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IOVATE HEALTH SCIENCES U.S.A. INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA BARBARA

DANIEL GARCIA, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

IOVATE HEALTH SCIENCES U.S.A. INC., a  
Delaware corporation and DOES 1-10, Inclusive,

Defendants.

KEVIN BRANCA, an individual on behalf of  
himself and all others similarly situated,

Intervenor.

CHRIS LEATON and LINDSEY DUNN, on  
behalf of themselves and all others similarly  
situated,

Plaintiff-Intervenors.

Case No. 1402915

**CLASS ACTION SETTLEMENT  
AGREEMENT**

**CLASS ACTION**

Dept.: SB 1  
Hon. James E. Herman

Complaint Filed: July 20, 2012

1 This Class Action Settlement Agreement (the “Settlement”), dated October 20, 2016, is  
2 made and entered into by and between the Class Representative Chris Leaton, on behalf of himself  
3 and the Settlement Class, and Defendant Iovate Health Sciences U.S.A. Inc. to settle and  
4 compromise this Action and settle, resolve, and discharge the Released Claims, as defined below,  
5 according to the terms and conditions herein.

6 **PREAMBLE**

7 1. WHEREAS, on July 20, 2012, Daniel Garcia filed the above-captioned class action  
8 lawsuit against Defendant Iovate Health Sciences U.S.A. Inc. (“Defendant”) entitled *Garcia v.*  
9 *Iovate Health Sciences U.S.A. Inc.*, Santa Barbara County Superior Court, Case No. 1402915.

10 2. WHEREAS, on March 7, 2013, Kevin Branca filed a Complaint in Intervention.

11 3. WHEREAS, on July 16, 2015, Chris Leaton and Lindsay Dunn filed a Complaint in  
12 Intervention.

13 4. WHEREAS, Daniel Garcia, Kevin Branca, Chris Leaton, and Lindsey Dunn allege  
14 that Defendant has engaged in acts that violate state consumer protections laws (including  
15 California’s False Advertising Laws (“FAL”), Bus. & Prof. Code § 17500 et seq., California’s  
16 Unfair Competition Laws (“UCL”), and California's Consumers Legal Remedies Act (“CLRA”),  
17 Civil Code § 1750 et seq.), as well as the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq.,  
18 breach of express warranty, breach of implied warranty, and that as a direct result of such  
19 violations, Class Representative and the putative class have suffered monetary damages and also  
20 seek equitable remedies.

21 5. WHEREAS, based upon the discovery taken to date, investigation, and evaluation of  
22 the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of  
23 continued litigation and all factors bearing on the merits of settlement, Chris Leaton (hereinafter the  
24 “Class Representative”) has agreed to settle the claims asserted in the Action pursuant to provisions  
25 of this Settlement.

26 NOW, THEREFORE, subject to the Final Approval of the Court as required herein and by  
27 applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises  
28

1 and covenants contained herein, that any Released Claims against any Released Parties shall be  
2 settled, compromised and forever released upon the following terms and conditions.

3 **TERMS AND CONDITIONS OF THE SETTLEMENT**

4 **1. DEFINITIONS**

5 As used in this Class Action Settlement Agreement and the related documents attached  
6 hereto as exhibits, the terms set forth below shall have the meanings set forth below.

7 1.1. "Action" means the civil action entitled *Garcia v. Iovate Health Sciences U.S.A. Inc.*,  
8 Case No. 1402915, currently pending in the Superior Court for the State of California, County of  
9 Santa Barbara.

10 1.2. "Claim" or "Settlement Claim" means a claim for payment submitted by a  
11 Settlement Class Member to the Claims Administrator as provided in this Class Action Settlement  
12 Agreement.

13 1.3. "Claim Form" or "Settlement Claim Form" means a claim form, substantially in the  
14 form of Exhibit C attached hereto, to be submitted by Claimants seeking payment pursuant to this  
15 Class Action Settlement Agreement to the Claims Administrator.

16 1.4. "Claimant" means a Settlement Class Member who submits a claim for payment.

17 1.5. "Claims Administrator" refers to Digital Settlement Group LLC.

18 1.6. "Class Action Settlement Agreement," "Settlement Agreement," "Settlement," or  
19 "Agreement" means this Class Action Settlement Agreement, including the attached exhibits.

20 1.7. "Class Counsel" means L. Timothy Fisher and the law firm of Bursor & Fisher, P.A.

21 1.8. "Class Period" means the time period between May 2, 2009 through the date the  
22 Preliminary Approval Order is entered.

23 1.9. "Class Representative" means Chris Leaton.

24 1.10. "Claim Fund" means the sum of money that Defendant shall make available for  
25 payment of Valid Claims.

26 1.11. "Court" means the Superior Court for the State of California, County of Santa  
27 Barbara.

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1 1.12. “Covered Products” means any of the Hydroxycut-branded products marketed by  
2 Defendant during the Class Period including Hydroxycut Pro Clinical, Hydroxycut Pro Clinical  
3 Drink mix, Hydroxycut Pro Clinical 99% Caffeine Free, Hydroxycut Pro Clinical Caffeine Free,  
4 Hydroxycut Pro Clinical Gummies, Hydroxycut Advanced, Hydroxycut Gummies, Hydroxycut  
5 Protein Bars, Hydroxycut Lean Protein Shakes, Hydroxycut Green Coffee, Hydroxycut Zero  
6 Weight Loss Protein, Hydroxycut Appetite Control, Hydroxycut Ultra, Hydroxycut Premium CLA,  
7 Hydroxycut All-in-One, Hydroxycut Results, Hydroxycut Black, Hydroxycut SX-7, Hydroxycut SX  
8 7 Thermo Powder, Hydroxycut SX-7 Non-Stimulant, Hydroxycut SX-7 Black Onyx, Hydroxycut  
9 SX-7 Black Onyx Ultra Probiotic, Hydroxycut SX-7 Black Onyx Non-stimulant, Hydroxycut  
10 Maximo, Hydroxycut Max, Hydroxycut Max Pro Clinical, Hydroxycut Max SX-7 Black Onyx,  
11 Hydroxycut Hardcore, Hydroxycut Hardcore Next Gen, Hydroxycut Hardcore Pro Series Ignition  
12 Stix, Hydroxycut Hardcore Elite, Hydroxycut Hardcore Elite Sport, and Hydroxycut Hardcore Elite  
13 Non-Stimulant.

14 1.13. “Defendant” means Iovate Health Sciences U.S.A. Inc., as well as its past, present,  
15 and future officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries,  
16 partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees,  
17 vendors, subcontractors, coconspirators, buyers, independent contractors, attorneys, representatives,  
18 heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities.

19 1.14. “Defendant’s Counsel” means Defendant’s counsel of record in the Action, Scott J.  
20 Ferrell, David W. Reid, and the law firm known as Pacific Trial Attorneys, APC.

21 1.15. “Effective Date” means the first date by which all of the following events shall have  
22 occurred: the Court has entered the Final Approval Order and Judgment on the docket in the Action,  
23 and (a) the time to appeal from such order has expired and no appeal has been timely filed, (b) if  
24 such an appeal has been filed, it has finally been resolved and has resulted in an affirmation of the  
25 Final Approval Order and Judgment, or (c) the Court, following the resolution of the appeal, enters  
26 a further order or orders approving settlement on the terms set forth herein, and either no further  
27 appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).  
28 Neither the pendency of the Fee and Cost Application, nor any appeal pertaining solely to a decision

1 on the Fee and Cost Application, shall in any way delay or preclude the Final Approval Order and  
2 Judgment from becoming final.

3 1.16. “Fee and Cost Application” means the written motion or application by which the  
4 Class Representative and/or Class Counsel request that the Court award attorneys’ fees, costs,  
5 expenses and incentive awards.

6 1.17. “Final Approval Hearing” means the hearing scheduled to take place at least ninety  
7 days after the date of entry of the Preliminary Approval Order at which the Court shall: (a)  
8 determine whether to grant final approval to this Class Action Settlement Agreement and to certify  
9 the Settlement Class; (b) consider any timely objections to this Settlement and all responses thereto;  
10 and (c) rule on the Fee and Cost Application.

11 1.18. “Final Approval Order” means the order in which the Court grants final approval of  
12 this Class Action Settlement Agreement, certifies the Settlement Class, and authorizes the entry of a  
13 final judgment and dismissal of the Action with prejudice.

14 1.19. “Judgment” means the judgment to be entered by the Court pursuant to the  
15 Settlement.

16 1.20. “Notice” shall mean a document substantially in the form of Exhibit D hereto, and  
17 “Summary Notice,” meaning a document substantially in the form of Exhibit E hereto, to be  
18 disseminated in accordance with the Preliminary Approval Order, informing Persons who fall  
19 within the Settlement Class definition of, among other things, the pendency of the Action, the  
20 material terms of the Proposed Settlement, and their options with respect thereto.

21 1.21. “Notice Date” means the date thirty (30) days after the Court provides Preliminary  
22 Approval to the Settlement Agreement, by which the Claims Administrator shall commence  
23 dissemination of Notice to the Settlement Class.

24 1.22. “Notice Plan” means the method of providing the Settlement Class with notice of the  
25 Class Action Settlement Agreement, as approved by the Court.

26 1.23. “Notice Response Deadline” means the deadline for all members of the Settlement  
27 Class to respond to the Notice, which shall be sixty (60) days after the Notice Date.

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1           1.24. “Opt-Out Date” means the date that is the end of the period to request exclusion from  
2 the Settlement Class established by the Court and set forth in the Notice.

3           1.25. “Participating Claimant” means a Claimant who submits a Qualifying Settlement  
4 Claim Form in response to the Notice.

5           1.26. “Parties” means Class Representative Chris Leaton and Defendant Iovate Health  
6 Sciences U.S.A. Inc. “Party” shall refer to each of them individually.

7           1.27. “Person” means any natural person, individual, corporation, partnership, limited  
8 partnership, association, joint stock company, estate, legal representative, trust, unincorporated  
9 association, government or any political subdivision or agency thereof, any business or legal entity,  
10 and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and  
11 assignees.

12           1.28. “Plaintiffs” means Chris Leaton, Daniel Garcia, Kevin Branca, and Lindsey Dunn.

13           1.29. “Preliminary Approval Order” means the order in which the Court grants its  
14 preliminary approval to this Class Action Settlement Agreement and preliminarily certifies the  
15 Settlement Class, authorizes dissemination of Notice to the Settlement Class, and appoints the  
16 Claims Administrator.

17           1.30. “Publication Notice” means the long-form and short-form notices, substantially in  
18 the form of Exhibits D and E attached hereto. The long-form Publication Notice and the short-form  
19 Publication Notice will be published as set forth in the Preliminary Approval Order.

20           1.31. A “Qualifying Settlement Claim Form” shall mean a Claim Form that is fully  
21 completed, properly executed and timely returned to the Claims Administrator on or before the  
22 Notice Response Deadline by a Settlement Class Member. A “Qualifying Settlement Claim Form”  
23 must be either returned with a postmark via U.S. mail or via online through the Class Settlement  
24 Website to be created and maintained by the Claims Administrator, at the Participating Claimant’s  
25 discretion. The Claims Administrator reserves the right to seek additional information beyond the  
26 Qualifying Settlement Claim Form, as necessary.

27           1.32. “Receipt” shall mean original documentary evidence (no photocopies) establishing  
28 the purchase of one or more Covered Products, the date of purchase and the purchase price.

1           1.33   “Released Claims” means all of the claims alleged in the First Amended Class  
2 Action Complaint filed in the Action.

3           1.34.   “Released Parties” and “Released Persons” means Defendant, its parent companies,  
4 subsidiary companies, affiliated companies, past, present, and future officers (as of the Effective  
5 Date), directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, joint  
6 partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees,  
7 vendors, subcontractors, coconspirators, buyers, independent contractors, attorneys, representatives,  
8 heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities, and all  
9 suppliers, wholesalers, distributors, and retailers of any Covered Products.

10          1.35.   “Releasing Parties” means all Settlement Class Members.

11          1.36.   “Request for Exclusion” means a valid request for exclusion from a member of the  
12 Settlement Class. To be valid, a request for exclusion must: (a) be submitted by the member of the  
13 Settlement Class; (b) be submitted to the Claims Administrator and postmarked by a date no later  
14 than the Notice Response Deadline; (c) contain the submitter’s name, address and telephone  
15 number; and (d) otherwise comply with the instructions set forth in the Notice.

16          1.37.   “Settlement” means the settlement set forth in this Class Action Settlement  
17 Agreement.

18          1.38.   “Settlement Class” means, collectively, all persons in the United States of America  
19 who purchased one or more of Defendant’s Covered Products at any time during the Class Period.  
20 Excluded from the Settlement Class are any officers, directors, or employees of Defendant, and the  
21 immediate family member of any such person. Also excluded is any judge who may preside over  
22 this case.

23          1.39.   “Settling Parties” means, collectively, Defendant, the Class Representative, and all  
24 Settlement Class Members.

25          1.40.   “Settlement Class Member” means any member of the Settlement Class who does  
26 not submit a timely and valid Request for Exclusion.

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1           1.41. “Valid Claim” means a claim for reimbursement submitted by a Settlement Class  
2 Member that satisfies all the criteria for submission of a Qualifying Settlement Claim Form and any  
3 additional information reasonably requested by the Settlement Administrator, if any.

4           1.42. The singular of any defined term includes the plural, and the plural of any defined  
5 term includes the singular.

## 6           **2. DENIAL OF WRONGDOING AND LIABILITY**

7           2.1. Defendant denies the material factual allegations and legal claims asserted by Plaintiffs  
8 including the Class Representative in the Action, including any and all charges of wrongdoing or  
9 liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have  
10 been alleged, in the Action.

## 11           **3. THE BENEFITS OF SETTLEMENT**

12           3.1. The Parties and their counsel recognize and acknowledge the expense and length of  
13 continued proceedings that would be necessary to prosecute the Action through trial and appeals.  
14 The Parties and their counsel also have taken into account the uncertain outcome and the risk of any  
15 litigation, especially in complex actions such as this Action, as well as the difficulties and delays  
16 inherent in such litigation. The Class Representative and Class Counsel are mindful of the inherent  
17 issues of proof and possible defenses to the claims asserted in the Action. The Class Representative  
18 and Class Counsel believe that the proposed settlement set forth in this Class Action Settlement  
19 Agreement confers substantial benefits upon the Settlement Class. Based on their evaluation of all  
20 of these factors, the Class Representative and Class Counsel have determined that the Class Action  
21 Settlement Agreement is in the best interests of the Class Representative and the Settlement Class.

## 22           **4. SETTLEMENT CONSIDERATION**

### 23           4.1. **Injunctive Relief**

24           4.1.1. Defendant will provide the Settlement Class injunctive relief by way of modification  
25 of the label, packaging, and advertising for Covered Products to ensure that to the extent Defendant  
26 still markets or sells Hydroxycut in the United States after the Effective Date, Iovate shall revise the  
27 labels on Hydroxycut manufactured ninety (90) days after the Effective Date to conform  
28 substantially to the following: Hydroxycut labels will include an appropriate disclaimer agreed



1 upon by the Parties. Defendant shall remove from its product labeling the following statement: “I  
2 highly recommend Pro Clinical Hydroxycut™. The key ingredients in this dietary supplement are  
3 clinically proven to help people lose weight.” Defendant shall also remove from its product  
4 labeling the word “significantly” from the following statement: “Test subjects also significantly  
5 reduced BMI versus the placebo group (10.2% vs 0.9%).” Nothing in this provision shall prevent  
6 Defendant from making changes to Hydroxycut labels not inconsistent with the foregoing, or as  
7 necessary to comply with governmental or regulatory requirements.

8 4.1.2. To the extent that any state and/or federal statute, regulation, policies, and/or code  
9 may at any time impose other, further, different and/or conflicting obligations or duties on  
10 Defendant at any time with respect to the Covered Products, this Class Action Settlement  
11 Agreement and any Judgment which may be entered pursuant thereto, as well as the Court’s  
12 continuing jurisdiction with respect to implementation and enforcement of the terms of this Class  
13 Action Settlement Agreement, shall cease as to the Settlement Class’s and Defendant’s conduct  
14 covered by that statute, regulation and/or code as of the effective date of such statute, regulation,  
15 and/or code.

16 4.2. **Monetary Relief**

17 4.2.1. Defendant shall make available a total Claim Fund of eight million dollars  
18 (\$8,000,000) for payment of Valid Claims.

19 4.2.1.1. Defendant shall not be required to make any part of the Claim Fund available to the  
20 Claims Administrator for payment of Valid Claims until after the Effective Date.

21 4.2.1.2. Defendant shall effect the transfer of sufficient funds to satisfy the payment of Valid  
22 Claims to an escrow account within 25 days after the Effective Date.

23 4.2.1.3. After the Preliminary Approval Order has been entered, but prior to the Effective  
24 Date, Defendant shall secure financial instruments sufficient for the payment of Valid Claims.

25 4.2.2. The amount of the refund for any claim shall be determined as follows:

26 4.2.2.1. For any Participating Claimant who provides an original Receipt, the Participating  
27 Claimant shall be entitled to a refund of the amount(s) shown on the original Receipt.  
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1           4.2.2.2. For any Participating Claimant who does not provide an original Receipt, but who  
2 submits a claim form, either online or via mail, attesting, swearing or affirming under penalty of  
3 perjury that he or she purchased a Covered Product during the Class Period, the actual amount paid  
4 to each Participating Claimant will be \$14.00 per bottle of the Covered Product, with a cap of two  
5 (2) bottles per household.

6           4.2.3. Participating Claimants cannot combine claims with Receipts with claims without  
7 Receipts.

8           4.2.4. Payment will be made directly to the Participating Claimant within ninety (90) days  
9 after the Effective Date.

10          4.2.5. Adequate and customary procedures and standards will be used by the Claims  
11 Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims  
12 including requesting additional information from Claimants (beyond the online claim form), if  
13 necessary.

14          4.2.6. Payments to Participating Claimants may be subject to pro rata reduction if the  
15 aggregate number of Valid Claims exceeds eight million dollars (\$8,000,000).

16 **5.       SUBSTANTIAL SIMILARITY OF COVERED PRODUCTS AND FILING OF**  
17 **AMENDED CLASS ACTION COMPLAINT**

18          5.1.1. Within seven (7) days of the full execution of this Class Action Settlement  
19 Agreement and notice of such full execution, Defendant shall provide a declaration of a person with  
20 knowledge within Defendant's company attesting to and explaining the substantial similarity of the  
21 Covered Products.

22          5.1.2. Upon receipt of the declaration from a person within Defendant's company attesting  
23 to and explaining the substantial similarity of the Covered Products, Class Representative shall  
24 prepare and successfully file an amended class action complaint asserting claims that the Covered  
25 Products are substantially similar and asserting a class definition that conforms to the class  
26 definition set forth herein.

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1       **6.       ADMINISTRATION AND NOTICE**

2               6.1.1. All costs and expenses of administering the Class Action Settlement Agreement and  
3 providing Notice in accordance with the Preliminary Approval Order (the “Administrative Costs”)  
4 shall be paid by Defendant, and shall not exceed two hundred fifty thousand dollars (\$250,000),  
5 plus postage.

6               6.1.2. **Appointment and Retention of Claims Administrator**

7               6.1.2.1. The Parties retained Digital Settlement Group LLC as a Notice Administrator and  
8 Claims Administrator to implement the terms of the Class Action Settlement Agreement.

9               6.1.2.2. The Claims Administrator will facilitate the notice process by assisting the Parties  
10 in the implementation of the Notice Plan and administering all aspects of the Settlement.

11              6.1.3. **Class Settlement Website**

12              6.1.3.1. The Claims Administrator will create and maintain the Class Settlement Website, to  
13 be activated within fifteen (15) days of the entry of the Preliminary Approval Order by the Court.  
14 The Claims Administrator’s responsibilities will also include securing an appropriate URL. The  
15 Class Settlement Website will post the settlement documents and case-related documents such as  
16 the Class Action Settlement Agreement, the Long-Form Notice, the Claim Form (in English and  
17 Spanish versions), and the Preliminary Approval Order. In addition, the Class Settlement Website  
18 will include procedural information regarding the status of the Court-approval process, such as an  
19 announcement of the Final Approval Hearing Date, when the Final Approval Order and Judgment  
20 have been entered, and when the Effective Date has been reached. Claimants will be able to submit  
21 their claims electronically via the Class Settlement Website.

22              6.1.3.2. The Class Settlement Website will terminate (be removed from the internet) and no  
23 longer be maintained by the Claims Administrator thirty (30) days after either (a) the Effective Date  
24 or (b) the date on which the Class Action Settlement Agreement is terminated or otherwise not  
25 approved by a court, whichever is later. The Claims Administrator will then transfer ownership of  
26 the URL to Defendant.

27              6.1.3.3. All costs and expenses related to the Class Settlement Website shall be paid by  
28 Defendant as part of the Administrative Costs as set forth in 6.1.1 of this Agreement.

1           6.1.4. **Notice Plan**

2           6.1.4.1. The class notice shall conform to all applicable requirements of the California  
3 Rules of Court, California Code of Civil Procedure, the United States Constitution (including the  
4 Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form  
5 agreed upon by the Parties and approved by the Court. The class notice shall constitute the best  
6 notice that is practicable under the circumstances.

7           6.1.4.2. Within thirty (30) days after preliminary approval by the Court of this Class Action  
8 Settlement Agreement, the Claims Administrator shall provide notice to the Settlement Class  
9 according to the Notice Plan.

10          6.1.4.3. The Notice Plan will include internet and print notice. The Notice Plan will have a  
11 calculated reach of seventy percent (70%) or greater, to be attested to by affidavit or declaration of  
12 the Settlement Administrator. A true and correct copy of the initial proposal for the Notice Plan is  
13 attached hereto as Exhibit A.

14          6.1.4.4. Defendant shall purchase the print notice associated with the Notice Plan, which  
15 shall be in addition to the \$250,000 amount paid to Digital Settlement Group LLC provided that  
16 such print notice shall not cost more than \$38,000.

17          6.1.4.5. The Parties agree to the content of these notices substantially in the forms attached  
18 to this Agreement as Exhibits D and E.

19           6.1.6. **Taxes**

20           Settlement Class Members, the Class Representative, and Class Counsel shall be responsible  
21 for paying any and all federal, state, and local taxes due on any payments made to them pursuant to  
22 the Class Action Settlement Agreement, if any.

23       7.     **RELEASES**

24           7.1. Upon the Effective Date, the Class Representative and each of the Settlement Class  
25 Members will be deemed to have, and by operation of the Judgment will have fully, finally, and  
26 forever released, relinquished, and discharged the Released Parties from all Released Claims during  
27 the Class Period.

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1       **8. CLASS CERTIFICATION**

2               8.1.1. The Parties agree that, for settlement purposes only, this Action shall be certified as a  
3 class action pursuant to section 382 of the California Code of Civil Procedure and rule 3.769 of the  
4 California Rules of Court with Class Representative serving as class representative and Class  
5 Counsel as counsel for the Settlement Class.

6               8.1.2. In the event the Class Action Settlement Agreement is terminated or for any reason  
7 the Class Action Settlement Agreement is not effectuated, the certification of the Settlement Class  
8 shall be vacated and the Action shall proceed as if the Settlement Class had not been certified.

9       **9. SETTLEMENT HEARING**

10              9.1. Promptly after execution of this Class Action Settlement Agreement, the Parties will  
11 submit the Class Action Settlement Agreement together with its Exhibits to the Court and will  
12 request that the Court grant preliminary approval of the Class Action Settlement Agreement, issue  
13 the Preliminary Approval Order, and schedule a hearing on whether the Class Action Settlement  
14 Agreement should be granted final approval and whether the Fee and Cost Application should be  
15 granted (“Settlement Hearing”).

16              **9.2. Procedures for Objecting to the Class Action Settlement Agreement**

17              9.2.1. Settlement Class Members shall have the right to appear and show cause, if they have  
18 any reason why the terms of this Class Action Settlement Agreement should not be given Final  
19 Approval, subject to each of the subprovisions in Paragraph 9.2. Any objection to this Class Action  
20 Settlement Agreement, including any of its terms or provisions, must be in writing, filed with the  
21 Court, with a copy served on Class Counsel, Counsel for Defendant, and the Claims Administrator  
22 at the addresses set forth in the Class Notice, and postmarked no later than the Notice Response  
23 Deadline. Settlement Class Members may object either on their own or through an attorney hired at  
24 their own expense.

25              9.2.2. If a Settlement Class Member hires an attorney to represent him or her at the Final  
26 Approval Hearing, he or she must do so at his or her own expense.

27              9.2.3. Any objection regarding or related to the Class Action Settlement Agreement shall  
28 contain a caption or title that identifies it as “Objection to Class Settlement in Garcia v. Iovate

1 Health Sciences U.S.A. Inc., No. 1402915” and also shall contain the following information: (i) the  
2 objector’s name, address, and telephone number, (ii) the name, address, and telephone number of  
3 any attorney for the objector with respect to the objection; (iii) the factual basis and legal grounds  
4 for the objection, including any documents sufficient to establish the basis for their standing as a  
5 Settlement Class Member, e.g., Receipt, or verification under oath as to the approximate date(s) and  
6 location(s) of their purchase(s) of the Covered Products; and (iv) identification of the case name,  
7 case number, and court for any prior class action lawsuit in which the objector and the objector’s  
8 attorney (if applicable) has objected to a proposed class action settlement, the general nature of such  
9 prior objection(s), and the outcome of said prior objection(s). If an objecting party chooses to  
10 appear at the hearing, no later than the Notice Response Deadline, a notice of intention to appear,  
11 either in person or through an attorney, must be filed with the Court and list the name, address,  
12 telephone number, facsimile number, and email address of the attorney, if any, who will appear.

13 9.2.4. If a Settlement Class Member wishes to present witnesses or evidence at the Final  
14 Approval Hearing in support of a timely and validly submitted objection, all witnesses must be  
15 identified in the objection, and true and correct copies of all supporting evidence must be appended  
16 to, or filed and served with, the objection. Failure to identify witnesses or provide copies of  
17 supporting evidence in this manner waives any right to introduce such testimony or evidence at the  
18 Final Approval Hearing. While the declaration described above is prima facie evidence that the  
19 objector is a member of the Settlement Class, Class Representative or Defendant or both may take  
20 discovery regarding the matter, subject to Court approval.

21 9.2.5. Any Settlement Class Member who does not object to the Class Action Settlement  
22 Agreement is deemed to be a Settlement Class Member and bound by the Class Action Settlement  
23 Agreement or any further orders of the Court in this Action.

24 **9.3. Right to Respond to Objections**

25 9.3.1. Class Counsel and Defendant shall have the right, but not the obligation, to respond to  
26 any objection no later than seven (7) days prior to the Final Approval Hearing. The Settling Party so  
27 responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail,  
28

1 hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for Class  
2 Representative and Defendant.

3 **9.4. Opt Outs**

4 9.4.1. Any Settlement Class Member who does not wish to participate in this Class Action  
5 Settlement Agreement must write to the Claims Administrator stating an intention to be “excluded”  
6 from this Class Action Settlement Agreement by the Opt-Out Date. This written Request for  
7 Exclusion must be sent via first class United States mail to the Claims Administrator at the address  
8 set forth in the Class Notice and postmarked no later than the Notice Response Deadline. The  
9 Request for Exclusion must be personally signed by the Class Member. So-called “mass” or “class”  
10 opt-outs shall not be allowed.

11 9.4.2. Any Settlement Class Member who does not request exclusion from the Settlement  
12 has the right to object to the Settlement as set forth in Paragraphs 9.2.1 to 9.2.5 above. If a Class  
13 Member submits a written Request for Exclusion, he or she shall be deemed to have complied with  
14 the terms of the opt-out procedure and shall not be bound by the Class Action Settlement  
15 Agreement if approved by the Court. However, any objector who has not timely requested  
16 exclusion from the Settlement will be bound by the terms of the Class Action Settlement Agreement  
17 and by all proceedings, orders and judgments in the Action.

18 **10. ATTORNEYS’ FEES, COSTS, AND EXPENSES AND INCENTIVE AWARDS**

19 10.1. Class Counsel may apply to the Court for an award of attorneys’ fees and costs in a  
20 total amount not to exceed One Million, Nine Hundred Thousand Dollars (\$1,900,000). Defendant  
21 shall pay any fees and costs awarded to Class Counsel.

22 10.2. Plaintiffs may apply to the Court for an enhancement award of \$5,000 each for their  
23 service as named plaintiffs, intervenors, or putative class representatives. Defendant agrees not to  
24 oppose Plaintiffs’ application for an enhancement award not to exceed \$5,000 each for any of the  
25 Plaintiffs.

26 10.3. A payment of attorneys’ fees, costs, expenses and the enhancement award, if approved  
27 by the Court, shall be payable within 30 days following the Superior Court’s final order approving  
28

1 the settlement and fee award, notwithstanding any appeal, subject to Class Counsel providing an  
2 undertaking in the form attached hereto as Exhibit B.

3 10.4. Class Counsel shall be solely responsible for paying any monies due to any and all  
4 other counsel for the Plaintiffs out of the payment of attorneys' fees and costs referenced in  
5 Paragraph 10.1. Defendant shall not be responsible for paying any other counsel, other than Class  
6 Counsel, and shall, in no event, be responsible for payment of more than \$1,900,000 in fees and  
7 costs.

8 10.5. Class Counsel shall indemnify and defend Defendant from any claims by any  
9 attorney or entity making a subsequent claim for attorneys' fees, costs or expenses arising from the  
10 settlement of this Action.

11 10.6. Any incentive payments awarded by the Court will be payable by Defendant to the  
12 Plaintiffs within ten days after the Effective Date.

13 **11. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF**  
14 **TERMINATION**

15 11.1. The Effective Date of this Class Action Settlement Agreement shall be the date as  
16 defined in Paragraph 1.15.

17 11.2. If this Class Action Settlement Agreement is not approved by the Court or the  
18 Settlement is terminated or fails to become effective in accordance with the terms of this Class  
19 Action Settlement Agreement, the Settling Parties will be restored to their respective positions in  
20 the Action as of the date the Motion for Preliminary Approval is filed. In such event, the terms and  
21 provisions of this Class Action Settlement Agreement and the Memorandum of Understanding  
22 dated May 11, 2016 will have no further force and effect with respect to the Settling Parties and will  
23 not be used in this Action or in any other proceeding for any purpose, and any Judgment or order  
24 entered by the Court in accordance with the terms of this Class Action Settlement Agreement will  
25 be treated as vacated.

26 11.3. No order of the Court or modification or reversal on appeal of any order of the Court  
27 concerning any award of attorneys' fees, expenses, or costs to Class Counsel will constitute grounds  
28 for cancellation or termination of this Class Action Settlement Agreement.



1 **12. MISCELLANEOUS PROVISIONS**

2 12.1. The Parties acknowledge that it is their intent to consummate this Class Action  
3 Settlement Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate  
4 and implement all terms and conditions of this Class Action Settlement Agreement and to exercise  
5 their best efforts to accomplish the foregoing terms and conditions of this Class Action Settlement  
6 Agreement.

7 12.2. The Parties intend the Settlement to be a final and complete resolution of all disputes  
8 between them with respect to the Action. The Settlement compromises claims that are contested and  
9 will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The  
10 Parties agree that the consideration provided to the Settlement Class and the other terms of the  
11 Settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached  
12 voluntarily after consultation with competent legal counsel.

13 12.3. Neither this Class Action Settlement Agreement nor the Settlement, nor any act  
14 performed or document executed pursuant to or in furtherance of this Class Action Agreement or  
15 the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the  
16 validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may be  
17 deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant  
18 in any civil, criminal, or administrative proceeding in any court, administrative agency or other  
19 tribunal. Any party to this Action may file this Class Action Settlement Agreement and/or the  
20 Judgment in any action that may be brought against it in order to support any defense or  
21 counterclaim, including without limitation those based on principles of res judicata, collateral  
22 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim  
23 preclusion or issue preclusion or similar defense or counterclaim.

24 12.4. All agreements made and orders entered during the course of the Action relating to the  
25 confidentiality of information will survive this Class Action Settlement Agreement.

26 12.5. Any and all Exhibits to this Class Action Settlement Agreement are material and  
27 integral parts hereof and are fully incorporated herein by this reference.

28 ///

1           12.6. This Class Action Settlement Agreement may be amended or modified only by a  
2 written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

3           12.7. This Class Action Settlement Agreement and any Exhibits attached hereto constitute  
4 the entire agreement among the Parties, and no representations, warranties, or inducements have  
5 been made to any Party concerning this Class Action Settlement Agreement or its Exhibits other  
6 than the representations, warranties, and covenants covered and memorialized in such documents.  
7 Except as otherwise provided herein, the Parties will bear their own respective costs.

8           12.8. Class Counsel, on behalf of the Settlement Class, are expressly authorized by the Class  
9 Representatives to take all appropriate action required or permitted to be taken by the Settlement  
10 Class pursuant to this Class Action Settlement Agreement to effectuate its terms, and are expressly  
11 authorized to enter into any modifications or amendments to this Class Action Settlement  
12 Agreement on behalf of the Settlement Class that Class Counsel deem appropriate.

13           12.9. Each counsel or other Person executing this Class Action Settlement Agreement or any  
14 of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do  
15 so.

16           12.10. This Class Action Settlement Agreement may be executed in one or more  
17 counterparts. All executed counterparts and each of them will be deemed to be one and the same  
18 instrument. A complete set of original counterparts will be filed with the Court.

19           12.11. This Class Action Settlement Agreement will be binding upon, and inure to the  
20 benefit of, the successors and assigns of the Settling Parties.


21           12.12. Except as provided herein, the Court will retain jurisdiction with respect to  
22 implementation and enforcement of the terms of this Class Action Settlement Agreement, and all  
23 parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the  
24 Settlement.

25           12.13. None of the Settling Parties, or their respective counsel, will be deemed the drafter of  
26 this Class Action Settlement Agreement or its Exhibits for purposes of construing the provisions  
27 thereof. The language in all parts of this Class Action Settlement Agreement and its Exhibits will be  
28

1 interpreted according to its plain meaning, and will not be interpreted for or against any of the  
2 Settling Parties as the drafter thereof.

3 12.14. This Class Action Settlement Agreement and any Exhibits hereto will be construed  
4 and enforced in accordance with, and governed by, the internal, substantive laws of the State of  
5 California without giving effect to that State's choice-of-law principles.

6  
7 Dated: October 19, 2016

8  
9 By:   
Chris Leaton

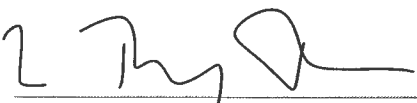
10  
11 Dated: October \_\_, 2016

12  
13 By: \_\_\_\_\_  
Roch Vaillancourt, General Counsel  
14 On behalf of Iovate Health Sciences U.S.A. Inc.

15  
16 **APPROVED AS TO FORM:**

17 Dated: October 19, 2016

18 **BURSOR & FISHER, P.A.**

19  
20 By:   
21 L. Timothy Fisher  
22 Attorneys for Plaintiff Chris Leaton, and the  
Settlement Class

23 Dated: October \_\_, 2016


24 **PACIFIC TRIAL ATTORNEYS, APC**

25 By: \_\_\_\_\_  
26 Scott J. Ferrell  
27 Attorneys for Defendant  
28 Iovate Health Sciences U.S.A. Inc.


1 interpreted according to its plain meaning, and will not be interpreted for or against any of the  
2 Settling Parties as the drafter thereof.

3 12.14. This Class Action Settlement Agreement and any Exhibits hereto will be construed  
4 and enforced in accordance with, and governed by, the internal, substantive laws of the State of  
5 California without giving effect to that State's choice-of-law principles.

6  
7 Dated: October \_\_, 2016

8  
9 By:   
Chris Leaton


10  
11 Dated: October 20, 2016

12  
13 By:   
Roch Vaillancourt, General Counsel  
On behalf of Iovate Health Sciences U.S.A. Inc.

14  
15  
16 **APPROVED AS TO FORM:**


17 Dated: October \_\_, 2016

18 **BURSOR & FISHER, P.A.**

19  
20 By:   
L. Timothy Fisher  
Attorneys for Plaintiff Chris Leaton, and the  
22 Settlement Class

23 Dated: October 20, 2016

24 **PACIFIC TRIAL ATTORNEYS, APC**

25 By:   
Scott J. Ferrell  
Attorneys for Defendant  
Iovate Health Sciences U.S.A. Inc.