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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>RONALD PATRICK KLINE AND YESINA REYES ABREU, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,</p> <p>PLAINTIFFS,</p> <p>V.</p> <p>DYMATIZE ENTERPRISES, LLC,</p> <p>DEFENDANT.</p>	<p>Case No.: 3:15-cv-02348-AJB-RBB</p> <p>FINAL ORDER AND JUDGMENT</p> <p>JUDGE: Hon. Anthony J. Battaglia</p>
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1 Plaintiffs Ronald Patrick Kline and Yesina Reyes Abreu (collectively,
2 Plaintiffs”) and defendant Dymatize Enterprises, LLC (“Dymatize” or “Defendant”)
3 entered in to a Settlement Agreement and Release (hereinafter referred to as the
4 “Agreement”), which is subject to review under Fed. R. Civ. P. 23. Plaintiffs filed
5 a Motion for Preliminary Approval of Class Action Settlement and Certification of
6 Settlement Class (hereinafter referred to as the “Preliminary Approval Motion”) in
7 the above-captioned action (the “Lawsuit”), which motion was unopposed by
8 Defendant.

9 On October 13, 2016, upon consideration of the Agreement, Preliminary
10 Approval Motion, and the record, the Court entered an Order of Preliminary
11 Approval of Class Action Settlement (hereinafter referred to as the “Preliminary
12 Approval Order”).

13 On December 22, 2016, the Plaintiffs filed their Motion for: (1) Attorneys’
14 Fees, Costs and Incentive Awards and (2) Final Approval of Class Action
15 Settlement. Pursuant to their Final Approval Motion, Plaintiffs request final
16 certification of the injunctive relief settlement class under Fed. R. Civ. P. 23(b)(2)
17 and final approval of the proposed class action settlement.

18 On April 6, 2017, a Fairness Hearing was held pursuant to Fed. R. Civ. P. 23
19 to determine whether the Lawsuit satisfies the applicable prerequisites for class
20 action treatment and whether the proposed settlement is fundamentally fair,
21 reasonable, adequate, and in the best interests of the Settlement Class Members and
22 should be finally approved by the Court.

23 The Court has read and considered the Agreement, Fee Brief, and Final
24 Approval Motion. All capitalized terms used herein have the meanings defined
25 herein and/or in the Agreement.

26 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
27 DECREED THAT:

1 I. The Agreement and all definitions set forth therein are hereby incorporated
2 with and made part of this final order and judgment (“Final Order and
3 Judgment”).

4 II. JURISDICTION: The Court has jurisdiction over the subject matter of the
5 Lawsuit and over all settling Parties thereto including, without limitation, the
6 Settlement Class Members.

7 III. CLASS MEMBERS: Pursuant to Fed. R. Civ. P. 23(b)(2), the Lawsuit is
8 hereby finally certified, for settlement purposes only, as an injunctive relief
9 class action on behalf of the following Class or Settlement Class Members:

10 All persons in the United States who made one or more
11 retail purchases, between October 1, 2011 through
12 October 13, 2016, the date of entry of final approval, of
13 any of the following Dymatize Protein Products: (i) ISO-
14 100; (ii) Elite Whey Protein; (iii) Elite Casein; (iv) Elite
15 Fusion 7; (v) Elite XT; (vi) Pursuit RX Recovery Blend;
(vii) Elite Gourmet; (viii) Pursuit RX Whey Protein.

16 IV. CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT:
17 Pursuant to Fed. R. Civ. P. 23, the Court appoints as Class Representatives,
18 Ronald Patrick Kline and Yesina Reyes Abreu, and as Class Counsel, Joshua
19 B. Swigart of Hyde & Swigart and Abbas Kazerounian of the Kazerouni Law
20 Group, APC.

21 V. NOTICE AND CLAIMS PROCESS: As the Settlement provides for
22 injunctive relief only and requires no release of rights by the Settlement Class
23 Members to statutory damages claims or any monetary claims of any kind, the
24 Court ordered that notice need not be provided to the Settlement Class
25 Members.

26 VI. FINAL CLASS CERTIFICATION: The Court finds that the Lawsuit satisfies
27 the applicable prerequisites for class action treatment under Fed. R. Civ. P.
28 23(a), for settlement purposes. The Court finds that the Settlement of the

1 Lawsuit, on the terms and conditions set forth in the Agreement, is in all
2 respects fundamentally fair, reasonable, adequate, and in the best interests of
3 the Settlement Class Members, especially in light of the benefits to the
4 Settlement Class Members, the strength of the Plaintiffs' case, the complexity,
5 expense and probable duration of further litigation, the risk that a contested
6 class certification motion may not be granted, risk and delay inherent in
7 possible appeals, and the risk of collecting any judgment obtained on behalf of
8 the Class.

9 VII. SETTLEMENT: The Agreement, which has been filed with the Court and
10 shall be deemed incorporated herein, and the proposed Settlement, are finally
11 approved and shall be consummated in accordance with the terms and
12 provisions thereof, except as amended by any order issued by this Court.

13 VIII. ATTORNEYS' FEES AND COSTS: The Court finds that Class Counsel are
14 qualified to represent the Settlement Class Members. The Court hereby grants
15 Class Counsels' request for an award of attorneys' fees and litigation costs in
16 the total amount of \$75,000 to be paid by Dymatize within the time period
17 set forth in the Agreement. The Court finds that the amount of this award is
18 fair and reasonable in light of the efforts expended by Class Counsel in
19 prosecuting this Lawsuit and the relief obtained. The Court also approves the
20 hourly rates of Plaintiffs' counsel as reasonable.

21 IX. INCENTIVE AWARD: The Court finds that it is appropriate for the Class
22 Representatives, Ronald Patrick Kline and Yesina Reyes Abreu, to be paid
23 one-time payments as service awards of \$1,500 each by Defendant, as
24 compensation to the Plaintiffs for instituting, prosecuting and bearing the
25 labor and risk of this litigation. This shall be the only consideration paid to
26 the Class Representatives as part of the Settlement.

27 X. INJUNCTION: As it concerns the eight (8) Dymatize products identified in
28 the First Amended Complaint, the Court issues the following injunction:

1 (1) As of the Effective Date of this Final Order and Judgment,
2 and remaining in effect for a period of five (5) years
3 thereafter, Dymatize is ordered to: (i) manufacture
4 products in translucent substrate containers and include a
5 window in the label design that allows a view of the
6 contents, (ii) add number of servings to the product label,
7 and (iii) state that the product is sold by weight and not by
8 volume;

9 (2) Dymatize will use its best efforts to implement the label
10 and product changes to the ISO-100 and Elite Whey
11 products by December 31, 2016, and such changes shall
12 be implemented for all products identified in the First
13 Amended Complaint no later than March 31, 2017;

14 (3) Dymatize shall be responsible for all costs to implement
15 these changes; and,

16 (4) Dymatize shall not be required to recall previous products
17 on the market.

18 XI. RELEASE OF CLAIMS AND DISMISSAL OF LAWSUIT: The Plaintiffs,
19 Settlement Class Members, and their successors and assigns, are permanently
20 barred and enjoined from instituting or prosecuting, either individually or as
21 a class, or in any other capacity, any of the Released Claims against any of
22 the Released Parties, as set forth in the Agreement.


23 XII. This document shall constitute a judgment for purposes of Rule 58 of the
24 Federal Rules of Civil Procedure. Final Judgment in this action is hereby
25 entered. This action is dismissed, in its entirety, with prejudice as to the
26 Released Claims of the Settlement Class Members, and with prejudice as to all
27 claims asserted in this Lawsuit by the named Plaintiffs.

28 XIII. This Order is binding on all Settlement Class Members. This Order is not, and
shall not be construed as, an admission by Defendant of any liability or
wrongdoing in this or in any other proceeding.

1 XIV. Without affecting the finality of this Final Order and Judgment, the Court
2 hereby retains continuing and exclusive jurisdiction over the Parties and all
3 matters relating to the Action and/or Agreement, including the administration,
4 interpretation, construction, effectuation, enforcement, and consummation of
5 the settlement and this order and judgment.

6 IT IS SO ORDERED.

7 Dated: April 6, 2017


8 Hon. Anthony J. Battaglia
9 United States District Judge