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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA  
**MAR 19 2014**  
Darrel E. Parker, Executive Officer  
BY *Terril Chavez*  
Terri Chavez, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA**

DANIEL GARCIA, on behalf of himself and all  
other similarly situated,  
  
Plaintiff,  
  
v.  
  
IOVATE HEALTH SCIENCES U.S.A. INC., a  
Delaware corporation, and DOES 1-10, Inclusive,  
  
Defendants.  
  
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KEVIN BRANCA, an individual, on behalf of  
himself and all others similarly situated.  
  
Intervenor.

Case No. 1402915  
Judge: Hon. James E. Herman  
Dept.: 6  
  
~~PROPOSED~~ **ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AGREEMENT,  
CONDITIONAL CERTIFICATION OF  
CLASS, AND SETTING OF FAIRNESS  
HEARING**  
  
Date: March 5, 2014  
Time: 9:30 a.m.  
Dept.: SB 6  
  
Complaint Filed: July 20, 2012

1 THE COURT has considered the joint motion of Plaintiff Daniel Garcia and intervenor Kevin  
2 Branca (“the Class Representatives”) and Defendant Iovate Health Sciences, U.S.A. Inc. (“Iovate”)  
3 (collectively, “Parties”) seeking approval of the Class Settlement Agreement and all exhibits  
4 (“Settlement” or “Settlement Agreement”) on a preliminary basis. The court finds that there is good  
5 cause for the motion, grants the Parties’ motion, and orders as follows:

6 (1) The Settlement appears to be in the range of acceptable settlements insofar as it appears to  
7 be fair, reasonable, and adequate, and is approved on a preliminary basis pursuant to CRC 8.769(c).

8 (2) The Parties' request for conditional class certification for settlement purposes only is  
9 GRANTED. The Settlement Class (“Settlement Class”) hereby certified by the Court for settlement  
10 purposes is defined as:

11 All persons in the United States who purchased Hydroxycut<sup>1</sup> from July 20, 2008 to  
12 the date of the signing of this Order for personal or household use, and not for  
13 resale or distribution purposes. Excluded from the Settlement Class are any  
14 officers, directors, or employees of Iovate, and the immediately family member of  
15 any such person, as well as any individual who received remuneration from Iovate  
16 in connection with that individual’s use or endorsement of Hydroxycut. Also  
17 excluded is any judge who may preside over this case.

18 (3) A final hearing on the proposed class settlement shall be held on August 20, 2014, at 9:30  
19 a.m. in Department 6 of this court.

20 (4) The court approves the form and content of the long-form class notice attached as Exhibit C  
21 to the Stipulation and Agreement of Settlement (with dates and addresses to be inserted).

22 (5) The court confirms plaintiff Daniel Garcia and intervenor Kevin Branca as class  
23 representatives and Kirtland and Packard LLP, the Law Offices of Ronald A. Marron and the Weston  
24 Firm as class counsel.

25 <sup>1</sup> “Hydroxycut” refers to Iovate’s Hydroxycut family of dietary supplement products (including Pro  
26 Clinical Hydroxycut, Hydroxycut Max for Women, Hydroxycut Advanced, Hydroxycut Hardcore,  
27 Hydroxycut Hardcore X, Hydroxycut Acai, Hydroxycut Herbal and Hydroxycut Hardcore Elite,  
28 Hydroxycut Caffeine Free Drink Mix, Hydroxycut Caffeine Free Caplets, Hydroxycut Acai,  
Hydroxycut Fiberfull Drink Mix, Hydroxycut 24, Hydroxycut Weight Loss Drink Mix, Hydroxycut  
Weight Loss Shot, Hydroxycut Max Caplets, Hydroxycut Max Drink Mix, Hydroxycut Max Aqua  
Shed, Hydroxycut Max Cleanse, Hydroxycut Cleanse, Hydroxycut Complete Cleanse, Hydroxycut  
Premium Cleanse, Hydroxycut Green Tea, Hydroxycut Gummies, Hydroxycut Herbal, Hydroxycut  
Hoodia, Hydroxycut CLA, Hydroxycut Shape, Hydroxycut Sprinkles, Hydroxycut Drink Mix,  
Hydroxycut Advance Drink Mix, Hydroxycut Bar, Hydroxycut RTD, and Hydroxycut Green Coffee).

1 (6) The court approves The Garden City Group, Inc. as class settlement administrator.

2 (7) No later than May 4, 2014, the settlement administrator shall commence publication of the  
3 notice of class settlement in a magazine via a ¼ page notice published in US Magazine for three  
4 weeks. Separate and apart from the publication notice via magazine, the settlement administrator shall  
5 commence publication of notice of the class settlement online via an internet website to be established  
6 by the Settlement Administrator as soon as reasonably practicable upon receipt of the order granting  
7 preliminary approval of the proposed class action settlement, but in no event later than May 4, 2014.  
8 The short-form class notice attached as Exhibit D to the Stipulation and Agreement of Settlement will  
9 be published in the print sources, and will direct the Settlement Class to the website for more  
10 information, where the long-form notice shall be published.

11 (8) Class members wishing to object to the proposed class action settlement shall file written  
12 objections with the court, and mail said objections to the class counsel and counsel for Iovate as set  
13 forth in the class notice, postmarked no later than July 30, 2014. No person shall be permitted to be  
14 heard at the final hearing on the settlement without filing a timely written objection.

15 (9) Class members seeking exclusion from the classes shall submit a letter to the settlement  
16 administrator, by mail, postmarked no later than July 30, 2014.

17 (10) The deadline for submitting claims under the settlement is July 30, 2014.

18 (11) The deadline for filing supplemental briefs and declarations regarding final approval of  
19 the settlement and requests for attorney fees and reimbursement of costs is August 13, 2014.

20 (12) The court reserves the right to adjourn or continue the date of the settlement hearing and  
21 other dates set forth herein without further notice to the putative class members.

22  
23 SO ORDERED.

24 DATED:

**JAMES E. HERMAN**

**MAR 19 2014**

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Hon. James E. Herman

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