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individually and on behalf of all others
similarly situated

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES EASHOO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

IOVATE HEALTH SCIENCES U.S.A.,
INC.,

Defendant.

CASE NO. 2:15-cv-01726-BRO-PJW
(Assigned to the Honorable Beverly
Reid O'Connell)

CLASS ACTION

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 9, 2015
Time: 1:30 p.m.
Crtrm: 14 - Spring St. Floor

1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 9, 2015, at 1:30 p.m. or as soon
 3 thereafter as the matter may be heard in the Courtroom of the Honorable Beverly
 4 Reid O'Connell, United States District Court, Central District of California, Central
 5 Division, Plaintiff James Eashoo will and hereby does move the Court, pursuant to
 6 Federal Rule of Civil Procedure 23(e), for the entry of an Order:

- 7 1. Preliminarily approving the Settlement Agreement between Plaintiff
- 8 James Eashoo and Defendant Iovate Health Sciences U.S.A., Inc.;
- 9 2. Directing notice of the proposed settlement to the Class; and
- 10 3. Setting a schedule for the final approval process.

11 The grounds for this motion are that the proposed settlement is within the
 12 necessary range of reasonableness to justify granting preliminary approval.

13 This motion is based upon this Notice of Motion and Motion for Preliminary
 14 Approval of Class Action Settlement, the Declaration of Daniel L. Warshaw, the
 15 pleading and papers on file in this action, and such oral and documentary evidence
 16 as may be presented at the hearing on this motion.

17
 18 DATED: October 9, 2015

PEARSON, SIMON & WARSHAW, LLP
 DANIEL L. WARSHAW
 BOBBY POUYA
 MATTHEW A. PEARSON
 ALEXANDER R. SAFYAN

22
 23 By: /s/ Daniel L. Warshaw
 24 DANIEL L. WARSHAW
 25 Attorneys for Plaintiff James Eashoo,
 26 individually and on behalf of all others
 27
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

This class action is centered on allegations that Defendant Iovate Health Sciences U.S.A., Inc. (“Iovate”) “spiked” its protein supplements with non-protein compounds to artificially inflate the claimed amount of protein contained therein. Rather than litigate this case through class certification and trial, and face the uncertainties that come therewith, Plaintiff James Eashoo (“Plaintiff” or “Eashoo”) and Iovate engaged in arm’s-length settlement negotiations with the assistance of a respected and experienced neutral, the Honorable Dickran M. Tevrizian (Ret.). As a result of these settlement negotiations, Plaintiff has obtained a nationwide class action Settlement,¹ which provides substantial monetary and injunctive relief to purchasers of Iovate protein supplements and adequately remedies the harm alleged by Plaintiff.

The Settlement Agreement creates a \$2.5 million non-reversionary common fund in which Class Members can participate and obtain refunds for their eligible purchases in three ways: (1) filing a claim using receipts for a 100% refund of the amount(s) shown on the receipt for each Protein Product² up to \$300 per household; (2) filing a claim by submitting proof of purchase to redeem the suggested retail price for each Protein Product up to \$300 per household; or (3) filing a claim without any receipt or proof of purchase to receive \$10.00 per Protein Product up to

¹ All capitalized terms herein shall have the definitions set forth in the Settlement Agreement unless otherwise stated. The Settlement Agreement is attached to the Declaration of Daniel L. Warshaw as Exh. 1.

² The term “Protein Products” is defined in the Settlement Agreement and herein as any of the protein supplements distributed by Defendant under any brand name including MuscleTech, Six Star, Epic, or fuel:one during the Class Period. (Settlement Agreement § 1.32.)

1 \$50.00 per household.

2 Additionally, the Settlement provides for injunctive relief that requires Iovate
3 to accurately test, measure and disclose the amount of protein in the Protein
4 Products by eliminating amino acids, creatine, and other nitrogen producing non-
5 protein compounds from its protein calculations. This injunctive relief directly
6 addresses the allegations in this lawsuit and ensures that consumers will be able to
7 make informed purchasing decisions regarding the Protein Products.

8 When weighed against the risks, costs, delay, and uncertainties of continuing
9 the litigation, the Settlement constitutes an excellent result that is fair, adequate, and
10 reasonable, and comports with all of the criteria for preliminary approval.
11 Furthermore, the notice plan contemplated by the Settlement Agreement and
12 detailed herein complies with the applicable law and is the best notice practicable
13 for this case. Accordingly, Plaintiff requests that the Court grant preliminary
14 approval to the proposed Settlement, direct distribution of notice to the Settlement
15 Class, and set a schedule for final approval of the Settlement.

16 **II. FACTUAL AND PROCEDURAL HISTORY**

17 Plaintiff originally filed this class action lawsuit on March 10, 2015. (Dkt. 1
18 and Declaration of Daniel L. Warshaw (“Warshaw Decl.”), ¶ 5.) Plaintiff thereafter
19 filed the operative First Amended Complaint (“FAC”) on April 10, 2015. (Dkt. 16.)
20 The FAC alleges causes of action on behalf of Plaintiff and a putative nationwide
21 class of purchasers of Iovate Protein Products since March 10, 2011 for: (1)
22 violation of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1770
23 *et seq.* (“CLRA”); (2) breach of express warranty; (3) negligent misrepresentation;
24 (4) violations of California’s false advertising law, Cal. Bus. & Prof. Code §§ 17500
25 *et seq.* (“FAL”); (5) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§
26 2301, *et seq.*; and (6) violation of California’s unfair competition law, Cal. Bus. &
27 Prof. Code §§ 17200 *et seq.* (“UCL”).

28 The crux of Plaintiff’s lawsuit is that Iovate engaged in a practice commonly

1 referred to as “protein spiking,” whereby it added creatine, amino acids, and other
 2 non-protein ingredients in the Protein Products that falsely registered as proteins
 3 under certain nitrogen based protein testing methods. (Dkt. 15, ¶¶ 26-29.) Plaintiff
 4 alleged that by counting these non-protein ingredients as proteins, Iovate misled
 5 consumers by artificially increasing the claimed protein content of the Protein
 6 Products. Plaintiff further alleged that Iovate misrepresented the qualities and
 7 benefits of the Protein Products by double counting these amino acids and non-
 8 protein compounds towards the amount of protein, and separately claiming that the
 9 products contain these compounds “*in addition to proteins.*” (*Id.*, ¶ 30.) Plaintiff
 10 alleged that as a result of Iovate’s material misrepresentations, Plaintiff and other
 11 similarly situated consumers were induced into purchasing or paying more for
 12 Iovate’s Protein Products than they otherwise would have.

13 The parties exchanged Rule 26 initial disclosures on April 13, 2015 and
 14 engaged in pre-certification discovery. In response to Plaintiff’s discovery requests,
 15 Iovate has produced over 1,000 pages of documents, relating to the testing,
 16 formulation, advertising, promotion, sales, protein content, and protein calculation
 17 of the Protein Products. (Warshaw Decl., ¶ 6.) Plaintiff also took the deposition of
 18 Iovate’s Rule 30(b)(6) witness, Derek Smith, regarding these same subjects on April
 19 30, 2015. (*Id.*, ¶ 7.) Iovate took the deposition of Plaintiff James Eashoo on May 5,
 20 2015. (*Id.*, ¶ 8.)

21 Iovate filed a Motion to Dismiss on May 11, 2015. (Dkt. 32 and Warshaw
 22 Decl., ¶ 9.) After the Motion to Dismiss was filed, the parties continued to meet
 23 and confer regarding the arguments raised in the Motion. (Warshaw Decl., ¶ 9.) As
 24 a result of these discussions, and in an effort to narrow the issues before the Court,
 25 on June 7, 2015, Iovate withdrew its initial Motion to Dismiss. (Dkt. 36 and
 26 Warshaw Decl., ¶ 10.) On June 19, 2015, Iovate filed a new Motion to Dismiss,
 27 arguing that Plaintiff’s claims are preempted by the regulations of the Federal Food,
 28 Drug and Cosmetics Act (“FDCA”) relating to the calculation of the protein content

1 in dietary supplements. (Dkt. 38.) Plaintiff filed his opposition to Iovate's second
2 Motion to Dismiss on July 27, 2015, (Dkt. 39 and Warshaw Decl., ¶ 11), and
3 Defendant filed its Reply on August 3, 2015. (Dkt. 40.) Defendant's Motion to
4 Dismiss was scheduled to be heard on August 17, 2015. (Dkt. 39 & Warshaw Decl.,
5 ¶ 11.)

6 In May 2015, the parties attended an initial mediation session with Judge
7 Tevrizian. (Warshaw Decl., ¶ 12.) This initial mediation did not result in a
8 successful resolution of the case. (*Id.*) However, the parties, with the assistance of
9 Judge Tevrizian, continued to engage in settlement talks. (*See id.*, ¶ 13.) These
10 settlement discussions were robust and hotly contested, and at times it appeared that
11 a Settlement could not be achieved. (*See id.*)

12 Under Judge Tevrizian's supervision, the parties ultimately reached
13 agreement on the essential terms of a settlement with a full and complete
14 understanding of the relevant facts and circumstances surrounding this litigation.
15 (*See Id.*) The parties filed their Notice of Settlement on August 12, 2015. (Dkt. 41
16 and Warshaw Decl., ¶ 15.) The parties did not discuss or reach any agreement on
17 attorneys' fees, costs, or incentive awards prior to finalizing the terms of the relief to
18 the Class Members. (Warshaw Decl., ¶ 14.) The parties finalized the Settlement
19 Agreement on September 21, 2015. (*See* Settlement Agreement, Warshaw Decl., at
20 Exh. 1.)

21 **III. SUMMARY OF THE SETTLEMENT**

22 The Settlement Agreement provides for a Non-Reversionary Common Fund
23 that will be used to pay Class Member claims, administration costs, attorneys' fees,
24 and expenses in this litigation. Under the Settlement Agreement, participating Class
25 Members will receive a **one hundred percent** refund up to \$300 if they submit
26 receipts or proof of purchase, or up to \$50 without any receipts or proof of purchase.
27 The Settlement Agreement also provides significant injunctive relief in the form of
28 modifications to the labels of Iovate's Protein Products. The material terms of the

Settlement Agreement are set forth below.

A. Class Member Relief

1. Monetary Relief

Pursuant to the Settlement Agreement, Iovate will provide a refund to Class Members who submit a timely and valid Claim Form. Settlement Class Members will be eligible to obtain monetary relief either with or without proof of purchase paid from the Settlement Fund. The Settlement allows Class Members to choose one of the following claim methods: (1) Settlement Class Members who submit valid receipts showing purchases of one or more Protein Products will receive a 100% refund of the amount(s) shown on the Receipt(s), up to \$300 per household; (2) Settlement Class Members who submit valid proof of purchase other than receipts (e.g. Protein Product labels, SKUs, etc.), will receive a refund for the suggested retail price of each Protein Product, up to \$300 per household; or (3) Settlement Class Members who do not provide a receipt or proof of purchase, but affirm under penalty of perjury that they purchased a Protein Product during the Class Period, will receive \$10.00 per Protein Product, up to \$50.00 per household. (*See* Settlement Agreement § 4.3.2.)

The Settlement Fund created by the Settlement Agreement is designed to maximize the recovery of Class Members. As such, any amounts remaining in the fund after all claims have been paid will be distributed to Class Members who made valid claims. (*See* Settlement Agreement § 4.3.6.) Under no circumstance will any funds revert back to Iovate. (*Id.*)

2. Injunctive Relief

The Settlement also requires Iovate to provide injunctive relief to the Class by modifying the testing, labeling, packaging, and advertising for its Protein Products to insure that the nitrogen content attributed to amino acids, creatine, and other non-protein substances therein are not included in the protein calculation. (*See* Settlement Agreement § 4.1.1.) This injunctive relief is significant because it

1 directly addresses and remedies the central allegation in Plaintiff’s lawsuit—that
 2 nitrogen from amino acids, creatine, and other non-protein substances artificially
 3 inflated the amount of claimed protein in the Protein Products.

4 **B. Narrowly Tailored Release**

5 The Settlement Agreement contains a narrowly tailored Class Member release
 6 that is specifically limited to the claims arising out of or relating to the Complaint
 7 during the Class Period. (*Id.* § 6.1.) As set forth herein, these allegations are
 8 limited to Plaintiff’s claims that Iovate misrepresented and artificially inflated the
 9 true protein content of the Protein Products.

10 **C. Cost of Administration and Class Notice**

11 Under the Settlement Agreement, all costs and expenses of administering the
 12 Settlement and providing Notice in accordance with the Preliminary Approval Order
 13 shall be distributed from the Non-Reversionary Common Fund. (Settlement
 14 Agreement § 5.1.1.) The parties have selected Rust Consulting, Inc. (“Rust”) as the
 15 claims administrator, and Kinsella Media, Inc. (“Kinsella”) as the notice provider.

16 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE**
 17 **SETTLEMENT**

18 **A. Standard for Preliminary Approval**

19 Rule 23(e) requires court approval of any settlement of claims of a settlement
 20 class. It is well-settled that there is “a strong judicial policy that favors settlements,
 21 particularly where complex class action litigation is concerned.” *Class Plaintiffs v.*
 22 *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *see also Churchill Vill., L.L.C.*
 23 *v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Syncor ERISA Litig.*, 516
 24 F.3d 1095, 1101 (9th Cir. 2008).

25 To grant preliminary approval of a class action settlement, a court need only
 26 find that the settlement is within “the range of reasonableness” to justify publishing
 27 and sending notice of the settlement to Class Members and scheduling final
 28 approval proceedings. *See In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078,

1 1079-80 (N.D. Cal. 2007); Newberg on Class Actions § 13:15 (5th ed.). Preliminary
 2 approval should be granted where “the proposed settlement appears to be the
 3 product of serious, informed, non-collusive negotiations, has no obvious
 4 deficiencies, does not improperly grant preferential treatment to class
 5 representatives or segments of the class, and falls within the range of possible
 6 approval.” *Vasquez v. Coast Valley Roofing, Inc.*, 670 F.Supp.2d 1114, 1125 (E.D.
 7 Cal. 2009).

8 The approval of a proposed class action settlement “is committed to the sound
 9 discretion of the trial judge.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
 10 Cir. 1998). In exercising this discretion, however, courts must give “proper
 11 deference to the private consensual decision of the parties” because “the court’s
 12 intrusion upon what is otherwise a private consensual agreement negotiated between
 13 the parties to a lawsuit must be limited to the extent necessary to reach a reasoned
 14 judgment that the agreement is not the product of fraud or overreaching by, or
 15 collusion between, the negotiating parties, and the settlement, taken as a whole, is
 16 fair, reasonable and adequate to all concerned.” *Id.* at 1027.

17 In making a preliminary determination of the fairness, reasonableness, and
 18 adequacy of a class action settlement, the trial court must balance a number of
 19 factors, including:

- 20 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity,
 21 and likely duration of further litigation; (3) the risk of maintaining class
 22 action status throughout the trial; (4) the amount offered in settlement;
 23 (5) the extent of discovery completed and the stage of the proceedings;
 24 (6) the experience and views of counsel; (7) the presence of a
 governmental participant; and (8) the reaction of the Class Members to
 the proposed settlement.

25 *Churchill Vill.*, 361 F.3d at 575; *see also Torrissi v. Tucson Elec. Power Co.*, 8 F.3d
 26 1370, 1375 (9th Cir. 1993). At the preliminary approval stage, a final analysis of
 27 the settlement’s merits is not warranted. Instead, a more detailed assessment is
 28

1 reserved for final approval, after class notice has been sent and Class Members have
 2 had the opportunity to object to, or opt out of, the settlement. *See* Moore’s Fed.
 3 Prac. § 23.165 (3d ed. 2009).

4 **B. The Settlement Provides Substantial Relief to the Class and**
 5 **is Well Within the Necessary Range of Reasonableness**

6 The Settlement in this case is fair, reasonable, and adequate and should be
 7 approved by the Court because it provides substantial monetary relief and injunctive
 8 relief to Settlement Class Members. Significantly, the Settlement Agreement will
 9 provide up to \$300 for claimants with proof of purchase and up to \$50 for claimants
 10 without proof of purchase, and requires Iovate to modify its testing protocols and
 11 procedures to ensure that creatine, amino acids, and other non-protein compounds
 12 are not counted towards the protein calculation. As detailed below, the factors to be
 13 considered by the Court weigh heavily in favor of preliminary approval, because the
 14 Settlement Agreement adequately remedies the false advertising claims alleged by
 15 Plaintiff in this class action lawsuit.

16 **1. The Strength of Plaintiff’s Case Compared to the Risk,**
 17 **Expense, Complexity, and Likely Duration of Further**
 18 **Litigation**

19 Although risks and expenses apply to any lawsuit, these elements were
 20 significant in this case and weigh strongly in favor of approving the Settlement. As
 21 set forth above, Plaintiff’s lawsuit alleges that Iovate misled consumers because the
 22 Protein Products contained less protein than the represented amount. The basis for
 23 Plaintiff’s lawsuit was that Iovate added or “spiked” its Protein Products with
 24 creatine, amino acids, and other nitrogen based non-protein additives, which falsely
 25 registered as proteins under certain testing methods.

26 Iovate vigorously defended its protein testing methodology and asserted that
 27 Plaintiff’s claims were without merit. Furthermore, Iovate brought a Motion to
 28

1 Dismiss on grounds that its protein testing methods and procedures complied with
2 federal law under the FDCA. Defendant argued that Plaintiff's lawsuit asserting
3 violations of California law were preempted by the FDCA and could not proceed
4 past the pleading stage. Although Plaintiff believes that he would have defeated
5 Iovate's Motion to Dismiss, there was no guarantee that Plaintiff would have
6 overcome the preemption argument. Even if Plaintiff did defeat Iovate's Motion to
7 Dismiss, Iovate was likely going to assert preemption as a defense to class
8 certification and trial.

9 If the parties did not reach a settlement, Iovate would have undoubtedly
10 asserted additional legal and factual defenses at class certification, summary
11 judgment, and trial. Thus, there was no guarantee that Plaintiff would have been
12 able to certify a nationwide class and obtain any recovery on behalf of the Class
13 Members. Even if Plaintiff prevailed at class certification and trial, it was uncertain
14 whether he could recover damages in the full amount of the purchase price of the
15 Protein Products, as permitted under the Settlement. *See Ivie v. Kraft Foods Global,*
16 *Inc.*, 2015 WL 183910, at * 2 (N.D. Cal. Jan. 14, 2015) (advocating for the price
17 premium model for damages rather than awarding the full purchase price of the
18 misbranded products). As such, in the absence of the Settlement, Plaintiff would
19 have faced significant litigation risks and no substantial prospect of obtaining a
20 better result on behalf of the Class Members.

21 Plaintiff would have also incurred substantial litigation expenses in order to
22 litigate this case through class certification and trial. In addition to ordinary
23 litigation expenses (e.g. filing fees, travel, court reporters, etc.), Plaintiff would have
24 had to incur expert fees and conduct substantial expert discovery in order to
25 demonstrate the Protein Products contained less protein than the amount claimed by
26 Iovate, and Plaintiff's claims could be litigated through trial on a class-wide basis.

27 Finally, since this case was in its early stages and the Court had not yet set a
28 trial date or pre-trial schedule, Plaintiff would have had to litigate this case for a

lengthy and unknown duration of time in order to prevail at class certification and trial. A successful result at trial may have also resulted in a post-trial appeal by Iovate. Therefore, this Settlement provides complete relief to the Class without the delay and risk of further litigation.

In light of the above, the litigation risks, expense, complexity, and duration of further litigation weigh heavily in favor of granting preliminary approval, especially when weighed against the substantial monetary and injunctive relief provided by the Settlement.

2. The Amount Offered in Settlement

The benefits offered by the Settlement Agreement also weigh heavily in favor of preliminary approval. As detailed above, the Settlement Agreement creates a \$2.5 million Non-Reversionary Common Fund that provides substantial monetary relief to the Class Members. Specifically, claimants can obtain a 100% refund up to \$300 if they provide receipts or proof of purchase of one or more of Iovate's Protein Products. (Settlement Agreement §§ 4.3.2.1, 4.3.2.2.) This relief is arguably more than claimants would have been able to obtain at trial, because it refunds the full purchase price of the Protein Products, rather than limiting damages to the price premium attributable to Iovate's alleged misrepresentations. *See Ivie*, 2015 WL 183910, at * 2.

The Settlement Agreement also allows Class Members without any proof of purchase to receive \$10 per Protein Product, up to \$50 per household, if they swear or affirm under penalty of perjury that they purchased one or more Iovate Protein Products during the Class Period. (Settlement Agreement § 4.3.2.3.) This option for recovery is significant because it ensures that Class Members can participate in a manner that is convenient and does not require them to maintain or submit proof of past purchases.

Class Members will also benefit from injunctive relief that requires Iovate to eliminate nitrogen attributed to amino acids, creatine, and other non-protein

1 ingredients, from the amount of protein claimed in the Protein Products. (Settlement
2 Agreement § 4.1.1.) This injunctive relief specifically remedies the
3 misrepresentations alleged in the FAC, and ensures that future consumers will make
4 informed decisions relating to the purchase of the Protein Products.

5 When viewed in light of the risks and costs of further litigation, these
6 remedies constitute an exceptional result for the Class and justify granting
7 preliminary approval of the Settlement.

8 **3. The Risk of Maintaining Class Action Status Through Trial**

9 As set out more fully below, Plaintiff submits that this action could be
10 properly maintained as a class action. However, Iovate would have undoubtedly
11 vigorously opposed class certification, and there was no guarantee that Plaintiff
12 would be able to certify the Class and maintain class action status through trial.
13 These arguments asserted by Iovate in opposition to class certification would have
14 likely included attacks on almost every factor for class certification, including
15 ascertainability, typicality, adequacy of representation, and the existence of common
16 issues. Defendant would have likely argued that common issues did not
17 predominate because of variations in damages and Class Members' reliance on the
18 alleged protein content misrepresentations. (*See* Dkt. 38, Motion to Dismiss, at p. 1
19 (discussing the purported benefits of the creatine and amino acids added to the
20 Protein Products.)) Plaintiff's ability to maintain class certification status through
21 trial may have also been impacted by an unforeseen intervening change in law.

22 Although Plaintiff is confident that this action could be certified as a class
23 action, the risk of maintaining class action status throughout trial weighs in favor of
24 preliminary approval.

25 **4. The Extent of Discovery Completed and the Stage of the** 26 **Proceedings**

27 Although the case is in its early stages, the parties have conducted sufficient
28 discovery to allow them to make an informed decision regarding the legal and

1 factual sufficiency of the Settlement Agreement. (Warshaw Decl., ¶ 16.) Prior to
 2 filing this lawsuit, Plaintiff and his counsel conducted a thorough investigation into
 3 the facts of the case, including conducting independent testing of the Protein
 4 Products. (*Id.*, ¶ 4.) After Plaintiff filed the lawsuit, the parties exchanged Rule 26
 5 initial disclosures on April 13, 2015. (*Id.*, ¶ 6.) Plaintiff then served Iovate with a
 6 Rule 30(b)(6) deposition notice and corresponding requests for production of
 7 documents relating to the testing, formulation, advertising, promotion, sales, protein
 8 content, and protein calculation of the Protein Products. (*Id.*, ¶ 6.) In response to
 9 this discovery, Iovate produced, and Plaintiff reviewed, over 1,000 pages of
 10 documents. (*Id.*) On April 30, 2015, Plaintiff took the deposition of Iovate's Rule
 11 30(b)(6) witness, Derek Smith, regarding the core facts and allegations underlying
 12 Plaintiff's claims. (*Id.*, ¶ 7.) Iovate then took the deposition of Plaintiff on May 5,
 13 2015. (*Id.*, ¶ 8.)

14 The Settlement Agreement further requires Iovate to produce additional
 15 confirmatory discovery regarding its sales revenue to verify the financial basis and
 16 assumptions in the Settlement Agreement. (Settlement Agreement § 11.1.) In
 17 addition to this formal discovery, the parties engaged in the informal exchange of
 18 relevant facts and information through the mediation and settlement negotiation
 19 process. (Warshaw Decl., ¶ 13.) This discovery and investigation provided the
 20 parties and Judge Tevrizian with sufficient evidence and understanding of the facts
 21 to evaluate the strengths and weaknesses of Plaintiff's claims, and make an
 22 informed decision to enter into the Settlement Agreement. (*Id.*)

23 **5. The Experience and Views of Counsel**

24 Preliminary approval is further justified by the fact that Plaintiff and the Class
 25 are represented by counsel from Pearson, Simon & Warshaw, LLP, who have
 26 extensive experience in class action litigation, have negotiated numerous other class
 27 action settlements, and have the ability to litigate this case on a class-wide basis
 28 through trial if the parties failed to reach a fair settlement. (Warshaw Decl., ¶ 17.)

Class Counsel were satisfied with the Settlement Agreement only after conducting intensive settlement negotiations with the assistance of Judge Tevrizian and thorough investigation into the factual and legal issues raised in this case. (*Id.*, ¶¶ 13, 16.) Class Counsel drew on their considerable experience and expertise in negotiating and evaluating the Settlement, and in determining that the Settlement Agreement was reasonable and provided substantive relief to the Class. (*See id.*, ¶¶ 13, 17, 18, 23.)

V. THE COURT SHOULD CERTIFY A SETTLEMENT CLASS FOR SETTLEMENT PURPOSES

Before granting preliminary approval of a settlement, the Court must determine that the proposed Settlement Class is a proper class for settlement purposes. Manual for Complex Litig. (4th ed. 2004) § 21.632; *Amchem Prods.*, 521 U.S. at 620. Certification is appropriate where the proposed class and the proposed class representatives meet the four requirements of Rule 23(a)—numerosity, commonality, typicality and adequacy of representation—and one of the three requirements of Rule 23(b).

Here, Plaintiff seeks certification pursuant to Rules 23(a) and 23(b)(3) on behalf of the Settlement Class, consisting of: “all persons in the United States of America who purchased one or more of Defendant’s Protein Products at any time during the [March 10, 2011 and the date of Preliminary Approval]. Excluded from the Settlement Class are any officers, directors, or employees of Iovate, and the immediate family member of any such person. Also excluded from the Settlement Class is any judge who may preside over this case.” (Settlement Agreement §§ 1.9, 1.41.) For the reasons set forth below, all of the required elements of class certification are satisfied.

A. The Requirements of Rule 23(a) Are Satisfied

“Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate.” *Wal-Mart Stores, Inc. v. Dukes*, 131

1 S. Ct. 2541, 2550 (2011). Under Rule 23(a), the party seeking certification must
2 demonstrate that:

3 (1) the class is so numerous that joinder of all members is impracticable;

4 (2) there are questions of law or fact common to the class;

5 (3) the claims or defenses of the representative parties are typical of the
6 claims or defenses of the class; and

7 (4) the representative parties will fairly and adequately protect the interests of
8 the class.

9 Fed. R. Civ. P. 23(a).

10 1. Numerosity

11 Rule 23(a)(1) requires that the class be “so numerous that joinder of all
12 members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Where the exact size of the
13 class is unknown, but general knowledge and common sense indicate that it is large,
14 the numerosity requirement is satisfied.” *In re Abbott Labs. Norvir Anti-trust Litig.*,
15 Case Nos. C 04-1511 CW, C 04-4203 CW, 2007 WL 1689899, at *6 (N.D. Cal.
16 June 11, 2007). Here, there are at least thousands of Settlement Class Members,
17 which easily satisfies the numerosity requirement.

18 2. Commonality

19 Rule 23(a)(2) requires that there be “questions of law or fact common to the
20 class.” Fed. R. Civ. P. 23(a)(2). “Commonality requires the plaintiff to demonstrate
21 that the Class Members ‘have suffered the same injury.’” *Dukes*, 131 S. Ct. at 2551
22 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). Class members’
23 claims “must depend upon a common contention . . . that is capable of classwide
24 resolution—which means that determination of its truth or falsity will resolve an
25 issue that is central to the validity of each one of the claims in one stroke.” *Id.*
26 “What matters to class certification . . . is not the raising of common ‘questions’—
27 even in droves—but, rather the capacity of a classwide proceeding to generate
28 common *answers* apt to drive the resolution of the litigation.” *Id.*

Here, the claims of all Class Members depend upon a common contention that Iovate misrepresented the true amount of protein content in Iovate's Protein Products by engaging in protein "spiking." All Class Members' claims are based upon the same alleged conduct by Iovate, resulting in the litigation of common legal issues. Further, the common questions of law and fact presented in this case could only be efficiently resolved in a classwide proceeding that would generate common answers to those questions.

3. Typicality

Rule 23(a)(3) is satisfied if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent Class Members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other Class Members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotations omitted).

Here, Plaintiff is a consumer who purchased the Protein Products as a dietary supplement. Like similarly situated Class Members, Plaintiff relied on Iovate's representations about the protein content and composition of its Protein Products in making his purchase. Plaintiff's experience is not unique, but rather illustrative of the experience of other Class Members. Accordingly, Plaintiff's claims are typical of the claims of the Class.

4. Adequacy of Representation

Rule 23(a)(4) permits class certification only if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "This factor requires: (1) that the proposed representative plaintiffs do not have

1 conflicts of interest with the proposed class, and (2) that Plaintiffs are represented by
2 qualified and competent counsel.” *Dukes*, 603 F.3d at 614, *rev’d on other grounds*,
3 131 S. Ct. 2541 (2011) (quoting *Hanlon*, 150 F.3d at 1020).

4 Plaintiff does not have any conflicts of interest with the proposed Class.
5 Plaintiff’s claims are identical to the claims of other Class Members and arise from
6 the same conduct by Iovate. Plaintiff and other Class Members have suffered the
7 same injury, and Plaintiff seeks relief equally applicable and beneficial to the Class.
8 Further, Plaintiff is represented by qualified and competent counsel who have the
9 experience and resources necessary to vigorously pursue this action. (*See* Warshaw
10 Decl., ¶ 17 & Exh. 2 (“Firm Resume”).) Plaintiff and his counsel are able to fairly
11 and adequately represent the interests of the Class.

12 **B. The Requirements of Rule 23(b)(3) Are Satisfied**

13 In addition to meeting the prerequisites of Rule 23(a), a class action must
14 satisfy at least one of the three conditions of Rule 23(b). Plaintiff submits that the
15 Settlement Class satisfies Rule 23(b)(3). Under Rule 23(b)(3), a class action may be
16 maintained if: “[1] the court finds that the questions of law or fact common to Class
17 Members predominate over any questions affecting only individual members, and
18 [2] that a class action is superior to other available methods for fairly and efficiently
19 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

20 Here, common questions predominate over any individualized inquiries
21 relating to Class Members. Plaintiff’s claims are based upon the same conduct of
22 Iovate: misrepresenting the true protein content and composition of their Protein
23 Products. The class claims predominate over any evidential inquiry as the core
24 misrepresentation relates to the fundamental characteristics of the Protein Products,
25 the amount of protein contained therein. Consumers purchase Protein Products for
26 one reason, protein supplementation. The questions of law and fact surrounding this
27 ultimate issue far outweigh any individualized issues regarding Class Members.

28 Therefore, this action is appropriate for class certification for settlement

1 purposes, embodying all the hallmarks, both in form and in substance, of class
2 actions routinely certified in this Circuit.

3 **VI. THE SETTLEMENT PROVIDES PROPER NOTICE TO THE**
4 **CLASS**

5 Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable
6 manner to all Class Members who would be bound by a proposed settlement,
7 voluntary dismissal, or compromise.” Notice to the class must be “the best notice
8 that is practicable under the circumstances, including individual notice to all
9 members who can be identified through reasonable effort.” Fed. R. Civ. P.
10 23(c)(2)(B); *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997);
11 *Mullane v. Cen. Hanover Bank & Trust Co.*, 229 U.S. 306, 314 (1950). The notice
12 must contain the following information: (1) the nature of the action; (2) the
13 definition of the class; (3) the class claims, issues, or defenses; (4) that any class
14 member may appear at the fairness hearing through an attorney; (5) that the court
15 will exclude from the class any member who requests exclusion; (6) the time and
16 manner for requesting exclusion; and (7) the binding effect of a judgment on Class
17 Members. Fed. R. Civ. P. 23(c)(2)(B).

18 Where the identity of specific Class Members is not reasonably available,
19 notice by publication is an acceptable method of providing notice. *See In re*
20 *Tableware Antitrust Litig.*, 484 F.Supp.2d at 1080 (citing *Manual for Complex*
21 *Litigation* § 21.311 (4th ed. 2004)); Cal. Civ. Code § 1781 (authorizing notice by
22 publication under the CLRA “if personal notification is unreasonably expensive or it
23 appears that all members of the class cannot be notified personally”). Here, Iovate
24 did not directly sell its Protein Products to Class Members so it does not possess
25 contact information for the Class Members.

26 The primary means of notice in this case will be notice by publication in print
27 format and via the Internet. Class Counsel and Kinsella have determined that
28 internet advertising is the best method to provide targeted notice to the Class, which

1 is comprised of younger and Internet savvy consumers. The advertising will be
 2 targeted to consumers who are interested in health, fitness, and exercising. The
 3 Internet-based portion of the notice plan calls for targeted Internet banner
 4 advertisements running for four weeks on several popular health and fitness
 5 websites, including: (1) Men's Health; (2) Men's Fitness; (3) Muscle & Fitness; (4)
 6 Muscle & Fitness Hers; and (5) Flex. Targeted notice will also be provided through
 7 Facebook to individuals who have expressed an interest in health and fitness. By
 8 advertising on these websites, the notice is expected to result in 50 million
 9 impressions³ that are targeted to reach the Class Members.

10 In addition to Internet advertising, the notice plan calls for the insertion of
 11 quarter-page notices Monday through Thursday for four consecutive weeks in *USA*
 12 *Today's* Los Angeles and San Francisco regional editions. This print publication
 13 plan satisfies the publication requirements of the CLRA.

14 Plaintiff's counsel will also issue an informational press release over PR
 15 Newswire's US1 and National Hispanic newslines. The US1 release will be issued
 16 broadly to more than 15,000 media outlets, including newspapers, magazines,
 17 national wire services, television, radio, and online media in all 50 states. The
 18 Hispanic newswire reaches over 7,000 U.S. Hispanic media contacts including
 19 online placement of approximately 100 Hispanic websites nationally.

20 The content of the notice complies with the requirements of Rule 23(c)(2)(B).
 21 As seen in both the Long Form and Short Form notices attached to the Settlement
 22 Agreement, the notice describes the nature of the action, states the definition of the
 23 class, explains the binding effect of the judgment on Class Members, and provides
 24 _____

25
 26 ³ "Impressions" are defined as the number of times a user was exposed to the
 27 advertisement.
 28

all of the necessary information for Class Members to appear at the fairness hearing, file a claim, object to the settlement, and/or exclude themselves from the Class.

Accordingly, the Court should approve the proposed notice plan.

VII. THE COURT SHOULD SET A FINAL APPROVAL HEARING SCHEDULE

The last step in the settlement approval process is the final approval hearing, at which the Court may hear all evidence and argument necessary to evaluate the proposed settlement. At that hearing, proponents of the settlement may explain and describe their terms and conditions and offer argument in support of settlement approval. Members of the Class—or their counsel—may be heard in support of or in opposition to the settlement. Plaintiff proposes the following schedule for final approval of the settlement:

Date	Action
Within 30 days after entry of the Order Granting Preliminary Approval	Commencement of Notice to the Class Members (“Notice Date”)
45 days after the Notice Date	Deadline to file Plaintiff’s Motion for Attorneys’ Fees, Costs, and Incentive Award
60 days after the Notice Date	Deadline for Class Members to file a claim, opt-out, or object to the Settlement Agreement and Plaintiff’s Motion for Attorneys’ Fees, Costs, and Incentive Award
75 days after the Notice Date	Deadline to file Plaintiff’s Motion for Final Approval of the Settlement Agreement
75 days after the Notice Date	Deadline for the parties to respond to any objection to the Settlement Agreement and/or Plaintiff’s Motion for Attorneys’ Fees, Costs, and Incentive Award
100 days after the Notice Date	Final approval/fairness hearing

///

VIII. ATTORNEYS' FEES AND COSTS AND ENHANCEMENT

AWARDS

The Settlement Agreement states that Class Counsel may apply to the Court for an award of attorneys' fees and costs in an amount not to exceed twenty-five percent (25%) of the \$2.5 million Non-Reversionary Common Fund (i.e. up to \$625,000) and expenses and verified costs in an amount not to exceed \$15,000.00. (Settlement Agreement, § 9.1.) The Settlement Agreement also allows Plaintiff to apply to the Court for an enhancement award of \$5,000. (Settlement Agreement, § 9.2.) The enhancement award is designed to reward the class representative for his service to the Class, and is consistent with Ninth Circuit precedent that holds enhancement awards cannot be conditioned on class representatives' support for the settlement. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1161 (9th Cir. 2013).

The Notice will explain the forthcoming motion for attorneys' fees, costs, and enhancement award so that Class Members will be aware of the proposed requests. The motion for attorneys' fees, costs, and enhancement awards will be filed a reasonable time before the deadline for objections. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir. 2010) (holding that Class Members should have adequate time to review motion for attorneys' fees before deadline for objections).

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1 **IX. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests that the Court grant
3 preliminary approval of the Settlement Agreement, approve the proposed notice
4 plan, and establish a final approval hearing schedule.

5
6 DATED: October 9, 2015

PEARSON, SIMON & WARSHAW, LLP
DANIEL L. WARSHAW
BOBBY POUYA
MATTHEW A. PEARSON
ALEXANDER R. SAFYAN

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10
11 By: /s/ Daniel L. Warshaw

DANIEL L. WARSHAW

12 Attorneys for Plaintiff James Eashoo,
13 individually and on behalf of all others
14 similarly situated
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Attorneys for Plaintiff James Eashoo,
individually and on behalf of all others
similarly situated

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES EASHOO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

IOVATE HEALTH SCIENCES U.S.A.,
INC.,

Defendant.

CASE NO. 2:15-cv-01726-BRO-PJW
(Assigned to the Honorable Beverly Reid
O'Connell)

CLASS ACTION

**DECLARATION OF DANIEL L.
WARSHAW IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 9, 2015
Time: 1:30 p.m.
Crtrm: 14 - Spring St. Floor

1 I, Daniel L. Warshaw, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California
3 and before this Court. I am a partner in the law firm Pearson, Simon & Warshaw,
4 LLP ("PSW"), attorneys or record for Plaintiff James Eashoo ("Plaintiff") and the
5 Class in this case. I make this declaration in support of the Motion for Preliminary
6 Approval of Class Action Settlement. I have personal knowledge of the following
7 matters and, if called to testify concerning them, I could and would do so
8 competently.

9 2. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement
10 Agreement entered into by the parties.

11 3. Attached hereto as Exhibit 2 is a true and correct copy of PSW's firm
12 resume.

13 4. Prior to filing this lawsuit, PSW conducted a thorough investigation
14 into the facts of this case, which included independent third party testing of the
15 protein content of the Protein Products. That testing verified that the amount of
16 protein was less than the amount that Iovate claimed was contained in its Protein
17 Products.

18 5. On March 10, 2015, PSW filed the instant action on behalf of Plaintiff
19 and the Class in the United States District Court, Central District of California.

20 6. The parties exchanged Rule 26 initial disclosures on April 13, 2015,
21 and engaged in pre-certification discovery. In response to Plaintiff's discovery
22 requests, Iovate has produced over 1,000 pages of documents, relating to the testing,
23 formulation, advertising, promotion, sales, protein content, and protein calculation
24 of the Protein Products.

25 7. Plaintiff took the deposition of Iovate's Rule 30(b)(6) witness, Derek
26 Smith, regarding these same subjects on April 30, 2015. However, prior to the
27 deposition, PSW carefully analyzed the documents produced by Iovate.

28 8. Iovate took the deposition of Plaintiff James Eashoo on May 5, 2015.

1 9. Iovate filed a Motion to Dismiss on May 11, 2015, prior to any
2 settlement discussions. The motion was made on several grounds including
3 preemption, statute of limitations, failure to provide proper notice under the
4 Magnuson-Moss Warranty Act, and failure to comply with Rule 9(b). After the
5 motion was filed, I engaged in further meet and confer discussions with Iovate's
6 counsel in an effort to narrow the issues for the court to decide.

7 10. Based on these discussions Iovate withdrew its Motion to Dismiss, on
8 June 7, 2015, and agreed to file a narrower Motion to Dismiss.

9 11. On June 19, 2015, Iovate re-filed its Motion to Dismiss, arguing that
10 Plaintiff's claims are preempted by the regulations of the Food, Drug and Cosmetics
11 Act ("FDCA"), relating to the calculation of the protein content in dietary
12 supplements. Plaintiff filed his opposition to Iovate's second Motion to Dismiss on
13 July 27, 2015, and was scheduled to be heard on August 17, 2015.

14 12. On May 14, 2015 the parties attended a full day mediation session at
15 JAMS with the Honorable Dickran M. Tevrizian (Ret.). Despite the parties' best
16 efforts, this initial mediation did not result in a successful resolution of the case.

17 13. However, settlement discussions continued over the next three months
18 under the supervision of Judge Tevrizian. The parties exchanged additional
19 information throughout the mediation process. Numerous telephone conferences
20 were held between the parties and Judge Tevrizian until the parties were able to
21 reach an agreement in August 2015 on all major points of the settlement.

22 14. The parties did not discuss or reach any agreement on attorneys' fees,
23 costs, or incentive awards prior to finalizing the terms of the relief to the Class.

24 15. The parties filed their Notice of Settlement on August 12, 2015, after
25 reaching agreement on the essential terms of the settlement on behalf of the Class.

26 16. The parties then engaged in extensive negotiations pertaining to the
27 terms of the settlement agreement. PSW entered into the Settlement Agreement
28 only after conducting a thorough investigation and discovery, into the nature of the

1 action, the size of the Class, Defendant's conduct, Defendant's sales, and the
2 fairness of the individual recovery in this case. This investigation and discovery
3 provided a legal and factual basis to support the adequacy of the settlement.

4 17. PSW has extensive experience in class action litigation, has negotiated
5 numerous other substantial settlements, and has the ability to litigate this case on a
6 class wide basis had the parties failed to reach a fair settlement.

7 18. The attorneys at PSW have decades of experience handling complex
8 consumer class actions, including cases that involve the types of claims asserted in
9 this case. In addition, PSW has served as lead or co-lead counsel in numerous class
10 actions including: *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827
11 (N.D. Cal.), *In re Lithium Ion Batteries Antitrust Litigation*, MDL No. 2330 (N.D.
12 Cal.), *In re Credit Default Swaps Antitrust Litigation*, MDL No. 2476 (S.D.N.Y.), *In*
13 *re Carrier IQ Consumer Privacy Litigation*, MDL No. 2330 (N.D. Cal.); *In re*
14 *Warner Music Group Corp. Digital Downloads Litigation*, No. CV 12-0559 (N.D.
15 Cal.); *Sciortino, et al. v. PepsiCo, Inc.*, No. 14-cv-478 (N.D. Cal.); *Senne v. Office of*
16 *the Commissioner of Baseball et al.*, No. 3:14-cv-00608 (N.D. Cal.). *See generally*
17 Exhibit 2 (PSW firm resume).

18 19. I served as co-lead counsel in *Wolph v. Acer America Corp.*, No. C 09-
19 1314 (N.D. Cal.), a nationally certified class action involving defective Acer
20 computers that resulted in a class wide settlement.

21 20. I also played an integral role in *TFT-LCD*, where I negotiated the ESI
22 protocol and managed a document review process that featured nearly 8 million
23 documents in multiple languages and 136 reviewers. The *TFT-LCD* case resulted in
24 an approximate \$560 million class recovery for direct purchaser plaintiffs.

25 21. Additionally, I currently serve as interim co-lead counsel in *In re*
26 *Warner Music Group Corp. Digital Downloads Litigation*, No. CV 12-0559-RS
27 (N.D. Cal.) and *James v. UMG Recordings, Inc.*, No. CV 11-1613-SI (N.D. Cal.),
28 cases involving allegations of underpaid royalties to recording artists and producers

1 for digital downloads of their music. I am also serving as co-lead counsel in
2 *Sciortino v. PepsiCo*, which involves allegations that Pepsi beverages violate
3 California's Proposition 65. In the order granting PSW's contested motion for lead
4 counsel, the Honorable Edward M. Chen stated:

5 PSW [] has extensive experience with complex class
6 action litigation, including trial experience. PSW [has]
7 demonstrated specific expertise in Proposition-65-related
8 litigation and have shown the ability and willingness to
commit resources to prosecuting this action.

9 22. My experience, in addition to the other attorneys at PSW, in leading
10 these aforementioned complex class action lawsuits, makes PSW uniquely qualified
11 to serve as class counsel in this case.

12 23. This settlement provides an exceptional result for the class by
13 providing a full refund of the purchase price of the Protein Products. Coupled with
14 the strong injunctive relief requiring Iovate to modify its product labels to stop the
15 practice of protein spiking, this settlement provides benefits to the class that equal or
16 surpass the result that could be achieved at trial, without risk or delay. Therefore,
17 based on my experience, and investigation into the facts of this case, I believe that
18 the Settlement Agreement is fair, reasonable, and adequate, and should be approved
19 by the Court.

20 I declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true and correct.

22 Executed October 9, 2015, in Sherman Oaks, California.

23
24 /s/ Daniel L. Warshaw
Daniel L. Warshaw

EXHIBIT 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES EASHOO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

IOVATE HEALTH SCIENCES U.S.A.,
INC.

Defendant.

Case No. 2:15-cv-1726-BRO-PJW

CLASS ACTION

**CLASS ACTION SETTLEMENT
AGREEMENT**

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

4 **TERMS AND CONDITIONS OF THE SETTLEMENT**

5 **1. DEFINITIONS**

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

9 1.1. "Action" means the civil action entitled *Eashoo v. Iovate Health Sciences*
10 *U.S.A., Inc.*, Case No. 2:15-cv-1726-BRO-PJW, currently pending in the United
11 States District Court for the Central District of California.

12 1.2 "CAFA Notice" means the notice of this Class Action Settlement
13 Agreement to the appropriate federal and state officials in the United States, as
14 provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further
15 described in Paragraph 5.1.4.

16 1.3. "Claim" or "Settlement Claim" means a claim for payment submitted by
17 a Settlement Class Member to the Claims Administrator as provided in this Class
18 Action Settlement Agreement.

19 1.4. "Claim Form" or "Settlement Claim Form" means a claim form,
20 substantially in the form of Exhibit A attached hereto, to be submitted by Claimants
21 seeking payment pursuant to this Class Action Settlement Agreement to the Claims
22 Administrator.

23 1.5. "Claimant" means a Settlement Class Member who submits a claim for
24 payment.

25 1.6. "Claims Administrator" refers to the independent, third-party claims
26 administrator jointly selected by the Parties to provide notice to the Settlement Class,
27 CAFA Notice, and to administer the claims process.

1 1.7. “Class Action Settlement Agreement,” “Settlement Agreement,”
2 “Settlement,” or “Agreement” means this Class Action Settlement Agreement,
3 including the attached exhibits.

4 1.8. “Class Counsel” means the Class Representative’s counsel of record in
5 the Action, Daniel L. Warshaw and the law firm of Pearson, Simon & Warshaw, LLP.

6 1.9. “Class Period” means the time period between March 10, 2011 through
7 the date the Preliminary Approval Order is entered.

8 1.10. “Class Representative” means James Eashoo.

9 1.11. “Court” means the United States District Court for the Central District of
10 California.

11 1.12. “Defendant” means Iovate Health Sciences U.S.A., Inc., as well as its
12 past, present, and future officers, directors, shareholders, employees, predecessors,
13 affiliates, parents, subsidiaries, partners, distributors, principals, insurers,
14 administrators, agents, servants, successors, trustees, vendors, subcontractors, co-
15 conspirators, buyers, independent contractors, attorneys, representatives, heirs,
16 executors, experts, consultants, and assigns of all of the foregoing persons and entities.

17 1.13. “Defendant’s Counsel” means Defendant’s counsel of record in the
18 Action, Scott J. Ferrell and the law firm known as Newport Trial Group, APC.

19 1.14. “Effective Date” means the first date by which all of the following events
20 shall have occurred: the Court has entered the Final Approval Order and Judgment on
21 the docket in the Action, and (a) the time to appeal from such order has expired and no
22 appeal has been timely filed, (b) if such an appeal has been filed, it has finally been
23 resolved and has resulted in an affirmation of the Final Approval Order and Judgment,
24 or (c) the Court, following the resolution of the appeal, enters a further order or orders
25 approving settlement on the terms set forth herein, and either no further appeal is
26 taken from such order(s) or any such appeal results in affirmation of such order(s).
27 Neither the pendency of the Fee and Cost Application, nor any appeal pertaining
28

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

3 1.15. "Fee and Cost Application" means the written motion or application by
4 which the Class Representative and/or Class Counsel request that the Court award
5 attorneys' fees, costs, expenses and incentive awards.

6 1.16. "Final Approval Hearing" means the hearing scheduled to take place at
7 least ninety days after the date of entry of the Preliminary Approval Order at which
8 the Court shall: (a) determine whether to grant final approval to this Class Action
9 Settlement Agreement and to certify the Settlement Class; (b) consider any timely
10 objections to this Settlement and all responses thereto; and (c) rule on the Fee and
11 Cost Application.

12 1.17. "Final Approval Order" means the order in which the Court grants final
13 approval of this Class Action Settlement Agreement, certifies the Settlement Class,
14 and authorizes the entry of a final judgment and dismissal of the Action with
15 prejudice.

16 1.18. "Judgment" means the judgment to be entered by the Court pursuant to
17 the Settlement.

18 1.19. "Net Settlement Fund" means the Non-Reversionary Common Fund, as
19 defined herein, less claims administration expenses, notice expenses, any fee award,
20 reimbursement of expenses, any incentive award, and tax expenses.

21 1.20. "Non-Reversionary Common Fund" means the non-reversionary sum of
22 two million five hundred thousand dollars (\$2,500,000) Defendant will pay to settle
23 all claims in the Action pursuant to this Settlement.

24 1.21. "Notice" shall mean a document substantially in the form of Exhibit B
25 hereto, and "Summary Notice," meaning a document substantially in the form of
26 Exhibit C hereto, to be disseminated in accordance with the Preliminary Approval
27 Order, informing Persons who fall within the Settlement Class definition of, among
28

1 other things, the pendency of the Action, the material terms of the Proposed
2 Settlement, and their options with respect thereto.

3 1.22 “Notice Date” means the date thirty (30) days after the Court provides
4 Preliminary Approval to the Settlement Agreement, by which the Claims
5 Administrator shall commence dissemination of Notice to the Settlement Class.

6 1.23. “Notice Plan” means the method of providing the Settlement Class with
7 notice of the Class Action Settlement Agreement, as approved by the Court.

8 1.24. “Notice Response Deadline” means the deadline for all members of the
9 Settlement Class to respond to the Notice, which shall be sixty (60) days after the
10 Notice Date.

11 1.25. “Opt-Out Date” means the date that is the end of the period to request
12 exclusion from the Settlement Class established by the Court and set forth in the
13 Notice.

14 1.26. “Participating Claimant” means a Claimant who submits a Qualifying
15 Settlement Claim Form in response to the Notice.

16 1.27. “Parties” means Class Representative James Eashoo and Defendant
17 Iovate Health Sciences U.S.A. Inc. “Party” shall refer to each of them individually.

18 1.28. “Person” means any natural person, individual, corporation, partnership,
19 limited partnership, association, joint stock company, estate, legal representative,
20 trust, unincorporated association, government or any political subdivision or agency
21 thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs,
22 predecessors, successors, representatives, and assignees.

23 1.29. “Plaintiff” means James Eashoo.

24 1.30. “Preliminary Approval Order” means the order in which the Court grants
25 its preliminary approval to this Class Action Settlement Agreement and preliminarily
26 certifies the Settlement Class, authorizes dissemination of Notice to the Settlement
27 Class, and appoints the Claims Administrator.

1 1.31 “Proof of Purchase” means the packaging, label, SKU or other evidence
2 from the Protein Products that the Claims Administrator deems sufficient to establish
3 that a Claimant purchased the Protein Products.

4 1.32. “Protein Products” means any of the protein supplements distributed by
5 Defendant under any brand name including MuscleTech, Six Star, Epic, or fuel:one
6 during the Class Period.

7 1.33. “Publication Notice” means the long-form and short-form notices,
8 substantially in the form of Exhibits B and C attached hereto. The long-form
9 Publication Notice and the short-form Publication Notice will be published as set forth
10 in the Preliminary Approval Order.

11 1.34. A “Qualifying Settlement Claim Form” shall mean a Claim Form that is
12 fully completed, properly executed and timely returned to the Claims Administrator
13 on or before the Notice Response Deadline by a Settlement Class Member. A
14 “Qualifying Settlement Claim Form” must be either returned with a postmark via U.S.
15 mail or via online through the Class Settlement Website to be created and maintained
16 by the Claims Administrator, at the Participating Claimant’s discretion.

17 1.35 “Receipt” shall mean documentary evidence establishing the purchase of
18 one or more Protein Products, the date of purchase and the purchase price.

19 1.36. “Released Claims” means all of the claims alleged in the First Amended
20 Class Action Complaint filed in the Action.

21 1.37. “Released Parties” and “Released Persons” means Defendant, its parent
22 companies, subsidiary companies, affiliated companies, past, present, and future
23 officers (as of the Effective Date), directors, shareholders, employees, predecessors,
24 affiliates, parents, subsidiaries, joint partners, distributors, principals, insurers,
25 administrators, agents, servants, successors, trustees, vendors, subcontractors, co-
26 conspirators, buyers, independent contractors, attorneys, representatives, heirs,
27 executors, experts, consultants, and assigns of all of the foregoing persons and entities.

28 1.38. “Releasing Parties” means all Settlement Class Members.

1 1.39. "Request for Exclusion" means a valid request for exclusion from a
2 member of the Settlement Class. To be valid, a request for exclusion must (a) be
3 submitted by the member of the Settlement Class; (b) be submitted to the Claims
4 Administrator and postmarked by a date no later than the Notice Response Deadline;
5 (c) contain the submitter's name, address and telephone number; and (d) otherwise
6 comply with the instructions set forth in the Notice.

7 1.40. "Settlement" means the settlement set forth in this Class Action
8 Settlement Agreement.

9 1.41. "Settlement Class" means, collectively, all persons in the United States of
10 America who purchased one or more of Defendant's Protein Products at any time
11 during the Class Period. Excluded from the Settlement Class are any officers,
12 directors, or employees of Defendant, and the immediate family member of any such
13 person. Also excluded is any judge who may preside over this case.

14 1.42. "Settling Parties" means, collectively, Defendant, the Class
15 Representative, and all Settlement Class Members.

16 1.43. "Settlement Class Member" means any member of the Settlement Class
17 who does not submit a timely and valid Request for Exclusion.

18 1.44. "Valid Claim" means a claim for reimbursement submitted by a
19 Settlement Class Member that satisfies all the criteria for submission of a Qualifying
20 Settlement Claim Form.

21 1.45. The singular of any defined term includes the plural, and the plural of any
22 defined term includes the singular.

23 **2. DENIAL OF WRONGDOING AND LIABILITY**

24 2.1. Defendant denies the material factual allegations and legal claims
25 asserted by the Class Representative in the Action, including any and all charges of
26 wrongdoing or liability arising out of any of the conduct, statements, acts or omissions
27 alleged, or that could have been alleged, in the Action.
28

1 **3. THE BENEFITS OF SETTLEMENT**

2 3.1. Class Counsel and the Class Representative recognize and acknowledge
3 the expense and length of continued proceedings that would be necessary to prosecute
4 the Action against Defendant through trial and appeals. Class Counsel also has taken
5 into account the uncertain outcome and the risk of any litigation, especially in
6 complex actions such as this Action, as well as the difficulties and delays inherent in
7 such litigation. Class Counsel is mindful of the inherent problems of proof and
8 possible defenses to the claims asserted in the Action. Class Counsel believes that the
9 proposed settlement set forth in this Class Action Settlement Agreement confers
10 substantial benefits upon the Settlement Class. Based on their evaluation of all of
11 these factors, the Class Representative and Class Counsel have determined that the
12 Class Action Settlement Agreement is in the best interests of the Class Representative
13 and the Settlement Class.

14 **4. SETTLEMENT CONSIDERATION**

15 4.1. **Injunctive Relief**

16 4.1.1. Defendant will provide the Settlement Class injunctive relief by way of
17 modification of the testing, label, packaging, and advertising for Protein Products to
18 ensure that the nitrogen content attributed to amino acids, creatine, and other non-
19 protein substances therein are not included in the protein calculation.

20 4.1.2. Defendant shall provide sufficient confirmation of the implementation of
21 its updated testing procedures, labels, and advertisements for Protein Products prior to
22 the Effective Date.

23 4.1.3. To the extent that any state and/or federal statute, regulation, policies,
24 and/or code may at any time impose other, further, different and/or conflicting
25 obligations or duties on Defendant at any time with respect to the Protein Products,
26 this Class Action Settlement Agreement and any Judgment which may be entered
27 pursuant thereto, as well as the Court's continuing jurisdiction with respect to
28 implementation and enforcement of the terms of this Class Action Settlement

1 Agreement, shall cease as to the Settlement Class's and Defendant's conduct covered
2 by that statute, regulation and/or code as of the effective date of such statute,
3 regulation, and/or code.

4 4.2. **Non-Reversionary Common Fund**

5 4.2.1. The amount of the Non-Reversionary Common Fund is two million five
6 hundred thousand dollars (\$2,500,000). None of the money paid into the Non-
7 Reversionary Common Fund will revert to Defendant under any circumstances.

8 4.2.2. No later than three (3) business days after entry of the Preliminary
9 Approval Order, Defendant shall make a deposit of two million five hundred thousand
10 dollars (\$2,500,000) into an escrow account to be established and managed by the
11 Claims Administrator.

12 4.2.3. Refunds to Settlement Class Members provided under Paragraph 4.3 will
13 be paid from the Net Settlement Fund.

14 4.2.4. Any taxes and tax expenses related to the fund shall be taken from the
15 Net Settlement Fund.

16 4.2.5. The amounts deposited by Defendant into the Non-Reversionary
17 Common Fund are to be released from escrow for funding the Class Action Settlement
18 Agreement only upon the Effective Date.

19 4.2.6. If for some reason the Court does not approve the Class Action
20 Settlement Agreement, the entirety of the Non-Reversionary Common Fund shall be
21 returned to Defendant within fifteen (15) business days of the Court's order denying
22 Final Approval.

23 4.3. **Refunds to Class Members**

24 4.3.1. The Non-Reversionary Common Fund shall provide for a full refund for
25 any of the Protein Products purchased by any member of the Settlement Class from
26 any retailer who makes a claim within the timeframe to make a Valid Claim, subject
27 to the household cap set forth in Paragraph 4.3.2.2 and 4.3.2.3. Adequate and
28 customary procedures and standards will be used by the Claims Administrator to

1 prevent the payment of fraudulent claims and to pay only legitimate claims including
2 requiring all Claimants to provide certifications as to their purchases.

3 4.3.2. The amount of the refund for any claim shall be determined as follows:

4 4.3.2.1. For any Participating Claimant who provides a Receipt, the
5 Participating Claimant shall be entitled to a refund of the amount(s) shown on the
6 receipt, subject to a cap of \$300.00 per household.

7 4.3.2.2 For any Participating Claimant who provides Proof of Purchase;
8 the Participating Claimant shall be entitled to the suggested retail price of the Protein
9 Product as determined by information on the packaging, such as a bar or SKU code,
10 subject to a cap of \$300.00 per household. 4.3.2.3 For any Participating Claimant
11 who does not provide Proof of Purchase or Receipts, but who swears or affirms under
12 penalty of perjury that he or she purchased a Protein Product during the Class Period,
13 the actual amount paid to each Participating Claimant will be \$10.00 per Protein
14 Product, with a cap of \$50.00 per household.

15 4.3.3. Participating Claimants can make a claim for a combination of Receipts
16 or Proof of Purchase. Participating Claimants cannot combine claims with Receipts or
17 Proof of Purchase with claims without Receipts or Proof of Purchase. A cap of \$300
18 per household shall apply to any combination of claims including claims with
19 Receipts, claims with Proof of Purchase, and claims without any Receipts or Proof of
20 Purchase.

21 4.3.4. Payment will be made directly to the Participating Claimant by first class
22 mail after entitlement to payment has been verified, and in no event more than six
23 months after the close of the timeframe to make a Valid Claim, unless Class Counsel
24 permits an extension of time.

25 4.3.5. Payments to Participating Claimants may be subject to *pro rata* reduction
26 if the aggregate number of claims exceeds the Net Settlement Fund.

27 4.3.6. If all eligible Valid Claims have been paid and funds remain in the Net
28 Settlement Fund 270 days following the close of the Effective Date, Class Counsel

1 shall direct the Claims Administrator to distribute one hundred (100) percent of any
2 remaining funds to Participating Claimants as a supplemental distribution. The
3 remaining funds shall first be distributed to Participating Claimants who have
4 provided valid claims with Receipts or Proof of Purchase in excess of \$300, up to the
5 full amount of their qualifying purchases of the Protein Products. Funds remaining
6 thereafter shall be distributed on a *pro rata basis* to Participant Claimants. In the
7 event that there are remaining funds subsequent to the aforementioned distributions to
8 Participating Claimants that are insufficient to justify a further distribution, the
9 remaining monies in the Net Settlement Fund shall be provided to Public Health Law
10 & Policy (dba ChangeLab Solutions), a cy pres recipient. Under no circumstances
11 shall the remaining funds revert to Defendant or Class Counsel.

12 **5. ADMINISTRATION AND NOTICE**

13 5.1.1. All costs and expenses of administering the Class Action Settlement
14 Agreement and providing Notice in accordance with the Preliminary Approval Order
15 (the “Administrative Costs”) shall be distributed from the Non-Reversionary Common
16 Fund.

17 5.1.2. Appointment and Retention of Claims Administrator

18 5.1.2.1. The parties retained a Claims Administrator to implement the
19 terms of the Class Action Settlement Agreement.

20 5.1.2.2. The Claims Administrator will facilitate the notice process by
21 assisting the Parties in the implementation of the Notice Plan, as well as CAFA
22 Notice, although Defendant shall retain ultimate responsibility for effecting CAFA
23 Notice within the required time.

24 5.1.2.3. The costs of the Claims Administrator will be paid from the Non-
25 Reversionary Common Fund.

26 5.1.3. Class Settlement Website

27 5.1.3.1. The Claims Administrator will create and maintain the Class
28 Settlement Website, to be activated within fifteen (15) days of the entry of the

1 Preliminary Approval Order by the Court. The Claims Administrator's
2 responsibilities will also include securing an appropriate URL. The Class Settlement
3 Website will post the settlement documents and case-related documents such as the
4 Class Action Settlement Agreement, the Long-Form Notice, the Claim Form (in
5 English and Spanish versions), and the Preliminary Approval Order. In addition, the
6 Class Settlement Website will include procedural information regarding the status of
7 the Court-approval process, such as an announcement of the Final Approval Hearing
8 Date, when the Final Approval Order and Judgment have been entered, and when the
9 Effective Date has been reached. Claimants will be able to submit their claims
10 electronically via the Class Settlement Website.

11 5.1.3.2. Defendant shall prominently place a link to the Class Settlement
12 Website on Defendant's corporate website.

13 5.1.3.3. The Class Settlement Website will terminate (be removed from the
14 internet) and no longer be maintained by the Claims Administrator thirty (30) days
15 after either (a) the Effective Date or (b) the date on which the Class Action Settlement
16 Agreement is terminated or otherwise not approved by a court, whichever is later.
17 The Claims Administrator will then transfer ownership of the URL to Defendant.

18 5.1.3.4. All costs and expenses related to the Class Settlement Website
19 shall be distributed from the Non-Reversionary Common Fund.

20 5.1.4. **CAFA Notice**

21 5.1.4.1. The Parties agree that the Claims Administrator shall serve notice
22 of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the
23 appropriate federal and state officials no later than ten (10) days after the filing of this
24 Class Action Settlement Agreement with the Court.

25 5.1.4.2. Notwithstanding the foregoing, Defendant shall have ultimate
26 responsibility to ensure that CAFA Notice is, in fact, effectuated consistent with the
27 statutory requirements.
28

1 5.1.4.3. All costs and expenses related to the CAFA Notice shall be
2 distributed from the Non-Reversionary Common Fund.

3 5.1.4.4. Defendant will file a certification with the Court stating the date(s)
4 on which the CAFA Notices were sent. Defendant will provide Class Counsel with
5 any substantive responses received in response to any CAFA Notice.

6 5.1.5. **Notice Plan**

7 5.1.5.1. The class notice shall conform to all applicable requirements of the
8 Federal Rules of Civil Procedure, the United States Constitution (including the Due
9 Process Clauses), and any other applicable law, and shall otherwise be in the manner
10 and form agreed upon by the Parties and approved by the Court. The class notice
11 shall constitute the best notice that is practicable under the circumstances.

12 5.1.5.2. Within thirty (30) days after preliminary approval by the Court of
13 this Class Action Settlement Agreement, the Claims Administrator shall provide
14 notice to the Settlement Class according to the Notice Plan.

15 5.1.5.3. The Notice Plan will include direct notice to any Settlement Class
16 Member who can be individually identified.

17 5.1.5.4. Defendant shall prominently place a link to the Class Settlement
18 Website on Defendant's corporate website.

19 5.1.5.5. The Parties agree to the content of these notices substantially in the
20 forms attached to this Agreement as Exhibits B and C.

21 5.1.6. **Taxes**

22 5.1.6.1. Settlement Class Members, the Class Representative, and Class
23 Counsel shall be responsible for paying any and all federal, state, and local taxes due
24 on any payments made to them pursuant to the Class Action Settlement Agreement.

25 5.1.6.2. Taxes due in connection with the Non-Reversionary Common
26 Fund and Net Settlement Fund prior to distribution to the Settlement Class shall be
27 paid by the Claims Administrator from the Net Settlement Fund.
28

1 **6. RELEASES**

2 6.1. Upon the Effective Date, the Class Representative and each of the
3 Settlement Class Members will be deemed to have, and by operation of the Judgment
4 will have fully, finally, and forever released, relinquished, and discharged the
5 Released Parties from all Released Claims during the Class Period.

6 **7. CLASS CERTIFICATION**

7 7.1.1. The Parties agree that, for settlement purposes only, this Action shall be
8 certified as a class action pursuant to Federal Rule of Civil Procedure 23 with Class
9 Representative serving as class representative and Class Counsel as counsel for the
10 Settlement Class.

11 7.1.2. In the event the Class Action Settlement Agreement is terminated or for
12 any reason the Class Action Settlement Agreement is not effectuated, the certification
13 of the Settlement Class shall be vacated and the Action shall proceed as if the
14 Settlement Class had not been certified.

15 **8. SETTLEMENT HEARING**

16 8.1. Promptly after execution of this Class Action Settlement Agreement, the
17 Parties will submit the Class Action Settlement Agreement together with its Exhibits
18 to the Court and will request that the Court grant preliminary approval of the Class
19 Action Settlement Agreement as of the date of which the settlement shall be deemed
20 as “filed” within the meaning of 28 U.S.C. § 1715, issue the Preliminary Approval
21 Order, and schedule a hearing on whether the Class Action Settlement Agreement
22 should be granted final approval and whether the Fee Application should be granted
23 (“Settlement Hearing”).

24 **8.2. Procedures for Objecting to the Class Action Settlement Agreement**

25 8.2.1. Settlement Class Members shall have the right to appear and show cause,
26 if they have any reason why the terms of this Class Action Settlement Agreement
27 should not be given Final Approval, subject to each of the subprovisions in Paragraph

28 8.2. Any objection to this Class Action Settlement Agreement, including any of its

1 terms or provisions, must be in writing, filed with the Court, with a copy served on
2 Class Counsel, Counsel for Defendant, and the Claims Administrator at the addresses
3 set forth in the Class Notice, and postmarked no later than the Notice Response
4 Deadline. Settlement Class Members may object either on their own or through an
5 attorney hired at their own expense.

6 8.2.2. If a Settlement Class Member hires an attorney to represent him or her at
7 the Final Approval Hearing, he or she must do so at his or her own expense. No
8 Settlement Class Member represented by an attorney shall be deemed to have objected
9 to the Class Action Settlement Agreement unless an objection signed by the
10 Settlement Class Member is also filed with the Court and served upon Class Counsel,
11 Counsel for Defendant, and the Claims Administrator at the addresses set forth in the
12 Class Notice no later than the Notice Response Deadline.

13 8.2.3. Any objection regarding or related to the Class Action Settlement
14 Agreement shall contain a caption or title that identifies it as “Objection to Class
15 Settlement in *Eashoo v. Iovate Health Sciences U.S.A. Inc.*, No. 2:15-cv-01726-BRO-
16 PJW” and also shall contain the following information: (i) the objector’s name,
17 address, and telephone number, (ii) the name, address, and telephone number of any
18 attorney for the objector with respect to the objection; (iii) the factual basis and legal
19 grounds for the objection, including any documents sufficient to establish the basis for
20 their standing as a Settlement Class Member, e.g., Receipt, Proof of Purchase, or
21 verification under oath as to the approximate date(s) and location(s) of their
22 purchase(s) of the Protein Products; and (iv) identification of the case name, case
23 number, and court for any prior class action lawsuit in which the objector and the
24 objector’s attorney (if applicable) has objected to a proposed class action settlement,
25 the general nature of such prior objection(s), and the outcome of said prior
26 objection(s). If an objecting party chooses to appear at the hearing, no later than the
27 Notice Response Deadline, a notice of intention to appear, either in person or through
28

1 an attorney, must be filed with the Court and list the name, address, telephone number,
2 facsimile number, and email address of the attorney, if any, who will appear.

3 8.2.4. If a Settlement Class Member wishes to present witnesses or evidence at
4 the Final Approval Hearing in support of a timely and validly submitted objection, all
5 witnesses must be identified in the objection, and true and correct copies of all
6 supporting evidence must be appended to, or filed and served with, the objection.
7 Failure to identify witnesses or provide copies of supporting evidence in this manner
8 waives any right to introduce such testimony or evidence at the Final Approval
9 Hearing. While the declaration described above is prima facie evidence that the
10 objector is a member of the Settlement Class, Plaintiff or Defendant or both may take
11 discovery regarding the matter, subject to Court approval.

12 8.2.5. Any Settlement Class Member who fails to comply with the applicable
13 provisions of the preceding paragraphs concerning their objection shall waive and
14 forfeit any and all rights he or she may have to object, appear, present witness
15 testimony, and/or submit evidence, shall be barred from appearing, speaking, and
16 introducing any testimony or evidence at the Final Approval Hearing, and shall be
17 bound by all the terms of this Class Action Settlement Agreement and by all
18 proceedings, orders and judgments in the Action.

19 8.2.6. Any Settlement Class Member who does not object to the Class Action
20 Settlement Agreement is deemed to be a Settlement Class Member and bound by the
21 Class Action Settlement Agreement or any further orders of the Court in this Action.

22 8.3. **Right to Respond to Objections**

23 8.3.1. Class Counsel and Defendant shall have the right, but not the obligation,
24 to respond to any objection no later than seven (7) days prior to the Final Approval
25 Hearing. The Settling Party so responding shall file a copy of the response with the
26 Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the
27 objector (or counsel for the objector) and to counsel for Plaintiff and Defendant.

28 8.4. **Opt Outs**

1 8.4.1. Any Settlement Class Member who does not wish to participate in this
2 Class Action Settlement Agreement must write to the Claims Administrator stating an
3 intention to be “excluded” from this Class Action Settlement Agreement by the Opt-
4 Out Date. This written Request for Exclusion must be sent via first class United
5 States mail to the Claims Administrator at the address set forth in the Class Notice and
6 postmarked no later than the Notice Response Deadline. The Request for Exclusion
7 must be personally signed by the Class Member. So-called “mass” or “class” opt-outs
8 shall not be allowed.

9 8.4.2. Any Settlement Class Member who does not request exclusion from the
10 Settlement has the right to object to the Settlement as set forth in paragraphs 8.2.1 to
11 8.2.7 above. If a Class Member submits a written Request for Exclusion, he or she
12 shall be deemed to have complied with the terms of the opt-out procedure and shall
13 not be bound by the Class Action Settlement Agreement if approved by the Court.
14 However, any objector who has not timely requested exclusion from the Settlement
15 will be bound by the terms of the Class Action Settlement Agreement and by all
16 proceedings, orders and judgments in the Action.

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

19 9.1. Class Counsel may apply to the Court for an award of attorneys’ fees in
20 an amount not to exceed twenty five percent (25%) of the \$2.5 million Non-
21 Reversionary Common Fund (i.e. up to \$625,000) and expenses and verified costs in
22 an amount not to exceed \$15,000.00.

23 9.2. Plaintiff may apply to the Court for an enhancement award of \$5,000 for
24 his service as a Class Representative.

25 9.3 A payment of attorneys’ fees, costs, expenses and the enhancement
26 award shall be paid from the Non-Reversionary Common Fund. Defendant agrees not
27 to oppose or submit any evidence or argument challenging or undermining such
28 application for attorneys’ fees, costs, or enhancement award that does not exceed the

1 amounts set forth in this Settlement Agreement. Defendant will bear its own
2 attorneys' fees, costs and expenses.

3 9.4. Attorneys' fees and costs that are approved by the Court shall be paid
4 from the Non-Reversionary Common Fund no later than fifteen (15) days after
5 Effective Date, and only in the event that the Effective Date occurs.

6 9.5 Any incentive payments awarded by the Court will be taken from the
7 Non-Reversionary Common Fund.

8 **10. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF**
9 **TERMINATION**

10 10.1. The Effective Date of this Class Action Settlement Agreement shall be
11 the date as defined in Paragraph 1.14.

12 10.2. If this Class Action Settlement Agreement is not approved by the Court
13 or the Settlement is terminated or fails to become effective in accordance with the
14 terms of this Class Action Settlement Agreement, the Settling Parties will be restored
15 to their respective positions in the Action as of the date the Motion for Preliminary
16 Approval is filed. In such event, the terms and provisions of this Class Action
17 Settlement Agreement will have no further force and effect with respect to the Settling
18 Parties and will not be used in this Action or in any other proceeding for any purpose,
19 and any Judgment or order entered by the Court in accordance with the terms of this
20 Class Action Settlement Agreement will be treated as vacated.

21 10.3. No order of the Court or modification or reversal on appeal of any order
22 of the Court concerning any award of attorneys' fees, expenses, or costs to
23 Class Counsel will constitute grounds for cancellation or termination of this Class
24 Action Settlement Agreement.

25 **11. CONFIRMATORY DISCOVERY**

26 11.1. This Class Action Settlement Agreement is conditioned upon Defendant
27 providing sufficient confirmatory discovery to confirm the wholesale revenues during
28 the Class Period.

1 **12. DISPUTE RESOLUTION**

2 12.1. If any dispute arises out of the Settlement, the Settling Parties agree that
3 they will attempt to resolve such disputes by way of mediation with the Honorable
4 Dickran M. Tevrizian (Ret.) before seeking the Court's intervention. If for any reason
5 Judge Tevrizian is unavailable or has a conflict of interest, the Settling Parties will
6 agree on a substitute neutral so that this portion of the Class Action Settlement
7 Agreement can be enforced without seeking Court intervention.

8 **13. MISCELLANEOUS PROVISIONS**

9 13.1. The Parties acknowledge that it is their intent to consummate this Class
10 Action Settlement Agreement, and they agree to cooperate to the extent reasonably
11 necessary to effectuate and implement all terms and conditions of this Class Action
12 Settlement Agreement and to exercise their best efforts to accomplish the foregoing
13 terms and conditions of this Class Action Settlement Agreement.

14 13.2. The Parties intend the Settlement to be a final and complete resolution of
15 all disputes between them with respect to the Action. The Settlement compromises
16 claims that are contested and will not be deemed an admission by any Settling Party as
17 to the merits of any claim or defense. The Parties agree that the consideration
18 provided to the Settlement Class and the other terms of the Settlement were negotiated
19 in good faith by the Parties, and reflect a settlement that was reached voluntarily after
20 consultation with competent legal counsel.

21 13.3. Neither this Class Action Settlement Agreement nor the Settlement, nor
22 any act performed or document executed pursuant to or in furtherance of this Class
23 Action Agreement or the Settlement is or may be deemed to be or may be used as an
24 admission of, or evidence of, the validity of any Released Claims, or of any
25 wrongdoing or liability of Defendant; or is or may be deemed to be or may be used as
26 an admission of, or evidence of, any fault or omission of Defendant in any civil,
27 criminal, or administrative proceeding in any court, administrative agency or other
28 tribunal. Any party to this Action may file this Class Action Settlement Agreement

1 and/or the Judgment in any action that may be brought against it in order to support
2 any defense or counterclaim, including without limitation those based on principles of
3 res judicata, collateral estoppel, release, good faith settlement, judgment bar or
4 reduction, or any other theory of claim preclusion or issue preclusion or similar
5 defense or counterclaim.

6 13.4. All agreements made and orders entered during the course of the
7 Action relating to the confidentiality of information will survive this Class Action
8 Settlement Agreement.

9 13.5. Any and all Exhibits to this Class Action Settlement Agreement are
10 material and integral parts hereof and are fully incorporated herein by this reference.

11 13.6. This Class Action Settlement Agreement may be amended or modified
12 only by a written instrument signed by or on behalf of all Parties or their respective
13 successors-in-interest.

14 13.7. This Class Action Settlement Agreement and any Exhibits attached
15 hereto constitute the entire agreement among the Parties, and no representations,
16 warranties, or inducements have been made to any Party concerning this Class Action
17 Settlement Agreement or its Exhibits other than the representations, warranties, and
18 covenants covered and memorialized in such documents. Except as otherwise
19 provided herein, the Parties will bear their own respective costs.

20 13.8. Class Counsel, on behalf of the Settlement Class, are expressly
21 authorized by the Class Representative to take all appropriate action required or
22 permitted to be taken by the Settlement Class pursuant to this Class Action Settlement
23 Agreement to effectuate its terms, and are expressly authorized to enter into any
24 modifications or amendments to this Class Action Settlement Agreement on behalf of
25 the Settlement Class that Class Counsel deem appropriate.

26 13.9. Each counsel or other Person executing this Class Action Settlement
27 Agreement or any of its Exhibits on behalf of any Party hereby warrants that such
28 Person has the full authority to do so.

1 13.10. This Class Action Settlement Agreement may be executed in one or
2 more counterparts. All executed counterparts and each of them will be deemed to be
3 one and the same instrument. A complete set of original counterparts will be filed with
4 the Court.

5 13.11. This Class Action Settlement Agreement will be binding upon, and
6 inure to the benefit of, the successors and assigns of the Settling Parties.

7 13.12. Except as provided herein, the Court will retain jurisdiction with respect
8 to implementation and enforcement of the terms of this Class Action Settlement
9 Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes
10 of implementing and enforcing the Settlement.

11 13.13. None of the Settling Parties, or their respective counsel, will be deemed
12 the drafter of this Class Action Settlement Agreement or its Exhibits for purposes of
13 construing the provisions thereof. The language in all parts of this Class Action
14 Settlement Agreement and its Exhibits will be interpreted according to its fair
15 meaning, and will not be interpreted for or against any of the Settling Parties as the
16 drafter thereof.

17 13.14. This Class Action Settlement Agreement shall be deemed the “proposed
18 agreement” filed with the Court within the meaning of 15 U.S.C. § 1715 as of the date
19 on which Preliminary Approval is granted by the Court.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

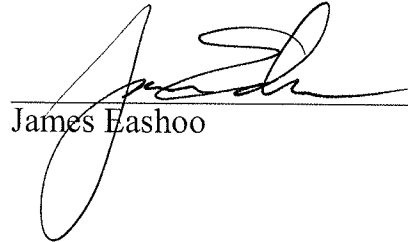
26 ///

27 ///

28 ///

1 13.15. This Class Action Settlement Agreement and any Exhibits hereto will be
2 construed and enforced in accordance with, and governed by, the internal, substantive
3 laws of the State of California without giving effect to that State's choice-of-law
4 principles.

5
6 Dated: September 21, 2015



James Eashoo

7
8
9 Dated: September ___, 2015

10 Roch Vaillancourt, General Counsel
11 On behalf of Iovate Health Sciences U.S.A. Inc.

12 **APPROVED AS TO FORM:**

13
14 Dated: September 21, 2015


15 Daniel L. Warshaw
16 Attorney for Plaintiff James Eashoo and the
17 Class

18 Dated: September ___, 2015


19 Scott J. Ferrell
20 Attorney for Defendant Iovate Health Sciences
21 U.S.A. Inc.

1 13.15. This Class Action Settlement Agreement and any Exhibits hereto will be
2 construed and enforced in accordance with, and governed by, the internal, substantive
3 laws of the State of California without giving effect to that State's choice-of-law
4 principles.

5
6 Dated: September __, 2015

James Eashoo

7
8
9 Dated: September 30, 2015



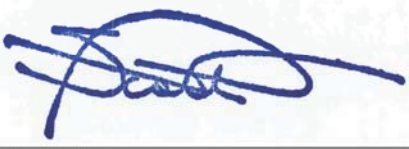
Roch Vaillancourt, General Counsel
On behalf of Iovate Health Sciences U.S.A. Inc.

10
11
12 **APPROVED AS TO FORM:**

13
14 Dated: September __, 2015

Daniel L. Warshaw
Attorney for Plaintiff James Eashoo and the
Class

15
16
17 Dated: September 30, 2015



Scott J. Ferrell
Attorney for Defendant Iovate Health Sciences
U.S.A. Inc.

EXHIBIT A

IMPORTANT LEGAL MATERIALS



* B A R C O D E 3 9 * - <<SequenceNo>>

<<Name 1>>

<<Name 2>>

<<Name 3>>

<<Name 4>>

<<Address 1>>

<<Address 2>>

<<City>> <<State>> <<Zip 10>>

<<CountryName>>



If the pre-printed information to the left is not correct or if there is no pre-printed information, please check the box and complete the information below:

Name: _____

Address: _____

City: _____

State: ____ Zip Code: ____

IOVATE SETTLEMENT CLAIM FORM

To receive a payment, you must accurately complete this Claim Form and submit it **NO LATER THAN** [REDACTED], 2016. **Failure to do so could result in a reduction or denial of your claim.**

CLASS MEMBER INFORMATION

Name:					
Mailing Address:					
City:		State:	____	Zip Code:	____
Telephone:	(____) ____ - ____	Email Address (optional):			

Claim Option

- ☐ **File Claim With Receipt to Recover Full Purchase Price Up To \$300 Per Household (must submit valid receipt)**
- ☐ **File Claim With Proof of Purchase to Recover Suggested Retail Price Up to \$300 Per Household (must submit valid proof of purchase).**
- ☐ **File a Claim With No Receipt or Proof of Purchase to Recover \$10 Per Product Up to \$50 Per Household.**

PURCHASE INFORMATION (For purchases made between March 10, 2011 and [REDACTED], 2015)

BRAND	PRODUCT	NUMBER PURCHASED	COST (FOR CLAIMS WITH RECEIPT)
Six Star	Whey Protein Plus Elite Series		
Six Star	Whey Protein Plus Professional Strength Elite Series		
Six Star	Whey Protein Isolate Elite Series		
Six Star	Whey Protein Isolate Professional Strength Elite Series		
Six Star	Casein Elite Series		
Six Star	Casein Professional Strength Elite Series		
Six Star	Muscle Building Milkshake Elite Series		





Six Star	Muscle Building Milkshake Professional Strength Elite Series		
Six Star	Mass Gainer Professional Strength Elite Series		
Six Star	Recovery Protein Elite Series		
Six Star	100% Whey Isolate Protein Gel		
Six Star	Protein Bars		
MuscleTech	MassTech Performance Series		
MuscleTech	MassTech		
MuscleTech	Nitro-Tech Performance Series		
MuscleTech	Nitro-Tech Hardcore Pro Series		
MuscleTech	Phase8 Performance Series		
MuscleTech	Anabolic Halo Performance Series		
MuscleTech	Nitro Isolate 65 Pro Series		
EPIQ	Isolate		
EPIQ	Gainer		
Sam's Club	Whey Protein Plus		
Sam's Club	Whey Isolate Plus		
Fuel One	Complex-1		
Fuel One	Gainer		
	TOTAL		

CERTIFICATION AND SIGNATURE

I personally completed this Claim Form and **I certify under penalty of perjury that the information I provided in this Claim Form is true, correct and complete to the best of my knowledge.**

Signature

Type/Print Name

____ / ____ / ____
Date

Upon completion, please mail your completed Claim Form, along with any Receipts and/or Proofs of Purchase, to:

IOVATE SETTLEMENT CLAIMS ADMINISTRATOR
PO BOX 2441
FARIBAULT, MN 55021-9140

Please note that the Claims Administrator has the right to audit all Claims submitted for validity.

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If You Bought MuscleTech, Six Star, EPIQ, or fuel:one Protein Products Between March 10, 2011, and [REDACTED], 2015 You Could Get a Cash Payment Up to \$300 From a Class Action Settlement

The District Court has authorized this Notice. The Court expresses no views as to the merits of Plaintiffs' claims.

This is *not* a solicitation from a lawyer. You are not being sued.

This Notice is to inform you that a class action lawsuit brought on behalf of Consumers that purchased certain Iovate Health Sciences, U.S.A., Inc. ("Iovate" or "Defendant") protein products is currently pending. A proposed Settlement of the lawsuit has been reached with Iovate.

If you bought MuscleTech, Six Star, EPIQ, or fuel:one Protein Products Between March 10, 2011, and [REDACTED], 2015 your legal rights are affected whether or not you act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DUE DATE
SUBMIT A CLAIM FORM	If you would like to receive a payment from this Settlement, you must submit a paper or online Claim Form by the due date listed.	SUBMITTED BY [REDACTED], 2016
EXCLUDE YOURSELF FROM THE CLASS	You may choose to exclude yourself from the Settlement by submitting a written request by the due date listed. This option will allow you to pursue claims against Iovate by filing your own lawsuit at your own expense. However, you will not be able to participate, or receive money from the Settlement.	SUBMITTED BY [REDACTED], 2016
OBJECT TO THE SETTLEMENT	You may write to the Court if you do not like the proposed Settlement by the due date listed. You must be a member of and remain in the Class to submit an objection.	FILED AND SUBMITTED BY [REDACTED], 2016
DO NOTHING	If you are a member of the Settlement Class and you do nothing, you will not receive any money from the Settlement and will be bound by the terms and conditions of the proposed Settlement, if approved. You will not be able to sue Iovate for the claims in this lawsuit.	

- These rights and options, and the deadlines to exercise them, are further explained in this Notice.
- The Court in charge of this case still has to approve the proposed Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved.
- Unless otherwise stated, the capitalized terms in this Notice are defined in the Settlement Agreement that is available at www.IovateSettlement.com.

BASIC INFORMATION**1. What is the class action about?**

This class action lawsuit was filed by Plaintiff James Eashoo, on behalf of himself and all others similarly situated, against Defendant Iovate. The lawsuit alleges that between March 10, 2011 and [REDACTED], 2015, Defendant engaged in a practice known as "protein spiking," whereby its protein products were "spiked" with amino acids, creatine, and other non-protein ingredients, which Plaintiff claims falsely registered as proteins. Plaintiff alleges that as a result of this practice, Defendant's protein products contained less protein than what Defendant represented. The protein products at issue in this case are sold under the brand names MuscleTech, Six Star, EPIQ, and fuel:one. See Question 4 for further discussion of the protein products involved in this class action.

2. Why is there a Settlement?

Defendant has agreed to settle to avoid the expense, inconvenience, and inherent risk of litigation. Plaintiff and his attorneys agree that the proposed Settlement is in the best interests of the Class because it substantially benefits the Class while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals. The Court has not decided in favor of either side in the case. Defendant denies all material factual allegations and legal claims asserted in the class action, including any and all charges of wrongdoing or liability arising out of any conduct, statements, acts or omissions alleged.

3. Who is included in the Settlement?

The Class is defined as all persons in the United States of America who purchased one or more of Defendant's protein products at any time from March 10, 2011 to [REDACTED], 2015. The protein products at issue in this case are sold under the brand names MuscleTech, Six Star, EPIQ, and fuel:one. See Question 4 for further discussion of the protein products involved in this class action.

4. What Iovate protein products are part of the Settlement?

This class action involves protein supplements manufactured by Iovate, including protein shakes and beverages, both in liquid (ready to drink) and powdered form, as well as, bars and gels sold under the brand names MuscleTech, Six Star, Fuel One, and EPIQ (collectively referred to as the "Protein Products"). A complete list of applicable Protein Products included in the Settlement is as follows:

PROTEIN PRODUCT LIST	
BRAND	PRODUCT
Six Star	Whey Protein Plus Elite Series
Six Star	Whey Protein Plus Professional Strength Elite Series
Six Star	Whey Protein Isolate Elite Series
Six Star	Whey Protein Isolate Professional Strength Elite Series
Six Star	Casein Elite Series
Six Star	Casein Professional Strength Elite Series
Six Star	Muscle Building Milkshake Elite Series
Six Star	Muscle Building Milkshake Professional Strength Elite Series
Six Star	Mass Gainer Professional Strength Elite Series
Six Star	Recovery Protein Elite Series
Six Star	100% Whey Isolate Protein Gel
Six Star	Protein Bars
MuscleTech	MassTech Performance Series
MuscleTech	MassTech
MuscleTech	Nitro-Tech Performance Series
MuscleTech	Nitro-Tech Hardcore Pro Series
MuscleTech	Phase8 Performance Series
MuscleTech	Anabolic Halo Performance Series
MuscleTech	Nitro Isolate 65 Pro Series
EPIQ	Isolate
EPIQ	Gainer
Fuel One	Complex-1
Fuel One	Gainer

5. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Class, you may call 1-866-759-6512 with questions or visit www.IovateSettlement.com. You may also write with questions to the Claims Administrator at the address listed in Question 16.

THE SETTLEMENT BENEFITS

6. What does the proposed Settlement provide?

Iovate has agreed to pay \$2.5 million for the benefit of the Class into a common fund. This fund will be used to pay all members of the Class that submit timely and valid Claim Forms for purchases of Protein Products ("Participating Claimants"), claims administration expenses, notice expenses, any attorneys' fee and expense reimbursement award, any incentive award, and tax expenses.

Participating Claimants can recover up to \$300 per household for claims with valid Receipts or Proof of Purchase, or \$50 without Receipts or proof of purchase. Class members can file claims under the following options:

Option 1: Participating Claimants who provide valid Receipts, will receive a refund of the amount(s) shown on the receipt(s), subject to a cap of \$300.00 per household.

Option 2: Participating Claimants who provide valid Proof of Purchase, such as an image of packaging, label, SKU or other evidence deemed sufficient by the Claims Administrator, will receive a refund of the suggested retail price of the Protein Products shown in the Proof of Purchase, subject to a cap of \$300.00 per household.

Option 3: Participating Claimants who do not provide Receipts or Proof of Purchase, but swears or affirms under penalty of perjury that they purchased Protein Products between March 10, 2011 and [REDACTED], 2015, will receive \$10.00 per Protein Product, subject to a cap of \$50.00 per household.

Participating Claimants can submit a Claim Form which contains a combination of Receipts and Proof of Purchase (Options 1 and 2 above) to substantiate a Claim.

Participating Claimants cannot combine a Claim without a Receipt or Proof of Purchase (Option 3 above) with a Claim that contains Receipts or Proof of Purchase (Options 1 or 2 above).

Multiple Participating Claimants from the same household can submit more than one Claim Form, subject to the cap of \$300.00 per household. If multiple claims are filed from the same household exceeding \$300 will be subject to a pro rata reduction.

The Settlement also requires Defendant to modify the testing, labeling, packaging, and advertising for applicable Protein Products to ensure that amino acids, creatine and other members of the Class that submit timely and valid Claim Forms for purchases of Protein Products ("Participating Claimants") non-protein substances are not included in the protein calculation.

7. How can I get a payment from the Settlement?

In order to receive a payment in the Settlement, you must file a Claim. You can access the Claim Form online at www.IovateSettlement.com or by calling 1-866-759-6512. You can submit the Claim Form online, or via mail to the address provided on the Claim Form.

8. How much will my payment be?

Payments to individual Class Members will depend on the type and amount of claims as described in Question 7 above. Claims are subject to the household caps of \$300 per household for claims with Receipts or Proof of Purchase, and \$50 per household for claims without Receipts or Proof of Purchase. Payments may be subject to *pro rata* reduction if the total purchases represented in all valid Claims exceeds the available settlement funds. This means each Participating Claimant's recovery would be reduced based on the same percentage as all other class members.

9. What am I giving up by Remaining in the Class?

By submitting a Claim Form or not taking any action, you remain in the Settlement Class give up your right to sue Iovate for the claims being resolved by this Settlement, if the Court approves the proposed Settlement as final. The specific claims you are giving up are described in the First Amended Complaint filed on April 10, 2015 and the Settlement Agreement. Copies of the First Amended Complaint and Settlement Agreement can be obtained at www.IovateSettlement.com, by calling 1-8##-###-####, or by written request to the Claims Administrator at the address listed in Question 16. If you do not want to be part of the Settlement Class and give up your rights, you must exclude yourself by following the instructions set forth in Question 10 below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How can I exclude myself from the Settlement Class?

To exclude yourself from the proposed Settlement, you must send a letter stating that you want to be excluded from the Class in *Eashoo v. Iovate Health Sciences U.S.A., Inc.* A request for exclusion must (a) be submitted by a member of the Class; (b) contain the Class Member's name, address, and telephone number; and (c) be submitted to the Claims Administrator at the address listed in Question 16, postmarked by [REDACTED], 2016.

OBJECTING TO THE SETTLEMENT**11. How can I tell the Court that I object to the proposed Settlement terms?**

Class Members who do not exclude themselves from the Settlement have a right to object to the proposed Settlement. Objections must be filed with the Court, with a copy served on Class Counsel, Counsel for Defendant, and the Claims Administrator at the addresses below, postmarked no later than [REDACTED], 2016.

Clerk of the Court	Class Counsel	Defendant's Counsel	Claims Administrator
[REDACTED]	Daniel L. Warshaw PEARSON, SIMON & WARSHAW, LLP 15165 Ventura Blvd., Suite 400 Sherman Oaks, CA 91403	Scott J. Ferrell Newport Trial Group, APC 4100 Newport Pl Dr., #800, Newport Beach, CA 92660	Iovate Settlement Claims Administrator P.O. Box 2441 Faribault, MN 55021

The written Objection must contain:

- 1) A caption or title that identifies the writing as an "Objection to Class Settlement in *Eashoo v. Iovate Health Sciences U.S.A. Inc.*, No. 2:15-cv-01726-BRO-PJW";
- 2) Your name, address, and telephone number;
- 3) The name, address, and telephone number of any attorney you've hired to represent you with respect to the objection;
- 4) The factual and legal grounds for the objection, including any documents sufficient to establish the basis for your standing as a Class Member (Example: Receipt, Proof of Purchase, or verification under oath a to the approximate date(s) and locations(s) of your purchase(s) of the Protein Products); and
- 5) Identification of the case name, case number, and court for any prior class action lawsuit in which you and your attorney (if applicable) has objected to a proposed class action settlement, the general nature of such objection(s), and the outcome of said objection(s).

Further information regarding the necessary content and form of a written objection is available in paragraph 8.2 of the Settlement Agreement. A copy of the Settlement Agreement can be found at www.IovateSettlement.com.

The Court will consider the objections from Class Members. If you intend to appear at the Final Approval Hearing, you must also file with the Court a notice of your intention to appear, either in person or through an attorney, no later than [REDACTED], 2016. Your notice of intention must list the name, address, telephone number, facsimile number, and email address of the attorney, if any, who will appear. **If you hire an attorney to represent you at the Final Approval Hearing, you must do so at your own expense.**

DO NOTHING AND REMAIN IN THE CLASS**12. What happens if I do nothing?**

If you are member of the Settlement Class and you do nothing, you will not receive any money from the Settlement and will be bound by the terms and conditions of the proposed Settlement, if approved. You will not be able to sue Iovate or its related entities for the claims in this lawsuit.

THE PARTIES REPRESENTING YOU**13. Who represents the Settlement Class?**

Class Representative. For the purposes of the Settlement, the Court has appointed Plaintiff James Eashoo to serve as the Class Representative. Plaintiff may apply to the Court for an enhancement award of \$5,000 for his service as a Class Representative.

Class Counsel. The Court has appointed Daniel L. Warshaw, Bobby Pouya, Alexander R. Safyan, and Matthew A. Pearson, of Pearson, Simon & Warshaw, LLP, as legal counsel for the Class. Their contact information is available in Question 11 above.

From the start of the lawsuit to the present, Class Counsel have not received any payment for the services they provided in prosecuting the case or obtaining the Settlement, nor have they been reimbursed for any out-of-pocket expenses. When they ask the Court to approve the Settlement, they will also make a motion to the Court for an award of attorneys' fees in an amount not to exceed \$625,000 (25% of the Non-Reversionary Common Fund) and up to \$15,000 in verified costs and

expenses. Any attorneys' fees and costs awarded by the Court will be paid from the Non-Reversionary Common Fund. The Class will not have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all Class Members.

The Motion for Attorneys' Fees, Costs, and Enhancement Awards will be filed on or before [Date], and will be made available for review online at www.IovateSettlement.com.

THE FINAL APPROVAL HEARING

14. When and where will the Court hold a hearing on the fairness of the proposed Settlement?

A Final Approval Hearing has been scheduled for [REDACTED], 2016, at [REDACTED] .m., before United States District Judge Beverly Reid O'Connell, Courtroom 14, United States District Court for the Central District of California, 312 North Spring Street Los Angeles, CA 90012-4701. The hearing may be moved to a different date or time by the Court without additional notice. At the hearing, the Court may hear any comments, objections, and arguments concerning the fairness of the proposed Settlement, the amount requested by Class Counsel for attorneys' fees and expenses, and an incentive award for the Class Representative.

15. Do I have to attend the Final Approval Hearing? May I speak at the hearing?

You do not need to attend this hearing to receive a benefit in the Settlement, if approved. You may attend the hearing, but it is not required, to have a comment or objection considered by the Court. If you would like to attend the hearing, please see Question 11 above for additional details and requirements.

FOR MORE INFORMATION

16. Where do I get additional information?

This Notice provides only a summary of the matters relating to the proposed Settlement. For more detailed information, you may wish to review the Settlement Agreement. You can view the Settlement Agreement and get more information at www.IovateSettlement.com. You can also get more information by calling the Claims Administrator toll-free 1-866-759-6512 or write with questions to:

Iovate Settlement Claims Administrator
P.O. Box 2441
Faribault, MN 55021
RUST EMAIL

PLEASE DO NOT CONTACT THE COURT OR IOVATE HEALTH SCIENCES WITH QUESTIONS ABOUT THE SETTLEMENT.

EXHIBIT C

**If You Bought any MuscleTech, Six Star,
EPIQ, or fuel:one Protein Products
between March 10, 2011 and _____, 2015,
*You Could Get Up to \$300
From a Class Action Settlement.***

A Settlement has been reached with Iovate Health Sciences U.S.A., Inc. ("Iovate"), concerning the marketing of certain protein products sold under the brand names MuscleTech, Six Star, EPIQ and fuel:one. The lawsuit claims Iovate misrepresented that certain protein products had higher levels of protein than what was actually contained in the products. As a result, the protein products contained less protein than what was represented on labels, packaging, and in advertising. Iovate Health Sciences denies these claims and denies any wrongdoing.

Who is included in the Settlement?

Anyone who bought one or more eligible MuscleTech, Six Star, EPIQ, fuel:one protein products between March 10, 2011 to _____, 2015 is included in the Settlement. The Settlement applies to protein shakes and beverages, both in liquid (ready to drink) and powdered form, as well as, bars and gels. A complete list of included products and additional information regarding who is included in the Settlement is available at www.IovateSettlement.com or by calling 1-866-759-6512.

What does the Settlement provide?

The Settlement provides for the creation of a \$2.5 million Settlement Fund that will be used to pay money to eligible Class Members, attorneys' fees and costs, and a class representative incentive award. Iovate has also agreed to change some of its business practices, including modifying its testing, labeling, packaging, and advertising of the amount protein contained in the Protein Products.

Eligible Class Members who file timely and valid claims may receive: (1) up to \$300 per household if they file valid claim with proof of purchase, or (2) up to \$50 per household if they file a valid claim without proof of purchase. Payment amounts may be reduced proportionally if the total amount of claims is greater than the money available. Additional details are provided in the Settlement Agreement available at www.IovateSettlement.com.

How can I get a payment?

You must submit a Claim Form online at www.IovateSettlement.com or via mail on or before **Month 00, 2015**. The payment amount you receive will be based in part on the quantity and price of the products you purchased, whether you have proof of purchase, and the total number of claims made.

What are my rights?

Even if you do nothing you will be bound by the Court's decisions. If you want to retain your right to sue Iovate yourself, you must exclude yourself from the Settlement on or before **Month 00, 0000**. If you stay in the Settlement, you may object to it on or before **Month 00, 0000**.

The Court will hold a hearing on **Month 00, 0000** to consider whether to approve the Settlement, and to determine plaintiff's request for attorneys' fees up to \$625,000, costs not to exceed \$15,000 and an incentive award up to \$5,000. You or your own lawyer may appear and speak at the hearing at your own expense, but you do not have to do so.

**For More Information or a Claim Form:
1-866-759-6512 www.IovateSettlement.com**

EXHIBIT 2



PEARSON | SIMON • WARSHAW LLP

LOS ANGELES OFFICE

15165 VENTURA BOULEVARD, SUITE 400
SHERMAN OAKS, CALIFORNIA 91403
TEL (818) 788-8300
FAX (818) 788-8104
WWW.PSWLAW.COM

SAN FRANCISCO OFFICE

44 MONTGOMERY STREET, SUITE 2450
SAN FRANCISCO, CALIFORNIA 94104
TEL (415) 433-9000
FAX (415) 433-9008
WWW.PSWLAW.COM

Pearson, Simon & Warshaw, LLP (“PSW”) is an AV-rated civil litigation firm with offices in Los Angeles and San Francisco. The firm specializes in complex litigation, including state coordination cases and federal multidistrict litigation. Its attorneys have extensive experience in antitrust, securities, consumer protection, and unlawful employment practices. The firm handles both national and multi-national class actions that present cutting edge issues in both substantive and procedural areas. PSW attorneys understand how to litigate difficult and large cases in an efficient and cost effective manner, and they have used these skills to obtain outstanding results for their clients, both through trial and negotiated settlement. They are recognized in their field for excellence and integrity, and are committed to seeking justice for their clients.

CASE PROFILES

PSW attorneys currently hold, or have held, a leadership role in the following representative cases:

- *In re Keurig Green Mountain Single-Serving Coffee Antitrust Litigation*, Southern District of New York, MDL No. 2542. In June 2014, Judge Vernon S. Broderick appointed PSW to serve as interim co-lead counsel on behalf of indirect purchaser plaintiffs in this multidistrict class action litigation. The case arises from the alleged unlawful monopolization of the United States market for single-serve coffee packs by Keurig Green Mountain, Inc. Keurig’s alleged anticompetitive conduct includes acquiring competitors, entering into exclusionary agreements with suppliers and distributors to prevent competitors from entering the market, engaging in sham patent infringement litigation, and redesigning the single-serve coffee pack products in the next version of its brewing system to lock out competitors’ products.
- *In re Credit Default Swaps Antitrust Litigation*, Southern District of New York, MDL No. 2476. PSW represents the Los Angeles County Employee Retirement Association (“LACERA”) in a class action on behalf of all purchasers and sellers of Credit Default Swaps (“CDS”) against thirteen of the world’s largest banks. The

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lawsuit alleges that the banks along with other defendants who control the market infrastructure for CDS trading have conspired for years to restrain the efficient trading of CDS, thereby inflating the cost to trade CDS. The alleged antitrust conspiracy has resulted in economic harm in the tens of billions of dollars to institutional investors such as pension funds, mutual funds, and insurance companies who use CDS to hedge credit risks on their fixed income portfolios. The action has been consolidated with nine other class action lawsuits that are assigned to the Honorable Denise Cote of the Southern District of New York. On December 13, 2013, Judge Cote appointed PSW as Co-Lead Counsel for the plaintiff class and its client, LACERA, as lead plaintiff for the class.

- *In re Lithium Ion Batteries Antitrust Litigation*, Northern District of California, MDL No. 2420. PSW attorneys currently serve as interim co-lead counsel for direct purchaser plaintiffs in this multidistrict class action litigation arising from the price-fixing of lithium ion batteries. The case involves allegations of collusive activity by a cartel made up of the world's largest manufacturers of lithium ion batteries, which are used in everything from cellular phones to cameras, laptops and tablet computers. PSW filed one of the earliest cases on behalf of the direct purchasers and successfully argued before the Joint Panel on Multidistrict Litigation ("JPML") for consolidation of the cases in the Northern District of California. PSW, along with its co-counsel, organized a leadership structure of three firms, winning appointment by Judge Gonzalez Rogers as co-lead counsel for the putative class of direct purchasers on May 17, 2013.
- *In Re: Warner Music Group Corp. Digital Downloads Litigation*, Northern District of California, Case No. 12-cv-00559. PSW attorneys served as interim co-lead counsel, and partner Bruce L. Simon served as chairman of the five-firm executive committee, in this putative nationwide class action on behalf of recording artists and producers who alleged that they were systematically underpaid royalties by the record company Warner Music Group. In a groundbreaking class action settlement, PSW secured both past relief and future relief *in perpetuity* for eligible class members who receive royalties from Warner Music Group.
- *James v. UMG Recordings, Inc.*, Northern District of California, Case No. 11-cv-01613. PSW partner Daniel L. Warshaw currently serves as interim co-lead counsel in this putative nationwide class action on behalf of recording artists and producers who allege that they have been systematically underpaid royalties by the record company UMG.

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- *In re Carrier IQ Consumer Privacy Litigation*, Northern District of California, MDL No. 2330. PSW attorneys currently serve as interim co-lead counsel in this putative nationwide class action on behalf of consumers who allege privacy violations arising from software installed on their mobile devices that was logging text messages and other sensitive information.
- *Sciortino, et al. v. PepsiCo, Inc.*, Northern District of California, Case No. 14-cv-0478. PSW attorneys currently serve as interim co-lead counsel in this putative California class action on behalf of consumers who allege that PepsiCo failed to warn them that certain of its sodas contain excess levels of a chemical called 4-Methylimidazole in violation of Proposition 65 and California consumer protection statutes.
- *Senne, et al. v. Office of the Commissioner of Baseball*, Northern District of California, Case No. 14-cv-0608. PSW attorneys currently serve as interim co-lead counsel in this putative nationwide class action and FLSA collective action on behalf of minor league baseball players who allege that Major League Baseball and its member franchises violated FLSA and state wage and hour laws by failing to pay minor league baseball players minimum wage and overtime.
- *In re TFT-LCD (Flat Panel) Antitrust Litigation*, Northern District of California, MDL No. 1827. PSW partner Bruce L. Simon served as co-lead counsel for the direct purchaser plaintiffs in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, a multidistrict litigation arising from the price-fixing of thin film transistor liquid crystal display panels. Worldwide, the TFT-LCD industry is a multi-billion dollar industry, and many believe that this proceeding was one of the largest price-fixing cases in the United States. Over \$405 million in settlements had already been approved before trial. Mr. Simon served as co-lead trial counsel, successfully marshaled numerous witnesses, and presented the opening argument. On July 3, 2012, PSW obtained a jury verdict of \$87 million before trebling against the sole remaining defendant in the case, Toshiba Corporation and its related entities. PSW later settled with Toshiba and AU Optronics to bring the total to \$473 million in settlements. In 2013, California Lawyer Magazine awarded Mr. Simon a California Lawyer of the Year Award for his work in the *TFT-LCD case*.
- *In re Potash Antitrust Litigation (No. II)*, Northern District of Illinois, MDL No. 1996. PSW partner Bruce L. Simon served as interim co-lead counsel for the plaintiffs in this multidistrict litigation arising from the price-fixing of potash sold in the United States. After defeating a motion to dismiss, Defendants appealed, and Mr.

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Simon argued before an *en banc* panel of the Seventh Circuit Court of Appeals. In an 8-0 decision, the *en banc* panel reversed the first panel decision and affirmed the denial of Defendants' motion to dismiss. *Minn-Chem, Inc. v. Agrium Inc.*, 683 F. 3d 845 (7th Cir. 2012). On June 12, 2012, the Court approved a \$90 million class settlement on behalf of direct purchaser plaintiffs.

- *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, Northern District of California, MDL No. 1486. PSW partner Bruce L. Simon served as co-chair of discovery and as a member of the trial preparation team in this multidistrict litigation arising from the price-fixing of DRAM, a form of computer memory. Mr. Simon was responsible for supervising and coordinating the review of almost a terabyte of electronic documents, setting and taking depositions, establishing and implementing protocols for cooperation between the direct and indirect plaintiffs as well as the Department of Justice, presenting oral arguments on discovery matters, working with defendants on evidentiary issues in preparation for trial, and preparation of a comprehensive pretrial statement. Shortly before the scheduled trial, class counsel reached settlements with the last remaining defendants, bringing the total value of the class settlements to over \$325 million.
- *In re Methionine Antitrust Litigation*, Northern District of California, MDL No. 1311. PSW partner Bruce L. Simon served as co-lead counsel in this nationwide antitrust class action involving a conspiracy to fix prices of, and allocate the markets for, methionine. Mr. Simon was personally responsible for many of the discovery aspects of the case including electronic document productions, coordination of document review teams, and depositions. Mr. Simon argued pretrial motions, prepared experts, and assisted in the preparation of most pleadings presented to the Court. This action resulted in over \$100 million in settlement recovery for the Class.
- *In re Sodium Gluconate Antitrust Litigation*, Northern District of California, MDL No. 1226. PSW partner Bruce L. Simon served as class counsel in this consolidated antitrust class action arising from the price-fixing of sodium gluconate. Mr. Simon was selected by Judge Claudia Wilken to serve as lead counsel amongst many other candidates for that position, and successfully led the case to class certification and settlement.
- *In re Citric Acid Antitrust Litigation*, Northern District of California, MDL No. 1092. PSW partner Bruce L. Simon served as class counsel in antitrust class actions against Archer-Daniels Midland Co. and others for their conspiracy to fix the prices of citric acid, a food additive product. Mr. Simon was one of the principal attorneys involved

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in discovery in this matter. This proceeding resulted in over \$80 million settlements for the direct purchasers.

- *Olson v. Volkswagen of America, Inc.*, Central District of California, Case No. CV07-05334. PSW attorneys brought this class action lawsuit against Volkswagen alleging that the service manual incorrectly stated the inspection and replacement intervals for timing belts on Audi and Volkswagen branded vehicles equipped with a 1.8 liter turbo-charged engine. This case resulted in a nationwide class settlement.
- *Swain et al. v. Eel River Sawmills, Inc. et al.*, California Superior Court, DR-01-0216. George S. Trevor and Bruce L. Simon served as lead trial counsel for a class of former employees of a timber company whose retirement plan was lost through management's investment of plan assets in an Employee Stock Ownership Plan. Mr. Trevor and Mr. Simon negotiated a substantial settlement on the eve of trial resulting in a recovery of approximately 40% to 50% of plaintiffs' damages after attorneys' fees and costs.
- *In re Digital Microwave Securities Litigation*, Northern District of California, C-90-20241. George S. Trevor was one of the principal attorneys for a plaintiff class alleging fraud in the financial reporting of a public company. Defendants included the accounting firm Arthur Andersen. Mr. Trevor negotiated a settlement of nearly \$20 million, despite the absence of any director's and officer's liability insurance.
- *In re Hawaiian and Guamanian Cabotage Antitrust Litigation*, Western District of Washington, MDL No. 1972. PSW partner Bruce L. Simon served as interim co-lead counsel for the plaintiffs in this multidistrict litigation arising from violations of the federal antitrust laws with respect to domestic ocean shipping services between the continental United States and Hawaii and/or between the continental United States and the Territory of Guam.
- *In re Homestore Litigation*, Central District of California, Master File No. 01-11115. PSW attorneys served as liaison counsel and class counsel for plaintiff CalSTRS in this securities class action. The case resulted in over \$100 million in settlements to the Class.
- *In re MP3.Com, Inc., Securities Litigation*, Southern District of California, Master File No. 00-CV-1873. PSW attorneys served as defense counsel in this class action involving alleged securities violations under Rule 10b-5.

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- *In re Ivan F. Boesky Securities Litigation*, Southern District of New York, MDL No. 732. George S. Trevor, while at the firm of Gold & Bennett, was one of the principal attorneys representing a class of former shareholders of the Pacific Lumber Company. The case was consolidated with numerous other shareholder class actions before the Honorable Milton Pollack. Mr. Trevor personally took numerous depositions and examined Michael Milken pursuant to Mr. Milken's settlement agreement with the Pacific Lumber class. He was also part of the trial team in New York when the case settled the evening before trial. The resulting settlement of \$144 million was estimated to be the fourth largest securities litigation settlement at the time.
- *In re Automotive Refinishing Paint Cases*, Alameda County Superior Court, Judicial Council Coordination Proceeding No. 4199. PSW attorneys served as class counsel with other law firms in this coordinated antitrust class action alleging a conspiracy by defendants to fix the price of automotive refinishing products.
- *In re Beer Antitrust Litigation*, Northern District of California, Case No. 97-20644 SW. PSW partner Bruce L. Simon served as primary counsel in this antitrust class action brought on behalf of independent micro-breweries against Anheuser-Busch, Inc., for its attempt to monopolize the beer industry in the United States by denying access to distribution channels.
- *In re Commercial Tissue Products Public Entity Indirect Purchaser Antitrust Litigation*, San Francisco Superior Court, Judicial Council Coordination Proceeding No. 4027. PSW partner Bruce L. Simon served as co-lead counsel for the public entity purchaser class in this antitrust action arising from the price-fixing of commercial sanitary paper products.
- *Hart v. Central Sprinkler Corporation*, Los Angeles County Superior Court, Case No. BC176727. PSW attorneys served as class counsel in this consumer class action arising from the sale of nine million defective fire sprinkler heads. This case resulted in a nationwide class settlement valued at approximately \$37.5 million.
- *Rueda v. Schlumberger Resources Management Services, Inc.*, Los Angeles County Superior Court, Case No. BC235471. PSW attorneys served as class counsel with other law firms representing customers of the Los Angeles Department of Water & Power ("LADWP") who had lead leaching water meters installed on their properties. The Court granted final approval of the settlement whereby defendant would pay \$1.5 million to a *cy pres* fund to benefit the Class and to make grants to LADWP to assist in implementing a replacement program to the effected water meters.

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- *In re Louisiana-Pacific Corp. Inner-Seal OSB Trade Practices Litigation*, Northern District of California, MDL No. 1114. PSW partner Bruce L. Simon worked on this nationwide product defect class action brought under the Lanham Act. The proposed class was certified, and a class settlement was finally approved by Chief Judge Vaughn Walker.
- *In re iPod nano Cases*, Los Angeles County Superior Court, Judicial Council Coordination Proceeding No. 4469. PSW attorneys were appointed co-lead counsel for this class action brought on behalf of California consumers who own defective iPod nanos. The case resulted in a favorable settlement.
- *Unity Entertainment Corp. v. MP3.Com*, Central District of California, Case No. 00-11868. PSW attorneys served as defense counsel in this class action alleging copyright infringement.
- *Vallier v. Jet Propulsion Laboratory*, Central District of California, Case No. CV97-1171. PSW attorneys served as lead counsel in this toxic tort action involving 50 cancer victims and their families.
- *Nguyen v. First USA N.A.*, Los Angeles County Superior Court, Case No. BC222846. PSW attorneys served as class counsel on behalf of approximately four million First USA credit card holders whose information was sold to third party vendors without their consent. This case ultimately settled for an extremely valuable permanent injunction plus disgorgement of profits to worthy charities.
- *Morales v. Associates First Financial Capital Corporation*, San Francisco Superior Court, Judicial Council Coordination Proceeding No. 4197. PSW attorneys served as class counsel in this case arising from the wrongful sale of credit insurance in connection with personal and real estate-secured loans. This case resulted in an extraordinary \$240 million recovery for the Class.
- *In re AEFA Overtime Cases*, Los Angeles County Superior Court, Judicial Council Coordination Proceeding No. 4321. PSW attorneys served as class counsel in this overtime class action on behalf of American Express Financial Advisors, which resulted in an outstanding classwide settlement.

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- *Khan v. Denny's Holdings, Inc.*, Los Angeles County Superior Court, Case No. BC177254. PSW attorneys settled a class action lawsuit against Denny's for non-payment of overtime wages to its managers and general managers.
- *Kosnik v. Carrows Restaurants, Inc.*, Los Angeles County Superior Court, Case No. BC219809. PSW attorneys settled a class action lawsuit against Carrows Restaurants for non-payment of overtime wages to its assistant managers and managers.
- *Castillo v. Pizza Hut, Inc.*, Los Angeles County Superior Court, Case No. BC318765. PSW attorneys served as lead class counsel in this California class action brought by delivery drivers who claimed they were not adequately compensated for use of their personally owned vehicles. This case resulted in a statewide class settlement.
- *Baker v. Charles Schwab & Co., Inc.*, Los Angeles County Superior Court, Case No. BC286131. PSW attorneys served as class counsel for investors who were charged a fee for transferring out assets between June 1, 2002 and May 31, 2003. This case resulted in a nationwide class settlement.
- *Eallonardo v. Metro-Goldwyn-Mayer, Inc.*, Los Angeles County Superior Court, Case No. BC286950. PSW attorneys served as class counsel on behalf a nationwide class of consumers who purchased DVDs manufactured by defendants. Plaintiffs alleged that defendants engaged in false and misleading advertising relating to the sale of its DVDs. This case resulted in a nationwide class settlement.
- *Gaeta v. Centinela Feed, Inc.*, Los Angeles County Superior Court, Case No. BC342524. PSW attorneys served as defense counsel in this class action involving alleged failures to pay wages, overtime, employee expenses, waiting time penalties, and failure to provide meal and rest periods and to furnish timely and accurate wage statements.
- *Leiber v. Consumer Empowerment Bv A/K/A Fasttrack*, Central District of California, Case No. CV 01-09923. PSW attorneys served as defense counsel in this class action involving copyrighted music that was made available through a computer file sharing service without the publishers' permission.
- *Higgs v. SUSA California, Inc.*, Los Angeles County Superior Court Case No. BC372745. PSW attorneys are serving as co-lead class counsel representing California consumers who entered into rental agreements for the use of self-storage facilities owned by defendants. In this certified class action, plaintiffs allege that

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defendants wrongfully denied access to the self-storage facility and/or charged excessive pre-foreclosure fees.

- *Fournier v. Lockheed Litigation*, Los Angeles County Superior Court. PSW attorneys served as counsel for 1,350 residents living at or near the Skunks-Works Facility in Burbank. The case resolved with a substantial confidential settlement for plaintiffs.
- *Nasseri v. CytoSport, Inc.*, Los Angeles County Superior Court, Case No. 439181. PSW attorneys are serving as class counsel on behalf of a nationwide class of consumers who purchase CytoSport's popular protein powders, ready to drink protein beverages, and other "supplement" products. Plaintiffs allege that these supplements contain excessive amounts of lead, cadmium and arsenic in amounts that exceed Proposition 65 and negate CytoSport's health claims regarding the products.

PEARSON, SIMON & WARSHAW, LLP

ATTORNEY PROFILES

PARTNERS

CLIFFORD H. PEARSON

Clifford H. Pearson is a civil litigator and business lawyer focusing on complex litigation, class actions and business law. In 2013, Mr. Pearson was named by the *Daily Journal* as one of the Top 100 lawyers in California. He was instrumental in negotiating settlements that totaled \$473 million in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, an antitrust case in the Northern District of California that alleged a decade-long conspiracy to fix the prices of TFT-LCD panels, and over \$90 million in *In re Potash Antitrust Litigation*, an antitrust case in the Northern District of Illinois that alleged price fixing by Russian, Belarusian and North American producers of potash, a main ingredient used in fertilizer.

Before creating the firm in 2006, Mr. Pearson was a partner at one of the largest firms in the San Fernando Valley, where he worked for 22 years. There, he represented aggrieved individuals, investors and employees in a wide variety of contexts, including toxic torts, consumer protection and wage and hour cases. Over his 32-year career, Mr. Pearson has successfully negotiated substantial settlements on behalf of consumers, small businesses and companies. In recognition of his outstanding work on behalf of clients, Mr. Pearson has been regularly selected by his peers as a Super Lawyer (representing the top 5% of practicing lawyers in Southern California). He has also attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Pearson is an active member of the American Bar Association, Canadian Bar Association, Los Angeles County Bar Association, Consumer Attorneys of California, Consumer Attorneys Association of Los Angeles, Association of Business Trial Lawyers and a Practitioner of Foreign Law in British Columbia, Canada.

Current Cases:

- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.)
- *In re Lithium Ion Batteries Antitrust Litigation* (N.D. Cal.)
- *In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio)
- *James v. UMG Recordings, Inc.* (N.D. Cal.)

Education:

- Whittier Law School, Los Angeles, California - J.D. – 1981
- University of Miami, Miami, Florida - M.B.A. – 1978
- Carleton University, Ontario, Canada - B.A. – 1976

PEARSON, SIMON & WARSHAW, LLP

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- Association of Business Trial Lawyers
- Canadian Bar Association
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association

BRUCE L. SIMON

Bruce L. Simon has led Pearson, Simon & Warshaw, LLP to national prominence. Mr. Simon specializes in complex cases involving antitrust, consumer fraud and securities. He has served as lead counsel in many business cases with national and global impact.

In 2013, Mr. Simon was chosen as one of the Top 100 attorneys in California by the Daily Journal. He received a CLAY award from California Lawyer magazine as one of the attorneys of the year for his work in the *In re TFT-LCD (Flat Panel) Antitrust Litigation* trial and settlements, and was also selected as one of the seven finalists for Consumer Attorneys of California's Consumer Attorney of the Year award. Mr. Simon was included in the Top 100 for Super Lawyers, and has been selected as a Super Lawyer ten years in a row. He also received a Trial Lawyer Excellence award in Chicago from the Law Bulletin for the settlement reached in *In re Potash Antitrust Litigation (II)*. He has attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

Mr. Simon was co-lead class counsel in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, a case where he and the firm obtained \$473 million in settlements. He was also co-lead trial counsel in that case and obtained an \$87 million jury verdict before trebling. *TFT-LCD* is considered to be one of the largest antitrust MDL class actions in the United States.

Mr. Simon was also co-lead counsel in *In re Potash Antitrust Litigation (II)*, a case which challenged a decades old international cartel that controlled one of the primary ingredients in fertilizer. The case resulted in \$90 million in settlements for the direct purchasers. Before the case settled, a panel of the Seventh Circuit reversed the trial court's upholding of the complaint. However, the Seventh Circuit later granted plaintiffs' counsel's *en banc* petition. The *en banc* panel issued a unanimous 8-0 decision denying the defendants' motion to dismiss. The opinion issued by the Court is one of the most significant decisions regarding the scope of international antitrust conspiracies.

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Mr. Simon also recently represented a generic brand drug company in an individual case alleging that the brand name manufacturer had filed false citizens petitions to delay the entry of the generic drug unto the market. The case resulted in a significant confidential settlement right before trial.

Current Cases:

Mr. Simon currently serves as co-lead counsel or on the executive committee in the following cases:

- *In re Keurig Green Mountain Single-Serving Coffee Antitrust Litigation* (S.D.N.Y.)
- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.)
- *In re Lithium Ion Batteries Antitrust Litigation* (N.D. Cal.)
- *In re Carrier IQ, Inc., Consumer Privacy Litigation* (N.D. Cal.)
- *In re Optical Disk Drive Products Antitrust Litigation* (N.D. Cal.)

Reported Cases:

- *Minn-Chem, Inc. et al. v. Agrium Inc., et al.*, 683 F.3d 845 (7th Cir. 2012)

Education:

- University of California, Hastings College of the Law, San Francisco, California - J.D. – 1980
- University of California, Berkeley, California - A.B. – 1977

Bar Admissions:

- California
- Supreme Court of the United States
- Ninth Circuit Court of Appeals
- Seventh Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Recent Publications:

- *Matthew Bender Practice Guide: California Unfair Competition and Business Torts*, LexisNexis, with Justice Conrad L. Rushing and Judge Elia Weinbach (Updated 2013)
- *The Questionable Use of Rule 11 Motions to Limit Discovery and Eliminate Allegations in Civil Antitrust Complaints in the United States*, ABA International Cartel Workshop February 2012, with Aaron M. Sheanin
- *Class Action for Health Professionals*, chapter from *Advocacy Strategies for Health and Mental Health Professionals*, Springer Publishing Co., 2011, with Thomas K. Boardman, Stuart L. Lustig, Editor

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- *The Collaboration Between Public Entities and Private Counsel: Prosecuting Cases that Otherwise Might Not Be Brought*, Competition, Vol. 19, Issue 2 (Fall 2010), with William J. Newsom
- *Strategies for Contending with the Continued Decline in Civility in the Legal Profession*, Consumer Attorneys of California, Don L. Galine Hawaii Seminar, November 30, 2010, with Alexander R. Safyan.
- *The Ownership/Control Exception to Illinois Brick in Hi-Tech Component Cases: A Rule That Recognizes the Realities of Corporate Price Fixing*, ABA International Cartel Workshop February 2014, with Aaron M. Sheanin
- *Reverse Engineering Your Antitrust Case: Plan for Trial Even Before You File Your Case*, Antitrust, Vol. 28, No. 2, Spring 2014 with Thomas K. Boardman

Professional Associations and Memberships:

- California State Bar Antitrust and Unfair Competition Section, Advisor and Past Chair
- ABA Antitrust Section Plaintiffs Task Force, Co-Chair
- ABA International Cartel Workshop, Steering Committee
- American Association for Justice, Business Torts Section, Past Chair
- Cambridge Antitrust Forum
- Hastings College of the Law, Board of Directors
- Public Justice Foundation
- Bar Association of San Francisco

DANIEL L. WARSHAW

Daniel L. Warshaw is a civil litigator and trial lawyer who focuses on complex litigation, class actions and consumer protection. Mr. Warshaw has held a lead role in numerous state and federal class actions, and obtained significant recoveries for class members in many cases. These cases have included, among other things, antitrust violations, high-technology products, automotive parts and false and misleading advertising. Mr. Warshaw has also represented employees and employers in a variety of class actions, including wage and hour, misclassification and other Labor Code violations.

Mr. Warshaw played an integral role in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, where he negotiated the ESI protocol and managed a document review process that featured nearly 8 million documents in multiple languages and 136 reviewers. He currently serves as interim co-lead counsel in a series of groundbreaking class actions involving the alleged underpayment of royalties to artists, producers and directors in the music and film industries. These cases have received significant attention in the press, and Mr. Warshaw has been profiled by the *Daily Journal* for his work in the digital download music cases. In recognition of his outstanding work, Mr. Warshaw has been selected by his peers as a Super Lawyer (representing the top 5% of practicing lawyers in Southern California) every year since 2005. He has also attained Martindale-Hubbell's highest rating (AV) for legal ability and ethical standards.

PEARSON, SIMON & WARSHAW, LLP

Mr. Warshaw has assisted in the preparation of two Rutter Group practice guides: *Federal Civil Trials & Evidence* and *Civil Claims and Defenses*. Since 2012, Mr. Warshaw has served as the Chair of the Plaintiffs' Class Action Forum sponsored by Cambridge International Forums, Inc. The purpose of the Forum is to facilitate a high-level exchange of ideas and in-depth dialogue on class action litigation.

Current Cases:

- *In re Lithium Ion Batteries Antitrust Litigation* (N.D. Cal.)
- *In re Carrier IQ, Inc., Consumer Privacy Litigation* (N.D. Cal.)
- *James v. UMG Recordings, Inc.* (N.D. Cal.)
- *Higgins v. Paramount Pictures Corp.* (and related cases) (LA Sup. Ct.)
- *Sciortino, et al. v. PepsiCo, Inc.* (N.D. Cal.)

Education:

- Whittier Law School, Los Angeles, California - J.D. – 1996
- University of Southern California - B.A. – 1992

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- Association of Business Trial Lawyers
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association

PEARSON, SIMON & WARSHAW, LLP

SENIOR COUNSEL

GEORGE S. TREVOR

George S. Trevor has focused his practice for the past 26 years representing investors in securities class actions, securities arbitrations and complex business litigation. Since joining Pearson, Simon & Warshaw, LLP in 2009 as Senior Counsel, Mr. Trevor has been the senior attorney on a number of the firm's important cases. Those include *In re Lehman Securities and ERISA Litigation*, where the firm represents California public entities that purchased Lehman securities prior to its bankruptcy. In 2012, Mr. Trevor was lead trial counsel for the City of South San Francisco in a suit challenging the California Board of Equalizations' long-standing interpretation of the Bradley-Burns Local Sales Tax Act. Following a months' long bench trial in the San Francisco Superior Court, Mr. Trevor obtained a judgment ordering the BOE to revise its practices in the allocation of local sales tax.

Mr. Trevor also represents bankruptcy trustees as special litigation counsel against former directors, professionals and financial institutions, and recently obtained a substantial settlement on behalf of an investor plaintiff class against a national bank alleged to have aided and abetted a Ponzi scheme.

Prior to joining Pearson, Simon & Warshaw, LLP, Mr. Trevor was managing partner of Trevor & Weixel LLP. Mr. Trevor's significant cases at Trevor & Weixel included a class action brought on behalf of former employees of Eel River Sawmills. Mr. Trevor was instrumental in obtaining a \$5 million settlement for a class of approximately 400 workers who had lost significant amounts promised to them under the company's Employee Stock Ownership Plan. Mr. Trevor was lead trial counsel in a multi-claimant securities arbitration against a brokerage firm tried in New Orleans in 2007-2008. Following twenty days of hearing and immediately prior to the panel's decision, Mr. Trevor negotiated substantial settlements on behalf of all claimants.

Mr. Trevor also practiced for 11 years Gold & Bennett. Among his cases there was a class action brought on behalf of the former shareholders of the Pacific Lumber Company. In 1985, Charles Hurwitz launched a hostile takeover of Pacific Lumber. Mr. Hurwitz, assisted by Michael Milken and Ivan Boesky, succeeded in forcing a shareholder buyout at \$40 per share. The class action complaint alleged that the buyout was obtained through the dissemination of fraudulent offering materials to shareholders. On the eve of trial, Mr. Hurwitz agreed to a \$52 million settlement. Combined with other settlements, the Pacific Lumber shareholders received over \$140 million in additional compensation for their shares, one of the largest recoveries in securities litigation at the time. Mr. Trevor was also instrumental in the recovery of \$19.2 million by the shareholders of Digital Microwave Corporation. Mr. Trevor has litigated cases against hedge funds, real estate limited partnerships, software and hardware companies, alternative energy companies and accounting firms, among others.

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Current Cases:

- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.)
- *In re Lehman Securities & ERISA Litigation* (S.D.N.Y.)
- *City of South San Francisco v. Board of Equalization* (S.F. Sup. Court)
- *In re Ivan F. Boesky Securities Litigation* (S.D.N.Y.)
- *In re Adobe Systems, Inc. Securities Litigation* (N.D. Cal.)
- *In re Digital Microwave Corp. Securities Litigation* (N.D. Cal.)
- *Lilley v. Charren* (Kenetech Corporation) (N.D. Cal.)
- *Daniels v. Centennial Group, Inc.* (Orange Sup. Court)

Education:

- University of California, Hastings College of the Law, San Francisco, California – J.D., 1986
- University of California, Berkeley, California – A.B. 1980 (Phi Beta Kappa, High Honors in Rhetoric and Distinction in General Scholarship).

Bar Admissions

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Northern District of California
- U.S. District Court, District of Arizona

Reported Cases

- *Musick Peeler & Garrett v. Wausau Ins.*, 508 U.S. 286 (1993)
- *Lippitt v. Raymond James*, 340 F.3d 1033 (9th Cir. 2003)
- *Daniels v. Centennial Group*, 16 Cal.App.4th 467 (Cal. Ct. App. 1993)
- *Boston Telecommunications v. Deloitte Touche*, 278 F. Supp 2d 1041 (N.D. Cal. 2003)
- *In re Silicon Graphics*, 970 F.Supp 746 (N.D. Cal. 1997)
- *Lilley v. Charren*, 936 F.Supp 708 (N.D. Cal. 1996)
- *In re Digital Microwave Corp. Securities Litigation*, 1992 U.S. Dist. LEXIS 18469 (N.D. Cal. 1992)
- *In re Adobe Systems, Inc. Securities Litigation*, 767 F. Supp. 1023 (N.D. Cal. 1991)

Professional Associations and Memberships

- American Bar Association, Member, 1992 – present
- Committee of Business and Corporate Litigation
- Public Investors Bar Association, Member, 2000 – present

PEARSON, SIMON & WARSHAW, LLP

OF COUNSEL

AARON M. SHEANIN

Aaron M. Sheanin, Of Counsel to Pearson, Simon & Warshaw, LLP, has extensive experience in complex litigation matters in federal and state courts, including the prosecution of antitrust and consumer class actions. He has litigated numerous securities fraud and corporate governance cases on behalf of individual and institutional investors, and has advised state pension funds and private institutions with respect to securities and antitrust matters. Mr. Sheanin also has experience litigating telecommunications, employment discrimination, defective product, and bankruptcy matters.

Mr. Sheanin was actively involved in all aspects of *In re TFT-LCD (Flat Panel) Antitrust Litigation*, and was an integral member of the trial team. For his work on that case, Mr. Sheanin was nominated by the Consumer Attorneys of California as a finalist for Consumer Attorney of the Year. Mr. Sheanin served as co-lead counsel in *In re American Express Financial Advisors Securities Litigation* (\$100 million settlement), as co-lead counsel on behalf of lead plaintiff the Kansas Public Employees' Retirement System in the securities class action *Scheiner v. i2 Technologies* (\$84.85 million in settlements), and as co-chair of the discovery committee in *In re Natural Gas Antitrust Cases* (\$160 million in settlements).

From 2002 to 2011, Mr. Sheanin gained extensive experience prosecuting class actions and other complex cases as an associate and a partner with Girard Gibbs LLP and as an associate with Lieff, Cabraser, Heimann & Bernstein, LLP. From 1999 to 2001, Mr. Sheanin was a *pro se* law clerk for the United States Court of Appeals for the Second Circuit.

Current Cases:

- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.)
- *In re Lithium Ion Batteries Antitrust Litigation* (N.D. Cal.)
- *In re Optical Disc Drive Products Antitrust Litigation* (N.D. Cal.)
- *In re NCAA Grant-In-Aid Antitrust Litigation* (N.D. Cal.)
- *In re Capacitors Antitrust Litigation* (N.D. Cal.)
- *In re Fresh & Process Potatoes Antitrust Litigation* (D. Idaho)
- *In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio)

Education:

- Columbia University School of Law, New York, New York – J.D. – 1999
- University of California, Berkeley, Berkeley, California – A.B. – 1993

Bar Admissions:

- California
- New York
- New Jersey
- Ninth Circuit Court of Appeals

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- Second Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California
- U.S. District Court, District of Colorado

Publications and Presentations:

- *Appellate Courts Grapple with the Foreign Trade Antitrust Improvements Act*, Competition: The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California, Vol. 23, No. 2 (Fall 2014), with Craig C. Corbitt.
- *The Ownership/Control Exception to Illinois Brick in Hi-Tech Component Cases: A Rule That Recognizes the Realities of Corporate Price Fixing*, ABA International Cartel Workshop February 2014, with Bruce L. Simon
- *The Questionable Use of Rule 11 Motions to Limit Discovery and Eliminate Allegations in Civil Antitrust Complaints in the United States*, ABA International Cartel Workshop February 2012, with Bruce L. Simon
- American Bar Association, Task Force on Contingent Fees (Tort Trial and Insurance Practice Section)
- “California Class Actions Practice and Procedure” (Matthew Bender, 1st Ed. 2003), contributing author

Professional Associations and Memberships:

- California State Bar Antitrust and Unfair Competition Section, Executive Committee
- Antitrust Section of the San Francisco Bar Association, Executive Committee
- American Bar Association
- New York Bar Association

ROBERT G. RETANA

Robert G. Retana is an accomplished litigator, with both civil and criminal experience and a long history of community involvement. After graduating from law school, Mr. Retana worked as a civil litigator at the Heller Ehrman firm in San Francisco, where he handled large, complex litigation as well as several *pro bono* matters. From 1994-1998, he served as an Assistant District Attorney for the City and County of San Francisco, where he was the Assistant Supervisor of the Misdemeanor Trial Division and a member of the Felony Domestic Violence Unit. As an Assistant District Attorney, Mr. Retana tried dozens of cases and handled hundreds of hearings. He then worked as a litigator at Cotchett Pitre & Simon, where he handled complex cases, including class actions, securities and antitrust cases, on the plaintiff’s side. Mr. Retana next worked as an attorney for the Administrative Office of the Courts, in the Litigation Management Unit, where he handled litigation for and gave legal advice to judges, courts and court staff. Before joining Pearson, Simon & Warshaw, LLP, Mr. Retana was a named partner at Oliver, Sabec & Retana, where he handled litigation and intellectual property matters. Mr. Retana has also served as a Judge Pro Tem in San Mateo County.

PEARSON, SIMON & WARSHAW, LLP

At Pearson, Simon & Warshaw, LLP, Mr. Retana was a member of the trial team in *In re TFT-LCD (Flat Panel) Antitrust Litigation*. He worked extensively on the briefing of summary judgment motions and on the motions for preliminary and final approval of the settlements reached therein. He was actively involved in the trial of that case, including the examination of witnesses. As part of that trial team, Mr. Retana was nominated along with other lawyers from the firm by the Consumer Attorneys of California as a finalist for the Consumer Attorney of the Year Award.

Mr. Retana is currently counsel in two proposed class actions involving complex allegations of aiding and abetting Ponzi schemes. One involves primarily Latinos in Los Angeles who invested in a company known as “Financial Plus” that targeted members of the Latino community. A substantial settlement was reached in that matter with a national bank that is alleged to have aided and abetted the Ponzi scheme operator. The other is brought on behalf of the trustee of an investment company whose assets were looted by its managers with the knowledge and assistance of its bank.

Mr. Retana has been featured as a speaker at events related to educating the public about investment scams. For example, in March of 2013, he spoke about avoiding Ponzi schemes and financial fraud at Univision’s *Feria Financiera, Plan Prosperidad 2013*, held at the University of Southern California. In the Fall of 2013, he was featured as a legal expert in a video produced by the Financial Industry Regulatory Authority (FINRA) regarding investment fraud in the Latino community.

Current Cases:

- *In re Lithium Ion Batteries Antitrust Litigation* (N.D. Cal.)
- *In re Carrier IQ, Inc., Consumer Privacy Litigation* (N.D. Cal.)
- *In re Keurig Green Mountain Single-Serving Coffee Antitrust Litigation* (S.D.N.Y.)
- *Uecker v. Wells Fargo Capital Finance, LLC* (Bankr. N.D. Cal.)

Education:

- University of California, Boalt Hall, Berkeley, California – J.D. – 1990
- Columbia College, New York, New York – B.A. – 1984

Bar Admissions:

- California
- Supreme Court of the United States
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- San Francisco Lawyers Committee for Civil Rights, Member
- San Francisco La Raza Lawyers Association, former Board Member

PEARSON, SIMON & WARSHAW, LLP

- La Raza Centro Legal, former Board Member and former Board President
- BALIF, Member
- American Bar Association
- San Mateo County Bar Association
- Association of Business Trial Lawyers

PEARSON, SIMON & WARSHAW, LLP

ASSOCIATES

BOBBY POUYA

Bobby Pouya is a civil litigator and trial lawyer in the firm's Los Angeles office, focusing on complex litigation, class actions and consumer protection. Mr. Pouya has been an attorney with Pearson, Simon & Warshaw since 2006, and has extensive experience in representing clients in a variety of contexts. He has served as a primary member of the litigation team in multiple cases that resulted in class certification or a classwide settlement, including cases that involved high-technology products, consumer safety and false and misleading advertising. Mr. Pouya's success has earned him recognition by his peers as a Super Lawyers Rising Star (representing the top 2.5% of lawyers in Southern California age 40 or younger or in practice for 10 years or less) every year since 2008.

Mr. Pouya currently serves as one of the attorneys representing direct purchaser plaintiffs in several MDL antitrust cases, including *In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio) and *In re Fresh and Processed Potatoes Antitrust Litigation* (D. Idaho). Mr. Pouya is actively involved in the prosecution of these cases, and works closely with lead counsel on all aspects of litigation strategy. Mr. Pouya earned his Juris Doctorate from Pepperdine University School of Law in 2006, where he received a certificate in dispute resolution from the prestigious Straus Institute for Dispute Resolution and participated on the interschool trial and mediation advocacy teams, the Dispute Resolution Law Journal and the Moot Court Board.

Current Cases:

- *In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio)
- *Senne, et al. v. Office of the Commissioner of Baseball* (N.D. Cal.)
- *Higgins v. Paramount Pictures Corp.* (and related cases) (L.A. Sup. Ct.)
- *Sciortino, et al. v. PepsiCo, Inc.* (N.D. Cal.)

Education:

- Pepperdine University School of Law, Malibu, California – J.D. – 2006
- University of California, Santa Barbara, California – B.A., with honors – 2003

Recent Publications:

- *Central District Local Rules Hinder Class Certification*, Daily Journal, April 9, 2013, with Alexander R. Safyan

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

PEARSON, SIMON & WARSHAW, LLP

Professional Associations and Memberships:

- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association
- San Fernando Valley Bar Association

VERONICA W. GLAZE

Veronica W. Glaze is an associate in the firm's Los Angeles office, focusing on antitrust, consumer and business litigation. Ms. Glaze was a member of the trial team in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, and was actively involved in representing the direct purchaser plaintiffs at all stages of the case. In 2013, Ms. Glaze was recognized by Consumer Attorneys of California as a finalist for its "Consumer Attorney of the Year" award for her work in the case. Ms. Glaze also worked on key aspects of the direct purchaser plaintiffs' case in *In re Potash Antitrust Litigation (II)*, an MDL antitrust case that alleged price fixing by Russian, Belarusian and North American producers of potash. While at Pearson, Simon, & Warshaw, Ms. Glaze has become particularly adept at managing the electronic review of documents at all stages of litigation. She has also gained extensive experience managing the review of foreign language documents and resolving discovery issues concerning the use of translations throughout the litigation process.

Ms. Glaze matriculated at Pomona College in Claremont, California and received her Bachelor of Arts in English Literature, with minors in Black Studies and Politics. She earned her Juris Doctorate in 2008 from Pepperdine University School of Law. While in law school, Mrs. Glaze was a member of Pepperdine's Moot Court Board and worked as a research assistant to Professor Carol A. Chase. Ms. Glaze is also a former law clerk for the Legal Aid Foundation of Los Angeles.

Current Cases:

- *In re Lithium Ion Batteries Antitrust Litigation* (N.D. Cal.)
- *In re Fresh and Processed Potatoes Antitrust Litigation* (D. Idaho)
- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.)

Education:

- Pepperdine University School of Law, Malibu, California – J.D. – 2008
- Pomona College, Claremont, California – B.A. – 2004

Bar Admissions:

- California
- U.S. District Court, Northern District of California
- U.S. District Court, Central District of California

PEARSON, SIMON & WARSHAW, LLP

Professional Associations and Memberships:

- John M. Langston Bar Association, Board Member
- Black Women Lawyers Association of Los Angeles, Scholarship Committee Member
- Consumer Attorneys of California, Member
- Los Angeles County Bar Association, Member
- Consumer Attorneys Association of Los Angeles, Member
- San Fernando Valley Bar Association, Member

Honors and Awards:

- Consumer Attorneys of California's Consumer Attorney of the Year, award finalist, 2013
- John M. Langston Bar Association's President's Award, 2013

ALEXANDER R. SAFYAN

Alexander Safyan is an associate in the firm's Los Angeles office, focusing on antitrust, consumer and business litigation. Mr. Safyan has worked on many of the firm's class actions, including drafting complex complaints, motions and discovery. Mr. Safyan has also served as the principal attorney on some of the firm's non-class cases, representing both individuals and companies in contract disputes. In recognition of his work on behalf of clients, Mr. Safyan has been selected by his peers as a Super Lawyers Rising Star (representing the top 2.5% of lawyers in Southern California age 40 or younger or in practice for 10 years or less) every year since 2013.

Mr. Safyan is a prolific writer, having been published several times by the *Daily Journal* and co-authored papers and presentations with some of the firm's senior attorneys. Further, Mr. Safyan published a law review comment titled *A Call for International Regulation of the Thriving "Industry" of Death Tourism*, which has been cited by multiple other publications. Mr. Safyan earned his Bachelor of Arts degree, *cum laude*, in political science from the University of Southern California in 2008. He earned his Juris Doctorate, *cum laude*, from Loyola Law School Los Angeles in 2011, graduating as a member of the Order of the Coif.

Current Cases:

- *James v. UMG Recordings, Inc.* (N.D. Cal.)
- *Sciortino, et al. v. PepsiCo, Inc.* (N.D. Cal.)
- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.)
- *Higgins v. Paramount Pictures Corp.* (and related cases) (L.A. Sup. Ct.)

Education:

- Loyola Law School Los Angeles, Los Angeles, California – J.D., *cum laude* – 2011
- University of Southern California, Los Angeles, California – B.A., *cum laude* – 2008

Recent Publications:

- *A Call for International Regulation of the Thriving "Industry" of Death Tourism*, 33 LOY. L.A. INT'L & COMP. L. REV. 287 (2011)

PEARSON, SIMON & WARSHAW, LLP

- *Brantley v. NBC Uni: Tying Consumers' Hands in Bringing Antitrust Tying Claims*, Daily Journal, April 12, 2012, with Clifford H. Pearson
- *Central District Local Rules Hinder Class Certification*, Daily Journal, April 9, 2013, with Bobby Pouya
- *Strategies for Contending with the Continued Decline in Civility in the Legal Profession*, Consumer Attorneys of California, Don L. Galine Hawaii Seminar, November 30, 2010, with Bruce L. Simon

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- Association of Business Trial Lawyers, Young Lawyers Division
- Consumer Attorneys Association of Los Angeles
- Los Angeles County Bar Association

MICHAEL H. PEARSON

Michael H. Pearson is an associate in the firm's Los Angeles office, focusing on antitrust, personal injury and business litigation. Mr. Pearson has represented clients in high-stakes personal injury, mass tort and product liability cases.

Mr. Pearson received his Bachelor of Science degree from Tulane University in 2008, majoring in Finance with an Energy Specialization. He received his Juris Doctorate from Loyola Law School Los Angeles in 2011. Mr. Pearson is an active member in a number of legal organizations, including the American, Los Angeles County and San Fernando Valley Bar Associations, Consumer Attorneys of California, the Consumer Attorneys Association of Los Angeles and the Association of Business Trial Lawyers.

Current Cases:

- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.)
- *In re Cathode Ray Tube (CRT) Antitrust Litigation* (N.D. Cal.)

Education:

- Loyola Law School Los Angeles, Los Angeles, California – J.D. – 2011
- Tulane University, New Orleans, Louisiana – B.S. *magna cum laude* – 2008

Bar Admissions:

- California

PEARSON, SIMON & WARSHAW, LLP

- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- Association of Business Trial Lawyers
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association
- San Fernando Valley Bar Association

BENJAMIN E. SHIFTAN

Benjamin E. Shiftan is a litigator in the firm's San Francisco office. Since joining the firm in 2014, Mr. Shiftan has focused on complex class action litigation, including antitrust, product defect, and consumer protection cases.

Prior to joining the firm, Mr. Shiftan litigated complex bad faith insurance cases for a national law firm. Before that, Mr. Shiftan served as a law clerk to the Honorable Peter G. Sheridan, United States District Court for the District of New Jersey, and worked for a mid-sized firm in San Diego.

Mr. Shiftan graduated from the University of San Diego School of Law in 2009. While in law school, he served as Lead Articles Editor of the San Diego International Law Journal and competed as a National Team Member on the Moot Court Board. Mr. Shiftan won the school's Paul A. McLennon, Sr. Honors Moot Court Competition. At graduation, he was one of ten students inducted into the Order of the Barristers. Mr. Shiftan graduated from the University of Virginia in 2006.

Current Cases:

- *In re NCAA Grant-In-Aid Cap Antitrust Litigation* (N.D. Cal.)
- *In re Lithium Ion Batteries Antitrust Litigation* (N.D. Cal.)
- *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation* (N.D. Cal.)

Education:

- University of San Diego School of Law, San Diego, CA – J.D. – 2009
- University of Virginia, Charlottesville, VA – B.A. – 2006

Bar Admissions:

- California
- Ninth Circuit Court of Appeals

PEARSON, SIMON & WARSHAW, LLP

- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- San Francisco County Bar Association

MATTHEW A. PEARSON

Matthew A. Pearson is an associate in the firm's Los Angeles office focusing on antitrust, personal injury and business litigation. Mr. Pearson has represented clients in variety of different matters including toxic tort litigation, business litigation, products liability, and high-stakes personal injury matters.

Mr. Pearson received his Bachelor of Science degree from the University of Arizona in 2010, majoring in Business Management. He received his Juris Doctorate from Whittier Law School in 2013. Mr. Pearson is an active member in a number of legal organizations, including the American Bar Association, American Association for Justice, Association of Business Trial Lawyers, Consumer Attorneys Association of Los Angeles, Consumer Attorneys of California, and the Los Angeles County Bar Association.

Current Cases:

- *In re Credit Default Swaps Antitrust Litigation* (S.D.N.Y.)

Education:

- Whittier Law School, California – J.D. – 2013
- University of Arizona: Eller College of Management – B.S.– 2010

Bar Admissions:

- California
- Ninth Circuit Court of Appeals
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California

Professional Associations and Memberships:

- American Bar Association
- American Association for Justice
- Association of Business Trial Lawyers
- Consumer Attorneys Association of Los Angeles
- Consumer Attorneys of California
- Los Angeles County Bar Association

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 JAMES EASHOO, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.
15

16 IOVATE HEALTH SCIENCES U.S.A.,
17 INC.,

18 Defendant.
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CASE NO. 2:15-cv-01726-BRO-PJW

CLASS ACTION

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 9, 2015

Time: 1:30 p.m.

Dept.: 14 - Spring St. Floor

1 The Court, having reviewed the Motion for Preliminary Approval of Class
2 Action Settlement (“Motion”), the evidence and argument provided by the parties,
3 and the pleadings and other papers on file in this action, hereby GRANTS
4 preliminary approval to the Class Action Settlement Agreement attached hereto as
5 Exhibit 1, as detailed below.

6 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

7 1. For purposes of this Order, except as otherwise set forth herein, the
8 Court adopts and incorporates the definitions contained in the Settlement
9 Agreement.

10 2. The Court hereby grants preliminary approval to the Settlement
11 Agreement, subject to a hearing on the final approval of the settlement (the
12 “Fairness Hearing”), on behalf of the following Class:

13 All persons in the United States of America who purchased one or more
14 of Defendant Iovate Health Sciences, Inc.’s Protein Products¹ at any
15 time between March 10, 2011 and the date of this Order.

16 3. The Court finds that the Settlement Agreement falls within the range of
17 reasonableness. The Court further finds that there is a sufficient basis for notifying
18 the Class of the proposed Settlement Agreement and for enjoining Class Members
19 from proceeding in any other action arising from or relating to this litigation
20 pending the conclusion of the Fairness Hearing.

21 4. The Fairness Hearing will be conducted to determine the following:

22 a. Whether the proposed Settlement Agreement is fair, reasonable,
23 and adequate and should be granted final approval;

24 b. Whether final judgments should be entered dismissing the claims

25 _____
26 ¹All capitalized terms herein shall have the definitions set forth in the Settlement
27 Agreement filed herewith unless otherwise stated. The Settlement Agreement is
28 attached hereto as Exhibit 1.

1 of the Class against Iovate with prejudice; and

2 c. Such other matters as the Court may deem appropriate.

3 5. The Court appoints Rust Consulting, Inc. as the Claims Administrator.

4 6. The Court finds that the forms of notice to the Class Members
5 regarding the pendency of this class action, and the methods of dissemination to the
6 Class Members in accordance with the terms of this Order, constitute valid, due, and
7 sufficient notice to the Class Members pursuant to Federal Rule of Civil Procedure
8 23, California Civil Code section 1781(d), the United States Constitution, and any
9 other applicable law.

10 7. The Court approves the form and content of the Claim Form, Long
11 Form Notice, and Summary Published Notice attached to the Settlement Agreement
12 as Exhibits A-C, respectively.

13 8. The first date on which the Summary Notice is published in a
14 newspaper of general circulation in California shall be no later than 30 days after
15 entry of this Order (the "Notice Date").

16 9. On or before the Notice Date, the Claims Administrator shall establish
17 the Case Website, which will allow Class Members the ability to obtain information
18 and documents about the settlement, including the Claim Form, Long Form Notice,
19 Summary Published Notice, the Settlement Agreement, and (when it becomes
20 available) Plaintiff's Motion for Attorneys' Fees, Costs, and Incentive Award.

21 10. Commencing on or before the Notice Date, the Claims Administrator
22 shall arrange for publication of the Summary Published Notice, in the form attached
23 to the Settlement Agreement as Exhibit C, as follows: four quarter-page notices
24 once a week for four consecutive weeks in *USA Today's* California edition.

25 11. On or before the Notice Date, the Claims Administrator will issue an
26 informational press release over PR Newswire's US1 and National Hispanic
27 newslines.

28 12. Commencing on or before the Notice Date, the Claims Administrator

1 shall create Internet banner notices on several websites including: (1) Men’s Health;
2 (2) Men’s Fitness; (3) Muscle & Fitness; (4) Muscle & Fitness Hers; and (5) Flex.
3 Additionally, the Claims Administrator shall create advertisements on Facebook and
4 Twitter targeted to users with interests such as “Bodybuilding,” “Weight training,”
5 “Muscle & Fitness” or similar terms targeted to reach potential Class Members.
6 These Internet notices will allow access to the Case Website. Counsel for the
7 parties and the Claims Administrator may direct notice via additional websites that
8 are targeted to reach potential Class Members.

9 13. On or before the Notice Date, the Claims Administrator shall establish
10 a case-specific Facebook page and a case-specific Twitter account, which will give
11 Class Members access to information about the settlement.

12 14. On or before the Notice Date, the Claims Administrator shall establish
13 a toll-free telephone number, which will provide answers to frequently asked
14 questions and give Class Members the ability to request information to be mailed
15 directly to them.

16 15. Counsel for the parties are hereby authorized to utilize all reasonable
17 procedures in connection with the administration of the Settlement which are not
18 materially inconsistent with either this Order or the terms of the Settlement
19 Agreement.

20 16. The Court adopts the following schedule in order to effectuate the final
21 approval of the Settlement Agreement:

22 a. Plaintiff’s Motion for Attorneys’ Fees, Costs, and Incentive
23 Award shall be filed on or before _____ (45 days after the Notice Date);

24 b. Class Members shall have until _____ (60 days after
25 the Notice Date) to file claims, opt-out or exclude themselves, object to the
26 Settlement Agreement, or respond to Plaintiff’s Motion for Attorneys’ Fees, Costs,
27 and Incentive Award;

28 c. Plaintiff shall file his Motion for Final Approval of the

1 Settlement Agreement on or before _____ (75 days after the Notice
2 Date);

3 d. Plaintiff shall respond to any objection to the Settlement
4 Agreement and/or Plaintiff's Motion for Attorneys' Fees, Costs, and Incentive
5 Award on or before _____ (75 days after the Notice Date); and

6 e. The Fairness Hearing shall be held on _____ at
7 _____ (100 days after the Notice Date).

8 17. The hearing date and/or time for the Fairness Hearing may be moved
9 *sua sponte* by the Court or pursuant to a stipulation by the parties subject to Court
10 approval without providing additional notice to the Class Members.

11 18. Class Members shall, upon final approval of the Settlement Agreement,
12 be bound by the terms and provision of the Settlement Agreement so approved,
13 including but not limited to the releases, waivers, and covenants described in the
14 Settlement Agreement, whether or not such person or entity objected to the
15 Settlement Agreement and whether or not such person or entity makes a claim upon
16 the settlement funds.

17 19. In the event that this Order conflicts with the Settlement Agreement
18 regarding the form and manner of providing notice to the Class, this Order shall
19 control. All provisions of the Settlement Agreement regarding the form and manner
20 of providing notice to the Class shall remain in full force and effect unless otherwise
21 expressly modified herein.

22 20. All further proceedings in this litigation are hereby stayed except for
23 any actions required to effectuate the Settlement Agreement.

24 **IT IS SO ORDERED.**

25
26 DATED: _____, 2015

27 _____
28 Honorable Beverly Reid O'Connell
United States District Judge

EXHIBIT 1

DANIEL L. WARSHAW (Bar No. 185365)
dwarshaw@pswlaw.com
BOBBY POUYA (Bar No. 245527)
bpouya@pswlaw.com
MATTHEW A. PEARSON (Bar No. 291484)
mapearson@pswlaw.com
PEARSON, SIMON & WARSHAW, LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, California 91403
Telephone: (818) 788-8300
Facsimile: (818) 788-8104

Attorneys for Plaintiff James Eashoo
and the Settlement Class

NEWPORT TRIAL GROUP
A Professional Corporation
Scott J. Ferrell, Bar No. 202091
sferrell@trialnewport.com
David W. Reid, Bar No. 267382
dreid@trialnewport.com
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rhikida@trialnewport.com
4100 Newport Place Drive, Ste. 800
Newport Beach, CA 92660
Tel: (949) 706-6464
Fax: (949) 706-6469

Attorneys for Defendant
IOVATE HEALTH SCIENCES U.S.A. INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES EASHOO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

IOVATE HEALTH SCIENCES U.S.A.,
INC.

Defendant.

Case No. 2:15-cv-1726-BRO-PJW

CLASS ACTION

**CLASS ACTION SETTLEMENT
AGREEMENT**

1 This Class Action Settlement Agreement (the “Settlement”), dated September
2 30, 2015, is made and entered into by and between the Class Representative James
3 Eashoo, on behalf of himself and the Settlement Class, and Defendant Iovate Health
4 Sciences U.S.A. Inc. to settle and compromise this Action and settle, resolve, and
5 discharge the Released Claims, as defined below, according to the terms and
6 conditions herein.

7 **PREAMBLE**

8 1. WHEREAS, on March 10, 2015, Plaintiff James Eashoo (“Plaintiff”)
9 filed the above-captioned class action lawsuit against Defendant Iovate Health
10 Sciences U.S.A. Inc. (“Defendant”) entitled *Eashoo v. Iovate Health Sciences U.S.A.,*
11 *Inc.*, Case No. 2:15-cv-1726-BRO-PJW.

12 2. WHEREAS, on April 10, 2015, Plaintiff filed a First Amended Class
13 Action Complaint.

14 3. WHEREAS, Plaintiff alleges that Defendant has engaged in acts that
15 violate state consumer protections laws (including California’s False Advertising
16 Laws (“FAL”), Bus. & Prof. Code §17500 et seq., California's Unfair Competition
17 Laws (“UCL”), and California's Consumer Legal Remedies Act (“CLRA”), Civil
18 Code § 1750 et seq.), as well as the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301
19 et seq., breach of express warranty, and negligent misrepresentation, and that as a
20 direct result of such violations, Plaintiff and the putative class have suffered monetary
21 damages and also seek equitable remedies.

22 4. WHEREAS, based upon the discovery taken to date, investigation, and
23 evaluation of the facts and law relating to the matters alleged in the pleadings, plus the
24 risks and uncertainties of continued litigation and all factors bearing on the merits of
25 settlement, Plaintiff has agreed to settle the claims asserted in the Action pursuant to
26 provisions of this Settlement.

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

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

4 **TERMS AND CONDITIONS OF THE SETTLEMENT**

5 **1. DEFINITIONS**

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

9 1.1. "Action" means the civil action entitled *Eashoo v. Iovate Health Sciences*
10 *U.S.A., Inc.*, Case No. 2:15-cv-1726-BRO-PJW, currently pending in the United
11 States District Court for the Central District of California.

12 1.2 "CAFA Notice" means the notice of this Class Action Settlement
13 Agreement to the appropriate federal and state officials in the United States, as
14 provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further
15 described in Paragraph 5.1.4.

16 1.3. "Claim" or "Settlement Claim" means a claim for payment submitted by
17 a Settlement Class Member to the Claims Administrator as provided in this Class
18 Action Settlement Agreement.

19 1.4. "Claim Form" or "Settlement Claim Form" means a claim form,
20 substantially in the form of Exhibit A attached hereto, to be submitted by Claimants
21 seeking payment pursuant to this Class Action Settlement Agreement to the Claims
22 Administrator.

23 1.5. "Claimant" means a Settlement Class Member who submits a claim for
24 payment.

25 1.6. "Claims Administrator" refers to the independent, third-party claims
26 administrator jointly selected by the Parties to provide notice to the Settlement Class,
27 CAFA Notice, and to administer the claims process.

1 1.7. “Class Action Settlement Agreement,” “Settlement Agreement,”
2 “Settlement,” or “Agreement” means this Class Action Settlement Agreement,
3 including the attached exhibits.

4 1.8. “Class Counsel” means the Class Representative’s counsel of record in
5 the Action, Daniel L. Warshaw and the law firm of Pearson, Simon & Warshaw, LLP.

6 1.9. “Class Period” means the time period between March 10, 2011 through
7 the date the Preliminary Approval Order is entered.

8 1.10. “Class Representative” means James Eashoo.

9 1.11. “Court” means the United States District Court for the Central District of
10 California.

11 1.12. “Defendant” means Iovate Health Sciences U.S.A., Inc., as well as its
12 past, present, and future officers, directors, shareholders, employees, predecessors,
13 affiliates, parents, subsidiaries, partners, distributors, principals, insurers,
14 administrators, agents, servants, successors, trustees, vendors, subcontractors, co-
15 conspirators, buyers, independent contractors, attorneys, representatives, heirs,
16 executors, experts, consultants, and assigns of all of the foregoing persons and entities.

17 1.13. “Defendant’s Counsel” means Defendant’s counsel of record in the
18 Action, Scott J. Ferrell and the law firm known as Newport Trial Group, APC.

19 1.14. “Effective Date” means the first date by which all of the following events
20 shall have occurred: the Court has entered the Final Approval Order and Judgment on
21 the docket in the Action, and (a) the time to appeal from such order has expired and no
22 appeal has been timely filed, (b) if such an appeal has been filed, it has finally been
23 resolved and has resulted in an affirmation of the Final Approval Order and Judgment,
24 or (c) the Court, following the resolution of the appeal, enters a further order or orders
25 approving settlement on the terms set forth herein, and either no further appeal is
26 taken from such order(s) or any such appeal results in affirmation of such order(s).
27 Neither the pendency of the Fee and Cost Application, nor any appeal pertaining
28

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

3 1.15. “Fee and Cost Application” means the written motion or application by
4 which the Class Representative and/or Class Counsel request that the Court award
5 attorneys’ fees, costs, expenses and incentive awards.

6 1.16. “Final Approval Hearing” means the hearing scheduled to take place at
7 least ninety days after the date of entry of the Preliminary Approval Order at which
8 the Court shall: (a) determine whether to grant final approval to this Class Action
9 Settlement Agreement and to certify the Settlement Class; (b) consider any timely
10 objections to this Settlement and all responses thereto; and (c) rule on the Fee and
11 Cost Application.

12 1.17. “Final Approval Order” means the order in which the Court grants final
13 approval of this Class Action Settlement Agreement, certifies the Settlement Class,
14 and authorizes the entry of a final judgment and dismissal of the Action with
15 prejudice.

16 1.18. “Judgment” means the judgment to be entered by the Court pursuant to
17 the Settlement.

18 1.19. “Net Settlement Fund” means the Non-Reversionary Common Fund, as
19 defined herein, less claims administration expenses, notice expenses, any fee award,
20 reimbursement of expenses, any incentive award, and tax expenses.

21 1.20. “Non-Reversionary Common Fund” means the non-reversionary sum of
22 two million five hundred thousand dollars (\$2,500,000) Defendant will pay to settle
23 all claims in the Action pursuant to this Settlement.

24 1.21. “Notice” shall mean a document substantially in the form of Exhibit B
25 hereto, and “Summary Notice,” meaning a document substantially in the form of
26 Exhibit C hereto, to be disseminated in accordance with the Preliminary Approval
27 Order, informing Persons who fall within the Settlement Class definition of, among
28

1 other things, the pendency of the Action, the material terms of the Proposed
2 Settlement, and their options with respect thereto.

3 1.22 “Notice Date” means the date thirty (30) days after the Court provides
4 Preliminary Approval to the Settlement Agreement, by which the Claims
5 Administrator shall commence dissemination of Notice to the Settlement Class.

6 1.23. “Notice Plan” means the method of providing the Settlement Class with
7 notice of the Class Action Settlement Agreement, as approved by the Court.

8 1.24. “Notice Response Deadline” means the deadline for all members of the
9 Settlement Class to respond to the Notice, which shall be sixty (60) days after the
10 Notice Date.

11 1.25. “Opt-Out Date” means the date that is the end of the period to request
12 exclusion from the Settlement Class established by the Court and set forth in the
13 Notice.

14 1.26. “Participating Claimant” means a Claimant who submits a Qualifying
15 Settlement Claim Form in response to the Notice.

16 1.27. “Parties” means Class Representative James Eashoo and Defendant
17 Iovate Health Sciences U.S.A. Inc. “Party” shall refer to each of them individually.

18 1.28. “Person” means any natural person, individual, corporation, partnership,
19 limited partnership, association, joint stock company, estate, legal representative,
20 trust, unincorporated association, government or any political subdivision or agency
21 thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs,
22 predecessors, successors, representatives, and assignees.

23 1.29. “Plaintiff” means James Eashoo.

24 1.30. “Preliminary Approval Order” means the order in which the Court grants
25 its preliminary approval to this Class Action Settlement Agreement and preliminarily
26 certifies the Settlement Class, authorizes dissemination of Notice to the Settlement
27 Class, and appoints the Claims Administrator.

1 1.31 “Proof of Purchase” means the packaging, label, SKU or other evidence
2 from the Protein Products that the Claims Administrator deems sufficient to establish
3 that a Claimant purchased the Protein Products.

4 1.32. “Protein Products” means any of the protein supplements distributed by
5 Defendant under any brand name including MuscleTech, Six Star, Epic, or fuel:one
6 during the Class Period.

7 1.33. “Publication Notice” means the long-form and short-form notices,
8 substantially in the form of Exhibits B and C attached hereto. The long-form
9 Publication Notice and the short-form Publication Notice will be published as set forth
10 in the Preliminary Approval Order.

11 1.34. A “Qualifying Settlement Claim Form” shall mean a Claim Form that is
12 fully completed, properly executed and timely returned to the Claims Administrator
13 on or before the Notice Response Deadline by a Settlement Class Member. A
14 “Qualifying Settlement Claim Form” must be either returned with a postmark via U.S.
15 mail or via online through the Class Settlement Website to be created and maintained
16 by the Claims Administrator, at the Participating Claimant’s discretion.

17 1.35 “Receipt” shall mean documentary evidence establishing the purchase of
18 one or more Protein Products, the date of purchase and the purchase price.

19 1.36. “Released Claims” means all of the claims alleged in the First Amended
20 Class Action Complaint filed in the Action.

21 1.37. “Released Parties” and “Released Persons” means Defendant, its parent
22 companies, subsidiary companies, affiliated companies, past, present, and future
23 officers (as of the Effective Date), directors, shareholders, employees, predecessors,
24 affiliates, parents, subsidiaries, joint partners, distributors, principals, insurers,
25 administrators, agents, servants, successors, trustees, vendors, subcontractors, co-
26 conspirators, buyers, independent contractors, attorneys, representatives, heirs,
27 executors, experts, consultants, and assigns of all of the foregoing persons and entities.

28 1.38. “Releasing Parties” means all Settlement Class Members.

1 1.39. "Request for Exclusion" means a valid request for exclusion from a
2 member of the Settlement Class. To be valid, a request for exclusion must (a) be
3 submitted by the member of the Settlement Class; (b) be submitted to the Claims
4 Administrator and postmarked by a date no later than the Notice Response Deadline;
5 (c) contain the submitter's name, address and telephone number; and (d) otherwise
6 comply with the instructions set forth in the Notice.

7 1.40. "Settlement" means the settlement set forth in this Class Action
8 Settlement Agreement.

9 1.41. "Settlement Class" means, collectively, all persons in the United States of
10 America who purchased one or more of Defendant's Protein Products at any time
11 during the Class Period. Excluded from the Settlement Class are any officers,
12 directors, or employees of Defendant, and the immediate family member of any such
13 person. Also excluded is any judge who may preside over this case.

14 1.42. "Settling Parties" means, collectively, Defendant, the Class
15 Representative, and all Settlement Class Members.

16 1.43. "Settlement Class Member" means any member of the Settlement Class
17 who does not submit a timely and valid Request for Exclusion.

18 1.44. "Valid Claim" means a claim for reimbursement submitted by a
19 Settlement Class Member that satisfies all the criteria for submission of a Qualifying
20 Settlement Claim Form.

21 1.45. The singular of any defined term includes the plural, and the plural of any
22 defined term includes the singular.

23 **2. DENIAL OF WRONGDOING AND LIABILITY**

24 2.1. Defendant denies the material factual allegations and legal claims
25 asserted by the Class Representative in the Action, including any and all charges of
26 wrongdoing or liability arising out of any of the conduct, statements, acts or omissions
27 alleged, or that could have been alleged, in the Action.
28

1 **3. THE BENEFITS OF SETTLEMENT**

2 3.1. Class Counsel and the Class Representative recognize and acknowledge
3 the expense and length of continued proceedings that would be necessary to prosecute
4 the Action against Defendant through trial and appeals. Class Counsel also has taken
5 into account the uncertain outcome and the risk of any litigation, especially in
6 complex actions such as this Action, as well as the difficulties and delays inherent in
7 such litigation. Class Counsel is mindful of the inherent problems of proof and
8 possible defenses to the claims asserted in the Action. Class Counsel believes that the
9 proposed settlement set forth in this Class Action Settlement Agreement confers
10 substantial benefits upon the Settlement Class. Based on their evaluation of all of
11 these factors, the Class Representative and Class Counsel have determined that the
12 Class Action Settlement Agreement is in the best interests of the Class Representative
13 and the Settlement Class.

14 **4. SETTLEMENT CONSIDERATION**

15 4.1. **Injunctive Relief**

16 4.1.1. Defendant will provide the Settlement Class injunctive relief by way of
17 modification of the testing, label, packaging, and advertising for Protein Products to
18 ensure that the nitrogen content attributed to amino acids, creatine, and other non-
19 protein substances therein are not included in the protein calculation.

20 4.1.2. Defendant shall provide sufficient confirmation of the implementation of
21 its updated testing procedures, labels, and advertisements for Protein Products prior to
22 the Effective Date.

23 4.1.3. To the extent that any state and/or federal statute, regulation, policies,
24 and/or code may at any time impose other, further, different and/or conflicting
25 obligations or duties on Defendant at any time with respect to the Protein Products,
26 this Class Action Settlement Agreement and any Judgment which may be entered
27 pursuant thereto, as well as the Court's continuing jurisdiction with respect to
28 implementation and enforcement of the terms of this Class Action Settlement

1 Agreement, shall cease as to the Settlement Class's and Defendant's conduct covered
2 by that statute, regulation and/or code as of the effective date of such statute,
3 regulation, and/or code.

4 4.2. **Non-Reversionary Common Fund**

5 4.2.1. The amount of the Non-Reversionary Common Fund is two million five
6 hundred thousand dollars (\$2,500,000). None of the money paid into the Non-
7 Reversionary Common Fund will revert to Defendant under any circumstances.

8 4.2.2. No later than three (3) business days after entry of the Preliminary
9 Approval Order, Defendant shall make a deposit of two million five hundred thousand
10 dollars (\$2,500,000) into an escrow account to be established and managed by the
11 Claims Administrator.

12 4.2.3. Refunds to Settlement Class Members provided under Paragraph 4.3 will
13 be paid from the Net Settlement Fund.

14 4.2.4. Any taxes and tax expenses related to the fund shall be taken from the
15 Net Settlement Fund.

16 4.2.5. The amounts deposited by Defendant into the Non-Reversionary
17 Common Fund are to be released from escrow for funding the Class Action Settlement
18 Agreement only upon the Effective Date.

19 4.2.6. If for some reason the Court does not approve the Class Action
20 Settlement Agreement, the entirety of the Non-Reversionary Common Fund shall be
21 returned to Defendant within fifteen (15) business days of the Court's order denying
22 Final Approval.

23 4.3. **Refunds to Class Members**

24 4.3.1. The Non-Reversionary Common Fund shall provide for a full refund for
25 any of the Protein Products purchased by any member of the Settlement Class from
26 any retailer who makes a claim within the timeframe to make a Valid Claim, subject
27 to the household cap set forth in Paragraph 4.3.2.2 and 4.3.2.3. Adequate and
28 customary procedures and standards will be used by the Claims Administrator to

1 prevent the payment of fraudulent claims and to pay only legitimate claims including
2 requiring all Claimants to provide certifications as to their purchases.

3 4.3.2. The amount of the refund for any claim shall be determined as follows:

4 4.3.2.1. For any Participating Claimant who provides a Receipt, the
5 Participating Claimant shall be entitled to a refund of the amount(s) shown on the
6 receipt, subject to a cap of \$300.00 per household.

7 4.3.2.2 For any Participating Claimant who provides Proof of Purchase;
8 the Participating Claimant shall be entitled to the suggested retail price of the Protein
9 Product as determined by information on the packaging, such as a bar or SKU code,
10 subject to a cap of \$300.00 per household. 4.3.2.3 For any Participating Claimant
11 who does not provide Proof of Purchase or Receipts, but who swears or affirms under
12 penalty of perjury that he or she purchased a Protein Product during the Class Period,
13 the actual amount paid to each Participating Claimant will be \$10.00 per Protein
14 Product, with a cap of \$50.00 per household.

15 4.3.3. Participating Claimants can make a claim for a combination of Receipts
16 or Proof of Purchase. Participating Claimants cannot combine claims with Receipts or
17 Proof of Purchase with claims without Receipts or Proof of Purchase. A cap of \$300
18 per household shall apply to any combination of claims including claims with
19 Receipts, claims with Proof of Purchase, and claims without any Receipts or Proof of
20 Purchase.

21 4.3.4. Payment will be made directly to the Participating Claimant by first class
22 mail after entitlement to payment has been verified, and in no event more than six
23 months after the close of the timeframe to make a Valid Claim, unless Class Counsel
24 permits an extension of time.

25 4.3.5. Payments to Participating Claimants may be subject to *pro rata* reduction
26 if the aggregate number of claims exceeds the Net Settlement Fund.

27 4.3.6. If all eligible Valid Claims have been paid and funds remain in the Net
28 Settlement Fund 270 days following the close of the Effective Date, Class Counsel

1 shall direct the Claims Administrator to distribute one hundred (100) percent of any
2 remaining funds to Participating Claimants as a supplemental distribution. The
3 remaining funds shall first be distributed to Participating Claimants who have
4 provided valid claims with Receipts or Proof of Purchase in excess of \$300, up to the
5 full amount of their qualifying purchases of the Protein Products. Funds remaining
6 thereafter shall be distributed on a *pro rata basis* to Participant Claimants. In the
7 event that there are remaining funds subsequent to the aforementioned distributions to
8 Participating Claimants that are insufficient to justify a further distribution, the
9 remaining monies in the Net Settlement Fund shall be provided to Public Health Law
10 & Policy (dba ChangeLab Solutions), a cy pres recipient. Under no circumstances
11 shall the remaining funds revert to Defendant or Class Counsel.

12 **5. ADMINISTRATION AND NOTICE**

13 5.1.1. All costs and expenses of administering the Class Action Settlement
14 Agreement and providing Notice in accordance with the Preliminary Approval Order
15 (the “Administrative Costs”) shall be distributed from the Non-Reversionary Common
16 Fund.

17 5.1.2. **Appointment and Retention of Claims Administrator**

18 5.1.2.1. The parties retained a Claims Administrator to implement the
19 terms of the Class Action Settlement Agreement.

20 5.1.2.2. The Claims Administrator will facilitate the notice process by
21 assisting the Parties in the implementation of the Notice Plan, as well as CAFA
22 Notice, although Defendant shall retain ultimate responsibility for effecting CAFA
23 Notice within the required time.

24 5.1.2.3. The costs of the Claims Administrator will be paid from the Non-
25 Reversionary Common Fund.

26 5.1.3. **Class Settlement Website**

27 5.1.3.1. The Claims Administrator will create and maintain the Class
28 Settlement Website, to be activated within fifteen (15) days of the entry of the

1 Preliminary Approval Order by the Court. The Claims Administrator's
2 responsibilities will also include securing an appropriate URL. The Class Settlement
3 Website will post the settlement documents and case-related documents such as the
4 Class Action Settlement Agreement, the Long-Form Notice, the Claim Form (in
5 English and Spanish versions), and the Preliminary Approval Order. In addition, the
6 Class Settlement Website will include procedural information regarding the status of
7 the Court-approval process, such as an announcement of the Final Approval Hearing
8 Date, when the Final Approval Order and Judgment have been entered, and when the
9 Effective Date has been reached. Claimants will be able to submit their claims
10 electronically via the Class Settlement Website.

11 5.1.3.2. Defendant shall prominently place a link to the Class Settlement
12 Website on Defendant's corporate website.

13 5.1.3.3. The Class Settlement Website will terminate (be removed from the
14 internet) and no longer be maintained by the Claims Administrator thirty (30) days
15 after either (a) the Effective Date or (b) the date on which the Class Action Settlement
16 Agreement is terminated or otherwise not approved by a court, whichever is later.
17 The Claims Administrator will then transfer ownership of the URL to Defendant.

18 5.1.3.4. All costs and expenses related to the Class Settlement Website
19 shall be distributed from the Non-Reversionary Common Fund.

20 5.1.4. **CAFA Notice**

21 5.1.4.1. The Parties agree that the Claims Administrator shall serve notice
22 of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the
23 appropriate federal and state officials no later than ten (10) days after the filing of this
24 Class Action Settlement Agreement with the Court.

25 5.1.4.2. Notwithstanding the foregoing, Defendant shall have ultimate
26 responsibility to ensure that CAFA Notice is, in fact, effectuated consistent with the
27 statutory requirements.
28

1 5.1.4.3. All costs and expenses related to the CAFA Notice shall be
2 distributed from the Non-Reversionary Common Fund.

3 5.1.4.4. Defendant will file a certification with the Court stating the date(s)
4 on which the CAFA Notices were sent. Defendant will provide Class Counsel with
5 any substantive responses received in response to any CAFA Notice.

6 5.1.5. **Notice Plan**

7 5.1.5.1. The class notice shall conform to all applicable requirements of the
8 Federal Rules of Civil Procedure, the United States Constitution (including the Due
9 Process Clauses), and any other applicable law, and shall otherwise be in the manner
10 and form agreed upon by the Parties and approved by the Court. The class notice
11 shall constitute the best notice that is practicable under the circumstances.

12 5.1.5.2. Within thirty (30) days after preliminary approval by the Court of
13 this Class Action Settlement Agreement, the Claims Administrator shall provide
14 notice to the Settlement Class according to the Notice Plan.

15 5.1.5.3. The Notice Plan will include direct notice to any Settlement Class
16 Member who can be individually identified.

17 5.1.5.4. Defendant shall prominently place a link to the Class Settlement
18 Website on Defendant's corporate website.

19 5.1.5.5. The Parties agree to the content of these notices substantially in the
20 forms attached to this Agreement as Exhibits B and C.

21 5.1.6. **Taxes**

22 5.1.6.1. Settlement Class Members, the Class Representative, and Class
23 Counsel shall be responsible for paying any and all federal, state, and local taxes due
24 on any payments made to them pursuant to the Class Action Settlement Agreement.

25 5.1.6.2. Taxes due in connection with the Non-Reversionary Common
26 Fund and Net Settlement Fund prior to distribution to the Settlement Class shall be
27 paid by the Claims Administrator from the Net Settlement Fund.
28

1 **6. RELEASES**

2 6.1. Upon the Effective Date, the Class Representative and each of the
3 Settlement Class Members will be deemed to have, and by operation of the Judgment
4 will have fully, finally, and forever released, relinquished, and discharged the
5 Released Parties from all Released Claims during the Class Period.

6 **7. CLASS CERTIFICATION**

7 7.1.1. The Parties agree that, for settlement purposes only, this Action shall be
8 certified as a class action pursuant to Federal Rule of Civil Procedure 23 with Class
9 Representative serving as class representative and Class Counsel as counsel for the
10 Settlement Class.

11 7.1.2. In the event the Class Action Settlement Agreement is terminated or for
12 any reason the Class Action Settlement Agreement is not effectuated, the certification
13 of the Settlement Class shall be vacated and the Action shall proceed as if the
14 Settlement Class had not been certified.

15 **8. SETTLEMENT HEARING**

16 8.1. Promptly after execution of this Class Action Settlement Agreement, the
17 Parties will submit the Class Action Settlement Agreement together with its Exhibits
18 to the Court and will request that the Court grant preliminary approval of the Class
19 Action Settlement Agreement as of the date of which the settlement shall be deemed
20 as “filed” within the meaning of 28 U.S.C. § 1715, issue the Preliminary Approval
21 Order, and schedule a hearing on whether the Class Action Settlement Agreement
22 should be granted final approval and whether the Fee Application should be granted
23 (“Settlement Hearing”).

24 **8.2. Procedures for Objecting to the Class Action Settlement Agreement**

25 8.2.1. Settlement Class Members shall have the right to appear and show cause,
26 if they have any reason why the terms of this Class Action Settlement Agreement
27 should not be given Final Approval, subject to each of the subprovisions in Paragraph

28 8.2. Any objection to this Class Action Settlement Agreement, including any of its

1 terms or provisions, must be in writing, filed with the Court, with a copy served on
2 Class Counsel, Counsel for Defendant, and the Claims Administrator at the addresses
3 set forth in the Class Notice, and postmarked no later than the Notice Response
4 Deadline. Settlement Class Members may object either on their own or through an
5 attorney hired at their own expense.

6 8.2.2. If a Settlement Class Member hires an attorney to represent him or her at
7 the Final Approval Hearing, he or she must do so at his or her own expense. No
8 Settlement Class Member represented by an attorney shall be deemed to have objected
9 to the Class Action Settlement Agreement unless an objection signed by the
10 Settlement Class Member is also filed with the Court and served upon Class Counsel,
11 Counsel for Defendant, and the Claims Administrator at the addresses set forth in the
12 Class Notice no later than the Notice Response Deadline.

13 8.2.3. Any objection regarding or related to the Class Action Settlement
14 Agreement shall contain a caption or title that identifies it as “Objection to Class
15 Settlement in *Eashoo v. Iovate Health Sciences U.S.A. Inc.*, No. 2:15-cv-01726-BRO-
16 PJW” and also shall contain the following information: (i) the objector’s name,
17 address, and telephone number, (ii) the name, address, and telephone number of any
18 attorney for the objector with respect to the objection; (iii) the factual basis and legal
19 grounds for the objection, including any documents sufficient to establish the basis for
20 their standing as a Settlement Class Member, e.g., Receipt, Proof of Purchase, or
21 verification under oath as to the approximate date(s) and location(s) of their
22 purchase(s) of the Protein Products; and (iv) identification of the case name, case
23 number, and court for any prior class action lawsuit in which the objector and the
24 objector’s attorney (if applicable) has objected to a proposed class action settlement,
25 the general nature of such prior objection(s), and the outcome of said prior
26 objection(s). If an objecting party chooses to appear at the hearing, no later than the
27 Notice Response Deadline, a notice of intention to appear, either in person or through
28

1 an attorney, must be filed with the Court and list the name, address, telephone number,
2 facsimile number, and email address of the attorney, if any, who will appear.

3 8.2.4. If a Settlement Class Member wishes to present witnesses or evidence at
4 the Final Approval Hearing in support of a timely and validly submitted objection, all
5 witnesses must be identified in the objection, and true and correct copies of all
6 supporting evidence must be appended to, or filed and served with, the objection.
7 Failure to identify witnesses or provide copies of supporting evidence in this manner
8 waives any right to introduce such testimony or evidence at the Final Approval
9 Hearing. While the declaration described above is prima facie evidence that the
10 objector is a member of the Settlement Class, Plaintiff or Defendant or both may take
11 discovery regarding the matter, subject to Court approval.

12 8.2.5. Any Settlement Class Member who fails to comply with the applicable
13 provisions of the preceding paragraphs concerning their objection shall waive and
14 forfeit any and all rights he or she may have to object, appear, present witness
15 testimony, and/or submit evidence, shall be barred from appearing, speaking, and
16 introducing any testimony or evidence at the Final Approval Hearing, and shall be
17 bound by all the terms of this Class Action Settlement Agreement and by all
18 proceedings, orders and judgments in the Action.

19 8.2.6. Any Settlement Class Member who does not object to the Class Action
20 Settlement Agreement is deemed to be a Settlement Class Member and bound by the
21 Class Action Settlement Agreement or any further orders of the Court in this Action.

22 8.3. **Right to Respond to Objections**

23 8.3.1. Class Counsel and Defendant shall have the right, but not the obligation,
24 to respond to any objection no later than seven (7) days prior to the Final Approval
25 Hearing. The Settling Party so responding shall file a copy of the response with the
26 Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the
27 objector (or counsel for the objector) and to counsel for Plaintiff and Defendant.

28 8.4. **Opt Outs**

1 8.4.1. Any Settlement Class Member who does not wish to participate in this
2 Class Action Settlement Agreement must write to the Claims Administrator stating an
3 intention to be “excluded” from this Class Action Settlement Agreement by the Opt-
4 Out Date. This written Request for Exclusion must be sent via first class United
5 States mail to the Claims Administrator at the address set forth in the Class Notice and
6 postmarked no later than the Notice Response Deadline. The Request for Exclusion
7 must be personally signed by the Class Member. So-called “mass” or “class” opt-outs
8 shall not be allowed.

9 8.4.2. Any Settlement Class Member who does not request exclusion from the
10 Settlement has the right to object to the Settlement as set forth in paragraphs 8.2.1 to
11 8.2.7 above. If a Class Member submits a written Request for Exclusion, he or she
12 shall be deemed to have complied with the terms of the opt-out procedure and shall
13 not be bound by the Class Action Settlement Agreement if approved by the Court.
14 However, any objector who has not timely requested exclusion from the Settlement
15 will be bound by the terms of the Class Action Settlement Agreement and by all
16 proceedings, orders and judgments in the Action.

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

19 9.1. Class Counsel may apply to the Court for an award of attorneys’ fees in
20 an amount not to exceed twenty five percent (25%) of the \$2.5 million Non-
21 Reversionary Common Fund (i.e. up to \$625,000) and expenses and verified costs in
22 an amount not to exceed \$15,000.00.

23 9.2. Plaintiff may apply to the Court for an enhancement award of \$5,000 for
24 his service as a Class Representative.

25 9.3 A payment of attorneys’ fees, costs, expenses and the enhancement
26 award shall be paid from the Non-Reversionary Common Fund. Defendant agrees not
27 to oppose or submit any evidence or argument challenging or undermining such
28 application for attorneys’ fees, costs, or enhancement award that does not exceed the

1 amounts set forth in this Settlement Agreement. Defendant will bear its own
2 attorneys' fees, costs and expenses.

3 9.4. Attorneys' fees and costs that are approved by the Court shall be paid
4 from the Non-Reversionary Common Fund no later than fifteen (15) days after
5 Effective Date, and only in the event that the Effective Date occurs.

6 9.5 Any incentive payments awarded by the Court will be taken from the
7 Non-Reversionary Common Fund.

8 **10. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF**
9 **TERMINATION**

10 10.1. The Effective Date of this Class Action Settlement Agreement shall be
11 the date as defined in Paragraph 1.14.

12 10.2. If this Class Action Settlement Agreement is not approved by the Court
13 or the Settlement is terminated or fails to become effective in accordance with the
14 terms of this Class Action Settlement Agreement, the Settling Parties will be restored
15 to their respective positions in the Action as of the date the Motion for Preliminary
16 Approval is filed. In such event, the terms and provisions of this Class Action
17 Settlement Agreement will have no further force and effect with respect to the Settling
18 Parties and will not be used in this Action or in any other proceeding for any purpose,
19 and any Judgment or order entered by the Court in accordance with the terms of this
20 Class Action Settlement Agreement will be treated as vacated.

21 10.3. No order of the Court or modification or reversal on appeal of any order
22 of the Court concerning any award of attorneys' fees, expenses, or costs to
23 Class Counsel will constitute grounds for cancellation or termination of this Class
24 Action Settlement Agreement.

25 **11. CONFIRMATORY DISCOVERY**

26 11.1. This Class Action Settlement Agreement is conditioned upon Defendant
27 providing sufficient confirmatory discovery to confirm the wholesale revenues during
28 the Class Period.

12. DISPUTE RESOLUTION

12.1. If any dispute arises out of the Settlement, the Settling Parties agree that they will attempt to resolve such disputes by way of mediation with the Honorable Dickran M. Tevrizian (Ret.) before seeking the Court's intervention. If for any reason Judge Tevrizian is unavailable or has a conflict of interest, the Settling Parties will agree on a substitute neutral so that this portion of the Class Action Settlement Agreement can be enforced without seeking Court intervention.

13. MISCELLANEOUS PROVISIONS

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

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

13.3. Neither this Class Action Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Class Action Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Action may file this Class Action Settlement Agreement

1 and/or the Judgment in any action that may be brought against it in order to support
2 any defense or counterclaim, including without limitation those based on principles of
3 res judicata, collateral estoppel, release, good faith settlement, judgment bar or
4 reduction, or any other theory of claim preclusion or issue preclusion or similar
5 defense or counterclaim.

6 13.4. All agreements made and orders entered during the course of the
7 Action relating to the confidentiality of information will survive this Class Action
8 Settlement Agreement.

9 13.5. Any and all Exhibits to this Class Action Settlement Agreement are
10 material and integral parts hereof and are fully incorporated herein by this reference.

11 13.6. This Class Action Settlement Agreement may be amended or modified
12 only by a written instrument signed by or on behalf of all Parties or their respective
13 successors-in-interest.

14 13.7. This Class Action Settlement Agreement and any Exhibits attached
15 hereto constitute the entire agreement among the Parties, and no representations,
16 warranties, or inducements have been made to any Party concerning this Class Action
17 Settlement Agreement or its Exhibits other than the representations, warranties, and
18 covenants covered and memorialized in such documents. Except as otherwise
19 provided herein, the Parties will bear their own respective costs.

20 13.8. Class Counsel, on behalf of the Settlement Class, are expressly
21 authorized by the Class Representative to take all appropriate action required or
22 permitted to be taken by the Settlement Class pursuant to this Class Action Settlement
23 Agreement to effectuate its terms, and are expressly authorized to enter into any
24 modifications or amendments to this Class Action Settlement Agreement on behalf of
25 the Settlement Class that Class Counsel deem appropriate.

26 13.9. Each counsel or other Person executing this Class Action Settlement
27 Agreement or any of its Exhibits on behalf of any Party hereby warrants that such
28 Person has the full authority to do so.

1 13.10. This Class Action Settlement Agreement may be executed in one or
2 more counterparts. All executed counterparts and each of them will be deemed to be
3 one and the same instrument. A complete set of original counterparts will be filed with
4 the Court.

5 13.11. This Class Action Settlement Agreement will be binding upon, and
6 inure to the benefit of, the successors and assigns of the Settling Parties.

7 13.12. Except as provided herein, the Court will retain jurisdiction with respect
8 to implementation and enforcement of the terms of this Class Action Settlement
9 Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes
10 of implementing and enforcing the Settlement.

11 13.13. None of the Settling Parties, or their respective counsel, will be deemed
12 the drafter of this Class Action Settlement Agreement or its Exhibits for purposes of
13 construing the provisions thereof. The language in all parts of this Class Action
14 Settlement Agreement and its Exhibits will be interpreted according to its fair
15 meaning, and will not be interpreted for or against any of the Settling Parties as the
16 drafter thereof.

17 13.14. This Class Action Settlement Agreement shall be deemed the “proposed
18 agreement” filed with the Court within the meaning of 15 U.S.C. § 1715 as of the date
19 on which Preliminary Approval is granted by the Court.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

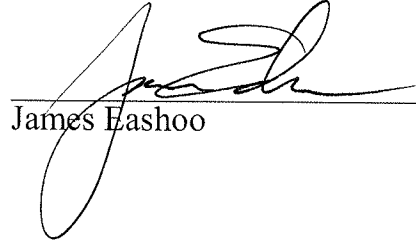
26 ///

27 ///

28 ///

1 13.15. This Class Action Settlement Agreement and any Exhibits hereto will be
2 construed and enforced in accordance with, and governed by, the internal, substantive
3 laws of the State of California without giving effect to that State's choice-of-law
4 principles.

5
6 Dated: September 21, 2015



James Eashoo

7
8
9 Dated: September __, 2015

10
11 Roch Vaillancourt, General Counsel
On behalf of Iovate Health Sciences U.S.A. Inc.

12 **APPROVED AS TO FORM:**

13
14 Dated: September 21, 2015


Daniel L. Warshaw
Attorney for Plaintiff James Eashoo and the
Class

15
16
17 Dated: September __, 2015


18
19 Scott J. Ferrell
Attorney for Defendant Iovate Health Sciences
U.S.A. Inc.

1 13.15. This Class Action Settlement Agreement and any Exhibits hereto will be
2 construed and enforced in accordance with, and governed by, the internal, substantive
3 laws of the State of California without giving effect to that State's choice-of-law
4 principles.

5
6 Dated: September __, 2015

James Eashoo

7
8
9 Dated: September 30, 2015



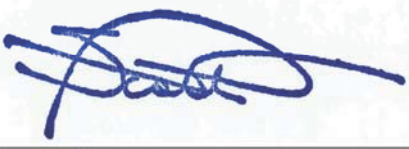
Roch Vaillancourt, General Counsel
On behalf of Iovate Health Sciences U.S.A. Inc.

10
11
12 **APPROVED AS TO FORM:**

13
14 Dated: September __, 2015

Daniel L. Warshaw
Attorney for Plaintiff James Eashoo and the
Class

15
16
17 Dated: September 30, 2015



Scott J. Ferrell
Attorney for Defendant Iovate Health Sciences
U.S.A. Inc.

EXHIBIT A

IMPORTANT LEGAL MATERIALS



* B A R C O D E 3 9 * - <<SequenceNo>>

<<Name 1>>

<<Name 2>>

<<Name 3>>

<<Name 4>>

<<Address 1>>

<<Address 2>>

<<City>> <<State>> <<Zip 10>>

<<CountryName>>



If the pre-printed information to the left is not correct or if there is no pre-printed information, please check the box and complete the information below:

Name: _____

Address: _____

City: _____

State: ____ Zip Code: ____

IOVATE SETTLEMENT CLAIM FORM

To receive a payment, you must accurately complete this Claim Form and submit it **NO LATER THAN** [REDACTED], 2016. **Failure to do so could result in a reduction or denial of your claim.**

CLASS MEMBER INFORMATION

Name:					
Mailing Address:					
City:		State:	____	Zip Code:	____
Telephone:	(____) ____ - ____	Email Address (optional):			

Claim Option

- ☐ **File Claim With Receipt to Recover Full Purchase Price Up To \$300 Per Household (must submit valid receipt)**
- ☐ **File Claim With Proof of Purchase to Recover Suggested Retail Price Up to \$300 Per Household (must submit valid proof of purchase).**
- ☐ **File a Claim With No Receipt or Proof of Purchase to Recover \$10 Per Product Up to \$50 Per Household.**

PURCHASE INFORMATION (For purchases made between March 10, 2011 and [REDACTED], 2015)

BRAND	PRODUCT	NUMBER PURCHASED	COST (FOR CLAIMS WITH RECEIPT)
Six Star	Whey Protein Plus Elite Series		
Six Star	Whey Protein Plus Professional Strength Elite Series		
Six Star	Whey Protein Isolate Elite Series		
Six Star	Whey Protein Isolate Professional Strength Elite Series		
Six Star	Casein Elite Series		
Six Star	Casein Professional Strength Elite Series		
Six Star	Muscle Building Milkshake Elite Series		





Six Star	Muscle Building Milkshake Professional Strength Elite Series		
Six Star	Mass Gainer Professional Strength Elite Series		
Six Star	Recovery Protein Elite Series		
Six Star	100% Whey Isolate Protein Gel		
Six Star	Protein Bars		
MuscleTech	MassTech Performance Series		
MuscleTech	MassTech		
MuscleTech	Nitro-Tech Performance Series		
MuscleTech	Nitro-Tech Hardcore Pro Series		
MuscleTech	Phase8 Performance Series		
MuscleTech	Anabolic Halo Performance Series		
MuscleTech	Nitro Isolate 65 Pro Series		
EPIQ	Isolate		
EPIQ	Gainer		
Sam's Club	Whey Protein Plus		
Sam's Club	Whey Isolate Plus		
Fuel One	Complex-1		
Fuel One	Gainer		
	TOTAL		

CERTIFICATION AND SIGNATURE

I personally completed this Claim Form and **I certify under penalty of perjury that the information I provided in this Claim Form is true, correct and complete to the best of my knowledge.**

Signature

Type/Print Name

____ / ____ / ____
Date

Upon completion, please mail your completed Claim Form, along with any Receipts and/or Proofs of Purchase, to:

IOVATE SETTLEMENT CLAIMS ADMINISTRATOR
PO BOX 2441
FARIBAULT, MN 55021-9140

Please note that the Claims Administrator has the right to audit all Claims submitted for validity.

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If You Bought MuscleTech, Six Star, EPIQ, or fuel:one Protein Products Between March 10, 2011, and [REDACTED], 2015 You Could Get a Cash Payment Up to \$300 From a Class Action Settlement

The District Court has authorized this Notice. The Court expresses no views as to the merits of Plaintiffs' claims.

This is *not* a solicitation from a lawyer. You are not being sued.

This Notice is to inform you that a class action lawsuit brought on behalf of Consumers that purchased certain Iovate Health Sciences, U.S.A., Inc. ("Iovate" or "Defendant") protein products is currently pending. A proposed Settlement of the lawsuit has been reached with Iovate.

If you bought MuscleTech, Six Star, EPIQ, or fuel:one Protein Products Between March 10, 2011, and [REDACTED], 2015 your legal rights are affected whether or not you act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DUE DATE
SUBMIT A CLAIM FORM	If you would like to receive a payment from this Settlement, you must submit a paper or online Claim Form by the due date listed.	SUBMITTED BY [REDACTED], 2016
EXCLUDE YOURSELF FROM THE CLASS	You may choose to exclude yourself from the Settlement by submitting a written request by the due date listed. This option will allow you to pursue claims against Iovate by filing your own lawsuit at your own expense. However, you will not be able to participate, or receive money from the Settlement.	SUBMITTED BY [REDACTED], 2016
OBJECT TO THE SETTLEMENT	You may write to the Court if you do not like the proposed Settlement by the due date listed. You must be a member of and remain in the Class to submit an objection.	FILED AND SUBMITTED BY [REDACTED], 2016
DO NOTHING	If you are a member of the Settlement Class and you do nothing, you will not receive any money from the Settlement and will be bound by the terms and conditions of the proposed Settlement, if approved. You will not be able to sue Iovate for the claims in this lawsuit.	

- These rights and options, and the deadlines to exercise them, are further explained in this Notice.
- The Court in charge of this case still has to approve the proposed Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved.
- Unless otherwise stated, the capitalized terms in this Notice are defined in the Settlement Agreement that is available at www.IovateSettlement.com.

BASIC INFORMATION**1. What is the class action about?**

This class action lawsuit was filed by Plaintiff James Eashoo, on behalf of himself and all others similarly situated, against Defendant Iovate. The lawsuit alleges that between March 10, 2011 and [REDACTED], 2015, Defendant engaged in a practice known as "protein spiking," whereby its protein products were "spiked" with amino acids, creatine, and other non-protein ingredients, which Plaintiff claims falsely registered as proteins. Plaintiff alleges that as a result of this practice, Defendant's protein products contained less protein than what Defendant represented. The protein products at issue in this case are sold under the brand names MuscleTech, Six Star, EPIQ, and fuel:one. See Question 4 for further discussion of the protein products involved in this class action.

2. Why is there a Settlement?

Defendant has agreed to settle to avoid the expense, inconvenience, and inherent risk of litigation. Plaintiff and his attorneys agree that the proposed Settlement is in the best interests of the Class because it substantially benefits the Class while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals. The Court has not decided in favor of either side in the case. Defendant denies all material factual allegations and legal claims asserted in the class action, including any and all charges of wrongdoing or liability arising out of any conduct, statements, acts or omissions alleged.

3. Who is included in the Settlement?

The Class is defined as all persons in the United States of America who purchased one or more of Defendant's protein products at any time from March 10, 2011 to [REDACTED], 2015. The protein products at issue in this case are sold under the brand names MuscleTech, Six Star, EPIQ, and fuel:one. See Question 4 for further discussion of the protein products involved in this class action.

4. What Iovate protein products are part of the Settlement?

This class action involves protein supplements manufactured by Iovate, including protein shakes and beverages, both in liquid (ready to drink) and powdered form, as well as, bars and gels sold under the brand names MuscleTech, Six Star, Fuel One, and EPIQ (collectively referred to as the "Protein Products"). A complete list of applicable Protein Products included in the Settlement is as follows:

PROTEIN PRODUCT LIST	
BRAND	PRODUCT
Six Star	Whey Protein Plus Elite Series
Six Star	Whey Protein Plus Professional Strength Elite Series
Six Star	Whey Protein Isolate Elite Series
Six Star	Whey Protein Isolate Professional Strength Elite Series
Six Star	Casein Elite Series
Six Star	Casein Professional Strength Elite Series
Six Star	Muscle Building Milkshake Elite Series
Six Star	Muscle Building Milkshake Professional Strength Elite Series
Six Star	Mass Gainer Professional Strength Elite Series
Six Star	Recovery Protein Elite Series
Six Star	100% Whey Isolate Protein Gel
Six Star	Protein Bars
MuscleTech	MassTech Performance Series
MuscleTech	MassTech
MuscleTech	Nitro-Tech Performance Series
MuscleTech	Nitro-Tech Hardcore Pro Series
MuscleTech	Phase8 Performance Series
MuscleTech	Anabolic Halo Performance Series
MuscleTech	Nitro Isolate 65 Pro Series
EPIQ	Isolate
EPIQ	Gainer
Fuel One	Complex-1
Fuel One	Gainer

5. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Class, you may call 1-866-759-6512 with questions or visit www.IovateSettlement.com. You may also write with questions to the Claims Administrator at the address listed in Question 16.

THE SETTLEMENT BENEFITS

6. What does the proposed Settlement provide?

Iovate has agreed to pay \$2.5 million for the benefit of the Class into a common fund. This fund will be used to pay all members of the Class that submit timely and valid Claim Forms for purchases of Protein Products ("Participating Claimants"), claims administration expenses, notice expenses, any attorneys' fee and expense reimbursement award, any incentive award, and tax expenses.

Participating Claimants can recover up to \$300 per household for claims with valid Receipts or Proof of Purchase, or \$50 without Receipts or proof of purchase. Class members can file claims under the following options:

Option 1: Participating Claimants who provide valid Receipts, will receive a refund of the amount(s) shown on the receipt(s), subject to a cap of \$300.00 per household.

Option 2: Participating Claimants who provide valid Proof of Purchase, such as an image of packaging, label, SKU or other evidence deemed sufficient by the Claims Administrator, will receive a refund of the suggested retail price of the Protein Products shown in the Proof of Purchase, subject to a cap of \$300.00 per household.

Option 3: Participating Claimants who do not provide Receipts or Proof of Purchase, but swears or affirms under penalty of perjury that they purchased Protein Products between March 10, 2011 and [REDACTED], 2015, will receive \$10.00 per Protein Product, subject to a cap of \$50.00 per household.

Participating Claimants can submit a Claim Form which contains a combination of Receipts and Proof of Purchase (Options 1 and 2 above) to substantiate a Claim.

Participating Claimants cannot combine a Claim without a Receipt or Proof of Purchase (Option 3 above) with a Claim that contains Receipts or Proof of Purchase (Options 1 or 2 above).

Multiple Participating Claimants from the same household can submit more than one Claim Form, subject to the cap of \$300.00 per household. If multiple claims are filed from the same household exceeding \$300 will be subject to a pro rata reduction.

The Settlement also requires Defendant to modify the testing, labeling, packaging, and advertising for applicable Protein Products to ensure that amino acids, creatine and other members of the Class that submit timely and valid Claim Forms for purchases of Protein Products ("Participating Claimants") non-protein substances are not included in the protein calculation.

7. How can I get a payment from the Settlement?

In order to receive a payment in the Settlement, you must file a Claim. You can access the Claim Form online at www.IovateSettlement.com or by calling 1-866-759-6512. You can submit the Claim Form online, or via mail to the address provided on the Claim Form.

8. How much will my payment be?

Payments to individual Class Members will depend on the type and amount of claims as described in Question 7 above. Claims are subject to the household caps of \$300 per household for claims with Receipts or Proof of Purchase, and \$50 per household for claims without Receipts or Proof of Purchase. Payments may be subject to *pro rata* reduction if the total purchases represented in all valid Claims exceeds the available settlement funds. This means each Participating Claimant's recovery would be reduced based on the same percentage as all other class members.

9. What am I giving up by Remaining in the Class?

By submitting a Claim Form or not taking any action, you remain in the Settlement Class give up your right to sue Iovate for the claims being resolved by this Settlement, if the Court approves the proposed Settlement as final. The specific claims you are giving up are described in the First Amended Complaint filed on April 10, 2015 and the Settlement Agreement. Copies of the First Amended Complaint and Settlement Agreement can be obtained at www.IovateSettlement.com, by calling 1-8##-###-####, or by written request to the Claims Administrator at the address listed in Question 16. If you do not want to be part of the Settlement Class and give up your rights, you must exclude yourself by following the instructions set forth in Question 10 below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How can I exclude myself from the Settlement Class?

To exclude yourself from the proposed Settlement, you must send a letter stating that you want to be excluded from the Class in *Eashoo v. Iovate Health Sciences U.S.A., Inc.* A request for exclusion must (a) be submitted by a member of the Class; (b) contain the Class Member's name, address, and telephone number; and (c) be submitted to the Claims Administrator at the address listed in Question 16, postmarked by [REDACTED], 2016.

OBJECTING TO THE SETTLEMENT**11. How can I tell the Court that I object to the proposed Settlement terms?**

Class Members who do not exclude themselves from the Settlement have a right to object to the proposed Settlement. Objections must be filed with the Court, with a copy served on Class Counsel, Counsel for Defendant, and the Claims Administrator at the addresses below, postmarked no later than [REDACTED], 2016.

Clerk of the Court	Class Counsel	Defendant's Counsel	Claims Administrator
[REDACTED]	Daniel L. Warshaw PEARSON, SIMON & WARSHAW, LLP 15165 Ventura Blvd., Suite 400 Sherman Oaks, CA 91403	Scott J. Ferrell Newport Trial Group, APC 4100 Newport Pl Dr., #800, Newport Beach, CA 92660	Iovate Settlement Claims Administrator P.O. Box 2441 Faribault, MN 55021

The written Objection must contain:

- 1) A caption or title that identifies the writing as an "Objection to Class Settlement in *Eashoo v. Iovate Health Sciences U.S.A. Inc.*, No. 2:15-cv-01726-BRO-PJW";
- 2) Your name, address, and telephone number;
- 3) The name, address, and telephone number of any attorney you've hired to represent you with respect to the objection;
- 4) The factual and legal grounds for the objection, including any documents sufficient to establish the basis for your standing as a Class Member (Example: Receipt, Proof of Purchase, or verification under oath a to the approximate date(s) and locations(s) of your purchase(s) of the Protein Products); and
- 5) Identification of the case name, case number, and court for any prior class action lawsuit in which you and your attorney (if applicable) has objected to a proposed class action settlement, the general nature of such objection(s), and the outcome of said objection(s).

Further information regarding the necessary content and form of a written objection is available in paragraph 8.2 of the Settlement Agreement. A copy of the Settlement Agreement can be found at www.IovateSettlement.com.

The Court will consider the objections from Class Members. If you intend to appear at the Final Approval Hearing, you must also file with the Court a notice of your intention to appear, either in person or through an attorney, no later than [REDACTED], 2016. Your notice of intention must list the name, address, telephone number, facsimile number, and email address of the attorney, if any, who will appear. **If you hire an attorney to represent you at the Final Approval Hearing, you must do so at your own expense.**

DO NOTHING AND REMAIN IN THE CLASS**12. What happens if I do nothing?**

If you are member of the Settlement Class and you do nothing, you will not receive any money from the Settlement and will be bound by the terms and conditions of the proposed Settlement, if approved. You will not be able to sue Iovate or its related entities for the claims in this lawsuit.

THE PARTIES REPRESENTING YOU**13. Who represents the Settlement Class?**

Class Representative. For the purposes of the Settlement, the Court has appointed Plaintiff James Eashoo to serve as the Class Representative. Plaintiff may apply to the Court for an enhancement award of \$5,000 for his service as a Class Representative.

Class Counsel. The Court has appointed Daniel L. Warshaw, Bobby Pouya, Alexander R. Safyan, and Matthew A. Pearson, of Pearson, Simon & Warshaw, LLP, as legal counsel for the Class. Their contact information is available in Question 11 above.

From the start of the lawsuit to the present, Class Counsel have not received any payment for the services they provided in prosecuting the case or obtaining the Settlement, nor have they been reimbursed for any out-of-pocket expenses. When they ask the Court to approve the Settlement, they will also make a motion to the Court for an award of attorneys' fees in an amount not to exceed \$625,000 (25% of the Non-Reversionary Common Fund) and up to \$15,000 in verified costs and

expenses. Any attorneys' fees and costs awarded by the Court will be paid from the Non-Reversionary Common Fund. The Class will not have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all Class Members.

The Motion for Attorneys' Fees, Costs, and Enhancement Awards will be filed on or before [Date], and will be made available for review online at www.IovateSettlement.com.

THE FINAL APPROVAL HEARING

14. When and where will the Court hold a hearing on the fairness of the proposed Settlement?

A Final Approval Hearing has been scheduled for [REDACTED], 2016, at [REDACTED] .m., before United States District Judge Beverly Reid O'Connell, Courtroom 14, United States District Court for the Central District of California, 312 North Spring Street Los Angeles, CA 90012-4701. The hearing may be moved to a different date or time by the Court without additional notice. At the hearing, the Court may hear any comments, objections, and arguments concerning the fairness of the proposed Settlement, the amount requested by Class Counsel for attorneys' fees and expenses, and an incentive award for the Class Representative.

15. Do I have to attend the Final Approval Hearing? May I speak at the hearing?

You do not need to attend this hearing to receive a benefit in the Settlement, if approved. You may attend the hearing, but it is not required, to have a comment or objection considered by the Court. If you would like to attend the hearing, please see Question 11 above for additional details and requirements.

FOR MORE INFORMATION

16. Where do I get additional information?

This Notice provides only a summary of the matters relating to the proposed Settlement. For more detailed information, you may wish to review the Settlement Agreement. You can view the Settlement Agreement and get more information at www.IovateSettlement.com. You can also get more information by calling the Claims Administrator toll-free 1-866-759-6512 or write with questions to:

Iovate Settlement Claims Administrator
P.O. Box 2441
Faribault, MN 55021
RUST EMAIL

PLEASE DO NOT CONTACT THE COURT OR IOVATE HEALTH SCIENCES WITH QUESTIONS ABOUT THE SETTLEMENT.

EXHIBIT C

**If You Bought any MuscleTech, Six Star,
EPIQ, or fuel:one Protein Products
between March 10, 2011 and _____, 2015,
*You Could Get Up to \$300
From a Class Action Settlement.***

A Settlement has been reached with Iovate Health Sciences U.S.A., Inc. (“Iovate”), concerning the marketing of certain protein products sold under the brand names MuscleTech, Six Star, EPIQ and fuel:one. The lawsuit claims Iovate misrepresented that certain protein products had higher levels of protein than what was actually contained in the products. As a result, the protein products contained less protein than what was represented on labels, packaging, and in advertising. Iovate Health Sciences denies these claims and denies any wrongdoing.

Who is included in the Settlement?

Anyone who bought one or more eligible MuscleTech, Six Star, EPIQ, fuel:one protein products between March 10, 2011 to _____, 2015 is included in the Settlement. The Settlement applies to protein shakes and beverages, both in liquid (ready to drink) and powdered form, as well as, bars and gels. A complete list of included products and additional information regarding who is included in the Settlement is available at www.IovateSettlement.com or by calling 1-866-759-6512.

What does the Settlement provide?

The Settlement provides for the creation of a \$2.5 million Settlement Fund that will be used to pay money to eligible Class Members, attorneys’ fees and costs, and a class representative incentive award. Iovate has also agreed to change some of its business practices, including modifying its testing, labeling, packaging, and advertising of the amount protein contained in the Protein Products.

Eligible Class Members who file timely and valid claims may receive: (1) up to \$300 per household if they file valid claim with proof of purchase, or (2) up to \$50 per household if they file a valid claim without proof of purchase. Payment amounts may be reduced proportionally if the total amount of claims is greater than the money available. Additional details are provided in the Settlement Agreement available at www.IovateSettlement.com.

How can I get a payment?

You must submit a Claim Form online at www.IovateSettlement.com or via mail on or before **Month 00, 2015**. The payment amount you receive will be based in part on the quantity and price of the products you purchased, whether you have proof of purchase, and the total number of claims made.

What are my rights?

Even if you do nothing you will be bound by the Court’s decisions. If you want to retain your right to sue Iovate yourself, you must exclude yourself from the Settlement on or before **Month 00, 0000**. If you stay in the Settlement, you may object to it on or before **Month 00, 0000**.

The Court will hold a hearing on **Month 00, 0000** to consider whether to approve the Settlement, and to determine plaintiff’s request for attorneys’ fees up to \$625,000, costs not to exceed \$15,000 and an incentive award up to \$5,000. You or your own lawyer may appear and speak at the hearing at your own expense, but you do not have to do so.

**For More Information or a Claim Form:
1-866-759-6512 www.IovateSettlement.com**