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Superior Court of California
County of Los Angeles

JUN 17 2016

Sherri R. Carter, Executive Officer/Clerk
By: Roxanne Arralga, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

REBECCA SCHEUERMAN, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

VITAMIN SHOPPE INDUSTRIES, INC.,
d/b/a VITAMIN SHOPPE, INC.,

Defendant.

CASE NO. BC592773 310
Assigned to the Hon. Kenneth R. Freeman

CLASS ACTION

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

By Fax

1 WHEREAS, Plaintiff in the above-captioned action, *Rebecca Scheuerman*,
2 *individually and on behalf of all others similarly situated v. Vitamin Shoppe Industries, Inc., d/b/a*
3 *Vitamin Shoppe, Inc.*, Los Angeles County Superior Court, No. BC486925 (the "Action"), and
4 Defendant Vitamin Shoppe Industries, Inc. ("Vitamin Shoppe"), incorrectly sued as Vitamin
5 Shoppe Industries, Inc., d/b/a Vitamin Shoppe, Inc., have reached a proposed settlement and
6 compromise of the disputes between them in the above action, which is embodied in the Second
7 Amended Settlement Agreement filed with the Court;

8 WHEREAS, the Parties have applied to the Court for preliminary approval of the
9 proposed Settlement of the Action, the terms and conditions of which are set forth in the Second
10 Amended Stipulation and Agreement of Settlement (the "Second Amended Settlement
11 Agreement");

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

17 1. The Court, for purposes of this Order, adopts all defined terms as set forth in
18 the Second Amended Settlement Agreement.

19 2. Subject to further consideration by the Court at the time of the Final Approval
20 Hearing, the Court preliminarily approves the Settlement as fair, reasonable and adequate to the
21 Settlement Class, as falling within the range of possible final approval, and as meriting submission
22 to the Settlement Class for its consideration.

23 3. For purposes of the Settlement only, the Court certifies the Settlement Class,
24 which means: All persons who purchased for personal consumption, and not for re-sale, Resveratrol
25 Trans-Resveratrol in the United States during the Class Period. Excluded from the Settlement Class
26 are any officers, directors, or employees of Vitamin Shoppe, and the immediate family members of
27 any such person, as well as any individual who received remuneration from Vitamin Shoppe in
28

1 connection with that individual's use or endorsement of Resveratrol. Also excluded
2 is any judge who may preside over this case.

3 4. Based upon the submissions of the Parties and the evidence submitted
4 therein, the Court conditionally makes the following findings for settlement purposes only, subject
5 to final affirmation at the Fairness Hearing: (a) the members of the Settlement Class are so
6 numerous as to make joinder impracticable; (b) there are questions of law and fact common to the
7 Settlement Class, and such questions predominate over any questions affecting only individual
8 Settlement Class Members; (c) Plaintiff's claims and the defenses thereto are typical of the claims
9 of Settlement Class Members and the defenses thereto; (d) Plaintiff and her counsel can and have
10 fairly and adequately protected the interests of the Settlement Class Members in this Action; and (e)
11 a class action is superior to all other available methods for fairly and efficiently resolving this
12 Action and provides substantial benefits to the Parties, the Settlement Class Members and the Court.

13 5. This matter is conditionally certified as a class action for settlement purposes
14 only, under California Code of Civil Procedure Section 382, California Civil Code Section 1781,
15 and California Rules of Court, Chapter 6, Rules 3.767 *et seq.*, as applicable.

16 6. The Court appoints Rebecca Scheuerman as Class Representative. The Court
17 also appoints Kazerouni Law Group, APC and Hyde & Swigart as Class Counsel for purposes of
18 this Settlement.

19 7. A Final Approval Hearing shall be held before this Court at 10:00a.m. on
20 November 8, 2016 in Dept. 310 of the Los Angeles County Superior Court, to address whether the
21 proposed Settlement should be finally approved as fair, reasonable and adequate, and whether the
22 Final Approval Order and Judgment should be entered;

23 8. Following the hearing on fairness, another hearing shall be held before this
24 Court at 2:00 p.m. on December 8, 2016 in Dept. 310 of the Los Angeles County Superior Court, to
25 address whether Class Counsel's application for attorneys' fees, costs, and incentive award should
26 be approved. Consideration of any application for an award of attorneys' fees, costs, and incentive
27 award shall be separate from consideration of whether or not the proposed Settlement should be
28 approved. Class Counsel will file their application for attorneys' fees, costs, and incentive award no

1 later than thirty (30) days prior to the deadline for class members to file their claims, object, or opt
2 out.

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

10 10. The Court approves, as to form and content, the long-form and short-form
11 Notices, substantially in the forms attached as Exhibits C and D to the Second Amended Settlement
12 Agreement. The Notice Plan, including direct mail/email notice and Internet notice, shall be
13 implemented as set forth in Article IV of the Second Amended Settlement Agreement, the
14 submissions of Plaintiff in support of Preliminary Approval, and the Declarations of Steven
15 Weisbrot. No later than thirty-five (35) days prior to the Final Approval Hearing, the Settlement
16 Administrator and Notice Provider shall file with the Court declarations attesting to compliance
17 with this Order.

18 11. The Court finds that the Notice Plan described in Article IV of the Second
19 Amended Settlement Agreement, the submissions of the Class Representative in support of
20 Preliminary Approval, and the Declarations of Steven Weisbrot constitute the best notice
21 practicable under the circumstances and shall constitute due and sufficient notice to the Settlement
22 Class of the pendency of the Action, certification of the Settlement Class, the terms of the Second
23 Amended Settlement Agreement, and the Fairness Hearing, and complies fully with the
24 requirements of the California Rules of Court, the California Code of Civil Procedure, the United
25 States Constitution, and any other applicable law.

26 12. The Court further finds that the Notice Plan described in Article IV of the
27 Second Amended Settlement Agreement, the submissions of the Class Representative in support of
28 Preliminary Approval, and the Declarations of Steven Weisbrot will adequately inform members of

1 the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be
2 bound by the terms of the Second Amended Settlement Agreement. Any member of the Settlement
3 Class who desires to be excluded from the Settlement Class, and therefore not bound by the terms
4 of the Second Amended Settlement Agreement, must submit to the Settlement Administrator,
5 pursuant to the instructions set forth in the Notice, a timely and valid written Request for Exclusion,
6 submitted online or postmarked at least forty-six (46) days prior to the date set for the Final
7 Approval Hearing in paragraph 7 above. Not later than thirty-five (35) days before the Final
8 Approval Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who
9 shall file it with the Court, and Vitamin Shoppe's Counsel, a report stating the total number of
10 Persons that have submitted timely and valid Requests for Exclusion from the Settlement Class, and
11 the names of such Persons.

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

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

19 To Class Counsel:

20
21 Abbas Kazerounian, Esq.
22 KAZEROUNI LAW GROUP, APC
23 245 Fischer Avenue, Suite D1
Costa Mesa, CA 92626

24 Jessica R. K. Dorman, Esq.
25 Joshua B. Swigart, Esq.
26 HYDE & SWIGART
2221 Camino Del Rio South, Suite 101
San Diego, CA 92108-3551

27 To Defense Counsel:

28 Angel A. Garganta, Esq.

1 VENABLE LLP
2 505 Montgomery Street
3 Suite 1400
4 San Francisco, CA 94111

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

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

18 17. In the event that the proposed Settlement is not approved by the Court, or in
19 the event that the Second Amended Settlement Agreement becomes null and void pursuant to its
20 terms, this Order and all orders entered in connection therewith shall become null and void, shall be
21 of no further force and effect, and shall not be used or referred to for any purposes whatsoever in
22 this civil action or in any other case or controversy; in such event the Second Amended Settlement
23 Agreement and all negotiations and proceedings directly related thereto shall be deemed to be
24 without prejudice to the rights of any and all of the Parties, who shall be restored to their respective
25 positions as of the date and time immediately preceding the execution of the Second Amended
26 Settlement Agreement.

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18. The calendar of events leading to Final Approval (Fairness) Hearing shall be as follows:

Event	Estimated Date
Preliminary Approval Order (Previously granted)	June 6, 2016
Deadline to begin Notice to Class	July 6, 2016
Application for Attorney's Fees and Incentive Award due date	August 24, 2016
Notice Response Deadline (claim, object, opt-out)	September 23, 2016
Deadline to file Settlement Administrator Declaration of Compliance and Report from Settlement Administrator on Requests for Exclusion, Objections, and Valid Claims	October 4, 2016
Deadline for Plaintiff's Brief in support of Final Approval and Response to Objections	October 7, 2016
Final Approval Hearing	November 8, 2016, 10:00 AM
Opposition to Application for Fees, Cost and Incentive Award	November 16, 2016
Reply to Application for Fees, Cost and Incentive Award	November 22, 2016
Hearing on Applications for Fees, Costs, and Incentive Awards	December 8, 2016, 2:00 PM

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

IT IS SO ORDERED.

Dated:

JUN 17 2016

KENNETH R. FREEMAN

Honorable Kenneth R. Freeman
Judge, Los Angeles County Superior Court