at least 45 days prior to the Final 19 Approval Hearing. Reply papers, if any, must be filed and served at least 7 days 20 prior to the Final Approval Hearing.

21 The Court Approves the Form and Method of Class Notice

22 The Court approves, as to form and content, the proposed Long-14. 23 form Notice, Publication Notice and Current Eligible Claimant Class Notice 24 (collectively the "Class Notice"), which are Exhibits 3, 4, and 8 respectively, to 25 the Stipulation of Settlement on file with this Court.

26 15. The Court finds that the distribution of Class Notice substantially in 27 the manner and form set forth in this Order and the Stipulation of Settlement 28 meet the requirements of Federal Rules of Civil Procedure, Rule 23 and due

process, is the best notice practicable under the circumstances, and shall
 constitute due and sufficient notice to all Persons entitled thereto.

16. The Court approves the designation of Boston Financial Data
Services, Inc. and Epiq Class Action & Claims Solutions, Inc. to serve as the
Court-appointed Settlement Administrators for the settlement. The Settlement
Administrators shall disseminate Class Notice and supervise and carry out the
notice procedure, the processing of claims, and other administrative functions,
and shall respond to Settlement Class Member inquiries, as set forth in the
Stipulation and this Order under the direction and supervision of the Court.

10 17. The Court directs the Settlement Administrator to establish a
11 Settlement Website, making available copies of this Order, the Class Notice,
12 Claim Forms that may be downloaded and submitted online or by mail, the
13 Stipulation and all exhibits thereto, and such other information as may be of
14 assistance to Settlement Class Members or required under the Stipulation.

15 18. The Settlement Administrator is ordered to complete dissemination
16 of the Class Notice no later than 60 days after the Court enters this Preliminary
17 Approval Order.

18 19. The costs of the Class Notice, processing of claims, creating and
19 maintaining the Settlement Website, and all other Claims Administrator and
20 Class Notice expenses shall be paid out of the Settlement Fund in accordance
21 with the applicable provisions of the Stipulation.

22 **Procedure for Settlement Class Members to Participate In the Settlement**

23 20. Settlement Class Members who wish to claim a settlement award
24 must submit their Claim Form and supporting documentation no later than 90
25 days after the Court first sets a date for the Final Approval Hearing. Such
26 deadline may be further extended without notice to the Settlement Class by Court
27 order, by agreement between the Parties, or as set forth in the Stipulation.

Procedure for Requesting Exclusion from the Class

2 21. Any Person falling within the definition of the Class may, upon his or her request, be excluded from the Class. Any such Person must submit a 3 4 request for exclusion to the Settlement Administrator postmarked or delivered no 5 later than 30 days before the Final Approval Hearing (the "Opt-Out Date"), as set 6 forth in the Class Notice. Requests for exclusion purportedly filed on behalf of groups of persons are prohibited and will be deemed to be void.

8 22. Any Settlement Class Member who does not send a signed request 9 for exclusion postmarked or delivered on or before the Opt-Out Date will be 10 deemed to be a Settlement Class Member for all purposes and will be bound by 11 all further orders of the Court in this Action and by the terms of the settlement, if finally approved by the Court. The written request for exclusion must request 12 13 exclusion from the Class, must be signed by the potential Settlement Class 14 Member and include a statement indicating that the Person desires to be excluded 15 from the Settlement Class. All Persons who submit valid and timely requests for 16 exclusion in the manner set forth in the Stipulation shall have no rights under the 17 Stipulation and shall not be bound by the Stipulation or the Final Judgment and 18 Order.

23. A list reflecting all requests for exclusions shall be filed with the Court by Defendant at or before the Final Approval Hearing.

21 **Procedure for Objecting To the Settlement**

22 24. Any Settlement Class Member who desires to object to the proposed 23 settlement, including the requested attorneys' fees and expenses or service 24 awards to the Consolidated Complaint Plaintiffs must timely file with the Clerk 25 of this Court a notice of the objection(s), together with all papers that the 26 Settlement Class Member desires to submit to the Court no later than 30 days 27 prior to the date first set for the Final Approval Hearing (the "Objection Date"). 28 The objection must also be served on Class Counsel and Defendant's counsel no

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later than the Objection Date. The Court will consider such objection(s) and
papers only if such papers are received on or before the Objection Date provided
in the Class Notice, by the Clerk of the Court and by Class Counsel and
Defendant's counsel. In addition to the filing with this Court, such papers must
be sent to each of the following persons:

6 7

- 8
- -

Blood Hurst & O'Reardon, LLP 701 B Street, Suite 1700 San Diego, CA 92101 Telephone: 619/338-1100

Timothy G. Blood

Arturo J. Gonzalez Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 Telephone: 414/268-7000

9 The written objection must include: (a) a heading which refers to the 25. 10 Action; (b) the objector's name, address, telephone number and, if represented by 11 counsel, of his/her counsel; (c) a statement that the objector purchased 12 Hydroxycut Products during the class period; (d) a statement whether the 13 objector intends to appear at the Final Approval Hearing, either in person or 14 through counsel; (e) a statement of the objection and the grounds supporting the 15 objection; (f) copies of all papers, briefs, or other documents upon which the 16 objection is based; and (g) the objector's handwritten, dated signature (the 17 signature of objector's counsel, an electronic signature, and the annotation "/s" or 18 similar annotation will not suffice).

19 26. Any Settlement Class Member who files and serves a written 20 objection, as described in the preceding Section, may appear at the Final 21 Approval Hearing, either in person or through counsel hired at the Settlement 22 Class Member's expense, to object to any aspect of the fairness, reasonableness, 23 or adequacy of this Agreement, including attorneys' fees. Settlement Class 24 Members or their attorneys who intend to make an appearance at the Final 25 Hearing must serve a notice of intention to appear on the Class Counsel 26 identified in the Class Notice and to Defendant's counsel, and file the notice of 27 appearance with the Court, no later than twenty (20) days before the Final 28 Approval Hearing.

{00069372.V1}

1	27. Any Settlement Class Member who fails to comply with the
2	provisions of the preceding paragraph shall waive and forfeit any and all rights
3	he or she may have to appear separately and/or to object, and shall be bound by
4	all the terms of the Agreement and by all proceedings, orders and judgments,
5	including, but not limited to, the Release, in the Action.
6	28. Counsel for the Parties are hereby authorized to utilize all
7	reasonable procedures in connection with the administration of the settlement
8	which are not materially inconsistent with either this Order or the terms of the
9	Stipulation.
10	IT IS SO ORDERED.
11	
12	DATED: THE HON. BARRY TED MOSKOWITZ
13	U.S. DISTRICT COURT JUDGE
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28 {00069372.V1}	8 Case No. 3:09-MD-02087-BTM(KSC)
	Case No. 3:09-CV-01088-BTM(KSC) [PROPOSED] PRELIMINARY APPROVAL ORDER

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EXHIBIT 6

4/10/2014				NOT	NOTIFICATIONS
Notice plan reaches an e	Notice plan reaches an estimated 81.1% of Adults who take an over the counter remedy for weight loss, an estima	over the counter r	emedy for weight loss, an estima	ted 3.1 times each.	
	Media	Frequency	Distribution	Space & Material Close	Ad Unit
Newspaper Inserts			7 • • • • • • • • • • • • •		
	Parade USA Weekend	Weekly Weekly	National	30 days prior to issue date 30 days prior to issue date	3/10 page 1/4 page
Magazine					
C	Life & Style	Weekly	National	30 days prior to issue date	1/3 page
	Men's Fitness	10/year	National	60 days prior to issue date	1/3 page
	OK! Magazine	Weekly	National	30 days prior to issue date	1/3 page
	US Weekly	Weekly	National	30 days prior to issue date	1/3 page
Online					
	Facebook	Real-time	165,000,000 impressions	10 days prior to live date	100x80
	Conversant (formally Valueclick)	Real-time	85,000,000 impressions	10 days prior to live date	468x60
Press Release					
	PR Newswire	One-time	National	2 days prior to issue date	600 word max
Estimate(s) good for 60 days from date of issue	ys from date of issue.				

10300 SW Allen Blvd. Beaverton, OR 97005 503.350.5210 www.epiqsystems.com

HILSOFT

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EXHIBIT 7

Claims Protocol

This Claims Protocol (the "Protocol") is part of the Stipulation of Settlement ("Agreement") and shall be used by the Settlement Administrator to review and process those Claims submitted pursuant to the Agreement and otherwise implement the terms of the claim review and administration process. All capitalized terms used in this Protocol shall have the same meaning given them in the Agreement.

1. Settlement Administrator's Role and Duties

- (a) The Settlement Administrator shall be selected by the agreement of the Parties and recommended to and approved by the Court.
- (b) The Settlement Administrator must consent, in writing, to serve and shall abide by the obligations of the Agreement, this Protocol, and the Orders issued by the Court.
- (c) The Settlement Administrator shall coordinate with the Escrow Agent regarding the funds in the escrow account. However, the Claim Administrator shall have no authority, under any circumstance, to withdraw or disburse any escrowed funds without the written instructions of Iovate and Co-Lead Class Counsel.
- (d) The Settlement Administrator shall have access to information about the balance of the escrowed funds to perform calculations relating to (i) the costs and expenses associated with disseminating the Class Notice; (ii) the costs and expenses associated with claims administration; and (iii) the total amount due to Authorized Claimants.
- (e) The Settlement Administrator shall warrant that it knows of no reason why it cannot fairly and impartially administer the claim review process set forth in the Agreement. If the Settlement Administrator, Iovate, or Co-Lead Class Counsel learns of a conflict of interest as to a Claim, that party shall give written notice to the other parties, who shall resolve any such circumstances by further written agreement. Any unresolved dispute over such conflict of interest shall be submitted to the Court for resolution. The Settlement Administrator shall indemnify and defend the Parties and their counsel against any liability arising from the Settlement Administrator's breach of this provision.
- (f) The Settlement Administrator shall keep a clear and careful record of all communications with Settlement Class Members, all claims decisions, all expenses, and all tasks performed in administering the notice and claim review processes.
- (g) The Settlement Administrator shall provide periodic reports to the Co-Lead Class Counsel and Iovate regarding Claim Form submissions beginning not later than one after Class Notice is first disseminated and continuing on a weekly basis thereafter.

- (h) The actual cost of the Settlement Administrator shall be paid, from time to time, as determined by submitted and approved invoices, from the escrowed funds.
- (i) The Settlement Administrator shall take all reasonable efforts to administer the Claims efficiently and avoid unnecessary fees and expenses. The Settlement Administrator shall only be reimbursed for fees and expenses supported by detailed and clear timesheets and receipts for costs. As soon as work commences, the Settlement Administrator shall provide a detailed written accounting of all fees and expenses on a monthly basis to Co-Lead Class Counsel and Iovate's counsel, and shall respond promptly to inquiries by these counsel concerning fees and expenses.
- (j) The Parties are entitled to observe and monitor the performance of the Settlement Administrator to assure compliance with the Agreement and this Protocol. The Settlement Administrator shall promptly respond to all inquiries and requests for information made by Iovate or its counsel or Co-Lead Class Counsel.

2. Providing and Submitting Claim Forms

- (a) The Claim Form, which is in substantially the form attached as Exhibit _____ to the Agreement, shall be available as part of the Class Notice, on the Settlement Website at www.DietSupplementSettlement.com, or by contacting the Settlement Administrator. The Claim Form on the Settlement Website and the hard copy Claim Form shall be identical in content.
- (b) The Settlement Administrator shall establish and maintain the Settlement Website, www. DietSupplementSettlement.com, that shall be easily accessible through commonly used Internet Service Providers for the submission of claims. The Settlement Website shall be designed to permit Settlement Class Members to readily and easily submit Claims and obtain information about the Settlement Class Members' rights and options under the Agreement. The Internet website shall be maintained continuously until the Effective Date.
- (c) The Settlement Administrator also shall establish a toll-free telephone number that will have recorded information answering frequently asked questions about the Agreement, including, but not limited to, the instructions about how to request a Claim Form and/or Class Notice as well as an option to reach a live operator.
- (d) The Claim Form shall advise Settlement Class Members that Proof of Purchase is required for cash claims for more than three units of Hydroxycut Product and for Product Units for more than three units of Hydroxycut Product. If the Class Member does not provide Proof of Purchase with the Claim Form and is unable to provide Proof of Purchase upon request from the Settlement Administrator, the Claim may be reduced to the claim amount reasonably supported by the documentation or denied.
- (e) The Settlement Administrator shall mail a copy of the Current Eligible Claimant Notice (including the Claim Form) to the address listed on the Current Eligible

Claimant's previously submitted claim forms no later than 30 days following entry of an order granting preliminary approval of the settlement. The Settlement Administrator shall perform reasonable address updates for all Current Eligible Claimant Notices returned as undeliverable from the initial mailed notice. No later than 35 days from the initial mailed notice, the Settlement Administrator shall complete the re-mailing of Current Eligible Claimant Notices to those Current Eligible Claimants whose new addresses were identified as of that time through address updating.

3. Claim Form Review and Processing

- (a) Settlement Class Members may timely submit a Claim to the Settlement Administrator up to the Claims Deadline. Settlement Class Members shall be eligible for the relief provided in the Agreement, provided Settlement Class Members complete and timely submit the Claim Form to the Settlement Administrator by the Claim Deadline.
- (b) Whether or not they submit a new Claim Form (timely or otherwise), and unless they submit a valid request for exclusion from this Settlement, Current Eligible Claimants shall be automatically entitled, at a minimum, to an award for the same number of units of Hydroxycut Product (and in the same award form previously selected cash or product) for which they were entitled under the terms of the settlement memorialized in the Stipulation of Settlement filed in this Action on November 2, 2012 (Dkt. 188 in Case No. 3:09-cv-01088) as modified by the Amended Stipulation of Settlement filed in this action on August 1, 2013 (Dkt. 238 in Case No. 3:09-cv-01088). If the Current Eligible Claimant did not elect cash or product, he or she will be paid cash.
- (c) The Settlement Administrator shall complete the claim review process within the time period specified in Section V of the Agreement.
- (d) The Settlement Administrator shall gather and review the Claim Forms received pursuant to the Agreement, and fulfill valid claims.
 - (i) Settlement Class Members who submit a timely and valid Claim Form shall be designated as Authorized Claimants. The Settlement Administrator shall examine the Claim Form before designating the Settlement Class Member as an Authorized Claimant to determine that the information on the Claim Form is reasonably complete and contains sufficient information to enable the mailing of the settlement award to the Settlement Class Member. If the Settlement Class Member does not elect cash or product on the Claim Form, he or she will be paid cash.
 - (ii) No Settlement Class Member may submit more than one Claim Form for each unit of Hydroxycut Product purchased by the claimant. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member ("Duplicative

Claim Forms"). Following consultation with counsel for the Parties, the Settlement Administrator shall determine whether there is any duplication of Claims, if necessary by contacting the claimant(s) or their counsel. The Settlement Administrator shall designate any such Duplicative Claims as invalid claims to the extent they allege the same damages or allege damages on behalf of the same Settlement Class Member.

- (iii) The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any claim to prevent actual or possible fraud or abuse.
- (iv) By agreement of the Parties, the Parties can instruct the Settlement Administrator to take whatever steps they deem appropriate to preserve the Settlement Fund to further the purposes of the Agreement if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of Claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse.
- (v) The Claims Administrator shall, in its discretion, following consultation with counsel for the Parties, decide whether to accept Claim Forms submitted after the Claims Deadline.
- (e) Beginning once Notice is disseminated, the Settlement Administrator shall provide periodic reports to Class Counsel and Iovate's counsel regarding the implementation of the Agreement and this Protocol.
- (f) If a Claim Form cannot be processed without additional information and/or Proof of Purchase, the Settlement Administrator shall promptly notify the Parties and, after consulting with counsel for the Parties, mail a letter that advises the claimant of the additional information and/or documentation need to validate the claim. The claimant shall have thirty-five (35) days from the date of the postmarked letter sent by the Settlement Administrator to respond to the request from the Settlement Administrator and the claimant shall be so advised.
 - (i) In the event the claimant timely provides the requested information and/or documentation, the Claim shall be deemed validated and shall be processed for payment.
 - (ii) In the event the claimant does not timely provide the information and/or documentation, the Claim may be denied or, in the case of a missing Proof of Purchase, reduced to the claim amount reasonably supported by the documentation without further communication with the claimant.
- (g) If a Claim is reduced or denied because the Settlement Administrator determined that the documentation of Proof of Purchase was not sufficient to prove up the Claim, the Settlement Administrator shall provide a report to Class Counsel and

Iovate's counsel who shall meet and confer in an attempt to resolve these Claims. If Class Counsel reasonably recommends payment of the Claim or payment of a reduced claim amount and Iovate agrees (and Iovate's agreement shall not be unreasonably withheld), then the Settlement Administrator shall be instructed pay those Claims.

(h) The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Iovate. Case 3:09-cv-01088-BTM-KSC Document 311-2 Filed 04/21/14 Page 84 of 93

EXHIBIT 8

If You Purchased Hydroxycut Products Between May 9, 2006 and May 1, 2009, You May Be Entitled To Settlement Benefits

The United States District Court for the Southern District of California authorized this notice. This is not a solicitation from a lawyer.

<u>Please take notice of the following information</u>

THIS LETTER IS BEING SENT TO YOU BECAUSE RECORDS INDICATE THAT IN 2013 YOU SUBMITTED A CLAIM FOR SETTLEMENT BENEFITS FROM A HYDROXYCUT PRODUCT SETTLEMENT.

As explained in this notice, the Parties have reached a different settlement. Your rights may be impacted. Please read this notice carefully.

Under this settlement, you may now submit a claim for up to 3 purchases of eligible Hydroxycut Products without submitting proof of purchase. Previously, proof of purchase was required for claims of more than one unit purchased. If you wish to update your claim information you must complete and return a Claim Form no later than _____,2014 either online at www.DietSupplementSettlement.com or by mail to the Settlement Administrator's address listed on the Claim Form. If you do not wish to update your previously submitted claim form you do not have to do anything. If you do not submit an updated claim form, the Court-appointed Settlement Administrator will evaluate your eligibility for Settlement benefits based on your previously submitted Hydroxycut settlement claim form. [NOTE: Records indicate you previously submitted a claim for free products rather than cash, you will automatically be sent [NAME OF PRODUCT]. If you want.]

A Claim Form is included with this Notice. Claim Forms are also available online at <u>www.DietSupplementSettlement.com</u> or by calling 1.xxx.xxx.

You should read the rest of this notice carefully for more information on your legal rights under this Settlement. Your legal rights are impacted whether you act or don't act.

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This Notice advises you of a proposed class action settlement. The settlement concerns alleged misrepresentations regarding certain Hydroxycut products. Your legal rights are affected whether you act or don't act. You should read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	Get a cash refund or free products.
EXCLUDE YOURSELFGet out of the lawsuit. Get no settlement benefits.	
Object	Write to the Court about why you don't like the settlement.
DO NOTHING	Get no cash refund or free products. Give up your rights to separately sue.

Your rights and options - and the deadlines to exercise them - are explained in this notice.

The Court in charge of this case 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. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION	4 -
WHO IS IN THE SETTLEMENT	4 -
THE SETTLEMENT BENEFITS—WHAT YOU GET	5 -
THE LAWYERS REPRESENTING YOU	6 -
EXCLUDING YOURSELF FROM THE SETTLEMENT	6 -
DBJECTING TO THE SETTLEMENT	7 -
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BASIC INFORMATION

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed a class action lawsuit claiming that defendants misrepresented that certain Hydroxycut weight loss products were clinically proven to be safe and effective for weight loss. In courts throughout the United States, twenty other lawsuits with similar claims were also filed. Defendants deny all allegations and are entering into this settlement to avoid burdensome and costly litigation. The settlement is not an admission of wrongdoing.

The defendants are the companies that marketed and sold the Hydroxycut products. The defendants that are settling the lawsuit are: Kerr Investment Holding Corp. f/k/a Iovate Health Sciences Group, Inc.; Iovate Health Sciences, Inc.; and Iovate Health Sciences U.S.A. Inc ("Iovate").

The parties have agreed to settle the lawsuit on the terms explained in this notice. The settlement will resolve this case and the other related class action cases.

WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called Class Representatives (in this case Andrew Dremak), sue on behalf of people who have alleged similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class. United States District Court Judge Barry Moskowitz is in charge of this class action.

WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and settlement benefits go to the Class Members. The Class Representative and the attorneys think the settlement is best for the Class Members.

WHO IS IN THE SETTLEMENT

To see if you are eligible for benefits, you first have to determine whether you are a Class Member.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

You may be a member of the Class if you purchased one of the Hydroxycut weight loss products listed below in the United States between May 9, 2006 and May 1, 2009, inclusive:

- Hydroxycut Regular Rapid Release Caplets
- Hydroxycut Caffeine-Free Rapid Release Caplets
- Hydroxycut Hardcore Liquid Caplets
- Hydroxycut Max Liquid Caplets
- Hydroxycut Regular Drink Packets

- Hydroxycut Max Drink Packets
- Hydroxycut Liquid Shots
- Hydroxycut Hardcore RTDs (Ready-to-Drink)
- Hydroxycut Max Aqua Shed
- Hydroxycut 24

Questions? Visit www.DietSupplementSettlement.com or Call 1-800-xxx-xxxx

- Hydroxycut Caffeine-Free Drink Packets
- Hydroxycut Hardcore Drink Packets (Ignition Stix)
- Hydroxycut Carb Control
- Hydroxycut Natural

This settlement only covers the economic loss for the purchase of the products listed above.

THE SETTLEMENT BENEFITS—WHAT YOU GET

A CASH REFUND OR A PRODUCT UNIT IF YOU SUBMIT A CLAIM

Iovate has agreed to provide a total settlement fund of \$14 million (\$7 million in cash and \$7 million in product) (the "Fund") in full settlement of the claims of the Settlement Class. The Fund will be used to pay eligible claims, notice and claim administration expenses, as well as Class Counsel's attorneys' fees and expenses and any service awards to the Plaintiffs (discussed below). Defendants will not be obligated to pay any additional amounts of any kind in connection with this Settlement. The settlement distribution process will be administered by an independent settlement administrator ("Settlement Administrator") approved by the Court.

WHAT CAN I GET FROM THE SETTLEMENT?

For **each unit** of Hydroxycut Product you purchased, you may choose to receive **either** a Product Unit or a cash payment.

Each Product Unit will be worth at least \$25 and will contain at your choice any bottle of Hydroxycut Caffeine Free (72 count), Hydroxycut Pro Clinical (72 count), Hydroxycut Hardcore (60 count), or Hydroxycut Max (60 count). Cash payments will vary depending on, among other factors, the number of valid cash claims by all Settlement Class Members and other adjustments and deductions as specified in the Settlement Agreement. The amount for each unit could be more (up to more than two times the approximate average retail price), the same, or less than \$15 for each unit of Hydroxycut Product.

If you request an award of **up to three** Product Units, no Proof of Purchase is necessary.

If you request an award of more than three Product Units, you must provide Proof of Purchase.

If you request a cash award for **up to three units** of Hydroxycut Product, no Proof of Purchase is necessary.

If you request a cash award for **more than three units** of Hydroxycut Product, you must provide Proof of Purchase.

Any monies remaining in the Fund after paying valid claims, expenses, service awards and attorneys' fees and expenses will be distributed to ChangeLab Solutions or some other similar organization as the Court determines pursuant to the *cy pres* doctrine. Any product remaining in the Fund after satisfying valid Product Unit claims will be distributed to the Hydroxycut purchasers in the form of additional product.

HOW CAN I GET A CASH PAYMENT OR PRODUCT UNIT?

To receive cash or Product Unit(s), you must complete and return a "Current Eligible Claimant Claim Form" **no later than _____,2014.**

A "Current Eligible Claimant Claim Form" is included with this Notice. "Current Eligible Claimant Claim Forms" are also available online at <u>www.DietSupplementSettlement.com</u> or by calling 1.xxx.xxx.

WHEN WOULD I GET MY SETTLEMENT AWARD?

The Court will hold a hearing on **[date]** at _____ **a.m./p.m.**, to decide whether to approve the settlement. If Judge Moskowitz approves the settlement, there may be appeals. The appeal process can take time, perhaps more than a year. Please be patient.

IN RETURN FOR THESE SETTLEMENT BENEFITS, WHAT AM I GIVING UP?

If the Court approves the proposed settlement and you do not request to be excluded from the Class, you must release (give up) all claims concerning defendants' alleged misrepresentation of the Hydroxycut products covered by this settlement, and the case will be dismissed on the merits and with prejudice. If you remain in the Class, you may not assert any of those claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress. However, you do not release claims for personal injuries through this settlement. The judgment and orders entered in this case, whether favorable or unfavorable, will bind all Class Members who do not request to be excluded.

The full terms of the Release are contained in the Stipulation of Settlement that is available at www.DietSupplementSettlement.com, or in the public court records on file in this action.

THE LAWYERS REPRESENTING YOU

DO I HAVE A LAWYER IN THIS CASE?

The Court appointed the law firms of Blood Hurst & O'Reardon, LLP and Bonnett Fairbourn Friedman & Balint, P.C. to represent you and other Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense and enter an appearance through your own counsel.

HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to award attorneys' fees not to exceed 25% of the Fund, plus provide reimbursement of expenses incurred not to exceed \$300,000. These amounts will be paid by defendants from the Fund.

In addition, the Class Representative in this case, the Consolidated Complaint Plaintiffs, and the Other Plaintiffs in the other related class actions will ask the Court to award them service awards of \$2,000 for their time and effort acting as plaintiffs in the lawsuits.

Defendants have agreed to not to oppose these awards.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue defendants, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself—or is sometimes referred to as opting out of the Settlement Class.

HOW DO I GET OUT OF THE SETTLEMENT?

If you do not wish to be included in the Class and receive a refund for your purchases of Hydroxycut, you must send a letter stating that you want to be excluded from *Dremak v. Iovate Health Sciences Group, Inc.*, No. 3:09cv01088 (S.D. Cal). Be sure to include your name, address, telephone number, your signature, and a statement that you purchased one of the Hydroxycut products covered by this settlement. You must mail your exclusion request post-marked no later than [date] to:

Settlement Administrator [address]

You can't exclude yourself on the phone or by fax or e-mail. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. However, you will not be legally bound by anything that happens in this lawsuit and you will keep your right to separately pursue claims against the defendants relating to the subject matter of this lawsuit.

IF I DON'T EXCLUDE MYSELF, CAN I SUE DEFENDANTS FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue defendants for the claims that this settlement resolves. You must exclude yourself from *this* Class to pursue your own lawsuit. Remember, your exclusion must be postmarked on or before **[date]**.

IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?

No. If you exclude yourself, you will not receive any money. Do not send in a Claim Form. But, you will not lose any right you may have to sue, continue to sue, or be part of a different lawsuit against defendants about the legal issues in this case.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

How do I tell the Court that I do not like the settlement?

If you are a Class Member, you can object to the settlement if you do not like any part of it and the Court will consider your views. The deadline for Class Members who have not filed a lawsuit for personal injuries has passed. Therefore, this objection opportunity is limited to those Class Members who also have claims for personal injuries. To object, you must send a letter with your handwritten, dated signature to the Court and the parties saying that you object to the settlement in *Dremak v. Iovate Health Sciences Group, Inc.*, No. 3:09cv01088 (S.D. Cal). Be sure to include your name, address, telephone number, your signature, and all the reasons you object to the settlement. You must also affirm under penalty of perjury that you are a Class Member or provide other proof of Class membership.

Your objection *must be mailed to and actually received* at these three different places no later than [date]. Send your objection to:

Clerk of the Court United States District Court, Southern District of California 333 West Broadway, Suite 420 San Diego, CA 92101 Timothy G. Blood Blood Hurst & O'Reardon, LLP 701 B Street, Suite 1700 San Diego, CA 92101

Arturo J. Gonzalez Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105

WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. You cannot request exclusion **and** object to the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. Class Members who do exclude themselves may, if they wish, enter an appearance through their own counsel.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you don't have to.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Final Approval Hearing at [time] on [date] at the United States District Court, Southern District of California, Edward J. Schwartz U.S. Courthouse, 221 West Broadway, San Diego, California, 92101. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Moskowitz will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement. The Court may also consider how much to award Class Counsel and the amount of the service award for Plaintiffs. We do not know how long this decision will take.

DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions Judge Moskowitz may have. But, you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you delivered your written objection on time, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

MAY I SPEAK AT THE HEARING?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file with the Court a "Notice of Intention to Appear." Be sure to include your name, address, telephone number, and your signature. You may also be required to provide proof that you are a Class Member. Your Notice of Intention to

Questions? Visit www.DietSupplementSettlement.com or Call 1-800-xxx-xxxx

Appear must be filed no later than [date], and must also be served on the Clerk of the Court, Class Counsel and Defense Counsel at the three addresses listed on page 6 above. You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will be part of the settlement Class. The Settlement Administrator will review your previously submitted claim form to determine your relief under this settlement. You won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against defendants about the legal issues in this case.

GETTING MORE INFORMATION

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The Stipulation of Settlement contains the complete terms. You can get a copy of the Stipulation of Settlement at <u>www.DietSupplementSettlement.com</u>, or by reviewing the records on file in the court clerk's office. The Claim Form and other information are also available at <u>www.DietSupplementSettlement.com</u>. Remember to return a Claim Form to participate in the settlement benefits.

PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.

/s/ The Honorable Barry T. Moskowitz

DATED: _____

UNITED STATES DISTRICT JUDGE

	(Case 3:09-cv-01088-BTM-KSC Docume	nt 311-3 Filed 04/21/14 Page 1 of 20
	1 2 3 4 5 6	BLOOD HURST & O'REARDON, I TIMOTHY G. BLOOD (149343) LESLIE E. HURST (178432) THOMAS J. O'REARDON II (24795 701 B Street, Suite 1700 San Diego, CA 92101 Telephone: (619) 338-1100 Facsimile: (619) 338-1101 tblood@bholaw.com lhurst@bholaw.com toreardon@bholaw.com	
EARDON, LLP	7 8 9 10 11 12 13	BONNETT, FAIRBOURN, FRIEDM & BALINT, P.C. ANDREW S. FRIEDMAN (AZ 0054 ELAINE A. RYAN (AZ 012870) PATRICIA N. SYVERSON (CA 203111; AZ 020191) 2901 N. Central Avenue, Suite 1000 Phoenix, AZ 85012-3311 Telephone: (602) 274-1100 Facsimile: (602) 798-5860 afriedman@bffb.com eryan@bffb.com psyverson@bffb.com	IAN 25)
BLOOD HURST & O'REARDON, LLP	 14 15 16 17 18 19 20 21 22 23 24 		ES DISTRICT COURT RICT OF CALIFORNIA Case No.: 3:09-MD-02087-BTM(KSC) Case No.: 3:09-CV-01088-BTM(KSC) DECLARATION OF TIMOTHY G. BLOOD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT Dept.: 15 Judge: Honorable Barry T. Moskowitz
	24 25 26 27 28	GROUP, INC., <i>et al.</i> , Defendants.	_
{0006938	-		Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC) G. BLOOD IN SUPPORT OF MOTION AL OF CLASS ACTION SETTLEMENT

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I, TIMOTHY G. BLOOD, declare as follows:

 I am an attorney duly licensed to practice before all of the courts of the State of California. I am the managing partner at Blood Hurst & O'Reardon, LLP, one of the firms appointed as Class Counsel pursuant to Fed. R. Civ. P. 23(g). I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto. I submit this declaration in support of the Motion for Preliminary Approval of Class Action Settlement.

2. Attached are true and correct copies of the following documents:

Exhibit A: Blood Hurst & O'Reardon, LLP Firm Resume;

Exhibit B: Collection of print advertisements and labeling exemplars for the Hydroxycut Products; and

Exhibit C: Collection of television advertisement scripts for the Hydroxycut Products.

14 3. This MDL litigation has been hard-fought from the very beginning, 15 even before the related class actions were consolidated before this Court. There 16 have been contested discovery motions and numerous motions to dismiss on 17 several consolidated complaints that required extensive briefing and focused 18 discovery on complex issues such as personal jurisdiction over Iovate's parent 19 corporation, as well as the choice-of-law analysis in the MDL context. As a 20 result of the Parties' extensive meet and confer efforts held virtually 21 continuously throughout this litigation, Class Counsel was able to obtain over 22 two million pages of documents from Iovate and the Retailer Defendants. Class 23 Counsel organized a team of attorneys who coded and analyzed these documents 24 on several database systems. Depositions of corporate representatives from 25 Iovate and the Retailer Defendants were also conducted. Class Counsel also 26 engaged in substantial third-party discovery resulting in tens of thousands of 27 pages of documents. Class Counsel successfully served Iovate's President, Paul 28 Gardiner and his trust, through the Hague Convention. The following is a

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summary of the motion practice, discovery efforts and settlement negotiations 1 2 that were involved in the successful litigation of this action

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Initial Investigations: In April 2009, Plaintiffs' Counsel began 4. investigating the veracity of the advertising and product labeling claims Iovate made about the safety and efficacy of the Hydroxycut Products. These investigations coincided with Iovate's announcement on May 1, 2009, that it was recalling the Hydroxycut Products, but not providing restitution to consumers. Iovate's recall followed announcements by the Food and Drug Administration ("FDA") and Health Canada that ingestion of the Hydroxycut Products was associated with numerous adverse reactions. On April 30, 2009, the FDA informed Iovate that it "concluded that the ingestion of the dietary supplement Hydroxycut presents a severe potentially life-threatening hazard to some users." Further, the FDA "strongly advise[d]" consumers of "the potential risk of severe liver injury" associated with consumption of the products and urged that they discontinue use of the Hydroxycut Products. See FTS-HHS FDA, "Hydroxycut Dietary Supplement FDA Warns Consumers To Stop Using Hydroxycut Products Risk Of Liver Injury," Transcript Dated 5/1/09.

Our investigation included gathering and analyzing studies that 18 5. 19 purported to evidence the safety and efficacy benefits derived from consuming 20 the Hydroxycut Products. We also researched and obtained medical reports 21 discussing the dangers associated with consuming the Hydroxycut Products. Our 22 investigation also included an extensive search and review of Iovate's advertising 23 and marketing materials for the Hydroxycut Products. We also researched and 24 analyzed available financial and sales information about Iovate generally and 25 financial and sales information related to the Hydroxycut Products. This analysis 26 also included research regarding the facts and allegations in prior litigation and 27 recalls involving the Hydroxycut Products' predecessor formula containing 28 ephedra.

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1 On May 19, 2009, on behalf of 6. **Initial Complaint Filings**: 2 proposed Class Representative Andrew Dremak, I caused to have filed a class 3 action against Iovate for false advertising, including that the Hydroxycut 4 Products were not effective for weight-loss purposes and that the Hydroxycut 5 Products were unsafe. On behalf of plaintiff Cody Coleman, Co-Lead Class 6 Counsel at Bonnett, Fairbourn, Friedman, & Balint, P.C., filed the original 7 complaint in the related class action entitled Coleman v. Iovate Health Sciences USA, Inc., Case No. 3:09-cv-00988-BTM(KSC). A number of other similar 8 9 class actions were filed around the country shortly thereafter.

BLOOD HURST & O'REARDON, LLP

10 The JPML Motion to Coordinate Related Actions: On October 7. 11 6, 2009, upon a Motion for Coordination and Transfer, the Judicial Panel on 12 Multidistrict Litigation transferred sixteen of the pending actions to the Southern 13 District of California and assigned them to the Honorable Barry Ted Moskowitz 14 for coordinated or consolidated pretrial proceedings. The action was captioned, 15 In re Hydroxycut Marketing and Sales Practices Litigation, MDL No. 2087 ("the 16 Action"). Thereafter, additional related class actions were transferred to Judge 17 Moskowitz as tag-along cases.

18 The Appointment of BHO and BFFB Pursuant to Rule 23(g): 8. 19 On February 3, 2010, plaintiffs submitted a motion to appoint Timothy G. Blood 20 of Blood, Hurst & O'Reardon, LLP ("BHO"), and Andrew S. Friedman of Bonnett, Fairbourn, Friedman, & Balint, P.C. ("BFFB") as Co-Lead Class 21 (D.E. No. 72).¹ On March 8, 2010, the Court issued an order 22 Counsel. 23 appointing BHO and BFFB as Co-Lead Class Counsel pursuant to Fed. R. Civ. 24 P. 23(g). (D.E. No. 112).

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¹ Unless stated otherwise, all "D.E. No." references are to docket entry numbers in the MDL docket, Case No. 3:09-MD-02087.

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<u>Court's Order Granting in Part and Denying in Part the Motion to Dismiss</u>:

The First Amended Complaint, Related Motion Practice and the

On December 22, 2009, Class Counsel filed a First Consolidated Amended Class Action Complaint ("FAC"). On February 12, 2010, Iovate and the Retailer 4 5 Defendants moved to dismiss the FAC. (D.E. Nos. 83-84). On April 9, 2010, 6 Plaintiffs filed their opposition brief. (D.E. No. 161). On January 31, 2011 and May 9, 2011, Plaintiffs filed supplemental authority in support of their 7 8 opposition, to which Defendants filed an opposition. (D.E. Nos. 469, 685, 695). 9 On May 31, 2011, the Court issued a 23-page opinion that granted in part and 10 denied in part the motion to dismiss. (D.E. No. 718). The Court held that 11 Plaintiffs have Article III standing and suffered injury in fact by purchasing falsely advertised Hydroxycut Products. (Id. at 8). However, the Court ruled 12 13 that Plaintiffs' consumer protection claims, set forth in Counts I-XIV of the 14 FAC, "failed to plead fraud with particularity as required by Fed. R. Civ. P. 9(b)," and granted leave to amend to include more factual details. (Id. at 12, 14). 15 16 Likewise, the Court ruled that Plaintiffs' breach of express warranty claim failed 17 to sufficiently plead which affirmations or promises formed the basis of the 18 bargain. (Id. at 15). The Court also held that a breach of express and implied 19 warranty and pre-suit notice was adequately alleged, but that certain warranty 20 claims failed based on the privity requirements of particular states. (Id. at 15-21 19). The Court held that adding factual specificity would remedy the problems 22 with Plaintiffs' unjust enrichment count. (Id. at 20-21). As to the Retailers, the 23 Court held that "Plaintiffs have not alleged sufficient facts to state a claim under 24 the various state consumer protection laws or to state claims for breach of 25 express warranty or unjust enrichment." (Id. at 21). The Court held that, with 26 the potential exception of allegations against GNC (for which more was still 27 required), the FAC failed to allege actionable misconduct against the Retailers:

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Case No. 3:09-CV-01088-BTM(KSC) DECLARATION OF TIMOTHY G. BLOOD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Because the FAC fails to allege facts showing that (1) the Retailer Defendants participated in, controlled, or adopted as their own, representations made by Iovate, or (2) made their own representations regarding the Products that Plaintiffs relied on in purchasing the Products, the Court dismisses the consumer protection claims, express warranty claim, and unjust enrichment claims as to the Retailer Defendants.

(Id. at 22). The Court granted Plaintiffs leave to amend their claims against the

6 Retailers. (*Id.*).

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10. Kerr's Jurisdictional Motion to Dismiss, Related Discovery and

the Court's Order Denying the Jurisdictional Motion to Dismiss: 8 On 9 February 12, 2010, defendant Kerr Investment Holding Corp. f/k/a lovate Health 10 Sciences Group Inc. ("Kerr") (a Canadian entity and the parent corporation for 11 the Iovate-related entities) filed a motion to dismiss for lack of personal 12 jurisdiction relating to the consolidated class action arguing that it did not have 13 sufficient minimum contacts with the United States. (D.E. No. 83). In response 14 to the jurisdictional motion to dismiss, Plaintiffs propounded several sets of 15 written discovery requests. Through extensive meet and confer efforts, Plaintiffs 16 ultimately obtained and reviewed approximately 23,000 pages of documents in 17 response to the jurisdictional discovery requests. Following several discovery 18 conferences with the Court, on April 14 and 15, 2010, Plaintiffs deposed two 19 corporate designees of Kerr in Toronto, Canada, pursuant to Fed. R. Civ. P. 30(b)(6), relating to jurisdictional issues. On September 3, 2010, Plaintiffs 20 21 submitted a 50-page memorandum in opposition to Kerr's jurisdictional motion 22 to dismiss. (D.E. No. 343). Two hundred and fifty-three exhibits were 23 submitted in support of their opposition. (D.E. No. 343-01). The Parties then 24 briefed Kerr's motion to strike over 150 of these exhibits. (D.E. Nos. 360, 365). 25 On October 13, 2010, the Court held a hearing on Kerr's jurisdictional motion to 26 dismiss and ordered the Parties to submit further briefing regarding the long-arm 27 statutes, the alter ego doctrine, and agency laws from the various states 28 implicated by Kerr's motion to dismiss. (D.E. No. 369). In response to the order Case No. 3:09-MD-02087-BTM(KSC) 5

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for additional briefing, on November 18, 2010, the Parties provided a comprehensive 70-page state-by-state analysis of each relevant jurisdiction's long-arm statute and an overview of each relevant jurisdiction's alter ego and agency theories of liability. (D.E. No. 402). On March 11, 2011, the Court granted in part Plaintiffs' objections to the confidentiality of documents 6 submitted in connection Kerr's motion to dismiss, resulting in the public filing of much of the briefing and many of the exhibits. (D.E. Nos. 540, 547, 577, 602, 8 605). On June 20, 2011, Plaintiffs filed supplemental authority in opposition to Kerr's motion to dismiss, to which Kerr responded on June 29, 2011. (D.E. Nos. 10 766, 794).

On July 12, 2011, the Court issued a detailed, 32-page decision 11. denying Kerr's motion to dismiss for lack of personal jurisdiction. (D.E. No. 821). The Parties then submitted contested briefing on sealing portions of the Court's order denying Kerr's motion to dismiss. (D.E. Nos. 842, 846). On August 25, 2011, the Court issued an order granting in part Kerr's application to seal portions of the order denying Kerr's motion to dismiss. (D.E. No. 887).

17 The Second Amended Complaint and Defendants' Motions to 12. 18 On August 8, 2011, Class Counsel filed the Second Consolidated **Dismiss**: 19 Amended Class Action Complaint (the "SAC"). (D.E. No. 865). On September 20 1, 2011, the Court issued an order regarding the Parties' contested briefing on Kerr's application to seal portions of the SAC. (D.E. Nos. 882, 884, 890, 898). 21 22 On January 13, 2012, the Parties filed briefing regarding the SAC, which 23 outlined their respective positions on potential Fed. R. Civ. P. Rule 12 issues, 24 including Defendants' arguments that (1) Plaintiffs' class allegations should be 25 stricken, (2) the claims sounded in fraud and failed to meet the particularity 26 requirements, and (3) the warranty claims failed because the alleged promises or 27 affirmations were not detailed and privity did not exist as to the Retailers. (D.E. 28 No. 1019).

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Case No. 3:09-MD-02087-BTM(KSC) 6 Case No. 3:09-CV-01088-BTM(KSC) DECLARATION OF TIMOTHY G. BLOOD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

13. On March 9, 2012, Iovate filed a Fed. R. Civ. P. Rule 12(b)(6) motion to dismiss Counts I, VII, and IX of the SAC and the Retailer Defendants filed a Fed. R. Civ. P. Rule 12(b)(6) motion to dismiss Counts I-XV of the SAC. (D.E. Nos. 1097-1099). On March 27, 2012, Plaintiffs filed their oppositions to Iovate and Retailers' motions to dismiss. (D.E. Nos. 1143-1144). On April 6, 2012, Iovate and the Retailers filed their reply briefs in support of their motions to dismiss. (D.E. Nos. 1163-1165).

14. On December 16, 2013, the Parties submitted supplemental briefing regarding the motions to dismiss submitted by the Iovate Defendants and the Retailer Defendants. (D.E. Nos. 1737-1738 (Plaintiffs' supplemental briefing), 1739 (Defendants' supplemental briefing)).

12 15. On January 27, 2014, the Court issued a lengthy opinion that denied 13 Iovate's and the Retailer Defendants' motions to dismiss, but ordered Plaintiff to 14 provide a more definite statement. (D.E. No. 1786). The Court held that Rule 23 governed Plaintiffs' claims and were not subject to dismissal based on the 15 16 state statutes prohibiting class actions. (*Id.* at 8, 19). For the Retail Defendants, 17 the Court held that aside from three plaintiffs (Ortiz, Torres, and Walquer), the 18 SAC did not satisfy the pleading requirements of Rule 9(b). (*Id.* at 8). The 19 Court also held that the Plaintiffs failed to allege "facts supporting an inference" 20 of knowledge as to all of the state consumer claims." (Id. at 17). Likewise, the Court ruled that Plaintiffs' breach of express warranty claim failed because the 21 22 SAC failed to "identify representations by the Retailer Defendants that led to 23 Plaintiffs' purchase of Hydroxycut Products." (Id. at 18). The Court also held 24 Plaintiffs' unjust enrichment claim failed because it was premised on the 25 consumer protection claims, which were not pled with the requisite specificity. 26 (Id.) The Court gave Plaintiffs 30 days to file a more definite statement to 27 addressed the issues raised in the Order concerning the Retailer Defendants. (Id. 28 at 20). Within 20 days of filing a more definite statement, Retailer Defendants

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can answer or file a notice of intention to file a motion to dismiss. (*Id.*) The
Court set a trial date of October 14, 2014, and a pretrial conference for
September 15, 2014. (D.E. No. 1741).

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16. <u>Naming and Serving Paul Gardiner and the Trust Through the</u> <u>Hague Convention</u>: Following the Court's order denying the Iovate parent corporation's motion to dismiss for lack of personal jurisdiction, and in connection with the SAC, Plaintiffs named as defendants Paul Gardiner, the President of Kerr and the Iovate-related entities, as well as The Toronto Oak Trust, the entity that owns Kerr. Both Paul Gardiner and The Toronto Oak Trust are citizens of and located in Canada. On January 6, 2012, Plaintiffs accomplished service of the SAC on Paul Gardiner and The Toronto Oak Trust through the Hague Convention process. (D.E. No. 1061).

13 **Overview of Discovery Efforts**: Starting in November 2009, the 17. 14 Parties have engaged in a substantial amount of discovery. Iovate and the 15 Retailers have provided numerous witnesses for depositions and have produced 16 millions of pages of documents. Discovery has included productions from both 17 hard-copy files and electronic files. Electronically stored information ("ESI") 18 was retrieved from a variety of network sources and encompassed more than one 19 hundred document custodians. Class Counsel also obtained substantial discovery 20 through third-parties subpoenas, the Freedom of Information Act ("FOIA") and state "sunshine law" requests. Class Counsel also propounded and obtained 21 22 responses to hundreds of discovery requests propounded on Iovate and the 23 Retailers.

18. Jurisdictional Discovery, Including Iovate Depositions: In
August 2009 (before the related lawsuits were consolidated by the JPML), and in
response to Kerr's original Rule 12(b)(2) motion filed in *Dremak v. Iovate Health Sciences Group, Inc.*, Case No. 09-1088 (S.D. Cal.), Thomas O'Reardon
and I filed and fully briefed a motion for leave to take jurisdictional discovery.

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1 See Dremak, Case No. 3:09-CV-01088-BTM(KSC), D.E. Nos. 27, 32, 34. On 2 November 5, 2009, the Court granted Plaintiff's motion. (D.E. No. 9). Thus, in 3 November 2009, Plaintiffs served Kerr with their first sets of discovery requests, 4 including interrogatories, requests for admissions and document requests aimed 5 at jurisdictional discovery related to Kerr's Rule 12(b)(2) motion to dismiss. 6 Plaintiffs also served a Fed. R. Civ. P. 30(b)(6) deposition notice on Kerr, and a 7 notice of deposition for Jo-Ann Heikkila, Trademark Agent and Senior Corporate 8 Law Clerk for Iovate Health Sciences Research Inc. Thereafter, the Parties held 9 several meet and confer sessions regarding Kerr's discovery responses. In March 10 2010, Plaintiffs served Kerr with second sets of discovery requests, including 11 interrogatories, requests for admissions and document request, regarding 12 personal jurisdiction. In response to Plaintiffs' jurisdictional discovery requests, 13 Kerr produced approximately 23,000 pages of documents. On April 14, 2010, 14 Plaintiffs took the deposition of Ms. Heikkila, and on April 15, 2010, Plaintiffs 15 deposed Kerr's corporate designee and the Finance Director of Iovate Health 16 Sciences, Inc., John Pica. On April 12, 2011, Plaintiffs also deposed Iovate's 17 Director of Regulatory Affairs, John Doherty.

18 19. The Parties held substantial negotiations relating to the ESI: 19 production of ESI. On March 29, 2010, the Court ordered the Parties to meet 20 and confer on all issues relating to the disclosure and discovery of ESI, including 21 the form of production, archive and legacy data at issue, onsite inspection and 22 sampling, keywords, and the likely universe and identity of witnesses. (D.E. No. 23 136). Accordingly, beginning in April 2010, the Parties began discussions 24 relating to the ESI network structures, and key custodians relevant to the Action. 25 As part of the meet and confer process, and pursuant to the guidance provided by 26 the Court, Iovate provided detailed network and organizational structure and 27 retention policy information. Likewise, the Retailer defendants provided key 28 custodian and network structure information. The Parties also negotiated a

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document preservation order and a protective order, which was twice amended by the Parties. (D.E. Nos. 432, 1214). The Parties also engaged in substantial negotiations over tiered, defendant-specific keywords for the production of ESI. Likewise, the Parties negotiated a phased ESI production from prioritized custodians. As a result of these extensive meet and confer efforts, lovate 6 produced approximately 2 million pages of documents from its network folders and the files of approximately 80 current and former employees. The Retailers 8 also each made document productions. Wal-Mart, GNC, and Walgreens produced approximately 34,000, 14,000, and 1,228 pages of documents, 10 respectively. Class Counsel created a dedicated document database for the discovery obtained, and organized a team of attorneys who then analyzed and 12 coded these productions over the course of months. Class Counsel also obtained access to an additional Iovate database containing separate, substantial amounts 14 of ESI that was subsequently coded and analyzed. These documents were used 15 throughout the litigation, including for amended complaint purposes, depositions, 16 and the preparation of the briefing and related documents for class certification.

17 Written Discovery: Plaintiffs served substantial amounts of 20.discovery on Iovate and the nine Retailer defendants. In May 2011, Plaintiffs 18 19 served a first set of interrogatories, requests for admissions and document 20 requests on each of the nine Retailer defendants. These discovery requests 21 generally related to the marketing, science, and sales of the Hydroxycut Products. 22 In March 2012, Plaintiffs served a second set of interrogatories on each of the 23 nine Retailer defendants. This discovery focused on the Retailer Defendants' 24 scientific studies substantiating the Hydroxycut Products' advertisements, as well 25 as the retail pricing and sales for the Hydroxycut Products. In March 2012, 26 Plaintiffs served additional interrogatories and document requests on the Iovate 27 defendants that related to the marketing, science and sales of the Hydroxycut

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1 Products. These written discovery requests were also the subject of meet and 2 confer sessions between Plaintiffs, Iovate and the Retailer defendants.

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21. **Depositions**: Plaintiffs deposed corporate designees from Iovate's two largest retailers, GNC and Wal-Mart. In March 2012, Plaintiffs served Fed. R. Civ. P. 30(b)(6) deposition notices on the nine Retailer defendants. These deposition notices required the Retailer defendants to designate individuals knowledgeable to testify on a comprehensive list of relevant subject matter areas, including, *inter alia*, the Retailer defendant's corporate organization, business operations, corporate management, financial and distribution agreements, product sales, geographic distribution of the Products, marketing strategies, and scientific testing. In May 2012, Plaintiffs served a Fed. R. Civ. P. 30(b)(6) deposition notice on Iovate relating to advertising and marketing subject matters. On May 17, 2012, Plaintiffs took the Fed. R. Civ. P. 30(b)(6) deposition of defendant GNC on topics relating to Hydroxycut Products' sales and profits, marketing, and scientific substantiation. On May 23, 2012, Plaintiffs took the Fed. R. Civ. P. 30(b)(6) deposition of defendant Wal-Mart on topics relating to Hydroxycut Products' sales and profits, marketing, and scientific substantiation.

18 22. Third-Party Subpoenas, FOIA and Sunshine Law Requests: 19 Class Counsel also obtained substantial discovery through third-parties 20 subpoenas, as well as FOIA and state "sunshine law" requests. In May 2011, 21 Class Counsel served a subpoena for documents on Chief Media, a third-party 22 retained by Iovate to assist in advertising the Hydroxycut Products. As a result 23 of numerous meet and confers, which occurred frequently over a four-month 24 period, Chief Media and Class Counsel negotiated a detailed production 25 agreement culminating in Chief Media's production of approximately 12,275 26 pages of documents, including information related to advertising substantiation 27 for the Hydroxycut Products. In January 2012, Class Counsel served a subpoena 28 for documents on one of the key ingredient manufacturers and an entity involved Case No. 3:09-MD-02087-BTM(KSC) 11

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in the purported scientific substantiation for the Hydroxycut Products, InterHealth Nutraceuticals ("InterHealth"). Plaintiff held numerous meet and confer conferences with counsel for InterHealth, resulting in a significant document production starting in February 2012. In April 2012, Class Counsel also served subpoenas for documents and deposition testimony on Dr. Harry 6 Preuss. In response to the document subpoena, which sought draft and final study reports and raw data for his studies relating to the primary ingredients in 8 the Hydroxycut Products, Dr. Preuss produced approximately 1,100 pages of documents. Additionally, Class Counsel obtained documents from the Food and 10 Drug Administration and conducted an onsite sunshine law review at the offices of the Missouri Attorney General. This document review conducted on February 16-17, 2012, in Jackson City, Missouri. During the review, a team of attorneys 12 from the Class Counsel's offices reviewed approximately 20 boxes of documents 14 relating to the Missouri AG's investigation and subsequent lawsuit involving the Hydroxycut Products' predecessor formulation. This onsite review resulted in 15 the collection of a substantial number of documents and Iovate employee 16 deposition transcripts relevant to this Action.

18 23. Settlement Negotiations: At the same time the Parties were 19 engaging in extensive briefing and discovery efforts, including preparing for 20 class certification, they were also engaging in hard-fought and protracted 21 settlement negotiations. After engaging in preliminary negotiations, the Parties 22 agreed to mediation with the Honorable John K. Trotter (Ret.) of JAMS. The 23 Parties engaged in numerous, arm's-length mediations sessions beginning in 24 January 2011. Class Counsel's first mediation session with Justice Trotter was 25 held on May 12, 2011. A second session with Justice Trotter was held on 26 October 18, 2011.

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Following the second formal mediation session with Justice Trotter,

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March 27, 2012, the Parties informally met for a day-long discussion regarding potential settlement options. Finally, at that session, the Parties tentatively reached a generally agreeable framework for settlement. Following that session, the parties believed it would be helpful to hold another formal session with a private mediator. Accordingly, on April 20, 2012, the parties met with Martin Quinn of JAMS. That last formal mediation session was followed by numerous telephonic and in-person meetings to finalize the terms of that settlement and negotiate the terms of the agreement memorializing the previously submitted settlement.

10 25. On November 19, 2013, the Court denied final approval of the previous settlement. (D.E. No. 1731). Following the order, the Parties began 12 preparing for motions for class certification and summary judgment due in May 13 2014. Likewise, as explained above, the Parties submitted supplemental briefing 14 concerning Defendants' motions to dismiss the second amended complaint. At 15 the same time, the Parties continued to engage in settlement discussions, both 16 telephonically and in-person. On January 28, 2014, the Parties reached 17 agreement on the current settlement, the terms of which are memorialized in the 18 concurrently submitted Stipulation. The January 28, 2014, in-person meeting 19 was followed by numerous hard-fought conferences to finalize this settlement 20 and its exhibits.

21 26. Every aspect of this Settlement was heavily negotiated, including 22 the overall dollar amount of the Settlement, each aspect of the Settlement 23 Agreement and exhibits, the release, the amounts available to individual 24 Settlement Class Members making claims, the claims process and the Class 25 Member notice and outreach program.

26 27. Throughout the litigation, Plaintiff Andrew Dremak has done 27 everything required to represent the interests of Class Members. Mr. Dremak 28 assisted in my firms' pre-filing investigation of the claims and provided to my

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firm all documents and information regarding his purchases of the Hydroxycut Products. He was very helpful in explaining his purchase of the product, the reasons he purchased the product and the advertising for this product as he understood it. His considerable cooperation and willingness to help provided Class Counsel with insight at the very start of the case about the subject products and the marketplace for the products that has proven useful throughout the case. He has remained in contact with my firm throughout the litigation, promptly responding to our inquiries for further information and calling our office to keep up to date on the status of the case and proceedings. Mr. Dremak at all times professed his willingness to sit for deposition, including arranging with my office for availability once Iovate noticed his deposition, and to testify at trial. He met with partners from my firm to review the proposed settlement on multiple occasions prior to signing the detailed term sheet.

14 28. The schedule below is a detailed summary indicating the amount of 15 time spent by each attorney, paralegal, and other professionals and paraprofessionals of my firm who performed work in this litigation since the 16 inception of the litigation through the present. The schedule includes the name 17 18 of each person who worked on the case, hourly billing rates, and the number of 19 The backgrounds and qualifications of the attorneys who hours expended. 20 worked on the matter are set forth in the Firm Resume attached hereto as Exhibit A. The lodestar calculation is based on the firm's current billing rates, including 21 22 for attorneys and employees no longer employed by the firm, at the firm's 23 customary hourly rates charged to our fee-paying clients, and which have been 24 accepted as reasonable by this District and other district courts in numerous other 25 class action litigations. See, e.g., Hartless v. Clorox Company, 273 F.R.D. 630, 26 644 (S.D. Cal. 2011) (J. Bencivengo) (approving hourly rates of Blood Hurst & 27 O'Reardon, LLP); Shames v. Hertz Corp., No. 07-cv-2174-MMA (WMC), 2012 U.S. Dist. LEXIS 158577, at *61 (S.D. Cal. Nov. 5, 2012) (approving hourly 28 Case No. 3:09-MD-02087-BTM(KSC) 14

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1 rates based on Hartless); Dennis v. Kellogg Co., No. 09-cv-1786-L (WMC), 2 2013 U.S. Dist. LEXIS 163118, at *22-23 (S.D. Cal. Nov. 14, 2013) (J. Lorenz) 3 (approving hourly rates of Blood Hurst & O'Reardon, LLP as "fall[ing] within typical rates for attorneys of comparable experience"); Johnson v. General Mills, 4 5 Inc., No. 10-61, 2013 U.S. Dist. LEXIS 90338, at *19-21 (C.D. Cal. June 17, 6 2013) (approving hourly rates and time spent by Blood Hurst & O'Reardon, 7 LLP, stating "[t]he Court has considered class counsel's rates and finds they are reasonable because of the experience of the attorneys and prevailing market 8 9 rates") (citing Blood Hurst & O'Reardon, LLP's firm resume).

29. The total number of hours expended on this litigation by my firm through April 11, 2014 is 3,475.25 hours. The total lodestar for my firm is \$1,604,910.50.

NAME	HOURS	RATE	LODESTAR
Timothy Blood (partner)	618.50	\$695	\$429,857.50
Leslie Hurst (partner)	182.50	\$585	\$106,507.50
Thomas O'Reardon II (partner)	1,005.25	\$510	\$512,677.50
Paula Roach (associate)	90.00	\$410	\$36,900.00
ennifer MacPherson (project attorney)	201.25	\$410	\$82,512.50
Andrew Compoginis (project attorney)	375.50	\$350	\$131,425.00
Tiffany Bailey (project attorney)	17.00	\$320	\$5,440.00
Orion Bylsma (project attorney)	126.50	\$320	\$40,480.00
Geoff Laval (project attorney)	464.50	\$305	\$141,672.50
Timothy Morgan (project attorney)	326.60	\$305	\$9,9613.00
Sean Coletta (project attorney)	27.00	\$305	\$8,235.00
Bethany Maxwell (paralegal)	26.75	\$280	\$7,490.00
Ruth Cameron (paralegal)	14.00	\$150	\$2,100.00
TOTAL	3,475.35		\$1,604,910.50

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DECLARATION OF TIMOTHY G. BLOOD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC)

30. We also employed various paralegal interns in this case. Those 2 interns collectively worked 47.5 hours, incurring a lodestar of \$12,350.00 at an hourly rate of \$260. Although their work was valuable and I believe the time 4 incurred was reasonable, we have not included this time in our fee request.

31. From the inception of the litigation until January 2010, I and others worked on this case as members and associates of the Robbins Geller firm.² Based on the records maintained by my previous firm, from inception of the case through December 31, 2010, the total number of hours expended on this case was 286.50. The total lodestar during that period was \$100,522.50.

NAME	HOURS	RATE	LODESTAR	
Timothy Blood (partner)	33.00	\$655	\$21,615.00	
Leslie Hurst (partner)	1.25	\$585	\$731.25	
Thomas O'Reardon II (associate)	122.75	\$345	\$42,348.75	
Melissa Bacci (paralegal)	78.25	\$260	\$20,345.00	
Christina Sindac (paralegal)	17.50	\$275	\$4,812.50	
Michele Wallbrett (paralegal)	14.25	\$290	\$4,132.50	
Susan Williams (paralegal)	7.50	\$290	\$2,175.00	
Kelley Brandon (investigator)	3.50	\$400	\$1,400.00	
Steven Ellman (investigator)	7.50	\$365	\$2,737.50	
Megan Preovolos (document clerk)	1.00	\$225	\$225.00	
TOTAL	286.50		\$100,522.50	

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32. The hours and lodestar incurred by my firm will increase because, as Class Counsel, my firm is responsible for final approval papers and responding to any objectors, attending the preliminary and final approval hearings, post judgment motions and appeals, and claims administration. Based

26 When I began working on this case, I was a partner at the law firm of what is now called Robbins Geller Rudman & Dowd, LLP and was in charge of this case for that firm. In January 2010, I and others from the Robbins Geller firm left to form our own firm, Blood Hurst & O'Reardon, LLP. 28

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Case No. 3:09-MD-02087-BTM(KSC) 16 Case No. 3:09-CV-01088-BTM(KSC) DECLARATION OF TIMOTHY G. BLOOD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

on our experience in prior consumer settlements, including this Action, my firm
will expend time communicating with class members regarding the claims
process continuing until claims are paid. On an ongoing basis, my firm has been
and will continue to be in regular contact with the Claims Administrator
regarding the Notice, claims and opt out processes, will continue to oversee the
claim process and will continue to regularly review and act on the reports
provided by the Claims Administrator, as well as address issues which will arise.

8 33. My firm's lodestar figures are based upon the firm's billing rates,
9 which rates do not include charges for expense items. Expense items are billed
10 separately and such charges are not duplicated in my firm's billing rates.

34. As detailed below, my firm has incurred a total of \$47,266.81 in unreimbursed expenses in connection with the prosecution of this litigation through April 11, 2014. The expenses incurred in this Action, which were reasonable and necessary for the prosecution of this case, are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

DISBURSEMENT	TOTAL
Meals, Hotels & Transportation	\$9,985.59
In-House Photocopies	\$18,610.90
Outside Photocopies	\$84.97
Expert Fees	\$2,087.50
Transcripts & Court Reporters	\$4,307.45
IT Hardware for Document Databases & Review	\$5,130.43
Postage / Messenger / Fed-Ex	\$1,085.92
Long Distance Telephone/Conference Calls	\$382.27
Mediation Fees	\$137.50
Filing & Service Fees	\$2,625.50
Lexis / Online Research / PACER	\$2,795.96
Settlement Website Domain Fees	\$32.82
TOTAL	\$47,266.81

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FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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35. Based on the books and records maintained by Robbins Geller, from
 inception of the case through December 31, 2010, Robbins Geller incurred a total
 of \$9,729.78 in unreimbursed expenses in this case.

DISBURSEMENT	TOTAL
Meals, Hotels & Transportation	\$3,633.35
Network Printing	\$368.25
In-House Photocopy	\$869.25
In-House Postage	\$84.74
In-House Fax	\$11.00
Messenger / Fed-Ex / UPS	\$114.08
Filing Fees	\$350.00
Attorney Service Fee	\$1,143.00
Lexis / Westlaw / Online Research / PACER	\$3,156.11
TOTAL	\$9,729.78

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 21st day of April, 2014, at San Diego, California.

Dated: April 21, 2014

Bv: /s/ Timothy G. Blood TIMOTHY G. BLOOD

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	C	Case 3:09-cv-01088-BTM-KSC Document 311-3 Filed 04/21/14 Page 20 of 20			
BLOOD HURST & O'REARDON, LLP	1	CERTIFICATE OF SERVICE			
	2	I hereby certify that on April 21, 2014, I electronically filed the foregoing			
	3	with the Clerk of the Court using the CM/ECF system which will send			
	4	notification of such filing to the e-mail addresses denoted on the Electronic Mail			
	5	Notice List.			
	6	Executed on April 21, 2014.			
	7	s/ Timothy G. Blood			
	8				
	9	BLOOD HURST & O'REARDON, LLP			
	10	BLOOD HURST & O'REARDON, LLP 701 B Street, Suite 1700 San Diego, CA 92101 Telephone: 619/338-1100 619/338-1101 (fax) tblood@bholaw.com			
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		Case No. 3:09-CV-01088-BTM(KSC) DECLARATION OF TIMOTHY G. BLOOD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT			

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EXHIBIT A



701 B Street, Suite 1700 | San Diego, CA 92101 T | 619.338.1100 F | 619.338.1101 www.bholaw.com

FIRM RESUME



Blood Hurst & O'Reardon, LLP specializes in the nationwide prosecution of complex class and representative actions. The firm represents the interests of consumers, insurance policy holders and investors in state and federal trial and appellate courts throughout the country. The principals of Blood Hurst & O'Reardon come from a large firm that represented plaintiffs in class action litigation, where they formed the core of the consumer and insurance practice group. Blood Hurst & O'Reardon's principals have been appointed lead counsel and have held other leadership positions in a wide variety of class action matters.

Timothy G. Blood

Mr. Blood is the firm's managing partner. His practice has focused on complex litigation, including class action litigation, since the early 1990's. Mr. Blood has tried class action cases and is highly regarded in the field of consumer protection law, including California's Unfair Competition Law and Consumers Legal Remedies Act.

Mr. Blood has represented millions of retail consumers, holders of life, automobile and homeowner insurance policies, mortgagors, credit card customers, homeowners, and victims of race discrimination. He practices in both state and federal courts throughout the country, and has represented the interests of consumers formally or informally before the Federal Trade Commission, the California Department of Justice, the California Legislative Analyst's Office and the California Department of Insurance. He has worked with the Federal Trade Commission to obtain record setting recoveries for consumers. In *In re Skechers Toning Shoes Prods. Liab. Litig.*, Mr. Blood's work with the Federal Trade Commission resulted in the largest consumer recovery in a false advertising action in FTC history.

Since 2010, Mr. Blood's court-appointed leadership positions include: Federal Rule of Civil Procedure 23(g) Class Counsel in Godec v. Bayer Corp., Case No. Case No. 1:10-CV-00224-JG (N.D. OH); Federal Rule of Civil Procedure 23(g) Class Counsel in Johns v. Bayer Corp., Case 09-cv-1935-AJB (DHB) (S.D. Cal.); Federal Rule of Civil Procedure 23(g) Class Counsel in In re Skechers Toning Shoes Prods. Liab. Litig., Case No. 3:11-MD-2308-TBR (W.D. KY); Plaintiffs' Liaison Counsel and Steering Committee member by the United States District Court for the Southern District of California in the multidistrict litigation In re: Sony Gaming Networks and Customer Data Breach Security Litigation; Class Counsel by the district court for the District of Massachusetts in In re: Reebok Easytone Litigation; Class Counsel in Victor E. Bianchi v. Bosa Development California by the San Diego Superior Court; Co-Lead Class Counsel by the Los Angeles Superior Court in In re: Toyota Motor Cases, JCCP No. 4621 (Toyota Unintended Acceleration Consolidated Litigation); Co-Lead Class Counsel by the United States District Court for the Southern District of California in the multidistrict litigation In re: Hydroxycut Marketing and Sales Practices Litigation; Co-Lead Class Counsel by the United States District Court for the Central District of California in Johnson v. General Mills, Inc.; Co-Lead Class Counsel by the United States District Court for the Southern District of California in Hartless v. Clorox Company; and Class Counsel by the United States District Court for the Southern District of Florida in Smith v. Wm. Wrigley, Jr. Company. Recently, Mr. Blood has acted as lead counsel in a number of "functional food" false advertising class actions, including cases against General Mills and The Dannon Company filed in federal courts around the country. The Dannon litigation resulted in the largest settlement in food industry history for

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false advertising. He was lead trial counsel in *Lebrilla v. Farmers Insurance Group, Inc.*, a multistate class action which settled on terms favorable to the class after a month long trial and just before closing arguments. He was also co-lead trial counsel in *In re Red Light Photo Enforcement Litigation*, an action brought on behalf of California motorists.

Mr. Blood has represented millions of purchasers of food, food supplements and overthe-counter drugs arising out of various advertising claims made by manufacturers and retailers. He has also represented owners of motor vehicles in product liability cases and consumer credit and mortgage borrowers against a number of major lending institutions, including Bank of America, Washington Mutual, Countrywide, GMAC and Wells Fargo.

Mr. Blood has extensive experience litigating against life, auto and other insurance carriers on behalf of consumers. His experience litigating against life insurance companies includes representing owners, holders and beneficiaries of industrial life insurance in race discrimination cases (with class periods dating back to the late 1800's). He also represented those holding traditional life insurance policies in market conduct actions such as the "vanishing premium" life insurance actions. Mr. Blood was responsible for one of only two litigated cases where classes where certified in the vanishing premium series of cases. He was also one of the few plaintiffs' attorneys to obtain class-wide recoveries in the "imitation parts" automobile insurance actions. Insurance companies against whom Mr. Blood has litigated include the American General companies, Farmers Insurance Group of Companies, Mercury Insurance Group, Allstate, State Farm, Great Southern Life, Metropolitan Life, United Life Insurance Company, Midland National Life Insurance Company and General American Insurance Company.

Mr. Blood has also represented consumers in traditional false advertising actions, those victimized by so-called "negative option" sales practices, and owners of a variety of different types of faulty computer equipment and software from manufacturers. Some of these retailers and manufacturers include Apple, Dell, IBM, Procter & Gamble, General Mills, The Dannon Company, Bayer, AG, Bosa Development, Kellogg Company and General Dynamics.

Mr. Blood has been involved in a number of precedent-setting appellate decisions in areas which include consumer and insurance law and class action procedure. These appellate decisions include: *Corvello v. Wells Fargo Bank, NA*, 728 F.3d 878 (9th Cir. 2013) (consumer protection and banking); *Fitzpatrick v. General Mills, Inc.*, 635 F.3d 1279 (11th Cir. 2011) (class certification, consumer law and false advertising); *Westwood Apex v. Contreras*, 644 F.3d 799 (9th Cir. 2011) (CAFA jurisdiction); *Kwikset Corp. v. Superior Court (Benson)*, 51 Cal. 4th 310 (2011) (consumer law and false advertising); *Martinez v. Wells Fargo Home Mortgage, Inc.*, 598 F.3d 549 (9th Cir. 2010) (banking and preemption); *Troyk v. Farmers Group, Inc.*, 171 Cal. App. 4th 1305 (2009) (insurance law); *Hawaii Medical Ass'n v. Haw. Med. Serv. Ass'n*, 148 P.3d 1179 (Haw. 2006) (health insurance); *McKell v. Washington Mutual Bank, Inc.*, 142 Cal. App. 4th 1457 (2006) (banking law and consumer law); *Santiago v. GMAC Mortgage Group, Inc.*, 417 F.3d 384 (3d Cir. 2005) (consumer and banking law); *Lebrilla v. Farmers Group, Inc.*, 119 Cal. App. 4th 1070 (2004) (automobile insurance and class action procedure); *Moore v. Liberty Nat'l Life Ins. Co.*, 365 F.3d 408 (5th Cir. 2004) (life insurance and civil rights); *Kruse v. Wells Fargo*

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Home Mortgage, Inc., 383 F.3d 49 (2d Cir. 2004) (consumer and banking law); and *Lavie v. Procter & Gamble, Inc.*, 105 Cal. App. 4th 496 (2003) (consumer law and false advertising).

Mr. Blood has testified before the California State Assembly and State Senate Judiciary Committees, as well as the Assembly and Senate Committees on Banking, Finance & Insurance. He has worked at both the state and federal level with lawmakers and government agencies to shape legislation to protect consumer rights, including lobbying on the Class Action Fairness Act of 2005 and working to defeat a California state ballot initiative designed to weaken the class action device.

Mr. Blood is a frequent continuing legal education speaker on topics which include complex litigation, class action procedure, financial fraud litigation, insurance litigation and consumer fraud. He has been an invited speaker for American Bar Association practice groups, the Practicing Law Institute, University of San Diego School of Law, Loyola Law School, American Association of Justice, Consumer Attorneys of California, ALI-ABA, the National Practice Institute, Bridgeport Continuing Education, Law Seminars International and the Consumer Attorneys of San Diego, for which he chairs a multi-day seminar on class action litigation.

Mr. Blood is frequently consulted by the media. He has appeared on Good Morning America, ABC World News Tonight, and major network affiliates on behalf of his clients. He has been interviewed for stories featuring consumer rights issues and his cases by *The New York Times*, *The Wall Street Journal*, *Bloomberg*, Reuters, the Associate Press, *The Los Angeles Times*, the *Daily Journal*, *Adweek*, CNBC, Fox News, the Korean Broadcasting Service and others.

Mr. Blood is an executive officer of the Consumer Attorneys of California and is the President Elect of the Consumer Attorneys of San Diego. In 2007, he was a finalist for the Consumer Attorneys of California Lawyer of the Year award for his trial work in a multistate class action against Farmers Insurance. He has been named a "Super Lawyer" since 2006 and has achieved an "AV" rating by Martindale Hubbell. Mr. Blood is also the Legislative Column Editor for *Trial Bar News*.

Mr. Blood is admitted to practice in the state of California, as well as the United States Courts of Appeal for the Third, Fifth, Sixth, Eighth, Ninth and Eleventh Circuits, and the United States District Courts for the Southern, Central, Northern and Eastern Districts of California, the Eastern District of Arkansas and the Eastern District of Michigan. Before starting Blood Hurst & O'Reardon, Mr. Blood was a partner in Milberg Weiss Bershad Hynes & Lerach, LLP and Coughlin Stoia Geller Rudman & Robbins, LLP. Mr. Blood received his Juris Doctor from George Washington University in 1990 and his Bachelor of Arts with honors in Economics from Hobart College in 1987.



Leslie E. Hurst

Ms. Hurst is a co-founding partner of the firm. Prior to founding the firm, Ms. Hurst was a partner at Coughlin Stoia Geller Rudman & Robbins LLP and an associate at Milberg Weiss Bershad Hynes & Lerach LLP.

Her practice has focused on complex class action lawsuits, including federal multi-district litigation and California Judicial Council Coordinated Proceedings, with an emphasis on consumer fraud and insurance cases under California's consumer protection statutes.

Ms. Hurst works in a number of practice areas, including areas focusing on cases against: (1) life insurers for misrepresenting the terms of vanishing premium life insurance; (2) auto insurers for repairs with non-OEM parts, diminished value claims and improper collection of installment service charges; (3) financial institutions for a variety of conduct; (4) insurance companies for race-based discrimination in the sale of small value "industrial" or "burial" insurance policies; (5) consumer goods manufacturers for false and deceptive advertising; (6) real estate developers for fraud and false advertising; and (7) improper collection and over collection of fees from residents by the City of Los Angeles.

The most recent settlements on which Ms. Hurst was instrumental include: *Chakhalyan v. City of Los Angeles* (providing full refunds of overcharges and a revamping of L.A. billing practices); *Hartless v. Clorox Company*, 273 F.R.D. 630 (S.D. Cal. 2011) (nationwide settlement in excess of \$10 million that provided 100% recovery of damages to class members); *In re Enfamil LIPIL Mktg. & Sales Practices Litig.* (nationwide settlement in excess of \$8 million involving false advertising of infant formula); *Dennis v. Kellogg Co.* (nationwide settlement in excess of \$4 million); *In re Skechers Toning Shoes Prods. Liab. Litig.* (nationwide settlement of \$45 million).

Ms. Hurst is also involved in the firm's appellate practice. She successfully argued before the Ninth Circuit Court of Appeal in *Corvello v. Wells Fargo Bank, NA*, 728 F.3d 878 (9th Cir. 2013) and before California's Second District Court of Appeal in *Goodman v. Wells Fargo Bank, NA* (decision pending). Ms. Hurst also worked on the appeals in *In re Enfamil LIPIL Mktg. & Sales Practices Litig.* (11th Cir.); *Hartless v. Clorox Company* (9th Cir.); *Guerra v. SDG&E* (4th DCA); *Garcia v. Sony Computer Entertainment* (9th Cir.); and *Gutierrez v. Wells Fargo Bank, NA*. (9th Cir.).

Between 2003 and 2005, Ms. Hurst took a sabbatical from law and moved to Sri Lanka where she worked for CARE International as the Coordinator for Strategic Planning with an emphasis on development of CARE's long-term strategic plan for the conflict-affected areas.

Ms. Hurst is admitted to practice in the state of California, as well as the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Southern, Central and Northern Districts of California. Ms. Hurst received her Juris Doctor degree from the University of California, Hastings College of the Law in 1995. She earned her Master of Arts degree in Sociology from the University of California, Berkeley and a Bachelor of Arts



degree in Sociology (*cum laude*) from the University of San Diego. Ms. Hurst is an active member of the Consumer Attorneys of San Diego, and Consumer Attorneys of California.

Thomas J. O'Reardon II

Mr. O'Reardon is a co-founding partner of the firm. His practice focuses exclusively on complex class action lawsuits involving consumer fraud, insurance fraud and antitrust violations. Mr. O'Reardon earned his Bachelor of Arts degree in Politics from Wake Forest University and his Juris Doctor degree from the University of San Diego. He is licensed to practice law in all California state courts, the United States Courts of Appeal for the Sixth, Eighth, Ninth and Eleventh Circuits, as well as the United States District Courts for the Southern, Central, Eastern and Northern Districts of California, and the United States District Court for the Eastern District of Arkansas.

Prior to founding the firm, Mr. O'Reardon worked at Coughlin Stoia Geller Rudman & Robbins LLP. There, Mr. O'Reardon worked on numerous complex class action litigation matters, including actions involving: annuity policies marketed and sold to senior citizens; insurer kickbacks known as "contingent commissions" in the property and casualty insurance brokerage industry; Sherman Act claims against the world's largest manufacturers of random access memory for computers; invasions of credit card holder's rights of privacy; false and deceptive advertising of consumer goods and wireless telephone services; automobile insurers' unlawful practices with respect to installment pay plans; and dangerous and defective products, including recalled children's toys. He was also part of the team representing the California Department of Insurance against five of the largest employee benefit insurance companies for violations relating to their failure to disclose payments of contingent commissions to brokers. As a result of the action, all five defendants agreed to sweeping changes in their disclosure practices.

Some of the actions on which Mr. O'Reardon has worked include: In re Skechers Toning Shoes Prods. Liab. Litig. (W.D. Ky.) (nationwide settlement of \$45 million involving false advertising of Skechers' Shape-ups toning shoes products); In re Reebok Easytone Litigation (D. Mass.) (nationwide settlement of \$25 million involving false advertising of Reebok toning footwear and apparel products); Dolfo v. Bank of America (S.D. Cal.) (certified class action involving mortgage modification banking practices, pending final settlement approval); Johnson v. General Mills, Inc. (C.D. Cal.) (certified class action involving false advertising of General Mills' YoPlus vogurt, which resulted in a nationwide settlement of \$8.5 million); *Fitzpatrick v*. General Mills, Inc. (S.D. Fla.) (certified class action reviewed and approved by the Eleventh Circuit); Johns v. Bayer Corp. (S.D. Cal.) (certified class action involving false advertising of Bayer's One-A-Day multivitamins); Godec v. Bayer Corp. (N.D. Ohio) (certified class action involving false advertising of Bayer's One-A-Day multivitamins, which settled on a class wide basis); Corvello v. Wells Fargo Bank, NA (N.D. Cal.) (action involving mortgage modification practices where order granting motion to dismiss was reversed by the Ninth Circuit); Rosales v. FitFlop (S.D. Cal.) (nationwide settlement of \$5.3 million involving false advertising of toning footwear, pending final settlement approval); Blessing v. Sirius XM Radio, Inc. (S.D.N.Y.) (nationwide settlement valued in excess of \$180 million involving monopoly price increases arising out of the merger between Sirius and XM); In re Dynamic Random Access Memory Antitrust Litig. (N.D. Cal.) (settlement of more than \$300 million); In re Mattel, Inc. Toy Lead

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Paint Prods. Liab. Litig. (C.D. Cal.) (nationwide settlement valued at over \$50 million); Gemelas v. The Dannon Co., Inc. (N.D. Ohio) (nationwide settlement in excess of \$45 million involving false advertising of Dannon's Activia and DanActive yogurt products); In re Enfamil LIPIL Mktg. & Sales Practices Litig. (S.D. Fla.) (nationwide settlement in excess of \$8 million involving false advertising of infant formula); Smith v. Wm. Wrigley Jr. Co. (S.D. Fla.) (nationwide settlement in excess of \$7 million involving false advertising of Wrigley Eclipse chewing gum and mints); Duffer v. Chattem, Inc. (S.D. Cal.) (nationwide settlement of up to \$1.8 million involving false advertising of ACT Total Care mouthwash); In re Enron Corp. Sec. Litig. (S.D. Tex.) (settlements of \$7.3 billion); AOL Time Warner Cases (Cal. Super. Ct., Los Angeles County) (settlements of approximately \$630 million); Morris v. CBS Broadcasting, Inc. (S.D.N.Y.) (nationwide settlement on behalf of purchasers of asbestos-laden children's toys); In re Aqua Dots Prods. Liab. Litig. (N.D. Ill.) (multidistrict litigation on behalf of purchasers of more than 4 million toxic children's toys); Berry v. Mega Brands, Inc. (D.N.J.) (litigation on behalf of purchasers of more than 10 million lethal children's toys); In re: Toyota Motor Cases, JCCP No. 4621 (Cal. Super. Ct., Los Angeles County) (litigation on behalf of consumers who purchased vehicles subject to "sudden unintended acceleration"); and In re Hydroxycut Marketing and Sales Practices Litigation (S.D. Cal.) (multidistrict litigation on behalf of purchasers of unsafe and ineffective weight-loss products). With the exception of the Sirius XM Radio litigation, Mr. O'Reardon and/or his firm served as court-appointed Lead or Co-Lead Counsel in each of the above-mentioned class actions. In granting final settlement approval, which included appointing Mr. O'Reardon as Class Counsel, the Court's order in the Johnson v. General Mills (C.D. Cal.) action states that Mr. O'Reardon is "vastly experienced" in consumer class action litigation.

Mr. O'Reardon is an active member of the Consumer Attorneys of San Diego, the Consumer Attorneys of California, and a founding member of the CAOC Young Lawyers Division. He has also been a member of, and contributing author for, The Sedona Conference Working Group on Electronic Document Retention and Production. Mr. O'Reardon has been an invited speaker for the University of San Diego School of Law, Consumer Attorneys of California, and the Consumer Attorneys of San Diego on topics which include complex litigation, electronic discovery, and the class action settlement process.

Paula M. Roach

Paula M. Roach is an associate with the firm. Her practice focuses on complex class action litigation, including consumer and antitrust cases. Ms. Roach earned her Bachelor of Arts degree in Political Science from the University of Washington in 2004 and graduated cum laude from California Western School of Law in 2007. While at California Western, Ms. Roach was a member of the *California Western Law Review* and authored *Parent-Child Relationship Trumps Biology: California's Definition of Parent in the Context of Same-Sex Relationships*, 43 Cal. W. L. Rev. 235 (2006). She is a member of the California Bar and is licensed to practice before the United States District Courts for the Central, Southern and Northern Districts of California, the United States District Court for the Northern District of Illinois and the United States Courts of Appeals for the Eighth and Ninth Circuits.



Prior to joining Blood Hurst & O'Reardon, Ms. Roach was an associate at Coughlin Stoia Geller Rudman & Robbins. While there, she represented plaintiffs in a number of complex class action litigation matters involving: price-fixing claims against the world's largest aftermarket auto lighting parts manufacturers and distributors; monopoly claims against the largest seller of portable media players; price fixing claims against containerboard manufacturers; race-discrimination claims against mortgage lenders; and false and deceptive practices in the sale of defective children's products and toys. Some of these actions include: *In re Apple iPod iTunes Antitrust Litigation* (N.D. Cal.); *In re Mattel, Inc. Toy Lead Paint Prods. Liab. Litigation* (C.D. Cal.); *In re Aftermarket Automotive Lighting Products Antitrust Litigation* (C.D. Cal.); *Payares v. Chase Bank* (C.D. Cal.); *Salazar v. Greenpoint Mortgage* (N.D. Cal.); *Puello v. Citifinancial* (D. Mass.); *Morris v. CBS Broadcasting* (S.D.N.Y.); *In re Aqua Dots Prods. Liab. Litigation* (N.D. Ill.); and *Berry v. Mega Brands, Inc.* (D.N.J.).

EXHIBIT B (PART 1 OF 2) PRINT ADVERTISEMENTS AND LABELING EXEMPLARS

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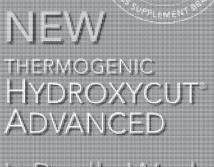
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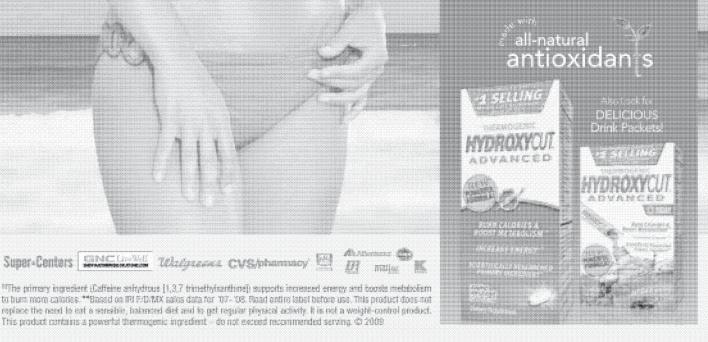
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Case 3:09-cv-01088-BTM-KSC Document 311-5 Filed 04/21/14 Page 3 of 94



It Really Works

🔍 Increase Energy 🤢 Boost Metabolism 🗤 🗼 Burn Calories



Super-Centers SINCLOWED Telacores CVS/pharmancy

This product contains a powerful thermogenic ingredient - do not exceed recommended serving. © 2009

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Picture Perfect Weight Loss with Hydroxycut



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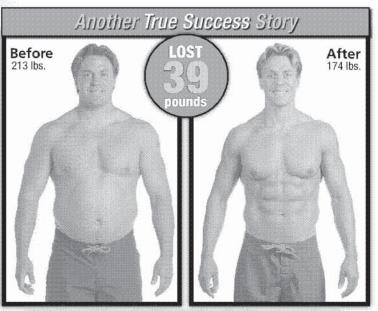


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"With the help of Hydroxycut, I revealed the coveted 'six-pack' abs fast. My mood has improved and I'm not sluggish throughout the day anymore. Now I'm more likely to jump into a game of basketball with my students, whereas before I didn't feel up to it. I think it has actually made me a better teacher!"

- Skip Wood School Teacher, Gilbert, Arizona



Results will vary, Individual combined Hydroxycut with sensible diet and exercise for 20 weeks.

Used by Millions to Lose Weight

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America's #1 SELLING Weight-Loss Supplement



Based on the scientific studies of the key ingredients in Hydroxycut and my personal experience using the product, I would recommend Hydroxycut[®] to healthy adults wishing to lose weight."

Dr. Nick Evans, M.D.

Clinically proven key ingredients help you lose up to 4.5 times the weight than diet and exercise alone.*



CAPLETS

Lose Weight Fast

Super+Centers

SHOP NATIONWIDE OR AT ONC.COM

Walgreens CVS/pharmacy



*In two 8-week studies in which all groups followed a diet and exercise plan, subjects using key ingredients (*Garcinia cambogia*, chromium polynicotinate, *Gymnema sylvestre* extract) lost, on average, significantly more weight than subjects using a placebo (14.99 vs. 3.06 lbs. and 12.54 vs. 3.53 lbs.). Individuals were remunerated. "Based on IRI F/D/MX sales data for Hydroxycut[®], Read entire label before use. Sensible diet and exercise are essential for healthy weight loss. © 2009



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Case 3:09-cv-01088-BTM-KSC Document 311-5 Filed 04/21/14 Page 8 of 94 14071.00.0000.000.0000 0000000.0000 mm. repr.

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HYDROXYCUT Up to 450% more weight loss than diet and exercise alone!

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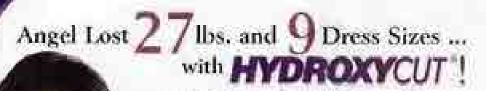
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GET YOUR BEST BODY IN

"I was as excited to see my figure improve during my transformation. Now, my confidence is at an all time high?"

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Angel Toves-Awuhi

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It's that time of year egoin; a time for new beginnings. The fact that you're medicig this Besty means that part of you New Year's reactistor: included fire torking your body by loting weight. While you may have med unsuccessfully in the part to drop flows extra poends, 2007 can briefly be bet your you follow through and achieve your goals. So which the difference between this your and years port? In interweed itytheorypat.

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SOLUTION:

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The way Hydroxytout works is ample. By providing support in the form of an increase m energy, a boost in metabolism to burn more catatine, and arguithe control for negating human. Hydroxycall has got you covered. What follows is a quick brook down of these product benefits and wrast inky can mean to you. You'll also set rest-life examples of how Hydroxycat - America's #1 selling weight-loss formula: - has helperi real people lose dramatic amounts of weight, fault

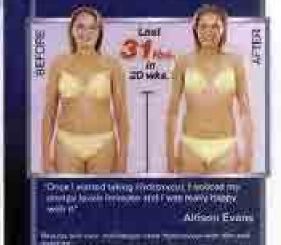
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THE HYDROXYCUT SOLUTION:

TO INCREASE YOUR METABOLISM AND BURN MORE CALORIES

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Combined, These 4 Amazing Women Lost,bs. with Hydroxycut - Fast!

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Leve up to 4.5 times the weight than with just dies and exercise above"

Born over 150 more calories every day – that's over 1,000 extra calories per week!

Key ingredients proven effective by published research.

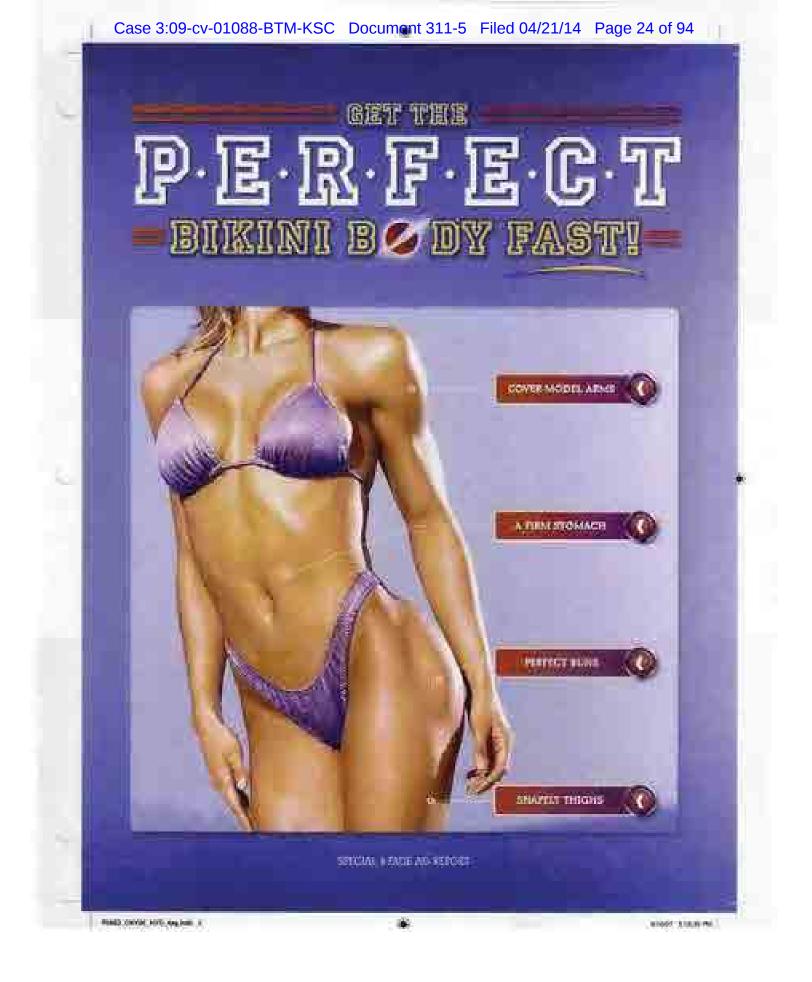
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Burn over 1,100 extra calories with Hydroxycut

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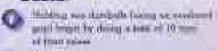
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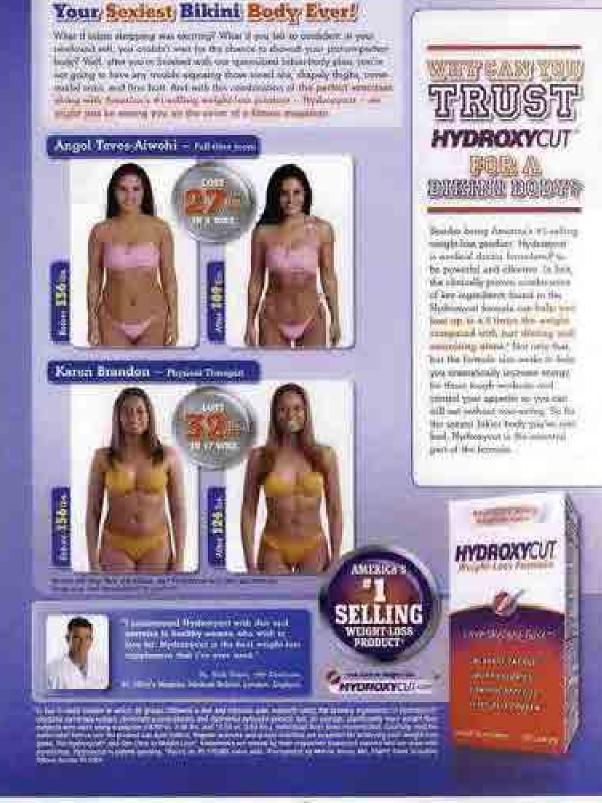
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Case 3:09-cv-01088-BTM-KSC Document 311-5 Filed 04/21/14 Page 27 of 94



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America's #1 SELLING Weight-Loss Supplement!

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Millions of Americans have made Hydroxycut the #1 setling weightloss supplement because it works. Get doctor formulated' Hydroxycut today and formulated that diet and exercise alone!

"The fact that Hydroxycut" is the #1 selling weight-loss supplement is an indication of its ability to help people achieve weight loss."

- Dr. Jon Marshall, Resident Physician and Hydrixsycit Success Story

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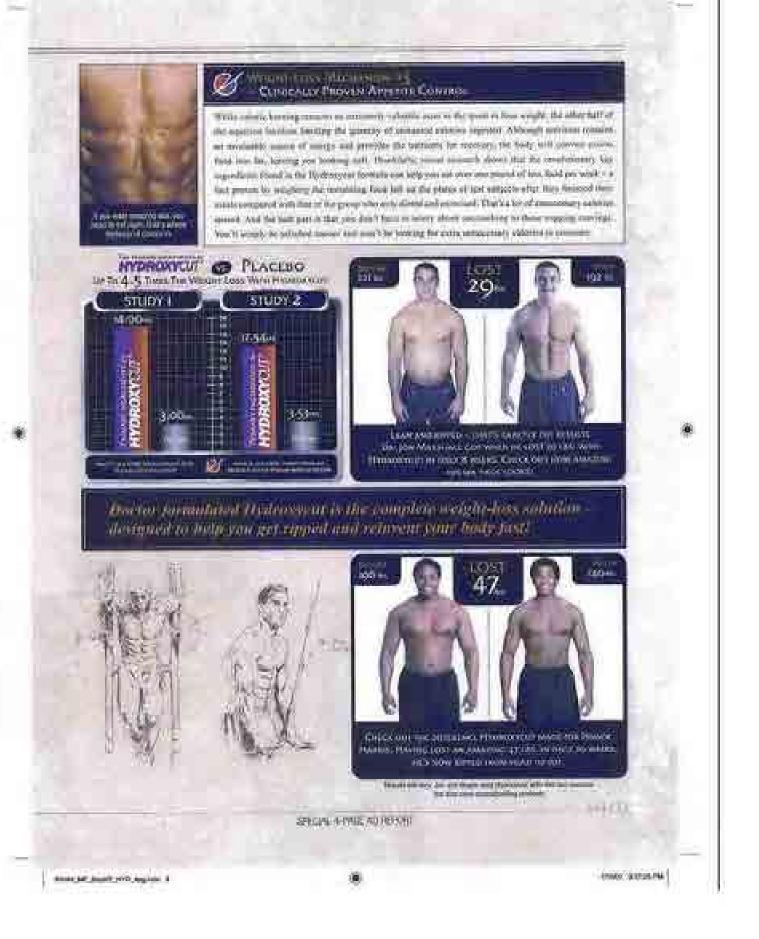
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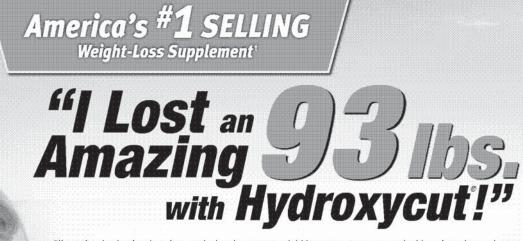
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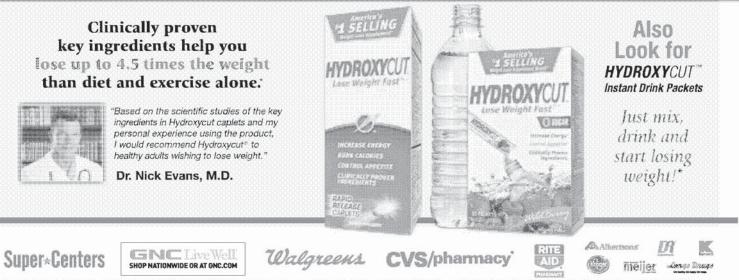


"It was hard going to a beach or pool when I was overweight because everyone was looking at me. I was always in a one-piece swimsuit and it wasn't comfortable. Now I lost an amazing 93 pounds and over 16 inches off my waist, and I never would have imagined feeling this good about my body! Hydroxycut really works!"



Used by Millions to Lose Weight

Stacy Nikitin Madbury, NH



*In two 8-week studies in which all groups followed a diet and exercise plan, subjects using key ingredients (*Garcinia cambogia*, chromium polynicotinate, *Gymnema sylvestre* extract) lost, on average, significantly more weight than subjects using a placebo (14.99 vs. 3.06 lbs. and 12.54 vs. 3.53 lbs.). Individuals were remunerated. [†]Based on IRI F/D/MX sales data for Hydroxycut[®] caplets. Read entire label before use. Sensible diet and exercise are essential for healthy weight loss. © 2009

HYDROXYCUT HARD-BODY CHALLEN UP FOR GRABS!

Calling all hardcore amateur bodybuilders:

get ready because this is the contest you've been waiting for! Brought to you by America's #1 selling hardcore fat burner – Hydroxycut[®] Hardcore – it's our biggest transformation contest ever. Introducing The Hydroxycut[®] Hard-Body Challenge! Team MuscleTech[™] has joined forces exclusively with GNC to give one hardcore male and one hardcore female athlete a chance to win \$100,000!

Get Cut and Win \$100,000!

Think the pros are the only ones getting paid to be shredded? Be a part of bodybuilding history by getting your hard-earned muscle sliced and diced by June 30, 2009 for your chance to win stacks of cash in one shot! Enter now and you could win BIG by taking home the top prize of \$100,000 for placing first!

We went even further to make sure that as many people as possible get a chance at the cash. Twenty-five runners-up will each receive \$2,000! What's more? You'll be the envy of all your bodybuilding friends by having your shredded physique splashed all over the pages of your favorite bodybuilding mags! With a total cash payout of \$250,000 – yes you read that right, \$250,000 – you'll be part of the industry's biggest transformation contest ever!

For a chance to win \$100,000 all you have to do is take Hydroxycut Hardcore to get shredded, take Before and After photos and send them in!

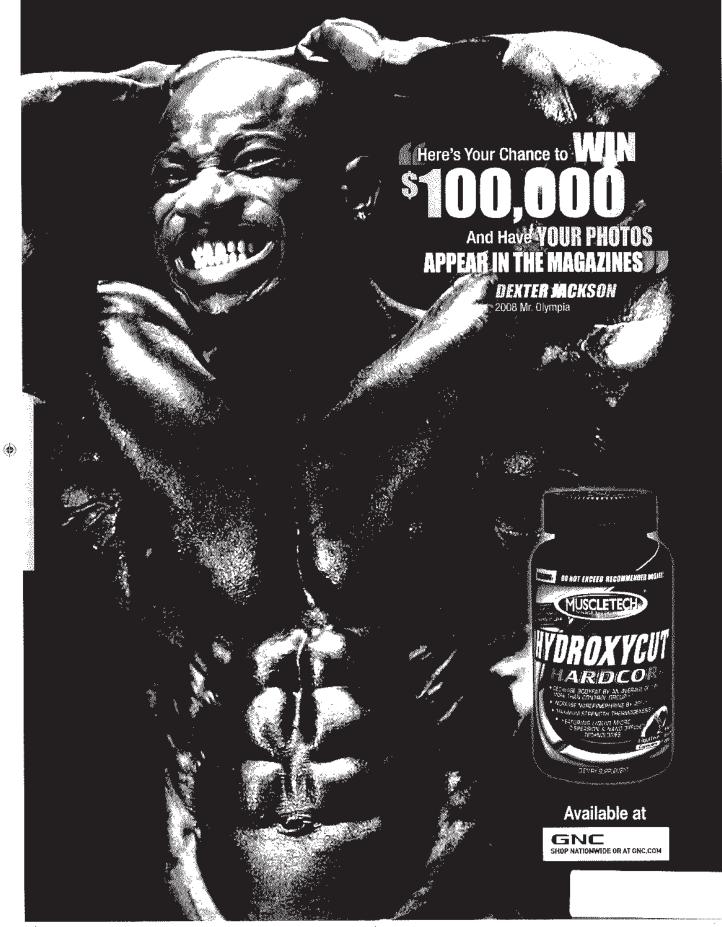
Visit:

This isn't just about who peels away the most weight or packs on the most muscle; it's about who has the guts to last until June 30, 2009 and showcase the best overall transformation. So don't wait. Sign up now so you can prove to yourself, and America, why you deserve to be the first Hydroxycut[®] Hard-Body!

No purchase necessary to enter or win. Contest begins at 12:00 AM(ET) on 01/01/00 and ends at 11:59 AM(ET) on 06/30/09. The contest is open to legal residents of the U.S., 10 years of age or older. The centest is subject to Official Aules at HydroxycotHardBodyChallenge.com and at participating GNC locations. Void in Puerto Rico and where prehibited, © 2009.

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America's #1 SELLING Weight-Loss Supplement!

"I Lost 55 lbs. Fast with Hydroxycut"!"

"Goodbyn size 141 Growing up, I was always the girl with a little more 'meat' on her bones but it was after callege that I put on the most weight. I decided enough smit enough the moment I had to boy a size 14. I chose (sydroxycus" because I was amazed and inspired by the successful transformations women had experienced with it. I lost 35 pounds with stydroxycut and near I wear a size 21 Thank you stydroxycut for helping me change my life!"

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America's #1 SELLING Weight-Loss Supplement

"I Lost 39 lbs. With Hydroxycut!"

"When I was error-neight I Jelt at f communa and thopping yas difficult. I emilds't buy cominitis for work or bathing sain, and I server more sharts. When I had in buy time 18 pairin, I datagite errough was enough ~ 3 had to low the weight I know Hydroxyant' was ency repeatable and worked for other people, so I decided to try to I winted up leading to people with Hydroxycat dol. dropped all line way down do a trice 4t base. For more confidant, and points and port of Jelenhous - Hydroxycat works."

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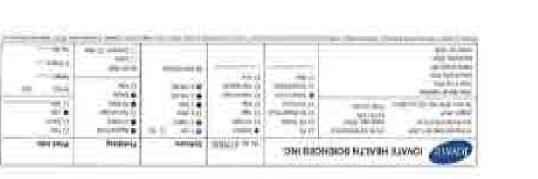
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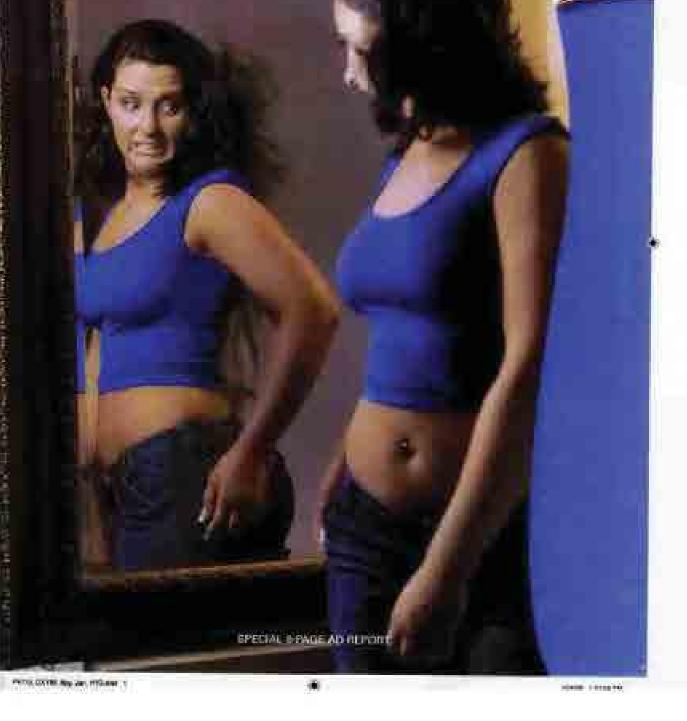
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Hydroxycut Study #1

this was as a week, randomiest donnie bland, playabes controlled human trial (which is considered the gold standard in research studies). Thing subjects week played on a 2.000 keed/day diet (the daily value reference states) as established by the (DA) where the subjects ingested the assigned issumptioners (the key ingestitions from line (reference)) three more dails. To us fol

> Semantines an investibily effective edge is norded. Many people have made insenation changes to their bothes by moding Hydroxycus," in their weightstore plan. It's America's #1 selling, weight-loss formulat.

orientes prior to marks and participand to appeelsed indicates have times previewerk (a straple watering control to supplicate). At the end of the study, weight-loss without in the groups taking (4)/forearcor more signal carrily greater (14.97 line lost) (burn in the platelse groups (3.06 lbs.). Moreover, the platelse group (3.06 lbs.). Moreover, the platelse group thereod a slight increase in fixed communiphing, while the principle group (3.06 lbs.). Moreover, the platelse group thereod a slight increase in fixed communiphing, while the principal group in the bay togoedies in a fixed communiphing while the principal group in work or work to be door a possible less fixed community in war receiver at the study.) Description the war neowwored to be study.) Description the war indicate the study.) Description the ware sourced in Dydicorport are commonly infective in helping control opposite and primining and primining and primining and primining and primining and primining.



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Hydroxycut Study #2

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Hydroxycut Study #3:

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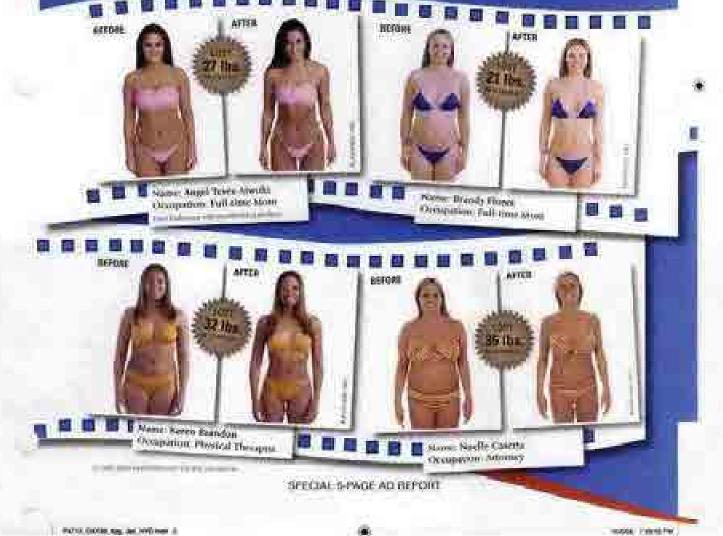
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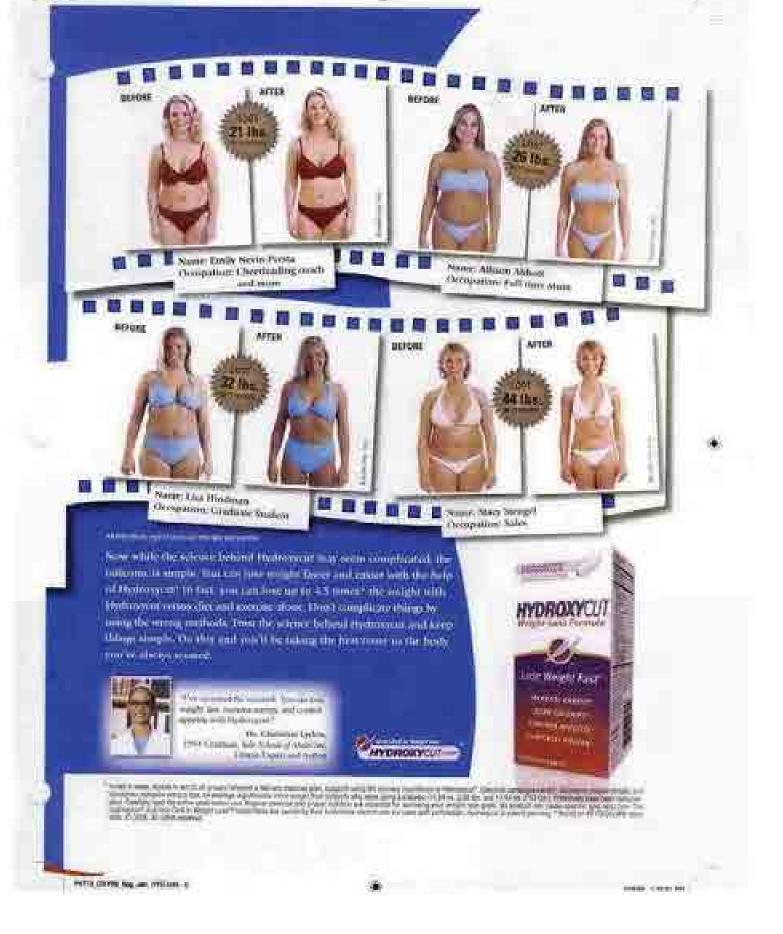
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Other Hydroxycut Success Stories.





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and looks sexier than ever!

As Brandy Flores knows firsthand, even the most fabulous fashions always look better when there's a slim and sexy body modeling them. That's why millions of women all over America flave turned to Hydroxycut[®] for the perfect body – fast! Doctor formulated with clinically proven ingredients, Hydroxycut can help you lose up to 4.5 times the weight compared to dieting and exercising alone.⁴ So make Hydroxycut your rapid weight-loss secret today, and your best outfits will look fabulous on yout



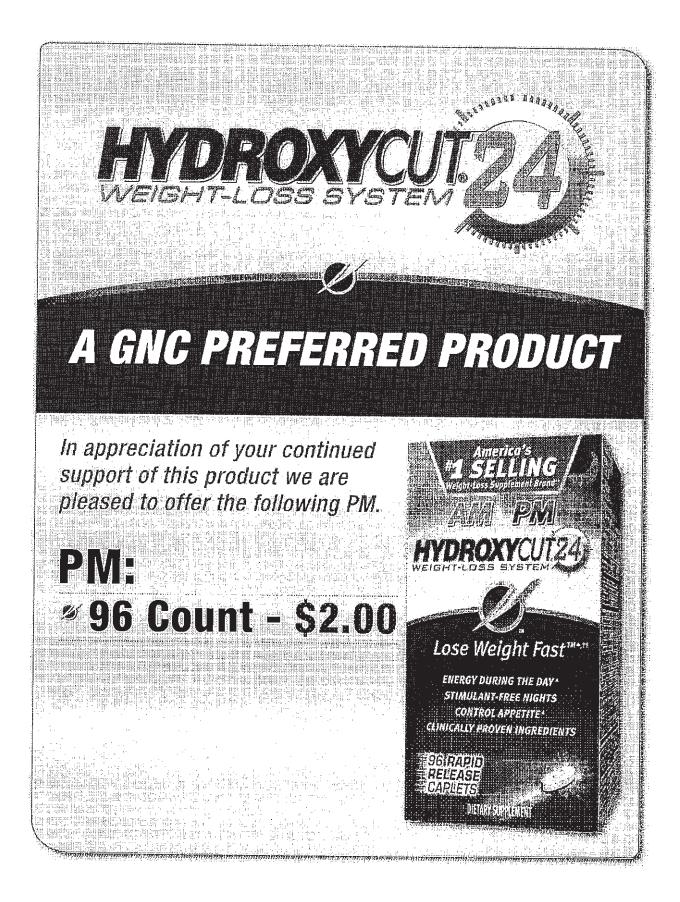
"In bot 8-work studies in which all groups followed a diet and exercise plan, subjects using the primary ingredients in Hydroxycut® lost, on average, significantly more weight than subjects who were using a placebo (14.99 vs. 3.06 lbs. and 12.54 vs. 3.53 lbs.). *Formulated by Marvin Heuer, MD, FAAFP, Chief Scientific Officer, lovate. *Based on IRI F/D/MX sales data. Individuals have been remunerated. Carefully read the entire label before use. Regular exercise and proper nutrition are essential for achieving your weight-loss goals. The Hydroxycut® trademark is owned by its respective trademark owner and is used with permission. Hydroxycut is patent-pending. @ 2007.

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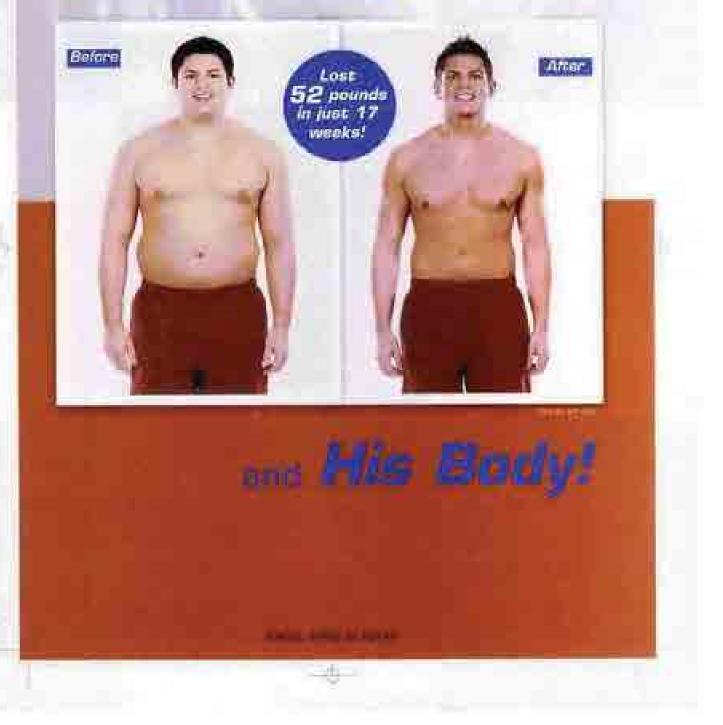
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	y Selling Tips:
	The same benefits as the regular Hydroxycut® formula in a breakthrough 24-hour system.
Ø	Designed with two formulas, in one convenient blister pack, Hydroxycut® 24 works around the clock.
IJ	The AM formula delivers an energy boost to get through the day.
9 0	The PM formula offers stimulant-free, restful nights , while helping to control midnight cravings
245	One of the most recognized brand names in weight loss.
U	Rapid-release caplets dissolve quickly and are sweet coated so they are easy to swallow.
945	Comes in a condensed serving size for convenience.
<i>CU</i>	Proven to help people lose up to 4.5 times the weight than diet and exercise alone, as shown in two 8-week studies of the primary ingredients in Hydroxycut® 24 (14.99 vs. 3.06 lbs. and 12.54 vs. 3.53 lbs.)
Ø	Doctor researched and formulated. ¹
Цí	Includes a free product information booklet.
ey	GNC tagging is prominent in all print ads to drive customers to you.
	"I strongly recommend Hydroxycut" 24 to healthy individuals looking to slim down while controlling their appetite. Hydroxycut" 24 is an effective solution for weight loss."
ر پلین محمد ا	Dr. Jon Marshall, D.O., Resident Physician and Hydroxycut Success Story
łow	does Hydroxycut [®] 24 Work?
timula elp bo ydroxy idia) и	rcut® 24 consists of an AM formulation that gives you energy during the day and a PM formulation for nt-free nights. Included are two proprietary compounds – Hydroxagen® Plus™ and HydroxyTea™ – that ost your metabolism, increase energy levels, burn more calories and ultimately support weight loss. rcut® 24 also contains Gymnena sylvestre extract (an herb found in the rain forests of central and southern hich can promote normal blood sugar levels. Stable blood sugar levels can help reduce cravings, which mately help you lose weight.
	For more information visit
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Erik Brokke Changed His Life ...



Case 3:09-cv-01088-BTM-KSC Document 311-5 Filed 04/21/14 Page 50 of 94

Erik Brakke made a few changes and last 52 pounds in just 17 weeks! Find out how

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With the science of Hydroxycut, you too can lose up to 4.5 times the weight than you could with just dist and exercise alone!



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No. 17 weeks, my life bas changed. It was summthing that I didn't see happening, and it's baan such a drematic change in my life. Hydroxyout made it happen."

- Ersk Strakke

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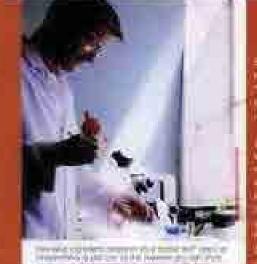


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Lose weight and tell your story to millions!

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Americo's #1 SELLING Weight-Loss Supplement!





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Goctor formulated" Hydroxytut contains scientifically proven key impedients to help you impredients that help control your reparties and increase averyy laws, it's no wonder why millions of Americans have reads Hydroxytut the PT exiling weight base supplement!

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FAST WEIGHT LOSS BODY SHAPE





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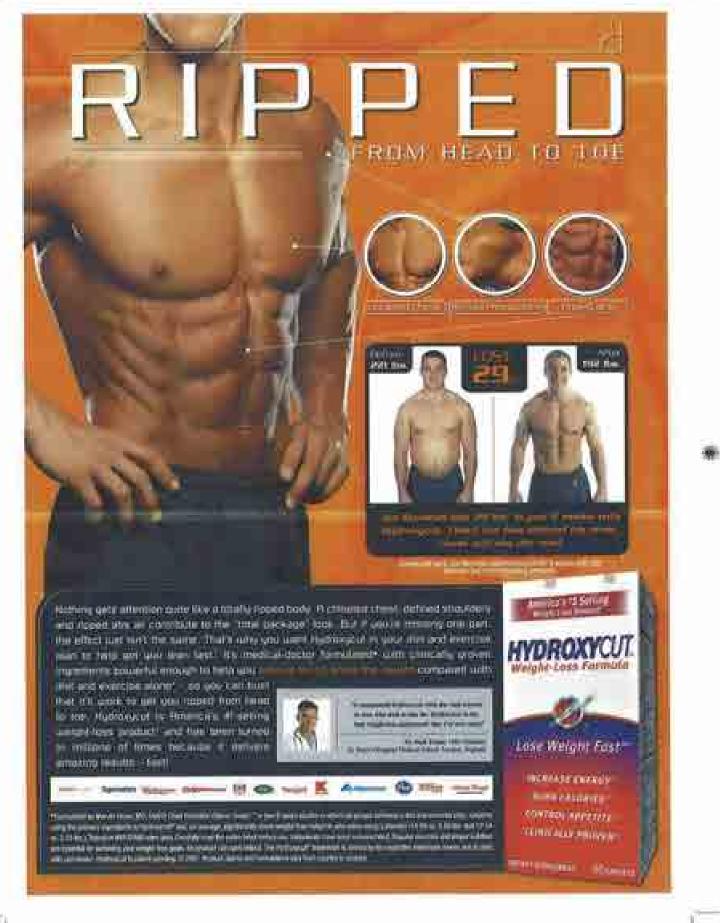
FOUR WOMEN, FOUR DUFENENT BODY SHAPES, ONE RAPID WEIGHTLOSS SOLUTION.

Medical doctor formulated' with key, illoitally private impredients that can help you keep up to 4.4 memthe weight compared with that wid private addres', hydroxycut is America's PT-setting product' for fast and effective total-body weight ices. Simply stated, more propie have chosen Hydroxycut this year than anything size! So whether your figure membles an upple, certot, callery or pase, Hydroxycut will help make your body more boautiful than ever before. It worked for these four women and counters others arrors America, and it can work for you tou!



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HYDROXYCUT: For Proven Results Beyond Just Diet and Exercise



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Stop just hoping for results from your plan and add Hydroxycut today!



Research Results: Lose up to 4.5 Times the Weight!*

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Real World Results. The Success Stories Speak for Themselves.



RANDY FLORES LOST 21 LBS. FAST with Hydroxycut!

"Since I know Hydroxycut works, there's no reason to try anything else!" The Coldonus Received is a wile and unitful with what when Ensuring Plone mat al shape but when Ensuring Plone make America a 11 solution weight low supplication 1 (Epsingers and the fact an immediate 21 line fact) New shar's back to undering and acting and has the body and thought shard never around

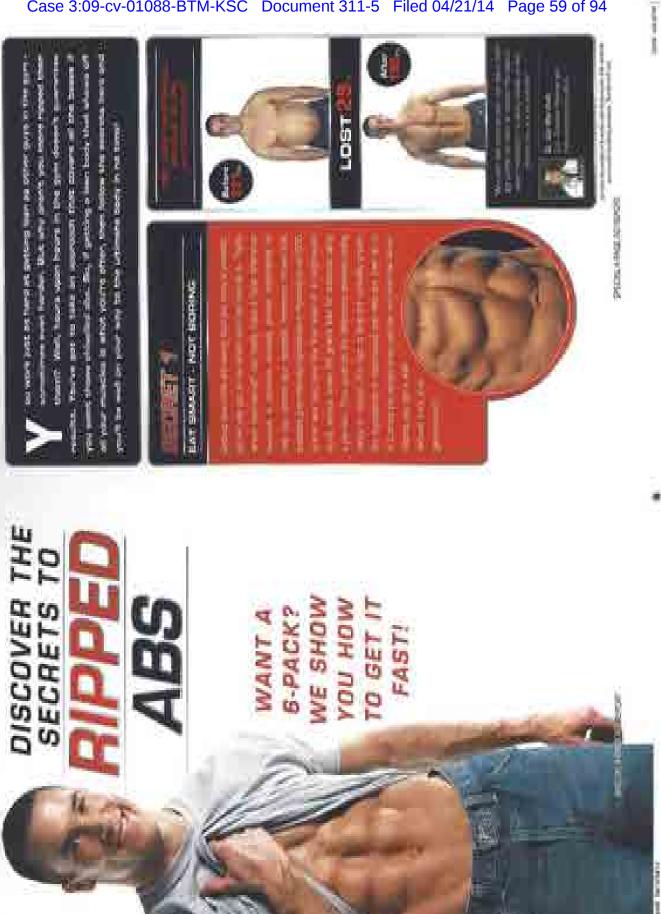
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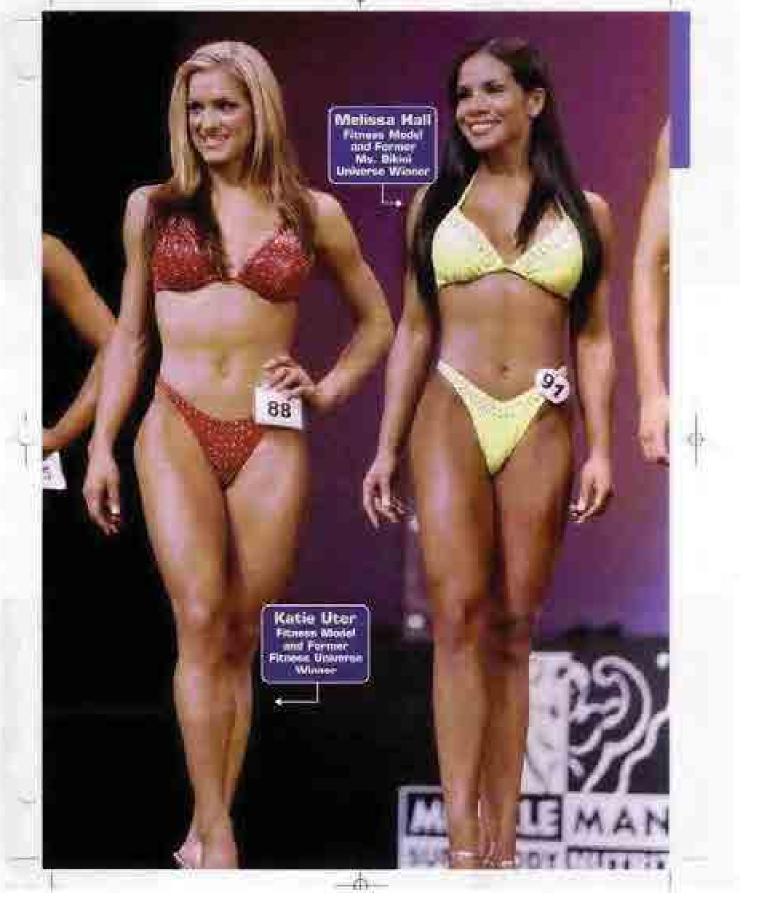
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Get a Body Like a Fitness Model's!

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Hydroxycut': Don't Diet at Train without it!

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BRANDY FLORES



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Four types of calorie burning that occur in your body and help with weight loss

- 1. Basal thermogenesis (basal metabolic rate or BMR)
- I. Increase induced thermogenesis (physical activity)
- 3. Diet-induced thermogenesis (thermic effect of food)
- 4. Adaptive thermogenesis (energy of adaptation)

Highed Decomposition (Manual mathematic) when out BNAT. Years BMB suggestive incommunybookly functions such as sinculating bits of just broathing, simil as also for as their sound, they " require a lot of calories to perform.

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- A.h is command that your WMR may account for up to two thirds of the total railones you burn on any group day?
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Medissa's Sample Calorie-Burning Circuit Training Workout

Felata does circuit training with weights for 15 emplois. Each meetoost le parformed once mis cimari tor 13 to: 20 read on such with no next between sets Each commit

is completed three times. Department Hanning 15 no 20 raps. Came - 15 co 20 reps. Dumber muchler press > 75 no 20 nego and water restored - 55 to 20 rept. Scott made a squite - 15 to 30 raps Ling transmission 15 no. 20 empty Dominif excelority - 15 to 20 repair Photophy Hg taosa - 15 to 20 repa

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This occurs when you are doing any more of physical activity, including candles on wright training. 4 for of this thermogenesis is sumed by an introduced heart cate and the higher blood deputation. that accompaniest surroise. Exonole at a logher rate or for a barger period of time to been more relevan-

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- A As noted, and don't have survey control over they have think about it must take yourte shevening onder a blacker or essenting it out in the hor son. That's adaption thermogenesis in series, regulating year body trapperation.

Find Trach Your Weight, Loss with HYDRICKYCUT

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A SURE-FIRE WAY TO A CONTROLOGY OF THE BODY YOU WANT FIND OUT HOW YOU CAN GET THE BODY YOU WANT FASTER THAN YOU EVER DREAMED!

W constrainty know it - being a woman isn't say, forme days it's a straightout chore to look and feel his way you want. Then there are the times you even start wishing you had "her" body. So, if you've been himing your nase up at that person in the mirror for quite some time, it's definitely time to ture flings mound. On the pages that follow, we culline four major benefits all typicewyout." that play a major role in terming your body into a tight and thim picture of perfection. Combine it with your healthy, active Efectyle and you'll be taking the right rep to becoming a woman who is completely combinable with herself on the outside. So if you've ready to take charge and get the body you want and deserve, now is the time!

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> "HYDROXYCUT really helped me stay motivated to get out to the gym and not slack." - humer flores



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CONTROL YOUR APPETITE



"I noticed that using HYDROXYCUT does have an effect on appetite suppression, which helped me gain control over my cravings." - stary surget



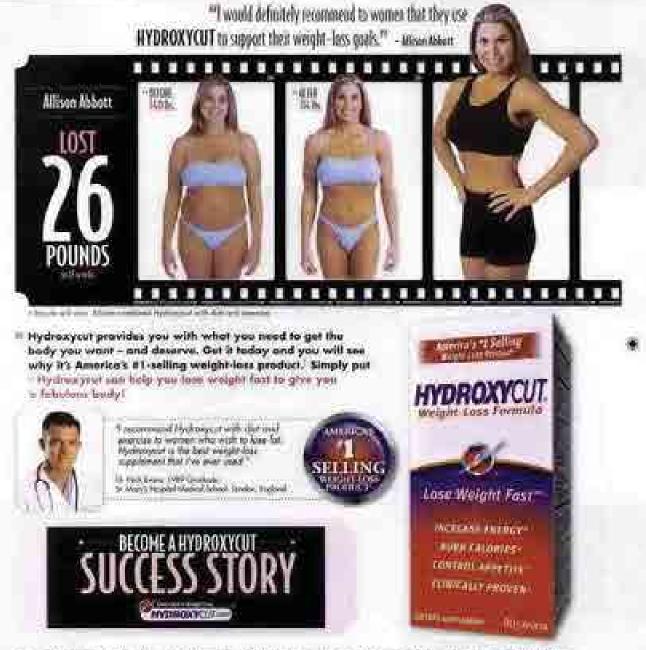
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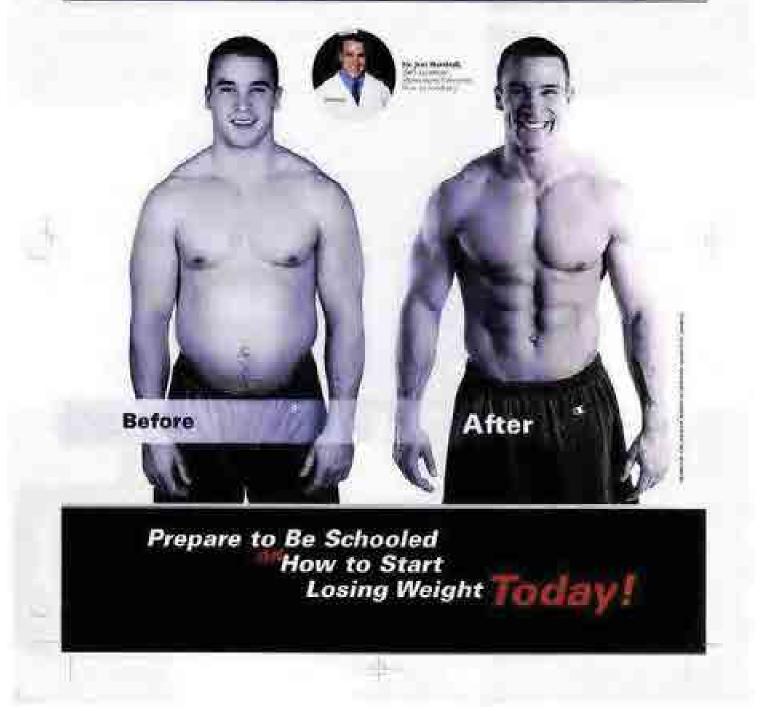
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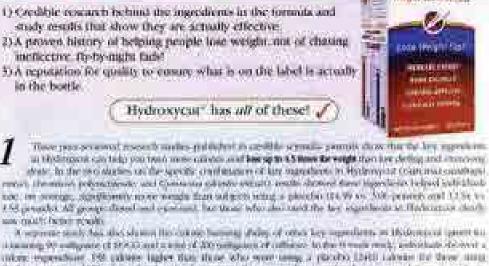


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Must-haves to look for in a weight-loss product



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TEST Your Weight-Loss and Exercise Knowledge

The part of an exercise where your muscle is flexing/shortening is called Oil) excentilie (fo) concentric (c) peak contraction

A 25-year-old with a resting heart rate of 76 hears ger minute (hpm) who ecome to have weight should exceeds within a target linert rate surge of (a) 176 on 198 by in (b) 136 to 159 bpm (c) 96 to 129 hpm

Your basel metabolic case is (a) the sate at which you burn calories at cere (b) the high level of calorie burning that occurs during cardle (c) the specific rate at which your body can add mincle

The activity that will have also more calculus for a 165pound mate is (a) 45 minutes of pickup basketball (b) a one-bony workout with weights (c) # 35 millione run (7.6 mph)

The FDA Food Pyramidi cocompounds this much fai (classified as "otte" in the Food Pyramid) per day for men aged 19 to 50 YOURS. (a) 7 tempoons (b) 12 teaspoons

(c) 13 company

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Why would you settle for an interior product that you can't even tell is working? Up to 4.5 times the weight loss than tilet and exercise alone: Thet's what you can expect from Hydroxyout!

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GET DETTER RESULTS THAN DIET AND EXERCISE ALONE BY ADDING HYDROXYCUT.

HYDROXYCUT

- Can help increase energy to help you get active and stay individed
- 🖭 Helps you buts over a hundred extra calonies per day!
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across the nation who have already made Hydroxycut their choice for fast, proven weight-loss support. When you see the results, you'll know you made the sight choice.

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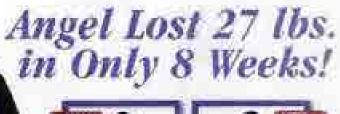
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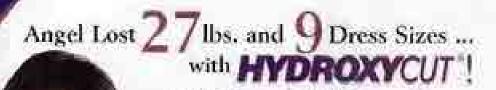
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THESE WOMEN EACH LOST 25 POUNDS WITH HYDROXYCUT. HOW MUCH WILL YOU LOSE?

Hydroxycut[®] is America's #1-spling[®] weight-loss formula and has been above by millions to get in shape - fast! The priori peoks kydemed function even he diplome below repriors here been proved effective allocating to 10 55 times the weight been results of the and another sizes.¹ Must importantly, in resistance in them with residence in the set of a providence of the set of a set of a set of the set of the



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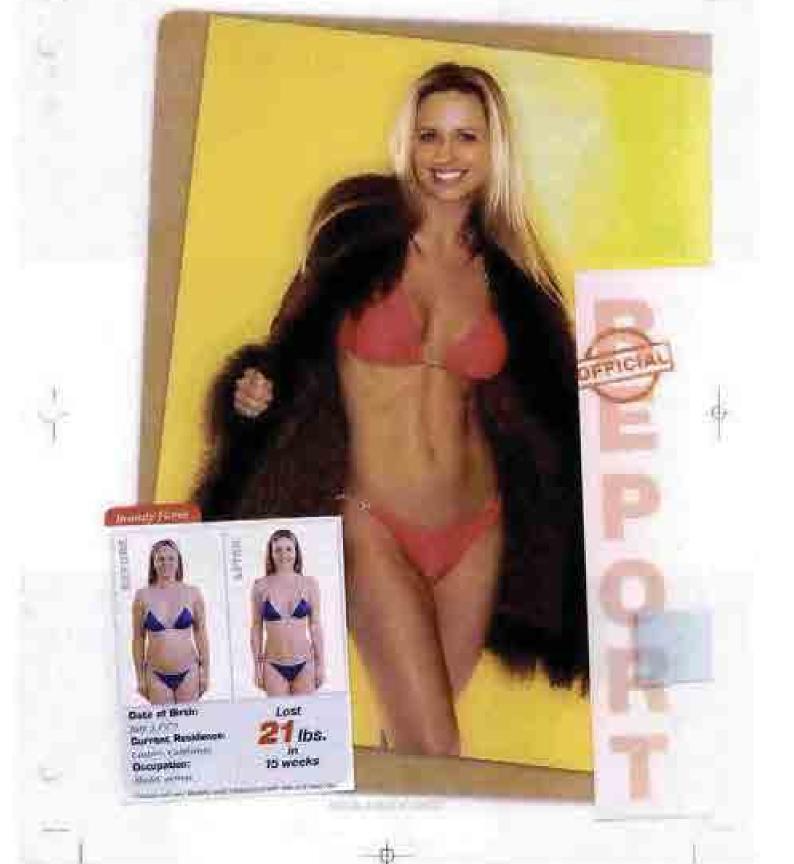
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OFFICIAL REPORT ON WEIGHT LOSS

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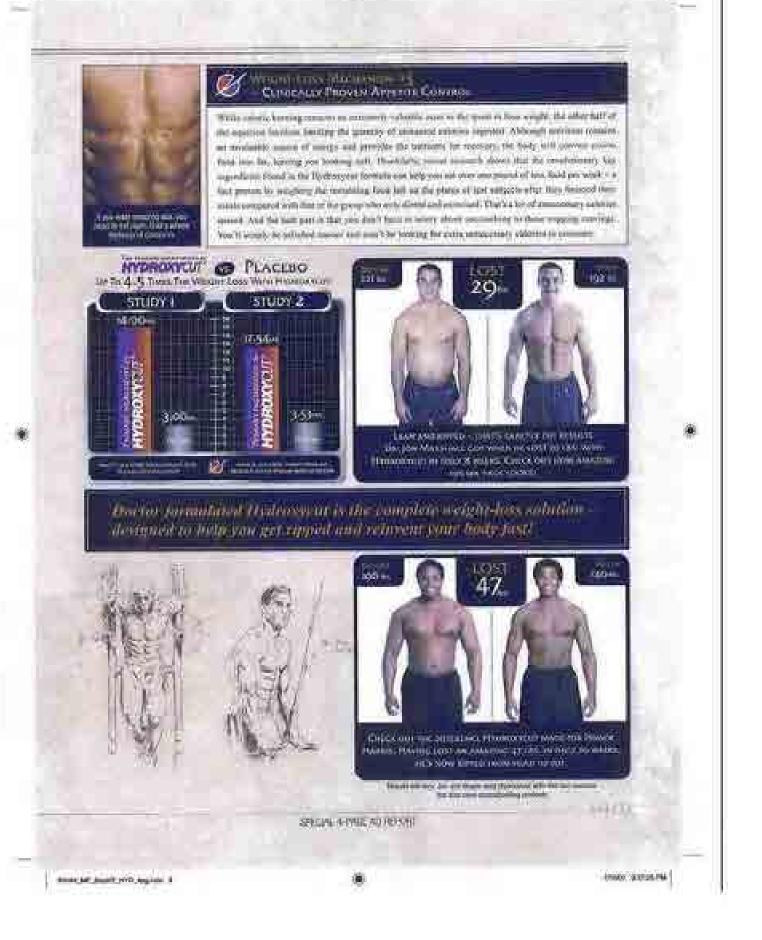
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America's #1 SELLING Weight-Loss Supplement'

"I Lost 31 Pounds FAST With Hydroxycut!"

"Being so busy caught up with me - I'd gained weight. I felt very lethargic and being heavy was emotionally trying. I lost my self-esteem. I'd heard great things about Hydroxycut - it's truly a great weight-loss solution - so I decided I'd try it too so I could lose the weight in fact, I wound up losing 31 pounds fast and I feel more. confident than ever. My abs are definitely one of my best features now! Hydroxycut is simply amazing?"

Millions of Americans have made Hydroxycut the #1 selling weight-loss supplement because it works. Doctor formulated* Hydroxycut will help you rapidly lose up to 4.5 times the weight than with diet and exercise alone!' With clinically proven ingredients to help control your appetite and increase energy levels, nothing works like Hydroxycut.



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The fact that Hydroxycut' is the #7 selling weight-loss supplement is an indication of its ability to help people achieve weight loss. I would not recommend a weight-loss product other than Hydroxycut to anyone serious about weight loss. Dr. Jon Marshall, D.O., Resident Physician, Hydroxycut Success Story

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AMERICA'S #1 SELLING WEIGHT-LOSS SUPPLEMENT!

"I GOT **ZDRI**

Many guys have been there - overweight, out of shape, and looking for answers. Skip Wood known it firsthand, That's why he turned to America's #1 selling weight-loss supplement -Hydroxycut" - and got ripped fast! "My transformation was the mal deal. I got into the best shape of my life with Hydroxycut! That's why It's easy to recommend it to others," he reveals. Make Hydroxycut your number one choice today and get the ripped body you've always wanted tool

"I lost 39 pounds fast with Hydroxycut and got into the best shape of my life!"

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Doctor formulated* Hydroxycut contains key ingredients scientifically and bir thirty your 10110 And with clinically proven ingredients that help control your appetite and increase energy levels, it's no wonder why millions of Americans have made Hydroxycut the #1 selling weight-loss supplement!



"The fact that Hydroxycut" is the #1 selling weight loss supplement is an indication of its ability to help people achieve weight loss. I would not recommend a weight-loss supplement other than Hydroxycut te anyone serious about losing weight"

Dr. Joe Marshall, C.O. Resident Physician, Hydroxycut Soccess Story

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Hydroxycut's" Ingredients are Scientifically Proven to Help You Lose Weight Fast

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Hydroxycut[®] Helps Increase Your Energy to Stay Motivated and Succeed

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STAY FOCUSED on losing the weight with these motivational tips:

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Ask an Expert: Dr. Christine Lydon

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Dier and exercise are vital components of any good weight loss plan, but adding Hydroxycut to the two is a must if you want excellent results! Remember, diet and exercise abute can take you so far. Now you know that with Hydroxycut', you can take your results that much huther. Dun't hind the positive changes you could be making to your figure. Choose Hydroxycut and experience the science behind successful weight loss firsthand!

Lose weight fast'
Increase your energy
Burn calories
Control your appetite.

Advanced Bydrixxycul More servings per bette mere convenient in toko and just se powerful.

AND CARLON OF A

Weight-Loss Formula

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Lose Weight Fast

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ecrets to ardcore t Burning

r the 5 secrets behind the one e fat burner powerful enough to carve p cuts that have forged more Olympiag physiques than any other in bodyg history – Hydroxycut® Hardcore!

> hen Dexter "The Blade" Jackson hit the stage at the 2008 Mr. Olympia, he came armed with a ton of muscle etched, peeled, striated and slashed to bits. In fact, he was the most ripped man on stage. But that's why they call him The Blade. Ever wonder how he's able to show up to every contest more sliced and diced than the one before?

> Dex has some secrets. Five, to be exact. You see, he knows that aside from good genetics, competing against the best bodybuilders in the world requires supplemental intervention by way of a hardcore fat burner that will help get him peeled to the bone. For this purpose, researchers from Team MuscleTech¹⁴ have engineered Hydroxycut[®] Hardcore!

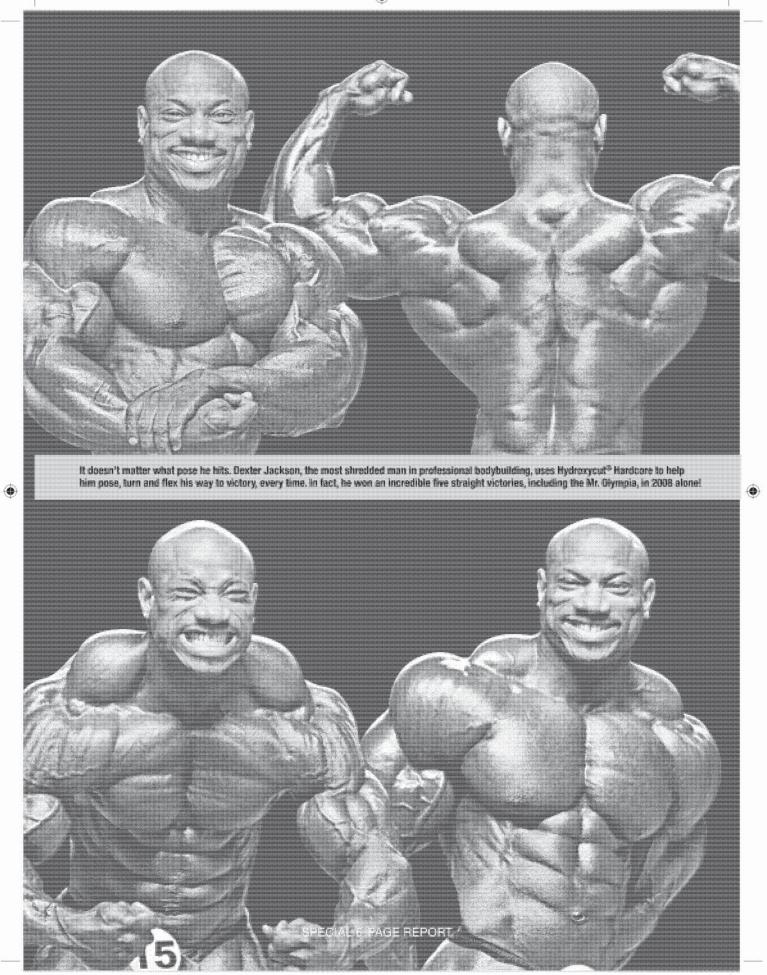
Read on to discover just how this fat-burning powerhouse is so effective at burning fat and why it's the reason you could get shredded in no time!

Straight Victories – Undefeated in 2008!

Arnold Classic Australian Grand Prix New Zealand Elite Pro Mr. Olympia Romanian Grand Prix

SPECIAL 6-PAGE REPORT

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The Clinical Science Behind Wicked Cuts

When you're busting your ass to get completely shredded, you simply can't forget about the science of it all. You need

the research to be ironelad. And it's no surprise that IFBB pros like Dexter Jackson, Jay Cutler, Johnnie Jackson, Gustavo Badell, David Henry and Darrem Charles continue to make Hydroxycot# Hardcore these incredible results in just 12 short weeks! What's more? In the next study, researchers were amazed at what they found. During a sixweek trial testing a key ingredient in Hydroxycut Hardcore, the average weight loss was an incredible 10.56 pounds. And those results were achieved without any training at all! That's pretty incredible. But it's only the beginning. The placelso

A key ingredient in the Hydroxycut Hardcore formula is proven to burn 7.9% more bodytat!

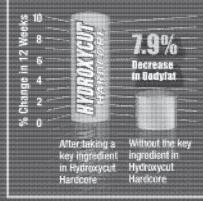
their fat burner of choice. Why? Because leading scientific data on the key ingredients in the formula proves they work. In fact, during a gold-standard clinical study, when subjects consumed just one of Hydroxycut Hardcore's powerful fat-burning compounds, they actually decreased their total fat area by an unbelievable average of 7.9 percent more than the control group! And what's even more amazing is that they achieved

For the reigning Mr. Olympia, forging the shredded physique that won him his last five contests in a row requires help from the most powerful handcore fat burner in the world – Hydroxycut Hardcore! group actually gained an average of 2.64 pounds! That's right. When subjects weren't given the key ingredient in Hydroxycut Hardcore they actually gained weight! But that's not all During yet another third-party gold-standard study involving consumption of other key components in Hydroxycut Hardcore. Team MuscleTech researchers were shocked to discover that each

subject's calorie burning increased over a 24-hour period. Proof positive

Hydroxycut Hardcore's Key Ingredient Delivers Proven Fal-Burning Results!

Subjects who took a key ingredient in Hydroxycut[®] Hardcore lost an incredible 7.9% more bodyfat than the control group after just 12 weeks!



that the Hydroxycut Hardcore formula was engineered using clinically proven ingredients that can help you burn fat. In fact, Hydroxycut Hardcore can help you expose the wicked cuts you've been striving to attain, one muscle fiber at a time!

Advanced Technology for Rapid Delivery

Undoubtedly, one of the reasons the newly crowned Mr. Olympia, Dexter Jackson, was able to claim victory is the fast-acting fat-burning formula of Hydroxycut Hardcore! You see, the revolutionary LiquiTech¹⁴ capsule technology is suspended in a cutting-edge liquid matrix engineered for a rapid release. of key fat-burning ingredients. The hardcore competition-strength complex also features pharmaceutically inspired Nano-Diffuse** technology. This highly innevative technology treats a precise portion of a key active ingredient and nanoparticulates it to a size that's up to 8,700 percent smaller than conventional particles. This innovative technology can't be found in any other fat burner only Hydroxycut® Hardcore!

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LEAGE REPORT



The five fat-burning steps of Hydroxyout⁹ Nardoore are so powerful That amateur bodybuilder Leon Eastman used it to get every muscle peeled to the bone. He lost so much weight he was able to compete at a national bodybuilding show in just 19 weeks!



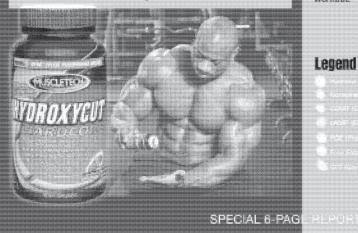
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Dial It In with the 5 Steps of Hydroxycul Hardcore

Creating a fat burner that would only tackle the fat-burning issue with one ingredient wouldn't be as effective as

the Hydroxycut Hardcore formula at all. In fact, this is a dead-end approach because the body has so many methods of preventing change that it quickly adapts to any one attempt to induce fat loss. It can then neutralize that attempt, making the fat burner a waste of your time and money. Hydroxycut Hardcore, on the other hand, has been formulated by the brightest minds in the supplement industry, and it synergistically employs a five-fold platform to aggressively attack the processes involved in thermogenesis. In fact, the key components in Hydroxycur# Hardcore increase levels of a key fatburning hormone while simultaneously inhibiting the shut off mechanisms the body uses to store fat, keeping the fat-borning signal strong!

After five previous top-five finishes at the Olympia, The Blade took the crown by continuing to use Hydroxycut[®] Hardcore. He knows that each dose is clinically engineered to keep his fat-burning signal nsityl



The 5 Steps of Hydroxycut® Hardcore

SIED 1 Hydroxycut Hardoore is designed to block adenosine receptors to help increase NE, the key fat-burning hormone, by 40 percent.

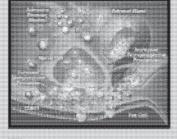
Step 2 To keep fat burning at maximum levels, Hydroxycut Hardcore is designed to sustain a high level of NE by blocking COMT, allowing the fat-burning signal to continue. NE binds to beta-receptors to trigger intracellular levels of cAMP. which allows transmission of the metabolism-boosting signal into the cell. At the same time, Hydroxycut Handcore's formula contains an ingredient which binds to alpha-receptors to help keep metabolism stoked.

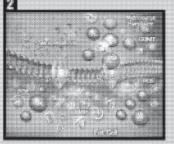
SIED 3 Hydroxyout Hardcore is designed to strengthen the body's intracellular fat-loss signal by blocking phosphodiesterase, which then helps continue to increase and sustain levels of cAMP. This then signals the cell to break down fat stores and liberate fatty acids into the hinnisheam

Step 4 Once failty acids are released into the bloodstream. Hydroxyout Hardcore is engineered to maximize their breakdown inside the mitochondria.

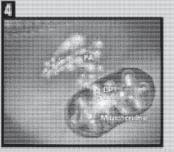
SIGD 5 Thermogenesis is ignited when these fatty acids are burned, creating heat. This fuels the intensity for your next workput

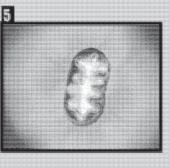
Legend











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The Extreme Potency of the World's Most Powerful Hardcore Fat Burner

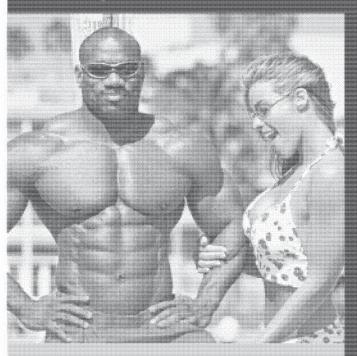
Team MuscleTech³⁴ champions know that gruefing training sessions and years of personal sacrifice are only part of the puzzle to achieving a monstrous and shredded physique. When they need to etch out every zipper-like striation and defined muscle tie-in, Mr. Olympia, Dexter Jackson and two-time Mr. Olympia, Jay Cutler know that competing on the Olympia stage takes clinical-strength fat burning. They trust the Hydroxycut⁹ Hardcore formula because it's infused with four powerful properietary blends that work synergistically to ensure its ultimate effectiveness – Pyroxyclene⁴⁴, Norepidrol⁶⁴, Lasidrate⁵⁶ and Yohimbacore³⁴. In fact, the Pyroxyclene⁴⁴



Just like Dexter Jackson, amateur bedybuilder Henry Everette used Hydroxyout Mardoore to get him his best results ever. It took only 14 weeks to slice off a staggering 53 lbs. and expose wicked cuts all over his body!

Key ingredients in Hydroxycut Hardcore are proven to elevate your body's key fat-burning hormone, norepinephrine, by 40%!

blend is engineered with precise dosages to synergistically force the ignition of your body's dominant fat-burning hormone, norepinephrine, by 40 percent in 24 hours! In addition, these blends are designed to release energy from fat and fiercely power the fat-burning process for unprecedented fat-burning results!



Using Hydroxycut Hardcore to win another Olympia crown is top priority for Dex. But there's a lot more that comes with being more shredded than the next gwyl

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Engineered by the Top Supplement Researchers in the World

Researchers from Team MuscleTech have created the ultimate fat burner utilizing the same supplement innovation that has propelled them to the forefront of countless supplement categories. As a result of their ability to research, patent and develop innovative products, they continue to help produce champion bodybuilders like 13-time IFBB champion Dexter Jackson. In fact, after a bilistering season of five first-place finishes in a row, and an equally intense hunger for another Sandow,

Hydroxycut Hardcore's powerful fat-burning effects are backed by a decade of scientific research!

the 2008 Mr. Olympia champ promises to deliver an even better physique in 2009! And although it will take a while for the new champ to get used to being called "Mr. Olympia." 39 year-old Jackson who, unbelievably, continues to get better with age had this to say about defending the Sandow in 2009: "It feels surreal right now. I've been waiting 10 grueling years for this and I've proven all the way that I deserve it. Make no mistake: I intend to bring an even better package to next year's O, with even more size, symmetry and overall conditioning. In 2009 you'll see the greatest Dexter ever!" But he won't go it alone. He'll be using Hydroxycut® Hardcore to help him eclipse the competition.

SPECIAL 6-PAGE REPORT

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So, if Hydroxycut# Hardcore is powerful enough to help Dexter Jackson and Jay Cutler bring more chiseled muscularity and cuts to the Olympia stage, imagine what it could do for you and. loodybuilders all over America!

In addition to following the secrets behind Dexter Jackson's Obempia winning physique, keeping motivated every day is essential. Team Muscle Tech w knows this. That's why they've joined forces with GNC to bring you the most explosive cashwinning contest ever - The Hydroxycut Hard-Body Challenge

Get Shredded. Get \$100.000

Hardcore bedybuilders everywhere, mark your calendars because on January 1, 2009, The Hydrosycut Hard-Body Challenge - sponsored by Hydroxycut Hardcore - will begin! This contest will surely be the motivation you've been waiting for to get your hard-earned muscle sliced and diced by June 30, 2009!

So what's in it for you, other than getting more impossibly shredded than ever before? How about a shot at \$100,000! That's right: one hardcore male and one bardcore female will each win \$100,000 for placing first. But you shouldn't be disappointed. if you don't take the gold. Twenty-five runners-up will each receive \$2,000! What's more? Winners will also appear in their favorite hardcore mags. That's right! Now you can be the envy of all your friends by having your peeled-to-the-bone physique splashed in magazines everywhere!

How to Enter Now for Your Chance at \$100.000!

Entering couldn't be easier! Simply download an entry form from HydroxycutHardBodyChallenge.com and follow the

Contest Starts January 1st, 2009

Whip yourself into amazing shape by June 30, 2009 and you could win BIG! And don't worry if you don't take 1st place; 25 runners-up will each receive \$2,000!

For more details, see the Official Rules at HydroxycutHardBodyChallenge.com.

to perchase receivery to enter or win. Context begins at 12-00 AM(ET) on 01/01/09 and ends at 11-69 AM(ET) on 00/0016). The context is spon to legal residents of the U.S., 18 years of age or older. The context is subject to official rules. Void in Puerto Rico and where prohibited



Team MuscleTech continues to be a proud sponsor of the NPC (National Physique Committee), With an unwavering commitment to the advancement of our sport, Team MuscleTech remains dedicated to supporting amateur bodybuilding shows and athletes alike.

instructions found on the site. See Official Rules for details.

This isn't just about who peels away the most weight or slices off the most inches, it's about who has the best overall transformation. So don't wait. Sign up now so you can prove to yourself, and America, why you deserve to be the next Hydroxycut[®] Hard-Body!

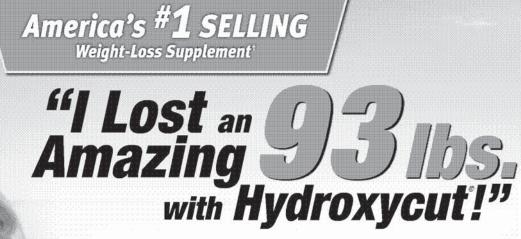


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SPECIAL 6-PAGE REPORT



"It was hard going to a beach or pool when I was overweight because everyone was looking at me. I was always in a one-piece swimsuit and it wasn't comfortable. Now I lost an amazing 93 pounds and over 16 inches off my waist, and I never would have imagined feeling this good about my body! Hydroxycut really works!"



Used by Millions to Lose Weight

Stacy Nikitin Madbury, NH



*In two 8-week studies in which all groups followed a diet and exercise plan, subjects using key ingredients (Garcinia cambogia, chromium polynicotinate, Gymnema sylvestre extract) lost, on average, significantly more weight than subjects using a placebo (14.99 vs. 3.06 lbs. and 12.54 vs. 3.53 lbs.). Individuals were remunerated. *Based on IRI F/D/MX sales data for Hydroxycut* caplets. Read entire label before use. Sensible diet and exercise are essential for healthy weight loss. © 2009



Experience Less Bloating with EASY, FAST, SAFE Cleanse Results!

VS

COMPLETE 7-DAY

HYDROXYCUT.com

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You lead a busy life and can't afford to have that bloated, sluggish feeling slowing you down. That's why you need **Complete 7-Day Cleanse** from the makers of Hydroxyout". Complete 7-Day Cleanse is an easy, fast and safe way to gently remove more waste, so you can feel retreshed and rejuvenated – in just 7 days. Try Complete 7-Day Cleanse⁻⁻ today, and feel revitalized and renewed like never before!

"Many cleanse products on the market foday are harsh. With Complete 7-Day Cleanse", you get a safe, gente way to cleanse." Dr. Nick Evans, M.D.

Could You Use a Cleanse?

YES NO

81



SHOP NATIONWIDE OR AT GNC.COM

If you answered "yes" to one or more of these questions, you could use Complete 7-Day Cleanse"!

Walgreens. CVS/pharmacy

Super*Centers

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Rejuvenate & Renew Like Never Before!

Enter a new era of cleansing with a revitalizing new product that can make you feel as glamorous as you look. Introducing Maximum-Strength Cleanse System for Women from the makers of Hydroxycut® Max! a powerful yet gentle cleanse product designed just for women and infused with female support ingredients. Why wait any longer to feel your best? Maximum-Strength Cleanse System for Women is like a day at the spa that works on the inside - try it today!

Works in just 7 days

Helps eliminate bloating and puffiness b more waste

Cleanses your colon safely & gently

Optimizes digestive function

Infused with female-friendly ingredients such as calcium, vitamin D, folic acid and the super-antioxidant acai

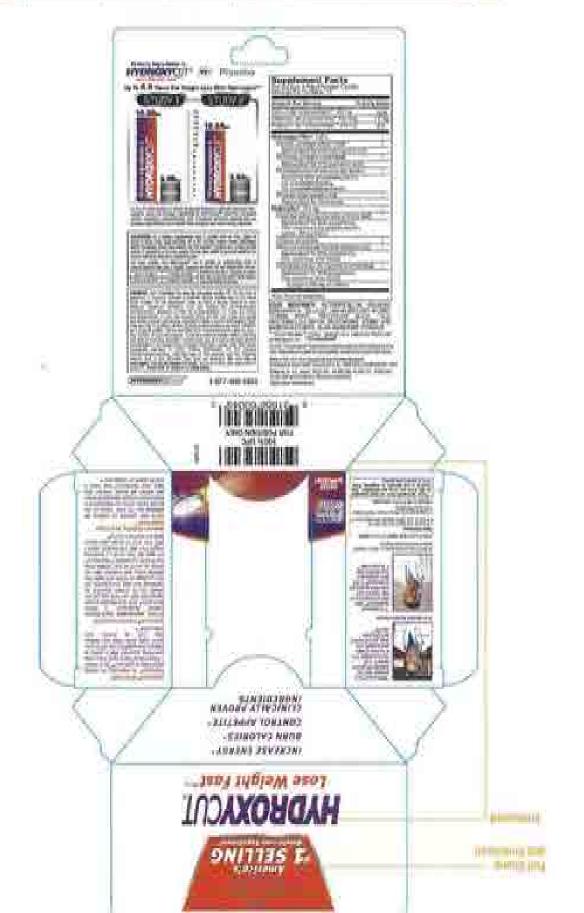
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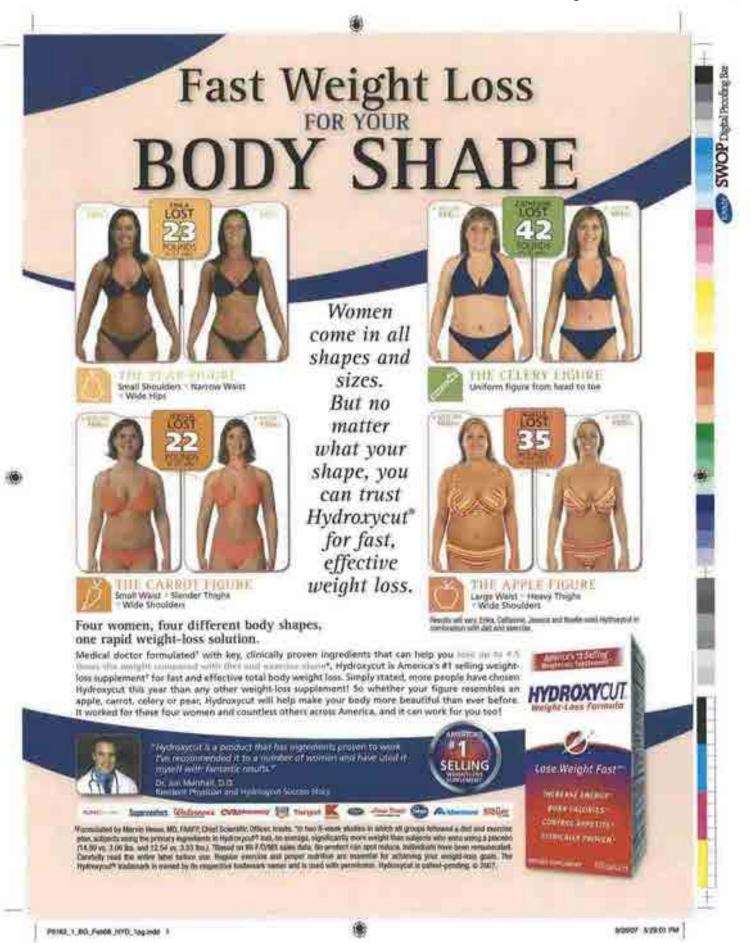
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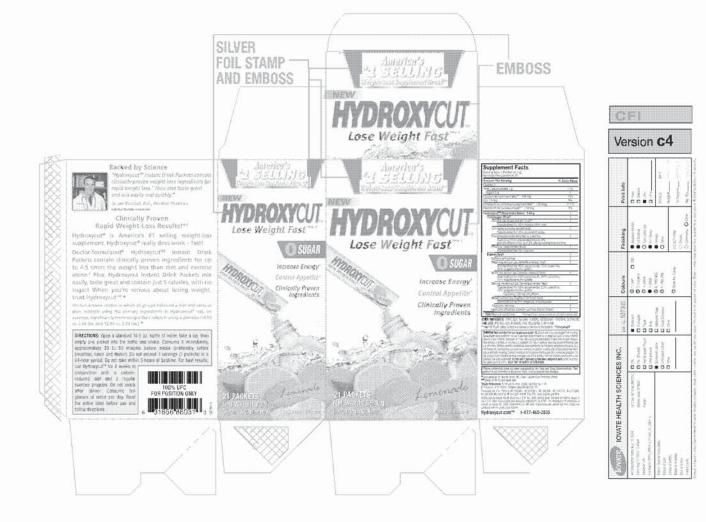
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Case 3:09-cv-01088-BTM-KSC Document 311-6 Filed 04/21/14 Page 25 of 73



Revitalizea In Just 7 Days

Experience Less Bloating with EASY, FAST, SAFE Cleanse Results!

To gently remove more waste so you feel less bloated, try **Complete 7-Day Cleanse**". This easy, fast, safe cleanse was created by the makers of Hydroxycut[®] to quickly feel refreshed and rejuvenated. Revitalize yourself for fast, effective results.

"Many cleanse products on the market today are harsh. With Complete 7-Day Cleanse, you get a safe, genite way to cleanse."

Dr. Nick Evans, M.D.

complete 7-day

HYDROXYCUT

Could You Use a Cleanse?

	YES	NO
Do you often feel bloated?		
Do you have a "puffy" feeling?		
Are you looking to promote regularity?		
Do you feel sluggish?		
Have you been feeling unlike yourself lately?		

If you answered "yes" to one or more of these questions, you could use Complete 7-Day Cleanse"!

CVS/pharmacy

e[™]! **HYDR⊙XY**CUT.com

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'Based on IRI F/D/MX for Hydroxycut" caplets. Read the entire label before use. © 2009

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Have the questions "Do I look fat?" or "Does my butt look big in these jeam?" become a daily ritual? Do you find yourself reaching for those so-called "fat day" clothes a little too often? Imagine what it would be like to wear "slim day" clothes and start saying "I feel sexy1" all the time.

Make it happen with diet, exercise, and Hydroxycut[®] – America's #1 selling weight-loss supplement. With key ingredients clinically proven to help you achieve up to 4.5 times the weight loss compared with diet and exercise alone*. Hydroxycut can help you shed pounds faster than you ever thought possible for that slim, sexy body you want and deserve!

Stop having those "I feel fat" days and turn them into "I feel sexy" days with Hydroxycut!



WAL*MART Walgreens CVS/pharmacy

"In two 8-week statistics in which all groups followed a det and exercise plan, subjects using the protect ingreduets in Hydrospuel" last, on average, significantly more veright their subjects who were using a passise (14.99 vs. 3.60 lbs, and 12.54 vs. 3.53 fbs.). "Based on 99 FXMX sales uses, hydrospuel" last, manuscrated, ComMy read the online label before use. Regular services and proper monthis are assectial for achieving plur ungliti-lass goals. No product can used reliace. The Hydrospuel" trademark is served by fit respective trademark owner and is used with persection. Hydrosput is patient peoples, o 2008.

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A SURE-FIRE WAY TO A CONTROLOGIES CONTROLO

W co already know it - being a woman isn't easy forme days it's a straightout chore to look and feel his way you want. Then there are the times you even start wishing you had "her" body. So, if you've been himing your nase up at that person in the mirror for quite some time. It's definitely time to turn flings mound. On the pages that follow, we colline four major benafits of typicesycal. That play a major rule in turning your body into a tight and trim picture of perfection. Combine it with your healthy, active Restyle and you'll be taking the right rep to becoming a woman who is completely combinable with herself on the outside. So if you've ready to take charge and get the body you want and deserve, now is the time!

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> "HYDROXYCUT really helped me stay motivated to get out to the gym and not slack." - brandy Flores

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Manager Rowst et g. 2001

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CONTROL YOUR APPETITE



"I noticed that using HYDROXYCUT does have an effect on appetite suppression, which helped me gain control over my cravings." - stary surget



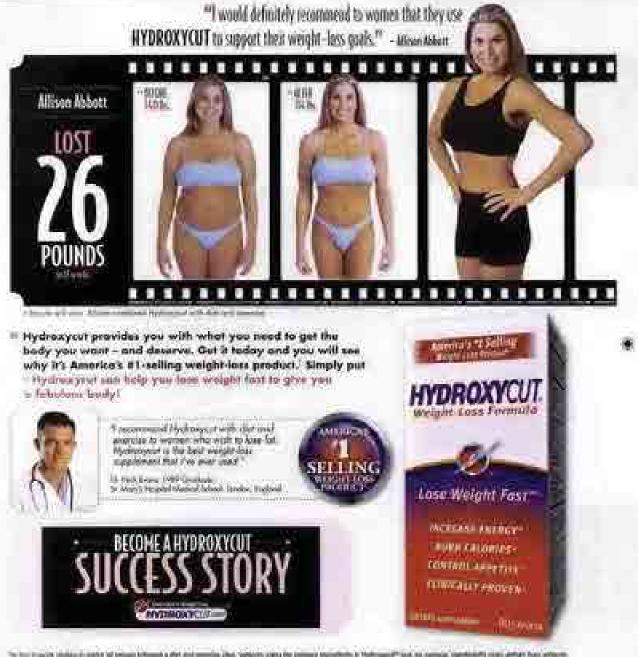
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AMERICA'S #1-SELLING WEIGHT-LOSS PRODUCT

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Is Hydroxycut[®] the Mişsing Pięćę in Your Weight Loss Plan?



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Hydroxycut - A Product Like No Other

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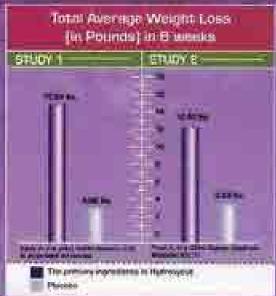
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FACT: Rydroxycut[®] can help you lose more weight *laster*

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FACT: Hydroxycut[®] helps keep your appetite in check

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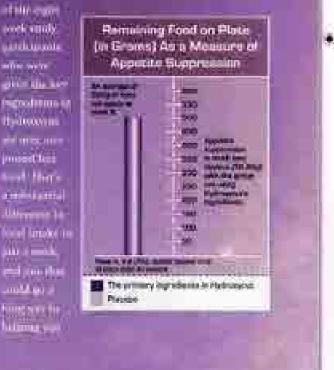


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FACT: Hydroxycut[®] can help you burn more calories

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How much weight will you lose with Hydroxycut?

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HYDROXYCUT

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We Lost 112 Ibs. With HYDROXYCUT YOU CAN DO IT TOO!

hese amazing women rech loss a shecking amount of unwanted, ugly weight fast. What do they all have in common? They triated America's #1 selling weight-loss supplement' - Hydroxycut* - for rapid results! Formulated by a medical doctor and chosen more than any other brand, Hydroxycut contains lingredients clinically provini to help you lote up to 4.5 times the weight than with diet and exercise alone.' Stop waiting time - get Hydeoxycut" today and reveal a beautiful body so you can look great and feel confident!



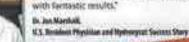
LOST 44 POUNDS

This Mother of 3 Never Looked So Good!

No second in the second test from the second s stition Ppacesent! - Collower Dove Monter of J



"Hydroxycet is a product that has ingredients proven to work. Eve mcommended it to a number of women, and have used it myself with farmastic moulds."



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Full Time Mom Uncovers Her Sexy New Body

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HYDROXYCUT Lose Weight Fast**

What is Hydroxycut?

- A weight-loss formula with key ingredients that are supported by multiple published studies that verify its efficacy*
- * A quality-assured product backed by scientific research
- Covered by 8 U.S. patents, with international patents pending
- * Contains research-tested key ingredients proven to be effective

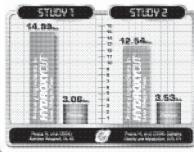
Who is it for?

Hydroxycut is for mainstream, middle-majority consumers and moderate fitness enthusiasts (adults aged 18-49) who are looking for an effective, research-backed product to help them lose weight.

Why should you recommend it?

The key ingredients in doctor-formulated^{*} *Hydroxycut* have been university-research-tested and clinically proven to help people quickly lose up to 4.5 times the weight than diet and exercise alone.* The next time you have a customer who is looking for fast, effective weight loss, recommend a product that has become synonymous with losing weight – *Hydroxycut*!





All groups dieted and exercised.



More Scientific Validation

Lose up to 4.5 Times

the Weight

with Hydroxycut

*In two 8-week studies in which all

groups followed a diet and exercise plan, subjects using the key weight-

loss ingredients, (Garcinia cambogia

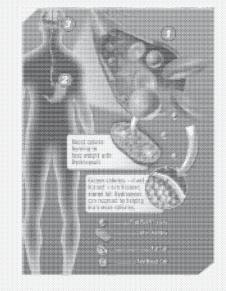
extract, chromium polynicotinate and Gymnema sylvestre extract)

in Hydroxycut lost, on average, 4.5 times the weight than the

placebo groups.

Other ingredients in *Hydroxycut** (catechins and caffeine) have been proven to help burn up to 158 extra calories over a 24-hour period than a placebo. Add that up and *Hydroxycut* could help burn over 1,100 extra calories per week, which is about the equivalent of the number of calories burned in four hours of weight training!

Hydroxycut acts in 3 ways to help people lose weight fast:



1) BURNS MORE CALORIES

Hydroxycut helps boost metabolism by increasing mitochondrial activity and burning away excess calories from sugar and fat that, if not used, can be converted to bodyfat.

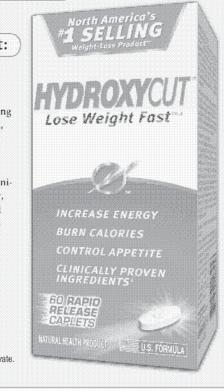
2 CONTROLS APPETITE

Key ingredients in *Hydroxycut* have been clinically proven to help control appetite. In fact, two 8-week studies show subjects who used key ingredients in *Hydroxycut* ate much less food than those who were given a placebo (avg. 346 g vs. 83 g eaten).

3 INCREASES ENERGY LEVELS

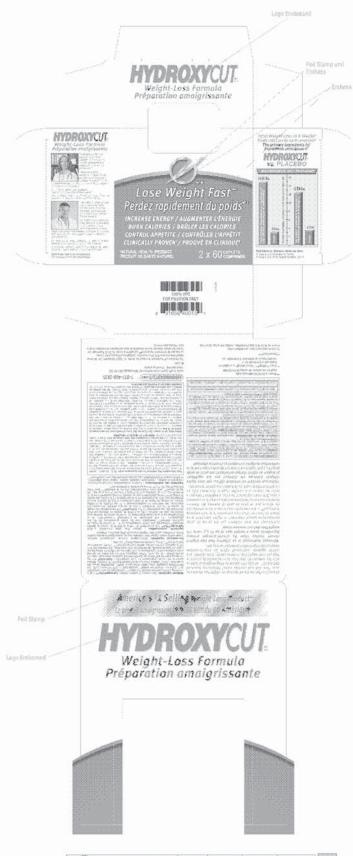
Hydroxycut[®] contains a key ingredient that is clinically proven to increase energy to help people stay motivated and active throughout the day.

**Based on available sales data (Includes NHPs and dietary supplements only). *Formulated by a medical doctor employed by lovate. Read entire label before use. Sensible diet and exercise are essential for healthy weight loss. © 2009



Scientific Support VD:{0}{/ **Research Supporting the** Efficacy of Hydroxycut Lose Weight Fast" Nutrition Research 24:45-48 Study #1 Study Location: Georgetown University, Washington DC Preuss HG, Bagchi D, Bagchi M, Rao CVS. Efficacy of a novel, natural extract of (-)-hydroxycitric acid (HCA-SX) and a combination of HCA-SX, niacin-bound chromium and Gymnema sylvestre extract in weight management in human volunteers: A pilot study. Nutr Res 2004; 24:45-58. Summary In this 8-week, randomized, double-blind, placebo-controlled human trial, 30 moderately obese subjects were divided into three groups. Group 1 received just the calcium/potassium salt of 60% HCA extract from Garcinia cambogia. Group 2 received Garcinia cambogia extract, chromium polynicotinate and Gymnema sylvestre extract. Group 3 received a placebo. All subjects were placed on a 2,000 kcal/day diet; ingested the assigned test supplements 3 times daily, 30 to 60 minutes prior to meals; and participated in supervised walking five times per week. At the end of 8 weeks, Group 1 lost on average, 12.1 pounds. Group 2 lost, on average, nearly 15 pounds. Group 3 lost, on average, 3.1 pounds. At the end of the study period, weight-loss values in both Group 1 and Group 2 were significantly greater than in the placebo group. Moreover, the placebo group showed a slight increase in food consumption, while the HCA groups both showed a significant reduction in appetite compared to placebo measured by the remaining food in grams on the plate. Based on the results from this study, it was concluded that the unique HCA extract used in this trial, either alone or in combination with Gymnema sylvestre extract and niacin-bound chromium, is effective in helping control appetite and promoting weight loss. Diabetes Obesity Metabolism. 6:171-180 Study #2 Study Location: Georgetown University, Washington DC Preuss HG, Bagchi D, Bagchi M, Rao CVS. Dey DK, Satyanarayana S. Effects of a natural extract of (-)-hydroxycitric acid (HCA-SX) and a combination of HCA-SX plus niacin-bound chromium and Gymnema sylvestre extract on weight loss. Diabetes Obes Metab 2004; 6(3): 171-180. Summary This study set out to determine the efficacy of a calcium/potassium salt of 60% HCA extract from Garcinia cambogia alone and in combination with niacin-bound chromium and a standardized extract of Gymnema sylvestre extract on weight-loss parameters in human volunteers. In a double-blind placebo-controlled design, 60 moderately obese individuals were randomly assigned to one of three groups. Group 1 received just calcium/potassium salt of 60% HCA extract from Garcinia cambogia. Group 2 received the Garcinia cambogia extract, chromium polynicotinate and Gymnema sylvestre extract. Group 3 received a placebo. Test supplements were taken 3 times daily, 30 to 60 minutes before meals. All subjects followed a 2,000 kcal/day diet and participated in supervised walking five times per week. At the end of 8 weeks, Group 1 lost an average of 10 pounds, Group 2 lost 12.5 pounds and the placebo group lost 3.5 pounds, which was significantly less weight lost than Groups 1 and 2. A reduction in appetite was also determined in both Groups 1 and 2 as measured by the amount of remaining food left on the plate. From these results it was concluded that supplementation with the combination of (-)-hydroxycitric acid (HCA-SX), niacin-bound chromium and Gymnema sylvestre extract can help individuals for weight management. British Journal of Nutrition. 94:432-6 Study #3 Study Location: Laval University, Quebec City, Quebec Bérubé-Parent S, Pelletier C, Doré J, Tremblay A. Effects of encapsulated green tea and Guarana extracts containing a mixture of epigallocatechin-3-gallate and caffeine on 24 h energy expenditure and fat oxidation in men. Br J Nutr. 2005 Sep;94(3):432-6. Summary The main aim of the present study was to compare the effect of a mixture of green tea and Guarana extracts containing a fixed dose of caffeine and variable doses of EGCG on 24 h energy expenditure and fat oxidation. Fourteen subjects took part in this randomized, placebo-controlled, double-blind, cross-over study. Each subject ingested a capsule of placebo or capsules containing caffeine and a variable dose of EGCG three times daily, 30 min before standardized meals. Twenty-four hour energy expenditure was found to increase significantly in the EGCG-caffeine mixture; with the EGCG-caffeine mixture burning on average 158 more calories per day compared with placebo. Therefore, EGCG-caffeine mixture increases the amount of calories burned as energy and would serve as a good complement to a weight loss program.

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Lose Weight Fast

INCREASE INERGY

CONTROL APPETURE

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RAPID RELEASE CARVETS

BURN CALORITY

Doctor formulated" Hydroxycut contains scientifically proven key ingredients to help you for up to 4.5 times the weight that diet and exercise alone!" With clinically proven ingredients that help control your appetite and increase energy levels, it's no wonder why millions of Americans have made Hydroxycut the #1 selling weight-loss supplement!



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America's #1 SELLING Weight-Loss Supplement

"I Lost **39 lbs**. with Hydroxycut?"

 Christina vandenBerg Ocean City, Maryland

> "I would choom Hydroxycut over any other weightloss product on the market today - I've experienced the results. Now, I feel beautiful and fabulence"

> > TING

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"When I was overweight I felt less confident, self conscious and was always covering up. When I had to buy size 14 pants, I throught enough was enough -- I had to fose the weight. I knew Hydroxycut' was very reputable and worked for other people, so I decided to try it. I wound up losing 39 pounds with Hydroxycut and now I'm in the best shape of my life. Hydroxycut really works!"



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Doctor formulated' Hydroxycut contains scientifically proven key ingredients to help you fore up to 4.3 times the weight than diet and exercise alone!' So ark yourself this: "What will Hydroxycut do for me?" The only way to find out is to try it, and join the millions of people who have made Hydroxycut America's #1 selling weight-foss supplement!

"The fact that Hydroxyent" is the #1 stilling weight-loss supplement is an indication of its ability to help people achieve weight loss. I would not recommend a weight-loss supplement other than Hydroxyent to anyone serious about losing weight."

Dr. Ion Marshall, JLO. Resident Physician, Hydroxyyur Suscent Sorry



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In two 8-week studies in which all groups followed a dist and eventue plan, subjects using the primary ingredients in Hydroxycut lost, on average, significantly more weight than subjects who were using a placebo (14.99 vs. 3.06 fte: and 12.54 vs. 3.53 fte). Yeave or in 155M were doin. Tomazel by Mavyo Invad. No. HWH Card Scientific Objects trade, trademine the later means that Card/M red the other add later are integer reacting and the subjects who were cardinate the subjects who were used by the subjects who were the trademine of provide the subjects and provide the subjects and even the subjects who were used by the subject of the subject in the subject in the subject of the subject in the subject is the subject in the subject

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HOW TO GET PERFECT ARMS

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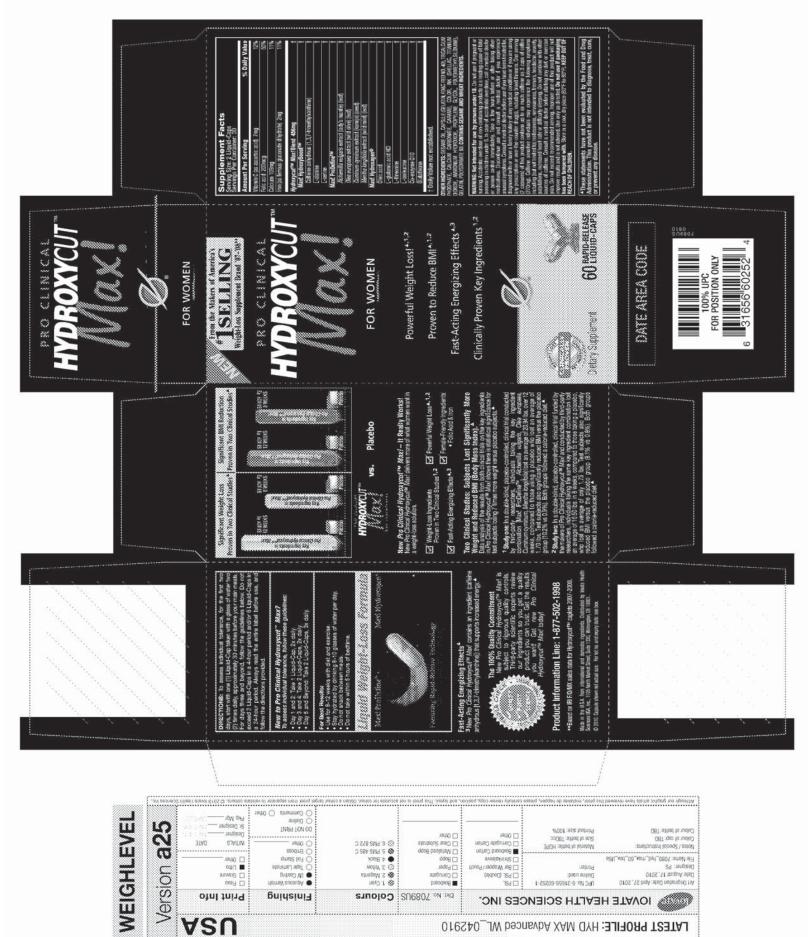
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Become a SYDSOXYCUT

Success Story at:

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What's Your

Pear? Apple? Carrot? Celery?

Find out which one you are and discover your personalized secrets to losing weight fast!

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to help you identify your specific body shape, and once you've got, that Equitid out, we're going to gour, you the tips and treats to add to your ownall ther and exercise plan (as well as addree on a doctor formulation wordshin you should consider that millions of people have already used for making your body shape kim, who and wordship form ewity engle.

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The Body Shape Selector

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So now that you know your true body shape, it's time to learn the Rip Over tips and tricks for making your shape incredibly sexy!

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SPECIAL SHIWLE AD REPORT





· Lecrets to loss yourght fast and look groat

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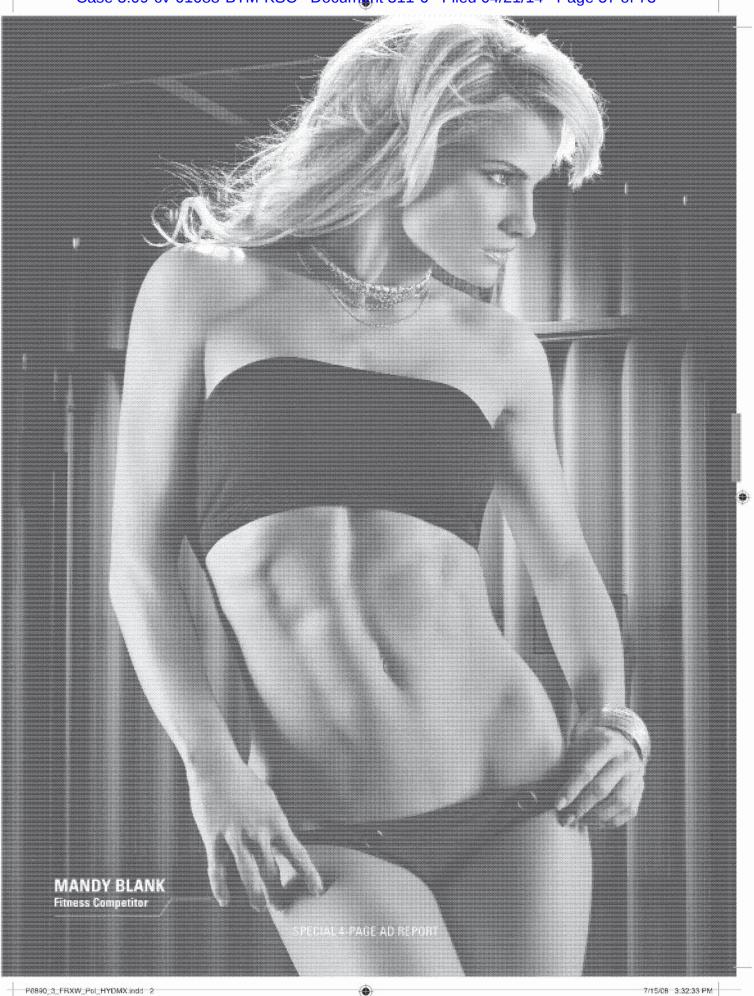
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Weight-Loss Secrets

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THE

EXTREME WOMEN'S FAT BURNER EVER!

Get the scoop on the **secret weapon** that was designed for elite fitness models and competitors!

f you ask any trainer, nutritionist, fitness enthusiast or your local know-it-all what product will help you burn fat fast, there's only one thing you'll get out of it – confusion! How many times have you asked that question and gotten a myriad of different answers? Likely, too many to count. And when all was said and done, where have you ended up? Back at square one, still asking how to get ultralean like the fitness models in this magazine. Well, fortunately for you there's an extreme-strength weight-loss formula tailored just for women that will help you burn fat like never before. It's a supplement so strong, it will help you get a body just like the pros. It's **Hydroxycut® Max**!

Hydroxycut® Max! - NOT Your Boyfriend's Fat Burner

In the past, maybe you've used your boyfriend or husband's fat burner, only because it seemed stronger than some of the other female diet pills you've tried. But be honest: Did you ever feel uncomfortable using it? Was the packaging so "manly" that you wanted to hide it from your friends? And what about the formula itself? Did you ever wonder if a fat-loss product tailored for a male was *truly* the best choice for you? If so, you don't have to worry anymore. *Hydroxycut Max!* was designed specifically for women with the highest quality key ingredients to **radically amplify your key fat-burning hormone for dramatic results**, especially when paired with a solid diet and exercise plan. In other words, *Hydroxycut Max!* triggers rapid, extreme weight loss! We're talking significant weight loss* – the kind that gets noticed by everyone!

TURN THE PAGE TO FIND OUT MORE

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HOW Hydroxycut^{*} Max! WORKS

Legend Holroxycurf Maxi key ingredient #1 Adenosine Holroxycurf Maxi key ingredient #2 Far burning hormone (noveproephrine) Adenosine receptor Gureceptor

Giprotein Giprotein receptor

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Hormone-sensitive lips:

Schematic representation.

The Science - Why It Matters

If you've never been a science buff or could care less about what ingredients go into your fat burner, that's fine. Maybe all you need to know is that the product works. But consider this: The only way your fat burner *will* do its job is if it's been carefully formulated and is backed by scientific research. The fact is, many dietary supplements are merely thrown together without a shred of research behind them, and they don't have key ingredients that have been tested in the lab or clinically shown to work.

But *Hydroxycut' Maxl* has no shortage of science behind it. In fact, it's supported by a significant research budget! What that says is that the creators of this innovative product truly care about how effective it is. Only when they were 100 percent satisfied with the formula – when they knew it would deliver the most extreme results possible – did they release it.

So whether you feel like just skimming the scientific illustrations shown on this page, or whether you want to read them in full, the take-home message is this: When it comes to quality and innovation, nothing beats Hydroxycut' Max!

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> Mysfrosycust Maxif seeds gour mitachenistis inte fat-burning coordrive, incinerating your besigint for extreme results!

The 6-Level Hydroxycut Max! Mechanism

One of the key ingredients in *Mythoxycul®* Moxf initiates the fat-burning process by counteracting the effects of adaptosine – a compound that stunts your fat-loss signal and makes you fuel tired. *Mythoxycul MoxP* delivers a key compound that blocks adencesine receptors, allowing the fat-loss signals in the cell to continue on their course, unebeted

At the same time, another ingredient in Hydroxycut Max/ works to bird a different receptor is, receptorion your fat calls that acts to achibit the fet burning process. Mydroxycut Max/ birds to these receptors on your fat cells, and blocks drem from also inhibiting your fat-loss potential.

B Approxycut Mexithen triggers a response that ratic ely empilies your key far burning humone *increasing/wine/* which fleads your blockstream, seeking out fat cells and activating the fat-burning process.

At the cellular level, Hydroxycar Max/ gues to work by boosting the activity of stimulatory G-erotein receptors on the fet cell, promoting the kinding of your fat-burning hormonic to its associated receptor and triggering the fat-exidation sequence deep inside.

The fat-borning signals proceed, otherately activating a fat-borning crowne called homena-sensitive lease that splits the free fat molecules inside your fet cells into smaller parts.

Bellular components called mitochondria are where your body actually turns fat into energy. *Rydroxycer* Maxifokes your fat borning to this final stage where mitochondrial activity is increased in your fat and musicle cells. Ultimately, this converts your bodyfat into asable energy and completes this lightly effective fat-burning mechanism.

SPECIAL 4-PAGE AD REPORT

Who's Using Hydroxycut® Max !?

Hydroxycut Max1 was originally formulated for elite athletes and fashion models who don't just want to look ultra-lean – they need to. With a whopping 25 ingredients, including key ingredients that provide the most extreme weight-loss effects possible, Hydroxycut Max1 is the perfect fit for them because it's the most extreme women's fat burner in existence. Not only that, but its Rapid-Release Liquid-Caps start to release immediately, delivering an instant energizing sensation so strong you can actually feel it! That's not to say that it won't work for those of you who just have a couple pounds to lose. It certainly will, Just be warned that with Hydroxycut Max1 you may end up losing more weight than you had planned!

Prepare to Burn Fat Fast!

Now is the time to try *Hydroxycut' Max!* After all, until you try *Hydroxycut Max!* for yourself, you won't know how much more incredible you could look. Let today be the day that you find out!

Max! Means:

» Max! Dose

Hydroxycut® MaxJ was scientifically formulated to contain maximum doses of key ingredients that are proven to deliver the most extreme weight-loss' and fat-burning results possible. With a whopping 25 ingredients combined to create two proprietary blands and powerful key ingredients that amplify your key fat-burning hormone, Hydroxycut MaxF is the most extreme fat burner you can find!

» Max! Speed

The revolutionary Hydroxycut Max! formule is suspended in a liquid metrix, and encased in Rapid-Release Liquid-Caps that dissolve almost five times faster than other rapid-release tablets and start to release immediately. The instant after your very first dose, the energizing sensation will let you know that Hydroxycut MaxFish't like anything else you've ever tried!

» Max! Potency

Unlike some other companies' products that only have a few dashes of key ingredients, the key ingredients in *Hydroxycut Max1* are contained in amounts clinically shown to result in extreme weight loss and calorie burning. Plus, each and every key ingredient in *Hydroxycut Max1* has also been rigorously tested for purity with the most scientifically advanced technologies so you can burn colories and both/fat fast!

» Max! Science

Formulated by a medical doctor-led team of researchers, *Hydrospeut Max!* relies on a multi-level system of metabolic interactions, which literally crank the female metabolic rate into overdrive. This metabolic boost causes a surge of lipolytic catalysis and thermogenic combustion – which is what scientists call fat burning and heat production. *Hydrosycut® Max!* is without question the most extreme women's fat burner on earth!

For Max! Results

BEYOND STRONG. BEYOND POWERFUL. THERE'S Max!

> EXTREME STRENGTH WEIGHT LOSS FOR WOMEN**

HYDROXYCUT.

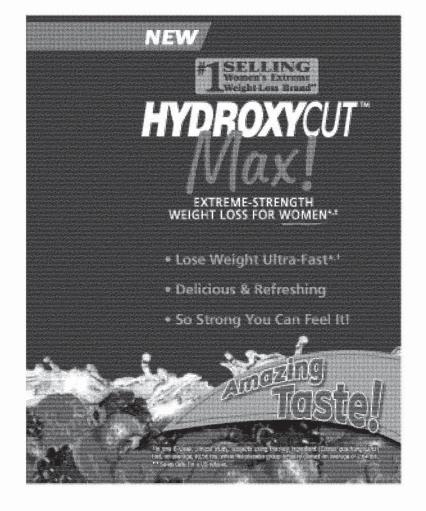
Radically Amplifies Women's Key Fat-burning Hormone*

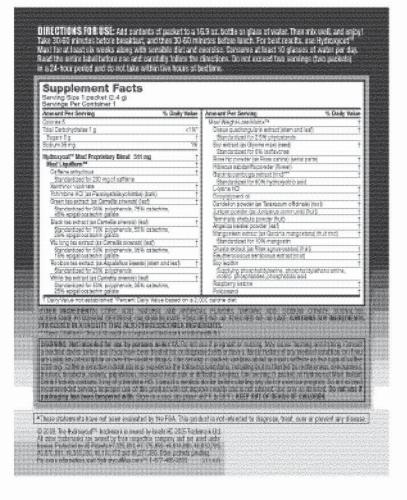
Surns Calories and Bodyfat Fasti*

So Strong You Can Feel It!



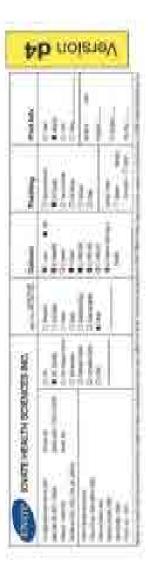
"In one 6-week clinical study, subjects using a key ingredient in Hydroxycet® Maxi (Ukeux quadrangularid) last, on average, 10.56 lites, while the placeto group actually gained an average of 2.54 ito. Carefully read entire intel before use. Regular diel and eventise are essential for achieving your weight-loss goals. The Hydroxycut and Hydroxycobles.com trademarks are owned by Trein respective owners and are used with permission Hydroxycut® Maxi is severed by U.S. patient #7, 175.859 and is patent-pending. 40 2008.





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LOSE WEIGHT & Change Your Shape Fast!

Find out your body shape and get your personalized Body Shaper Program to look and feel your best

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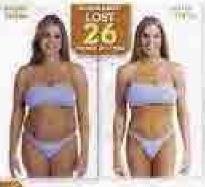
Pear, Apple, Celery or Carrot What shapu are you?

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SPECIAL 4-PAGE AD REPORT

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THE CELERY SHAPER PROGRAM

To add some curves to your body, you need to build some mutcle. To do this, you should decrease your cardie Intribility and duration while concentrating on resistance training. You'll liven fat and define your muscles all over with this body sculpting program:

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THE CARROT SHAPER PROGRAM

To strengthen your ligs and trim your mithection/upper body you used to increase your cardio, use heavier weights for your lower body and lighter weights for your upper body. You'll add those to your legs and trim your core, back and arms with this no-fail program:

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SPECIAL 4-PAGE AD REPORT

A statistical data

Lose Weight Fast and Get in the Best Shape of Your Life with Hydroxycut !

There you have it, it body shapes, it body Shaper Programs and the secret to ultimate weight loss success - Hydroxycutt Time, is shart, to dan't worte it an addight loss strategat that will confid event. When you add Hadranshit is your program.

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- Helps you lose up to 4.5 times the weight than with diet and exercise alone
- Helps reduce cravings out up to 505 grami less food per week.
- Increases your energy to minimize your workouts
- hums up to 158 more calories per day – there equivalent to 1,100 extra calories humori per week

Become A Hydroxycut Success Story Simply visit HYDROXY TO COMP and start your transformation today!



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Trust Hydroxycut For Amazing Results!

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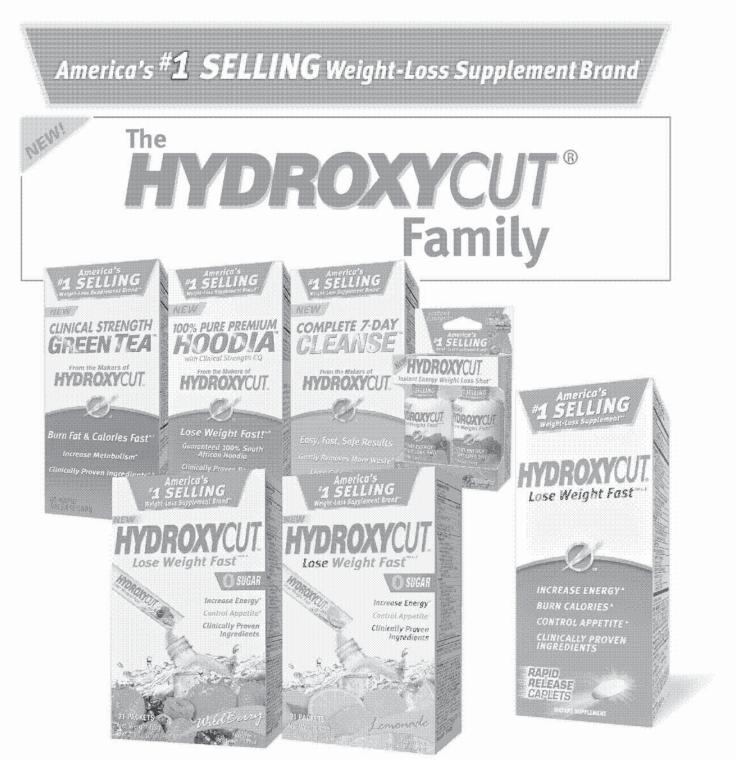


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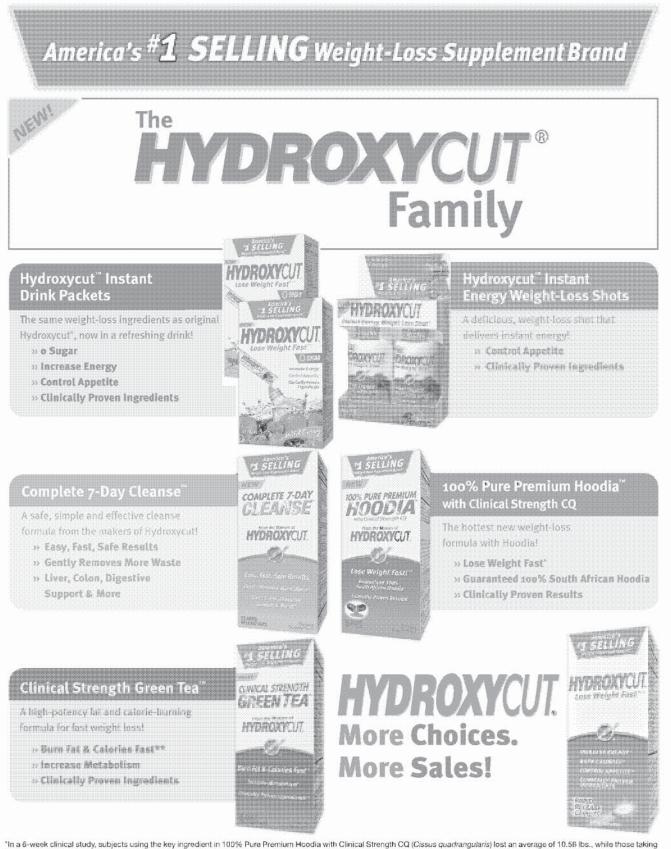
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Key Selling Tips:

- ✓ America's •1 Selling Weight-Loss Supplement Brand
- Medical doctor-formulated°
- ✓ Supports overall health and fitness goals
- ✓ Hydroxycut[®] products have been used by millions to help them achieve fast results



"In a 6-week clinical study, subjects using the key ingredient in 100% Pure Premium Hoodia with Clinical Strength CQ (*Cissus quadrangularis*) lost an average of 10.56 lbs., while those taking a placebo gained 2.64 lbs. "In a 12-week clinical study, subjects using a key ingredient in Clinical Strength Green Tea lost an average of 5.07 lbs. of bodyfat as compared to the placebo group, who only lost 1.10 lbs. Carefully read the entire label before use. Regular exercise and proper nutrition are essential for achieving your weight-loss goals. The Hydroxycut^e trademark is owned by its respective trademark owner and is used with permission. 100% Pure Premium Hoodia with Clinical Strength CQ and Clinical Strength Green Tea are covered by U.S. patent #7,175,859. All products are patent-pending. © 2008.



Hydroxycut Hardcore is engineered with Micro-Dispersion Technology and now, new Nano-Diffuse™ Technology.

- Decrease Bodyfat by an Average of 7.9% More Than Control Group[†]
- Increase Norepinephrine by 40% in 24 hours^{‡‡}
- Maximum-Strength Thermogenesis
- Featuring Liquid Micro-Dispersion and Nano-Diffuse[™] Technologies

Hydroxycut Hardcore's Key Ingredient Delivers Proven Fat-Burning Results!

Subjects who took a key ingredient in Hydroxycut* Hardcore lost an incredible 7.9% more bodyfat than the control group after just 12 weeks!

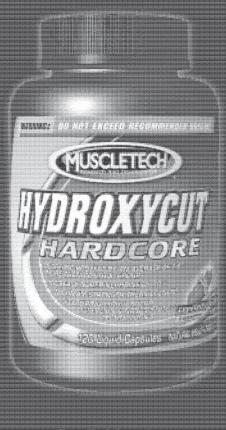


MUSCLETECH



Without the key ingredient in Hydroxycut Hardcore

Decrease In Bodyfat



Available Sizes: 120 count 210 count 252 count

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HARDCORE

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KEY SELLING TIPS

- LiquiTech[™] Cutting-edge Liquid Gel Technology for rapid release.
- Hydroxycut Hardcore is backed by over 10 years of research!
- Competition-strength formula.
- Hydroxycut Hardcore is the world's most powerful hardcore thermogenic!
- Key ingredients in Hydroxycut Hardcore are proven to blast up your body's key fat-burning hormone, norepinephrine, by 40% in 24 hours.^{\$‡}
- A powerful key ingredient in Hydroxycut Hardcore is proven to decrease total fat area by a staggering average of 7.9% more than the control group!

HOW TO TAKE HYDROXYCUT HARDCORE

Day 1 to Day 3	1 capsule, 2x daily
Day 4 to Day 7	2 capsules, 2x daily
Day 8 & beyond	3 capsules, 2x daily

DIRECTIONS: Take 3 capsules with a glass of water 2 times daily, 30 to 60 minutes before meals. On days of your workout, take 1 of these servings before the workout. Consume

ten glasses of water per day. Read the entire label before use and follow directions. Do not exceed 3 capsules in a 4-hour period. Do not take within 5 hours of bedtime. To assess individual tolerance, follow the chart. For best results, combine Hydroxycut® Hardcore with an intense exercise and nutrition program.

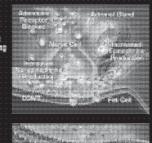
For maximum results, stack Hydroxycut Hardcore with these other MuscleTech² products.



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Hydroxycul[®] Hardcore Targets and Burns Fat 4 Powerful Ways!

Step 1 Indexact Handborn blocks adenosine receptors to increase NE, the key ful-burring hormone, by 40%.



SIBD 2 Teinitiate fet loss, Teptoxycut Harfoore staroghenes the body's fat-tass signal by Blocking phosphodestanae, which then increases and sustains of MP.





STOP 4 Thermogenesis is ignited when these tarty anids are borned, ensating heat. This tuels the intensity for your next workcet.



Legend

Hydroxycut Hardcore

Norepinephrine (NE)

COMT (Catechol-o-methyltransferase)

F Epinephrine

Cyclic Adenosine Monophosphate)

PDE (Phosphodiestersse)

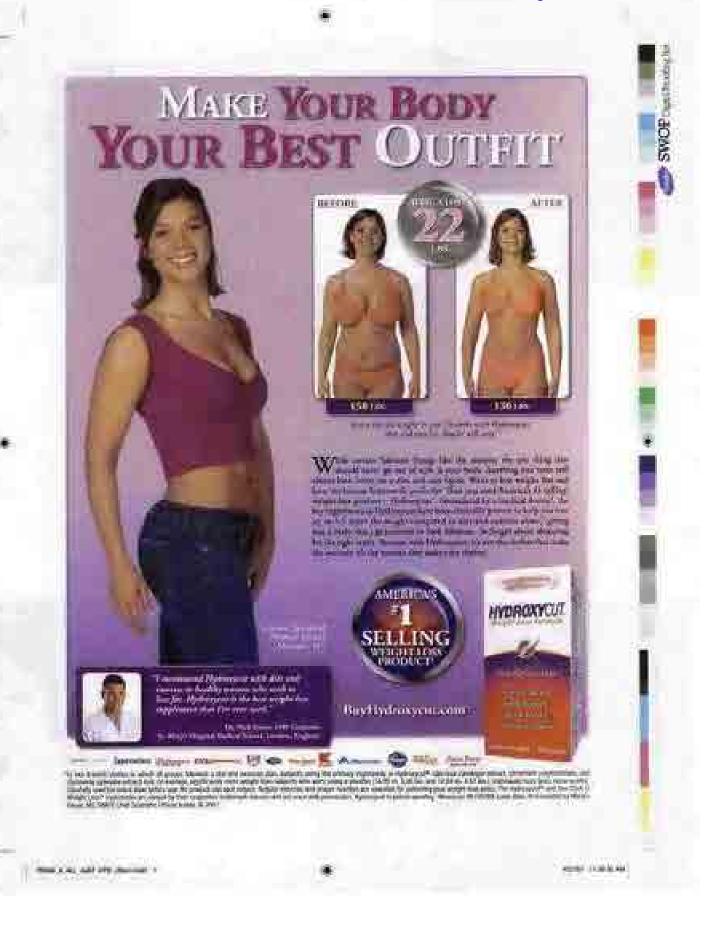
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EXHIBIT C (Hydroxycut Television Advertisement Exemplars)

<u>Hydroxycut "Montage #3" Commercial –</u> <u>All Stations</u>

30 sec. June 12/06 Revised: April 18/07 HYESAA-3AS

Scene #	VIDEO	AUDIO
1	Supers: • Consult a physician before	ANNOUNCER: Millions of Americans have made Hydroxycut the number 1 selling weight-loss product because it works.
2	 To Allison Abbott on camera. Supers: Lost 26 lbs. Fast! Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. To Allison's before and after shots. Supers: Lost 26 lbs Fast! Before/After 17 wks. Lost 26 lbs. Results will vary. 	ALLISON: I'm Allison from California.
	 Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8- week studies. All groups dieted and exercised. 	

3	 To Skip Wood on camera. Supers: Lost 39 lbs. Fast! Individuals combined Hydroxycut with diet and exercise. 	SKIP: I'm Skip from Phoenix,
	 To Skip's before and after shots. Supers: Lost 39 lbs. Fast! Before/After 20 wks. Lost 39 lbs. Results will vary. Individuals combined Hydroxycut with diet and exercise. 	and I lost 39 pounds, fast!
A	To Dy Jon Mayaball in aliginal	10N Cubicate using the natented

4	To Dr. Jon Marshall in clinical	JON: Subjects using the patented,
	setting.	primary ingredients in Hydroxycut
	Supers:	
	 *Doctor Formulated! 	
	Dr. Jon Marshall Resident	
	Physician	
	 *Formulated by Marvin 	
	Heuer, MD, FAAFP, Iovate	
	Chief Scientific Officer.	

5	To certificate/graph display. Supers:	JON: lost an average of up to 4 ¹ / ₂ times the weight than with diet and
	 Placebo/Hydroxycut – STUDY ONE Placebo/Hydroxycut – STUDY TWO Key Ingredients Lose up to 41/2 times the weight than diet and exercise alone. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 	exercise alone.
	lbs., with placebo in two 8- week studies. All groups dieted	

	and exercised.	
6	 To Emily Nevin-Presta on camera. Supers: Lost 21 lbs. Fast! Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. To Emily's before and after shots. Supers: Lost 21 lbs. Fast! Before/After 10 wks. Lost 21 lbs. Results will vary 	EMILY: I'm Emily from Montana, and I lost 21 pounds fast and so could you!
7	Individuals have been remunerated. To product shot and retailer tags –	ANNOUNCER:
	 Supercenters, GNC, Walgreens, CVS/pharmacy, Rite Aid, Target, Hydroxycut.com Supers: America's #1 Selling Weight-Loss Product! Read Entire Label. © 2007 These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure, or prevent any disease. 	Get yours at Hydroxycut.com, Supercenters, GNC, Walgreens, and fine retailers everywhere.

Hydroxycut "Montage #4" Commercial – All Stations

30 sec. June 12/06 Revised: May 3/07 HYLGAE-3AS

Scene #	VIDEO	AUDIO
1	 Hydroxycut Box with background. Supers: Consult a physician before starting a diet and exercise program. Based on IRI F/D/MX sales data. America's #1 selling weight-loss product! 	ANNOUNCER: Millions of Americans have made Hydroxycut the number 1 selling weight-loss product because it works.
2	 To Linh Gordon on camera. Supers: Lost 26 lbs. Fast! Linh used Hydroxycut and musclebuilding products with diet and exercise. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	LINH: I' m Linh from Ontario
	 To Linh's before and after shots. Supers: Lost 26 lbs Fast! Before/After 8 wks. Lost 26 lbs. Results will vary. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	and I lost 26 pounds fast. Hydroxycut really works.

	To Linh Gordon on camera.	LINH: I'm Linh from Ontario
	Supers:	
	Lost 26 lbs. Fast!Linh used Hydroxycut and	
	 Enhr used Hydroxycut and musclebuilding products with 	
	diet and exercise.	
	 Avg. weight loss 14.99 and 	
	12.54 lbs. with key ingredients	
	in Hydroxycut vs. 3.06 and	
	3.53 lbs., with placebo in two	
	8-week studies. All groups	
	dieted and exercised.	
	To Linh's before and offer chots	and I lost 26 pounds fast.
	To Linh's before and after shots. Supers :	Hydroxycut really works.
	Lost 26 lbs Fast!	· · · · · · · · · · · · · · · · · · ·
	 Before/After 8 wks. 	
	 Lost 26 lbs. 	
	Results will vary.	
	Avg. weight loss 14.99 and	
	12.54 lbs. with key ingredients	
	in Hydroxycut vs. 3.06 and	
	3.53 lbs., with placebo in two	
	8-week studies. All groups	
	dieted and exercised.	
3	To Greg Merrill on camera.	GREG: I'm Greg from Utah,
	Supers:Lost 37 lbs. Fast!	
	 Avg. weight loss 14.99 and 	
	• Avg. weight loss 14.99 and 12.54 lbs. with key ingredients	
	in Hydroxycut vs. 3.06 and	
	3.53 lbs., with placebo in two	
	8-week studies. All groups	
	dieted and exercised.	
	To Greg's before and after shots.	and I lost 37 pounds, fast!
	Supers:	
	 Lost 37 lbs. Fast! 	
	Before/After 18 wks.	
	• Lost 37 lbs.	
	Results will vary.	
	Avg. weight loss 14.99 and Avg. with loss ingradiants	
	12.54 lbs. with key ingredients	

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	 To Greg Merrill on camera. Supers: Lost 37 lbs. Fast! Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	GREG: I' m Greg from Utah,
	 To Greg's before and after shots. Supers: Lost 37 lbs. Fast! Before/After 18 wks. Lost 37 lbs. Results will vary. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. Individuals combined Hydroxycut with diet and exercise. 	and I lost 37 pounds, fast!
4	 To Dr. Jon Marshall in clinical setting. Supers: *Doctor Formulated! Dr. Jon Marshall Resident Physician *Formulated by Marvin Heuer, MD, FAAFP, Iovate Chief Scientific Officer. 	JON: Subjects using the patented, primary ingredients in Hydroxycut
5	To certificate/graph display. Supers: • Placebo/Hydroxycut – STUDY ONE • Placebo/Hydroxycut – STUDY TWO	JON: lost an average of up to 4 ¹ / ₂ times the weight than with diet and exercise alone.

	7	· · · · · · · · · · · · · · · · · · ·
	 Lose up to 4½ times the weight than diet and exercise alone. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	
6	 To Brandy Flores on camera. Supers: Lost 21 lbs. Fast! Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	BRANDY: Hi, I' m Brandy from L.A
	To Brandy's before and after shots. Supers: • Lost 21 lbs. Fast! • Before/After 15 wks. • Lost 21 lbs. • Results will vary • Individuals have been remunerated.	and I lost 21 pounds fast. Hydroxycut really works.
7	 To product shot and retailer tags- Supercenters, GNC, Walgreens, CVS/pharmacy, Rite Aid, Target, Hydroxycut.com Supers: America's #1 Selling Weight- Loss Product! Read Entire Label. © 2007 These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure, or prevent any disease. 	ANNOUNCER: Get yours at Hydroxycut.com, Supercenters, GNC, Walgreens, and fine retailers everywhere.

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Hydroxycut "Montage" Commercial – MTV 30 sec. June 12/06 Revised: Dec 28/06 HYJMS-3MTV

Scene #	VIDEO	AUDIO
1	 Hydroxycut Box with background. Supers: Based on IRI F/D/MX sales data. 52-weeks ending 11/05/06. America's #1 selling weightloss product! Individuals combined Hydroxycut with diet and exercise. 	ANNOUNCER: Millions of Americans have made Hydroxycut the number 1 selling weight-loss product because it works.
2	 To Jessica on camera. Supers: Lost 22 lbs. Fast! Individuals combined Hydroxycut with diet and exercise. Avg. weight loss of 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs, with placebo in two 8-week studies. Both groups dieted and exercised. To Jessica's before and after shots. Supers: Results will vary 	I'm Jessica from Montana and I lost 22 pounds fast with Hydroxycut.
3	 To Dr. Jon Marshall in clinical setting. Supers: Lost 29 lbs. Fast! Dr. Jon Marshall, Resident Physician Avg. weight loss of 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs, with 	JON MARSHALL OC/VO I'm Doctor Jon Marshall. I lost 29 pounds and 5 1/2 inches off my waist using Hydroxycut I strongly recommend it both as a new doctor and someone who used it with fantastic results.

	 To Dr. Jon Marshall in clinical setting. Supers: Lost 29 lbs. Fast! Dr. Jon Marshall, Resident Physician Avg. weight loss of 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs, with placebo in two 8-week studies. Both groups dieted and exercised. To Jon's B&A. Supers: Results will vary Jon used Hydroxycut and musclebuilding products with diet and exercise. To Dr. Jon Marshall in clinical setting. Supers: * Doctor Formulated! Dr. Jon Marshall, Resident Physician Formulated by Marvin Heuer, MD, FAAFP, Iovate Chief Scientific Officer. 	JON MARSHALL OC/VO I'm Doctor Jon Marshall. I lost 29 pounds and 5 1/2 inches off my waist using Hydroxycut I strongly recommend it both as a new doctor and someone who used it with fantastic results.
4	To Stacy	STACY:

4	 To Stacy. Supers: Lost 44 lbs. Fast! Consult a physician before starting a diet and exercise program. 	STACY: I'm Stacy from Wisconsin and I lost 44 pounds with Hydroxycut. It works really fast.
	 To Stacy's before and after shots. Supers: Results will vary Individuals have been remunerated. 	

5	 To product shot and retailer tags- Supercenters, GNC, Walgreens, CVS/pharmacy, Rite Aid, Target, BuyHydroxycut.com Supers: America's #1 Selling Weight- Loss Product! Carefully follow directions. © 2007 These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure, or 	ANNCR V/O: Get yours at BuyHydroxycut.com, Supercenters, GNC, Walgreens, and fine retailers everywhere.
	to diagnose, treat, cure, or prevent any disease.	

<u>Hydroxycut</u> <u>"Next Generation 8 Rev 2" Commercial</u> <u>(Gillian Risebury and Charlene Chao)</u> WITH CLEANSE TAG

30 sec.

March 25, 2009 FINAL

ISCIs AS: HYC-NG8-3A2 MTV: HYC-NG8-3M2

"New" tag has been removed from Cleanse Pack in end tag (audio & video)

Scene #	VIDEO	AUDIO
1	Brandy by fence	BRANDY: I lost 21 lbs.
	Skip on beach	SKIP: 39 lbs.
	Stephanie on porch	STEPHANIE: 31 lbs.
	 Supers: Results will vary. Individuals used Hydroxycut caplets with diet and exercise and have been remunerated. 21 in 15 wks 39 in 20 wks 31 in 11 wks 	
2	 Hydroxycut Box with background. Supers: America's #1 Selling Weight-Loss Supplement Based on IRI F/D/MX sales data. 52 weeks ending 11/02/2008. 	ANNOUNCER: Millions of Americans have made Hydroxycut the number 1 weight-loss supplement
3	To Gillian on a pier. Supers: • Avg. weight loss 14.99 and 12.54 lbs. with key ingredients (<i>Garcinia cambogia</i> extract, chromium polynicotinate and <i>Gymnema sylvestre</i>) vs. 3.06 and 3.53 lbs., with a placebo in two 8-week studies. All groups	GILLIAN : I'm Gillian from Illinois

		,
	dieted and exercised. To Gillian's before and after. Supers:	and I lost 39 lbs fast with Hydroxycut
	 Lost 39 pounds Before/After 13 wks Results will vary. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients (<i>Garcinia cambogia</i> extract, chromium polynicotinate and <i>Gymnema sylvestre</i>) vs. 3.06 and 3.53 lbs., with a placebo in two 8-week studies. All groups dieted and exercised. Back to Gillian on pier 	it really works!
	 Supers: Avg. weight loss 14.99 and 12.54 lbs. with key ingredients (<i>Garcinia cambogia</i> extract, chromium polynicotinate and <i>Gymnema sylvestre</i>) vs. 3.06 and 3.53 lbs., with a placebo in two 8-week studies. All groups dieted and exercised. 	
4	To Dr. Marshall in research setting. To display of patent.	JON: Subjects using the patented primary ingredients in Hydroxycut
	 Supers: Dr. Jon Marshall D.O. Resident Physician Consult a physician before starting a diet and exercise program. Combine with diet and exercise. 	lost an average of up to
	To bar graphs.	
	 Supers: Lose up to 4.5 times the weight than diet and exercise alone Key ingredients in Hydroxycut 	JON: four and a half times the weight than diet and exercise alone

	 vs. Placebo Study 1/ Study 2 Avg. weight loss 14.99 and 12.54 lbs. with key ingredients (<i>Garcinia cambogia</i> extract, chromium polynicotinate and <i>Gymnema sylvestre</i>) vs. 3.06 and 3.53 lbs., with a placebo in two 8-week studies. All groups dieted and exercised. 	
5	 To Charlene on a walkway by scooter. Supers: Avg. weight loss 14.99 and 12.54 lbs. with key ingredients (<i>Garcinia cambogia</i> extract, chromium polynicotinate and <i>Gymnema sylvestre</i>) vs. 3.06 and 3.53 lbs., with a placebo in two 8-week studies. All groups dieted and exercised. To Charlene's before and after. Supers: Lost 55 pounds Before/ After 30 weeks Results will vary Avg. weight loss 14.99 and 12.54 lbs. with key ingredients (<i>Garcinia cambogia</i> extract, chromium polynicotinate and <i>Gymnema sylvestre</i>) vs. 3.06 and 3.53 lbs., with a placebo in two 8-week studies. 	CHARLENE: I'm Charlene from California
	Back to Charlene on walkway	Hydroxycut is <i>amazing</i> !

 Supers: Read entire label. © 2008 These statements have not been evaluated by the FDA. These products are not intended to diagnose, treat, cure, or prevent any disease. 	6	Product shots of Hydroxycut box and Complete 7-Day Cleanse plus retailer tags : Walgreens, CVS/pharmacy, Rite Aid, Supercenters, GNC Live Well Hydroxycut.com <i>MTV VERS:</i> <i>Supercenters, GNC Live Well,</i> Hydroxycut.com	ANNOUNCER: Get Hydroxycut and Complete 7-Day Cleanse today.
		 Read entire label. © 2008 These statements have not been evaluated by the FDA. These products are not intended to diagnose, treat, 	

<u>Hydroxycut "Next Generation 1 (Stephanie &</u> <u>Catherine)" Commercial – MTV</u>

30 sec. Dec. 17/07 ISCI: HYM-NG1-3MTV

Scene #	VIDEO	AUDIO
1	 Hydroxycut Box with background. Supers: Consult a physician before starting a diet and exercise program. America's #1 selling weightloss supplement Based on IRI F/D/MX sales data. 52 weeks ending 11/04/07 	ANNOUNCER: Millions of Americans have made Hydroxycut the number 1 selling weight-loss supplement because it works.
2	 To Stephanie Granzow at pool setting. Supers: Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs. with placebo in two 8 week studies. All groups dieted and exercised. 	STEPHANIE: I'm Stephanie from Wisconson
	 To Stephanie's before and after display. Supers: Before/After in 11 wks Lost 31 pounds Results will vary. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	and I lost 31 pounds so fast.
	To Stephanie Granzow at pool setting.	And I feel beautiful.

4	 To Jon Marshall's before and after display. Supers: Before/After in 8 wks Lost 29 pounds Results will vary. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	JON: and someone who has used it with fantastic results.
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5	 To Catherine Boyd at a dock setting. Supers: Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	CATHERINE: I'm Catherine from Texas
	To Catherine's before and after display. Supers:	and I lost 41 pounds with Hydroxycut.

	 Before/After in 30 wks Lost 41 pounds Results will vary All individuals used Hydroxycut with diet and exercise. Individuals have been remunerated. 			
	To Catherine Boyd at a dock setting.	It works really fast!		
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6	 To product shot and retailer tags – Walmart, GNC, Walgreens, CVS/pharmacy, Rite Aid, Kmart, Hydroxycut.com Supers: Read Entire Label. © 2008 These statements have not been evaluated by the FDA. This product is not intended to diagnose, treat, cure, or prevent any disease. 	ANNOUNCER: Get Hydroxycut at Walmart, GNC, Walgreens, and stores everywhere.		

<u>Hydroxycut "Next Generation 2 (Stephanie &</u> <u>Linh)" Commercial – All Stations</u>

30 sec. Dec. 14/07 ISCI: ISCI: HYM-NG2-3AS

Scene #	VIDEO	AUDIO	
1	 Hydroxycut Box with background. Supers: Consult a physician before starting a diet and exercise program. America's #1 selling weightloss supplement Based on IRI F/D/MX sales data. 	ANNOUNCER: Millions of Americans have made Hydroxycut the number 1 selling weight-loss supplement because it works.	
2	To Stephanie Granzow at pool setting. Supers: • Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs. with placebo in two 8 week studies. All groups dieted and exercised.	STEPHANIE: I'm Stephanie from Wisconson	
	 To Stephanie's before and after display. Supers: Before/After in 11 wks Lost 31 pounds Results will vary. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	and I lost 31 pounds so fast.	
	To Stephanie Granzow at pool setting.	And I feel beautiful.	

3	 To Dr. Jon Marshall in research setting. Supers: Dr. Jon Marshall Resident Physician Combine with diet and exercise Individuals have been remunerated Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	JON: I was one of millions of American's struggling with their weight. I tried Hydroxycut. And I strongly recommend it, both as a doctor
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4	 To Jon Marshall's before and after display. Supers: Before/After in 8 wks Lost 29 pounds Results will vary. Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted and exercised. 	JON: and someone who has used it with fantastic results.
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5	 To Linh Gordon in beach house setting. Supers: Avg. weight loss 14.99 and 12.54 lbs. with key ingredients in Hydroxycut vs. 3.06 and 3.53 lbs., with placebo in two 8-week studies. All groups dieted 	LINH: I'm Linh from Ontario
	and exercised. To Linh's before and after display. Supers: • Before/After in 8 wks • Lost 26 pounds	and I lost 26 pounds fast.

6	To product shot and retailer tags –	ANNOUNCER:
	To Linh Gordon in beach house setting.	And I'm glad I did!
	 Results will vary All individuals used Hydroxycut with diet and exercise. Jon and Linh also used musclebuilding products. 	

6	To product shot and retailer tags –	ANNOUNCER:
	Walmart, GNC, Walgreens,	Get Hydroxycut at Walmart, GNC,
	CVS/pharmacy, Rite Aid, Kmart,	Walgreens, and stores everywhere.
	Hydroxycut.com	
	Supers:	
	Read Entire Label.	
	• © 2008	
	These statements have not	
	been evaluated by the FDA.	
	This product is not intended to	
	diagnose, treat, cure, or	
	prevent any disease.	

1	Case 3:09-cv-01088-BTM-KSC Document	311-8 Filed 04/21/14 Page 1 of 24
1	BLOOD HURST & O'REARDON, LL TIMOTHY G. BLOOD (149343) LESLIE E. HURST (178432) THOMAS J. O'REARDON II (247952)	P
2	1 /00 B Street. Suite 1/00)
3	San Diego (CA 9210)	
4	Telephone: (619) 338-1100 Facsimile: (619) 338-1101 tblood@bholaw.com	
5 6	lhurst@bholaw.com toreardon@bholaw.com	
7	BONNETT, FAIRBOURN, FRIEDMA & BALINT, P.C.	N
8	ANDREW S. FRIEDMAN (AZ 00542)	5)
	ANDREW S. FRIEDMAN (AZ 005425 ELAINE A. RYAN (AZ 012870) PATRICIA N. SYVERSON	
9	(CA 203111; AZ 020191) 2325 E. Camelback Road, Suite 300	
0	Phoenix, AZ 85016 Telephone: (602) 274-1100	
11	Telephone: (602) 274-1100 Facsimile: (602) 798-5860 afriedman@bffb.com eryan@bffb.com	
12	psyverson@bffb.com	
13 14	Co-Lead Class Counsel and Proposed C Counsel for the Settlement Class	Class
15	UNITED STATES	DISTRICT COURT
16	SOUTHERN DISTRI	CT OF CALIFORNIA
L7 L8	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION	Case No.: 3:09-MD-02087-BTM(KSC)
19	ANDREW DREMAK, on Behalf of	Case No.: 3:09-CV-01088-BTM(KSC)
20	ANDREW DREMAK, on Behalf of Himself, All Others Similarly Situated and the General Public,	DECLARATION OF ELAINE A.
21	Plaintiff,	RYAN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
22	vs.	
23	IOVATE HEALTH SCIENCES	Courtroom: 15
24	GROUP, INC., et al.,	Courtroom: 15 Judge: Hon. Barry T. Moskowitz
25	Defendants.	
26		
27		
28		No. 3:09-MD-02087-BTM(KSC)
	DECLARATION	No. 3:09-CV-01088-BTM(KSC) OF ELAINE A. RYAN ISO MOTION FOR PRELIMINARY APPROVAL
		l

I, ELAINE A. RYAN, declare as follows:

1. I am a shareholder with the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C. ("BFFB"). I am one of the attorneys representing the Plaintiffs and Class members in the above-entitled action. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in this action and for service awards to BFFB's clients in this matter.

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2. Attached as Exhibit 1 is a firm biography for BFFB.

3. My firm was appointed Co-Lead Class Counsel on March 8, 2010 to act on behalf of Plaintiffs. Thereafter, in the Order Preliminarily Approving Class Action Settlement dated December 18, 2012, BFFB was designated Class Counsel along with Blood Hurst & O'Reardon, LLP. As such, we have conducted daily oversight of the case, determined the overall litigation strategy and coordinated the litigation efforts of all Plaintiffs' counsel.

4. From the inception of this litigation in May 2009, counsel for Plaintiffs have aggressively prosecuted this case and vigorously represented the best interests of Plaintiffs and the Class.

BFFB assumed a co-lead role in all aspects of the litigation from the 5. 18 very outset, including conducting initial factual investigation and legal research, 19 fielding calls from and meeting with potential clients with concerns, retaining and 20 communicating with Plaintiffs, the formulation of Plaintiffs' litigation strategy, 21 drafting and amending the operative complaint, conducting extensive document 22 review and discovery including depositions, drafting and editing of pleadings and 23 submissions to the Court, and participating in motion hearings and status 24 conferences. My firm also took a co-lead role in all settlement negotiations and 25 mediations with the Hon. John K. Trotter (ret.) and Martin Quinn of JAMS and in 26 negotiating and preparing the settlement documents. 27

6. The total number of hours spent on this litigation by BFFB is 5,170.4. The total lodestar amount for attorney/paraprofessional time based on BFFB's current rates is \$1,619,245.00. The hourly rates shown below are the usual and customary rates charged for each individual in all of our class action cases and are the same as the regular rates charged for attorney services in non-contingent matters. A breakdown of the lodestar is as follows:

NAME		HOURS	RATE	LODESTAR
Andrew S. Friedman	Shareholder	11.3	\$650.00	\$7,345.00
Elaine A. Ryan	Shareholder	459.6	\$575.00	\$264,270.00
Patricia N. Syverson	Shareholder	480.7	\$525.00	\$252,367.50
Todd D. Carpenter	Shareholder	255.1	\$525.00	\$133,927.50
T. Brent Jordan	Associate	235.7	\$500.00	\$117,850.00
Manfred C. Muecke	Associate	24.5	\$375.00	\$9,187.50
Andrew M. Evans	Associate	1,099.3	\$250.00	\$274,825.00
Christopher A. Brewster	Associate	364.0	\$250.00	\$91,000.00
Sarah A. Havens	Associate	295.0	\$250.00	\$73,750.00
Amy L. Owen	Associate	232.9	\$250.00	\$58,225.00
Eric D. Zard	Associate	228.9	\$250.00	\$57,225.00
James B. Drimmer	Associate	112.5	\$250.00	\$28,125.00
Lindsey M. Gomez-Gray	y Associate	139.0	\$250.00	\$34,750.00
Kevin M. Hanger	Associate	95.4	\$250.00	\$23,850.00
Brian Elser Litigation S	upport Specialist	57.6	\$225.00	\$12,960.00
Rose K. Creech	Paralegal	179.7	\$175.00	\$31,447.50
Amy L. Owen	Paralegal	672.7	\$165.00	\$110,995.50
David J. Streyle	Paralegal	148.7	\$165.00	\$24,535.50
Lydia L. Rueda	Paralegal	52.4	\$165.00	\$8,646.00
Karen M. Vanderbilt	Paralegal	14.0	\$165.00	\$2,310.00
Kendall K. Wilson	Law Clerk	11.4	\$145.00	\$1,653.00
	TOTALS:	5,170.4		\$1,619,245.00
	2 DECLARATION OF ELA	JINE A. RYAN ISO	Case No. 3:09-	MD-02087-BTM(KSC) CV-01088-BTM(KSC) RELIMINARY APPROVAL

7. The hourly rates reflected in the foregoing table are consistent with
 those charged by similarly situated practitioners in the legal community. In
 particular, BFFB's rates have been accepted for purposes of lodestar
 determinations and cross-checks made in the following class action cases among
 many others:

- Payares v. J.P. Morgan Chase, No. CV 07-05540 (C.D. Cal.);
 Negrete v. Fidelity and Guaranty Life Ins. Co., No. CV-05-6837 (C.D. Cal.);
 Allen v. Decision One Mortgage Co., No. 1:07-cv-11669 (D. Mass);
 Rand v. American National Ins. Co., No. CV 09-0639 (N.D. Cal.);
 - Ramirez v. GreenPoint Mortgage Funding, Inc., No. 3:08-cv-00369 (N.D. Cal.);
 - In re Midland National Life Ins. Co. Annuity Sales Practices Litig., No. 2:07-ml-1825 (C.D. Cal);
 - In re Apollo Group, Inc. Securities Litig., No. CV 04-2147 (D. Ariz.); and In re Conseco Ins. Co. Annuity Marketing & Sales Practices Litig., No. 5:05-cv-04726 (N.D. Cal).

8. My firm incurred a total of \$38,154.96 in expenses in connection with
the prosecution of this litigation. They are broken down as follows:

•	EXPENSE CATEGORY	AMOUNT
0	Court/Filing Fees	\$1,580.00
1	Service of Process	\$1,750.00
2	Westlaw, Lexis Nexis, Pacer	\$2,550.76
	Outside Messenger	648.50
23	Overnight Delivery (Fedex, UPS)	\$1,010.30
4	Postage	\$748.36
.5	Outside Photocopy Expense	\$1,996.35
26	Photocopies	\$1,247.80
.0	Telephone, Facsimile	\$640.74

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Document Management Software (Litfolio)	\$2,970.1
Deposition/Transcript Fees	\$2,812.8
Travel/Lodging, Meals, Mileage & Parking	\$17,061.69
Mediation Fees	\$3,137.5
TOTAL:	\$38,154.9

9. The expenses categorized as Document Management Software in the aforementioned Expense table were paid to Denver LLC for Litfolio. Litfolio was a branded media system formerly owned and operated by Denver LLC, an Arizona limited liability company which included as its members attorneys who practiced law at Bonnett, Fairbourn, Friedman & Balint, P.C.

10. The aforementioned expenses pertaining to this case are reflected in the books and records of BFFB. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses. All of the expenses listed were reasonably incurred in the normal course of business. It is the practice of BFFB to charge for these categories of expenses and not to include them in firm overhead.

11. BFFB's compensation for the services rendered to the class is wholly contingent. Any fees and reimbursement of expenses will be limited to the amount approved by the Court.

BFFB has extensive experience prosecuting consumer class actions.
 The firm specializes in complex class action litigation, representing consumers,
 employees and investors in class actions pending in state and federal courts
 throughout the United States. During its successful history, the firm has
 successfully litigated over 100 class action cases and recovered millions of dollars
 for class members.

13. The lodestar summary reflects BFFB's experience in the field, the
 complexity of the matters involved in this litigation, and the prevailing rate for
 providing such services.

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14. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation of the matter.

15. My client, Class representative Melissa Reed, fully participated in the prosecution of this action. She met with counsel, supervised counsel's efforts on behalf of the Class, participated in efforts leading to settlement, and approved the amount and type of settlement proposed for the Class. She never displayed any interests adverse to the Class and a service award for her efforts is appropriate.

16. My client, Class representative Randall Scott Shortridge, fully participated in the prosecution of this action. He met with counsel, supervised counsel's efforts on behalf of the Class, participated in efforts leading to settlement, and approved the amount and type of settlement proposed for the Class. He never displayed any interests adverse to the Class and a service award for his efforts is appropriate.

15 17. My client, Class representative Nicholas Torres, fully participated in
the prosecution of this action. He met with counsel, supervised counsel's efforts
on behalf of the Class, participated in efforts leading to settlement, and approved
the amount and type of settlement proposed for the Class. He never displayed any
interests adverse to the Class and a service award for his efforts is appropriate.

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18. My client, Class representative Cody Coleman, fully participated in the prosecution of this action. He met with counsel, supervised counsel's efforts on behalf of the Class, participated in efforts leading to settlement, and approved the amount and type of settlement proposed for the Class. He never displayed any interests adverse to the Class and a service award for his efforts is appropriate.

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

Executed this ___th day of February, 2014, at Phoenix, Arizona.

ÁINE A. RYAN

BLOOD HURST & O'REARDON, LLP

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EXHIBIT A



ABOUT THE FIRM

Bonnett, Fairbourn, Friedman & Balint, P.C. is an AV rated firm of 27 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.

Bonnett, Fairbourn, Friedman & Balint, P.C. 2325 E. Camelback Road, Suite 300 Phoenix, Arizona 85016 Phone: (602) 274-1100 Toll Free Number: (800) 847-9094 Fax: (602) 274-1199

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.



ANDREW S. FRIEDMAN heads the firm's class action, securities fraud, and consumer fraud practice groups. Mr. Friedman is admitted to the State Bar of Arizona and is admitted to practice before the U.S. District Court for the District of Arizona, U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court.

Mr. Friedman's practice is devoted primarily to litigation of major class action cases in federal and state courts in Arizona and throughout the United States. He has represented plaintiff classes in major consumer, securities fraud,

antitrust, civil rights and insurance sales practices cases and other complex commercial litigation.

Securities Fraud

Mr. Friedman and other members of the firm served as Arizona counsel for the plaintiff class of investors in *In re American Continental Corp./Lincoln Savings and Loan Sec. Litig.*, MDL 834 (D. Ariz.). Mr. Friedman was one of the team of lawyers who represented the class of investors who purchased debentures and/or stock in American Continental Corp., the parent company of the now-infamous Lincoln Savings & Loan. The suit charged Charles Keating, Jr., other corporate insiders, three major accounting firms, law firms and others with racketeering and violations of the securities laws. Plaintiffs' counsel actively participated in bankruptcy proceedings, multi-district litigation and, ultimately, a jury trial in Tucson, Arizona. Plaintiffs successfully recovered \$240 million of the \$288 million in losses sustained by the investors. After trial, the jury rendered verdicts exceeding \$1 billion against Keating and other defendants.

Mr. Friedman also served, along with other members of the firm, on the court-appointed Executive Committee in the *Prudential Limited Partnerships Multi-District Litigation*, representing investors in limited partnerships sponsored by Prudential Securities. This action, which alleged racketeering and securities fraud claims on behalf of a nationwide class, resulted in a settlement providing more than \$125 million in benefits to defrauded investors.

Mr. Friedman has served as plaintiffs' counsel in many other securities fraud class actions, including the following major cases: Persky v. Pinnacle West Corp., et al. (securities fraud class action -- \$35 million settlement); Culligan International Company v. United Catalysts, Inc. (Antitrust Action); Sitgraves, et al. v. Allied Signal, Inc.; Stein v. Residential Resources, et al. (Securities Fraud Class Action); Gould v. Pinnacle West Corp., et al.; Shields v. Del Webb Corp., et al. (Securities Fraud Class and Derivative Suit); Hoexter v. Valley National Bank, et al. (Securities Fraud Class Action); Friedman, et al. v. Emerald Mortgage Investment Corporation, et al. (Securities Fraud Class Action); Marks, et al. v. Circle K (Securities Fraud Class Action); Krause v. Sierra Tucson, et al. (Securities Fraud Class Action); Braunstein, et al. v. Tucson Electric, et al. (Derivative Suit); Krause v. Sierra Pacific, et al. (Securities Fraud Class Action); Blinn v. Bech, et al. (Securities Fraud Class Action); Voss v. Cobra Industries, et al. (Securities Fraud Class Action); Hollywood Park Securities Litigation (Securities Fraud Class Action); In re America West Sec. Fraud Litig. (Securities Fraud Class Action); Orthologic Securities Fraud Litig. (Securities Fraud Litigation); and In re Vitamins Antitrust Litigation (Antitrust Class Action).

Deceptive Marketing of Insurance Products

Mr. Friedman served as co-lead counsel for the certified nationwide plaintiff classes in *In re Conseco Life Insurance Company Cost of Ins. Litig.*, MDL 1610 (C.D. Cal.). The suit charged that Conseco

breached the terms of life insurance policies owned by over 90,000 class members. After nearly two years of litigation against an entrenched adversary, the class recovered over \$400 million in damages.

Mr. Friedman and the firm were key members of a team of lawyers which brought landmark cases against major life insurance companies challenging the deceptive manner in which life insurance products were marketed to consumers during the 1980's. The first of these cases, against New York Life Insurance Co., arose from events uncovered in Arizona and resulted in a ground-breaking settlement providing benefits to class members exceeding \$250 million. This settlement has been praised by regulators and commentators as an innovative solution to sales practice abuses. Subsequently, Mr. Friedman and co-counsel for plaintiffs prosecuted class actions and secured settlements against a host of other major insurance companies, including settlements with *Prudential Life Insurance Company* (exceeding \$2 billion), *Metropolitan Life Insurance Company* (exceeding \$1 billion), *Manulife* (exceeding \$500 million) and more than 20 other companies. Mr. Friedman was instrumental in the prosecution of these actions, was a member of the settlement negotiating team and briefed and argued class certification issues at the trial level and in the appellate courts.

Mr. Friedman is co-lead counsel in a series of class actions against insurance companies challenging the sale of deferred annuities to senior citizens. These cases allege RICO claims and other theories to obtain redress for allegedly false and misleading representations inducing elderly purchasers to invest their life savings in illiquid and poorly performing annuity products. Defendants in these cases include: *Allianz Life Insurance Company of North America; Midland National Life Insurance Company; Fidelity and Guaranty Life Insurance Company; American Equity Investment Life Insurance Company; Conseco Insurance Company; Jackson National Life Insurance Company; and American International Group, Inc.*

Health Insurance

Mr. Friedman served as co-lead counsel representing health care providers in *In re Managed Care Litigation*, an MDL proceeding against major managed care companies seeking recovery for allegedly improper claims payment practices. Mr. Friedman represented the American Psychological Association, the American Podiatric Medical Society, the Florida Chiropractic Association and numerous individual providers in cases against Humana, Inc., CIGNA, numerous Blue Cross and Blue Shield companies and other managed care companies. Mr. Friedman and his co-counsel secured settlements against CIGNA (\$72 million) and Humana, Inc. (\$20 million) in these MDL proceedings.

Mr. Friedman also is representing health care providers in proceedings against several major health care companies arising from the use of the Ingenix database to improperly reduce payments to patients, physicians and other providers. Defendants in these class action proceedings include Aetna, CIGNA and WellPoint, Inc. Mr. Friedman represents the New Jersey Psychological Association, the American Podiatric Medical Association, the California Chiropractic Association and the California Psychological Association, among other plaintiffs, in these actions.

Mr. Friedman also represents plaintiffs in class action proceedings in California against Blue Cross and Blue Shield for engaging in postclaims underwriting. Postclaims underwriting is a practice by which insurance companies fail to conduct underwriting before accepting insurance applications but seek to find grounds to rescind health insurance policies when a claim for payment is submitted by the patient or doctor.

Civil Rights

Mr. Friedman and the firm, along with several other law firms, have represented African-American policy holders in class action proceedings against life insurance companies seeking relief under the Federal Civil Rights Act for racial discrimination in the sale and administration of life insurance policies. For many decades, life insurance companies routinely charged higher premiums to non-Caucasians for inferior life insurance policies. The first such action, against *American General Life & Accident Company*, resulted in a \$250 million settlement providing benefits that included cash refunds, increased death benefits and reduced future premiums. Mr. Friedman and the firm also represent plaintiffs in similar race discrimination class actions against other life insurance companies, including *Metropolitan Life, Liberty National, American National, Monumental Life, Western & Southern Life* and *Jefferson-Pilot Life Insurance Company*.

Mr. Friedman served as lead or co-lead counsel in many other actions seeking to hold financial institutions responsible for racial discrimination against minorities. He currently serves as co-lead counsel on behalf of proposed classes of African-American and Latino borrowers asserting claims against mortgage lenders for racial discrimination in violation of the Equal Credit Opportunity Act and the Fair Housing Act. The bank defendants in these actions, among others, include: *Countrywide Financial Corporation; Wells Fargo Bank, N.A.; GreenPoint Mortgage Funding, Inc.; GE Money Bank; First Franklin Financial Corp.; JP Morgan Chase & Chase Bank, U.S.A., N.A.; H&R Block, Inc.; IndyMac Bank, F.S.B.; HSBC Finance Co., and Option One Mortgage Co. Mr. Friedman also has represented Plaintiffs in cases challenging the use of credit scoring by insurance companies and lenders in a manner that adversely impacts minority consumers.*

Professional Associations

Mr. Friedman has lectured at numerous continuing legal education programs, including panel discussions and presentations on the Private Securities Litigation Reform Act (1996 Federal Bar Convention), prosecution of nationwide class actions in state courts (1996 ABA Annual Convention), litigation of life insurance market conduct cases (1997, 1999 and 2000 PLI conferences) and other litigation programs sponsored by the Practicing Law Institute, ALI-ABA, American Bar Association, National Academy of Elder Law Attorneys and Public Justice Foundation (2005, 2006, 2007, 2008).

Mr. Friedman testified before the U.S. Congress in connection with proposed legislation to limit the rights of consumers in class action cases. He also has testified before the Arizona Legislature in connection with legislation on the Arizona Anti-Racketeering Act and the Arizona Securities Fraud Act.

Mr. Friedman received his Bachelor of Arts Degree from the University of Rochester in 1975 (high distinction) and his Law Degree from Duke University School of Law in 1978 (Order of the Coif, high distinction). He serves as a Board member of Public Justice, a public interest organization and is also a member of the American Association of Justice and Consumer Attorneys of California. Mr. Friedman was a finalist for the Public Justice Trial Lawyer of the Year in 2008 and a finalist for the CAOC Consumer Attorney of the Year in 2009.

Mr. Friedman has performed *pro bono* services on behalf of non-profit organizations, including the Jewish Children and Family Services and private litigants.

Mr. Friedman is a founding member of Bonnett, Fairbourn, Friedman & Balint.

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FRANCIS J. BALINT, JR.'s practice focuses on class action litigation, qui tam actions under the federal False Claims Act, insurance coverage and defense matters, and appellate work. He has represented clients in class litigation involving federal and state securities laws, deceptive insurance sales practices, and other consumer claims. In particular, Mr. Balint served as counsel for the relator in *Todarello v. Beverly Enterprises*, (D. AZ & N.D. Cal) a qui tam action which lead to a recovery by the United States Government of \$170 Million. Successful appellate decisions include: *Atchison, Topeka and Santa Fe Ry. Co. v. Brown & Bryant*, Inc., 159 F.3d 358 (9th Cir. [Cal.] Oct. 14, 1998); *Taylor AG Industries v. Pure-Gro*, 54

F.3d 555 (9th Cir. [Ariz.], Apr. 24, 1995); *Ranch 57 v. City of Yuma*, 152 Ariz. 218, 731 P.2d 113 (Ariz. App. Div. 1, Sept. 2, 1986). Mr. Balint is a former President of the Arizona Association of Defense Counsel (1999-2000), a former member of its board of directors and former chairman of its Amicus Committee.

Mr. Balint served as co-counsel for the Lead Plaintiffs and the investor class in the litigation arising out of the collapse of the Baptist Foundation of Arizona, the largest charitable institution fraud case in United States history. The recovery achieved for investors, after four years of highly adversarial litigation, exceeded \$250 million.

Mr. Balint served as co-trial counsel for the Lead Plaintiff, the Policemen's Annuity and Benefit Fund of Chicago, and a class of shareholders seeking relief under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. *In re Apollo Group, Inc.*, CV-04-2147-PHX-JAT(D. Ariz.) was one of only six such cases to have been taken to trial since the passage of the PSLRA. Lead Plaintiff successfully obtained a verdict of approximately \$275 million for Apollo shareholders.

Other class action cases which Mr. Balint has litigated include Orthologic Securities Fraud Litig. (Securities Fraud); In re Skymall (Securities Fraud); In Re FINOVA (Securities Fraud); Elkins v. Equitable Life (Consumer Fraud); In Re Employee Solutions (Securities Fraud); Rogers v. American Family (Insurance Coverage); Lucero v. Microsoft (Antitrust).

Mr. Balint received his Bachelor of Arts Degree with high distinction from the University of Virginia in 1979. He received his law degree in 1982 from the University of Virginia. Mr. Balint was admitted to the Bar in the Commonwealth of Virginia in 1982, the District of Columbia in 1982, and the State of Arizona in 1983; he is admitted to practice before the U.S. Supreme Court, the U.S. District Court for the District of Arizona, U.S. District Court for the District of Virginia and the U.S. Court of Appeals for the Fourth and Ninth Circuits.

Mr. Balint was a sole practitioner in Virginia for a short period of time before becoming associated with Evans, Kitchel & Jenkes, P.C., a large Phoenix law firm. In 1984, Mr. Balint became a founding member of Bonnett, Fairbourn, Friedman & Balint, P.C.

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VAN BUNCH is a firm shareholder. Mr. Bunch's practice focuses on class action and mass tort litigation. He has represented clients in class litigation involving breach of contract, federal and state securities laws, federal and state RICO actions, deceptive insurance sales practices, environmental pollution and other consumer protection claims.

Recently, Mr. Bunch participated in the successful resolution of *In re Mingo County Coal Slurry* litigation in which several hundred West Virginia families received compensation for physical injuries, including wrongful death claims and the establishment of a medical monitoring program to help promote earlier

diagnosis and treatment from the health effects of alleged exposure to coal slurry in their water supplies.

Mr. Bunch served as trial counsel in *Smith v. American Family*, a case involving the use of imitation crash parts in repair estimates for consumers in the state of Missouri, which resulted in a unanimous jury verdict of approximately \$30 million in March, 2007. The case paid tens of thousands of Missourians full compensation, with interest, for their losses.

Mr. Bunch also served as trial counsel in *Lebrilla v. Farmers Insurance Group* in Santa Ana Superior Court, which settled following a complete bench trial in 2006 resulting in readjustment of auto property damage claims for Farmers' insureds nationwide following settlement.

Mr. Bunch served as trial counsel for the investor class in the litigation arising out of the collapse of American Continental Corporation/Lincoln Savings and Loan Securities Litigation, MDL 834. The recovery achieved for investors, after several years of highly adversarial litigation and a months-long trial, exceeded \$250 million.

Mr. Bunch served as Co-Lead counsel in the MDL proceedings of *In re Polaris Aircraft Income Fund*, which resulted in a settlement valued at approximately \$110 million.

Mr. Bunch also litigated a series of cases involving the sale of so-called "vanishing premium" life insurance policies, including cases against Prudential Insurance and MetLife, which alone returned over \$3 billion to defrauded policyholders. Others included cases against New York Life, John Hancock, Equitable of Iowa, American General and more. He litigated *Manners v. American General Life Assurance Company* before Judge Nixon, which involved the sale of so-called "industrial" life insurance policies and alleged race discrimination in premium setting. He served as local counsel for the Class in the indirect purchaser anti-trust action against Brand Name Prescription Drug makers before Judge Kurtz in Davidson County Circuit Court, which returned over \$7 million in prescription drug benefits distributed through community health centers throughout Tennessee.

Mr. Bunch served as co-editor of the Class Actions and Derivative Suits Subcommittee of the ABA Section of Litigation newsletter. He actively participates in pro bono work, including Tennessee's "On-Line TN Justice" resource. He also serves on the Signal Mountain, Tennessee Planning Commission.

Mr. Bunch received his Bachelor of Arts Degree from Vanderbilt University in 1979. He received his law degree in 1984 from the George C. Taylor School of Law at the University of Tennessee, where he earned membership in the Order of the Coif. Mr. Bunch was admitted to the Bar in Arizona in 1984, Tennessee in 1996 and West Virginia in 2007; he is admitted to practice before the U.S. District Court

for the District of Arizona, U.S. District Court for the Middle District of Tennessee and U.S. District Court for the Southern District of West Virginia.

Mr. Bunch was associated with Evans, Kitchel & Jenkes, P.C., a large Phoenix law firm from 1984-1986. In 1986, Mr. Bunch joined Bonnett, Fairbourn, Friedman & Balint, P.C., where he became a shareholder in 1989.



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.

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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, 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).

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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.

C	Case 3:09-cv-01088-BTM-KSC Docume	ent 311-9 Filed 04/21/14 Page 1 of 67		
1	BLOOD HURST & O'REARDON,	LLP		
2	BLOOD HURST & O'REARDON, TIMOTHY G. BLOOD (149343) LESLIE E. HURST (178432) THOMAS J. O'REARDON II (2479			
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4	San Diego, CA 92101 Telephone: (619) 338-1100			
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6	toreardon@bholaw.com			
7	BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. ANDREW S. FRIEDMAN (AZ 005425) ELAINE A. RYAN (AZ 012870) PATRICIA N. SYVERSON (CA 203111; AZ 020191) 2901 N. Central Avenue, Suite 1000 Phoenix, AZ 85012-3311 Telephone: (602) 274-1100 Facsimile: (602) 798-5860 afriedman@bfb.com			
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10 11				
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12	eryan@bffb.com psyverson@bffb.com			
14	Co-Lead Class Counsel and Proposed Class			
15	Counsel for the Settlement Class			
16	UNITED STATES DISTRICT COURT			
17	SOUTHERN DISTRICT OF CALIFORNIA			
18 19	IN RE HYDROXYCUT MARKETING AND SALES PRACTICES LITIGATION	Case No.: 3:09-MD-02087-BTM(KSC)		
20	ANDREW DREMAK, on Behalf of	Case No.: 3:09-CV-01088-BTM(KSC)		
21	Himself, All Others Similarly Situated and the General Public,	DECLARATION OF CAMERON R.		
22	Plaintiff,	AZARI ON NOTICE PLAN AND NOTICES		
23	VS.	Dept.: 15		
24	IOVATE HEALTH SCIENCES	Judge: Hon. Barry T. Moskowitz		
25	GROUP, INC., <i>et al.</i> , Defendants.			
26	Derendants.	_		
27				
28		Case No. 3:09-MD-02087-BTM(KSC)		
	Case No. 3:09-MID-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC) DECLARATION OF CAMERON R. AZARI ON NOTICE PLAN AND NOTICES			

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

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2. I am the Director of Legal Notice for Epiq Class Action & Claims Solutions, Inc., overseeing both its Hilsoft Notifications and Epiq Legal Noticing groups, firms that specialize in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. I have been court-recognized as a class action notice expert, and I am familiar with, or have been directly responsible, for many complex class action notice programs, involving all aspects of notice dissemination. My business address is 10300 SW Allen Boulevard, Beaverton, OR 97005. My personal CV is included as Attachment 1.

13 3. In forming my expert opinions, I and my staff draw from our in-depth 14 class action case experience, as well as our educational and related work 15 experiences. I am an active member of the Oregon State Bar, receiving my 16 Bachelor of Science from Willamette University and my Juris Doctor from 17 Northwestern School of Law at Lewis and Clark College. I have served as the 18 Director of Legal Notice for Hilsoft Notifications and Epiq Legal Noticing since 19 2008 and have overseen the detailed planning of virtually all of our court-20 approved notice programs since that time. Overall, I have twelve years' 21 experience in the design and implementation of legal notification and claims 22 administration programs, having been personally involved in well over one 23 hundred successful notice programs. I have been directly and personally 24 responsible for designing all of the notice planning here, including analysis of the 25 individual notice options and the media audience data and determining the most 26 effective mixture of media required to reach the greatest practicable number of 27 Class members.

4. This report will describe the notices and the notice plan (the "Notice
 Plan" or "Notice Program") proposed for the settlement in *In re: Hydroxycut Marketing and Sales Practices Litigation ("Hydroxycut")*. I will also describe
 why, in my view, the Notice Plan will provide the best notice practicable under
 the circumstances of this case, conform to all aspects of Federal Rule of Civil
 Procedure 23 and satisfy due process, including its "desire to actually inform"
 requirement.¹

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5. This declaration is based upon my personal knowledge and upon information provided by my staff.

Background

6. I understand the Settlement Class to consist of, "those persons who purchased in the United States any of the Hydroxycut Products between May 9, 2006 and May 1, 2009, inclusive. Excluded from the Settlement Class are: (i) those who purchased Hydroxycut Products for the purpose of resale; (ii) Iovate and its officers, directors, and employees; (iii) any person who files a valid and timely Request for Exclusion; and (iv) the Judge(s) to whom this Action is assigned and any members of their immediate families."

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7. I further understand that the Settlement defines the Hydroxycut
Products as, "the fourteen Hydroxycut-branded products at issue in this litigation
sold in the United States prior to May 1, 2009. Specifically, "Hydroxycut
Products" means: Hydroxycut Regular Rapid Release Caplets; Hydroxycut

¹ "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . ." Mullane v. Central Hanover Trust Bank & Trust Co., 339 U.S. 306, 315 (1950).

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1 Caffeine-Free Rapid Release Caplets; Hydroxycut Hardcore Liquid Caplets; 2 Hydroxycut Max Liquid Caplets; Hydroxycut Regular Drink Packets; 3 Hydroxycut Caffeine-Free Drink Packets; Hydroxycut Hardcore Drink Packets 4 (Ignition Stix); Hydroxycut Max Drink Packets; Hydroxycut Liquid Shots; 5 Hydroxycut Hardcore RTDs (Ready-to-Drink); Hydroxycut Max Aqua Shed; Hydroxycut 24; Hydroxycut Carb Control; and Hydroxycut Natural. 6 This 7 definition expressly excludes Hydroxycut-branded products containing ephedra, 8 and Hydroxycut-branded products available for purchase prior to December 1, 9 2004 or after May 1, 2009.

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Based on information provided by the settling parties email 8. 11 addresses are available for a small subset of the Settlement Class. The majority 12 of Settlement Class Members are unknown as the Hydroxycut Products were 13 sold at retail and not direct to consumer. Where names and email addresses 14 exist, individual notice will be provided using best email practices to ensure 15 optimal delivery of the notice to known Class Members. I understand that the 16 parties will ask the Court to appoint Boston Financial Data Services, Inc. 17 ("Boston Financial") as the settlement administrator. Boston Financial will 18 execute the individual notice portions of the Notice Plan. 19

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9. Data sources and tools that are commonly employed by experts in this field were used to analyze the reach and frequency² of the media portion of this Notice Program. These include GfK Mediamark Research Inc. ("MRI")

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 ² Reach is defined as the percentage of a class exposed to a notice, net of any duplication among people who may have been exposed more than once. Notice "exposure" is defined as the opportunity to read a notice. The average "frequency" of notice exposure is the average number of times that those reached by a notice would be exposed to a notice.

data,³ which provides statistically significant readership and product usage data 1 and Audit Bureau Circulation ("ABC")⁴ and Business Publications Audit 2 3 ("BPA")⁵ statements, which certify how many readers buy or obtain copies of publications. Online media planning data was provided by comScore, Inc.⁶ 4 5 These tools, along with demographic breakdowns indicating how many people 6 use each media vehicle, as well as computer software that take the underlying 7 data and factor out the duplication among audiences of various media vehicles, 8 allow us to determine the net (unduplicated) reach of a particular media schedule. 9 We combine the results of this analysis to help determine notice plan sufficiency 10 and effectiveness. U.S. federal and state courts have relied on such data sources 11 for many years, and our plans have routinely utilized such data to support media 12 recommendations with statistical proof of audience coverage.

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³ GfK MRI is a leading source of publication readership and product usage data for the communications industry. MRI offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, MRI provides information to magazines, televisions, radio, Internet, and other media, leading national advertisers, and over 450 advertising agencies – including 90 of the top 100 in the United States. MRI's national syndicated data are widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the United States.

 ⁴ Established in 1914, ABC is a non-profit cooperative formed by media, advertisers, and advertising agencies to audit the paid circulation statements of magazines and newspapers. ABC is the leading third party auditing organization in the U.S. It is the industry's leading, neutral source for documentation on the actual distribution of newspapers printed and bought by readers.

 ⁵ Established in 1931, BPA is a non-profit governed by a tripartite board comprised of media owners, advertising agencies and advertisers. BPA has the largest memberships of any media-auditing organization in the world, spanning more than 30 countries. Worldwide, BPA audits over 2,600 media properties.

 ⁶ comScore, Inc. (NASDAQ: SCOR) is a global leader in measuring the digital world and preferred source of digital marketing intelligence. In an independent survey of 800 of the most influential publishers, advertising agencies and advertisers conducted by William Blair & Company in January 2009, comScore was rated the "most preferred online audience measurement service" by 50% of respondents, a full 25 points ahead of its nearest competitor.

Individual Notice

10. Boston Financial will email the Long-form Notice (including the Claim Form) to a list of Settlement Class Members known to the Defendant, Iovate Health Sciences Inc., Iovate Health Sciences U.S.A., Inc., and Kerr Investment Holding Corp. ("Iovate"). I am informed that this list is compiled from complaints or directed inquiries about the safety and/or efficacy of the Hydroxycut Products made to Iovate and other identified Settlement Class Members to the extent Iovate has electronic mail addresses. Iovate will provide any such addresses in its possession to Boston Financial within 5 days from entry of the Preliminary Approval Order.

11. Within 30 days of an order granting preliminary approval of the settlement, I am informed that Boston Financial will deliver by U.S. mail the Court-approved Current Eligible Claimant Claim Form and Current Eligible Class Notice to all Current Eligible Claimants. Boston Financial will perform reasonable address traces for all Current Eligible Claimant Claim Forms and Current Eligible Claimant Class Notices returned as undeliverable from the initial mailed notice. No later than 35 days from the initial mailed notice, Boston Financial will complete the re-mailing of Current Eligible Claimant Claim Forms and Current Eligible Claimant Class Notices to those Current Eligible Claimants whose new addresses were identified as of that time through address traces.

12. Within 30 days of an order granting preliminary approval of the
settlement, Boston Financial will cause the Court-approved Long-form Notice
and Claim Form to be delivered by U.S. mail to all Class Members known to
have claims for personal injuries. For those Class Members known to have
personal injuries who are represented by counsel, such notice shall be sent to

their counsel. Iovate will provide such contact information to Boston Financial 2 within 5 days from entry of the Preliminary Approval Order.

Media Notice Plan

13. I understand that the Hydroxycut Products were marketed as a product people could buy without a prescription in order to lose weight. Accordingly, MRI data was studied for "Adults who take an over-the-counter remedy for weight loss."

10 14. In order to achieve broad national coverage, the notices will appear 11 once each in the national newspaper supplements Parade and USA Weekend, 12 which appear in over 1,200 Sunday newspapers nationwide with distribution in 13 large cities and small towns. The newspapers appear in a wide geographic area, 14 covering both large markets and smaller cities and towns. Combined, Parade 15 and USA Weekend have an estimated circulation of more than 54.5 million. The 16 current *Parade* and *USA Weekend* distribution list is included as Attachment 2.

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15. The Notice Plan will also include highly visible notice placements in the consumer magazines OK! Magazine, US Weekly, Men's Fitness, and Life 19 & Style. The Notice will appear one time in each publication. These publications 20 were selected both because of their reach to the target audience and also their high 21 "index" rating among Adults who use an over-the-counter remedy for weight-loss. 22 Index refers to the relative likelihood that a member of the target audience will be 23 a reader of the publication compared to the general adult population. Among our 24 target audience, Life & Style has an Index Rating of 124.2 and Men's Fitness has 25 an Index Rating of 149.7. These index ratings indicate that our target audience is 26 24.2% more likely to read Life & Style and 49.7% more likely to read Men's 27 Fitness than the average American adult (where the Index would be 100). These 28

higher indexes are indicative of efficient spending of advertising resources and are 2 used by the advertising industry to target specific segments of the market.

16. The selected consumer magazines have a combined circulation of over 3.3 million.

Online Banner Notice

8 17. The online portion of the Notice Plan will include banner 9 advertisements placed on a rotating basis over a 30 day period on *Facebook* and 10 the national media network *Conversant* (formally *Valueclick*) (a digital network 11 delivering PC impressions to over 9,600 digital properties across all major 12 categories including money/finance, content news, sports/recreation, 13 entertainment and others). Total estimated online impressions will exceed 250 14 million. When a user clicks on the Banner Notice they will be directed to the 15 Settlement website where detailed information about the settlement can be 16 obtained.

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18. A summary of the paid, publication Notice Plan is included as 18 Attachment 3. 19

Press Release

22 An informational release will be issued via PR Newswire to 19. 23 approximately 4,200 print and broadcast media points and 5,500 websites and 24 online databases throughout the United States. A news release serves a 25 potentially valuable role, providing additional notice exposure beyond that which 26 will be provided through paid media. There is no guarantee that any news stories 27 will result, but if they do, Settlement Class Members will have additional 28 opportunities to learn that their rights are at stake in credible news media, adding Case No. 3:09-MD-02087-BTM(KSC)

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to their understanding. The release will include the toll free number and
 Settlement website address.

Settlement Website

20. Increasing the availability of information via the Internet will serve the high proportion of U.S. adults who regularly use this medium. Online media tactics include a neutral and informational website where Settlement Class Members can obtain additional information and documents about the settlement, including the Long-form Notice, Claim Forms, Complaint and Settlement Agreement, as well as other documents and information deemed necessary. Additionally, the website will be configured to allow Class Members to file claims online. The website address will be prominently displayed in all notice documents. The online banner advertisements will include an embedded link directing class members to the dedicated Settlement website.

Toll-Free Telephone Support

21. A toll-free number will be established that will connect callers with a VRU recorded message. The message will provide callers with a brief summary of the proposed settlement, the option to select one of several more detailed recorded messages addressing frequently asked questions, and the option to request that a copy of the Long-form Notice and Claim Form be mailed to them. Contact information for Class Counsel will be made available for callers with further questions. The toll-free line and recorded information will be available 24 hours a day, seven days a week. 1

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Post Office Box

22. A post office box will also be established allowing Settlement Class Members to contact the claims administrator by mail with requests or questions and for the receipt of exclusion requests and Claim Forms.

Notice Design

23. The Notices themselves are designed to be "noticed," read, and—by 8 presenting the information in plain language—understood by even casual readers 9 of publications. The Notices contain substantial, albeit easy-to-read, summaries 10 of all of the key information about Settlement Class Members' rights and 11 The design of the Notices follows the principles embodied in the options. 12 Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov. 13 Many courts, and as previously cited, the FJC itself, have approved notices that 14 we have written and designed in a similar fashion. The Notices contain 15 substantial, albeit easy-to-read, summaries of all of the key information about 16 Class Members' rights and options. Consistent with our normal practice, all 17 notice documents will undergo a final edit prior to actual mailing and publication 18 for grammatical errors and accuracy. The proposed Long-form and Short-form 19 Notices are attached to the Stipulation of Settlement as Exhibits 3 and 4 20 respectively. 21

Notice Plan Performance

24 24. Using standard advertising industry methodologies to calculate the 25 overlap inherent in the mailed and email notice and the readership of publications 26 and viewership of online media, we estimate that 81.1% of the target audience 27 will be reached by the Notice Plan. In 2010, the Federal Judicial Center issued a 28 Judges' Class Action Notice and Claims Process Checklist and Plain Language Case No. 3:09-MD-02087-BTM(KSC) 9

Case No. 3:09-CV-01088-BTM(KSC) DECLARATION OF CAMERON R. AZARI ON NOTICE PLAN AND NOTICES

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Guide. This Guide states that a reach of at least 70% is reasonable.⁷ Here we are
able to exceed that. These statistical measures reinforce the fact that the Notice
Plan is efficient, targeted, and designed to reach the greatest practicable number
of Settlement Class Members. Reach will be further enhanced by the Email
Notice effort, informational release and case website.

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25. The Notice Plan will provide Class Members with the best practicable opportunity to view and understand the Notice and their rights, including their rights to opt-out and object to the Settlement and their right to file a claim. A by-product of using media vehicles necessary to achieve a broad net reach is frequency of exposure to notice stemming from inherent audience overlap.

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26. As a result, Adults who buy an over-the-counter remedy for weightloss will, on average, have 3.1 exposure opportunities to the proposed Notice Program. The frequency of exposure will be further enhanced by the Email Notice effort, informational release, and case website.

Conclusion

27. In class action notice planning, execution and analysis, I am guided by due process considerations under the United States Constitution, by local rules and statutes, and further by significant case law pertaining to notice. Sound code of conduct and communications planning practices also mandate that the notice program be designed to reach the greatest practicable number of potential class members and, in a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of

⁷ Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010), p. 3.*

benefits—nor the ability to exercise other options—to class members in any way. All of these requirements will be met in this case.

28. The Notice Plan outlined in this declaration will provide the best notice practicable under the circumstances of this case, conforms to all aspects of Federal Rule of Civil Procedure 23 and complies with the Due Process Clause of the Constitution. It further comports with the guidance for effective notice articulated in the latest edition of the *Manual for Complex Litigation 4th*.

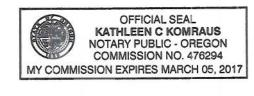
29. The Notice Plan schedule will afford enough time to provide full and proper notice to Settlement Class Members before the exclusion, objection and claims submission deadlines.

30. At the conclusion of the Notice Plan, we will provide a final report verifying the effective implementation of the Notice Program.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Cameron R. Azari, Esq.

SUBSCRIBED AND SWORN TO BEFORE ME this 10th day of April, 2014.



MY COMMISSION EXPIRES:

March 5.2

Tathleen

Case No. 3:09-MD-02087-BTM(KSC) Case No. 3:09-CV-01088-BTM(KSC) DECLARATION OF CAMERON R. AZARI ON NOTICE PLAN AND NOTICES

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Attachment 1

HILSOFT NOTIFICATIONS

Hilsoft Notifications is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. For more than 18 years, Hilsoft Notifications' notice plans have been approved and upheld by courts. Hilsoft Notifications has been retained by defendants and/or plaintiffs on more than 290 cases, including 30 MDL cases and 45 cases since 2009, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. Case examples include:

- Landmark \$6.05 billion settlement reached by Visa and MasterCard. The intensive notice program involved over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications, and language & ethnic targeted publications. Hilsoft also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a case website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL No. 1720 (E.D. Ny.).
- BP's \$7.8 billion settlement of claims related to the Deepwater Horizon oil spill emerged from possibly the most complex class action in US history. Hilsoft Notifications drafted and opined on all forms of notice. The 2012 notice program designed by Hilsoft reached at least 95% Gulf Coast region adults via television, radio, newspapers, consumer publications, trade journals, digital media and individual notice. *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL No. 2179 (E.D. La.).*
- Overdraft fee class actions have been brought against nearly every major US commercial bank. For related settlements, Hilsoft Notifications has developed programs that integrate individual notice and paid media efforts. PNC, Citizens, TD Bank, Fifth Third, Harris Bank and M&I are among the nearly 20 banks that have retained Hilsoft. *In re: Checking Account Overdraft Litigation,* MDL No. 2036 (S.D. Fla.).
- Possibly the largest data breach in U.S. history with approximately 130 million credit and debit card numbers stolen. *In re Heartland Data Security Breach Litigation,* MDL No. 2046 (S.D. Tex.).
- Largest and most complex class action in Canadian history. Designed and implemented groundbreaking notice to disparate, remote aboriginal people in the multi-billion dollar settlement. *In re Residential Schools Class Action Litigation*, 00-CV-192059 CPA (Ont. Super. Ct.).
- Extensive point of sale notice program of a settlement providing payments up to \$100,000 related to Chinese drywall – 100 million notices distributed to Lowe's purchasers during a six-week period. Vereen v. Lowe's Home Centers, SU10-CV-2267B (Ga. Super. Ct.).
- Largest discretionary class action notice campaign involving virtually every adult in the United States for the settlement. *In re Trans Union Corp. Privacy Litigation*, MDL No. 1350 (N.D. III.).
- Most complex national data theft class action settlement involving millions of class members. Lockwood v. Certegy Check Services, Inc., 8:07-cv-1434-T-23TGW (M.D. Fla.).

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 BEAVERTON, OR 97005
 T 503-597-7697

 PHILADELPHIA, PA 19102
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WWW.HILSOFT.COM INFO@HILSOFT.COM

- Largest combined U.S. and Canadian retail consumer security breach notice program. In re TJX Companies, Inc., Customer Data Security Breach Litigation, MDL No. 1838 (D. Mass.).
- Most comprehensive notice ever in a securities class action for the \$1.1 billion settlement of *In re Royal Ahold Securities and ERISA Litigation*, MDL No. 1539 (D. Md.).
- Most complex worldwide notice program in history. Designed and implemented all U.S. and international media notice with 500+ publications in 40 countries and 27 languages for \$1.25 billion settlement. *In re Holocaust Victims Assets,* "Swiss Banks," No. CV-96-4849 (E.D.N.Y.).
- Largest U.S. claim program to date. Designed and implemented a notice campaign for the \$10 billion. Tobacco Farmer Transition Program, (U.S. Dept. of Ag.).
- Multi-national claims bar date notice to asbestos personal injury claimants. Opposing notice expert's reach methodology challenge rejected by court. *In re Babcock & Wilcox Co,* No. 00-10992 (E.D. La.).

LEGAL NOTICING EXPERTS

Cameron Azari, Esq., Director of Legal Notice

Cameron Azari, Esq. has more than 12 years experience in the design and implementation of legal notification and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, Heartland Payment Systems, In re: Checking Account Overdraft Litigation, Lowe's Home Centers, Department of Veterans Affairs (VA), In re Residential Schools Class Action Litigation, and In re: Managed Care Litigation.* He is an active author and speaker on a broad range of legal notice and class action topics ranging from amendments to FRCP Rule 23 to email noticing, response rates and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at caza@legalnotice.com.

Lauran Schultz, Executive Director

Lauran Schultz is responsible for overall management of Hilsoft Notifications. He consults extensively with clients on notice adequacy and innovative legal notice programs. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration for the past seven years High profile actions he has been involved in include companies such as: BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq Systems in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at lschultz@hilsoft.com.

ARTICLES AND PRESENTATIONS

- Cameron Azari Speaker, "Legal Notice in Consumer Finance Settlements Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 29-30, 2014.
- Cameron Azari Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, October 25, 2013.
- > Cameron Azari Co-Author, "Class Action Legal Noticing: Plain Language Revisited." Law360, April 2013.

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- Cameron Azari Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 31-February 1, 2013.
- Cameron Azari Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.
- Cameron Azari Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 26-27, 2012.
- Lauran Schultz Speaker, "Legal Notice Best Practices: Building a Workable Settlement Structure." CLE International's 7th Annual Class Action Conference, San Francisco, CA, May, 2011.
- Cameron Azari Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January, 2011.
- Cameron Azari Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.
- Lauran Schultz Speaker, "Efficiency and Adequacy Considerations in Class Action Media Notice Programs." Chicago Bar Association, Chicago, IL, 2009.
- Cameron Azari Author, "Clearing the Five Hurdles of Email Delivery of Class Action Legal Notices." Thomson Reuters Class Action Litigation Reporter, June, 2008.
- Cameron Azari Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.
- Cameron Azari Speaker, "Noticing and Response Rates in Class Action Settlements" Class Action Bar Gathering, Vancouver, British Columbia, 2007.
- Cameron Azari Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.
- Cameron Azari Speaker, "Notice and Response Rates in Class Action Settlements" Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.
- Cameron Azari Speaker, "Notice and Response Rates in Class Action Settlements" Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.
- Cameron Azari Speaker, "Notice and Response Rates in Class Action Settlements" Stoel Rives litigation group, Portland/Seattle/Boise/Salt Lake City, UT, 2005.
- Cameron Azari Speaker, "Notice and Response Rates in Class Action Settlements" Stroock & Stroock & Lavan litigation group, Los Angeles, CA, 2005.
- > Cameron Azari Author, "Twice the Notice or No Settlement." Current Developments Issue II, August, 2003.
- Cameron Azari Speaker, "A Scientific Approach to Legal Notice Communication" Weil Gotshal litigation group, New York, 2003.

JUDICIAL COMMENTS

Judge John Gleeson, In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, (December 13, 2013) No. 1:05-cv-03800 (E.D. Ny.):

"The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards... The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here."

Judge Lance M. Africk, Evans, et al v. TIN, Inc., et al, (July 7, 2013) No. 2:11-cv-02067 (E.D.La.):

The Court finds that the dissemination of the Class Notice... as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances...; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.

Judge James B. Zagel, Saltzman v. Pella Corporation, (May 24, 2013) No. 06-cv-4481 (N.D. III.):

The Class Notice and Notice Plan implementated for the Settlement Class Members were performed in a reasonable manner, constituted the best notice practicable under the circumstances, constituted due and sufficient notice of the Lawsuit and the Settlement, and fully satisfied the requirements of due process and Fed. R. Civ. P. 23.

Judge Edward M. Chen, Marolda v. Symantec Corporation, (April 5, 2013) No. 08-cv-05701 (N.D. Cal.):

Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.

Judge Ann D. Montgomery, In Re: Zurn Pex Plumbing Products Liability Litigation, (February 27, 2013) No. 0:08cv01958 (D. Minn.):

The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.

The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).

Magistrate Judge Stewart, Gessele et al. v. Jack in the Box, Inc., (January 28, 2013) No. 3:10-cv-960 (D. Or.):

Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.



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Judge Carl J. Barbier, In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (Medical Benefits Settlement), (January 11, 2013) MDL No. 2179 (E.D. La.):

Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)

The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.

Judge Carl J. Barbier, In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 (Economic and Property Damages Settlement), (December 21, 2012) MDL No. 2179 (E.D. La.):

The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.

The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.

The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.

The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.

Judge Alonzo Harris, Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc., (August 17, 2012) No. 12-C-1599 (27th Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the

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certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.

Judge James Lawrence King, In re: Checking Account Overdraft Litigation (IBERIABANK), (April 26, 2012) MDL No. 2036 (S.D. Fla):

The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims . . . [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment." In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.

Judge Bobby Peters, Vereen v. Lowe's Home Centers, (April 13, 2012) SU10-CV-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.

Judge Lee Rosenthal, In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation, (March 2, 2012) MDL No. 2046 (S.D. Tex.):

The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement... Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197 (internal quotation marks omitted).

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Judge John D. Bates, Trombley v. National City Bank, (December 1, 2011) 1:10-CV-00232 (D. D.C.)

The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.

Judge Robert M. Dow, Jr., Schulte v. Fifth Third Bank, (July 29, 2011) No. 1:09-cv-6655 (N.D. III.):

The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.

Judge Ellis J. Daigle, Williams v. Hammerman & Gainer Inc., (June 30, 2011) No. 11-C-3187-B (27th Jud. D. Ct. La.):

Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30th day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

Judge Stefan R. Underhill, Mathena v. Webster Bank, N.A., (March 24, 2011) No. 3:10-cv-1448 (D. Conn.):

The form, content, and method of dissemination of 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 persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

Judge Ted Stewart, Miller v. Basic Research, LLC, (September 2, 2010) No. 2:07-cv-871 (D. Utah):

Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans.69 Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.

Judge Sara Loi, Pavlov v. Continental Casualty Co., (October 7, 2009) No. 5:07cv2580 (N.D. Ohio):

As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).



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Judge James Robertson, In re: Department of Veterans Affairs (VA) Data Theft Litigation, (September 23, 2009) MDL No. 1796 (D. D.C.):

The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

Judge Lisa F. Chrystal, Little v. Kia Motors America, Inc., (August 27, 2009) No. UNN-L-0800-01 (N.J. Super. Ct.):

The Court finds that the manner and content of the notices for direct mailing and for publication notice, as specified in the Notice Plan (Exhibit 2 to the Affidavit of Lauran R. Schultz), provides the best practicable notice of judgment to members of the Plaintiff Class.

Judge Barbara Crowder, Dolen v. ABN AMRO Bank N.V., (March 23, 2009) No. 01-L-454, 01-L-493, (3rd Jud. Cir. III.):

The Court finds that the Notice Plan is the best notice practicable under the circumstances and provides the Eligible Members of the Settlement Class sufficient information to make informed and meaningful decisions regarding their options in this Litigation and the effect of the Settlement on their rights. The Notice Plan further satisfies the requirements of due process and 735 ILCS 5/2-803. That Notice Plan is approved and accepted. This Court further finds that the Notice Plan and the Settlement, and thus they are hereby approved and adopted. This Court further finds that no other notice other than that identified in the Notice Plan is reasonably necessary in this Litigation.

Judge Robert W. Gettleman, In re Trans Union Corp., (September 17, 2008) MDL No. 1350 (N.D. III.):

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 Steven D. Merryday, Lockwood v. Certegy Check Services, Inc., (September 3, 2008) No. 8:07-cv-1434-T-23TGW (M.D. Fla.):

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 in the circumstances. The notice as given provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions of the Settlement Agreement, and these proceedings to all persons entitled to such notice, and the notice satisfied the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.

Judge William G. Young, In re TJX Companies, (September 2, 2008) MDL No. 1838 (D. Mass.):

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 Philip S. Gutierrez, Shaffer v. Continental Casualty Co., (June 11, 2008) SACV-06-2235-PSG (PJWx) (C.D. Cal.):

...was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law.



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Judge Robert L. Wyatt, *Gunderson v. AIG Claim Services, Inc.,* (May 29, 2008) No. 2004-002417 (14th Jud. D. Ct. La.):

Notices given to Settlement Class members...were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination...Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

Judge Mary Anne Mason, Palace v. DaimlerChrysler Corp., (May 29, 2008) No. 01-CH-13168 (III. Cir. Ct.):

The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois 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 due process and complied with 735 ILCS §§5/2-803 and 5/2-806.

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, Webb v. Liberty Mutual Ins. Co., (March 3, 2008) No. CV-2007-418-3 (Ark. Cir. Ct.):

The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members.

Judge Carol Crafton Anthony, *Johnson v. Progressive Casualty Ins. Co.*, (December 6, 2007) No. CV-2003-513 (Ark. Cir. Ct.):

Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated...Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable...The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process.

Judge Kirk D. Johnson, Sweeten v. American Empire Insurance Co., (August 20, 2007) No. CV-2007-154-3 (Ark. Cir. Ct.):

The Court does find that all notices required by the Court to be given to class members was done within the time allowed and the manner best calculated to give notice and apprise all the interested parties of the litigation. It was done through individual notice, first class mail, through internet website and the toll-free telephone call center...The Court does find that these methods were the best possible methods to advise the class members of the pendency of the action and opportunity to present their objections and finds that these notices do comply with all the provisions of Rule 23 and the Arkansas and United States Constitutions.

Judge Robert Wyatt, Gunderson v. F.A. Richard & Associates, Inc., (July 19, 2007) No. 2004-2417-D (14th Jud. D. Ct. La.):

Okay. Let me sign this one. This is the final Order and Judgment regarding the fairness, reasonableness and adequacy. And I am satisfied in all respects regarding the presentation that's been made to the Court this morning in the Class memberships, the representation, the notice, and all other aspects and I'm signing that Order at this time. Congratulations, gentlemen.

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Judge Lewis A. Kaplan, In re Parmalat Securities Litigation, (July 19, 2007) MDL No. 1653-LAK (S.D. N.Y.):

The Court finds that the distribution of the Notice, the publication of the Publication Notice, and the notice methodology...met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, (including the Due Process clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, et seq.) (the "PSLRA"), the Rules of the Court, and any other applicable law.

Judge Joe Griffin, Beasley v. The Reliable Life Insurance Co., (March 29, 2007) No. CV-2005-58-1 (Ark. Cir. Ct.):

[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process...So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter.

Judge Lewis A. Kaplan, In re Parmalat Securities Litigation, (March 1, 2007) MDL No. 1653-LAK (S.D. N.Y.):

The court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and the form set forth in Paragraph 6 of this Order...meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as emended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.

Judge Anna J. Brown, Reynolds v. The Hartford Financial Services Group, Inc., (February 27, 2007) No. CV-01-1529-BR (D. Ore):

[T]he court finds that the Notice Program fairly, fully, accurately, and adequately advised members of the Settlement Class and each Settlement Subclass of all relevant and material information concerning the proposed settlement of this action, their rights under Rule 23 of the Federal Rules of Civil Procedure, and related matters, and afforded the Settlement Class with adequate time and an opportunity to file objections to the Settlement or request exclusion from the Settlement Class. The court finds that the Notice Program constituted the best notice practicable under the circumstances and fully satisfied the requirements of Rule 23 and due process.

Judge Kirk D. Johnson, *Zarebski v. Hartford Insurance Company of the Midwest*, (February 13, 2007) No. CV-2006-409-3 (Ark. Cir. Ct.):

Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class. Accordingly, the Class Notice and Claim Form as disseminated are finally approved as fair, reasonable, and adequate notice under the circumstances. The Court finds and concludes that due and adequate notice of the pendency of this Action, the Stipulation, and the Final Settlement Hearing has been provided to members of the Settlement Class, and the Court further finds and concludes that the notice campaign described in the Preliminary Approval Order and completed by the parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process under the Arkansas and United States Constitutions.

Judge Richard J. Holwell, In re Vivendi Universal, S.A. Securities Litigation, 2007 WL 1490466, at *34 (S.D.N.Y.):

In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit outlining the effectiveness of its proposed method of providing notice in foreign countries. According to this...the Court is satisfied that plaintiffs intend to provide individual notice to those class members whose names and addresses are ascertainable, and that plaintiffs' proposed form of publication notice, while complex, will prove both manageable and the best means practicable of providing notice.

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Judge Samuel Conti, Ciabattari v. Toyota Motor Sales, U.S.A., Inc., (November 17, 2006) No. C-05-04289-SC (N.D. Cal.):

After reviewing the evidence and arguments presented by the parties...the Court finds as follows...The class members were given the best notice practicable under the circumstances, and that such notice meets the requirements of the Due Process Clause of the U.S. Constitution, and all applicable statutes and rules of court.

Judge Ivan L.R. Lemelle, *In re High Sulfur Content Gasoline Prods. Liability Litigation,* (November 8, 2006) MDL No. 1632 (E.D. La.):

This Court approved a carefully-worded Notice Plan, which was developed with the assistance of a nationally-recognized notice expert, Hilsoft Notifications...The Notice Plan for this Class Settlement was consistent with the best practices developed for modern-style "plain English" class notices; the Court and Settling Parties invested substantial effort to ensure notice to persons displaced by the Hurricanes of 2005; and as this Court has already determined, the Notice Plan met the requirements of Rule 23 and constitutional due process.

Judge Catherine C. Blake, In re Royal Ahold Securities and "ERISA" Litigation, (November 2, 2006) MDL No. 1539 (D. Md.):

The global aspect of the case raised additional practical and legal complexities, as did the parallel criminal proceedings in another district. The settlement obtained is among the largest cash settlements ever in a securities class action case and represents an estimated 40% recovery of possible provable damages. The notice process appears to have been very successful not only in reaching but also in eliciting claims from a substantial percentage of those eligible for recovery.

Judge Elaine E. Bucklo, Carnegie v. Household International, (August 28, 2006) No. 98 C 2178 (N.D. III.):

[T]he Notice was disseminated pursuant to a plan consisting of first class mail and publication developed by Plaintiff's notice consultant, Hilsoft Notification[s]...who the Court recognized as experts in the design of notice plans in class actions. The Notice by first-class mail and publication was provided in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies all requirements of Rule 23(e) and due process.

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest*, (June 13, 2006) No. CV-2005-58-1 (Ark. Cir. Ct.):

Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and the Publication Notice, 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...and the requirements of due process under the Arkansas and United States Constitutions.

Judge Norma L. Shapiro, First State Orthopedics et al. v. Concentra, Inc., et al., (May 1, 2006) No. 2:05-CV-04951-NS (E.D. Pa.):

The Court finds that dissemination of the Mailed Notice, Published Notice and Full Notice in the manner set forth here and in the Settlement Agreement meets the requirements of due process and Pennsylvania law. The Court further finds that the notice is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, is the best practicable notice; and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Lawsuit and of their right to object or to exclude themselves from the proposed settlement.

Judge Thomas M. Hart, Froeber v. Liberty Mutual Fire Ins. Co., (April 19, 2006) No. 00C15234 (Ore. Cir. Ct.):

The court has found and now reaffirms that dissemination and publication of the Class Notice in accordance with the terms of the Third Amended Order constitutes the best notice practicable under the circumstances.



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Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (January 6, 2006) MDL No. 1539 (D. Md.):

I think it's remarkable, as I indicated briefly before, given the breadth and scope of the proposed Class, the global nature of the Class, frankly, that again, at least on a preliminary basis, and I will be getting a final report on this, that the Notice Plan that has been proposed seems very well, very well suited, both in terms of its plain language and in terms of its international reach, to do what I hope will be a very thorough and broad-ranging job of reaching as many of the shareholders, whether individual or institutional, as possibly can be done to participate in what I also preliminarily believe to be a fair, adequate and reasonable settlement.

Judge Catherine C. Blake, In re Royal Ahold Securities & "ERISA" Litigation, 437 F.Supp.2d 467, 472 (D. Md. 2006):

The court hereby finds that the Notice and Notice Plan described herein and in the Order dated January 9, 2006 provided Class Members with the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Robert H. Wyatt, Jr., Gray v. New Hampshire Indemnity Co., Inc., (December 19, 2005) No. CV-2002-952-2-3 (Ark. Cir. Ct.):

Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process, including the Settlement Class definition, the identities of the Parties and of their counsel, a summary of the terms of the proposed settlement, Class Counsel's intent to apply for fees, information regarding the manner in which objections could be submitted, and requests for exclusions could be filed. The Notice properly informed Class members of the formula for the distribution of benefits under the settlement...Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice was also effected by publication in many newspapers and magazines throughout the nation, reaching a large majority of the Class members multiple times. The Court finds that such notice constitutes the best notice practicable.

Judge Michael J. O'Malley, Defrates v. Hollywood Entm't Corp., (June 24, 2005) No. 02 L 707 (Ill. Cir. Ct.):

[T]his Court hereby finds that the notice program described in the Preliminary Approval Order and completed by HEC complied fully with the requirements of due process, the Federal Rules of Civil Procedure and all other applicable laws.

Judge Wilford D. Carter, Thibodeaux v. Conoco Phillips Co., (May 26, 2005) No. 2003-481 F (14th J.D. Ct. La.):

Notice given to Class Members...were reasonably calculated under all the circumstances and have been sufficient, both as to the form and content...Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due process and sufficient notice to all potential members of the Class as Defined.

Judge Michael Canaday, Morrow v. Conoco Inc., (May 25, 2005) No. 2002-3860 G (14th J.D. Ct. La.):

The objections, if any, made to due process, constitutionality, procedures, and compliance with law, including, but not limited to, the adequacy of notice and the fairness of the proposed Settlement Agreement, lack merit and are hereby overruled.

Judge John R. Padova, Nichols v. SmithKline Beecham Corp., (April 22, 2005) No. 00-6222 (E.D. Pa.):

Pursuant to the Order dated October 18, 2004, End-Payor Plaintiffs employed Hilsoft Notifications to design and oversee Notice to the End-Payor Class. Hilsoft Notifications has extensive experience in class action notice situations relating to prescription drugs and cases in which unknown class members need to receive notice...After reviewing the individual mailed Notice, the publication Notices, the PSAs and the

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informational release, the Court concludes that the substance of the Notice provided to members of the End-Payor Class in this case was adequate to satisfy the concerns of due process and the Federal Rules.

Judge Douglas L. Combs, *Morris v. Liberty Mutual Fire Ins. Co.,* (February 22, 2005) No. CJ-03-714 (D. Okla.):

I am very impressed that the notice was able to reach – be delivered to 97 ½ percent members of the class. That, to me, is admirable. And I'm also – at the time that this was initially entered, I was concerned about the ability of notice to be understood by a common, nonlawyer person, when we talk about legalese in a court setting. In this particular notice, not only the summary notice but even the long form of the notice were easily understandable, for somebody who could read the English language, to tell them whether or not they had the opportunity to file a claim.

Judge Joseph R. Goodwin, In re Serzone Products Liability Litigation, 231 F.R.D. 221, 231 (S.D. W. Va. 2005):

The Notice Plan was drafted by Hilsoft Notifications, a Pennsylvania firm specializing in designing, developing, analyzing and implementing large-scale, unbiased legal notification plans. Hilsoft has disseminated class action notices in more than 150 cases, and it designed the model notices currently displayed on the Federal Judicial Center's website as a template for others to follow...To enhance consumer exposure, Hilsoft studied the demographics and readership of publications among adults who used a prescription drug for depression in the last twelve months. Consequently, Hilsoft chose to utilize media particularly targeting women due to their greater incidence of depression and heavy usage of the medication.

Judge Richard G. Stearns, In re Lupron[®] Marketing and Sales Practice Litigation, (November 24, 2004) MDL No. 1430 (D. Mass.):

After review of the proposed Notice Plan designed by Hilsoft Notifications...is hereby found to be the best practicable notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 the Federal Rules of Civil Procedure and due process.

Judge Richard G. Stearns, In re Lupron Marketing and Sales Practice Litigation, (November 23, 2004) MDL No. 1430 (D. Mass.):

I actually find the [notice] plan as proposed to be comprehensive and extremely sophisticated and very likely be as comprehensive as any plan of its kind could be in reaching those most directly affected.

Judge James S. Moody, Jr., *Mantzouris v. Scarritt Motor Group Inc.,* (August 10, 2004) No. 8:03 CV- 0015-T-30 MSS (M.D. Fla.):

Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the members of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement, it is hereby determined that all members of the Class, except for Ms. Gwendolyn Thompson, who was the sole person opting out of the Settlement Agreement, are bound by this Order and Final Judgment entered herein.

Judge Robert E. Payne, Fisher v. Virginia Electric & Power Co., (July 1, 2004) No. 3:02CV431 (E.D. Va.):

The record here shows that the class members have been fully and fairly notified of the existence of the class action, of the issues in it, of the approaches taken by each side in it in such a way as to inform meaningfully those whose rights are affected and to thereby enable them to exercise their rights intelligently...The success rate in notifying the class is, I believe, at least in my experience, I share Ms. Kauffman's experience, it is as great as I have ever seen in practicing or serving in this job...So I don't believe we could have had any more effective notice.

Judge John Kraetzer, Baiz v. Mountain View Cemetery, (April 14, 2004) No. 809869-2 (Cal. Super. Ct.):

The notice program was timely completed, complied with California Government Code section 6064, and provided the best practicable notice to all members of the Settlement Class under the circumstances. The Court finds that the notice program provided class members with adequate instructions and a variety of means to obtain information pertaining to their rights and obligations under the settlement so that a full opportunity has been afforded to class members and all other persons wishing to be heard... The Court has determined that the Notice given to potential members of the Settlement Class fully and accurately informed potential Members of the Settlement Class of all material elements of the proposed settlement and constituted valid, due, and sufficient notice to all potential members of the Settlement Class, and that it constituted the best practicable notice under the circumstances.

Hospitality Mgmt. Assoc., Inc. v. Shell Oil Co., 356 S.C. 644, 663, 591 S.E.2d 611, 621 (Sup. Ct. S.C. 2004):

Clearly, the Cox court designed and utilized various procedural safeguards to guarantee sufficient notice under the circumstances. Pursuant to a limited scope of review, we need go no further in deciding the Cox court's findings that notice met due process are entitled to deference.

Judge Joseph R. Goodwin, In re Serzone Prods. Liability Litigation, 2004 U.S. Dist. LEXIS 28297, at *10 (S.D. W. Va.):

The Court has considered the Notice Plan and proposed forms of Notice and Summary Notice submitted with the Memorandum for Preliminary Approval and finds that the forms and manner of notice proposed by Plaintiffs and approved herein meet the requirements of due process and Fed.R.Civ.P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice.

Judge James D. Arnold, Cotten v. Ferman Mgmt. Servs. Corp., (November 26, 2003) No. 02-08115 (Fla. Cir. Ct.):

Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the member of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement...

Judge Judith K. Fitzgerald, *In re Pittsburgh Corning Corp.*, (November 26, 2003) No. 00-22876-JKF (Bankr. W.D. Pa.):

The procedures and form of notice for notifying the holders of Asbestos PI Trust Claims, as described in the Motion, adequately protect the interests of the holders of Asbestos PI Trust Claims in a manner consistent with the principles of due process, and satisfy the applicable requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Judge Carter Holly, Richison v. American Cemwood Corp., (November 18, 2003) No. 005532 (Cal. Super. Ct.):

As to the forms of Notice, the Court finds and concludes that they fully apprised the Class members of the pendency of the litigation, the terms of the Phase 2 Settlement, and Class members' rights and options...Not a single Class member—out of an estimated 30,000—objected to the terms of the Phase 2 Settlement Agreement, notwithstanding a comprehensive national Notice campaign, via direct mail and publication Notice...The notice was reasonable and the best notice practicable under the circumstances, was due, adequate, and sufficient notice to all Class members, and complied fully with the laws of the State of California, the Code of Civil Procedure, due process, and California Rules of Court 1859 and 1860.

Judge Thomas A. Higgins, In re Columbia/HCA Healthcare Corp., (June 13, 2003) MDL No. 1227 (M.D. Tenn.):

Notice of the settlement has been given in an adequate and sufficient manner. The notice provided by mailing the settlement notice to certain class members and publishing notice in the manner described in the settlement was the best practicable notice, complying in all respects with the requirements of due process.



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Judge Harold Baer, Jr., Thompson v. Metropolitan Life Ins. Co., 216 F.R.D. 55, 68 (S.D.N.Y. 2003):

In view of the extensive notice campaign waged by the defendant, the extremely small number of class members objecting or requesting exclusion from the settlement is a clear sign of strong support for the settlement...The notice provides, in language easily understandable to a lay person, the essential terms of the settlement, including the claims asserted...who would be covered by the settlement...[T]he notice campaign that defendant agreed to undertake was extensive...I am satisfied, having reviewed the contents of the notice package, and the extensive steps taken to disseminate notice of the settlement, that the class notice complies with the requirements of Rule 23 (c)(2) and 23(e). In summary, I have reviewed all of the objections, and none persuade me to conclude that the proposed settlement is unfair, inadeguate or unreasonable.

Judge Edgar E. Bayley, *Dimitrios v. CVS, Inc.,* (November 27, 2002) No. 99-6209; *Walker v. Rite Aid Corp.,* No. 99-6210; and *Myers v. Rite Aid Corp.,* No. 01-2771 (Pa. Ct. C.P.):

The Court specifically finds that: fair and adequate notice has been given to the class, which comports with due process of law.

Judge Dewey C. Whitenton, Ervin v. Movie Gallery, Inc., (November 22, 2002) No. 13007 (Tenn. Ch.):

The content of the class notice also satisfied all due process standards and state law requirements...The content of the notice was more than adequate to enable class members to make an informed and intelligent choice about remaining in the class or opting out of the class.

Judge James R. Williamson, Kline v. The Progressive Corp., (November 14, 2002) No. 01-L-6 (III. Cir. Ct.):

Notice to the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The notice contained the essential elements necessary to satisfy due process...

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (September 13, 2002) No. L-008830.00 (N.J. Super. Ct.):

Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were placed...throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups.

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* (September 3, 2002) No. 00 Civ. 5071-HB (S.D. N.y.):

The Court further finds that the Class Notice and Publication Notice provided in the Settlement Agreement are written in plain English and are readily understandable by Class Members. In sum, the Court finds that the proposed notice texts and methodology are reasonable, that they constitute due, adequate and sufficient notice to all persons entitled to be provided with notice, and that they meet the requirements of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.

Judge Milton Gunn Shuffield, Scott v. Blockbuster Inc., (January 22, 2002) No. D 162-535 (Tex. Jud. Dist. Ct.) Ultimately withstood challenge to Court of Appeals of Texas. Peters v. Blockbuster 65 S.W.3d 295, 307 (Tex. App.-Beaumont, 2001):

In order to maximize the efficiency of the notice, a professional concern, Hilsoft Notifications, was retained. This Court concludes that the notice campaign was the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the settlement and afford them an opportunity to present their objections...The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.

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Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 30, 2001) No. MID-L-8839-00-MT (N.J. Super. Ct.):

The parties have crafted a notice program which satisfies due process requirements without reliance on an unreasonably burdensome direct notification process...The form of the notice is reasonably calculated to apprise class members of their rights. The notice program is specifically designed to reach a substantial percentage of the putative settlement class members.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 29, 2001) No. L-8830-00-MT (N.J. Super. Ct.):

I saw the various bar graphs for the different publications and the different media dissemination, and I think that was actually the clearest bar graph I've ever seen in my life...it was very clear of the time periods that you were doing as to each publication and which media you were doing over what market time, so I think that was very clear.

Judge Stuart R. Pollak, Microsoft I-V Cases, (April 1, 2001) J.C.C.P. No. CJC-00-004106 (Cal. Super. Ct.):

[C]oncerning dissemination of class notice; and I have reviewed the materials that have been submitted on that subject and basically I'm satisfied. I think it's amazing if you're really getting 80 percent coverage. That's very reassuring. And the papers that you submitted responded to a couple things that had been mentioned before and I am satisfied with all that.

Judge Stuart R. Pollak, Microsoft I-V Cases, (March 30, 2001) J.C.C.P. No. 4106 (Cal. Super. Ct.):

Plaintiffs and Defendant Microsoft Corporation have submitted a joint statement in support of their request that the Court approve the plan for dissemination of class action notice and proposed forms of notice, and amend the class definition. The Court finds that the forms of notice to Class members attached hereto as Exhibits A and B fairly and adequately inform the Class members of their rights concerning this litigation. The Court further finds that the methods for dissemination of notice are the fairest and best practicable under the circumstances, and comport with due process requirements.

LEGAL NOTICE CASES

Andrews v. MCI (900 Number Litigation)	S.D. Ga., CV 191-175
Harper v. MCI (900 Number Litigation)	S.D. Ga., CV 192-134
In re Bausch & Lomb Contact Lens Litigation	N.D. Ala., 94-C-1144-WW
In re Ford Motor Co. Vehicle Paint Litigation	E.D. La., MDL No. 1063
Castano v. Am. Tobacco	E.D. La., CV 94-1044
Cox v. Shell Oil (Polybutylene Pipe Litigation)	Tenn. Ch., 18,844
In re Amino Acid Lysine Antitrust Litigation	N.D. III., MDL No. 1083
In re Dow Corning Corp. (Breast Implant Bankruptcy)	E.D. Mich., 95-20512-11-AJS
Kunhel v. CNA Ins. Companies	N.J. Super. Ct., ATL-C-0184-94
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Hilsoft Notifications has served as a notice expert for planning, implementation and/or analysis in the following partial listing of cases:

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In re Factor Concentrate Blood Prods. Litigation (Hemophiliac HIV)	N.D. III., MDL No. 986
In re Ford Ignition Switch Prods. Liability Litigation	D. N.J., 96-CV-3125
Jordan v. A.A. Friedman (Non-Filing Ins. Litigation)	M.D. Ga., 95-52-COL
Kalhammer v. First USA (Credit Card Litigation)	Cal. Cir. Ct., C96-45632010-CAL
Navarro-Rice v. First USA (Credit Card Litigation)	Ore. Cir. Ct., 9709-06901
Spitzfaden v. Dow Corning (Breast Implant Litigation)	La. D. Ct., 92-2589
Robinson v. Marine Midland (Finance Charge Litigation)	N.D. III., 95 C 5635
McCurdy v. Norwest Fin. Alabama	Ala. Cir. Ct., CV-95-2601
Johnson v. Norwest Fin. Alabama	Ala. Cir. Ct., CV-93-PT-962-S
In re Residential Doors Antitrust Litigation	E.D. Pa., MDL No. 1039
Barnes v. Am. Tobacco Co. Inc.	E.D. Pa., 96-5903
Small v. Lorillard Tobacco Co. Inc.	N.Y. Super. Ct., 110949/96
Naef v. Masonite Corp (Hardboard Siding Litigation)	Ala. Cir. Ct., CV-94-4033
In re Synthroid Mktg. Litigation	N.D. III., MDL No. 1182
Raysick v. Quaker State Slick 50 Inc.	D. Tex., 96-12610
Castillo v. Mike Tyson (Tyson v. Holyfield Bout)	N.Y. Super. Ct., 114044/97
Avery v. State Farm Auto. Ins. (Non-OEM Auto Parts Litigation)	III. Cir. Ct., 97-L-114
Walls v. The Am. Tobacco Co. Inc.	N.D. Okla., 97-CV-218-H
Tempest v. Rainforest Café (Securities Litigation)	D. Minn., 98-CV-608
Stewart v. Avon Prods. (Securities Litigation)	E.D. Pa., 98-CV-4135
Goldenberg v. Marriott PLC Corp (Securities Litigation)	D. Md., PJM 95-3461
Delay v. Hurd Millwork (Building Products Litigation)	Wash. Super. Ct., 97-2-07371-0
Gutterman v. Am. Airlines (Frequent Flyer Litigation)	III. Cir. Ct., 95CH982
Hoeffner v. The Estate of Alan Kenneth Vieira (Un-scattered Cremated Remains Litigation)	Cal. Super. Ct., 97-AS 02993
In re Graphite Electrodes Antitrust Litigation	E.D. Pa., MDL No. 1244
In re Silicone Gel Breast Implant Prods. Liability Litigation, Altrichter v. INAMED	N.D. Ala., MDL No. 926
St. John v. Am. Home Prods. Corp. (Fen/Phen Litigation)	Wash. Super. Ct., 97-2-06368

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Crane v. Hackett Assocs. (Securities Litigation)	E.D. Pa., 98-5504
In re Holocaust Victims Assets Litigation (Swiss Banks Litigation)	E.D. N.Y., CV-96-4849
McCall v. John Hancock (Settlement Death Benefits)	N.M. Cir. Ct., CV-2000-2818
Williams v. Weyerhaeuser Co. (Hardboard Siding Litigation)	Cal. Super. Ct., CV-995787
Kapustin v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., 98-CV-6599
Leff v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., 95-CV-89
In re PRK/LASIK Consumer Litigation	Cal. Super. Ct., CV-772894
Hill v. Galaxy Cablevision	N.D. Miss., 1:98CV51-D-D
Scott v. Am. Tobacco Co. Inc.	La. D. Ct., 96-8461
Jacobs v. Winthrop Fin. Assocs. (Securities Litigation)	D. Mass., 99-CV-11363
Int'l Comm'n on Holocaust Era Ins. Claims – Worldwide Outreach Program	Former Secretary of State Lawrence Eagleburger Commission
Bownes v. First USA Bank (Credit Card Litigation)	Ala. Cir. Ct., CV-99-2479-PR
Whetman v. IKON (ERISA Litigation)	E.D. Pa., 00-87
Mangone v. First USA Bank (Credit Card Litigation)	III. Cir. Ct., 99AR672a
In re Babcock and Wilcox Co. (Asbestos Related Bankruptcy)	E.D. La., 00-10992
Barbanti v. W.R. Grace and Co. (Zonolite / Asbestos Litigation)	Wash. Super. Ct., 00201756-6
Brown v. Am. Tobacco	Cal. Super. Ct., J.C.C.P. 4042, 711400
Wilson v. Servier Canada Inc. (Canadian Fen/Phen Litigation)	Ont. Super. Ct., 98-CV-158832
In re Texaco Inc. (Bankruptcy)	S.D. N.Y. 87 B 20142, 87 B 20143, 87 B 20144.
Olinde v. Texaco (Bankruptcy, Oil Lease Litigation)	M.D. La., 96-390
Gustafson v. Bridgestone/Firestone, Inc. (Recall Related Litigation)	S.D. III., 00-612-DRH
In re Bridgestone/Firestone Tires Prods. Liability Litigation	S.D. Ind., MDL No. 1373
Gaynoe v. First Union Corp. (Credit Card Litigation)	N.C. Super. Ct., 97-CVS-16536
Carson v. Daimler Chrysler Corp. (Fuel O-Rings Litigation)	W.D. Tenn., 99-2896 TU A
Providian Credit Card Cases	Cal. Super. Ct., J.C.C.P. 4085
Fields v. Great Spring Waters of Am., Inc. (Bottled Water	Cal. Super. Ct., 302774
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Litigation)	
Sanders v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., 303549
Sims v. Allstate Ins. Co. (Diminished Auto Value Litigation)	III. Cir. Ct., 99-L-393A
Peterson v. State Farm Mutual Auto. Ins. Co. (Diminished Auto Value Litigation)	III. Cir. Ct., 99-L-394A
Microsoft I-V Cases (Antitrust Litigation Mirroring Justice Dept.)	Cal. Super. Ct., J.C.C.P. 4106
Westman v. Rogers Family Funeral Home, Inc. (Remains Handling Litigation)	Cal. Super. Ct., C-98-03165
Rogers v. Clark Equipment Co.	III. Cir. Ct., 97-L-20
Garrett v. Hurley State Bank (Credit Card Litigation)	Miss. Cir. Ct., 99-0337
Ragoonanan v. Imperial Tobacco Ltd. (Firesafe Cigarette Litigation)	Ont. Super. Ct., 00-CV-183165 CP
Dietschi v. Am. Home Prods. Corp. (PPA Litigation)	W.D. Wash., C01-0306L
Dimitrios v. CVS, Inc. (PA Act 6 Litigation)	Pa. C.P., 99-6209
Jones v. Hewlett-Packard Co. (Inkjet Cartridge Litigation)	Cal. Super. Ct., 302887
In re Tobacco Cases II (California Tobacco Litigation)	Cal. Super. Ct., J.C.C.P. 4042
Scott v. Blockbuster, Inc. (Extended Viewing Fees Litigation)	136 th Tex. Jud. Dist., D 162-535
Anesthesia Care Assocs. v. Blue Cross of Cal.	Cal. Super. Ct., 986677
Ting v. AT&T (Mandatory Arbitration Litigation)	N.D. Cal., C-01-2969-BZ
In re W.R. Grace & Co. (Asbestos Related Bankruptcy)	Bankr. D. Del., 01-01139-JJF
Talalai v. Cooper Tire & Rubber Co. (Tire Layer Adhesion Litigation)	N.J. Super. Ct.,, MID-L-8839-00 MT
Kent v. Daimler Chrysler Corp. (Jeep Grand Cherokee Park- to-Reverse Litigation)	N.D. Cal., C01-3293-JCS
Int'l Org. of Migration – German Forced Labour Compensation Programme	Geneva, Switzerland
Madsen v. Prudential Federal Savings & Loan (Homeowner's Loan Account Litigation)	3 rd Jud. Dist. Ct. Utah, C79-8404
Bryant v. Wyndham Int'I., Inc. (Energy Surcharge Litigation)	Cal. Super. Ct., GIC 765441, GIC 777547
In re USG Corp. (Asbestos Related Bankruptcy)	Bankr. D. Del., 01-02094-RJN
Thompson v. Metropolitan Life Ins. Co. (Race Related Sales Practices Litigation)	S.D. N.Y., 00-CIV-5071 HB
Ervin v. Movie Gallery Inc. (Extended Viewing Fees)	Tenn. Ch., CV-13007

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Peters v. First Union Direct Bank (Credit Card Litigation)	M.D. Fla., 8:01-CV-958-T-26 TBM
National Socialist Era Compensation Fund	Republic of Austria
In re Baycol Litigation	D. Minn., MDL No. 1431
Claims Conference–Jewish Slave Labour Outreach Program	German Government Initiative
Wells v. Chevy Chase Bank (Credit Card Litigation)	Md. Cir. Ct., C-99-000202
Walker v. Rite Aid of PA, Inc. (PA Act 6 Litigation)	C.P. Pa., 99-6210
Myers v. Rite Aid of PA, Inc. (PA Act 6 Litigation)	C.P. Pa., 01-2771
In re PA Diet Drugs Litigation	C.P. Pa., 9709-3162
Harp v. Qwest Communications (Mandatory Arbitration Lit.)	Ore. Circ. Ct., 0110-10986
Tuck v. Whirlpool Corp. & Sears, Roebuck & Co. (Microwave Recall Litigation)	Ind. Cir. Ct., 49C01-0111-CP-002701
Allison v. AT&T Corp. (Mandatory Arbitration Litigation)	1 st Jud. D.C. N.M., D-0101-CV-20020041
Kline v. The Progressive Corp.	III. Cir. Ct., 01-L-6
Baker v. Jewel Food Stores, Inc. & Dominick's Finer Foods, Inc. (Milk Price Fixing)	III. Cir. Ct., 00-L-9664
In re Columbia/HCA Healthcare Corp. (Billing Practices Litigation)	M.D. Tenn., MDL No. 1227
Foultz v. Erie Ins. Exchange (Auto Parts Litigation)	C.P. Pa., 000203053
Soders v. General Motors Corp. (Marketing Initiative Litigation)	C.P. Pa., CI-00-04255
Nature Guard Cement Roofing Shingles Cases	Cal. Super. Ct., J.C.C.P. 4215
Curtis v. Hollywood Entm't Corp. (Additional Rental Charges)	Wash. Super. Ct., 01-2-36007-8 SEA
Defrates v. Hollywood Entm't Corp.	III. Cir. Ct., 02L707
Pease v. Jasper Wyman & Son, Merrill Blueberry Farms Inc., Allen's Blueberry Freezer Inc. & Cherryfield Foods Inc.	Me. Super. Ct., CV-00-015
West v. G&H Seed Co. (Crawfish Farmers Litigation)	27 th Jud. D. Ct. La., 99-C-4984-A
Linn v. Roto-Rooter Inc. (Miscellaneous Supplies Charge)	C.P. Ohio, CV-467403
McManus v. Fleetwood Enter., Inc. (RV Brake Litigation)	D. Ct. Tex., SA-99-CA-464-FB
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Davis v. Am. Home Prods. Corp. (Norplant Contraceptive Litigation)	D. La., 94-11684
Walker v. Tap Pharmaceutical Prods., Inc. (Lupron Price Litigation)	N.J. Super. Ct., CV CPM-L-682-01
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Thibodeau v. Comcast Corp.	E.D. Pa., 04-CV-1777
Cazenave v. Sheriff Charles C. Foti (Strip Search Litigation)	E.D. La., 00-CV-1246
National Assoc. of Police Orgs., Inc. v. Second Chance Body Armor, Inc. (Bullet Proof Vest Litigation)	Mich. Cir. Ct., 04-8018-NP
Nichols v. SmithKline Beecham Corp. (Paxil)	E.D. Pa., 00-6222
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In re Serzone Prods. Liability Litigation	S.D. W. Va., MDL No. 1477
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In re Solutia Inc. (Bankruptcy)	S.D. N.Y., 03-17949-PCB
In re Lupron Marketing & Sales Practices Litigation	D. Mass., MDL No. 1430
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In re Ephedra Prods. Liability Litigation	D. N.Y., MDL No. 1598
Chesnut v. Progressive Casualty Ins. Co.	Ohio C.P., 460971
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In re Vivendi Universal, S.A. Securities Litigation	S.D. N.Y., 02-CIV-5571 RJH
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In re: Propulsid Products Liability Litigation	E.D. La., MDL No. 1355
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Harper v. Equifax	E.D. Pa., 2:04-CV-03584-TON
Beasley v. Hartford Insurance Co. of the Midwest	Ark. Cir. Ct., CV-2005-58-1
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Sunderman v. Regeneration Technologies, Inc. (Human Tissue Litigation)	S.D. Ohio, 1:06-CV-075-MHW
Splater v. Thermal Ease Hydronic Systems, Inc.	Wash. Super. Ct., 03-2-33553-3-SEA
Peyroux v. The United States of America (New Orleans Levee Breech)	E.D. La., 06-2317
Chambers v. DaimlerChrysler Corp. (Neon Head Gaskets)	N.C. Super. Ct., 01:CVS-1555
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In re Bridgestone Securities Litigation	M.D. Tenn., 3:01-CV-0017
In re Mutual Funds Investment Litigation (Market Timing)	D. Md., MDL No. 1586
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Hensley v. Computer Sciences Corp.	Ark. Cir. Ct., CV-2005-59-3
Peek v. Microsoft Corporation	Ark. Cir. Ct., CV-2006-2612
Reynolds v. The Hartford Financial Services Group, Inc.	D. Ore., CV-01-1529 BR
Schwab v. Philip Morris USA, Inc.	E.D. N.Y., CV-04-1945
Zarebski v. Hartford Insurance Co. of the Midwest	Ark. Cir. Ct., CV-2006-409-3
In re Parmalat Securities Litigation	S.D. N.Y., MDL No. 1653 (LAK)
Beasley v. The Reliable Life Insurance Co.	Ark. Cir. Ct., CV-2005-58-1
Sweeten v. American Empire Insurance Company	Ark. Cir. Ct., 2007-154-3
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West v. Carfax, Inc.	Ohio C.P., 04-CV-1898 (ADL)
Hunsucker v. American Standard Ins. Co. of Wisconsin	Ark. Cir. Ct., CV-2007-155-3
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Hoorman v. SmithKline Beecham	III. Cir. Ct., 04-L-715
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Lockwood v. Certegy Check Services, Inc. (Stolen Financial Data)	M.D. Fla., 8:07-cv-1434-T-23TGW
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Gunderson v. F.A. Richard & Assocs., Inc. (AIG)	14 th Jud. D. Ct. La., 2004-2417-D
Jones v. Dominion Resources Services, Inc.	S.D. W. Va., 2:06-cv-00671
Gunderson v. F.A. Richard & Assocs., Inc. (Wal-Mart)	14 th Jud. D. Ct. La., 2004-2417-D
In re Trans Union Corp. Privacy Litigation	N.D. III., MDL No. 350
Gudo v. The Administrator of the Tulane Ed. Fund	La. D. Ct., 2007-C-1959
Guidry v. American Public Life Insurance Co.	14 th Jud. D. Ct. La., 2008-3465
McGee v. Continental Tire North America	D. N.J., 2:06-CV-06234 (GEB)

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In Re Katrina Canal Breaches Consolidated Litigation	E.D. La., 05-4182
In re Department of Veterans Affairs (VA) Data Theft Litigation	D. D.C., MDL No. 1796
Dolen v. ABN AMRO Bank N.V. (Callable CD's)	III. Cir. Ct., 01-L-454 and 01-L-493
Pavlov v. CNA (Long Term Care Insurance)	N.D. Ohio, 5:07cv2580
Steele v. Pergo(Flooring Products)	D. Ore., 07-CV-01493-BR
Opelousas Trust Authority v. Summit Consulting	27 th Jud. D. Ct. La., 07-C-3737-B
Little v. Kia Motors America, Inc. (Braking Systems)	N.J. Super. Ct., UNN-L-0800-01
Boone v. City of Philadelphia (Prisoner Strip Search)	E.D. Pa., 05-CV-1851
In Re Countrywide Customer Data Breach Litigation	W.D. Ky., MDL No.1998
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Gunderson v. F.A. Richard & Assocs., Inc. (Cambridge)	14 th Jud. D. Ct. La., 2004-002417
Weiner v. Snapple Beverage Corporation	S.D. N.Y., No. 07-CV-08742
Holk v. Snapple Beverage Corporation	D. N.J., No 3:07-CV-03018-MJC-JJH
Coyle v. Hornell Brewing Co. (Arizona lced Tea)	D. N.J., No. 08-CV-2797-JBS-JS
In Re: Heartland Data Security Breach Litigation	S.D. Tex., MDL No. 2046
Satterfield v. Simon & Schuster, Inc. (Text Messaging)	N.D. Cal., No. 06-CV-2893 CW
Schulte v. Fifth Third Bank (Overdraft Fees)	N.D. III., No. 1:09-CV-06655
Trombley v. National City Bank (Overdraft Fees)	D. D.C., No. 1:10-CV-00232
Vereen v. Lowe's Home Centers (Defective Drywall)	Ga. Super. Ct., SU10-CV-2267B
Mathena v. Webster Bank, N.A. (Overdraft Fees)	D. Conn, No. 3:10-cv-01448
Delandro v. County of Allegheny (Prisoner Strip Search)	W.D. Pa., No. 2:06-cv-00927
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Williams v. Hammerman & Gainer, Inc. (Hammerman)	27 th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. (Risk Management)	27 th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. (SIF Consultants)	27 th Jud. D. Ct. La., No. 11-C-3187-B
Gwiazdowski v. County of Chester (Prisoner Strip Search)	E.D. Pa., No. 2:08cv4463

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Fontaine v. Attorney General of Canada (Stirland Lake and Cristal Lake residential schools)	Ont. Super. Ct., 00-CV-192059 CP
Opelousas General Hospital Authority v. FairPay Solutions	27 th Jud. D. Ct. La., 12-C-1599-C
Marolda v. Symantec Corporation (Software Upgrades)	N.D. Cal., No. 3:08-cv-05701
In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Economic and Property Damages Settlement	E.D. La., MDL No. 2179
In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Medical Benefits Settlement	E.D. La., MDL No. 2179
Vodanovich v. Boh Brothers Construction (Hurricane Katrina Levee Breaches)	E.D. La., 05-cv-4191
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Duval v. Citizens Financial Group, Inc. (Overdraft Fees)	S.D. Fla., MDL No. 2036
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In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation	E.D. N.Y., MDL No. 1720
Saltzman v. Pella Corporation (Building Products)	N.D. III., No. 06-cv-4481
In Re: Zurn Pex Plumbing, Products Liability Litigation	D. Minn., MDL No. 1958
Blahut v. Harris, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
Eno v. M & I Marshall & Ilsley Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Casayuran v. PNC Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Anderson v. Compass Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Evans, et al. v. TIN, Inc. (Environmental)	E.D. La., No. 2:11-cv-02067

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Williams v. SIF Consultants of Louisiana, Inc. et al.	27 th Jud. D. Ct. La., No. 09-C-5244-C
Miner v. Philip Morris Companies, Inc. et al.	Ark. Cir. Ct., No. 60CV03-4661
Fontaine v. Attorney General of Canada (Mistassini Hostels Residential Schools)	Qué. Super. Ct., No. 500-06-000293-056 & No. 550-06-000021-056 (Hull)
Glube et al. v. Pella Corporation et al. (Building Products)	Ont. Super. Ct., No. CV-11-4322294- 00CP
Yarger v. ING Bank	D. Del., No. 11-154-LPS
Price v. BP Products North America	N.D. III, No. 12-cv-06799
National Trucking Financial Reclamation Services, LLC et al. v. Pilot Corporation et al.	E.D. Ark., No. 4:13-cv-00250-JMM
Johnson v. Community Bank, N.A. et al. (Overdraft Fees)	M.D. Pa., No. 3:12-cv-01405-RDM
Rose v. Bank of America Corporation, et al. (TCPA)	N.D. Cal., No. 11-cv-02390-EJD
McGann, et al., v. Schnuck Markets, Inc. (Data Breach)	Mo. Cir. Ct., No. 1322-CC00800
Simmons v. Comerica Bank, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC, et al. v. Bestcomp, Inc., et al.	27 th Jud. D. Ct. La., No. 09-C-5242-B
Simpson v. Citizens Bank (Overdraft Fees)	E.D. Mich, No. 2:12-cv-10267
In re: Plasma-Derivative Protein Therapies Antitrust Litigation	N.D. III, No. 09-CV-7666
In re: Dow Corning Corporation (Breast Implants)	E.D. Mich., No. 00-X-0005
Mello et al v. Susquehanna Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Crystle Wong v. Alacer Corp. (Emergen-C)	Cal. Super. Ct., No. CGC-12-519221

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Alabama	Alexander City	Outlook	1		1		April 2013
Alabama	Anniston	Star	1		1		April 2013
Alabama	Birmingham	News	1		1		April 2013
Alabama	Gadsden	Times	1		1		April 2013
Alabama	Huntsville	Times	1		1		April 2013
Alabama	Mobile	Press-Register	1		1		April 2013
Alabama	Selma	Times Journal	1		1		April 2013
Alabama	Talladega	Daily Home	1		1		April 2013
Alabama	Tuscaloosa	News	1		1		April 2013
Alabama	Athens	The News Courier	1		1		April 2013
Alabama	Cullman	Times	1		1		April 2013
Alabama	Decatur	The Daily	-	1	1		August 2013
Alabama	Dothan	Eagle		1	1		August 2013
Alabama	Florence-Sheffield-Tuscumbia-Muscle	Times Daily		1	1		August 2013
Alabama	Fort Payne	Times-Journal		1	1		August 2013
Alabama	Hamilton	Mid-South Newspapers		1	1		August 2013 August 2013
Alabama	Jasper	Mountain Eagle		1	1		August 2013 August 2013
				1	1		August 2013 August 2013
Alabama Alabama	Montgomery Opelika/Auburn	Advertiser News		1	1		August 2013 August 2013
Alaska	Anchorage	Daily News	1	1	1		August 2013 April 2013
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Alaska	Fairbanks	News-Miner	1		1		April 2013
Alaska	Juneau	Juneau Empire	1		1		April 2013
Alaska	Kenai	Peninsula Clarion	1		1		April 2013
Arizona	Cottonwood	Verde Independent & The Bugle	1		1		April 2013
Arizona	Flagstaff	Arizona Daily Sun	1		1		April 2013
Arizona	Kingman	Daily Miner	1		1		April 2013
Arizona	Lake Havasu City	Today's News-Herald	1		1		April 2013
Arizona	Mesa/Scottsdale	East Valley Tribune	1		1		April 2013
Arizona	Prescott	Daily Courier	1		1		April 2013
Arizona	Sun City	Daily News-Sun	1		1		April 2013
Arizona	Tucson	Arizonia Daily Star	1	1	1	1	April/August 2013
Arizona	Yuma	Daily Sun	1		1		April 2013
Arizona	Bullhead City	Mohave Valley Daily News		1	1		August 2013
Arizona	Casa Grande	Dispatch		1	1		August 2013
Arizona	Nogales	International		1	1		August 2013
Arizona	Phoenix	Republic & Sunday Select		1	1		August 2013
Arizona	Safford	Eastern Arizona Courier		1	1		August 2013
Arizona	Sierra Vista	Herald		1	1		August 2013
Arkansas	Blytheville	Courier News	1		1		April 2013
Arkansas	Conway	Log Cabin Democrat	1		1		April 2013
Arkansas	Little Rock	Democrat-Gazette	1		1		April 2013
Arkansas	El Dorado	Sunday News	1		1		April 2013
Arkansas	Clinton	Van Buren County Democrat		1	1		August 2013
Arkansas	Fayetteville	Northwest Arkansas Democrat-Gazette	1	1	1	1	April/August 2013
Arkansas	Fort Smith	Times Record		1	1		August 2013
Arkansas	Harrison	Times		1	1		August 2013
Arkansas	Hot Springs	Sentinel-Record		1	1		August 2013
Arkansas	Jonesboro	Sun		1	1		August 2013
Arkansas	Lonoke	Democrat		1	1		August 2013
Arkansas	Mountain Home	Baxter Bulletin		1	1		August 2013
Arkansas	North Little Rock	The Times		1	1		August 2013
Arkansas	Paragould	Daily Press		1	1		August 2013
Arkansas	Pine Bluff	Commercial		1	1		August 2013
Arkansas	Russellville	Courier		1	1	İ	August 2013

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<u>State</u>	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Arkansas	Sherwood	Voice		1	1		August 2013
Arkansas	Van Buren	Press Argus Courier		1	1		August 2013
California	Bakersfield	Bakersfield Californian	1		1		April 2013
California	El Centro	Imperial Valley Press	1		1		April 2013
California	Escondido	North County Times	1		1		April 2013
California	Fresno	Bee	1		1		April 2013
California	Handford	Sentinel	1		1		April 2013
California	La Fin De Semana	La Fin De Semana	1		1		April 2013
California	Lompoc	Lompoc Record	1		1		April 2013
California	Los Angeles	Times	1		1		April 2013
California	Marysville	Appeal-Democrat	1		1		April 2013
California	Merced	Sun-Star	1		1		April 2013
California	Modesto	Bee	1		1		April 2013
California	Napa	Napa Valley Register	1		1		April 2013
California	Palmdale	Antelope Valley Press	1		1		April 2013
California	Porterville	Recorder	1		1		April 2013
California	Redding	Record Searchlight	1		1		April 2013
California	Riverside	Press Enterprise	1		1		April 2013
California	Sacramento	Bee	1		1		April 2013
California	San Diego	Union-Tribune	1		1		April 2013
California	San Francisco	Chronicle	1		1		April 2013
California	San Luis Obispo	Tribune	1		1		April 2013
California	Santa Ana	Orange County Register	1		1		April 2013
California	Santa Barbara	News-Press	1		1		April 2013
California	Santa Maria	Times	1		1		April 2013
California	Santa Rosa	Press Democrat	1		1		April 2013
California	Stockton	Record	1		1		April 2013
California	Ventura	County Star	1		1		April 2013
California	Victorville	Daily Press	1		1		April 2013
California	Auburn	Journal		1	1		August 2013
California	Benicia	Herald		1	1		August 2013
California	Big Bear	Grizzly Weekender		1	1		August 2013
California	Carmel Valley	Carmel Valley News		1	1		August 2013
California	Chico	Enterprise-Record		1	1		August 2013
California	Coronado	Eagle Newspapers		1	1		August 2013
California	Davis	Enterprise		1	1		August 2013
California	Eureka	Times-Standard		1	1		August 2013
California	Fairfield	Daily Republic	1	1	1	1	April/August 2013
California	Gilroy	The Dispatch		1	1		August 2013
California	Grass Valley	The Union		1	1		August 2013
California	Hayward/Fremont/Pleasanton	ANG Newspapers		1	1		August 2013
California	Hollister	Weekend Pinnacle		1	1		August 2013
California	Jackson	Amador Ledger Dispatch		1	1		August 2013
California	Laguna Beach	Coastline Pilot		1	1		August 2013
California	Lakeport	Record-Bee		1	1		August 2013
California	Lodi	News-Sentinel		1	1		August 2013
California	Long Beach	Impacto USA		1	1		August 2013
California	Los Angeles	Daily News		1	1		August 2013
California	Los Angeles County	Breeze		1	1		August 2013
California	Los Angeles County	Press Telegram		1	1		August 2013
California	Los Angeles County	Star News-Valley Tribune-Daily News		1	1		August 2013
California	Madera	Tribune		1	1		August 2013
California	Manteca	Bulletin-Journal		1	1		August 2013
California	Marin County	Independent Journal		1	1		August 2013
California	Monterey	Herald		1	1		August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
California	Morgan Hill	Morgan Hill Times		1	1		August 2013
California	Oakland	Tribune		1	1		August 2013
California	Ontario	Bulletin Express		1	1		August 2013
California	Ontario	Inland Valley Daily Bulletin		1	1		August 2013
California	Palm Springs	Desert Sun		1	1		August 2013
California	Palo Alto/Menlo Park	The Daily News		1	1		August 2013
California	Pasadena	Weekly Star		1	1		August 2013
California	Placerville	Mountain Democrat		1	1		August 2013
California	Powa	Poway News Chieftain		1	1		August 2013
California	Ramona	Ramona Sentinel		1	1		August 2013
California	Rancho Bernardo	News-Journal		1	1		August 2013
California	Red Bluff	News		1	1		August 2013
California	Redlands	Facts		1	1		August 2013
California	Ridgecrest	The Daily Independent		1	1		August 2013
California	Riverside	La Prensa		1	1		August 2013
California	Roseville	The Press-Tribune		1	1		August 2013
California	Salinas	Californian		1	1		August 2013
California	San Bernardino	Sun		1	1		August 2013
California	San Francisco	Examiner		1	1		August 2013
California	San Gabriel Valley	Highlander		1	1		August 2013 August 2013
California	San Jose	Mercury News		1	1		August 2013 August 2013
	San Jose San Mateo/Lompoc	Times		1	1		August 2013 August 2013
California	· ·			1	1		
California	Santa Clarita	The Valley Signal		1	1		August 2013
California	Santa Cruz	Sentinel		1	1		August 2013 August 2013
California	Solano Beach	Solana Beach Sun		1	1		U
California	Ukiah	Journal		1	1		August 2013
California	Vacaville	Reporter		1	1		August 2013
California	Vallejo	Times-Herald		l	1		August 2013
California	Visalia	Times-Delta		1	1		August 2013
California	Walnut Creek	Contra Costa Times		1	1		August 2013
California	Watsonville	Register-Pajaronian		1	1		August 2013
California	Woodland	Democrat		1	1		August 2013
California	Yreka	Siskiyou Daily News		1	1		August 2013
California	Yucca Valley	Hi-Desert Star		1	1		August 2013
California	Yucca Valley	Observation Post		1	1		August 2013
Colorado	Boulder	Sunday Camera	1		1		April 2013
Colorado	Canon City	Daily Record	1		1		April 2013
Colorado	Colorado Springs	Gazette	1		1		April 2013
Colorado	Denver	The Denver Post	1	1	1	1	April/August 2013
Colorado	Grand Junction	Daily Sentinel	1		1		April 2013
Colorado	Longmont	Times-Call	1		1		April 2013
Colorado	Loveland	Daily Reporter-Herald	1		1		April 2013
Colorado	Montrose	Daily Press	1		1		April 2013
Colorado	Pueblo	Sunday Chieftain	1		1		April 2013
Colorado	Trinidad	The Chronicle News	1		1		April 2013
Colorado	Aspen	Times		1	1		August 2013
Colorado	Durango/Cortez	Herald-Journal		1	1		August 2013
Colorado	Fort Collins	Coloradoan		1	1		August 2013
Colorado	Frisco	Summit Daily News		1	1	İ	August 2013
Colorado	Glenwood Springs	Post Independent		1	1	1	August 2013
Colorado	Granby	Sky Hi News		1	1	1	August 2013
Colorado	Grand Junction	Free Press		1	1		August 2013
Colorado		Tribune		1	1		August 2013 August 2013
Colorado							
Colorado Colorado	Greeley Steamboat Springs	Steamboat Today		1	1		August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Colorado	Windsor	Windsor now		1	1		August 2013
Connecticut	Bridgeport	Connecticut Post	1		1		April 2013
Connecticut	Danbury	News-Times	1		1		April 2013
Connecticut	Greenwich	Time	1		1		April 2013
Connecticut	New Britain	Herald	1		1		April 2013
Connecticut	Manchester	Journal Inquirer	1		1		April 2013
Connecticut	Meriden	Record-Journal	1		1		April 2013
Connecticut	Middletown	Press	1		1		April 2013
Connecticut	New Haven	Register	1		1		April 2013
Connecticut	New London	Day	1		1		April 2013
Connecticut	Stamford	Advocate	1		1		April 2013
Connecticut	Torrington	Register Citizen	1		1		April 2013
Connecticut	Waterbury	Republican-American	1		1		April 2013
Connecticut	Hartford	Courant	-	1	1		August 2013
Connecticut	Norwalk	Hour		1	1		August 2013
Connecticut	Norwich	Bulletin		1	1		August 2013 August 2013
Connecticut	Willimantic	Chronicle		1	1		August 2013 August 2013
		Deleware State News	1	1	1		August 2013 April 2013
Deleware	Dover Wilmington	News Journal	1	1	1		August 2013
Deleware District of Columbia		Washington Post	1	1	1		August 2013 April 2013
	Washington		1	1	1		August 2013
District of Columbia	Washington	Informer	1	1	1		0
Florida	Bradenton	Herald	1		1		April 2013
Florida	Cape Coral	Daily Breeze	1		1		April 2013
Florida	Ft. Walton Beach	Northwest Florida Daily News	1		1		April 2013
Florida	Gainesville	Sun	1		1		April 2013
Florida	Jacksonville	The Florida Times-Union	1		1		April 2013
Florida	Lake City	Reporter	1		1		April 2013
Florida	Lakeland	Ledger	1		1		April 2013
Florida	Live Oak	Suwannee Democrat	1		1		April 2013
Florida	Miami	El Nuevo Herald	1		1		April 2013
Florida	Miami	Miami Herald	1		1		April 2013
Florida	Naples	Daily News	1		1		April 2013
Florida	Ocala	Star-Banner	1		1		April 2013
Florida	Panama City	News Herald	1		1		April 2013
Florida	Panama City	Freedom Florida Newspapers (Weekly)	1		1		April 2013
Florida	Sarasota	Herald-Tribune	1		1		April 2013
Florida	St. Augustine	Record	1		1		April 2013
Florida	St. Petersburg	Tampa Bay Times	1		1		April 2013
Florida	Stuart	Treasure Coast News	1		1		April 2013
Florida	Tampa	Tribune & Times	1		1		April 2013
Florida	The Villages	Daily Sun	1		1		April 2013
Florida	West Palm Beach	The Palm Beach Post	1		1		April 2013
Florida	Brooksville	Hernando Today		1	1		August 2013
Florida	Charlotte Harbor	Sun		1	1		August 2013
Florida	Clearwater	Tampa Bay Newspapers		1	1		August 2013
Florida	Coral Springs	Forum		1	1		August 2013
Florida	Crystal River	Citrus County Chronicle		1	1		August 2013
Florida	Daytona Beach	News-Journal	1	1	1	1	April/August 2013
Florida	Deerfield Beach	Forum	-	1	1	-	August 2013
Florida	Fleming Island	OPC News		1	1	1	August 2013
Florida	Ft. Lauderdale	East Side Forum		1	1	1	August 2013
Florida	Ft. Lauderdale	El Sentinel		1	1		August 2013 August 2013
Florida	Ft. Lauderdale/South Florida	Sun-Sentinel		1	1		August 2013 August 2013
Florida	Ft. Myers	News-Press		1	1		August 2013 August 2013
Florida	Jackson County	Floridian		1	1		August 2013 August 2013
Fioliua	Jackson County	riondian		1	1		August 2015

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Florida	Kissimmee	Osceola News-Gazette		1	1		August 2013
Florida	Leesburg	Commercial		1	1		August 2013
Florida	Margate & Coconut Creek	The Forum		1	1		August 2013
Florida	Melbourne	Florida Today		1	1		August 2013
Florida	Orlando	Sentinel	1	1	1	1	April/August 2013
Florida	Orlando	What's The Deal		1	1		August 2013
Florida	Pensacola	News Journal		1	1		August 2013
Florida	Pompano Beach	Forum		1	1		August 2013
Florida	Sebring	Higlands Today		1	1		August 2013
Florida	Tallahassee	Democrat		1	1		August 2013
Florida	Tampa	Centro Mi Diario		1	1		August 2013
Florida	Tampa/Newport Richey	Suncoast News		1	1		August 2013
Florida	Winter Haven	News Chief		1	1		August 2013
Georgia	Americus	Times-Recorder	1	1	1		April 2013
	Athens	Banner-Herald	1		1		April 2013
Georgia	Atlanta	Journal-Constitution	1		1		April 2013
Georgia		Chronicle	1		1		April 2013
Georgia	Augusta		1		1		
Georgia	Country	Ledger-Enquirer	1		1		April 2013
Georgia	Cordele	Dispatch	1		1		April 2013
Georgia	Hinesville	Coastal Courier	1		1		April 2013
Georgia	Macon	Telegraph	1		1		April 2013
Georgia	Milledgeville	Union-Recorder	1		1		April 2013
Georgia	Moultrie	Observer	1		1		April 2013
Georgia	Richmond Hill	Bryan County News	1		1		April 2013
Georgia	Rome	News Tribune	1		1		April 2013
Georgia	Savannah	Morning News	1		1		April 2013
Georgia	Statesboro	Herald	1		1		April 2013
Georgia	Thomasville	Times-Enterprise	1		1		April 2013
Georgia	Tifton	Gazette	1		1		April 2013
Georgia	Valdosta	Daily Times	1		1		April 2013
Georgia	Albany	Herald		1	1		August 2013
Georgia	Atlanta	Inquirer		1	1		August 2013
Georgia	Canton	Cherokee Tribune		1	1		August 2013
Georgia	Carrollton	Times-Georgian		1	1		August 2013
Georgia	Cartersville	The Daily Tribune News		1	1		August 2013
Georgia	Covington	News		1	1		August 2013
Georgia	Cummings	Forsyth County News		1	1		August 2013
Georgia	Cummings	South Forsyth News		1	1		August 2013
Georgia	Dalton	Citizen		1	1		August 2013
Georgia	Douglas County	Sentinel		1	1		August 2013
Georgia	Dublin	Courier Herald		1	1		August 2013
Georgia	Gainesville	Times		1	1		August 2013
Georgia	Griffin	News		1	1		August 2013
Georgia	Jonesboro/McDonough	Clayton News Daily		1	1		August 2013
Georgia	LaGrange	LaGrange Daily News		1	1	1	August 2013
Georgia	Lawrenceville/Conyers/Rockdale	Daily Post-Citizen		1	1		August 2013
Georgia	Marietta	Journal		1	1	<u> </u>	August 2013
Georgia	Marietta	Marietta Neighbor Papers		1	1		August 2013
Georgia	Newnan	Times-Herald		1	1		August 2013 August 2013
Georgia	Winder	The Barrow County News		1	1		August 2013 August 2013
Hawaii	Wailuku	Maui News	1	1	1		April 2013
Hawaii	Hilo	Tribune-Herald	1	1	1		August 2013
III a Wall				1	1		
	Honolulu	Stor Advortisor					
Hawaii Hawaii	Honolulu Kailua/Kona	Star-Advertiser West Hawaii Today		1	1		August 2013 August 2013

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State C	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Idaho E	Boise	Idaho Statesman	1		1		April 2013
Idaho I	Idaho Falls	Post-Register	1		1		April 2013
Idaho I	Lewiston	Morning Tribune	1		1		April 2013
	Nampa	Idaho Press-Tribune	1		1		April 2013
Idaho F	Pocatello	Idaho State Journal	1		1		April 2013
	Rexburg	Standard Journal	1		1		April 2013
	Twin Falls	Times-News	1		1		April 2013
	Coeur D'Alene	Press	-	1	1		August 2013
	Moscow	The Moscow-Pullman Daily News		1	1		August 2013
	Alton	Telegraph	1	-	1		April 2013
	Belleville	News-Democrat	1		1		April 2013
	Bloomington-Normal	Pantagraph	1		1		April 2013
	Canton	Daily Ledger	1		1		April 2013
	Carbondale	Southern Illinoisian	1		1		April 2013
	Champaign-Urbana	News-Gazette	1		1		April 2013
	Chicago	Tribune	1		1		April 2013
	Chicago/Fin de Semana	1	1		1		April 2013
		Fin De Semana	1		1		
	Decatur	Herald & Review	1		1		April 2013
	Effingham	Daily News	1		1		April 2013
	Freeport	Journal Standard	1		1		April 2013
	Galesburg	Register-Mail	1		1		April 2013
	Jacksonville	Journal-Courier	1		1		April 2013
	Kewanee	Star-Courier	1		1		April 2013
	Macomb	Journal	1		1		April 2013
	Monmouth	Daily Review Atlas	1		1		April 2013
	Mount Vernon	Register-News	1		1		April 2013
	Ottawa	Times	1		1		April 2013
	Pekin	Daily Times	1		1		April 2013
Illinois F	Peoria	Journal Star	1		1		April 2013
	Quincy	Herald-Whig	1		1		April 2013
	Springfield	State Journal-Register	1		1		April 2013
	Arlington Heights	Herald		1	1		August 2013
Illinois A	Arlington Heights	Reflejos		1	1		August 2013
Illinois A	Aurora	Beacon News		1	1		August 2013
	Benton	Evening News		1	1		August 2013
Illinois C	Centralia	Morning Sentinel		1	1		August 2013
Illinois	Chicago	News Crusader		1	1		August 2013
Illinois C	Chicago	La Raza		1	1		August 2013
Illinois C	Chicago	Sun-Times		1	1		August 2013
Illinois C	Crystal Lake	Northwest Herald		1	1		August 2013
Illinois I	Danville	Commercial-News		1	1		August 2013
Illinois I	De Kalb	Daily Chronicle		1	1		August 2013
	Downers Grove	Press Publications-Bartlett		1	1		August 2013
	Du Quoin	Evening Call		1	1		August 2013
	Eldorado	Journal		1	1		August 2013
	Elgin	Courier News	İ	1	1		August 2013
	Elmhurst	Press Publications	İ	1	1		August 2013
	Harrisburg	Register	1	1	1		August 2013
	Joliet	Herald-News		1	1		August 2013
	Kankakee	The Daily Journal		1	1		August 2013
	La Salle/Peru/Oglesby/Spring Valley	News-Tribune		1	1		August 2013 August 2013
	La Sane/Feru/Oglesby/Spring Valley	Reporter-Courier		1	1		August 2013 August 2013
	Marion	Republican		1	1		August 2013 August 2013
	Marion Morris	Daily Herald		1	1		0
				1			August 2013
Illinois	Mt. Carmel	Daily Republican Register		1	1		August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Illinois	Naperville	Sun		1	1		August 2013
Illinois	Oak Brook	Suburban Life		1	1		August 2013
Illinois	Olney	Olney Daily Mail		1	1		August 2013
Illinois	Pontiac	Leader		1	1		August 2013
Illinois	Rock Island/Moline/East Moline	Argus-Dispatch		1	1		August 2013
Illinois	Rockford	Register Star		1	1		August 2013
Illinois	Shelbyville	Daily Union		1	1		August 2013
Illinois	St. Charles	Chronicle		1	1		August 2013
Illinois	Sterling/Rock Falls	Sauk Valley		1	1		August 2013
Illinois	Suburban Chicago	Southtown		1	1		August 2013
Illinois	Waukegan/Lake County	News Sun		1	1		August 2013
Illinois	West Frankfort	American		1	1		August 2013
Indiana	Anderson	Herald Bulletin	1		1		April 2013
Indiana	Batesville	Herald Tribune	1		1		April 2013
Indiana	Bloomington	Hoosier Times	1		1		April 2013
Indiana	Columbus	Republic	1		1		April 2013
Indiana	Evansville	Courier & Press	1		1		April 2013
Indiana	Franklin	Daily Journal	1		1		April 2013
Indiana	Ft. Wayne	Journal Gazette	1		1		April 2013
Indiana	Goshen	News	1		1		April 2013
Indiana	Greenfield	The Daily Reporter	1		1		April 2013
Indiana	Greensburg	Daily News	1		1		April 2013
Indiana	Kokomo	Tribune	1		1		April 2013
Indiana	Lebanon	The Reporter	1		1		April 2013
Indiana	Logansport	Pharos-Tribune	1		1		April 2013
Indiana	Mooresville-Decatur	Times	1		1		April 2013
Indiana	Munster	Times	1		1		April 2013
Indiana	New Albany-Jeffersonville	Evening News & The Tribune	1		1		April 2013
Indiana	Rushville	The Republican	1		1		April 2013
Indiana	Seymour	Tribune	1		1		April 2013
Indiana	South Bend	Tribune	1		1		April 2013
Indiana	Terre Haute	Tribune-Star	1		1		April 2013
Indiana	Bluffton	News-Banner		1	1		August 2013
Indiana	Connersville	News Examiner		1	1		August 2013
Indiana	Crawfordsville	Journal Review		1	1		August 2013
Indiana	Elkhart	Truth		1	1		August 2013
Indiana	Frankfort	Times		1	1		August 2013
Indiana	Huntington	Herald-Press		1	1		August 2013
Indiana	Indianapolis	Star		1	1		August 2013
Indiana	Jasper	Herald		1	1		August 2013
Indiana	Kendallville	Kendallville Publishing Company		1	1		August 2013
Indiana	La Porte	Herald Argus		1	1		August 2013
Indiana	Lafayette/West Lafayette	Journal and Courier		1	1		August 2013
Indiana	Marion	Chronicle Tribune		1	1		August 2013
Indiana	Merriville	Post-Tribune		1	1		August 2013
Indiana	Michigan City	News-Dispatch		1	1		August 2013
Indiana	Muncie	Star-Press		1	1		August 2013
Indiana	New Castle	Courier-Times		1	1		August 2013
Indiana	Peru	Tribune		1	1		August 2013
Indiana	Richmond	Palladium-Item		1	1		August 2013
Indiana	Shelbyville	News		1	1		August 2013
Indiana	Vincennes	Sun-Commercial		1	1		August 2013
Indiana	Wabash	Plain Dealer		1	1		August 2013
Indiana	Warsaw	Times-Union		1	1		August 2013
Iowa	Ames	Tribune	1		1		April 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Iowa	Cedar Rapids	Gazette	1		1		April 2013
Iowa	Clinton	Herald	1		1		April 2013
Iowa	Davenport	Quad-City Times	1		1		April 2013
Iowa	Dubuque	Telegraph-Herald	1		1		April 2013
Iowa	Fort Dodge	Messenger	1		1		April 2013
Iowa	Knoxville	Journal Express	1		1		April 2013
Iowa	Marshalltown	Times-Republican	1		1		April 2013
Iowa	Mason City	Sunday Globe	1		1		April 2013
Iowa	Muscatine	Journal	1		1		April 2013
Iowa	Oskaloosa	Herald	1		1		April 2013
Iowa	Ottumwa	Courier	1		1		April 2013
Iowa	Sioux City	Journal	1		1		April 2013
Iowa	Waterloo	Courier	1		1		April 2013
Iowa	Burlington	Hawk Eye	1	1	1		August 2013
Iowa	Centerville	Daily Iowegian		1	1		August 2013 August 2013
Iowa	Council Bluffs	Nonpareil		1	1		August 2013 August 2013
		News Advertiser		1	1		August 2013 August 2013
Iowa	Creston Des Maines			1	1		August 2013 August 2013
Iowa	Des Moines	Register & Sunday Select		1	1		
Iowa	Ft. Madison	The Daily Democrat		1	1		August 2013
Iowa	Iowa City	Press-Citizen		1	1		August 2013
Iowa	Keokuk	Daily Gate City		1	1	-	August 2013
Iowa	Newton	News		1	1		August 2013
Kansas	Garden City	Telegram	1		1		April 2013
Kansas	Great Bend	The Telegram	1		1		April 2013
Kansas	Hays	Daily News	1		1		April 2013
Kansas	Manhattan	Mercury	1		1		April 2013
Kansas	Ottawa	The Ottawa Herald	1		1		April 2013
Kansas	Salina	Journal	1		1		April 2013
Kansas	Topeka	Capital-Journal	1		1		April 2013
Kansas	Wichita	Eagle	1		1		April 2013
Kansas	Abilene	Reflector-Chronicle		1	1		August 2013
Kansas	Arkansas City	Traveler		1	1		August 2013
Kansas	Chanute	The Chanute Tribune		1	1		August 2013
Kansas	Dodge City	Globe		1	1		August 2013
Kansas	Emporia	Gazette		1	1		August 2013
Kansas	Hutchinson	News	1	1	1	1	April/August 2013
Kansas	Lawrence	Journal-World		1	1		August 2013
Kansas	Leavenworth	Times		1	1		August 2013
Kansas	Newton	Kansan		1	1		August 2013
Kansas	Parsons	Parsons Sun		1	1		August 2013
Kansas	Pittsburg	Sun		1	1		August 2013
Kansas	Winfield	Courier		1	1		August 2013
Kentucky	Ashland	Sunday Independent	1		1	l	April 2013
Kentucky	Bowling Green	Daily News	1		1	1	April 2013
Kentucky	Corbin	Times-Tribune	1		1	1	April 2013
Kentucky	Danville	Kentucky Advocate	1		1	1	April 2013
Kentucky	Elizabethtown	News Enterprise	1		1	1	April 2013
Kentucky	Glasgow	Daily Times	1		1		April 2013
Kentucky	Henderson	The Gleaner	1		1	1	April 2013
Kentucky	Lexington	Herald-Leader	1		1		April 2013
Kentucky	London	The Sentinel-Echo	1		1		April 2013
Kentucky	Maysville	Ledger Independent	1		1		April 2013
Kentucky	Somerset	Commonwealth Journal	1		1	<u> </u>	April 2013 April 2013
Kentucky	Winchester	Sun	1		1	+	April 2013 April 2013
Kentucky		Kentucky Standard	1	1	1	<u> </u>	
кепциску	Bardstown	Kentucky Standard		1	1	I	August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Kentucky	Frankfort	The State Journal		1	1		August 2013
Kentucky	Harlan	Enterprise		1	1		August 2013
Kentucky	Hopkinsville	New Era		1	1		August 2013
Kentucky	Louisville	Courier-Journal & Sunday Select		1	1		August 2013
Kentucky	Madisonville	Messenger		1	1		August 2013
Kentucky	Middlesboro	News		1	1		August 2013
Kentucky	Owensboro	Messenger-Inquirer		1	1		August 2013
Kentucky	Paducah	Sun		1	1		August 2013
Kentucky	Prestonsburg	The Floyd County Times		1	1		August 2013
Kentucky	Richmond	Register		1	1		August 2013
Kentucky	Russellville	News Democrat & Leader		1	1		August 2013
Lousianna	Baton Rouge	Sunday Advocate	1	1	1		April 2013
Lousianna	Crowley	Post-Signal	1		1		April 2013
Lousianna	Eunice	Louisiana State Newspaper	1		1		April 2013
Lousianna	Franklin	The Banner Tribune	1		1		April 2013
	Houma	Daily Courier	1		1		April 2013
Lousianna			1		1		
Lousianna	Lake Charles	American Press	1		1		April 2013
Lousianna	Morgan City	The Daily Review	1		1		April 2013
Lousianna	New Orleans	Times-Picayune	1		1		April 2013
Lousianna	Ruston	Daily Leader	1		1		April 2013
Lousianna	Alexandria	Town Talk		1	1		August 2013
Lousianna	Bogalusa	Daily News		1	1		August 2013
Lousianna	Hammond	Star		1	1		August 2013
Lousianna	La Place	L'Observeteur		1	1		August 2013
Lousianna	Lafayette	Advertiser		1	1		August 2013
Lousianna	Monroe	News-Star		1	1		August 2013
Lousianna	New Iberia	Sunday Iberian		1	1		August 2013
Lousianna	Opelousas	World		1	1		August 2013
Lousianna	Shreveport	Times		1	1		August 2013
Lousianna	Thibodaux	Comet		1	1		August 2013
Maine	Augusta	Kennebeck Journal	1		1		April 2013
Maine	Lewiston	Sun Journal	1		1		April 2013
Maine	Portland	Maine Sunday Telegram	1		1		April 2013
Maine	Waterville	Morning Sentinel	1		1		April 2013
Maine	Bangor	News		1	1		August 2013
Maine	Biddeford	Journal-Tribune		1	1		August 2013
Maryland	Baltimore	Baltimore Weeklies	1		1		April 2013
Maryland	Baltimore	The Sun	1		1		April 2013
Maryland	Cumberland	Times-News	1		1		April 2013
Maryland	Frederick	News-Post	1		1		April 2013
Maryland	Hagerstown	Herald-Mail Newspapers	1		1		April 2013
Maryland	Easton	Star-Democrat	1		1		April 2013
Maryland	Elkton	Cecil Whig	1		1		April 2013
Maryland	Annapolis	Capital	1	1	1		August 2013
Maryland	Annapolis	Maryland Gazette		1	1		August 2013
Maryland	Baltimore	Times		1	1		August 2013 August 2013
Maryland	Easton	Sunday Star		1	1		August 2013 August 2013
Maryland	Salisbury	Times		1	1		August 2013 August 2013
				1	1		August 2013 August 2013
Maryland	Westminster	Carrol County Times	1	1			
Massachusetts	Boston	Sunday Globe	1				April 2013
Massachusetts	Hyannis	Cape Cod Times	1				April 2013
Massachusetts	New Bedford	Sunday Standard-Times	1		1		April 2013
Massachusetts	Springfield	Sunday Republican	1		1		April 2013
Massachusetts	Worcester	Sunday Telegram	1		1		April 2013
Massachusetts	Attleboro	Sun Chronicle		1	1		August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Massachusetts	Beverly	News		1	1		August 2013
Massachusetts	Boston	Herald		1	1		August 2013
Massachusetts	Brockton	Enterprise		1	1		August 2013
Massachusetts	Fall River	Herald News		1	1		August 2013
Massachusetts	Fitchburg	Sentinel & Enterprise		1	1		August 2013
Massachusetts	Framingham	Framingham Tab		1	1		August 2013
Massachusetts	Framingham	Natick Bulletin & Tab		1	1		August 2013
Massachusetts	Framingham/Milford	Metrowest Daily News		1	1		August 2013
Massachusetts	Gloucester	Daily Times		1	1		August 2013
Massachusetts	Greenfield	Recorder		1	1		August 2013
Massachusetts	Lowell	Sun		1	1		August 2013
Massachusetts	Marshfield	Abington Mariner		1	1		August 2013
Massachusetts	Marshfield	Rockland Standard		1	1		August 2013
Massachusetts	Newburyport	Daily News		1	1		August 2013
Massachusetts	North Adams	Transcript		1	1		August 2013
Massachusetts	North Andover	Eagle-Tribune		1	1		August 2013 August 2013
Massachusetts	Northampton	Hampshire Gazette		1	1		August 2013
				1	1		August 2013 August 2013
Massachusetts Massachusetts	Pittsfield/Berkshire Quincy	Eagle Patriot Ledger		1	1		August 2013 August 2013
Massachusetts		Canton Journal		1	1		August 2013 August 2013
	Rayham			1	1		Ų
Massachusetts	Taunton	Gazette	1	1	1		August 2013
Michigan	Adrian	The Daily Telegram	1		1		April 2013
Michigan	Ann Arbor	AnnArbor.com	1		1		April 2013
Michigan	Bad Axe	Huron Daily Tribune	1		1		April 2013
Michigan	Bay City	Times	1		1		April 2013
Michigan	Cadillac	News	1		1		April 2013
Michigan	Dearborn	Press & Guide	1		1		April 2013
Michigan	Flint	Journal	1		1		April 2013
Michigan	Gaylord	Herald-Times	1		1		April 2013
Michigan	Grand Rapids	Press	1		1		April 2013
Michigan	Jackson	Citizen Patriot	1		1		April 2013
Michigan	Kalamazoo	Gazette	1		1		April 2013
Michigan	Lapeer	The County Press	1		1		April 2013
Michigan	Marquette	Mining Journal	1		1		April 2013
Michigan	Midland	Daily News	1		1		April 2013
Michigan	Monroe	Sunday News	1		1		April 2013
Michigan	Mount Clemens	Macomb Daily	1		1		April 2013
Michigan	Mount Pleasant	Morning Sun	1		1		April 2013
Michigan	Muskegon	Sunday Chronicle	1		1		April 2013
Michigan	Petsokey	News-Review	1		1		April 2013
Michigan	Pontiac	Oakland Press	1		1		April 2013
Michigan	Royal Oak	Daily Tribune	1		1		April 2013
Michigan	Saginaw	News	1		1		April 2013
Michigan	Shelby Township	Advisor & Source Newspapers	1		1		April 2013
Michigan	Southgate	News-Herald	1		1		April 2013
Michigan	Traverse City	Record-Eagle	1		1		April 2013
Michigan	Alpena	News		1	1		August 2013
Michigan	Battle Creek	Enquirer		1	1		August 2013
Michigan	Benton Harbor/St. Joseph	Herald-Palladium		1	1		August 2013
Michigan	Big Rapids/Manistee	Pioneer-News Advocate		1	1		August 2013
Michigan	Cheboygan	Daily Tribune		1	1		August 2013
Michigan	Coldwater	The Daily Reporter		1	1	1	August 2013
Michigan	Detroit	News and Free Press & Sunday Select		1	1		August 2013
	Escanaba	Press		1	1		August 2013
Michigan							

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Michigan	Greenville	News		1	1		August 2013
Michigan	Hillsdale	News		1	1		August 2013
Michigan	Holland	Sentinel		1	1		August 2013
Michigan	Houghton	Mining Gazette		1	1		August 2013
Michigan	Howell	Livingston County Daily Press & Argus		1	1		August 2013
Michigan	Iron Mountain/Kingsford	News		1	1		August 2013
Michigan	Ironwood	Daily Globe		1	1		August 2013
Michigan	Lansing	Lansing Community Newspapers		1	1		August 2013
Michigan	Lansing	State Journal		1	1		August 2013
Michigan	Livonia	Eccentric		1	1		August 2013
Michigan	Livonia	Observer		1	1		August 2013
Michigan	Owosso	Argus-Press		1	1		August 2013
Michigan	Port Huron	Times-Herald		1	1		August 2013
Michigan	Sturgis	Sturgis Journal		1	1		August 2013
Michigan	Traverse City	Grand Traverse Insider		1	1		August 2013
Minnesota	Albert Lea	Tribune	1		1		April 2013
Minnesota	Austin	Daily Herald	1		1		April 2013
Minnesota	Bemidji	Pioneer	1		1		April 2013
Minnesota	Brainerd	Dispatch	1		1		April 2013
Minnesota	Duluth	News-Tribune Herald	1		1		April 2013
Minnesota	Fairbault	Daily News	1		1		April 2013
Minnesota	Grand Rapids	Herald-Review	1		1		April 2013
Minnesota	Hibbing	Daily Tribune	1		1		April 2013
Minnesota	Mankato	Free Press	1		1		April 2013
Minnesota	Minneapolis-St. Paul	Star Tribune	1		1		April 2013
Minnesota	Red Wing	Republican Eagle	1		1		April 2013
Minnesota	New Ulm	Journal	1		1		April 2013
Minnesota	Northfield	Northfield News	1		1		April 2013
Minnesota	Owatonna	People's Press	1		1		April 2013
Minnesota	St. Paul	Pioneer Press	1		1		April 2013
Minnesota	Virginia	Mesabi News	1		1		April 2013
Minnesota	Willmar	West Central Tribune	1		1		April 2013
Minnesota	Winona	Daily News	1		1		April 2013
Minnesota	Worthington	Daily Globe	1		1		April 2013
Minnesota	Eden Prairie	Minnesota Sun Newspapers		1	1		August 2013
Minnesota	Fairmont	Sentinel		1	1		August 2013
Minnesota	Fergus Falls	Journal		1	1		August 2013
Minnesota	Marshall	Independent		1	1		August 2013
Minnesota	Rochester	Post-Bulletin		1	1		August 2013
Minnesota	St. Cloud	Times		1	1		August 2013
Minnesota	Stillwater	Gazette		1	1		August 2013
Mississippi	Biloxi/Gulfport	Sun Herald	1		1		April 2013
Mississippi	Brookhaven	Daily Leader	1		1		April 2013
Mississippi	Clarksdale	Press Register	1		1		April 2013
Mississippi	Columbus	Commercial Dispatch	1		1		April 2013
Mississippi	Greenville	Delta Democrat Times	1		1		April 2013
Mississippi	Greenwood	Commonwealth	1		1		April 2013
Mississippi	Laurel	The Chronicle	1		1		April 2013
Mississippi	McComb	Enterprise-Journal	1		1		April 2013
Mississippi	Meridian	Star	1		1		April 2013
Mississippi	Picayune	Item	1		1		April 2013
Mississippi	Tupelo	Northeast Mississippi Daily Journal	1	1	1		April 2013
Mississippi	Vicksburg	Post	1		1		April 2013
Mississippi	Cleveland	Bolivar Commerical	1	1	1		August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Mississippi	Hattiesburg	American		1	1		August 2013
Mississippi	Jackson	Clarion-Ledger	1	1	1		August 2013
Mississippi	Kosciusko	Star-herald	1	1	1		August 2013
Mississippi	Natchez	Democrat		1	1		August 2013
Missouri	Cape Girardeau	Southeast Missourian	1		1		April 2013
Missouri	Columbia	Missourian	1		1		April 2013
Missouri	Dexter	Daily Statesman	1		1		April 2013
Missouri	Fulton	The Fulton Sun	1		1		April 2013
Missouri	Jefferson City	Sunday News Tribune	1		1		April 2013
Missouri	Joplin	Globe	1		1		April 2013
Missouri	Kansas City	Star	1		1		April 2013
Missouri	Kennett	Daily Dunklin Democrat	1		1		April 2013
Missouri	Nevada	Sunday Journal	1		1		April 2013
Missouri	Park Hills	Daily Journal	1		1		April 2013
Missouri	Poplar Bluff	Daily American Republic	1		1		April 2013
Missouri	Sedalia	Democrat	1		1		April 2013
Missouri	Sikeston	Standard Democrat	1		1		April 2013
Missouri	St. Joseph	News-Press	1		1		April 2013
Missouri	St. Louis	Post-Dispatch	1		1		April 2013
Missouri	St. Louis	Suburban Newspapers	1		1		April 2013
Missouri	Columbia	Tribune		1	1		August 2013
Missouri	Hannibal	Courier-Post		1	1		August 2013
Missouri	Independence/Blue Springs	Examiner		1	1		August 2013
Missouri	Kirksville	Kirksville Daily Express		1	1		August 2013
Missouri	Maryville	Maryville Daily Forum		1	1		August 2013
Missouri	Mexico	Mexico Ledger		1	1		August 2013
Missouri	Moberly	Moberly Monitor - Index and Evening Democrat		1	1		August 2013
Missouri	Rolla	Rolla Daily News		1	1		August 2013
Missouri	Springfield	News-Leader		1	1		August 2013
Missouri	St. Louis	American		1	1		August 2013
Missouri	Washington	Washington Missourian		1	1		August 2013
Montana	Billings	Gazette	1		1		April 2013
Montana	Bozeman	Daily Chronicle	1		1		April 2013
Montana	Butte	Montana Standard	1		1		April 2013
Montana	Helena	Independent Record	1		1		April 2013
Montana	Kalispell	Daily Inter Lake	1		1		April 2013
Montana	Missoula	Missoulian	1		1		April 2013
Montana	Great Falls	Tribune		1	1		August 2013
Nebraska	Breatrice	Daily Sun	1		1		April 2013
Nebraska	Columbus	Telegram	1		1		April 2013
Nebraska	Grand Island	Independent	1		1		April 2013
Nebraska	Lincoln	Journal-Star	1		1		April 2013
Nebraska	Norfolk	Norfolk Daily News	1		1		April 2013
Nebraska	North Platte	Telegraph	1		1		April 2013
Nebraska	Omaha	Sunday World-Herald	1		1		April 2013
Nebraska	Scottsbluff	Star-Herald	1		1		April 2013
Nebraska	York	News Times	1		1		April 2013
Nebraska	Fremont	Tribune		1	1		August 2013
Nebraska	Hasting	Hastings Tribune		1	1		August 2013
Nebraska	Kearney	Hub		1	1		August 2013
Nevada	Elko	Daily Free Press	1		1		April 2013
Nevada	Boulder City	Boulder City Review		1	1		August 2013
Nevada	Carson City	Nevada Appeal		1	1		August 2013
Nevada	Fallon	Lahontan Valley News and Eagle		1	1		August 2013
	Las Vegas	El Tiempo					August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Nevada	Las Vegas	Review-Journal	1	1	1	1	April/August 2013
Nevada	Mesquite	Desert Valley Times		1	1		August 2013
Nevada	Pahrump	Valley Times		1	1		August 2013
Nevada	Reno	Gazette-Journal & Sunday Select		1	1		August 2013
Nevada	South Lake Tahoe	Tahoe Daily Tribune		1	1		August 2013
Nevada	Tonopah	Tonopah Times-Bonanza		1	1		August 2013
Nevada	Truckee	Sierra Sun		1	1		August 2013
New Hampshire	Keene	Sentinel	1		1		April 2013
New Hampshire	Manchester	New Hampshire Sunday News	1		1		April 2013
New Hampshire	Portsmouth	herald Sunday	1		1		April 2013
New Hampshire	Concord	Monitor	1	1	1		August 2013
New Hampshire	Dover/Laconia	Citizen-Foster's Sunday Citizen		1	1		August 2013 August 2013
New Hampshire	Lebanon/Hanover	Valley News		1	1		August 2013 August 2013
	Nashua			1	1		August 2013 August 2013
New Hampshire	Atlantic City	Telegraph Press of Atlantic City	1	1	1		August 2013 April 2013
New Jersey	ž		1		1		
New Jersey	Bergen	Record/North Jersey News	1		1		April 2013
New Jersey	Willingboro	Burlington County Times	1		1		April 2013
New Jersey	Flemington	Hunterdon Observer/Democrat	1		1		April 2013
New Jersey	Hackensack	Suburban Trends	1		1	-	April 2013
New Jersey	Jersey City	The Jersey Journal	1		1		April 2013
New Jersey	Newark	Star-Ledger	1		1		April 2013
New Jersey	Newton	New Jersey Herald	1		1		April 2013
New Jersey	Trenton	Times	1		1		April 2013
New Jersey	Trenton	Trentonian	1		1		April 2013
New Jersey	Woodbury	South Jersey Sunday	1		1		April 2013
New Jersey	Bridgewater	Courier-News		1	1		August 2013
New Jersey	Camden/Cherry Hill	Courier-Post		1	1		August 2013
New Jersey	East Brunswick	Home News Tribune		1	1		August 2013
New Jersey	Morristown/Parsippany	Record		1	1		August 2013
New Jersey	Neptune	Asbury Park Press		1	1		August 2013
New Jersey	Vineland	Journal		1	1		August 2013
New Mexico	Albuquerque	Sunday Journal	1	1	1	1	April/August 2013
New Mexico	Clovis	News Journal	1		1		April 2013
New Mexico	Hobbs	News-Sun	1		1		April 2013
New Mexico	Portales	News-Tribune	1		1		April 2013
New Mexico	Roswell	Daily Record	1		1		April 2013
New Mexico	Santa Fe	New Mexican	1		1		April 2013
New Mexico	Alamagordo	Times		1	1		August 2013
New Mexico	Angle Fire	Taos News-Sangre de Cristo Chronicle		1	1		August 2013
New Mexico	Belen	Valencia County News-Bulletin		1	1		August 2013
New Mexico	Carlsbad	Current-Argus		1	1		August 2013
New Mexico	Farmington	Times		1	1		August 2013
New Mexico	Gallup	Independent		1	1		August 2013
New Mexico	Las Cruces	Sun-News		1	1		August 2013
New Mexico	Los Alamos	Los Alamos Monitor		1	1		August 2013
New Mexico	Socorro	El Defensor Chieftain		1	1		August 2013
New York	Albany	Times Union	1	1	1		April 2013
New York	Auburn	Citizen	1		1	1	April 2013
New York	Batavia	Daily News	1		1	1	April 2013
New York	Buffalo	News	1		1		April 2013
			1	+	1		
New York New York	Canandaigua Catskill	Sunday Messenger Daily Mail	1		1		April 2013
			1				April 2013
New York	Corning	Sunday Leader	1				April 2013
New York	Geneva	Finger Lakes Times	1		1		April 2013
New York	Glens Falls	Post-Star	1		1		April 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
New York	Gloversville	Leader-Herald	1		1		April 2013
New York	Hornell	Tribune	1		1		April 2013
New York	Hudson	Register-Star	1		1		April 2013
New York	Kingston	Sunday Freeman	1		1		April 2013
New York	Malone	Tribune	1		1		April 2013
New York	Middletown	Sunday Record	1		1		April 2013
New York	New York	Post	1		1		April 2013
New York	Ogdensburg	Advance News	1		1		April 2013
New York	Oneida	Daily Dispatch	1		1		April 2013
New York	Oneonta	Daily Star	1		1		April 2013
New York	Plattsburgh	Press-Republican	1		1		April 2013
New York	Saratoga Springs	Saratogian	1		1		April 2013
New York	Staten Island	Sunday Advance	1		1		April 2013
New York	Syracuse	Post-Standard	1		1		April 2013
New York	Troy	Record	1		1		April 2013
New York	Watertown	Times	1		1		April 2013
New York	Adirondack	Enterprise	1	1	1		August 2013
New York		Press & Sun-Bulletin		1	1		August 2013
New York	Binghamton Dunkirk/Fredonia	Observer		1	1		August 2013 August 2013
New York		Star-Gazette		1	1		August 2013 August 2013
	Elmira			1	1		
New York	Ithaca	Journal		1	1		August 2013
New York	Jamestown	Post-Journal		1	1		August 2013
New York	Long Island	Newsday		1	1		August 2013
New York	Melville	This Week		1	1		August 2013
New York	New York	Sunday Values New York Daily News		1	1		August 2013
New York	New York City	Daily News		1	1		August 2013
New York	Niagara Falls	Niagara County Community Newspapers		1	1		August 2013
New York	Olean	Times Herald		1	1		August 2013
New York	Oswego	Palladium-Times		1	1		August 2013
New York	Poughkeepsie	Journal		1	1		August 2013
New York	Rochester	Democrat and Chronicle		1	1		August 2013
New York	Schenectady	Gazette		1	1		August 2013
New York	Utica	Observer-Dispatch		1	1		August 2013
New York	White Plains	Journal News		1	1		August 2013
New York	White Plains	Rivertown Express		1	1		August 2013
New York	White Plains	Yonkers/Mt. Vernon Express		1	1		August 2013
North Carolina	Albemarle	Stanley News & Press	1		1		April 2013
North Carolina	Burlington	Times-News	1		1		April 2013
North Carolina	Chapel Hill	The Chapel Hill News	1		1		April 2013
North Carolina	Charlotte	Observer	1		1		April 2013
North Carolina	Durham	News	1		1		April 2013
North Carolina	Elizabeth City	Daily Advance	1		1		April 2013
North Carolina	Fayetteville	Observer	1		1		April 2013
North Carolina	Gastonia	Gaston Gazette	1		1		April 2013
North Carolina	Goldsboro	News-Argus	1		1		April 2013
North Carolina	Greensboro	News & Record	1		1		April 2013
North Carolina	Greenville	Daily Reflector	1		1		April 2013
North Carolina	Hendersonville	Times-News	1		1		April 2013
North Carolina	Jacksonville	Daily News	1		1		April 2013
North Carolina	Kinston	Free Press	1		1		April 2013
North Carolina	New Bern	Sun-Journal	1		1		April 2013
North Carolina	Raleigh	News & Observer	1		1		April 2013
North Carolina	Rocky Mount	Telegram	1		1		April 2013
North Carolina	Shelby	Star	1		1		April 2013
riorui Carolilla	Sherby	The Pilot	1	-	1	1	April 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
North Carolina	Tarboro	Daily Southerner	1		1		April 2013
North Carolina	Washington	Daily News	1		1		April 2013
North Carolina	Wilmington	Star-News	1		1		April 2013
North Carolina	Winston-Salem	Journal	1		1		April 2013
North Carolina	Asheboro	Courier-Tribune		1	1		August 2013
North Carolina	Asheville	Citizen-Times		1	1		August 2013
North Carolina	Boone	The Watauga Democrat		1	1		August 2013
North Carolina	Boone	Watauga Mountain Times		1	1		August 2013
North Carolina	Charlotte	Carolina Weekly Newspapers		1	1		August 2013
North Carolina	Charlotte	Lake Norman Publications		1	1		August 2013
North Carolina	Clinton	The Sampson Independent		1	1		August 2013
North Carolina	Concord/Kannapolis	Independent Tribune		1	1		August 2013 August 2013
North Carolina	Durham	Herald-Sun		1	1		August 2013 August 2013
	Eden	News		1	1		August 2013 August 2013
North Carolina	Elizabethtown	The Bladen Journal		1	1		August 2013 August 2013
North Carolina				1	1		
North Carolina	Elkin	The Tribune		1	1		August 2013
North Carolina	Forest City	Courier		1	1		August 2013
North Carolina	Henderson	Dispatch		1	1		August 2013
North Carolina	Hickory	Record		1	1		August 2013
North Carolina	High Point	Enterprise		1	1		August 2013
North Carolina	Laurinburg	The Laurinburg Exchange		1	1		August 2013
North Carolina	Lenoir	News-Topic		1	1		August 2013
North Carolina	Lexington	Dispatch		1	1		August 2013
North Carolina	Lumberton	Robesonian		1	1		August 2013
North Carolina	Marion	The McDowell News		1	1		August 2013
North Carolina	Monroe	Enquirer-Journal		1	1		August 2013
North Carolina	Morganton	News-Herald		1	1		August 2013
North Carolina	Mount Airy	News		1	1		August 2013
North Carolina	Reidsville	Review		1	1		August 2013
North Carolina	Roanoke Rapids	Herald		1	1		August 2013
North Carolina	Rockingham	Richmond County Daily Journal		1	1		August 2013
North Carolina	Salisbury/Spencer/East Spencer	Salisbury Post		1	1		August 2013
North Carolina	Sanford	Herald		1	1		August 2013
North Carolina	Statesville	Record & Landmark		1	1		August 2013
North Carolina	West Jefferson	Ashe Mountain Times		1	1		August 2013
North Carolina	Wilson	Times		1	1		August 2013
North Carolina	Wilson-Salem	Journal-Sunday Direct		1	1		August 2013
North Dakota	Bismarck	Tribune	1		1		April 2013
North Dakota	Dickinson	Press	1		1		April 2013
North Dakota	Fargo	Forum	1		1		April 2013
North Dakota	Grand Forks	Herald	1		1		April 2013
North Dakota	Jamestown	The Sun	1		1		April 2013
North Dakota	Minot	Daily News	1		1		April 2013
Ohio	Ashland	Times-Gazette	1		1		April 2013
			1		1		
Ohio	Ashtabula	Star Beacon	1		1		April 2013
Ohio	Athens	News-Messenger	1		1		April 2013
Ohio	Cambridge	Daily Jeffersonian	1		1		April 2013
Ohio	Canton	Repository	1				April 2013
Ohio	Circleville	Herald	1		1		April 2013
Ohio	Cleveland	Plain Dealer	1		1		April 2013
Ohio	Columbus	Suburban News Publications	1		1		April 2013
Ohio	Dayton	Cox Ohio Southwest Group	1		1		April 2013
Ohio	Dayton	Daily News	1		1		April 2013
Ohio	Defiance	Crescent-News	1		1		April 2013
Ohio	East Liverpool	The Review	1		1		April 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Ohio	Elyria	Chronicle-Telegram	1		1		April 2013
Ohio	Findlay	The Courier	1		1		April 2013
Ohio	Fostoria	Review-Times	1		1		April 2013
Ohio	Hamilton	Journal News	1		1		April 2013
Ohio	Ironton	Tribune	1		1		April 2013
Ohio	Lima	News	1		1		April 2013
Ohio	Logan	Daily News	1		1		April 2013
Ohio	Lorain	Morning Journal	1		1		April 2013
Ohio	Middletown	Journal	1		1		April 2013
Ohio	New Philadelphia-Dover	Times Reporter	1		1		April 2013
Ohio	Salem	News	1		1		April 2013
Ohio	Springfield	News-Sun	1		1		April 2013
Ohio	Toledo	Blade	1		1		April 2013
Ohio	Waverly		1		1		April 2013
		The News Watchman	1		1		1
Ohio	Willoughby	Lake County News-Herald	1		1		April 2013
Ohio	Wooster	Daily Record	1		1		April 2013
Ohio	Youngstown	Vindicator	1	-	1		April 2013
Ohio	Akron	Beacon Journal		1	1		August 2013
Ohio	Akron	Cuyahoga Falls News Press		1	1		August 2013
Ohio	Bowling Green	Sentinel-Tribune		1	1		August 2013
Ohio	Bryan	Times		1	1		August 2013
Ohio	Cincinnati	Enquirer & Sunday Select		1	1		August 2013
Ohio	Columbus	Dispatch		1	1		August 2013
Ohio	Fairborn-Xenia	Daily Herald Gazette News-Current		1	1		August 2013
Ohio	Greenville	Advocate		1	1		August 2013
Ohio	Hillsboro	Times-Gazette		1	1		August 2013
Ohio	Hudson	Hub-Times		1	1		August 2013
Ohio	Jackson	Jackson County Times-Journal		1	1		August 2013
Ohio	Kent/Ravenna	Record-Courier		1	1		August 2013
Ohio	Lewis Center	This Week Community Newspapers		1	1		August 2013
Ohio	Lisbon	Morning Journal		1	1		August 2013
Ohio	Mansfield	News Journal		1	1		August 2013
Ohio	Marietta	Times		1	1		August 2013
Ohio	Martins Ferry/Belmont County	Times Leader		1	1		August 2013
Ohio	Medina	Gazette		1	1		August 2013
Ohio	Miami Valley	Sunday News		1	1		August 2013
Ohio	Napoleon	Northwest Signal		1	1		August 2013
Ohio	Newark	The Advocate Group		1	1		August 2013
Ohio	Norwalk	Reflector		1	1		August 2013
Ohio	Piqua	Call		1	1		August 2013 August 2013
Ohio	Pomeroy-Gallipolis	Daily Sentinel-Daily Tribune		1	1		August 2013 August 2013
				1	1		August 2013 August 2013
Ohio	Portsmouth	Times		1	1		0
Ohio	Sandusky	Register		1	1		August 2013
Ohio	Sidney	News		1	1		August 2013
Ohio	Steubenville	Herald-Star		1	1		August 2013
Ohio	Stow	Sentry		1	1		August 2013
Ohio	Tallmadge	Express		1	1		August 2013
Ohio	Tiffin	Advertiser-Tribune		1	1		August 2013
Ohio	Urbana	Citizen		1	1		August 2013
Ohio	Van Wert	Times-Bulletin		1	1		August 2013
Ohio	Warren	Tribune Chronicle		1	1		August 2013
Ohio	Washington Court House	Record-Herald		1	1		August 2013
Ohio	Wilmington	News-Journal		1	1		August 2013
Oklahoma	Claremore	Daily Progress	1		1		April 2013
Oklahoma	McAlester	News-Capitol	1		1		April 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Oklahoma	Miami	News-Record	1		1		April 2013
Oklahoma	Muskogee	Phoenix	1		1		April 2013
Oklahoma	Oklahoma City	Sunday Oklahoman	1		1		April 2013
Oklahoma	Pryor	The Daily Times	1		1		April 2013
Oklahoma	Tahlequah	Daily Press	1		1		April 2013
Oklahoma	Tulsa	World	1		1		April 2013
Oklahoma	Woodward	News	1		1		April 2013
Oklahoma	Ada	Evening News	-	1	1		August 2013
Oklahoma	Altus	Times		1	1		August 2013
Oklahoma	Ardmore	The Sunday Ardmorite		1	1		August 2013
Oklahoma	Bartlesville	Examiner-Enterprise		1	1		August 2013
Oklahoma	Chickasha	Star		1	1		August 2013
Oklahoma	Duncan	The Duncan Banner		1	1		August 2013
Oklahoma		Democrat		1	1		August 2013 August 2013
	Durant	The Edmond Sun		1	1		August 2013 August 2013
Oklahoma Oklahoma	Edmond Enid			1	1		August 2013 August 2013
		News & Eagle		1	1		0
Oklahoma	Lawton	Sunday Constitution		1	1		August 2013
Oklahoma	Norman	Transcript		1			August 2013
Oklahoma	Pauls Valley	Daily Democrat		1	1		August 2013
Oklahoma	Shawnee	News-Star		1	1		August 2013
Oklahoma	Stillwater	News-Press		1	1		August 2013
Oregon	Albany-Corvallis	Democrat-Herald/Corvallis Gazette-Times	1		1		April 2013
Oregon	Bend	Bulletin	1		1		April 2013
Oregon	Coos Bay	World	1		1		April 2013
Oregon	Eugene	Register-Guard	1		1		April 2013
Oregon	Klamath Falls	Herald and News	1		1		April 2013
Oregon	Medford	Mail Tribune	1		1		April 2013
Oregon	Ontario	Argus Observer	1		1		April 2013
Oregon	Pendleton	East Oregonian	1		1		April 2013
Oregon	Portland	Sunday Oregonian	1		1		April 2013
Oregon	Astoria	Daily Astoria		1	1		August 2013
Oregon	Grants Pass	Courier		1	1		August 2013
Oregon	Roseburg	News-Review of Douglas County		1	1		August 2013
Oregon	Salem	Statesman-Journal		1	1		August 2013
Pennsylvania	Allentown	Morning Call	1		1		April 2013
Pennsylvania	Beaver	County Times	1		1		April 2013
Pennsylvania	Carlisle	Sentinel	1		1		April 2013
Pennsylvania	Doylestown	Daily Intelligencer	1		1		April 2013
Pennsylvania	Du Bois	Tri-County Sunday	1		1		April 2013
Pennsylvania	Easton	Express-Times	1		1		April 2013
Pennsylvania	Erie	Times-News	1		1		April 2013
Pennsylvania	Gettysburg	Times	1		1		April 2013
Pennsylvania	Harrisburg	Patriot-News	1		1		April 2013
Pennsylvania	Hazleton	Standard-Speaker	1		1		April 2013
Pennsylvania	Johnstown	Sunday Tribune-Democrat	1		1		April 2013
Pennsylvania	Lancaster	Sunday News	1		1		April 2013
Pennsylvania	Levittown	Bucks County Courier Times	1		1		April 2013
Pennsylvania	New Castle	News	1		1		April 2013
Pennsylvania	Norristown	Times Herald	1		1		April 2013
Pennsylvania	Oil City-Franklin	The Derrick/The News-Herald	1		1		April 2013
Pennsylvania	Philadelphia	Inquirer	1		1		April 2013
Pennsylvania	Pittsburgh	Post-Gazette	1		1		April 2013
	5	Sunday Mercury	1		1		April 2013
Pennsylvania Pennsylvania	Pottstown Pottsville	Republican & Herald	1		1		April 2013 April 2013
Pennsylvania			1		1		
Pennsylvania	Primos	Delaware County Daily Times	1		1		April 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Pennsylvania	Reading	Eagle	1		1		April 2013
Pennsylvania	Sayre	Morning Times	1		1		April 2013
Pennsylvania	Scranton	Times-Tribune	1		1		April 2013
Pennsylvania	Smoakin	News Item	1		1		April 2013
Pennsylvania	Sharon	Herald	1		1		April 2013
Pennsylvania	State College	Center Daily Times	1		1		April 2013
Pennsylvania	Stroudsburg	Pocono Record	1		1		April 2013
Pennsylvania	Sunbury	Daily Item	1		1		April 2013
Pennsylvania	Towanda	Sunday Review	1		1		April 2013
Pennsylvania	Uniontown	Herald-Standard	1		1		April 2013
Pennsylvania	West Chester	Local News	1		1		April 2013
Pennsylvania	Wilkes-Barre	Times Leader	1		1		April 2013
Pennsylvania	Williamsport	Sun-Gazette	1		1		April 2013
Pennsylvania	Altoona	Mirror	1	1	1		August 2013
Pennsylvania	Bloomsburg	Press-Enterprise		1	1		August 2013
Pennsylvania	Bradford	Era		1	1		August 2013 August 2013
Pennsylvania	Butler	Eagle		1	1		August 2013 August 2013
				1	1		U U
Pennsylvania	Chambersburg	Public Opinion		1			August 2013 August 2013
Pennsylvania	Clearfield	Progress		1	1		0
Pennsylvania	Hanover	Sun		1	1		August 2013
Pennsylvania	Indiana	Gazette		1	1		August 2013
Pennsylvania	Lebanon	News		1	1		August 2013
Pennsylvania	Lehighton	Times News		1	1		August 2013
Pennsylvania	Lewistown	Sentinel		1	1		August 2013
Pennsylvania	Lock Haven	Express		1	1		August 2013
Pennsylvania	McKeesport/Duquesne/Clairton	News		1	1		August 2013
Pennsylvania	Meadville	Tribune		1	1		August 2013
Pennsylvania	New Kensington-Tarentum-Vandegrift	Valley News Dispatch		1	1		August 2013
Pennsylvania	Philadelphia	Metro Philadelphia		1	1		August 2013
Pennsylvania	Pittsburgh	Tribune-Review		1	1		August 2013
Pennsylvania	Somerset	Daily American		1	1		August 2013
Pennsylvania	Sunbury	Danville News		1	1		August 2013
Pennsylvania	Warren	Times-Observer		1	1		August 2013
Pennsylvania	Washington	Observer-Reporter	1	1	1	1	April/August 2013
Pennsylvania	Wilkes-Barre	Sunday Voice		1	1		August 2013
Pennsylvania	York	Sunday News		1	1		August 2013
Rhode Island	Providence	Sunday Journal	1		1		April 2013
Rhode Island	Kent County	Times		1	1		August 2013
Rhode Island	Newport	The Daily News		1	1		August 2013
Rhode Island	Pawtucket/Central Falls	Times		1	1		August 2013
Rhode Island	Westerly	Sun		1	1		August 2013
Rhode Island	Woonsocket	Call		1	1		August 2013
South Carolina	Anderson	Independent-Mail	1	-	1		April 2013
South Carolina	Charleston	Post and Courier	1		1		April 2013
South Carolina	Columbia	State	1		1		April 2013
South Carolina	Greenville	Journal	1		1		April 2013
South Carolina	Greenwood	Index-Journal	1		1		April 2013
South Carolina	Hilton Head Island	Island Packet	1		1		April 2013
South Carolina	Myrtle Beach	Sun News	1		1		April 2013
			1		1		
South Carolina	Orangeburg	Times & Democrat The Herald	1				April 2013
South Carolina	Rock Hill		1				April 2013
South Carolina	Spartanburg	Herald-Journal	1		1		April 2013
South Carolina	Sumter	Item	1		1		April 2013
South Carolina	Aiken	Standard	+	1	1		August 2013
South Carolina	Florence	Morning News		1	1		August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
South Carolina	Georgetown	Times		1	1		August 2013
South Carolina	Goose Creek	Gazette		1	1		August 2013
South Carolina	Greenville	News & Sunday Select		1	1		August 2013
South Carolina	Lancaster	The Lancaster News		1	1		August 2013
South Carolina	Newberry	The Newberry Observer		1	1		August 2013
South Carolina	Summerville	The Journal Scene		1	1		August 2013
South Carolina	Union	The Union Daily Times		1	1		August 2013
South Carolina	Winsboro	Herald Independent		1	1		August 2013
South Dakota	Aberdeen	American News	1		1		April 2013
South Dakota	Belle Fourche	Butte County Post	1		1		April 2013
South Dakota	Huron	Plainsman	1		1		April 2013
South Dakota	Mitchell	Daily Republic	1		1		April 2013
South Dakota	Rapid City	Journal	1		1		April 2013
South Dakota	Watertown	Public Opinion	1		1		April 2013
South Dakota	Sioux Falls	Argus Leader		1	1		August 2013
South Dakota	Yankton	Press & Dakotan		1	1		August 2013
Tennessee	Chattanooga	Times Free-Press	1		1		April 2013
Tennessee	Crossville	Chronicle	1		1		April 2013
Tennessee	Dyersburg	State Gazette	1		1		April 2013
Tennessee	Johnson City	Press	1		1		April 2013
Tennessee	Knoxville	News Sentinel	1		1		April 2013
Tennessee	Memphis	Commercial Appeal	1		1		April 2013
Tennessee	Morristown	Citizen Tribune	1		1		April 2013
Tennessee	Mufreesboro	Post	1		1		April 2013
Tennessee	Shelbyville	Shelbyville Times-Gazette	1		1		April 2013
Tennessee	Tullahoma	The Sunday News	1		1		April 2013
Tennessee	Athens	Post-Athenian		1	1		August 2013
Tennessee	Clarksville	Leaf-Chronicle		1	1		August 2013
Tennessee	Cleveland	Banner		1	1		August 2013
Tennessee	Columbia	Herald		1	1		August 2013
Tennessee	Cookeville	Herald-Citizen		1	1		August 2013
Tennessee	Dickson	Dickson Herald		1	1		August 2013
Tennessee	Elizabethton	Elizabethton Star		1	1		August 2013
Tennessee	Gallatin	News-Examiner		1	1		August 2013
Tennessee	Greeneville	The Greeneville Sun		1	1		August 2013
Tennessee	Hendersonville	Star News		1	1		August 2013
Tennessee	Jackson	Sun		1	1		August 2013
Tennessee	Kingsport	Times-News		1	1		August 2013
Tennessee	Lebanon	Democrat		1	1		August 2013
Tennessee	Maryville/Alcoa	Times		1	1		August 2013
Tennessee	Murfreesboro	News Journal		1	1		August 2013
Tennessee	Nashville	Tennessean & Sunday Select		1	1		August 2013
Tennessee	Newport	Plain Talk		1	1		August 2013
Tennessee	Oak Ridge	Oak Ridger		1	1		August 2013
Tennessee	Sevierville	Mountain Press		1	1		August 2013
Texas	Abilene	Reporter-News	1		1		April 2013
Texas	Amarillo	Globe-News	1		1		April 2013
Texas	Athens	Daily Review	1		1		April 2013
Texas	Austin	American-Statesman	1		1		April 2013
Texas	Beaumont	Enterprise	1		1		April 2013
Texas	Brownsville	Herald	1		1		April 2013
Texas	Brownwood	Bulletin	1		1		April 2013
Texas	Corpus Christi	Caller-Times	1		1		April 2013
Texas	Corsicana	Daily Sun	1		1		April 2013
Texas	Dallas/Al Dia	Al Dia	1		1		April 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Texas	Dallas/Briefing	Briefing	1		1		April 2013
Texas	Dallas	Morning News	1		1		April 2013
Texas	Denton	Record Chronicle	1		1		April 2013
Texas	El Paso	El Diario de El Paso	1		1		April 2013
Texas	Ft. Worth	Star-Telegram	1		1		April 2013
Texas	Gainsville	Daily Register	1		1		April 2013
Texas	Greenville	Herald Banner	1		1		April 2013
Texas	Harlingen	Valley Morning Star	1		1		April 2013
Texas	Houston	Houston Weekly	1		1		April 2013
Texas	Huntsville	Item	1		1		April 2013
Texas	Jacksonville	Daily Progress	1		1		April 2013
Texas	Kerrville	Daily Times	1		1		April 2013
Texas	Lubbock	Avalanche-Journal	1		1		April 2013
Texas	McAllen	Monitor	1		1		April 2013
Texas	Midland	Reporter-Telegram	1		1		April 2013
Texas	Mineral Wells	Index-Journal	1		1		April 2013
Texas	Odessa	American	1		1		April 2013
Texas	Palestine	Herald-Press	1		1		April 2013
Texas	Paris	News	1		1		April 2013
Texas	Plainview	Daily Herald	1		1		April 2013
Texas	San Angelo	Standard-Times	1		1		April 2013
Texas	Stephenville	Empire-Tribune	1		1		April 2013
Texas	Temple	Daily Telegram	1		1		April 2013
Texas	Texarkana	Gazette	1		1		April 2013
Texas	Tyler	Courier Times-Telegraph	1		1		April 2013
Texas	Victoria	Advocate	1		1		April 2013
Texas	Waco	Tribune-Herald	1		1		April 2013
Texas	Waxahachie	Daily Light	1		1		April 2013
Texas	Weslaco	Mid Valley Town Crier	1		1		April 2013
Texas	Wichita Falls	Times Record News	1		1		April 2013
Texas	Baytown	The Sun		1	1		August 2013
Texas	Bryan/College Station	Eagle		1	1		August 2013
Texas	Cleburne	Times-Review		1	1		August 2013
Texas	Clute	Brazosport Facts		1	1		August 2013
Texas	Del Rio	News Herald		1	1		August 2013
Texas	El Paso	Times/Y Mas		1	1		August 2013
Texas	Galveston County	News		1	1		August 2013
Texas	Houston	East Texas Community Newspapers		1	1		August 2013
Texas	Houston	Chronicle	1	1	1	1	April/August 2013
Texas	Houston	La Voz		1	1		August 2013
Texas	Houston	The Good Life		1	1		August 2013
Texas	Irving	Rambler		1	1		August 2013
Texas	Kileen	Herald	1	1	1	1	April/August 2013
Texas	Laredo	El Mercadito/Zapata		1	1		August 2013
Texas	Laredo/Zapata	Morning Times		1	1		August 2013
Texas	Lindale	Eat Texas Community Newspapers		1	1		August 2013
Texas	Longview	News-Journal		1	1		August 2013
Texas	Lufkin	Daily News		1	1		August 2013
Texas	Marshall	News Messenger		1	1		August 2013
Texas	McAllen	El Extra		1	1		August 2013
Texas	McAllen	The Coastal Current		1	1		August 2013
Texas	Nocogdoches	The Daily Sentinel		1	1		August 2013
Texas	New Braunfels	Herald-Zeitung		1	1		August 2013
Texas	Orange	Leader		1	1		August 2013
Texas	Plano	Star Local News Group		1	1		August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Texas	Port Arthur	News		1	1		August 2013
Texas	San Antonio	Conexion		1	1		August 2013
Texas	San Antonio	Express-News	1	1	1	1	April/August 2013
Texas	San Antonio	Light		1	1		August 2013
Texas	San Marcos	Daily Record		1	1		August 2013
Texas	Seguin	Seguin Gazette-Enterprise		1	1		August 2013
Texas	Sherman/Denison	Herald Democrat		1	1		August 2013
Texas	Van Alstyne	Leader		1	1		August 2013
Texas	Weatherford	The Democrat		1	1		August 2013
Utah	Logan	Herald Journal	1	-	1		April 2013
Utah	Provo	Daily Herald	1		1		April 2013
Utah	Salt Lake City	Tribune-Desert News	1		1		April 2013
Utah	Ogden	Standard-Examiner	1	1	1		August 2013
Utah	Salt Lake City	Media One of Utah		1	1		August 2013
Utah	St. George	Spectrum		1	1		August 2013
Vermont	Rutland/Barre	Rutland/Herald/Barre Times Argus	1	1	1		August 2013 April 2013
			1	1	1		August 2013
Vermont	Bennington	Banner		1	1		August 2013 August 2013
Vermont	Brattleboro	Reformer		1	1		
Vermont	Burlington	Free Press	1	1	1		August 2013
Virginia	Martinsville	Bulletin	1		1		April 2013
Virginia	Newport News	Daily Press	1		1		April 2013
Virginia	Norfolk	Virginian-Pilot	1		1		April 2013
Virginia	Petersburg	Progress-Index	1		1		April 2013
Virginia	Roanoke	Times	1		1		April 2013
Virginia	Bristol	Herald-Courier		1	1		August 2013
Virginia	Charlottesville	Progress		1	1		August 2013
Virginia	Culpeper	Star-Exponent		1	1		August 2013
Virginia	Danville	Register & Bee		1	1		August 2013
Virginia	Fredericksburg	Star Weekly		1	1		August 2013
Virginia	Fredericksburg	Free Lance-Star		1	1		August 2013
Virginia	Harrisonburg	News Record		1	1		August 2013
Virginia	Lynchburg	News & Advance		1	1		August 2013
Virginia	Richmond	Times-Dispatch	1	1	1	1	April/August 2013
Virginia	Staunton	News Leader		1	1		August 2013
Virginia	Strasburg	Northern Virginia Daily		1	1		August 2013
Virginia	Waynesboro	News Virginian		1	1		August 2013
Virginia	Winchester	Star		1	1		August 2013
Washington	Bellingham	Herald	1		1		April 2013
Washington	Bremerton	Kitsap Sun	1		1		April 2013
Washington	Ellensburg	Daily Record	1		1		April 2013
Washington	Longview	Daily News	1		1		April 2013
Washington	Mt. Vernon	Skagit Valley Herald	1		1		April 2013
Washington	Olympia	Olympian	1		1		April 2013
Washington	Pasco-Kennewick-Richland	Tri-City Herald	1		1		July 2012
Washington	Seattle	Times	1		1		April 2013
Washington	Spokane	Spokesman-Review	1		1		April 2013
Washington	Tacoma	News Tribune	1		1		April 2013
Washington	Vancouver	Columbian	1		1		April 2013
Washington	Walla Walla	Union-Bulletin	1		1	İ	April 2013
Washington	Yakima	Herald-Republic	1	1	1		April 2013
Washington	Aberdeen	Daily World	1	1	1		August 2013
Washington	Aberdeen	The South Beach Bulletin		1	1		August 2013 August 2013
Washington	Bellevue	Reporter		1	1		August 2013 August 2013
Washington	Centralia/Chehalis	Chronicle		1	1		August 2013 August 2013
		IN THE OTHER COMPANY AND A DECEMBER OF A DECEMBER		1	1		

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Washington	Everett	Bainbridge Island Review		1	1		August 2013
Washington	Everett	Bremerton Patriot		1	1		August 2013
Washington	Everett	Central Kitsap Reporter		1	1		August 2013
Washington	Everett	Covington/Maple Valley Reporter		1	1		August 2013
Washington	Everett	Federal Way Mirror		1	1		August 2013
Washington	Everett	Herald		1	1		August 2013
Washington	Everett	North Kitsap Herald		1	1		August 2013
Washington	Everett	Port Orchard		1	1		August 2013
Washington	Everett	South Whidbey Record		1	1		August 2013
Washington	Everett	Whidbey News Times		1	1		August 2013
Washington	Issaquah/Sammamish	Reporter		1	1		July 2012
Washington	Kent	Reporter		1	1		July 2012
Washington	Kirkland	The Kirkland Reporter		1	1		August 2012
Washington	Montesano	Vidette		1	1		August 2013
Washington	Moses Lake	Columbia Basin Herald		1	1		August 2013
Washington	Port Angeles	Peninsula Daily News		1	1		August 2013 August 2013
Washington	Redmond			1	1		August 2013 August 2013
		Reporter		1	1		0
Washington	Renton	Reporter World	1	1	1	1	August 2013
Washington	Wenatchee		1	1	1	I	April/August 2013
West Virginia	Beckley	Register-Herald	1		1		April 2013
West Virginia	Bluefield	Daily Telegraph	1		1		April 2013
West Virginia	Clarksburg	Exponent Telegram	1		1		April 2013
West Virginia	Fairmont	Times West Virginian	1		1		April 2013
West Virginia	Martinsburg	Sunday Journal	1		1		April 2013
West Virginia	Morgantown	Dominion Post	1		1		April 2013
West Virginia	Parkersburg	News	1		1		April 2013
West Virginia	Princeton	Times	1		1		April 2013
West Virginia	Wheeling	Sunday News-Register	1		1		April 2013
West Virginia	Charleston	Sunday Gazette-Mail	1	1	1	1	April/August 2013
West Virginia	Elkins	Inter-Mountain		1	1		August 2013
West Virginia	Gallipolis/Point Plesant	Register (WV)		1	1		August 2013
West Virginia	Huntington	Herald-Dispatch		1	1		August 2013
West Virginia	Logan	Logan Banner		1	1		August 2013
West Virginia	Weirton	Daily Times		1	1		August 2013
West Virginia	Williamson	Daily News		1	1		August 2013
Wisconisn	Baraboo	News Republic	1		1		April 2013
Wisconisn	Beaver Dam	Daily Citizen	1		1		April 2013
Wisconisn	Chippewa Falls	Chippewa Valley Newspapers	1		1		April 2013
Wisconisn	Eau Claire	Leader-Telegram	1		1		April 2013
Wisconisn	Kenosha	News	1		1		April 2013
Wisconisn	La Crosse	Tribune	1		1		April 2013
Wisconisn	Madison	Wisconsin State Journal	1		1		April 2013
Wisconisn	Portage	Daily Register	1	1	1		April 2013
Wisconisn	Racine	Journal Times	1	1	1		April 2013
Wisconisn	Rhinelander	Daily News	1		1		April 2013
Wisconsin	Shawano	Leader	1		1		April 2013
Wisconisn	Appleton	Post-Crescent		1	1		August 2013
Wisconisn	Beloit	News		1	1	İ	August 2013
Wisconisn	Beloit	My Stateline Shopper		1	1	1	August 2013
Wisconisn	Fond Du Lac	Reporter		1	1		August 2013
Wisconisn	Green Bay	Press-Gazette		1	1		August 2013
Wisconisn	Janesville	Gazette		1	1		August 2013
Wisconisn	Manitowoc/Two Rivers	Herald Times Reporter		1	1		August 2013
1 11 1500111511	wiaintowoc/ i wo Kiveis	ricialu rinies Reponei		1	1	ł	0
Wisconisn	Marinette	Eagle Herald		1	1		August 2013

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State	City	Newspaper	Parade	USA Weekend	Frequency	Duplication	Source
Wisconisn	Oshkosh	Northwestern		1	1		August 2013
Wisconisn	Rhinelander	Star Journal		1	1		August 2013
Wisconisn	Sheboygan	Press		1	1		August 2013
Wisconisn	Superior	Telegram		1	1		August 2013
Wisconisn	Watertown	Times		1	1		August 2013
Wisconisn	Wausau	Marshfield New-Herald		1	1		August 2013
Wisconisn	Wausau	Stevens Point Journal		1	1		August 2013
Wisconisn	Wausau	Wausau Daily Herald		1	1		August 2013
Wisconisn	Wausau	Wisconsin Rapids Daily Tribune		1	1		August 2013
Wisconisn	Wausau-Stevens Point	Central WI Sunday		1	1		August 2013
Wisconisn	Wausau-Stevens Point	Herald-Central WI Sunday		1	1		August 2013
Wyoming	Casper	Star-Tribune	1		1		April 2013
Wyoming	Cheyenne	Wyoming Tribune-Eagle	1	1	1	1	April/August 2013
Wyoming	Laramie	Boomerang	1	1	1	1	April/August 2013
Wyoming	Rawlins	Times	1		1		April 2013
Wyoming	Rock Springs	Rocket-Miner	1		1		April 2013
		TOTAL	597	647	1226	18	
			Parade Circ.	USA Weekend Circ.		1	
			4/1/13	8/1/13			
			32,500,000	22,296,979			

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Attachment 3

Hydroxycut

4/10/2014

Notice plan reaches an estimated 81.1% of Adults who take an over the counter remedy for weight loss, an estimated 3.1 times each.

	Media	Frequency	Distribution	Space & Material Close	Ad Unit
lewspaper Inserts					
	Parade	Weekly	National	30 days prior to issue date	3/10 page
	USA Weekend	Weekly	National	30 days prior to issue date	1/4 page
lagazine					
	Life & Style	Weekly	National	30 days prior to issue date	1/3 page
	Men's Fitness	10/year	National	60 days prior to issue date	1/3 page
	OK! Magazine	Weekly	National	30 days prior to issue date	1/3 page
	US Weekly	Weekly	National	30 days prior to issue date	1/3 page
Online					
	Facebook	Real-time	165,000,000 impressions	10 days prior to live date	100x80
	Conversant (formally Valueclick)	Real-time	85,000,000 impressions	10 days prior to live date	468x60
ress Release					
	PR Newswire	One-time	National	2 days prior to issue date	600 word max
ssumes Notice word cou	nt is kept at 550 words or fewer				
stimate(s) good for 60 da	-				

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