

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

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

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

Plaintiffs,

-v-

USPLABS, LLC, and  
GNC CORPORATION

Defendants.

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**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

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## I. PRELIMINARY STATEMENT

On September 8, 2014, Plaintiffs Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick (“Plaintiffs”) on behalf of themselves and all others similarly situated filed a Second Amended Complaint in *Valesquez, et al. v. USPLabs, LLC and GNC Corporation*, Case No. 4:13-cv00627-RH-CAS (hereafter the “Action”) in the Northern District of Florida.<sup>1</sup> The Action alleges that USPlabs, LLC (“USPlabs”) and GNC Corporation (“GNC”) (collectively, “Defendants”) violated numerous state consumer protections laws, including the Florida Drug and Cosmetic Act, Florida Statutes §499 *et. seq.*; Florida Consumer Protection Statutes § 501.201 - § 501.213; Florida’s Deceptive and Unfair Trade Practices Act; the California Consumers Legal Remedies Act; California Business & Professions Code §§ 17200, *et. seq.*; California Business & Professions Code §§ 17500, *et. seq.*; the Texas Deceptive Trade Practices Act, as well as the Magnusson Moss Warranty Act. Specifically, the Action alleges that Defendants manufacture, market, and sell Jack3, OxyELITE Pro, and VERSA-1 (hereafter jointly referred to as “the USPlabs Products”) as university-studied supplements that provide safe and legal benefits to consumers.

Plaintiffs claim that Defendants fail to warn consumers that the USPlabs Products contain one of two ingredients: Dimethylamylamine (also known as “DMAA”) and Aegeline, which Plaintiffs claim are known to cause dangerous health effects and that Defendants’ advertising statements regarding the USPlabs Products (and their ingredients) violate consumer protection laws, including the acts and laws described above. The Action seeks, among other things, injunctive relief, compensatory damages, restitution, and punitive damages.

Defendants have denied, and continue to deny, liability for the claims asserted by Representative Plaintiffs. Defendants, however, also recognize the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in such litigation.

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<sup>1</sup> The Action includes the claims filed by Plaintiffs Michael Campos and Jennifer Southwick on December 5, 2013 in the United States District Court, Southern District of California, Case No. 13-CV-02891-DMS-BLM. The Plaintiffs joined the Florida Action and pursuant to the Settlement Agreement, the California case shall be dismissed.



Plaintiffs' Counsel has conducted a thorough investigation into the facts surrounding the Action. This investigation included but was not limited to: factual research, legal research, out-of-state depositions of USPlabs' key witnesses, and collecting and reviewing of documents and key financial data. As a result of this extensive process, Plaintiffs' Counsel was able to review thoroughly the claims of the Settlement Class Members and Defendants' policies, practices and procedures as they relate to the design, sale, manufacture and distribution of the USPlabs Products.

The Parties have engaged in substantial arms-length negotiations during an intense mediation session with a well-seasoned mediator, Dominic Caparello, Esq.. The result was a settlement of the Action in its entirety, culminating with the Settlement Agreement attached hereto as Exhibit 1. A significant sum of two million dollars (\$2,000,000) ("Settlement Fund") shall be made available to those Class Members who submit requests for reimbursements. The Settlement Fund shall include payment to the Class Members and attorneys' fees and costs, as well as the costs of administering the settlement.

Based on the above-outlined investigation, the current state of the law, the expense, burden and time necessary to prosecute the Action through trial and possible appeals, the risks and uncertainty of further prosecution of this Action considering the defenses at issues, the sharply contested legal and factual issues involved, and the relative benefits to be conferred upon Plaintiffs and the Settlement Class Members pursuant to this Agreement, both in substantial refunds and injunctive relief, Plaintiffs' Counsel has concluded that a settlement with Defendants on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of all known facts and circumstances.

## **II. SUMMARY OF THE SETTLEMENT TERMS**

The Settlement's terms are detailed in the Agreement attached as Exhibit 1. The following is a summary of the material terms of the Settlement.

### **A. The Settlement Class.**

The Settlement Class is defined as:

all persons who purchased for personal consumption, and not for re-sale, one or more of the USPlabs Products in the United States during the Class Period (August 17, 2012 to 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.

**B. Monetary Relief for the Benefit of the Class**

The Settlement requires Defendants to deposit an initial \$400,000 after the entry of the Preliminary Approval Order and another \$1.6 million once the Court has entered a Final Approval Order. These monies shall create a total non-reversionary settlement “Common Fund” of \$2,000,000, all of which will be distributed to the class. After deducting for the amount of attorneys’ fees, costs and expenses, the incentive/bonus payment to the class representatives, and the estimated costs of taxes, notice and administration, the remainder of the Common Settlement Fund (“Net Settlement Fund”) will be distributed to Class Members (who have not opted out).

- Eligible Class Members will receive refunds in the amount of \$35 per container or bottle of OxyELITE Pro purchased, \$20 per container or bottle of Jack3d purchased, and \$20 per container or bottle of VERSA-1 purchased.
- For Class Members who have purchased receipts documenting proof of purchase, there will be no limit on the number of bottles or containers for which reimbursement will be made.
- If proof of purchase is a claim under penalty of perjury, the maximum refund will be \$150 per Class Member.

If the total value of all Class Member claims is less than the amount in the Net Settlement Fund, Class Members will receive a *pro rata* addition per bottle to the amounts to be refunded to them, up to the amount of \$300.00 per Settlement Class Member. If claims exceed the amount of the Settlement Fund, each valid claim will be reduced on a *pro rata* basis per bottle. If there are still monies remaining in the Net Settlement Fund, the unclaimed balance of the Common Fund

shall be distributed *cy pres* to a charitable organization that benefits the Settlement Class, to be mutually agreed on by the Parties subject to Court approval. At this time the Parties are still conferring on the appropriate *cy pres* charity and will provide a supplemental declaration within two weeks that identifies the proposed *cy pres* charity agreed on by the Parties.

**C. Class Release**

In exchange for the benefits conferred by the Settlement, all Settlement class members who do not opt out will be deemed to have released Defendants and their directors, owners, employees, manufacturers, distributors, suppliers, wholesalers, and retailers (additional parties are listed in the actual release language) from claims relating to the subject matter of this action and any claims that are based on, arise out of, or relate to the manufacturing, marketing, sale, labeling and/or advertising of the USPlabs Products and/or the lawfulness, safety, or efficacy of the USPlabs Products (specifically including the presence of DMAA or aegeline in the USPlabs Products). The detailed release language can be found in Article II of the Agreement.

**D. The Notice Plan**

The Notice Plan in this Settlement (Agreement, Article IV), as set forth below, and as detailed in the concurrently filed Declaration of Daniel Rosenthal Regarding Settlement Notice Plan (“Rosenthal Decl.”) is designed to provide the best notice practicable, and it is tailored to take advantage of the information Defendants have made available about the Settlement Class Members. The Notice Plan is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel’s Fee Application and request for Service Awards for Plaintiffs, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel’s Fee Application, and/or the request for Service Awards for Plaintiffs.

The Notice Plan contemplates the following notice: direct notice, internet notice, and publication notice designed to reach to reach at least 75% of Settlement Class Members. Rosenthal Decl. ¶ 3. Based on sales information provided by Defendants, the Parties estimate the class size to be about 1.78 million consumers. For purposes of the Notice Plan, the Parties will

assume an estimated class size of 2 million.

Direct Notice: The Parties shall use best efforts to provide direct notice to potential Settlement Class Members by email and postal addresses, to the extent available based on sales records from Defendants USPlabs and GNC. The Settlement Administrator and Notice Provider shall email a summary notice to all Class Members for whom email addresses are available within thirty (30) days after the date of entry of the Preliminary Approval Order. Within fifteen (15) days after the completion of the email campaign, the Settlement Administrator and Notice Provider shall mail via U.S. First Class Mail a summary notice postcard to all “email bounce-backs” for whom postal addresses are available and all other Class Members for whom postal addresses (but not email addresses) are available. Rosenthal Decl. ¶¶ 15-16. The Direct Notice shall be supported by Internet Notice and Publication Notice, as described below, in order to supplement the Direct Notice campaign.

Internet Notice: Internet notice shall begin within thirty (30) days after the date of entry of this Preliminary Approval Order and shall consist of advertising banners published on portal and demographic-targeted websites that will direct potential Class Members to the main settlement website. *See* Rosenthal Decl. ¶¶ 18-19.

Publication Notice: Publication Notice shall commence in print in three large-circulation nationwide workout and/or bodybuilding magazines within seventy-five (75) days after the date of entry of the Preliminary Approval Order. The proposed publications are leading publications among Fitness & Dietary Supplement Users, for instance: A 1/3 page page summary notice will appear once in *Men’s Fitness*, *Muscle & Fitness*, and *Shape*. Rosenthal Decl. ¶ 17. Additionally, an informational press release will be issued to approximately 6,450 press outlets throughout the country. Rosenthal Decl. ¶ 20. The Settlement Class Notice shall be provided in the manner approved by the Court in the Preliminary Approval Order and substantially in the same forms as the exemplars submitted as Exhibits 2 and 3 attached hereto.

The Notice Plan shall be administered by the Settlement Administrator and the Notice Provider. The cost of mailing, emailing, and publishing the Direct Notice, Publication Notice,

and Internet Notice shall be paid for out of the Settlement Fund, subject to the terms hereof.

The Notice and Notice Plan constitutes sufficient notice to all persons entitled to notice. The Notice and Notice Plan satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of due process. All forms of Notice to the Settlement Class will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may exclude themselves from or “opt out” of the Settlement Class; a date by which Settlement Class members may object to the Settlement; the date of the Final Approval Hearing; and the contact information for Plaintiffs’ Counsel so Settlement Class Members may receive the Agreement and other related documents and information.

**E. Settlement Administration**

The proposed Settlement Administrator is Kurtzman Carson Consultants (“KCC”), one of the leading class action settlement administrators in the United States. Its responsibilities are fully detailed in the Reosenthal Decl. and the Settlement Agreement.

**F. Class Representative Enhancements**

Class Counsel will seek and Defendants will not oppose Service Awards of \$2,500 for each named Plaintiff. If the Court approves them, the Service Awards will be paid from the Settlement Fund, and will be in addition to the relief the Class Representatives will be entitled to under the terms of the Settlement. These awards will compensate the representatives for their time and effort in the Action, including their time and effort in preparing for and appearing at depositions, and for the risks they assumed in prosecuting the Action against Defendants. (Declaration of Tim Howard. ¶22, Declaration of Aashish Y. Desai ¶20.)

**G. Attorneys’ Fees and Awards**

Plaintiffs and/or Class Counsel will make a Fee and Cost Application to be heard at the Final Approval Hearing seeking an award of attorneys’ fees and costs consistent with federal law. Attorneys’ fees and costs that are approved by the Court shall be paid out of the Settlement Fund.

### III. THE COURT MAY GRANT PRELIMINARY APPROVAL OF THE CLASS SETTLEMENT

Public and judicial policies both strongly favor pretrial settlement of litigation; this policy is particularly compelling in class actions and other complex litigation. *See In re United States Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (“Public policy strongly favors the pretrial settlement of class action lawsuits.”); *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (“our judgment is informed by the strong judicial policy favoring settlement”); *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) (“Particularly in class action suits, there is an overriding public interest in favor of settlement.”); *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1314 (S.D. Fla. 2005) (“there exists ‘an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex’”).

The criteria for granting final approval to a class action settlement under Fed. R. Civ. P. 23(e) is that the settlement is “fair, adequate and reasonable [and] . . . not the product of collusion between the parties.” *Bennett*, 737 F.2d at 986-87 (internal quotation marks and citation omitted); *accord Cotton*, 559 F.2d at 1330; *Knight v. Alabama*, 469 F. Supp. 2d 1016, 1031 (N.D. Ala. 2006), *aff’d sub nom.*, *United States v. Alabama*, 271 Fed. Appx. 896 (11th Cir. 2008); *Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D. Fla. 2005).

In *Bennett*, the Court of Appeals held that the following factors should be considered in evaluating a class action settlement:

- (1) the likelihood of success at trial;
- (2) the range of possible recovery;
- (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable;
- (4) the complexity, expense and duration of litigation;
- (5) the substance and amount of opposition to the settlement;
- and (6) the stage of proceedings at which the settlement was achieved.<sup>2</sup>

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<sup>2</sup> Plaintiffs address the factors here, but reserve a more thorough discussion of each factor for the motion for final approval of the Settlement.

737 F.2d at 986; *see also In re CP Ships Ltd. Sec. Litig.*, 578 F.3d 1306, 1318 (11th Cir. 2009); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1329 (S.D. Fla. 2001).

Approval of a class action settlement, including application of the foregoing factors, “is committed to the sound discretion of the district court.” *United States Oil*, 967 F.2d at 493; *accord In re HealthSouth Corp. Sec. Litig.*, 572 F.3d 854, 859 (11th Cir. 2009); *Bennett*, 737 F.2d at 986. Additionally, in evaluating a proposed settlement under these factors, the court “is entitled to rely on the judgment of experienced counsel for the parties.” *Canupp v. Sheldon*, No. 2:04-cv-260, 2009 WL 4042928, at \*5 (M.D. Fla. Nov. 23, 2009) (quoting *Cotton*, 559 F.2d at 1330). Indeed, in reviewing a class action settlement under Rule 23(e), “the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.” *Cotton*, 559 F.2d at 1330; *accord Strube*, 226 F.R.D. at 703.

The Court’s grant of preliminary approval will allow all Settlement Class Members to receive notice of the proposed Settlement’s terms, and of the date and time of the Final Approval Hearing at which Settlement Class Members may be heard, and at which further evidence and argument concerning the fairness, adequacy, and reasonableness of the Settlement may be presented by the Parties. *See* Manual for Compl. Lit., §§ 13.14, 21.632. Neither formal notice nor a hearing is required at the preliminary approval stage; the Court may grant such relief upon an informal application by the settling parties, and may conduct any necessary hearing in court or in chambers, at the Court’s discretion. *Id.* § 13.14.

**A. This Settlement Satisfies the Criteria for Preliminary Settlement Approval.**

Each of the relevant factors weighs in favor of approval of this Settlement. First, the Settlement was reached in the absence of collusion, and is in fact the product of good-faith, informed and arm’s length negotiations by competent counsel, in conjunction with an experienced mediator.

Furthermore, a preliminary review of the factors related to the fairness, adequacy and reasonableness of the Settlement demonstrates that the Settlement fits well within the range of

reasonableness, such that preliminary approval is appropriate. Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Plaintiffs believe that the claims asserted are meritorious and that they would prevail if this matter proceeded to trial.

Defendants argue that Plaintiffs' claims are unfounded, deny any potential liability, and have shown a willingness to litigate those claims vigorously. The Parties have concluded that the benefits of settlement in this case outweigh the risks attendant to continued litigation, which include, but are not limited to, the time and expenses associated with proceeding to trial, the time and expenses associated with appellate review, and the countless uncertainties of litigation, particularly in the context of a large and complex multidistrict litigation. (Declaration of Tim Howard. ¶20, Declaration of Aashish Y. Desai ¶18.)

**1. This Settlement Is The Product Of Good Faith, Informed and Arm's Length Negotiations.**

A class action settlement should be approved so long as a district court finds that "the settlement is fair, adequate and reasonable and is not the product of collusion between the parties." *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 318-19 (S.D. Fla. 2005) (approving class settlement where the "benefits conferred upon the Class are substantial, and are the result of informed, arms-length negotiations by experienced Class Counsel").

The Settlement in this case is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this Action. The parties engaged in one formal mediation before an experienced and respected mediator, Dominic Caparello. These negotiations were arm's-length and extensive and lasted for approximately 11 hours before a settlement was reached. (Declaration of Tim Howard. ¶22, Declaration of Aashish Y. Desai ¶20) *see also Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding that class settlement was not collusive in part because it was overseen by "an experienced and well-respected mediator").



Furthermore, counsel for both sides are particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases. (Declaration of Tim Howard. ¶6, Declaration of Aashish Y. Desai ¶6.) Counsel zealously represented their clients in litigating throughout the discovery process, which included the depositions of USPlabs' corporate officers and the Named Plaintiffs. In negotiating this Settlement in particular, Settlement Class Counsel had the benefit of years of experience and a familiarity with the facts of this Action as well as with other cases involving similar claims. As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims and engaged in extensive formal discovery with Defendants.

Counsel's review of that extensive discovery enabled them to gain an understanding of the evidence related to central questions in the case, and prepared counsel for well-informed settlement negotiations. (Declaration of Tim Howard. ¶20, Declaration of Aashish Y. Desai ¶18) *see also Francisco v. Numismatic Guaranty Corp. of America*, 2008 WL 649124, \*11 (S.D. Fla. Jan. 31, 2008) (stating that "Class Counsel had sufficient information to adequately evaluate the merits of the case and weigh the benefits against further litigation" where counsel conducted two 30(b)(6) depositions and obtained "thousands" of pages of documentary discovery). In short, Class Counsel was well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, as well as the appropriate basis upon which to settle them. (Declaration of Tim Howard. ¶20, Declaration of Aashish Y. Desai ¶18.)

**2. The Facts Support a Preliminary Determination that the Settlement is Fair, Adequate and Reasonable.**

As noted, this Court may conduct a preliminary review of the *Bennett* factors to determine whether the Settlement falls within the "range of reason" such that notice and a final hearing as to the fairness, adequacy, and reasonableness of the Settlement is warranted.

**(a) Likelihood of Success at Trial.**

Plaintiffs and Class Counsel are confident in the strength of their case, but are also

pragmatic in their awareness of the various defenses available to Defendants, and the risks inherent to litigation. As is set forth in the Joint Declarations, Plaintiffs assert that their case has merit. Plaintiffs claim that Defendants fail to prominently warn consumers that the USPlabs Products contain DMAA or aegeline, which Plaintiffs claim is known to cause dangerous health effects, and that such statements violate consumer protection laws and other laws described above. Plaintiffs further allege that this failure to warn and inform consumers actually misled consumers, such as the representative Plaintiffs, into buying the USPlabs Products when, had they known the truth, they would not have otherwise purchased such products, or not purchased them at the price they paid.

However, Defendants have raised several defenses, which could negate or mitigate any recovery by the Class. First, DMAA and aegeline are very well-studied and have been consumed for many years (as part of the geranium plant and the bael fruit tree, respectively). Additionally, Defendants contend that the safety and efficacy of all of the USPlabs Products is supported by scientific research, including seven clinical studies involving DMAA and additional animal toxicity studies on aegeline. For example, some research suggests that the stimulant effect of DMAA is comparable to the stimulant effect of 2 to 3 cups of coffee. As to aegeline, animal studies suggest that it is not harmful even at doses 19-37 times higher than the recommended daily dose in the USPlabs Products. Defendants have also argued that the USPlabs Products are lawful dietary supplements marketed in accordance with federal requirements (including the Food, Drug, and Cosmetic Act's statutory definition of a dietary supplement) and there is no proof or causal evidence that support Plaintiffs' allegations that the USPlabs Products are unsafe or ineffective. Although Plaintiffs disagree with the weight and validity of the studies cited by Defendants, it would take significant and extensive expert work to challenge those studies at trial.

An additional argument that Defendants have raised is that many Class Member's claims will be barred by *res judicata* to the extent those Class Members first purchased the USPlabs Products during the time period prior to August 17, 2012. Putative Class Members who first

purchased the USPlabs Products prior to that time were already part of a nationwide class action settlement (called the “*Hogan*” settlement) that previously resolved false advertising claims as to USPlabs Products with DMAA. Defendants argue that putative class members who were part of the *Hogan* settlement have already litigated their false advertising claims against USPlabs, and any subsequent claims (including claims arising after the *Hogan* settlement) are barred by *res judicata*.

Defendants also assert that they would vigorously oppose class certification, if necessary. For example, given the well-publicized nature of the controversy surrounding USPlabs Products, Defendants believe that customers may have had “actual knowledge” as to the purportedly “false advertising” yet decided to purchase the USPlabs Products anyway. Defendants point to case law supporting the position that “actual knowledge” of alleged false advertising can preclude class certification: *See, e.g., Egwuatu v. South Lubes, Inc.*, 976 So.2d 50, 53 (Fla. App. 2008) (holding that there are too many differences in the facts supporting the claims of the individual plaintiffs when their claims turn on whether or not each class member had “actual knowledge” of alleged false advertising.). Although Plaintiffs disagree with Defendants’ factual and legal arguments, the risks of Defendants prevailing in their defenses or at trial is a factor that Plaintiffs considered in determining the settlement amount.

Even if Plaintiffs did prevail at trial, any recovery could be delayed for years by an appeal. *Lipuma*, 406 F. Supp. 2d at 1322 (likelihood that appellate proceedings could delay class recovery “strongly favor[s]” approval of a settlement). The Settlement provides a benefit to every individual who purchased one of the USPLabs Products at issue, in reliance on the allegedly misleading packaging, labeling, advertising and/or promotion of any of the USPLabs Products due to a failure to warn. That is a substantial benefit to the settlement class of consumers, and one which might not be obtained through further litigation.

**(b) Range of Possible Recovery and the Point on or Below the  
Range of Recovery at Which a Settlement Is Fair.**

“The second and third factors in the Eleventh Circuit’s *Bennett* analysis call for the Court to determine ‘the possible range of recovery’ and then ascertain where within that range ‘fair, adequate, and reasonable settlements lie.’” *Garst v. Franklin Life Ins. Co.*, No. 97-C-0074-S, 1999 U.S. Dist. LEXIS 22666, at \*64 (N.D. Ala. June 25, 1999) (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 541 (S.D. Fla. 1988) (same), *aff’d*, 899 F.2d 21 (11th Cir. 1990)); *see also Sunbeam*, 176 F. Supp. 2d at 1331 (“the second and third considerations of the *Bennett* test are easily combined”).

In this Action, when compared to the range of possible recoveries at trial and the risks of continued litigation, the proposed Settlement is an outstanding recovery and clearly falls within the range of reasonableness. Plaintiffs and Defendants are aware and understand that there is always risk in further litigation, and that further litigation will always make settlement more difficult. The Joint Declarations make clear that if these matters were to proceed forward, the expense, duration, complexity, and duration of the litigation would be substantial. As noted above, Defendants have raised defenses that could negate or mitigate any recovery by the Class (*e.g.*, the scientific research supporting the USPlabs Products and the *res judicata* issues arising from the prior *Hogan* settlement). In addition, although Plaintiffs believe that this case is subject to class action treatment, there is always a risk that a class may not be certified or that such certification could not be maintained through trial. When taking all of these factors into account, Plaintiffs are unlikely to enhance their settlement or trial position by further litigation of this matter.

An additional factor is the financial condition of USPlabs. Although sales of the USPlabs Products were plentiful during the class period, discovery revealed that USPlabs had a “net loss” of \$5.6 million during the proposed class period due to massive costs associated with the aegeline recall process and the legal expenses related to the controversy surrounding the DMAA and the aegeline litigation. Howard Decl. ¶ 15. During the class period, USPlabs only saw a net income of approximately \$1 million when taking into account the sales revenue for all of its products. *Id.* The \$2 million recovery available to the class here is substantial, in light of the risks

of protracted litigation, the defenses raised by Defendants, and the financial condition of USPlabs. Moreover, there are dozens of personal injury lawsuits filed against USPlabs related to the subject products. If these cases are tried to verdict and result in substantial recoveries, the class claims may well be rendered moot by USPlabs' lack of financial resources to pay all the personal injury judgments and fund the class settlement. In this sense the Settlement here provides for an immediate and concrete recovery for the class claims.

**(c) The Complexity, Expense and Likely Duration of Continued Litigation Support Approval of the Settlement.**

This Action has been challenging and complex, given the complicated facts and law at issue in the litigation. The Action involves complex issues of Florida and California laws and facts associated with consumer class actions generally. The difficulties of litigating the Action are also generated by the concurring personal injury litigation against Defendants. Based on the evidence, the complexity of the issues involved, and the tenacity of Defendants and their counsel, Plaintiffs reasonably expected that continued litigation of the Action would involve an enormous amount of attorney time and additional work with multiple experts. (Declaration of Tim Howard. ¶¶ 14-15, Declaration of Aashish Y. Desai ¶¶ 12-13.)

Plaintiffs would need to complete fact and expert discovery; brief additional motions before the District Court, including the inevitable summary judgment motions and *Daubert* motions. Trial would involve the significant challenge of proving the required elements of consumer fraud, including that the alleged misstatements were materially false and misleading, and that there was resulting damages. These efforts would require significant resources over an extended period, after which the Class might obtain a result far less beneficial than the one provided by the Settlement. Moreover, even if successful at trial, which itself would have been long and expensive, Plaintiffs would face the post-judgment appeals which were sure to follow and could take years to resolve.

In contrast to the substantial expense of litigating the case through trial and the extended duration that would result from the trial itself, post-trial motions, and appeals, the Settlement

provides a certain settlement payment of \$2 million.

**(d) The Settlement Was Reached After Substantial Discovery  
and, thus, the Stage of the Proceedings Strongly Supports  
Approval of the Settlement.**

In assessing the stage of the proceedings at which a settlement is achieved, “the relevant inquiry is whether the parties have conducted sufficient discovery to assess the strengths and weaknesses of their claims and defenses.” *Garst*, 1999 U.S. Dist. LEXIS 22666, at \*69-70; *See Perez*, 501 F. Supp. 2d at 1383; *Behrens*, 118 F.R.D. at 544. Here, the Settlement was not reached until after several months of litigation and after Plaintiffs filed a detailed consolidated complaint; and the completion of extensive discovery, including taking the depositions of USPlabs’ corporate officers and three of the named Plaintiffs’ depositions; reviewing thousands of documents; and participating in extensive negotiations before an experienced mediator. (Declaration of Tim Howard. ¶20, Declaration of Aashish Y. Desai ¶18.)

After such efforts, there can be no question that the parties had sufficient information to assess the strengths and weaknesses of their claims and that each side “was well aware of the other side’s position and the merits thereof.” *Sunbeam*, 176 F. Supp. 2d at 1332. Accordingly, this factor strongly supports the fairness and reasonableness of the Settlement.

**(e) The Recommendations of Experienced Counsel Heavily  
Favors Approval of the Settlement.**

In determining whether the proposed Settlement is fair, adequate and reasonable, the Court may rely on the judgment of counsel and, indeed, “should be hesitant to substitute its own judgment for that of counsel.” *Cotton*, 559 F.2d at 1330; *accord Perez*, 501 F. Supp. 2d at 1380; *Strube*, 226 F.R.D. at 703.

Class Counsel, which are highly experienced in class action litigation of this type and are very well informed about the strengths and weaknesses of their case following over two years of litigation, strongly endorse the Settlement and believe that it represents an excellent recovery on behalf of the Class. (Declaration of Tim Howard. ¶20, Declaration of Aashish Y. Desai ¶16.)

**C. Certification of the Settlement Class Is Appropriate.**

For settlement purposes, Plaintiffs respectfully request that the Court certify the Settlement Class defined above. “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Certification of the proposed Settlement Class will allow notice of the proposed Settlement to issue to the class to inform class members of the existence and terms of the proposed Settlement, of their right to be heard on its fairness, of their right to opt out, and of the date, time and place of the formal fairness hearing. *See Manual for Compl. Lit.*, at §§ 21.632, 21.633. For purposes of this Settlement only, Defendants USPlabs and GNC do not oppose class certification.

For the reasons set forth below, certification is appropriate under Rule 23(a) and (b)(3). Certification under Rule 23(a) of the Federal Rules of Civil Procedure requires that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Under Rule 23(b)(3), certification is appropriate if the questions of law or fact common to the members of the class predominate over individual issues of law or fact and if a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The numerosity requirement of Rule 23(a) is satisfied because the Settlement Class consists of hundreds of thousands of consumers who purchased USPlabs Products, and joinder of all such persons is impracticable. (Declaration of Tim Howard. ¶27, Declaration of Aashish Y. Desai ¶25; *See Fed. R. Civ. P. 23(a)(1); Kilgo v. Bowman Trans.*, 789 F.2d 859, 878 (11th Cir. 1986) (numerosity satisfied where plaintiffs identified at least 31 class members “from a wide geographical area”).

“Commonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of class-wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 2541, 2551 (2011) (citation omitted). Here, the commonality requirement is readily satisfied. There are multiple questions of law and fact – centering on Defendants’ labeling of the USPLabs Products – that are common to the Settlement Class, that are alleged to have injured all Settlement Class Members in the same way, and that would generate common answers central to the viability of the claims were this case to proceed to trial.

For similar reasons, Plaintiffs’ claims are reasonably coextensive with those of the absent class members, such that the Rule 23(a)(3) typicality requirement is satisfied. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims “arise from the same event or pattern or practice and are based on the same legal theory”); *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they “possess the same interest and suffer the same injury as the class members”). Plaintiffs are typical of absent Settlement Class Members because they were subjected to the same advertising and labeling resulting in the same injuries, and because they will benefit equally from the relief provided by the Settlement.

Plaintiffs also satisfy the adequacy of representation requirement. Adequacy under Rule 23(a)(4) relates to (1) whether the proposed class representatives have interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake this litigation. *Fabricant v. Sears Roebuck & Co.*, 202 F.R.D. at 314 (S.D. Fla. 2001). The determinative factor “is the forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the members of the class.” *Lyons v. Georgia-Pacific Corp. Salaried Employees Ret. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000) (internal quotation marks omitted). Plaintiffs’ interests are coextensive with, not antagonistic to, the



interests of the Settlement Class, because Plaintiffs and the absent Settlement Class Members have the same interest in the relief afforded by the Settlement, and the absent Settlement Class Members have no diverging interests.

Further, Plaintiffs are represented by qualified and competent counsel who have extensive experience and expertise prosecuting complex class actions, including consumer actions similar to the instant case. (Declaration of Tim Howard. ¶¶6-7, Declaration of Aashish Y. Desai ¶¶6-7.) Class Counsel have devoted substantial time and resources to vigorous litigation of this Action through filing the Complaint and Amended Complaint, defeating USPlabs' petition for multi-district litigation, discovery, mediation, and settlement. (Declaration of Tim Howard. ¶20, Declaration of Aashish Y. Desai ¶18)

Rule 23(b)(3) requires that “[c]ommon issues of fact and law . . . ha[ve] a direct impact on every class member’s effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010) (internal quotation marks omitted). Plaintiffs readily satisfy the Rule 23(b)(3) predominance requirement because liability questions common to all Settlement Class Members substantially outweigh any possible issues that are individual to each Settlement Class Member. Further, resolution of thousands of claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See Fed. R. Civ. P. 23(b)(3)*.

For all of these reasons, the Court should certify the Settlement Class.

**D. The Court Should Approve the Proposed Notice Program, Because It Is Constitutionally Sound.**

“Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3).” Manual for Compl. Lit. § 21.312 (internal quotation marks omitted). The best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the

pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). To satisfy this standard, “[n]ot only must the substantive claims be adequately described but the notice must also contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action.” *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998) (internal quotation marks omitted); *see also* Manual for Compl. Lit., § 21.312 (listing relevant information).

The proposed Notice Program satisfies all of these criteria. As recited in the proposed Settlement and above, the Notice will properly inform Settlement Class Members of the substantive terms of the Settlement. It will advise Settlement Class Members of their options for opting-out or objecting to the Settlement, and how to obtain additional information about the Settlement. The Notice Program is designed to reach a high percentage of Settlement Class Members (by direct notice via mailing and emailing where possible, internet notice, and publication notice) and it exceeds the requirements of constitutional due process. (Declaration of Tim Howard. ¶17, Declaration of Aashish Y. Desai ¶15.) Therefore, the Court should approve the Notice Program and the form and content of the Notices attached to this Motion as Exhibits 2 and 3.

#### **E. The Court Should Schedule a Final Approval Hearing.**

The last step in the Settlement approval process is a Final Approval Hearing, at which the Court will hear all evidence and argument necessary to make its final evaluation of the Settlement. Proponents of the Settlement may explain the terms and conditions of the Settlement, and offer argument in support of Final Approval. The Court will determine at or after the Final Approval Hearing whether the Settlement should be approved; whether to enter a final order and judgment under Rule 23(e); and whether to approve Class Counsel’s application for attorneys’ fees and reimbursement of costs and expenses. Plaintiffs request that the Court schedule the Final Approval Hearing for at least 120 days after the Court enters an order preliminary approving the Settlement.

#### IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court (1) preliminarily approve the Settlement; (2) certify for settlement purposes the proposed Settlement Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure and appoint Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick as Class Representatives; (3) approve the Notice Program set forth in the Agreement and approve the form and content of the Notices, attached to this Motion as Exhibits 2 and 3; (4) approve and order the opt-out and objection procedures set forth in the Agreement; (5) stay the Action against Defendants pending Final Approval of the Settlement; (6) appoint as Class Counsel and Settlement Class Counsel the attorneys and law firms listed in p. 4 of the Agreement, and (7) schedule a fairness hearing on Final Approval no sooner than 120 days after the Court enters an order preliminarily approving the Settlement.

For the Court's convenience, Plaintiffs attach as Exhibit 4 a Proposed Order Preliminarily Approving Class Settlement and Certifying Settlement Class.

Dated: September 22, 2014

Respectfully submitted,

/s/ Aashish Y. Desai  
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ATTORNEYS FOR PLAINTIFFS

**CERIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed via the Court's CM/ECF system this 22nd day of September 2014, which will serve the following counsel of record:

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Respectfully submitted,

/s/ Aashish Y. Desai

# EXHIBIT 1

**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-cv00627-RH-CAS

Honorable Robert L. Hinkle

**STIPULATION AND AGREEMENT  
OF SETTLEMENT**

It is hereby stipulated and agreed by and between the undersigned Parties, subject to the approval of the Court, that the settlement of this Action shall be effectuated pursuant to the terms and conditions set forth in this Settlement Agreement.

#### ARTICLE I – PREAMBLE

1. WHEREAS Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick (“Plaintiffs”) are the named plaintiffs in the above-captioned action entitled *Velasquez, et al. v. USPlabs, LLC and GNC Corp.*, Northern District of Florida, 4:13-cv00627-RH-CAS (“the Action”);

2. WHEREAS USPlabs, LLC (“USPlabs”) and GNC Corporation (“GNC”) (collectively, “Defendants”) are the defendants in the Action;

3. WHEREAS Plaintiffs allege that they purchased USPlabs’ branded dietary supplement products containing 1,3-dimethylamylamine (“DMAA”) or aegeline, including product lines known as OxyElite Pro, Jack3d and VERSA-1 (“the USPlabs Products”).

4. WHEREAS, Plaintiffs allege they relied on allegedly false and misleading statements contained on the labels and in advertisements and marketing materials for the USPlabs Products regarding the lawfulness, safety, and effectiveness of the USPlabs Products, and such statements violate state consumer protections laws (including the Florida Drug and Cosmetic Act, Florida Statutes §499 *et. seq.*; Florida Consumer Protection Statutes § 501.201 - § 501.213; Florida’s Deceptive and Unfair Trade Practices Act; the California Consumers Legal Remedies Act; California Business & Professions Code §§ 17200, *et. seq.*; California Business & Professions Code §§ 17500, *et. seq.*; the Texas Deceptive Trade Practices Act), as well as the Magnusson Moss Warranty Act, and that as a direct result of such violations Defendants have been unjustly enriched;



5. WHEREAS Plaintiffs seek to recover monetary and equitable remedies on behalf of themselves and a class of similarly situated persons;

6. WHEREAS Plaintiffs acknowledge they have not suffered personal injuries as a result of their personal consumption and use of the USPlabs Products;

7. WHEREAS the Parties have negotiated this Settlement at arms-length from positions of informed strength, and have had a full and fair opportunity to evaluate the strengths and weaknesses of their respective positions;

8. WHEREAS Defendants deny the allegations of the Action, deny all allegations of wrongdoing and of liability, and deny any causation of harm or damage to the Settlement Class;

9. WHEREAS Defendants nevertheless have concluded that, in light of the costs, risks and disruption of litigation, this Settlement is appropriate on the terms and conditions set forth herein;

10. WHEREAS Plaintiffs believe that the claims asserted in the Action are meritorious;

11. WHEREAS Plaintiffs nevertheless have concluded that, in light of the costs, delay and risks of litigation of the matters in dispute, the risk that the Court will not certify their claims as a class action, particularly in complex class action proceedings, the risk of losing on the merits, and in the desire to provide relief to the class sooner rather than later, this Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class;

12. WHEREAS the performance of any act referenced in this Settlement Agreement, or any other circumstance regarding the Parties' agreement to settle, shall not be considered an admission of liability or as an admission of any allegations made in any claim or litigation, including this Action or the Dismissed Action;

13. ~~WHEREAS~~ the Parties agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any federal or state statute, rule or regulation, principle of common law or equity, or of any liability or wrongdoing whatsoever by Defendants, or of the truth of any of the Claims asserted in the Action or the Dismissed Action, or elsewhere;

14. ~~NOW THEREFORE~~, it is hereby stipulated and agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to approval of the Court, the Action shall be fully and finally settled and dismissed with prejudice under the following terms and conditions:

#### ARTICLE II – DEFINITIONS

As used in this Settlement Agreement and the related documents attached hereto as exhibits, the terms set forth below shall have the meanings set forth below. The singular includes the plural and vice versa.

1. “Aggregate Fees, Costs, and Expenses” means the aggregate attorneys’ fees and costs, the costs of notice, the administrative expenses, and the incentive awards.
2. “Action” means the civil action entitled *Velasquez, et al. v. USPlabs, LLC and GNC Corp.*, Northern District of Florida, 4:13-cv00627-RH-CAS.
3. “Class Counsel” means Tim Howard and the law firm of Howard & Associates, P.A., and Aashish Desai and the law firm, Desai Law Firm, P.C.
4. “Class Period” means August 17, 2012 through the date the Final Approval Order and Judgment is entered.
5. “Class Released Claims” means any and all actions, causes of action, claims, demands, liabilities, obligations, fees, costs, sanctions, proceedings, and/or rights of any nature and description whatsoever, including, without limitation, violations of any state or federal statutes, rules or regulations, or principles of

common law, whether liquidated or unliquidated, known or unknown, in law or in equity, whether or not concealed or hidden, by Plaintiffs, members of the Plaintiff Settlement Class, or any of them (on their own behalf and/or on behalf of the proposed class or the general public) against Defendants or any other Released Parties, through the date the Final Approval Order and Judgment is entered, and that are based on, arise out of, or relate to in any way the facts, transactions, events, occurrences, acts, disclosures, advertisements, omissions, or failures to act concerning the manufacturing, marketing, sale, labeling and/or advertising of the USPlabs Products and/or the lawfulness, safety, or efficacy of the USPlabs Products, specifically including but not limited to any claims based on, arising out of, or relating to the presence of DMAA or ephedrine in the USPlabs Products. Notwithstanding the above, "Class Released Claims" shall exclude any claims for personal injury on behalf of the Settlement Class.

6. "Class Representatives" means Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick.

7. "Common Fund" means a fund in the amount of Two Million Dollars (\$2,000,000.00), to be funded as set forth herein. The Aggregate Fees, Costs, and Expenses shall be paid from the Common Fund. The Common Fund represents the absolute, capped amount of Defendants' financial liability for the Settlement.

8. "Court" means the United States District Court for the Northern District of Florida (Tallahassee Division).

9. "Defense Counsel" means Venable LLP, counsel for Defendants USPlabs and GNC.

10. "Dismissed Action" means *Campos et al., v. USPlabs, LLC and GNC Corp.*, No. 3:13-cv-02891, United States Court for the Southern District of

California, the action previously brought against Defendants by Michael Campos and Jennifer Southwick and voluntarily dismissed without prejudice.

11. "Effective Date" means the first date by which all of the following events shall have occurred: (a) the Court has entered the Preliminary Approval Order; (b) the Court has entered the Final Approval Order and Judgment; and (c) the Final Approval Order and Judgment have become Final.

12. "Fee and Cost Application" means the written motion or application by which the Class Representatives and/or Class Counsel request that the Court award attorneys' fees, costs, expenses and incentive awards.

13. "Final" means that the Court has entered the Final Approval Order and Judgment on the docket in the Action, and (a) the time to appeal from such order has expired and no appeal has been timely filed, (b) if such an appeal has been filed, it has finally been resolved and has resulted in an affirmation of the Final Approval Order and Judgment, or (c) the Court, following the resolution of the appeal, enters a further order or orders approving settlement on the terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s). Neither the pendency of the Fee and Cost Application, nor any appeal pertaining solely to a decision on the Fee and Cost Application, shall in any way delay or preclude the Final Approval Order and Judgment from becoming Final.

14. "Final Approval Hearing" means the hearing scheduled to take place at least one-hundred and twenty (120) days after the date of entry of the Preliminary Approval Order at which the Court shall: (a) determine whether to grant final approval to this Settlement Agreement and to certify the Settlement Class; (b) consider any timely objections to this Settlement and all responses thereto; and (c) rule on the Fee and Cost Application.

15. "Final Approval Order and Judgment" means the order, substantially in the form of Exhibit B attached hereto, in which the Court grants final approval of this Settlement Agreement, certifies the Settlement Class, and authorizes the entry of a final judgment and dismissal of the Action with prejudice.

16. Individual Released Claims means any and all of the Class Representatives' actions, causes of action, claims, demands, liabilities, obligations, fees, costs, sanctions, proceedings, and/or rights of any nature and description whatsoever, including, without limitation, violations of any state or federal statutes, rules or regulations, or principles of common law, whether liquidated or unliquidated, known or unknown, in law or in equity, whether or not concealed or hidden, that are based on, arise out of, or are related to Class Representatives' personal purchase, use, and consumption of any products manufactured, sold, or otherwise distributed by USPlabs, including but not limited to any claims relating to (i) physical, mental, or emotional injury or disability; (ii) the manufacturing, marketing, sale, labeling and/or advertising of any products manufactured, sold, or otherwise distributed by USPlabs; and (iii) the lawfulness, safety, or efficacy of any products manufactured, sold, or otherwise distributed by USPlabs.

17. "Internet Notice" shall mean the online, social media, and email notice set forth in Section IV.

18. "Jack3d" shall mean the line of dietary supplements distributed by USPlabs branded and known as "Jack3d" and that contained DMAA or acgeline.

19. "Notice" or "Notice Plan" shall mean the Publication Notice, Internet Notice, and any other form of notice that may be provided for pursuant to Section IV.

20. "Notice Provider" means, subject to Court approval, the third-party agent(s) or administrator(s) to be mutually agreed on by the Parties and appointed by the Court for purposes of the Notice Plan.

21. "Notice Response Deadline" means the deadline for all members of the Settlement Class to respond to the Notice, which shall be twenty-one (21) days prior to the Final Approval Hearing.

22. "OxyELITE Pro" shall mean the line of dietary supplements distributed by USPlabs branded and known as "OxyELITE Pro" and that contained either DMAA or acetyl-L-carnitine.

23. "Participating Claimant" means a Settlement Class Member who submits a Qualifying Settlement Claim Form in response to the Notice.

24. "Parties" means the named Plaintiffs and Defendants in this Action.

25. "Person" means any natural person, firm, corporation, unincorporated association, partnership, or other form of legal entity or government body, including its agents and representatives.

26. "Preliminary Approval Order" means the order, substantially in the form of Exhibit A attached hereto, in which the Court grants its preliminary approval to this Settlement Agreement and preliminarily certifies the Settlement Class, authorizes dissemination of Notice to the Settlement Class, and appoints the Settlement Administrator and Notice Provider.

27. "Publication Notice" means the long-form and short-form notices, substantially in the form of Exhibits C and D attached hereto. The long-form Publication Notice and the short-form Publication Notice will be published as set forth in the Notice Plan, Preliminary Approval Order, and Section IV.

28. A "Qualifying Settlement Claim Form" shall mean a Settlement Claim Form that: (a) is fully completed, properly executed and timely returned to the Settlement Administrator, *i.e.*, returned with a postmark on or before the

Notice Response Deadline; and (b) confirms that the Settlement Class Member purchased one or more of the USPlabs Products identified in the Claim Form during the Class Period.

29. "Released Parties" means (1) USPlabs and its past and present officers, directors, employees, stockholders, investors, owners, agents, representatives, attorneys, administrators, successors, subsidiaries, assigns, affiliates, joint-ventures, partners, members, divisions, predecessors, spokespersons, public relations firms, advertising and production agencies, manufacturers, distributors, suppliers, wholesalers, retailers, vendors, licensees and licensors; and (2) GNC and its past and present officers, directors, employees, stockholders, investors, owners, agents, representatives, attorneys, administrators, successors, subsidiaries, assigns, affiliates, joint-ventures, partners, members, divisions, predecessors, spokespersons, public relations firms, advertising and production agencies, manufacturers, distributors, suppliers, wholesalers, retailers, vendors, licensees and licensors.

30. "Releasing Parties" means all Settlement Class Members.

31. "Request for Exclusion" means a valid request for exclusion from a Settlement Class Member. To be valid, a request for exclusion must (a) be submitted by the Settlement Class Member; (b) be submitted to the Settlement Administrator and postmarked by a date not later than twenty-one (21) days before the Final Approval Hearing; (c) contain the submitter's name, address and telephone number; and (d) otherwise comply with the instructions set forth in the Notice.

32. "Settlement Administrator" means, subject to Court approval, the third-party agent(s) or administrator(s) to be mutually agreed on by the Parties and appointed by the Court.

33. "Settlement Agreement," "Settlement," or "Agreement" means this Stipulation and Agreement of Settlement, including the attached exhibits.

34. "Settlement Claim" or "Claim" means a claim for reimbursement submitted by a Settlement Class Member to the Settlement Administrator as provided in this Agreement.

35. "Settlement Claim Form" or "Claim Form" means a claim form, in the form to be determined by the Settlement Administrator, that a Settlement Class Member seeking reimbursement must submit to the Settlement Administrator as provided in this Agreement.

36. "Settlement Class" means, collectively, all persons who purchased for personal consumption, and not for re-sale, one or more of the USPlabs Products in the United States during the Class Period. 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.

37. "Settlement Class Member" or "Class Member" means any member of the Settlement Class who does not submit a timely and valid Request for Exclusion.

38. "USPlabs" means USPlabs, LLC.

39. "USPlabs Products" means, collectively, the lines of dietary supplements distributed by USPlabs and containing either DMAA or aegeline, including OxyELITE Pro, Jack3d, and VTRSA-1.

40. "Valid Claim" means a claim for reimbursement submitted by a Settlement Class Member that satisfies all the criteria for submission of a Qualifying Settlement Claim Form.



41 "VERSA-1" shall mean the line of dietary supplements distributed by USPlabs branded and known as "VERSA-1" and that contained DMAA or aegeline.

### ARTICLE III – SETTLEMENT CLASS RELIEF

In consideration of a full, complete, and final settlement of the Action, and the Releases in Article VII below, and subject to the Court's approval, the Parties agree to the following relief:

1. Common Fund

The amount of the Common Fund is Two Million Dollars (\$2,000,000.00). In no event shall Defendants' monetary liability under this Settlement Agreement exceed the amount of the Common Fund. The Common Fund shall be funded in two parts, as follows:

- No later than five (5) business days after entry of the Preliminary Approval Order, USPlabs shall make an initial deposit of Four-Hundred Thousand Dollars (\$400,000.00) into an escrow account with an escrow institution to be mutually agreed on by the Parties, to be held for safe keeping.
- No later than thirty (30) business days after entry of the Final Approval Order, USPlabs shall deposit One Million Six-Hundred Thousand Dollars (\$1,600,000.00) into the above-referenced escrow account, to be held for safe keeping.

The amounts deposited by USPlabs into the Common Fund are to be released from escrow for (a) payment of notice and administrative costs directly to the Notice Provider and Settlement Administrator at the time they are incurred, and (b) for funding the Settlement only upon the Court's final approval of the Settlement Agreement. If for some reason the Court does not approve the Settlement

Agreement, the entirety of the Common Fund, minus expenses actually incurred for notice and administrative costs, shall be returned to USPlabs within fifteen (15) business days of the Court's order denying Final Approval.

2. Distribution of the Common Fund

The Aggregate Fees, Costs, and Expenses shall be paid from the Common Fund consistent with the provisions of Article VI of this Settlement Agreement. The remainder of the Common Fund shall be distributed as set forth herein. Distribution of funds from the Common Fund to the Settlement Class shall commence as soon as practicable after the Effective Date, but in no event later than thirty (30) days after the Effective Date.

3. Settlement Class Member Claims

a. Relief to the Settlement Class

The Common Fund, less all Aggregate Fees, Costs and Expenses, shall be available to pay Valid Claims submitted by Settlement Class Members who purchased the USPlabs Products for personal consumption, and not for re-sale, during the Class Period. Settlement Class Members who submit a Claim without purchase receipts will be entitled to reimbursement of \$35.00 per bottle or container of OxyRLITE Pro purchased, \$20.00 per bottle or container of Jack3d purchased, and \$20 per bottle or container of VERSA-1 purchased up to a maximum refund of \$150. For Settlement Class Members who submit a Claim with purchase receipts documenting proof of purchase, there will be no limit on the number of bottles or containers for which reimbursement will be made.

All Settlement Class Members who submit a Claim must provide an affirmation, signed under penalty of perjury, that the Class Member personally purchased and consumed one or more of the USPlabs Products during the Class Period. Settlement Class Members who submit a Claim without purchase receipts will also be required to provide information relating to the purchase of the

USPlabs Products sufficient to satisfy the reasonable requests of the Settlement Administrator for the purpose of determining whether the Settlement Class Member has made a Valid Claim, including where the USPlabs Products were purchased, the quantity purchased, and the approximate purchase date.

b. Claim Forms

Settlement Class Members will be able to obtain a Settlement Claim Form by calling the toll-free number established for purposes of administering this Agreement, by requesting one by mail at the address established by the Settlement Administrator, or by downloading the form from the Internet website established by the Settlement Administrator. The Claim Form shall include instructions for the submission process. Settlement Class Members may submit a Claim Form online or by mail to the Settlement Administrator at the address provided.

c. Waiver

If a Qualifying Settlement Claim Form is not actually received by the Settlement Administrator from a Settlement Class Member via the internet or with a postmark on or before the Notice Response Deadline, then that Settlement Class Member will be deemed to have forever waived his or her right to be a Participating Claimant and to receive payment under this Settlement. As long as they do not properly submit a Request for Exclusion, Settlement Class Members who do not become Participating Claimants shall be deemed Members of the Settlement Class and shall be subject to the Judgment. Only Participating Claimants shall be entitled to payment pursuant to the Judgment.

4. Insufficient or Excess Funds

If the aggregate value of Valid Claims submitted by Settlement Class Members exceeds the amount remaining in the Common Fund after payment of all Aggregate Fees, Costs, and Expenses, then the amount of reimbursement per bottle will be adjusted downward on a per bottle basis.

If the aggregate value of Valid Claims submitted by Settlement Class Members is less than the amount remaining in the Common Fund after payment of all Aggregate Fees, Costs, and Expenses, Settlement Class Members will receive a pro rata addition to the amounts to be refunded to them, up to the amount of \$300.00 per Settlement Class Member. In the event that, even after a pro rata addition to the amounts refunded to Settlement Class Members, the aggregate value of Valid Claims is still less than the amount remaining in the Common Fund after payment of all Aggregate Fees, Costs, and Expenses, then the unclaimed balance of the Common Fund shall be distributed *cy pres* to a charitable organization that benefits the Settlement Class, to be mutually agreed on by the Parties subject to Court approval. Any remaining funds shall be paid out of the Common Fund not later than one-hundred and eighty (180) days after the Effective Date, provided that the Effective Date occurs.

#### **ARTICLE IV – NOTICE PLAN AND REQUESTS FOR EXCLUSION**

##### **I. Notice Plan**

a. Publication Notice: Publication Notice to the Settlement Class shall be provided in the manner approved by the Court in the Preliminary Approval Order and substantially in the same forms as the exemplars submitted as Exhibits C and D. The Publication Notice shall be published promptly after entry of the Preliminary Approval Order on dates to be agreed upon by the Parties so as to provide the best practical notice to the Settlement Class. The Parties, the Settlement Administrator and the Notice Provider shall use best efforts to cause the Publication Notice to commence online at an internet website to be established by the Settlement Administrator within thirty (30) days after the date of entry of the Preliminary Approval Order. Publication Notice shall also commence in print in one large-circulation nationwide workout or bodybuilding magazine within thirty (30) days after the date of entry of the Preliminary Approval Order.

Publication Notice shall extend to additional print magazines within seventy-five (75) days after the date of entry of the Preliminary Approval Order.

b. Internet Notice: Additional internet notice shall begin within thirty (30) days after the date of entry of this Preliminary Approval Order and shall consist of the following: (1) Information Ads: advertising banners directing potential Class Members to the main settlement website are to be published on portal and demographic-targeted websites; (2) Social Media: social media advertising will be employed to direct Class Members to the main settlement website; (3) Email Notification to Demographically Similar Customers: An e-mail based notice will be delivered to a database of persons who within the past two years have purchased or shown interest in a direct to consumer offer with similar demographic properties as purchasers of the USPlabs Products; 4) Email Notification to Known Customers. Email based notice will also be delivered to a database of known persons who purchased the USPlabs Products online directly through the USPlabs company website.

c. The Parties shall provide the Court, at least 14 (fourteen) days prior to the Preliminary Approval Hearing, the specific components of a Notice Plan that the Parties, the Settlement Administrator, and the Notice Provider agree will provide the best notice practicable to the Settlement Class, under the circumstances, constituting 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 Final Approval Hearing, pursuant to the due process requirements of the United States Constitution and any other applicable law.

d. The Publication Notice and Internet Notice shall be administered by the Settlement Administrator and the Notice Provider. The cost

of publishing the Publication Notice and Internet Notice shall be paid for out of the Common Fund, subject to the terms hereof.

2. Declarations Of Compliance

The Settlement Administrator and the Notice Provider shall prepare declarations attesting to compliance with the publication requirements set forth above. Such declarations shall be provided to Class Counsel and Defense Counsel and filed with the Court no later than ten (10) days prior to the Final Approval Hearing.

3. Report On Requests For Exclusion and Valid Claims

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: (1) the total number of Persons that have submitted timely and valid Requests for Exclusion from the Settlement Class, and the names of such Persons; and (2) the total number of Persons that have submitted timely Valid Claims, and the aggregate value of those Valid Claims. Any Person that has submitted a timely and valid Request for Exclusion will not be entitled to receive any relief under this Settlement Agreement.

4. Inquiries From Settlement Class Members

It shall be the responsibility of Class Counsel to establish procedures for receiving and responding to all inquiries from Settlement Class Members with respect to this Settlement. USPlabs and Defense Counsel may respond, but are not required to respond, to such inquiries.

**ARTICLE V – COURT APPROVAL OF SETTLEMENT**

1. Preliminary Approval

As soon as practicable after the execution of this Settlement Agreement, Class Counsel shall apply for entry of the Preliminary Approval Order in the form

of Exhibit A hereto. The Preliminary Approval Order shall include provisions: (a) preliminarily certifying the Settlement Class for settlement purposes only; (b) preliminarily approving this Settlement and finding this Settlement sufficiently fair, reasonable and adequate to allow Notice to be disseminated to the Settlement Class; (c) approving the form, content, and manner of the Notice; (d) setting a schedule for proceedings with respect to final approval of this Settlement; (e) providing that, pending entry of a Final Approval Order and Judgment, no Settlement Class Member (either directly, in a representative capacity, or in any other capacity) shall commence or continue any action against the Released Parties asserting any of the Class Released Claims; and (f) staying the Action, other than such proceedings as are related to this Settlement.

2. Objections To Settlement

Any Settlement Class Member wishing to object to or to oppose the approval of this Settlement and/or the Fee and Cost Application shall file a written objection (with a statement of reasons) with the Court and serve it on the Parties at least twenty-one (21) days before the date of the Final Approval Hearing. Any Settlement Class Member that fails to do so shall be foreclosed from making such objection or opposition. Plaintiffs will file with the Court their brief in support of final settlement approval, in support of final certification of the Settlement Class, and in response to any objections at least seven (7) days before the date of the Final Approval Hearing. Any Settlement Class Member that fails to file a timely written objection and to appear at the final approval hearing shall have no right to file an appeal relating to the approval of this Settlement.

3. Final Approval Hearing

The Parties shall request that the Court, on the date set forth in the Preliminary Approval Order, or on such other date that the Court may set, conduct a Final Approval Hearing to: (a) determine whether to grant final approval to this

Settlement Agreement and to certify the Settlement Class; (b) consider any timely objections to this Settlement and the Parties' responses to such objections; and (c) rule on the Fee and Cost Application. At the Final Approval Hearing, the Parties shall ask the Court to give final approval to this Settlement Agreement. If the Court grants final approval to this Settlement Agreement, then the Parties shall ask the Court to enter a Final Approval Order and Judgment, substantially in the form of Exhibit B attached hereto, which approves this Settlement, certifies the Settlement Class, and authorizes entry of a final judgment.

4. Disapproval, Cancellation, Termination, Or Nullification Of Settlement

a. This Settlement Agreement shall terminate automatically if either (i) the Court denies preliminary approval or final approval to this Settlement Agreement, or (ii) the Final Approval Order and Judgment does not become Final by reason of a higher court reversing final approval by the Court, and the Court thereafter declining to enter a further order or orders approving settlement on the terms set forth herein.

b. Defendants shall have the right to terminate this Settlement Agreement if, prior to the date of the Final Approval Order and Judgment, the total number of Persons that have submitted timely and valid Requests for Exclusion from the Settlement Class constitutes greater than five hundred (500). If Defendants elect to terminate this Settlement Agreement under this paragraph, Defendants must provide written notice to the other Parties' counsel on or before the date of the Final Approval Order and Judgment. Such written notice shall be provided by mail or email to the Parties' counsel.

c. If this Settlement Agreement is terminated pursuant to its terms, then: (i) this Settlement Agreement shall be rendered null and void; (ii) this Settlement Agreement and all negotiations and proceedings relating hereto shall be



of no force or effect, and without prejudice to the rights of the Parties; and (iii) all Parties shall be deemed to have reverted to their respective status in the Action and the Dismissed Action as of the date and time immediately preceding the execution of this Settlement Agreement and, except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed, except that the Parties shall not seek to recover from one another any costs incurred in connection with this Settlement.

**ARTICLE VI – ADMINISTRATIVE EXPENSES, ATTORNEYS’ FEES,  
COSTS**

1. Costs Of Notice

All costs of providing the Notice as provided herein, including the costs of publishing the Notice, shall be paid for out of the Common Fund, subject to the terms hereof.

2. Costs Of Administering Settlement

All costs of administering this Settlement, including all fees of the Settlement Administrator and the costs of generating and mailing any checks to be issued as part of this Settlement, shall be paid for out of the Common Fund at the time such administrative costs are incurred. In the event that this Settlement Agreement is terminated pursuant to its terms, Defendants shall bear any costs of administering this Settlement already incurred.

3. Attorneys’ Fees And Costs

Plaintiffs and/or Class Counsel will make a Fee and Cost Application to be heard at the Final Approval Hearing seeking an award of attorneys’ fees and costs consistent with federal law. Attorneys’ fees and costs that are approved by the Court shall be paid out of the Common Fund to Class Counsel no later than fifteen (15) days after the Effective Date, and only in the event that the Effective Date

occurs. Class Counsel shall be solely responsible for further distributing any payments made under this provision.

4. Incentive Award

Plaintiffs and/or Class Counsel on their behalf, may make an application to be heard at the Final Approval Hearing for incentive awards to be paid out of the Common Fund in an amount not to exceed \$2,500 per individual Class Representative. Incentive awards shall be paid out of the Common Fund as approved by the Court no later than fifteen (15) days after the Effective Date, and only in the event that the Effective Date occurs. These payments shall be compensation and consideration for the efforts of named Plaintiffs as the Class Representatives in the Action.

5. Effect On Settlement

The Parties agree that the rulings of the Court regarding the amount of attorneys' fees or costs and any incentive award, and any claim or dispute relating thereto, will be considered by the Court separately from the remaining matters to be considered at the Final Approval Hearing as provided for in this Settlement Agreement and any determinations in that regard will be embodied in a separate order. Any order or proceedings relating to the amount of attorneys' fees or incentive award, including any appeals from or modifications or reversals of any order related thereto, shall not operate to modify, reverse, terminate, or cancel the Settlement Agreement, affect the releases provided for in the Settlement Agreement, or affect whether the Final Approval Order and Judgment becomes Final as defined herein.

**ARTICLE VII – RELEASES UPON EFFECTIVE DATE**

1. Binding and Exclusive Nature of Settlement Agreement

On the Effective Date, if it occurs, the Parties and each and every Settlement Class Member shall be bound by this Settlement Agreement and shall

have recourse exclusively to the benefits, rights, and remedies provided hereunder. No other action, demand, suit or other claim may be pursued against the Released Parties with respect to the Class Released Claims.

2. Class Releases

On the Effective Date, if it occurs, the Releasing Parties shall be deemed to have, and by operation of this Settlement Agreement shall have, fully, finally and forever released, relinquished and discharged the Released Parties from any and all of the Class Released Claims.

3. Class Representatives' Individual Releases

On the Effective Date, if it occurs, the Class Representatives shall be deemed to have, and by operation of this Settlement Agreement shall have, fully, finally and forever released, relinquished and discharged the Released Parties from any and all of the Class Representatives' Individual Released Claims.

4. Stay Of The Action

The Parties agree to request that the Court, in connection with Preliminary Approval, issue an immediate stay of the Action.

5. Waiver of Unknown Claims

On the Effective Date, if it occurs, the Releasing Parties shall be deemed to have, and by operation of this Settlement Agreement shall have, with respect to the subject matter of the Class Released Claims and Individual Released Claims, expressly waived the benefits of any statutory provisions or common law rule that provides, in sum or substance, that a general release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected its settlement with any other party. In particular, but without limitation, the Releasing Parties waive the provisions of California Civil Code § 1542 (or any

like or similar state or federal statute or common law doctrine), and do so understanding the significance of that waiver. Section 1542 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.

The releases provided for in this Settlement Agreement are limited to the Class Released Claims and the Individual Released Claims as defined in Article II above.

6. Assumption of Risk

In entering into this Settlement Agreement, each of the Parties assumes the risk of any mistake of fact or law. If either Party should later discover that any fact which the Party relied upon in entering this Settlement Agreement is not true, or that the Party's understanding of the facts or law was incorrect, the Party shall not be entitled to modify, reform, or set aside this Settlement Agreement, in whole or in part, by reason thereof. The Parties agree that at the time this Settlement Agreement was executed, there were unsettled issues of law, and the Parties agree to honor this Agreement regardless of developments in the law after execution; specifically, the Class Representatives and Class Counsel recognize and agree that, given these uncertainties in the law, the Class Representatives and Class Counsel are receiving valuable consideration for the settlement of the Action at this time and per the terms of this Agreement. The Parties will advocate for Court approval of this Settlement Agreement.

**ARTICLE VIII – LIMITATIONS ON USE OF SETTLEMENT  
AGREEMENT**

1. No Admission

Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiations or proceedings constitutes an admission with respect to the merits of the claims alleged in the Action, the validity of any claims that could have been asserted by any of the Settlement Class Members in the Action, or the liability of Defendants in the Action, or the Dismissed Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, or the Dismissed Action. Neither the acceptance by named Plaintiffs of the terms of this Settlement Agreement, nor any of the related negotiations or proceedings constitutes an admission with respect to the merits of the claims alleged in the Action, or the Dismissed Action.

2. Limitations on Use

This Settlement Agreement shall not be used, offered, or received into evidence in the Action for any purpose other than to enforce, to construe, or to finalize the terms of the Settlement Agreement or to obtain the preliminary and final approval by the Court of the terms of the Settlement Agreement. Neither this Settlement Agreement nor any of its terms shall be offered or received into evidence in any other action or proceeding except that USPlabs or GNC may file this Settlement Agreement or the Judgment in any action that may be brought against a Released Party in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

3. No Public Statements Without Agreement of the Parties

The Parties and their counsel agree that no Party or counsel who is a signatory to this Settlement Agreement will comment publicly in any form regarding this Settlement or litigation without prior approval of all Parties and counsel, other than to issue a press release substantially in the form of Exhibit B attached hereto. Any disputes among the Parties regarding publicity associated with this Settlement shall be submitted to this court for expedited review and determination.

**ARTICLE IX – MISCELLANEOUS PROVISIONS**

1. Binding On Assigns

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

2. Captions

Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

3. Settlement Class Member Signatures

It is agreed that, because the Settlement Class Members are so numerous, it is impractical to have each Settlement Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the Releases and of the remainder of this Settlement Agreement, and in the absence of a valid and timely Request for Exclusion, such Notice shall have the same force and effect as if each Settlement Class Member executed this Settlement Agreement.

4. Construction

The Parties agree that the terms and conditions of this Settlement Agreement are the result of arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party, or his or its counsel, participated in the drafting of this Settlement Agreement.

5. Counterparts

This Settlement Agreement and any amendments hereto may be executed in one or more counterparts, and either Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and both of which counterparts taken together shall constitute but one and the same instrument. A facsimile or portable data file (PDF) signature shall be deemed an original for all purposes.

6. Governing Law

Construction and interpretation of the Settlement Agreement shall be determined in accordance with the laws of the State of Florida, without regard to the choice-of-law principles thereof.

7. Integration Clause

This Settlement Agreement, including the exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement Agreement other than those expressly set forth in this Settlement Agreement. This Settlement Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Settlement Agreement may not be changed, altered or modified, except in a writing signed by the Parties and approved by the Court. This

Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

8. Jurisdiction

The Court shall retain jurisdiction, after entry of the Final Approval Order and Judgment, with respect to enforcement of the terms of this Settlement, and all Parties and Settlement Class Members submit to the exclusive jurisdiction of the Court with respect to the enforcement of this Settlement and any dispute with respect thereto.

9. No Assignment

Each Party represents, covenants, and warrants that she or it has not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, cause of action, or rights that she or it herein releases.

10. No Collateral Attack

This Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member at any time on or after the Effective Date. Such prohibited collateral attacks shall include, but not be limited to, claims that a Settlement Class Member's claim was improperly denied, that the payment to a Settlement Class Member was improperly calculated, and/or that a Settlement Class Member failed to receive timely notice of the Settlement Agreement.

11. Notices

All notices to the Parties or counsel required by this Settlement, except Requests for Exclusion, shall be made in writing and communicated by mail to the following addresses:



If to Plaintiffs or 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

If to Defendants or Defense Counsel

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

12. Parties' Authority

The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions hereof.

13. Receipt Of Advice Of Counsel

The Parties acknowledge, agree, and specifically warrant to each other that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Settlement, and fully understand its legal effect.

14. Settlement Conditioned on Certain Matters

This entire Settlement Agreement is contingent upon the Parties reaching agreement on the contents of the exhibits and ancillary agreements hereto.

15. Waiver Of Compliance

Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent

permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

[SIGNATURES ON THE FOLLOWING PAGE]

Dated: August 26, 2014

By: Steve Fenstermacher  
Steve Fenstermacher, CFO, on behalf of  
Defendant USPlabs, LLC

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Gerald Stubenhofer, Senior Vice President  
and Chief Legal Officer, on behalf of  
Defendant GNC Corporation

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Juan Velasquez, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Joshua Arce, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Giancarlo Bollo, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Michael Campos, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Jennifer Southwick, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Steve Feustermacher, CFO, on behalf of  
Defendant USPlabs, I.I.C

Dated: August \_\_, 2014

By:  \_\_\_\_\_  
Gerald Stubenhofer, Senior Vice President  
and Chief Legal Officer, on behalf of  
Defendant GNC Corporation

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Juan Velasquez, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Joshua Arce, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Giancarlo Bollo, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Michael Campos, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Jennifer Southwick, on behalf of  
himself and the proposed class


Dated: August \_\_, 2014

By: \_\_\_\_\_  
Steve Fenstermacher, CFO, on behalf of  
Defendant USPlabs, LLC


Dated: August \_\_, 2014

By: \_\_\_\_\_  
Gerald Stubenhofer, Senior Vice President  
and Chief Legal Officer, on behalf of  
Defendant GNC Corporation


Dated: August 28, 2014

By:   
\_\_\_\_\_  
Juan Velasquez, on behalf of  
himself and the proposed class

Dated: August 28, 2014

By:   
\_\_\_\_\_  
Joshua Arce, on behalf of  
himself and the proposed class

Dated: August 28, 2014

By:   
\_\_\_\_\_  
Giancarlo Bollo, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Michael Campos, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Jennifer Southwick, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Steve Fenstermacher, CFO, on behalf of  
Defendant USPlabs, LLC

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Gerald Stubenhofer, Senior Vice President  
and Chief Legal Officer, on behalf of  
Defendant GNC Corporation

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Juan Velasquez, on behalf of  
himself and the proposed class

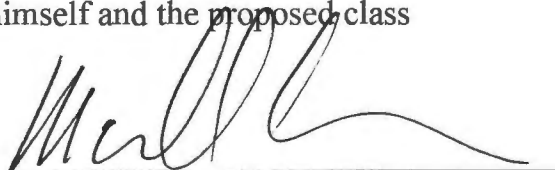
Dated: August \_\_, 2014

By: \_\_\_\_\_  
Joshua Arce, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Giancarlo Bollo, on behalf of  
himself and the proposed class

Dated: August 27, 2014

By:   
\_\_\_\_\_  
Michael Campos, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Jennifer Southwick, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Steve Fenstermacher, CFO, on behalf of  
Defendant USPlabs, LLC

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Gerald Stubenhofer, Senior Vice President  
and Chief Legal Officer, on behalf of  
Defendant GNC Corporation

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Juan Velasquez, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Joshua Arce, on behalf of  
himself and the proposed class


Dated: August \_\_, 2014

By: \_\_\_\_\_  
Giancarlo Bollo, on behalf of  
himself and the proposed class

Dated: August \_\_, 2014

By: \_\_\_\_\_  
Michael Campos, on behalf of  
himself and the proposed class

Dated: August ~~27~~, 2014

By:  \_\_\_\_\_  
Jennifer Southwick, on behalf of  
himself and the proposed class

APPROVED AS TO FORM:

Dated: August 26, 2014

VENABLE LLP

By: 

Angel A. Garganta, Esq.

Attorneys for Defendants  
USPlabs, LLC and GNC Corporation

Dated: August \_\_, 2014

HOWARD & ASSOCIATES, P.A.

By: \_\_\_\_\_

P. Tim Howard, Esq.

Attorneys for Plaintiffs and the proposed  
class

Dated: August \_\_, 2014

DESAI LAW FIRM, P.C.

By: \_\_\_\_\_

Aashish Desai, Esq.

Attorneys for Plaintiffs and the proposed  
class



APPROVED AS TO FORM:

Dated: August \_\_, 2014

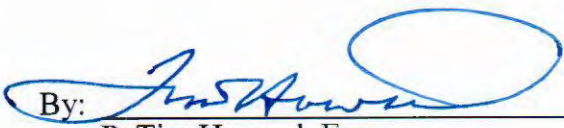
VENABLE LLP

By: \_\_\_\_\_  
Angel A. Garganta, Esq.

Attorneys for Defendants  
USPlabs, LLC and GNC Corporation

Dated: August 28, 2014

HOWARD & ASSOCIATES, P.A.

By:  \_\_\_\_\_  
P. Tim Howard, Esq.

Attorneys for Plaintiffs and the proposed  
class

Dated: August \_\_, 2014

DESAI LAW FIRM, P.C.

By: \_\_\_\_\_  
Aashish Desai, Esq.

Attorneys for Plaintiffs and the proposed  
class

APPROVED AS TO FORM:

Dated: August \_\_, 2014

VENABLE LLP

By: \_\_\_\_\_  
Angel A. Garganta, Esq.

Attorneys for Defendants  
USPlabs, LLC and GNC Corporation

Dated: August \_\_, 2014

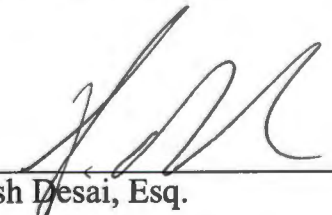
HOWARD & ASSOCIATES, P.A.

By: \_\_\_\_\_  
P. Tim Howard, Esq.

Attorneys for Plaintiffs and the proposed  
class

Dated: August 27, 2014

DESAI LAW FIRM, P.C.

By:  \_\_\_\_\_  
Aashish Desai, Esq.

Attorneys for Plaintiffs and the proposed  
class

# Exhibit A

**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-cv00627-RH-CAS

Honorable Robert L. Hinkle

**[PROPOSED] ORDER RE:  
PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENT**

WHEREAS, Plaintiffs in the above-captioned action, *Velasquez, et al. v. USPlabs, LLC and GNC Corp.*, Northern District of Florida, 4:13-cv00627-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 in the United States during the Class Period. 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 \_\_\_ a.m. on \_\_\_\_\_ 2012 in Dept. \_\_\_ of 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' fee, 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 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 Declaration of [Notice Provider]. 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 described in Article IV of the Settlement Agreement, the submissions of Plaintiff in support of Preliminary Approval, and the Declaration of [Notice Provider] 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 Declaration of [Notice Provider] 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.

**IT IS SO ORDERED.**

Dated:

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Honorable Robert L. Hinkle  
United States District Judge

# Exhibit B

**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-cv00627-RH-CAS

Honorable Robert L. Hinkle

**[PROPOSED] FINAL APPROVAL  
ORDER AND JUDGMENT**

WHEREAS, on \_\_\_\_\_, an Order Re: Preliminary Approval of Proposed Settlement (“Preliminary Approval Order”) was entered by this Court, preliminarily approving the proposed settlement of the Action pursuant to the terms of the Stipulation and Agreement of Settlement (the “Settlement Agreement”) and directing that notice be given to the members of the Settlement Class.

WHEREAS, pursuant to the Parties’ plan for providing notice to the Settlement Class (the “Notice Plan”), the Settlement Class were notified by publication of the terms of the proposed Settlement and of a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement are fair, reasonable and adequate for the release of the Released Claims against the Released Parties; and (2) whether judgment should be entered.

WHEREAS, a Final Approval Hearing was held on \_\_\_\_\_. Prior to the Final Approval Hearing, proof of completion of the Notice Plan was filed with the Court, along with declarations of compliance as prescribed in the Preliminary Approval Order. Settlement Class Members were therefore notified of their right to appear at the hearing in support of or in opposition to the proposed Settlement, the award of attorneys’ fees and expenses to Class Counsel, and the payment of incentive awards.

NOW, THEREFORE, the Court, having heard the presentations of Class Counsel and Defendant’s Counsel, having reviewed all of the submissions presented with respect to the proposed Settlement, having carefully considered the requirements for class certification, having determined that the Settlement is fair, adequate, and reasonable, having considered the application of Class Counsel for awards of attorneys’ fees and expense reimbursements, and having reviewed the materials in support thereof, it is hereby ORDERED, ADJUDGED and DECREED THAT:

1. The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

2. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Settlement Class.

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

4. The Settlement Class, which will be bound by this Final Approval Order and Judgment, shall include all members of the Settlement Class who did not submit a timely and valid Request for Exclusion.

5. For purposes of the Settlement and this Final Approval Order and Judgment, the Settlement Class shall consist of the following: All persons who purchased for personal consumption, and not for re-sale, one or more of the USPlabs Products in the United States during the Class Period. 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.

6. The Court finds that the Notice Plan set forth in Article IV of the Settlement Agreement, the submissions of Plaintiff in support of Preliminary

Approval, and the Declaration of [Notice Provider], and effectuated pursuant to the Preliminary Approval Order 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 for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Procedure, the United States Constitution, and any other applicable law.

7. The Settlement, as set forth in the Settlement Agreement, is in all respects fair, reasonable, adequate and in the best interests of the Settlement Class, and it is approved. The Parties shall effectuate the Settlement Agreement according to its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

8. Unless otherwise directed by the Court, within thirty (30) days of the Effective Date, USPlabs shall deposit the balance of the Common Fund amount as set forth in the Settlement Agreement, and the funds in the Common Fund, except for other disbursements authorized by this Judgment, shall be distributed to the Settlement Class pursuant to the terms of the Settlement Agreement.

9. Upon the Effective Date, the Class Representatives and all Settlement Class Members shall have, by operation of this Order and Final Judgment, fully, finally and forever released, relinquished, and discharged all Released Parties from all Class Released Claims pursuant to Article VII of the Settlement Agreement.

10. Settlement Class Members, including the Class Representatives, and the successors, assigns, parents, subsidiaries, affiliates or agents of any of them, are hereby permanently barred and enjoined from

instituting, commencing or prosecuting, either directly or in any other capacity, any Class Released Claim against any of the Released Parties.

11. Upon the Effective Date, the Class Representatives shall have, by operation of this Order and Final Judgment, fully, finally and forever released, relinquished, and discharged all Released Parties from all Individual Released Claims pursuant to Article VII of the Settlement Agreement.

12. The Class Representatives, and the successors, assigns, parents, subsidiaries, affiliates or agents of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any Individual Released Claim against any of the Released Parties.

13. This Final Approval Order and Judgment, the Settlement Agreement, the Settlement which it reflects, and any and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, or used as an admission by or against Defendants of any fault, wrongdoing, or liability on their part, or of the validity of any Class Released Claim or Individual Released Claim or of the existence or amount of damages.

14. The payments ordered herein shall be made in the manner and at the times set forth in the Settlement Agreement.

15. Except as otherwise provided in this Order, and the Court's award of costs and attorneys' fees pursuant to the Fee and Cost Application, the Parties shall bear their own costs and attorneys' fees. Without affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement, including enforcement and administration of the Settlement Agreement, including any releases in connection therewith, and any other matters related or ancillary to the foregoing.



**IT IS SO ORDERED.**

Dated:

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Honorable Robert L. Hinkle  
United States District Judge

# Exhibit C

# If you bought USPlabs' "OxyELITE Pro," "Jack3d," and/or "VERSA-1" dietary supplement products from August 17, 2012, you could be entitled to money from a legal settlement.

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached between USPlabs, LLC ("USPlabs") and GNC Corp. ("GNC"), (collectively, "Defendants") and Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick ("Class Representatives" or "Plaintiffs"), individually and on behalf of the Settlement Class.
- The settlement resolves a class action lawsuit about allegations that Defendants made false and misleading statements in their labeling and/or advertising regarding the lawfulness, safety, and effectiveness of OxyELITE Pro, Jack3d, and VERSA-1 dietary supplement products (the "USPlabs Products") that contained ingredients known as DMAA or aegeline.
- Defendants deny the allegations and are settling to avoid the expense and distraction of litigation. The settlement does not mean Defendants did anything wrong, and the Court has not decided that they did anything wrong.
- The settlement provides cash payments based on the amount of the USPlabs Products purchased.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A VALID CLAIM</b>	The only way to get a cash payment, if you qualify.
<b>EXCLUDE YOURSELF</b>	This is the only option that allows you to be part of any other lawsuit against Defendants about the legal claims in this case.
<b>OBJECT</b>	Tell the Court about why you don't like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the settlement.
<b>DO NOTHING</b>	Get no benefits. Give up rights to be part of any other lawsuit against Defendants about the legal claims in this case.

- These 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. Cash payments for valid claims will be issued only if the Court approves the settlement and after the time for appeals has ended and any appeals are resolved. Please be patient.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [\[SETTLEMENT WEBSITE\]](#)  
PARA UNA NOTIFICACIÓN EN ESPAÑOL, VISITE NUESTRO SITIO DE INTERNET.**

**WHAT THIS NOTICE CONTAINS**

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- 2. What is the lawsuit about?
- 3. Why is this a class action?
- 4. Why is there a settlement?

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- 5. How do I know if I am part of the settlement?
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**THE SETTLEMENT BENEFITS—WHAT YOU GET..... PAGE 4**

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**HOW TO GET A CASH PAYMENT—SUBMITTING A VALID CLAIM FORM ..... PAGE 5**

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- 22. How do I get more information?

## BASIC INFORMATION

### 1. Why was this notice issued?

A Court authorized this notice because you have a right to know about the proposed settlement in this class action lawsuit, and about all of your options, before the Court decides whether to give “final approval” to the settlement. This notice explains the lawsuit, the settlement, and your legal rights.

The case is known as *Velasquez, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. USPlabs, LLC and GNC Corporation*, United States District Court for the Northern District of Florida, No. 4:13-cv00627-RH-CAS (the “Action”). The people who sued are called the Plaintiffs. The companies they are suing, USPlabs and GNC, are called the Defendants.

### 2. What is the lawsuit about?

On [Date], Plaintiffs filed this Action on behalf of themselves and all others similarly situated alleging that they relied on allegedly false and misleading statements on labeling and in advertisements regarding the lawfulness, safety, and effectiveness of the USPlabs Products, and that such statements violate state consumer protections laws (including the Florida Drug and Cosmetic Act, Florida Statutes §499 et. seq.; Florida Consumer Protection Statutes § 501.201 - § 501.213; Florida’s Deceptive and Unfair Trade Practices Act; the California Consumers Legal Remedies Act; California Business & Professions Code §§ 17200, et. seq.; California Business & Professions Code §§ 17500, et. seq.; the Texas Deceptive Trade Practices Act), as well as the Magnusson Moss Warranty Act, and that as a direct result of such violations Defendants have been unjustly enriched.

Defendants deny any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action and believe that they have valid defenses to the allegations. The Court has not decided that Defendants did anything wrong, and the settlement does not mean they broke the law. Both the Plaintiffs and Defendants believe that the settlement is fair, adequate, and reasonable and that it is in the best interests of the Settlement Class.

### 3. Why is this a class action?

In a class action one or more people called “Class Representatives” (in this case, Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick) sue on behalf of people who have similar claims. All of these people or entities are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### 4. Why is there a settlement?

Both sides agreed to the settlement to avoid the cost and risk of further trial. The settlement does not mean that any law was broken. Defendants deny all of the legal claims in this case. The Class Representatives and the lawyers representing them think the settlement is best for all Class Members.

## WHO IS IN THE SETTLEMENT?

To see if you are affected or if you can get benefits, you first have to determine whether you are a Settlement Class member.

### 5. How do I know if I am part of the settlement?

You are a member of the Settlement Class if you purchased for personal consumption, and not for resale, one or more bottles of the USPlabs Products in the United States from August 17, 2012 until the date this Settlement is finally approved by the Court. These dates are referred to as the “Class Period”.

### 6. I’m still not sure if I’m included in the settlement.

If you are not sure whether you are included in the Class, call 1-xxx-xxx-xxxx or go to [\[Settlement Website\]](#).

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 7. What does the settlement provide?

The parties have agreed to create a settlement fund of \$2,000,000 (the “Common Fund”), to be paid by Defendants for the benefit of Class Members who purchased the USPlabs Products for personal use between August 17, 2012 and \_\_\_\_\_, 20\_\_\_. The parties have agreed that the costs to administer this Settlement, reasonable attorneys’ fees and costs to Class Counsel related to obtaining the settlement fund, and an incentive award to each of the named Plaintiffs will be paid from the Common Fund.

In order to make a claim, Class Members must provide purchase receipts documenting proof of purchase, or provide information, signed under penalty of perjury, relating to their purchase of the USPlabs Products, including where the purchase took place, the quantity purchased, and the approximate dates of purchase. Class Members who submit a Valid Claim without purchase receipts will be entitled to reimbursement of \$35.00 per bottle or container of OxyELITE Pro purchased, \$20.00 per bottle or container of Jack3d purchased, and \$20.00 per bottle or container of VERSA-1 purchased up to a maximum reimbursement of \$150. For Settlement Class Members who submit a Claim with purchase receipts documenting proof of purchase, there will be no limit on the number of bottles or containers for which reimbursement will be made.

In the event that claims exceed the amount of the fund, the amount of reimbursement per bottle will be adjusted downward on a per bottle basis. In the event claims do not exceed the fund, the remaining funds will be paid out as a pro rata distribution to claimants, up to an amount of \$300.00 per claimant. Any remaining settlement funds will be donated to a court-approved charitable organization.

More details are in a document called the Settlement Agreement, which is available at [\[Settlement Website\]](#).

### 8. What am I giving up in exchange for the settlement benefits?

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [\[SETTLEMENT WEBSITE\]](#)**

If the settlement becomes final, Class Members will be releasing Defendants and all related people and entities for all the claims described and identified in Article VII of the Settlement Agreement (called the “Class Released Claims”). The Settlement Agreement is available at [\[Settlement Website\]](#). The Settlement Agreement describes the Class Released Claims with specific descriptions, in necessarily accurate legal terminology, so read it carefully. You can talk to one of the lawyers listed below for free or you can, of course, talk to your own lawyer if you have questions about the released claims or what they mean.

## How to Get a Cash Payment—Submitting a Valid Claim Form

### 9. How can I get a cash payment?

To ask for a cash payment you must complete and submit a Claim Form along with the required supporting documentation, if you have it. If one was not already sent to you with this Notice, you can get a Claim Form at [\[Settlement Website\]](#). You may also submit your claim via the website. The Claim Form describes what you must provide to prove your claim and receive a cash payment and generally requires information, provided by you under penalty of perjury, on where any purchases took place, the quantity of the USPlabs Products purchased, and the approximate dates of purchase. Please read the instructions carefully, fill out the Claim Form, and either submit it online at [\[Settlement Website\]](#) or mail it postmarked no later than, \_\_\_\_\_, 20\_\_ to:

USPlabs Claims Administrator  
XXXXXXXXXX  
XXXXXXXXXX

### 10. When will I get my check?

Checks will be mailed to Class Members who send in valid Claim Forms on time, after the Court grants “final approval” of the settlement, and after the time for appeals has ended and any appeals have been resolved. If the judge approves the settlement after a hearing on \_\_\_\_\_ 20\_\_ (see the section “The Court’s Fairness Hearing” below), there may be appeals. Resolving these appeals can take time. Please be patient.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Defendants over the legal issues in this case, you must take steps to get out of the settlement. This is called asking to be excluded from—sometimes called “opting out” of—the Class.

### 11. If I exclude myself, can I get anything from the settlement?

If you ask to be excluded, you will not get a cash payment, and you cannot object to the settlement. But you may sue, continue to sue, or be part of a different lawsuit against Defendants in the future. You will not be bound by anything that happens in this lawsuit.

### 12. If I don’t exclude myself, can I sue 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 start or continue your own lawsuit.

### 13. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *Velasquez, et al. v. USPlabs, LLC and GNC Corp., Northern District of Florida*, No. 4:13-cv-00627. Be sure to include your name, address, the approximate date of purchase, and your signature. You can't ask to be excluded at the website or on the phone. You must mail your exclusion request postmarked no later than \_\_\_\_\_, 20\_\_ to:

USPlabs Settlement Exclusions  
XXXXXXXXXX  
XXXXXXXXXX

Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the settlement and any Final Judgment entered in this Litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the settlement.

## THE LAWYERS REPRESENTING YOU

### 14. Do I have a lawyer in the case?

The Court has designated the lawyers at HOWARD AND ASSOCIATES, P.A. and DESAI LAW FIRM, P.C. to represent you as "Class Counsel". You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

### 15. How will the costs of the lawsuit and settlement be paid?

The Settlement Administrator's and Notice Provider's costs and fees associated with administering the Settlement, including all costs associated with the publication of the Notice of Settlement will be paid from the Common Fund. Plaintiffs Counsel's reasonable attorneys' fees and costs related to obtaining the settlement in an amount consistent with California law will also be paid from the Common Fund, subject to Court approval. The Class Representatives will also request that the Court approve a payment to each of them of up to \$2,500 to be paid from the Common Fund, as an incentive award for their participation as the Class Representatives, for taking on the risk of litigation, and for settlement of their individual claims as Class Members in this Action. These amounts are subject to Court approval and the Court may award less than these amounts.



## Objecting to the Settlement

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

**16. How do I tell the Court if I don't like the settlement?**

You can object to the settlement if you don't like some part of it. You must give reasons why you think the Court should not approve it. To object, send a letter saying that you object to *Velasquez, et al. v. USPlabs, LLC and GNC Corp.*, Northern District of Florida, No. 4:13-cv-00627. Be sure to include your name, address, telephone number, your signature, the reasons why you object to the settlement, all documents you want the Court to consider, and indicate whether you or your attorney will appear at the fairness hearing (see the section on the "Court's Fairness Hearing" below). Mail the objection to the addresses below so that it is postmarked no later than \_\_\_\_\_, 20\_\_:

ADMINISTRATOR	COURT
USPlabs Objections XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX	Clerk of the Court XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
CLASS COUNSEL	DEFENSE 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	Angel A. Garganta, Esq. VENABLE LLP Spear Tower, 40th Floor One Market Plaza San Francisco, CA 94105

**17. What's the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. If you have filed an objection on time you may attend and you may ask to speak, but you don't have to.

### 18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at \_\_:00 \_\_m. on \_\_\_\_\_, \_\_\_\_\_, **20\_\_**, at \_\_\_\_\_ . The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [\[Settlement Website\]](#). At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The judge will only listen to people who have asked to speak at the hearing (see Question 20). The Court will also decide how much to pay the Class Representatives and the lawyers representing Class Members. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

### 19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the judge may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. If you have sent an objection but do not come to the Court hearing, however, you will not have a right to appeal an approval of the settlement. You may also pay another lawyer to attend on your behalf, but it's not required.

### 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear in the *Velasquez v. USPlabs, LLC* litigation." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intent to Appear must be postmarked no later than \_\_\_\_\_ **20\_\_**, and be sent to the addresses listed in Question 16. You cannot speak at the hearing if you excluded yourself from the Class.

## IF YOU DO NOTHING

### 21. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will not receive a payment from this settlement. And, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the claims in this case, ever again.

## GETTING MORE INFORMATION

### 22. How do I get more information?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement, download a Claim Form and review additional case information at [\[Settlement Website\]](#). You may also call toll-free 1-xxx-xxx-xxxx.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [\[SETTLEMENT WEBSITE\]](#)**

# Exhibit D

## **If you bought “OxyELITE Pro,” “Jack3d,” and/or “VERSA-1” you could be entitled to money from a legal settlement.**

A Settlement has been proposed in a class action lawsuit with USPlabs, LLC (“USPlabs”) and GNC Corporation (“GNC”) involving USPlabs’ “OxyELITE Pro,” “Jack3d,” and “VERSA-1” dietary supplement products (the “Products”) containing DMAA or aegeline.

### **What Is the Lawsuit About?**

The lawsuit claims that USPlabs and GNC (collectively “Defendants”) made misleading or false statements about the lawfulness, safety, and effectiveness of the Products. Defendants deny any wrongdoing or illegal conduct but has agreed to settle the case to avoid the expense and distraction of litigation. The Settlement does not mean that Defendants did anything wrong and the Court has not decided that they did anything wrong.

### **Am I a Member of the Class?**

You are a member of the Settlement Class if you purchased for personal consumption, and not for re-sale, one or more bottles of the Products in the United States starting from August 17, 2012.

### **What Does the Settlement Provide?**

The Defendants have agreed to create a settlement fund of \$2,000,000 to pay valid claims, the costs to administer this Settlement, reasonable attorneys’ fees and costs, and incentive awards to the named Plaintiffs.

### **How Much Money Can I Get Back?**

Claimants must provide purchase receipts or provide information, signed under penalty of perjury, relating to their purchase of the Products. Valid claims without purchase receipts will be entitled to \$35.00 per bottle/container of OxyELITE Pro purchased, \$20.00 per bottle/container of Jack3d purchased, and \$20.00 per bottle/container of VERSA-1 purchased, up to a maximum reimbursement of \$150. Valid claims with purchase receipts will be refunded the same amounts, but with no limit on the number of bottles refunded. If claims exceed the amount of the fund, each valid claim will be reduced on a pro rata basis. Any money remaining in the fund after all claims are processed and expenses are paid will be paid out as an increase to the claim amounts paid, on a pro rata basis, up to a total maximum of \$300.00 per claimant. Any remaining funds thereafter will be donated to a court-approved charitable organization. Claims must be submitted online or by mail and submitted or postmarked, by **Month Day, 20\_\_**.

### **What Are My Other Options?**

If you do not want to be legally bound by the settlement, you must exclude yourself by **Month Day, 20\_\_**. If you stay in the settlement, you may object to it by **Month Day, 20\_\_**. The Court will hold a hearing on **Month Day, 20\_\_** to consider whether to approve the settlement and determine the amount of attorneys’ fees and Plaintiffs’ incentive awards. Detailed information about the Settlement, including specific instructions about how to file a claim or object to, or exclude yourself from the Settlement are available at the website.

# Exhibit E

**FOR IMMEDIATE RELEASE**

TALLAHASSEE, FLORIDA, **[insert date]** / -- A notice program has been authorized by the United States Court for the Northern District of Florida to alert those who purchased USPlabs, LLC's "OxyELITE Pro," "Jack3d," and "VERSA-1" dietary supplement products from August 17, 2012 about a proposed settlement with USPlabs, LLC ("USPlabs") and GNC Corporation ("GNC") (collectively, "Defendants").

The settlement is a result of the Court certifying for settlement purposes only, on **[insert date]**, a class in a lawsuit alleging that USPlabs and GNC made misleading or false statements about the lawfulness, safety, and efficacy of USPlabs' line of OxyELITE Pro, Jack3d, and VERSA-1 dietary supplement products (the "USPlabs Products") containing the ingredients DMAA or aegeline. See *Velasquez, et al. vs. USPlabs, LLC and GNC Corp.*, United States District Court for the Northern District of Florida, No. 4:13-cv-00627. Now, the parties have reached a \$2 million settlement, which provides relief to purchasers of the USPlabs Products.

Defendants have denied any wrongdoing whatsoever, and are settling the case only to avoid the expense and inconvenience of litigation. The Court has not decided that Defendants did anything wrong.

All Class Members can submit claims online at: **[settlement website]** or via U.S. mail. Claim forms must be postmarked no later than **[insert date]**. Class Members who do not submit purchase receipts are entitled to receive \$35.00 per bottle or container of OxyELITE Pro purchased, \$20.00 per bottle or container of Jack3d purchased, and \$20.00 per bottle or container of VERSA-1 purchased, up to a maximum refund of \$150.00, and are required to provide information, signed under penalty of perjury, regarding their product purchases. Class Members who submit purchase receipts with their claim will be reimbursed for the same amounts, but with no limit on the number of bottles refunded. Class Members can also ask to be excluded from, or object to, the settlement. The deadline for exclusions and objections is **[insert date]**.

The Court has preliminarily appointed the law firms of Howard & Associates, P.A. and Desai Law Firm to represent the Class as Class Counsel.

Notices informing Class Members about their legal rights are appearing in print and online from **[insert claims period]**, leading up to the Final Approval Hearing on **[insert date]**. A toll-free number, **[insert number]**, has been established in this case along with a website, **[settlement website]**, where notices, claim forms, the settlement agreement, and the Court's preliminary approval order may be obtained. Those affected also may write to: USPlabs Settlement Administrator, **[insert address]**.

###

# EXHIBIT 2

## **If you bought USPlabs’ “OxyELITE Pro,” “Jack3d,” and/or “VERSA-1” dietary supplement products from August 17, 2012, you could be entitled to money from a legal settlement.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached between USPlabs, LLC (“USPlabs”) and GNC Corp. (“GNC”), (collectively, “Defendants”) and Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick (“Class Representatives” or “Plaintiffs”), individually and on behalf of the Settlement Class.
- The settlement resolves a class action lawsuit about allegations that Defendants made false and misleading statements in their labeling and/or advertising regarding the lawfulness, safety, and effectiveness of OxyELITE Pro, Jack3d, and VERSA-1 dietary supplement products (the “USPlabs Products”) that contained ingredients known as DMAA or aegeline.
- Defendants deny the allegations and are settling to avoid the expense and distraction of litigation. The settlement does not mean Defendants did anything wrong, and the Court has not decided that they did anything wrong.
- The settlement provides cash payments based on the amount of the USPlabs Products purchased.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A VALID CLAIM</b>	The only way to get a cash payment, if you qualify.
<b>EXCLUDE YOURSELF</b>	This is the only option that allows you to be part of any other lawsuit against Defendants about the legal claims in this case.
<b>OBJECT</b>	Tell the Court about why you don’t like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the settlement.
<b>DO NOTHING</b>	Get no benefits. Give up rights to be part of any other lawsuit against Defendants about the legal claims in this case.

- These 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. Cash payments for valid claims will be issued only if the Court approves the settlement and after the time for appeals has ended and any appeals are resolved. Please be patient.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [\[SETTLEMENT WEBSITE\]](#)  
PARA UNA NOTIFICACIÓN EN ESPAÑOL, VISITE NUESTRO SITIO DE INTERNET.**



**WHAT THIS NOTICE CONTAINS**

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- 2. What is the lawsuit about?
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- 4. Why is there a settlement?

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**IF YOU DO NOTHING ..... PAGE 8**

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**GETTING MORE INFORMATION ..... PAGE 8**

- 22. How do I get more information?

## BASIC INFORMATION

### 1. Why was this notice issued?

A Court authorized this notice because you have a right to know about the proposed settlement in this class action lawsuit, and about all of your options, before the Court decides whether to give “final approval” to the settlement. This notice explains the lawsuit, the settlement, and your legal rights.

The case is known as *Velasquez, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. USPlabs, LLC and GNC Corporation*, United States District Court for the Northern District of Florida, No. 4:13-cv00627-RH-CAS (the “Action”). The people who sued are called the Plaintiffs. The companies they are suing, USPlabs and GNC, are called the Defendants.

### 2. What is the lawsuit about?

On [Date], Plaintiffs filed this Action on behalf of themselves and all others similarly situated alleging that they relied on allegedly false and misleading statements on labeling and in advertisements regarding the lawfulness, safety, and effectiveness of the USPlabs Products, and that such statements violate state consumer protections laws (including the Florida Drug and Cosmetic Act, Florida Statutes §499 et. seq.; Florida Consumer Protection Statutes § 501.201 - § 501.213; Florida’s Deceptive and Unfair Trade Practices Act; the California Consumers Legal Remedies Act; California Business & Professions Code §§ 17200, et. seq.; California Business & Professions Code §§ 17500, et. seq.; the Texas Deceptive Trade Practices Act), as well as the Magnusson Moss Warranty Act, and that as a direct result of such violations Defendants have been unjustly enriched.

Defendants deny any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action and believe that they have valid defenses to the allegations. The Court has not decided that Defendants did anything wrong, and the settlement does not mean they broke the law. Both the Plaintiffs and Defendants believe that the settlement is fair, adequate, and reasonable and that it is in the best interests of the Settlement Class.

### 3. Why is this a class action?

In a class action one or more people called “Class Representatives” (in this case, Juan Velasquez, Joshua Arce, Giancarlo Bollo, Michael Campos, and Jennifer Southwick) sue on behalf of people who have similar claims. All of these people or entities are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### 4. Why is there a settlement?

Both sides agreed to the settlement to avoid the cost and risk of further trial. The settlement does not mean that any law was broken. Defendants deny all of the legal claims in this case. The Class Representatives and the lawyers representing them think the settlement is best for all Class Members.

## WHO IS IN THE SETTLEMENT?

To see if you are affected or if you can get benefits, you first have to determine whether you are a Settlement Class member.

### 5. How do I know if I am part of the settlement?

You are a member of the Settlement Class if you purchased for personal consumption, and not for resale, one or more bottles of the USPlabs Products in the United States from August 17, 2012 until the date this Settlement is finally approved by the Court. These dates are referred to as the “Class Period”.

### 6. I’m still not sure if I’m included in the settlement.

If you are not sure whether you are included in the Class, call 1-xxx-xxx-xxxx or go to [\[Settlement Website\]](#).

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 7. What does the settlement provide?

The parties have agreed to create a settlement fund of \$2,000,000 (the “Common Fund”), to be paid by Defendants for the benefit of Class Members who purchased the USPlabs Products for personal use between August 17, 2012 and \_\_\_\_\_, 20\_\_\_. The parties have agreed that the costs to administer this Settlement, reasonable attorneys’ fees and costs to Class Counsel related to obtaining the settlement fund, and an incentive award to each of the named Plaintiffs will be paid from the Common Fund.

In order to make a claim, Class Members must provide purchase receipts documenting proof of purchase, or provide information, signed under penalty of perjury, relating to their purchase of the USPlabs Products, including where the purchase took place, the quantity purchased, and the approximate dates of purchase. Class Members who submit a Valid Claim without purchase receipts will be entitled to reimbursement of \$35.00 per bottle or container of OxyELITE Pro purchased, \$20.00 per bottle or container of Jack3d purchased, and \$20.00 per bottle or container of VERSA-1 purchased up to a maximum reimbursement of \$150. For Settlement Class Members who submit a Claim with purchase receipts documenting proof of purchase, there will be no limit on the number of bottles or containers for which reimbursement will be made.

In the event that claims exceed the amount of the fund, the amount of reimbursement per bottle will be adjusted downward on a per bottle basis. In the event claims do not exceed the fund, the remaining funds will be paid out as a pro rata distribution to claimants, up to an amount of \$300.00 per claimant. Any remaining settlement funds will be donated to a court-approved charitable organization.

More details are in a document called the Settlement Agreement, which is available at [\[Settlement Website\]](#).

### 8. What am I giving up in exchange for the settlement benefits?

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [\[SETTLEMENT WEBSITE\]](#)**

If the settlement becomes final, Class Members will be releasing Defendants and all related people and entities for all the claims described and identified in Article VII of the Settlement Agreement (called the “Class Released Claims”). The Settlement Agreement is available at [\[Settlement Website\]](#). The Settlement Agreement describes the Class Released Claims with specific descriptions, in necessarily accurate legal terminology, so read it carefully. You can talk to one of the lawyers listed below for free or you can, of course, talk to your own lawyer if you have questions about the released claims or what they mean.

## How to Get a Cash Payment—Submitting a Valid Claim Form

### 9. How can I get a cash payment?

To ask for a cash payment you must complete and submit a Claim Form along with the required supporting documentation, if you have it. If one was not already sent to you with this Notice, you can get a Claim Form at [\[Settlement Website\]](#). You may also submit your claim via the website. The Claim Form describes what you must provide to prove your claim and receive a cash payment and generally requires information, provided by you under penalty of perjury, on where any purchases took place, the quantity of the USPlabs Products purchased, and the approximate dates of purchase. Please read the instructions carefully, fill out the Claim Form, and either submit it online at [\[Settlement Website\]](#) or mail it postmarked no later than, \_\_\_\_\_, 20\_\_ to:

USPlabs Claims Administrator  
XXXXXXXXXX  
XXXXXXXXXX

### 10. When will I get my check?

Checks will be mailed to Class Members who send in valid Claim Forms on time, after the Court grants “final approval” of the settlement, and after the time for appeals has ended and any appeals have been resolved. If the judge approves the settlement after a hearing on \_\_\_\_\_ 20\_\_ (see the section “The Court’s Fairness Hearing” below), there may be appeals. Resolving these appeals can take time. Please be patient.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Defendants over the legal issues in this case, you must take steps to get out of the settlement. This is called asking to be excluded from—sometimes called “opting out” of—the Class.

### 11. If I exclude myself, can I get anything from the settlement?

If you ask to be excluded, you will not get a cash payment, and you cannot object to the settlement. But you may sue, continue to sue, or be part of a different lawsuit against Defendants in the future. You will not be bound by anything that happens in this lawsuit.

### 12. If I don’t exclude myself, can I sue 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 start or continue your own lawsuit.

### 13. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *Velasquez, et al. v. USPlabs, LLC and GNC Corp., Northern District of Florida*, No. 4:13-cv-00627. Be sure to include your name, address, the approximate date of purchase, and your signature. You can't ask to be excluded at the website or on the phone. You must mail your exclusion request postmarked no later than \_\_\_\_\_, 20\_\_ to:

USPlabs Settlement Exclusions  
XXXXXXXXXX  
XXXXXXXXXX

Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the settlement and any Final Judgment entered in this Litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the settlement.

## THE LAWYERS REPRESENTING YOU

### 14. Do I have a lawyer in the case?

The Court has designated the lawyers at HOWARD AND ASSOCIATES, P.A. and DESAI LAW FIRM, P.C. to represent you as "Class Counsel". You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

### 15. How will the costs of the lawsuit and settlement be paid?

The Settlement Administrator's and Notice Provider's costs and fees associated with administering the Settlement, including all costs associated with the publication of the Notice of Settlement will be paid from the Common Fund. Plaintiffs Counsel's reasonable attorneys' fees and costs related to obtaining the settlement in an amount consistent with California law will also be paid from the Common Fund, subject to Court approval. The Class Representatives will also request that the Court approve a payment to each of them of up to \$2,500 to be paid from the Common Fund, as an incentive award for their participation as the Class Representatives, for taking on the risk of litigation, and for settlement of their individual claims as Class Members in this Action. These amounts are subject to Court approval and the Court may award less than these amounts.

## Objecting to the Settlement

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

**16. How do I tell the Court if I don't like the settlement?**

You can object to the settlement if you don't like some part of it. You must give reasons why you think the Court should not approve it. To object, send a letter saying that you object to *Velasquez, et al. v. USPlabs, LLC and GNC Corp.*, Northern District of Florida, No. 4:13-cv-00627. Be sure to include your name, address, telephone number, your signature, the reasons why you object to the settlement, all documents you want the Court to consider, and indicate whether you or your attorney will appear at the fairness hearing (see the section on the "Court's Fairness Hearing" below). Mail the objection to the addresses below so that it is postmarked no later than \_\_\_\_\_, 20\_\_:

<b>ADMINISTRATOR</b>	<b>COURT</b>
USPlabs Objections XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX	Clerk of the Court XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
<b>CLASS COUNSEL</b>	<b>DEFENSE COUNSEL</b>
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	Angel A. Garganta, Esq. VENABLE LLP Spear Tower, 40th Floor One Market Plaza San Francisco, CA 94105

**17. What's the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. If you have filed an objection on time you may attend and you may ask to speak, but you don't have to.

### 18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at   :00   .m. on \_\_\_\_\_, \_\_\_\_\_, **20**  , at \_\_\_\_\_ . The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [\[Settlement Website\]](#). At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The judge will only listen to people who have asked to speak at the hearing (see Question 20). The Court will also decide how much to pay the Class Representatives and the lawyers representing Class Members. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

### 19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the judge may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. If you have sent an objection but do not come to the Court hearing, however, you will not have a right to appeal an approval of the settlement. You may also pay another lawyer to attend on your behalf, but it's not required.

### 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear in the *Velasquez v. USPlabs, LLC* litigation." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intent to Appear must be postmarked no later than \_\_\_\_\_ **20**  , and be sent to the addresses listed in Question 16. You cannot speak at the hearing if you excluded yourself from the Class.

## IF YOU DO NOTHING

### 21. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will not receive a payment from this settlement. And, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the claims in this case, ever again.

## GETTING MORE INFORMATION

### 22. How do I get more information?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement, download a Claim Form and review additional case information at [\[Settlement Website\]](#). You may also call toll-free 1-xxx-xxx-xxxx.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [\[SETTLEMENT WEBSITE\]](#)**

# EXHIBIT 3



## **If you bought “OxyELITE Pro,” “Jack3d,” and/or “VERSA-1” you could be entitled to money from a legal settlement.**

A Settlement has been proposed in a class action lawsuit with USPlabs, LLC (“USPlabs”) and GNC Corporation (“GNC”) involving USPlabs’ “OxyELITE Pro,” “Jack3d,” and “VERSA-1” dietary supplement products (the “Products”) containing DMAA or aegeline.

### **What Is the Lawsuit About?**

The lawsuit claims that USPlabs and GNC (collectively “Defendants”) made misleading or false statements about the lawfulness, safety, and effectiveness of the Products. Defendants deny any wrongdoing or illegal conduct but has agreed to settle the case to avoid the expense and distraction of litigation. The Settlement does not mean that Defendants did anything wrong and the Court has not decided that they did anything wrong.

### **Am I a Member of the Class?**

You are a member of the Settlement Class if you purchased for personal consumption, and not for re-sale, one or more bottles of the Products in the United States starting from August 17, 2012.

### **What Does the Settlement Provide?**

The Defendants have agreed to create a settlement fund of \$2,000,000 to pay valid claims, the costs to administer this Settlement, reasonable attorneys’ fees and costs, and incentive awards to the named Plaintiffs.

### **How Much Money Can I Get Back?**

Claimants must provide purchase receipts or provide information, signed under penalty of perjury, relating to their purchase of the Products. Valid claims without purchase receipts will be entitled to \$35.00 per bottle/container of OxyELITE Pro purchased, \$20.00 per bottle/container of Jack3d purchased, and \$20.00 per bottle/container of VERSA-1 purchased, up to a maximum reimbursement of \$150. Valid claims with purchase receipts will be refunded the same amounts, but with no limit on the number of bottles refunded. If claims exceed the amount of the fund, each valid claim will be reduced on a pro rata basis. Any money remaining in the fund after all claims are processed and expenses are paid will be paid out as an increase to the claim amounts paid, on a pro rata basis, up to a total maximum of \$300.00 per claimant. Any remaining funds thereafter will be donated to a court-approved charitable organization. Claims must be submitted online or by mail and submitted or postmarked, by **Month Day, 20\_\_**.

### **What Are My Other Options?**

If you do not want to be legally bound by the settlement, you must exclude yourself by **Month Day, 20\_\_**. If you stay in the settlement, you may object to it by **Month Day, 20\_\_**. The Court will hold a hearing on **Month Day, 20\_\_** to consider whether to approve the settlement and determine the amount of attorneys’ fees and Plaintiffs’ incentive awards. Detailed information about the Settlement, including specific instructions about how to file a claim or object to, or exclude yourself from the Settlement are available at the website.

# EXHIBIT 4

**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-cv00627-RH-CAS

Honorable Robert L. Hinkle

**[PROPOSED] ORDER RE:  
PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENT**

WHEREAS, Plaintiffs in the above-captioned action, *Velasquez, et al. v. USPlabs, LLC and GNC Corp.*, Northern District of Florida, 4:13-cv00627-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 \_\_\_ a.m. on \_\_\_\_\_ 2012 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' fee, 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.

**IT IS SO ORDERED.**

Dated:

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Honorable Robert L. Hinkle  
United States District Judge

**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-cv00627-RH-CAS

Honorable Robert L. Hinkle

**[PROPOSED] ORDER RE:  
PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENT**

WHEREAS, Plaintiffs in the above-captioned action, *Velasquez, et al. v. USPlabs, LLC and GNC Corp.*, Northern District of Florida, 4:13-cv00627-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 \_\_\_ a.m. on \_\_\_\_\_ 2012 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' fee, 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.

**IT IS SO ORDERED.**

Dated:

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Honorable Robert L. Hinkle  
United States District Judge