

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JUAN VELASQUEZ, JOSHUA
ARCE, GIANCARLO BOLLO,
MICHAEL CAMPOS, and JENNIFER
SOUTHWICK, Each Individually and
on Behalf of All Persons Similarly
Situated,

Plaintiffs,

v.

USPlabs, LLC, and GNC Corporation,

Defendants.

Case No. 4:13-cv-00627-RH-CAS

**ORDER PRELIMINARILY APPROVING
THE PROPOSED SETTLEMENT**

WHEREAS, Plaintiffs in the above-captioned action, *Velasquez, et al. v. USPlabs, LLC and GNC Corp.*, Northern District of Florida, 4:13-cv-00627-RH-CAS (“the Action”), and Defendants USPlabs, LLC (“USPlabs”) and GNC Corporation (“GNC”) (collectively, “Defendants”) have reached a proposed settlement and compromise of the disputes between them in the above action, which is embodied in the Settlement Agreement filed with the Court;

WHEREAS, the Parties have applied to the Court for preliminary approval of the proposed Settlement of the Action, the terms and conditions of which are set forth in the Stipulation and Agreement of Settlement (the “Settlement Agreement”);

AND NOW, the Court, having read and considered the Settlement Agreement and accompanying documents and the Motion For Preliminary Settlement Approval and Supporting Papers, and the Parties to the Settlement Agreement having consented to the entry of this order, and all capitalized terms used herein having the meaning defined in the Settlement Agreement, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement Agreement.
2. Subject to further consideration by the Court at the time of the Final Approval Hearing, the Court preliminarily approves the Settlement as fair, reasonable and adequate to the Settlement Class, as falling within the range of possible final approval, and as meriting submission to the Settlement Class for its consideration.
3. For purposes of the Settlement only, the Court certifies the Settlement Class, which means: All persons who purchased for personal consumption, and not for re-sale, one or more of the USPlabs Products (Jack3d, Versa-1, or OxyElite Pro containing either DMAA or aegeline) in the United

States during the Class Period (August 17, 2012 through the date of final approval). Excluded from the Settlement Class are any officers, directors, or employees of Defendants, and the immediate family member of any such person, as well as any individual who received remuneration from Defendants in connection with that individual's use or endorsement of the USPlabs Products. Also excluded is any judge who may preside over this case.

4. The Court preliminarily finds, solely for purposes of considering this Settlement, that the requirements of Federal Rule of Civil Procedure 23 appear to be satisfied, including requirements for the existence of an ascertainable class, numerosity, typicality, commonality, adequacy of representation, and manageability of a settlement class, that common issues of law and fact predominate over individualized issues, and that a settlement class is superior to alternative means of resolving the claims and disputes at issue in this Action.

5. The Court appoints Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick as Class Representatives. The Court also appoints Howard & Associates, P.A. and Desai Law Firm, P.C. as Class Counsel for purposes of this Settlement.

6. A Final Approval Hearing shall be held before this Court at 10:00 a.m. on Thursday, February 26, 2015, in the United States District Court for the Northern District of Florida, to address: (a) whether the proposed Settlement should be finally approved as fair, reasonable and adequate, and whether the Final Approval Order and Judgment should be entered; and (b) whether Class Counsel's application for attorneys' fees, costs, expenses and incentive awards should be approved. Consideration of any application for an award of attorneys' fees, costs, expenses and incentive awards shall be separate from consideration of whether or not the proposed Settlement should be approved.

7. With the exception of such proceedings as are necessary to implement, effectuate and grant final approval to the terms of the Settlement Agreement, all proceedings are stayed in this Action and all Settlement Class Members are enjoined from commencing or continuing any action or proceeding in any court or tribunal asserting any claims encompassed by the Settlement Agreement, unless the Settlement Class Member timely files a valid Request for Exclusion as defined in the Settlement Agreement.

8. The Court approves, as to form and content, the long and short-form Publication Notices, substantially in the forms attached as Exhibits C, and D to the Settlement Agreement. The Notice Plan, including Direct Notice, Publication Notice and Internet Notice, shall be implemented as set forth in Article IV of the Settlement Agreement, the submissions of Plaintiff in support of Preliminary Approval, and the Settlement Administrator's Declaration Regarding the Settlement Notice Plan. No later than ten (10) days prior to the Final Approval Hearing, the Settlement Administrator and Notice Provider shall file with the Court declarations attesting to compliance with this Order.

9. The Court finds that the Notice Plan as set forth in Article IV of the Settlement Agreement, the submissions of Plaintiff in support of Preliminary Approval, and the Settlement Administrator's Declaration Regarding the Settlement Notice Plan constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement Agreement, and the Fairness Hearing, and complies fully with the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

10. The Court further finds that the Notice Plan described in Article IV of the Settlement Agreement, the submissions of Plaintiff in support of

Preliminary Approval, and the Settlement Administrator's Declaration regarding the Settlement Notice Plan will adequately inform members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not bound by the terms of the Settlement Agreement, must submit to the Settlement Administrator, pursuant to the instructions set forth in the Notice, a timely and valid written Request for Exclusion, submitted online or postmarked at least twenty-one (21) days prior to the date set for the Final Approval Hearing in paragraph 7 above. Not later than ten (10) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file it with the Court, and Defense Counsel, a report stating the total number of Persons that have submitted timely and valid Requests for Exclusion from the Settlement Class, and the names of such Persons.

11. Any member of the Settlement Class who elects to be excluded shall not be entitled to receive any of the benefits of the Settlement Agreement, shall not be bound by the release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object to the Settlement Agreement or appear at the Final Approval Hearing. The names of all Persons timely submitting valid Requests for Exclusion shall be provided to the Court.

12. Service of all papers on counsel for the Parties shall be made as follows:

To Class Counsel:

P. Tim Howard, Esq.
HOWARD AND ASSOCIATES, P.A.
2120 Killarney Way, Suite 125
Tallahassee, FL 32309

Aashish Y. Desai, Esq.
DESAI LAW FIRM, P.C.
Pacific Arts Plaza
3200 Bristol Street, Ste. 650
Costa Mesa, CA 92626

To Defense Counsel:

Angel A. Garganta, Esq.
VENABLE LLP
Spear Tower, 40th Floor
One Market Plaza
San Francisco, CA 94105

13. Only Settlement Class Members who have filed and served valid and timely notices of intention to appear, together with supporting papers, shall be entitled to be heard at the Final Approval Hearing.

14. Any Settlement Class Member who does not make an objection in the time and manner provided shall be deemed to have waived such objection and forever shall be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement, adequacy of notice, the payment of attorneys' fees and costs, the payment of incentive awards, and/or the Final Approval Order and Judgment. Any Settlement Class Member who makes a timely written objection in the time and manner provided, but fails to appear at the Final Approval Hearing, shall have waived the right to appeal the fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement, adequacy of notice, the payment of attorneys' fees and costs, the payment of incentive awards, and/or the Final Approval Order and Judgment.

15. In the event that the proposed Settlement is not approved by the Court, or in the event that the Settlement Agreement becomes null and void pursuant to its terms, this Order and all orders entered in connection therewith

shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this civil action or in any other case or controversy; in such event the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

16. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class, be continued by order of the Court.

SO ORDERED on October 13, 2014.

s/Robert L. Hinkle

United States District Judge