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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LOREAN BARRERA, On Behalf of  
Herself and All Others Similarly  
Situated,

Plaintiff,

v.

PHARMAVITE, LLC, a California  
limited liability company,

Defendant.

CASE NO: 11-cv-04153-CAS

TRUTH IN ADVERTISING, INC.’S  
REPLY TO DEFENDANT’S  
OPPOSITION TO MOTION FOR LEAVE  
TO FILE BRIEF AS *AMICUS CURIAE*

Assigned to:  
Hon. Christina A. Snyder

Date: December 4, 2017  
Time: 10:00 a.m.  
Courtroom: 8D

It comes as no surprise that defendant – who stands to benefit from and be permanently protected by the proposed settlement agreement – is asking the Court to ignore Truth in Advertising, Inc.’s opposition to the proposed settlement, arguing that an independent, nonprofit consumer advocacy organization that is focused exclusively on deceptive marketing has no place in this deceptive marketing case. This argument is belied by the courts that have granted TINA.org *amicus curiae* status – including the very case that defendant

1 incorrectly relies on, *Hazlin v. Botanical Labs., Inc.*<sup>1</sup> – and the settlements that  
 2 have been modified to address issues and legal concerns independently raised by  
 3 TINA.org. *See Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-02624 (E.D.N.Y.),  
 4 [Minute Order Granting Motion to File Amicus Brief, dated June 7, 2016](#); *In re*  
 5 *Glaceau Vitaminwater Marketing and Sales Practice Litig.*, Case No. 11-md-  
 6 02215 (E.D.N.Y.), [Order Granting Motion for Leave to File Amicus Brief, dated](#)  
 7 [February 26, 2016](#); *Bostick v. Herbalife Internat’l of Am., Inc.*, Case No. 13-cv-  
 8 2488 (C.D. Cal.), [Order Re: Plaintiffs’ Motions for Final Approval of Class](#)  
 9 [Action Settlement, \(2\) Defendants’ Motion for Joinder; and \(3\) Amici’s Motions](#)  
 10 [for Leave to File Amicus Curiae Briefs, dated May 14, 2015 \(Dkt No. 145\)](#);  
 11 *Lerma v. Schiff Nutrition Int’l, Inc.*, Case No. 11-cv-1056 (S.D. Cal.), [Order](#)  
 12 [Granting Motion to File Amici Curiae Brief, dated Mar. 26, 2015 \(Dkt No. 135\)](#)  
 13 (prior to this Order, plaintiffs moved to withdraw from the proposed settlement as  
 14 no longer worthy of court approval citing TINA.org’s anticipated objection. *See*  
 15 Dkt Nos. [120](#) and [124](#)); *Hazlin v. Botanical Labs.*, Case No. 13-cv-0618 (S.D.  
 16 Cal.), [Order Granting Truth in Advertising, Inc.’s Motion for Leave to File Brief](#)  
 17 [as Amicus Curiae in Opposition to Proposed Settlement, dated Feb. 18, 2015](#)  
 18 [\(Dkt No. 50\)](#); *Volz v. Coca Cola Co.*, Case No. 10-cv-879 (S.D. Ohio), [Order](#)  
 19 [Granting TINA.org’s Motion for Leave to File Amicus Brief, dated Dec. 2, 2014](#)  
 20 [\(Dkt No. 65\)](#); *Quinn v. Walgreen, Co.*, Case No. 12-cv-8187, (S.D.N.Y.), [Motion](#)  
 21 [of Truth in Advertising, Inc. to File Brief as Amicus Curiae in Opposition to](#)  
 22 [Proposed Settlement, dated Nov. 19, 2014 \(Dkt No. 116\)](#) and [Amendment to](#)  
 23 [Settlement Agreement and General Release, dated Jan. 30, 2015 \(Dkt No. 141-1\)](#)

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 25 <sup>1</sup>“On February 10, 2015, Truth in Advertising, Inc. (‘TINA.org’) filed a Motion for leave to  
 26 file a brief as amicus curiae in this case. [Doc. 48] The Court hereby GRANTS the Motion.  
 27 The Clerk of Court shall docket the brief attached to the Motion and add TINA.org as an  
 28 Amicus party.” *Hazlin v. Botanical Labs.*, Case No. 13-cv-0618 (S.D. Cal.), Order Granting  
 Truth in Advertising, Inc.’s Motion for Leave to File Brief as *Amicus Curiae* in Opposition to  
 Proposed Settlement, dated Feb. 18, 2015 (Dkt No. 50).

1 (after filing a motion for leave and an *amicus* brief opposing the terms of the  
2 proposed settlement agreement, the parties renegotiated the agreement and  
3 revised the injunctive relief to include permanent and broader labeling  
4 restrictions).<sup>2</sup>

5 For the foregoing reasons and those previously articulated, TINA.org  
6 respectfully requests that the Court grants its Motion for Leave to File Brief as  
7 *Amicus Curiae* in Opposition to the Proposed Settlement.

8 DATED: November 29, 2017 Respectfully submitted,

9 FINCH, THORNTON & BAIRD, LLP

10  
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14 Attorney for Truth In Advertising, Inc.

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24 <sup>2</sup> In addition to these district court cases, last year, TINA.org was twice granted *amicus curiae*  
25 status in a case pending in the Fifth Circuit. *See Torres v. S.G.E. Management, L.L.C.*, No. 14-  
26 20128 (5th Cir.), [Order Granting Truth in Advertising’s Motion for Leave to File Amicus](#)  
27 [Curiae Brief in Support of Appellees’ Petition for Rehearing En Banc, dated Nov. 30, 2015](#) and  
28 [Order Granting Truth in Advertising’s Motion for Leave to File Amicus Curiae Brief in Favor](#)  
[of Appellees and in Support of Affirmance, dated May 18, 2016](#). TINA.org has also filed an  
*amicus curiae* brief with the U.S. Supreme Court in support of a petition for a writ of certiorari.  
*See Frank v. Poertner*, No. 15-765 (S. Ct.), [Brief Amicus Curiae for Truth in Advertising, Inc.](#)  
[Supporting Petitioner, dated Jan. 14, 2016](#).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been filed electronically on this 29th day of November 2017 and is available for viewing and downloading to the ECF registered counsel of record:

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DATED: November 29, 2017

Respectfully submitted,

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