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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LUIS LERMA, an Individual,
NICK PEARSON, an Individual,
On Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

v.

SCHIFF NUTRITION
INTERNATIONAL, INC., a
Delaware Corporation and
SCHIFF NUTRITION GROUP, INC.,
a Utah Corporation,

Defendants.

CASE NO: 11-cv-1056-MDD

REPLY BRIEF OF *AMICI CURIAE*
TRUTH IN ADVERTISING, INC. AND
AARP IN OPPOSITION TO PROPOSED
SETTLEMENT

Assigned to:
Magistrate Judge:
Hon. Mitchell D. Dembin

Date: October 30, 2015
Time: 10:00 a.m.
Courtroom: 1E

Amici curiae, Truth in Advertising, Inc. (“TINA.org”) and AARP, stand by
their opposition to the proposed settlement in this case, which was timely filed on

1 March 11, 2015 (Dkt. 127-1) and supplemented in response to the parties’
 2 proposed amendments to the settlement agreement on May 8, 2015 (Dkt. 144).

3 In their response brief, Plaintiffs state that it is their understanding that “the
 4 Objections/Amicus Brief filed by Truth in Advertising, Inc. (“TINA”) and the
 5 American Association of Retired Persons (“AARP”) earlier in this litigation
 6 (D.E. 127, 136, 144), are no longer pending before this Court.”¹ (Dkt.166).
 7 Defendants also state that “it is unclear whether the objection has been
 8 withdrawn.” (Dkt. 167). TINA.org and AARP have not withdrawn their
 9 opposition to the settlement. Further, the Supplemental Brief filed by TINA.org
 10 and AARP on May 15, 2015 (Dkt. 144) specifically opposes the terms of the
 11 proposed *amended* settlement agreement.²

12 In summary, TINA.org and AARP oppose the terms of the proposed
 13 settlement agreement, which bans just six types of phrases from the labels of
 14 defendants’ glucosamine supplement for a mere two years:

- 15 • Repair/repairing/reparation/repairs joints;
- 16 • Repair/repairing/reparation/repairs cartilage;
- 17 • Rebuild/rebuilding/rebuilds joints;
- 18 • Rebuild/rebuilding/rebuilds cartilage;
- 19 • Rejuvenate/rejuvenating/rejuvenation/rejuvenates joints; and
- 20 • Rejuvenate/rejuvenating/rejuvenation/rejuvenates cartilage.

21 Second Amended Settlement Agreement, ¶ IV.E. The amended settlement
 22 continues to allow the use of deceptive marketing phrases, including, for example,
 23 “build cartilage,” “improve joint function,” “reduce joint pain,” and other
 24 synonymous phrases. Thus, as explained in detail in TINA.org’s and AARP’s
 25 previous filings, this insignificant injunctive relief, requiring only superficial and

26 ¹ AARP is the correct legal name of the organization. AARP no longer stands for the
 27 “American Association of Retired Persons.”

28 ² Both parties stated in their respective Responses to Objections that they are addressing the arguments
 raised by TINA.org and AARP. Thus, neither party is disadvantaged by their alleged confusion.

1 incomplete labeling changes, does not justify release of the class members' claims
2 and an award of over \$6.5 million, or 33% of the settlement fund to plaintiffs'
3 attorneys, while the majority of class members—those who did not retain receipts
4 for every purchase—will have an opportunity to receive a maximum recovery of
5 \$12.00, if they learn about the settlement in time to make a claim.

6 For the foregoing reasons, and those detailed in the previously filed
7 pleadings, amici curiae TINA.org and AARP respectfully urge this Court to deny
8 final approval of the proposed settlement.

9 DATED: October 13, 2015 Respectfully submitted,
10 FINCH, THORNTON & BAIRD, LLP

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15 DATED: October 13, 2015 Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been filed electronically on this 13th day of October 2015 and is available for viewing and downloading to the ECF registered counsel of record:

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6 DATED: October 13, 2015

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