UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JAMES J. ABOLTIN, *et al.*,

Plaintiffs,

v.

JEUNESSE, LLC, *et al.*,

Defendants.

Case No. 6:17-cv-01624-PGB-TBS

BRIEF OF OBJECTOR HELEN XIONG IN OPPOSITION TO PROPOSED SETTLEMENT

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INTRODUCTION

The settlement is a great deal for Jeunesse, its conspirators, and Class Counsel. It is a lousy deal for the consumers of this pyramid scheme, whose rights have been bargained away without independent representation. Class Counsel bear the burden of demonstrating that the Settlement agreement presents a certifiable class and appears to fall within the range of possible approval. The settlement is patently defective in the following material respects:

- The Plaintiffs lack standing to release California claims on an individual or classwide basis, even though an estimated 1/3 (or more) of all class member distributors have enrolled in California;
- The Plaintiffs have not established that this Court has jurisdiction to release claims of Californian residents even though none of the Plaintiffs can assert California causes of action individually or on a classwide basis;
- The claims process is misleading and discourages participation from victims of the pyramid scheme;
- The settlement provides inadequate monetary and injunctive relief;
- The class definition creates intraclass conflicts and does not limit recovery to actual victims;
- The release provision is overbroad, impermissibly one-sided, and requires a non-mutual release against 220,000 persons who are not even defendants in this action;
- Class Counsel conducted no discovery – thus, there is no factual record on which to evaluate the strength of the claims and defenses.

The settlement should be disapproved and the Motion denied.

BACKGROUND

A. Background of Objector Helen Xiong's Dispute

Objector Helen Xiong became a Jeunesse distributor in 2015 and paid approximately $10,000 towards the opportunity. However, she has not received commissions as promised based on her participation in the scheme. On August 10, 2018, Xiong filed a class action complaint against Jeunesse and one of its top California Diamond distributors, Kimberly Hui, both of whom are defendants in this case. *Xiong v. Jeunesse Global, LLC*, Case No. 8:18-cv-01430-DOC (C.D. Cal.). A copy of the Complaint is attached hereto as **Exhibit 1**. Ms. Xiong has only asserted four causes of action under California law in her action, and she primarily seeks restitution and injunctive relief. Ms. Xiong does not seek to certify any of the claims at issue in this case. Ms. Xiong's case is presently stayed based on the pendency of this settlement Motion.

The first count in the Xiong Action, a claim under the California anti-pyramid scheme Endless Chain Law ("ECL"), codified at C.C.P. § 1689.2 and Cal. Penal Code § 327, broadly define that any operator or preparer of an "endless chain" must pay restitution to a "participant" less the amount paid out by the scheme to the participant. An "endless chain" is further defined as a business model where a "participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation." The California Legislature was clear that "compensation...does not mean or include payment based upon sales made to persons who are **not participants in the scheme and who are not purchasing in order to participate in the scheme.**" Cal. Penal Code § 327 (emphasis added). In other words, the intent of the consumer to start her own business or personally consume product as a distributor, is irrelevant for the purposes of remedial liability.

B. Plaintiffs Have Attempted to Release Claims They Have No Standing To Release, Which Are The Most Valuable Claims That Consumers Can Assert Against Jeunesse

Jeunesse has represented in the past that approximately 1/3 of its United States distributor base enrolled in the State of California, where anti-pyramid protection is particularly remedial and interposes criminal and civil liability. None of the plaintiffs in this action are California residents, nor did Plaintiffs assert that they made purchases in California. Jeunesse is not a California entity, nor is it licensed under the Seller Assisted Marketing Act (SAMP Act) of *California Civil Code Section 1812.200 et seq.* to do business in California. Plaintiffs appear to be attempting to release Xiong's ECL claim and SAMP Act claim based on the potential risks of PLSRA preclusion as to Class Plaintiffs' Racketeer Influenced and Corrupt Organizations Act ("RICO"). On January 2, 2018, Plaintiffs abandoned their only other viable Federal Count to address the pyramid scheme conduct, when they dismissed their Federal securities claim.[1] Dkt. No. 184, p. 19. The Class Plaintiffs have not provided sufficient information as to the size of the class, and have not undertaken a thorough review as to the exposure that they face on each claim.

On November 26, 2018, Ms. Xiong opted out of the monetary relief in the settlement (with her accompanying addendum), but by the very terms of her opt-out form, she did not opt out of the injunctive/restitution relief components of the settlement. *See* Opt Out Form Dkt. No. 259-1, p. 76 ("By checking this box, I affirm that I wish to be excluded from the **monetary** portion of the Class Action.") (emphasis added); *see also* Settlement, ¶9.1. Ms. Xiong's completed Opt Out Form, subject to and with the accompanying addendum, is attached hereto

[1] Plaintiffs also pled claims under state law consumer fraud statutes of Texas, Florida, and Arizona. Dkt. No. 259-1, p. 8. But residents of these states are affected on a much smaller scale, and the consumer protection laws of these states are not as remedial as in California.

as **Exhibit 2**. Ms. Xiong reserves the right to request leave to intervene in this action. *Tech Training Assocs., Inc. et al. v. Buccaneers Ltd. P'ship*, 874 F.3d 692 (11th Cir. 2017).

The settlement also contemplates an additional right of opt-out at a later date. Agreement, Dkt. No. 259-1, Settlement Agreement, ¶4.2 ("...and may opt out of this Settlement Agreement is a mutually-agreeable solution is not forthcoming").

C. The Settlement Is Unfair

On August 17, 2018, a Stipulation of Settlement was filed with the Court ("Settlement"). Dkt. No. 259-1. The Settlement was preliminarily approved to the unnoticed request for preliminary approval. Monetary relief can only be obtained by filing a claim. First, a Class Member is only permitted to receive restitution by way of a "refund for a starter kit" if payment was made with the "intention of building a business," the distributor "never advanced in rank," and the distributor "did not earn at least the amount he or she paid..." Settlement, ¶4.6.

Second, a Class Member is only permitted to receive monetary relief by way of refunds for discarded products when he or she affirms "she discarded Jeunesse Products," and that she "intended to resell" but was unsuccessful. Settlement, ¶4.7. A Class Member then only receives 50% of the amount of the product discarded, which is nothing more than a distributor may otherwise receive under the applicable documents by which Jeunesse is governed. This promise is thus, hollow. Importantly, Jeunesse has discretion to "reach a mutually-agreeable solution" in response to any claim it receives. Settlement, ¶4.2. And the limitation that the distributor "did not earn at least the amount he or she paid" in the first form of monetary relief is noticeably absent from this form of relief.

Thus, there is legitimate concern that through this settlement, Jeunesse will seek to pay its cronies and middle men, rather than paying legitimate victims of the pyramid scheme. By participating in this settlement, Jeunesse distributors will be deemed "to have resigned" and will

have been "otherwise terminated." Settlement, ¶4.9. Since Jeunesse distributors must forfeit future commissions upon termination, distributors are required to forego and relinquish any financial benefit they may have accrued by participating in this settlement. Requiring a distributor to forfeit her distributorship for participating in this settlement undercuts the premise that this settlement has any value.

Jeunesse offers insufficient injunctive relief to the class for the broad and sweeping release demanded. Settlement, ¶¶ 5.1-5.7. The proposed injunctive relief does not warrant anything close to the Federal Trade Commission's 80/20 rule or 10-customer rule concerning market level marketing companies like Jeunesse, nor does the floor level of injunctive relief comply with California Law.

The release provisions are incredibly broad, and one-sided. Each class member is required to release "all Distributors," "Jeunesse" and all parties it could possibly be affiliated with, but Jeunesse offers no reciprocal settlement. Settlement, ¶¶ 8.1. It is rare to see a class settlement where ***hundreds of thousands*** of unknown persons are being released. This provision should not be approved. At minimum, Jeunesse must publish and provide to the Court a list of all persons that will have been deemed to have been given a release.

The Release also broadly includes a specific reference to the claims Ms. Xiong and her class have asserted, *i.e.* "unfair competition; false and/or misleading advertising; or operated any type of illegal, pyramid, endless chain, or fraudulent scheme." Settlement, ¶¶ 8.1. The Plaintiffs seek to waive the benefits of Section 1542 of the California Civil Code and release unknown claims, even though they are not California residents, and thus, have no right to do so. *Id.* at ¶ 8.2.

ARGUMENT

A. The Plaintiffs Lack Standing To Release Claims Under California Law

"[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (*citing Allen v. Wright*, 468 U.S. 737, 751 (1984)). "Much more than legal niceties are at stake here. The statutory and (especially) constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998). Standing is "an indispensable part of the plaintiff's case," and thus, "each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1276 (2015) (*quoting Lujan*, 504 U.S. at 561) (alteration in original).

The Plaintiffs attempt to obtain standing through bootstrapping the claims of absent class members, but the Supreme Court requires that a plaintiff demonstrate actual standing for each claim that is asserted. *Davis v. FEC*, 554 U.S. 724, 734 (2008) ("a plaintiff must demonstrate standing for each claim he seeks to press"); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs (TOC), Inc.*, 528 U.S. 167, 185 (2000); *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996) ("[S]tanding is not dispensed in gross."). Because "[s]tanding requires that the party seeking to invoke federal jurisdiction 'demonstrate standing for each claim he seeks to press[,]'" courts "do not exercise jurisdiction over one claim simply because it arose from the same 'nucleus of operative fact' as another claim." *Neale*, 794 F.3d at 359 (*quoting DaimlerChrysler*, 547 U.S. at 352).

The same principle applies in class actions. "A plaintiff who would be unable to maintain an individual action under [the standing requirements of] *Lujan* cannot maintain a class action."

1 William B. Rubenstein, Alba Conte & Herbert Newberg, Newberg on Class Actions § 2:1 (5th ed. 2011); *see also Warth v. Seldin*, 422 U.S. at 502 ("Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent."); *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40, n.20 (1976) (class representative cannot acquire standing by claiming "that injury has been suffered by other, unidentified members of the class ... they purport to represent").

At least the Eleventh, Second, Third, Fifth, Sixth, Eighth, Ninth, Tenth, and D.C. Circuits are all in accord on this point. *Prado-Steitman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000) ("[I]t is well-settled that prior to the certification of a class ... the district court must determine that at least one named class representative has Article III standing to raise each class subclaim"); *Griffin v. Dugger*, 823 F.2d 1476, 1483 (11th Cir. 1987) (Class cannot acquire standing "by virtue of [the representative] having standing as to just one of many claims he wishes to assert. Rather, each claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to that claim.")[2]

Objector Xiong has asserted ***only*** California claims ("California Claims") in her California Class Action, principally under the ECL and the California Unfair Competition Law ("UCL"), and she has asserted none of the Federal, Texas, and Arizona Counts at issue in these

[2] *See also James v. City of Dallas*, 254 F.3d 551, 563 (5th Cir. 2001) ("Both standing and class certification must be addressed on a claim-by-claim basis."); *Mahon v. Ticor Title Ins.*, 683 F.3d 59, 65-66 (2d Cir. 2012); *Neale v. Volvo Cars of N. Am., LLC*, 794 F.3d 353, 367 (3d Cir. 2015); *Rosen v. Tenn. Comm'r of Fin. & Admin.*, 288 F.3d 918, 928 (6th Cir. 2002); *Elizabeth M. v. Montenez*, 458 F.3d 779, 784 (8th Cir. 2006); *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1238 (9th Cir. 2001); *Rector v. City & Cty of Denver*, 348 F.3d 935, 949 (10th Cir. 2003); *In re Lorazepam & Clorazepate Antitrust Litig.*, 289 F.3d 98, 107 (D.C. Cir. 2002).

proceedings. Because the Plaintiffs do not reside in California and did not make any purchases in California, Plaintiffs have no standing to assert or release, any claim under California Law. *See e.g. In re Terazosin Hydrochloride Antitrust Litig.*, 160 F. Supp. 2d 1365, 1367-68 (S.D. Fla. 2001) (rejecting attempt to assert state law claims by non-resident); *Meridian Project Sys., Inc. v. Hardin Constr. Co.*, 404 F. Supp. 2d 1214, 1225 (E.D. Cal. 2005) ("California's UCL does not support claims by non-California residents where none of the alleged misconduct or injuries occurred in California.").

Jeunesse will no doubt attempt to morph and conflate this objection from one of a "standing" grievance to a commonality and predominance defect, because Xiong similarly asserts the underlying facts that Jeunesse and its cronies are operating a pyramid scheme. However, as the above Supreme Court and Circuit authority above demonstrates, this shortcut and bootstrapping is not allowed.

Even if Ms. Xiong's objection were not treated as a standing issue, but rather a commonality and predominance issue, the settlement agreement could not be approved as presently structured. There are several factual and legal differences with the two cases. First, it is not readily apparent that Plaintiffs in this case can assert claims sounding in pyramid scheme allegations in this Circuit based on the defenses Jeunesse may assert under the Private Litigation Securities Regulation Act (PLSRA). Plaintiffs and the class abandoned the only other viable theory to seek redress based on pyramid scheme conduct, a Federal Securities class action.

The material factual difference between the two cases is that Ms. Xiong faces no such formidable attacks and certification hurdles against her claims under California Endless Chain Law, Cal. Code of Civil Procedure § 1689.2 and Cal. Penal Code § 327. Second, approximately 1/3 of all Jeunesse distributors are California residents. Thus, Plaintiffs' attempted release of California claims provides a significant financial benefit without much to gain in return because

none of the plaintiffs here can assert claims under California law. Finally, a claimant raising a claim under the ECL does not face the same hurdles to advancing her claim on the merits. The ECL merely requires an individual to assert they are a "participant" in an "endless chain," which is further defined as a business model where revenues are made from recruiting others. Proving pyramid conduct under RICO does not proscribe liability with this certitude, even though such cases have recently been met with some success. Simply, commonality and predominance cannot be met for this settlement class because there is a large subset of absent class members in California that fare much better in establishing pyramid conduct.

B. The Plaintiffs And Defendants Have Not Demonstrated that the Court has Jurisdiction To Release Class Members' California Claims

Related but independent from the fatal standing defect, is the question of whether jurisdiction properly lies by which the Plaintiffs can release the California claims. In *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), the United States Supreme Court held that courts should not exercise jurisdiction over claims of out-of-state residents. Some Federal Courts have held these concerns of federalism are equally present as to a Federal Court evaluating state substantive claims. *See e.g. Fitzhenrey-Russell v. Dr. Pepper Snapple Group, Inc.*, 2017 WL 4224723, at *4 (N.D. Cal. Sep. 22, 2017).

It is undisputed that the Plaintiffs are not residents of California and did not purchase product or enter into distributorships in California. Thus, jurisdiction is lacking by which an order can be entered releasing the California claims of non-residents. Moreover, it is wholly improper for Jeunesse to demand from the class plaintiffs that they waive Section 1542 of the California Civil Code, when none of the class representatives are plaintiffs. *See Stipulation of Settlement*, ¶ 8.2.

Defendants have taken the position that the Court has no jurisdiction over Plaintiffs' substantive claims because such claims, and the determination of arbitrability of the claims, belongs in arbitration. *Moses Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 (1983). Thus, even if Ms. Xiong's jurisdictional objection were to be construed as an objection based on personal jurisdiction (which can be waived), as opposed to an objection based on subject matter jurisdiction (which cannot be waived), it is clear based on the positions the Defendants have taken before this Court (and several others) that this Court would not have jurisdiction to allow any Court to hear Ms. Xiong's claims on the merits. The rights of over 220,000 people cannot be bargained away because of the specter that this case may be referred to arbitration for determination as to whether the contract is illusory. For this additional reason, the settlement should not be denied.

C. The Settlement Should Be Denied Because The Claims Process Is Misleading, Not Likely To Lead To Class Member Participation, and Discourages The Filing Of Legitimate Claims

Many courts have held that the claims notice process must be reasonable and fair, or else the settlement cannot be approved. *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782–83 (7th Cir. 2014) (J. Posner) (concluding that the claims process of a consumer class action settlement appeared to have been designed "with an eye toward discouraging the filing of claims"). Notice must be "the best notice practicable under the circumstances," "concisely and clearly stat[ing] in plain, easily understood language," *inter alia*, "the nature of the action[,] the definition of the class certified[, and] the class claims, issues, or defenses." Fed. R. Civ. P. 23(c)(2)(B).

Objector Xiong joins Truth In Advertising, Inc.'s ("TINA") objection that this claims-made structure, as opposed to a direct-pay settlement, is self-serving to Jeunesse and is not a meaningful opportunity to the class. Dkt. No. 270-1. Claims made settlements are notorious for

evidencing low participation, and coupled with the impermissible reversionary provisions Jeunesse has required in this settlement, this claims process improperly discourages participation. *Gallego v. Northland Group, Inc.*, 814 F.3d 123, 127 (2d Cir. 2016) (affirming denial of a class settlement where participation was only 5% participation); *Sullivan v. DB Investments*, 667 F.3d 273, 329 n. 60 (3d Cir. 2011) (en banc) (even when the class is directly mailed, response rates "rarely exceed seven percent.").

The facts here do not present the circumstances that have led some district courts to accept claims made settlements. *See Wilson v. Everbank, N.A.*, 2016 WL 457011, at *18 (S.D. Fla. Feb. 3, 2016) *quoting In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, 733 F. Supp. 2d 997, 1010 (E.D. Wis. Aug. 16, 2010) (claims made settlements can sometimes "strike a proper balance between, on the one hand, avoiding fraudulent claims and keeping administrative costs low, and on the other hand, allowing as many class members as possible to claim benefits.")

This settlement fails this standard because it does not involve a low-price consumer product sold to millions of persons at an impermissible price premium, but rather involves litigation to seek restitution based on all consideration wrongfully obtained by a pyramid scheme. Also, the "claims made" process here, does not strike the balance because this settlement encourages participation from cronies of Jeunesse and discourages participation of victims, based on standards having nothing to do with anti-pyramid conduct, *i.e.* the covenant that the individual does not intend to consume ***any*** of the products.

Class members must navigate a vague and unnecessary administrative process that appears designed to decrease the cost to Jeunesse and encourage participation by conspirators. Like the class settlement recently rejected in *Eubank v. Pella Corp.*, __ F.3d __, 2014 WL 2444388, at *7 (7th Cir. June 2, 2014), the Settlement "strews obstacles in the path of any" class

member seeking recovery by imposing requirements and deadlines that, if unsatisfied, reduce or completely bar recovery. Claims made settlements only work if there is an "opportunity" to legitimate class members. *Hamilton v. SunTrust Mortg., Inc.*, 2014 WL 5419507, *7 (S.D. Fla. 2014). There is no such opportunity here.

On page three of the Claim Form, Jeunesse demands that as a condition for any class member to participate in the class resolution process, the class member must forfeit their distributorship, immediately resign, and forgo any other contractual benefits Jeunesse may otherwise owe a class member. Specifically, "[t]he benefits provided under this Settlement are for people who attempted, but ultimately failed, to build a Jeunesse distributorship business. As a result if you make a claim for one or more of the benefits below and you have not yet redesigned as a distributor, or your distributorship remains active, Jeunesse will deem you to have resigned as a distributor upon your making a claim for benefits under this settlement, and your Jeunesse distributor account will be closed." Claim Form, p. 3. These covenants impose a chilling effect on participation in this case. Fundamentally, this absurd claim provision completely undercuts the premise that injunctive relief has ***any*** value to absent class members. A "participating class member" cannot gain any benefit from prospective future injunctive relief if they are terminated and fired by virtue of their participation in the settlement. This demanded covenant is irreconcilable with the stated value of the settlement.

On page three of the same form, a condition to submitting a claim is that a class member has the "intention of building a business." *See also* Claim Form, p. 4. Aside from the fact this required covenant is vague and ambiguous to an average consumer who may construe "business" more substantively than what is intended, the "intent to build a business" is not an element of an anti-pyramid scheme claim under California Law or the law in many other jurisdictions or Section 5 of the FTC Act. Revenues derived from distributors that are recruited make this a

pyramid scheme, irrespective of a distributor's intent. Only if the products are purchased by a legitimate retail customer is the revenue legitimate retail revenue. Thus, Jeunesse's demand for a "true/false" covenant is likewise meant to chill participation in this settlement and is not reasonably connected to the claims that are being settled. These hurdles render participation onerous. *Walter v. Hughes Commc'ns, Inc.*, No. 09-2136, 2011 WL 2650711, at *14 (N.D. Cal. July 6, 2011) (rejecting class settlement where "[m]any hurdles stand between a class member and the receipt of . . . payment" and claim form was "unnecessarily complex," "confusingly arranged," and "invites user error"). The deficient claims process here requires denial of preliminary approval.

D. The Settlement Is Not Fair, Reasonable, and Adequate

To obtain approval of a proposed class settlement, Class Counsel must first demonstrate the existence of a certifiable class. *Amchem v. Windsor Prods. Inc.*, 521 U.S. 591, 620 (1997); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 794 (3d Cir. 1995), *cert. denied* 516 U.S. 824 (1995) (denying approval of settlement where class not certifiable). Second, Class Counsel must proffer a settlement that "discloses [no] grounds to doubt its fairness . . . and appears to fall within the range of possible approval." *In re Nat'l Football League Players Concussion Injury Litig.*, 961 F. Supp. 2d 708, 714 (E.D. Pa. 2014).

When discovery is advanced and the parties' have developed a detailed factual record through adversary proceedings, the court may already have enough information to conduct that rigorous analysis. But where, as here, discovery has not yet commenced, the Court will have to proactively solicit that record and should carefully scrutinize a factual record developed outside of the adversary process. *See* Manual for Complex Litigation (Fourth) § 22.921. Similarly, where settlement negotiations precede class certification, the Court should be "even more

scrupulous than usual." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004). This added scrutiny does not just apply to the fairness of the settlement; it applies to the Court's assessment of the Rule 23 requirements as well. *Amchem v. Windsor Prods. Inc.*, 521 U.S. 591, 620 (1997) ("a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold"); *see also In re Deepwater Horizon v. BP Exploration & Production, Inc., et al.*, 732 F.3rd 326, 342 (5th Cir. 2013) (Article III bars court from approving class settlement of claims of class members who lack standing); Fed. R. Civ. P. 23(e) (class settlement may be approved only if "it is fair, reasonable, and adequate").

In assessing whether a settlement "discloses grounds to doubt its fairness," the Court must consider whether: (1) the negotiations occurred at arm's length, (2) there was sufficient discovery, (3) the proponents of the settlement are experienced in similar litigation, and (4) the class substantially favors the settlement. *Saccoccio v. JPMorgan Chase Bank, N.A.*, 297 F.R.D. 683, 692 (S.D. Fla. 2014); *NFL Concussion*, 961 F. Supp. 2d at 714.

1. There is Impermissible Adversity Between Subgroups of the Settlement Class

The settlement appears to further an improper funnel of settlement monies to conspirators and cronies of Jeunesse, instead of the to the rightful victims. Because of this conflict between victims of Jeunesse, and those that contribute to their demise, Class Counsel has not put forth a certifiable class. "The judge should examine the interests of all groups, including any future claimants, and make affirmative findings that each group is adequately represented by claimants and counsel who have no conflicting interests." *See* Manual for Complex Litigation (Fourth) § 22.921 (2004). Thus, "adversity among subgroups" – an intra-class conflict – precludes certification. *Amchem v. Windsor Prods. Inc.*, 521 U.S. 591, 627 (1997) (quotation marks omitted).

This settlement provides no deterrence against awarding conspirators of Jeunesse who may not have lost money. That is because losing money is not a condition to making a claim under the second form of relief, that form of relief which will ultimately result in a higher amount of claims. Companies like Jeunesse are set up to reward those at the top of the pyramid, and middle men that assist the upper levels of preying on new recruits. Jeunesse appears to retain unfettered discretion to determine claim eligibility and make distributions under the settlement. Up lines (those above the consumer victims) could encourage their downline friends and family in a collusive manner, to fill out forms with no maximums at issue, and thus, make the settlement appear beneficial, and participation better than expected as another backdoor means of compensating the undeserving and not the victims of the pyramid scheme.[3]

This objection is particularly important because the Plaintiffs highlighted the back-office deals that are so prevalent at Jeunesse in their Complaint. The form they have bought into, defeats the grievances written about, and instead encourages back-office deals because the Claims Administrator will be doling out settlement funds as a means by which Jeunesse can compensate their cronies, rather than payment to legitimate class members who are victims.

To further this point, payment under this settlement defeats principles of victim restitution as understood in common law and under the Endless Chain Law, requiring victims to be paid only the amounts they paid less, the amounts they received. In other words, a true victim of Jeunesse is one who paid more than they received back in commissions. Without such limitation as to the *second form of monetary relief*, this form encourages participation by the middle men of Jeunesse.

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[3] Some Courts have appointed liaison counsel to coordinate and convey non-settling plaintiffs' positions to Proposed Class Counsel and the Court in an orderly manner. *Hyundai and Kia Fuel Economy Litigation*, MDL No. 2424, has adopted just, ECF No. 32 (C.D. Cal.). Admittedly, this is not MDL, but the oversight concerns with this settlement are heightened.

There is a second intra-class conflict. The settlement seeks to pay only those persons who "intended to grow a business," but that is not by definition how a pyramid scheme is defined under state law or Federal law. The intent of the distributor is not an element under the California Endless Chain Law, and income made by distributors is not considered to be legitimate retail income. Thus, the settlement and claim form improperly limit recovery to those who affirmatively state their intent is to a grow a business.

A "disparity in the relief afforded under the settlement to the named plaintiffs, on the one hand, and the unnamed class members, on the other hand, [makes] the settlement unfair." *Vassalle v. Midland Funding LLC,* 708 F.3d 747, 755 (6th Cir. 2013) (reversing district court's approval of a settlement). A court should reject a settlement where such an intra-class conflict is present on the grounds that it does not represent the "best possible recovery" for all putative class members. *In re Pet Food Prods.*, 629 F.3d 333, 355 (3d Cir. 2010); *see also Amchem*, 521 U.S. at 627 (denying class certification where settlement not agreed to by representatives of all sub-classes); *see also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 856 (1999) (holding that intraclass conflict "require[d] division into homogenous subclasses . . . with separate representation to eliminate conflicting interests"). As the Supreme Court and Circuit Court authority requires, there is an impermissible disparity based on Jeunesse's contrived requirement (having no mooring in anti-pyramid scheme law) that ones intent not include the intent to consume.

2. The Settlement Reflects Indicia That It Was Not Reached At Arm's Length

"[A]chiev[ing] the settlement after little or no discovery . . . raise[s] a red flag." *GMC Pick-Up Trucks Fuel-Tank Prods. Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995). There is no dispute there has been little to no discovery. Nor does the presence of a mediator insulate the agreement, which discharge class counsel's duties. *Kakani v. Oracle Corp.*, No. C 06- 06493 WHA, 2007 WL 179377, 2007 U.S. Dist. LEXIS 47515, at *31 (N.D. Cal. Jun. 19, 2007); James Richard

Coben, Creating a 21st Century Oligarchy: Judicial Abdication to Class Action Mediators, 5 PENN ST. Y.B. ARB. & MEDIATION 162, 163 (2013) (deference to mediators "is an abdication of judicial fiduciary duty to ensure that proposed class action settlements are fair to absent class members."). Courts have also considered the claims participation rate as a ratio to the amount of attorney's fees and timing of this determination as indicative of whether a settlement should be approved. *Vought v. Bank of Am., N.A.*, 901 F. Supp. 2d 1071, 1092 (C.D. Ill. 2012) (emphasizing the "scant" 4.5% claims rate and result that $38,000 of $500,000 available would be that is fictitious"); *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 WL 1627973, 2011 U.S. Dist. LEXIS 48878, at *48 (N.D. Cal. Apr. 29, 2011) (a court "cannot judge the settlement value until claims are filed."). Because the claims' participation is not yet known, the settlement is not at arm's length and cannot be approved.

3. The Monetary Value of The Settlement Is Insufficient

While the Motion for approval does include some analysis of the substantive claims, the Motion, does not quantify the potential damages in the case. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 654 (7th Cir. 2006) (reversing approval where "the court did not attempt to quantify the value of plaintiffs' case or even the overall value of the settlement offer to class members"). Class Plaintiffs have repeatedly touted the significant value of the claims prior to the settlement at hundreds of millions of dollars, but are settling at a speck of these total through a claims made settlement that will not lead to meaningful consumer restitution.

E. The Settlement and Release Provisions Are Overbroad, One-Sided, and Unfair

The release provisions in this agreement are so overbroad that the Court could, on this basis alone, reject the agreement. Under the collective reach of the release provision, class members waive – ***in perpetuity*** – any past, present, or future claims against Jeunesse arising

under federal, state, or local law. Such an expansive release of Jeunesse class members' claims is legally defective for several reasons.

First, release provisions in class settlement agreements that prospectively waive claims are highly disfavored since, contrary to public policy, a settling defendant otherwise would then be able to "purchase" a license to continue with its illegal conduct in the future. In their prior complaints in this action, the named plaintiffs assert only allegations under RICO and the states where putative class members are not substantively involved. Given the limited scope of this Complaint, well-established federal caselaw precludes the settling parties from compromising the claims of absent class members that arise out of other legal or factual predicates. *See, e.g., National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9, 18 (2nd Cir. 1981) ("If a judgment after trial cannot extinguish claims not asserted in the class action complaint, a judgment approving a settlement in such an action should not be able to do so either.").

Second, the overly expansive scope of the Class Settlement Agreement's release provision could also compromise the ability of the FTC, SEC, the California Attorney General, FBI, and the Department of Justice to cooperate with class members. While Federal and State Regulatory claims are not waived through the release provision, joint participation and sharing would be chilled by virtue of this agreement.

Third, the broad linguistic sweep of the release provisions suggests that, were the agreement endorsed by the Court, absent class members may be viewed as having waived their rights to seek ***all*** available forms of relief under state or local law, including substantial monetary relief. However, when a proposed class settlement purports to waive rights to substantial monetary relief (by virtue of compromising claims under state or local laws for which statutory, compensatory, and/or punitive damages may be available), constitutional considerations dictate

that absent class members receive both personal notice and an opportunity to opt out of the proposed settlement agreement irrespective of whether the class action has been nominally certified under Fed. R. Civ. Proc. 23(b)(2) or Fed. R. Civ. Proc. 23(b)(3). *Molski v. Gleich*, 318 F.3d 937, 945-51 (9th Cir. 2003).

Finally, the release provides for an abhorrent one way release of ***all distributors*** against all other distributors. In effect, Jeunesse is requiring an injunction and release that each class member release claims against ***230,000 people***. Requiring class members to release each other and claims against other conspirators creates a conflict and is overbroad.

Taken together, the procedural deficiencies underlying the agreement's broad release provisions, counsel against judicial endorsement of this agreement. *See, e.g., National Super Spuds*, 660 F.2d at 18-19 (reversing district court's approval of class settlement agreement with over broad release provision that provided for uncompensated release of unliquidated potato futures contracts that were not encompassed within the class complaint concerning liquidated contracts); *Petruzzi's, Inc. v. Darling-Delaware Co., Inc.*, 880 F. Supp. 292, 299-301 (M.D. Pa. 1995) (rejecting class settlement requiring release of all class members' claims when only one-half of class received any direct economic benefit from agreement).

Lastly, the settlement is procedurally flawed because it lacks any mechanisms for enforcement or compliance monitoring. Absent such provisions, the only remedy for compliance and enforcement issues would be an action in federal court alleging breach of the settlement agreement – an expensive and time-consuming enforcement mechanism. While the absence of compliance monitoring or enforcement provisions may not alone be a reason to reject the Jeunesse agreement, the lack of such provisions – when coupled with the agreement's other significant procedural problems – underscores the manifest injustice class members will likely suffer if the district court endorses the agreement. *Cf. Van Horn v. Trickey*, 840 F.2d 604, 608

(8th Cir. 1988) (affirming district court's approval of prisoners' class action challenging conditions at correctional center when settlement agreement provided, *inter alia*, strong compliance monitoring program by court-appointed committee of penal experts).

F. The Potentially Large Cy Pres Award To An Organization With No Nexus To The Claims At Issue Should Be Rejected

Cy pres settlements raise "fundamental concerns." *Marek v. Lane*, 134 S. Ct. 8, 9 (2013) (Roberts, C.J.). The cy pres award must be sufficiently related to the plaintiff class. *Dennis v. Kellogg Co.*, No. 11-55674, 2012 WL 3800230 (9th Cir. Sept. 4, 2012); *Naschshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. Nov. 21, 2011) (cy pres should not be "local" and must be a "nexus" between class and *cy pres* recipient); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990) (*cy pres* distribution must be guided by the objectives of the underlying statute and the interest of silent class members). While Ms. Xiong has no reason to doubt the overall philanthropic mission and efforts of the chosen cy pres recipient (even though it may have past connections to Jeunesse or its members which have not been disclosed), this proposed cy pres recipient has no connection to the class, appears to be of local interest and not of national support where all class members may be found, and is not guided by the objectives of the underlying statutes at issue in this litigation. The settlement should be rejected for this independent reason.

CONCLUSION

Taken together, the Jeunesse Class Settlement Agreement's significant procedural and substantive flaws strongly counsel against judicial approval of the settlement. While voluntary settlement of litigation is always a laudable goal, neither the parties nor this Court can sacrifice the claims of absent class members in order to avoid litigation. Ms. Xiong, therefore, objects to the Jeunesse Class Settlement Agreement and urges the Court to disapprove this agreement.

Dated: December 7, 2018

Respectfully submitted,

/s/ Blake J. Lindemann
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Helen Xiong

STATEMENT OF HELEN XIONG PURSUANT TO PRELIMINARY APPROVAL ORDER

I, Helen Xiong, object to the settlement in *Aboltin v. Jeunesse*. My objections are stated in the filings made by my counsel contemporaneously herewith.

Hai Sin Xiong

Helen Xiong

EXHIBIT 1

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HELEN XIONG AND THOSE
SIMILARLY SITUATED

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

HELEN XIONG aka Huiqin Xiong, an individual; on behalf of herself and those similarly situated,

Plaintiffs,

v.

JEUNESSE GLOBAL, LLC dba JEUNESSE, LLC; KIM HUI, an individual; and DOES 1-10,

Defendants.

Case No:

ORIGINAL COMPLAINT – CLASS ACTION

[DEMAND FOR JURY TRIAL]

I. INTRODUCTION TO THE CASE

1. Jeunesse represented to Plaintiff Helen Xiong and other California employees (collectively, the "Plaintiffs") that they could make "streams of income" and "wealth," by recruiting others to become Jeunesse distributors.

2. Plaintiffs and the class all purchased Jeunesse inventory and became distributors. Plaintiff put in significant effort into selling the Jeunesse opportunity but failed.

3. Plaintiff did not make money as promised. Like the thousands of Jeunesse distributors before and after, Plaintiff failed. She failed even though she was committed and put in the time and effort. She failed because she was doomed from the start by a Jeunesse marketing plan that systematically rewards recruiting distributors over retail sales of product.

4. Defendants run an illegal pyramid scheme. They take money in return for the right to sell products and the right rewards for recruiting other participants into the pyramid.

5. Accordingly, Plaintiffs, for themselves, all others similarly situated, and the general public, allege:

II. TYPE OF ACTION

6. Plaintiffs sue for themselves and for all persons who were California participants from August 10, 2014 until the present under California's Endless Chain Scheme Law (California's Penal Code § 327 and California Civil Code § 1689.2), California's Unfair Competition Law (Business and Professions Code §17200 *et. seq.*); False Advertising Law (Business and Professions Code §17500), fraudulent inducement, and Unjust Enrichment. The class Plaintiffs are seeking to represent does not include any person outside of the State of California.

III. PARTIES

7. Plaintiff Helen Xiong aka Huiqin Xiong became a participant in Defendants' endless chain when certain products were shipped by Jeunesse to her on

August 10, 2015. Upon information and belief, and best records, Plaintiff Xiong paid Defendants approximately $10,000 to the Defendants as part of the scheme.

8. Jeunesse is a Florida limited liability company, with its principal place of business located 650 Douglas Avenue, Suite 1010, Altamonte Springs, Florida 32714. Jeunesse commenced operations in 2009. Jeunesse purports to provide a catalogue of alleged "youth enhancing" skin care products and dietary supplements it pedals as part of its distributorships.

9. Kim Hui is a resident of Orange County, California and Double Diamond Director in Jeunesse.

10. Upon information and belief, approximately 1/3 of Jeunuesse's sales occur in the State of California.

IV. JURISDICTION AND VENUE

11. Jurisdiction is conferred upon this Court because Defendants do business in this judicial district, they hold themselves out and market to this jurisdiction, and they actually conduct significant transactions in this jurisdiction.

12. Venue is proper in this Court because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred here, a substantial part of the property that is the subject of this action is situated here, and Defendants are subject to personal jurisdiction, in this District.

13. Defendant Jeunesse is subject to the jurisdiction of this Court. Jeunesse has been engaged in continuous and systematic business in California. In fact, most of Jeunesse's distributions originate from California.

14. Jeunesse has committed tortious acts in this State.

15. Each of the Defendants named herein acted as a co-conspirator, single enterprise, joint venture, co-conspirator, or alter ego of, or for, the other Defendants with respect to the acts, omissions, violations, representations, and common course of conduct alleged herein, and ratified said conduct, aided and abetted, or is other liable. Defendants have agreements with each other, and other unnamed Diamond

Director co-conspirators and have reached agreements to market and promote the Jeunesse Pyramid as alleged herein.

16. Defendants, along with unnamed Diamond Director co-conspirators, were part of the leadership team that participated with Jeunesse, and made decisions regarding: products, services, marketing strategy, compensation plans (both public and secret), incentives, contests and other matters. In addition, Defendants and unnamed co-conspirators were directly and actively involved in decisions to develop and amend the distributor agreements and compensation plans.

17. Plaintiff is presently unaware of the true identities and capacities of fictitiously named Defendants designated as DOES 1 through 10, but will amend this complaint or any subsequent pleading when their identities and capacities have been ascertained according to proof. On information and belief, each and every DOE defendant is in some manner responsible for the acts and conduct of the other Defendants herein, and each DOE was, and is, responsible for the injuries, damages, and harm incurred by Plaintiffs. Each reference in this complaint to "defendant," "defendants," or a specifically named defendant, refers also to all of the named defendants and those unknown parties sued under fictitious names.

18. Plaintiff is informed and believes and thereon allege that, at all times relevant hereto, all of the defendants together were members of a single association, with each member exercising control over the operations of the association. Each reference in this complaint to "defendant," "defendants," or a specifically named defendant, refers also to the above-referenced unincorporated association as a jural entity and each defendant herein is sued in its additional capacity as an active and participating member thereof. Based upon the allegations set forth in this Complaint, fairness requires the association of defendants to be recognized as a legal entity, as the association has violated Plaintiffs and Class Members' legal rights. *See e.g.*, *Coscarart v. Major League Baseball*, 1996 WL 400988 at *22 (N.D. Cal. 1996).

19. Plaintiff is further informed and believe and thereon allege that each and all of the acts herein alleged as to each defendant was authorized and directed by the remaining defendants, who ratified, adopted, condoned and approved said acts with full knowledge of the consequences thereof, and memorialized the authority of the agent in a writing subscribed by the principal.

20. Plaintiff is informed and believe and thereon allege that each of the defendants herein agreed among each other to commit the unlawful acts (or acts by unlawful means) described in this Complaint.

21. The desired effect of the conspiracy was to defraud and otherwise deprive Plaintiffs and Class Members (as hereinafter defined) of their constitutionally protected rights to property, and of their rights under other laws as set forth herein. Each of the defendants herein committed an act in furtherance of the agreement. Injury was caused to the Plaintiffs and Class Members by the defendants as a consequence.

V. EMPLOYMENT ALLEGATIONS

22. Plaintiff Xiong is informed and believes, and thereon alleges that Jeunesse uniformly misclassifies all of its representatives as independent contractors when they are, in fact, employees.

23. Jeunesse exerts significant control over its representatives. For example, representatives must adhere to rules regarding the their conduct, their sales pitches, their performance, and the method by which they complete sales.

24. As a result of the misclassification, Jeunesse failed to provide Plaintiff Xiong and other aggrieved employees with itemized wage statements, minimum and overtime wages, lawful meal or rest periods, and reimbursement for necessary expenses. Jeunesse also failed to keep accurate payroll records showing aggrieved employees' hours worked and wages paid.

25. Plaintiff Xiong further alleges that Jeunesse violated PAGA in the following ways: (1) Jeunesse has failed to provide prompt payment of wages to

representative employees upon termination and resignation in violation of Labor Code §§ 201, 202, 203; (2) Jeunesse has failed to provide itemized wage statements to representative employees in violation of Labor Code §§ 226(a), 1174, and 1174.5; (3) Jeunesse has failed to provide meal and rest periods in violation of Wage Order No. 9 and Labor Code §§ 226.7, 512, and 558; (4) Jeunesse has willfully misclassified its representative employees in violation of Labor Code § 226.8; (5) Jeunesse has retained portions of monies intended for representative employees in violation of Labor Code § 351; (6) Jeunesse has failed to keep required payroll records in violation of Wage Order No. 9 and Labor Code §§ 1174 and 1174.5; (7) Jeunesse has failed to pay overtime wages in violation of Wage Order No. 9 and Labor Code §§ 510, 558, 1194 and 1198; (8) Jeunesse has failed to pay minimum wages in violation of Wage Order No. 9 and Labor Code §§ 1182.12, 1194, and 1197; (9) Jeunesse has failed to reimburse representative employees for all reasonably necessary expenditures and losses incurred by representative employees in direct consequence of the discharge of their duties, including but not limited to commissions, travel costs, product costs, shipping costs, and other costs incurred in the sale of travel packages, in violation of Labor Code § 2802.

VI. FACTS

A. Overview Of Jeunesse' Pyramid Scheme

26. As of 2015, More than 50 complaints have been filed with the Federal Trade Commission ("FTC") and the Florida Attorney General's office regarding Jeunesse. The vast majority of the complaints concern problems with obtaining refunds, and claims that Jeunesse is a pyramid and/or ponzi scheme.

27. Some time in 2015, TruthInAdvertising.org conducted an investigation into Jeunesse's business practices and filed its own complaint with the FTC.

28. Rewards paid in the form of cash bonuses, where primarily earned for recruitment, as opposed to merchandise sales to consumers, constitute a fraudulent business model. *See F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878 (9th Cir. 2014).

29. Jeunesse admitted through its top-earning distributorships, that its method of operation constitutes a pyramid scheme.

30. One of the top and senior distributors, Defendant Kim Hui of Newport Beach, is estimated to be earning over $6 million a year from Jeunesse from "commission" – amounts earned from distributors signed up below her on the tall pyramid Defendants have constructed.

31. According to Hui in a video published online, success in Jeunesse is all about recruitment:

> *So first thing we've got to do is go out there and recruit . . . We're building a distribution channel if you would and so what we do – the first thing we do is recruit. What do we recruit? We recruit entrepreneurs . . . . And the second thing we do is that we teach other people how to recruit because this business is all about duplication.* ***It's not about one person selling all the time cause that's linear income, you know, trading time for money. But this business model is about building distribution and about creating wealth*** *. . . And then the third thing we do is teach other people on how to teach other people and so that's when true duplication happens . . . With wealth, with the money would be – we are paid to build our distribution network.*

32. Hui, in discussing Jeunesse's bonus structure, further states:

> *So the first way to make money is retail commissions, right. You know we as distributors we get the product at wholesale and then when people buy it, they buy it retail . . .* ***so we get a little retail commission****. . . .* ***Now that will be the smallest pay you ever get****. OK? I forget about retail commissions for me. . . .* ***I'm in this not to sell product. I'm here to build a global distribution****. . . . I'm not a salesperson; I'm a business builder.* (emphasis added).

33. Similar to these public statements, Plaintiffs and the Class were informed that the most important function of the business was building a network of

distributors and paying their monthly commissions through the pyramid scheme, in other words, sales of the product were of no relevance.

34. Further evidencing the nature of Defendants' pyramid scheme and the ponzi scheme, Jeunesse's inventory is regularly and systematically re-sold by distributors on Amazon.com™ for less than the wholesale prices distributors can sell the product for. Based on a common understanding of the marketplace, a normal class member cannot earn any retail profit off the sales side of products because one of the largest seller of consumer goods in the United States, Amazon.com, offers "cheaper" prices than a Jeunesse distributor. And this sale at prices "lower than wholesale" price also shows sales of the products are not a motivating factor in leading distributors to sign up. Distributors make profit from the commissions each distributor below on their downline charges, that they will sell Jeunesse's products at a loss based on what the distributors have paid.

35. Jeunesse also has significant variance in its suggested retail of between $45 to almost $300 (the suggested retail price at most times) during the class period. This range reflects nearly no potential for profit if a distributor sells product at the "lower end" of the range, further symbolizing that the business is propagated, and held up by commissions of persons on the lower level of the pyramid. Particularly in the Chinese-American community, Jeunesse encourages Chinese to sell at wholesale price and to take advantage merely of the "commissions" paid by down-stream distributors.

36. Defendants also create a more expensive "starter" package to "jump-start their business by purchase a product package, which ranges in price from about $200 to $1,800. This purportedly allows "newbies" to catapult to higher levels of compensation on their commissions, i.e. they receive a larger percentage of the commission for those persons below them on the pyramid scheme by paying the unconscionable mount of $1,800. This package prevailed at many times during the

class period. The maximum "start-up" package has now been reduced by Jeunesse from $1,800 to $1,000.

37. All Class Members and Plaintiff is required to purchase a mandatory starter kit for $49.95, with a $19.95 renewal fee, the requirement to purchase at least $100 per month of product to remain qualified for all commission and bonuses. Should a distributor not purchase $100, the commissions of all those below them on the pyramid they would have been entitled to, are forfeited.

38. During nearly the entire Class Period (as later defined), Jeunesse did not make an income disclosure statement to its distributors or prospective distributors, particularly during nearly the entire time that Plaintiff was a distributor for Jeunesse.

39. Instead, Jeunesse made the following representations to the Class Members and Plaintiff with no supporting information:

> "Jeunesse Is paying us over a million a year!"
>
> "$2,000, $3,000, $10,000, $20,000, $50,000, $100,000 – you can do it with Jeunesse."
>
> "It's a proven plan. With as many as six streams of income. People are making $26,250 a week – a week. Think of what you could do with that."
>
> "Average diamond in Jeunesse makes over a million dollars a year. I hit diamond right after my year marker in Jeunesse. And this is life changing."

40. These statements are deceptive income claims regarding the financial gains consumers will achieve by becoming distributors. For example, Jeunesse advertises that those who sign-up for its business opportunity can make over $26,000 per week. Its distributors also make unrealistic financial promises, such as being able to make millions of dollars per year.

41. Even when Jeunesse did finally make income statement disclosures to some Class Members in late 2015 ("Income Disclosures"), the statement was confusing, misleading, and false as follows:

a. The Income Disclosures provided that 98% of the distributors of Jeunesse (over 500,000 distributorships) gross less than $5,500 per year;

b. The highest earning distributorships, the top of the pyramid scheme, earn a majority of revenues from the scheme;

c. The Income Disclosures are confusing because they are ambiguous as to whether it captures data for the U.S. only, or culls income figures on a global level;

d. The Income Disclosures fail to state the period or term by which the income is measured, *i.e.* one year, two-years, and is thus, misleading;

e. The Income Disclosures fail to define material terms such as "Avg high Gross Earnings/month" and "Avg Low Gross Earnings/month";

f. The Income Disclosures fail to define a "distributor";

g. Finally, the Income Disclosures are incorrect. The median is higher numerically than the average of the "high income" persons, evidencing that the numbers are either erroneous or fabricated.

42. Further evidencing the pyramid scheme, the "products" Jeunesse offers are a complete scam and do not provide any of the benefits as represented. Specifically, all four of the doctors on the board of Jeunesse claim that some Jeunesse products can literally manipulate human genes and cells, even going so far as to say that Jeunesse products can actually slow the aging process and cure cancer. At Jeunesse's 2015 Singapore convention, here's what its physician team had to say: *Vincent Giampapa, M.D.*: "prevention and restoration and regeneration . . . our products are really designed to not only treat aging but to help prevent it and slow it at these early ages." (at 4:33) Dr. Giampapa goes on to say, "One of the key focuses of AM PM was to really look at how do we actually manipulate that gene clock but

in a natural way. And what we found out . . . is . . . plant extracts, herbs, enzymes – if they're the right combinations of things can actually turn off certain of these genes this that are negative aging genes and turn back on, for instance, genes that help keep us healthy and young. So . . . AM PM we frequently refer that product as a vitamin mineral supplement and in reality it's the next evolution beyond vitamin and minerals." (at 10:29) *William Amzallag, M.D.*: "Reserve . . . it will balance oxidation and anti-oxidation because as you know we have to balance . . . so this is the first goal of Reserve. The second goal of Reserve is to switch on a very specific gene which is called survival gene." (at 13:50) *Donna Antarr, M.D.*: "With Zen Bodi, we created a system that works with the body . . . that enables the body to actually rejuvenate and recover on a cellular level." (at 23:40) *Nathan Newman, M.D.*: "when we are putting these products on our body or taking them by mouth, we're really changing every cell in the body just like Dr. Giampapa said, we're changing one cell at a time, we're effecting them and that effect is/has a domino effect and it goes much further than the one place that we treat or what product that we take." (at 36:20).

B. The Public And Private Compensation Business Operations Constitute A Pyramid Scheme

43. In addition to the "public" compensation plan generally described above, Jeunesse has a private compensation plan involving secret, undisclosed backroom deals offered to those believed to be "quality" recruits, typically top earners in other network marketing companies with established downline (the "Off-Book Plan"). Both compensation plans further Jeunesse's operation of an illegal pyramid scheme because both plans revolve around recruitment. A distributor's compensation is derived from successfully recruiting new distributors (not product sales to ultimate end users), or as in the case of the undisclosed, Secret

Compensation Plan, luring and importing entire downlines or "teams" from other network marketing companies.

44. Defendants have operated and promoted their fraudulent schemes through the United States through the use of the U.S. mail and interstate wire communications, e-mail, fax, and other methods of communication. Through their creation and operation of their pyramid scheme, Defendants intended to, and did in fact, defraud their distributors – including Plaintiffs and the Class Members.

45. In reality, few of Jeunesse's products are ever sold to anyone other than its Distributors. Because its Distributors are the actual customers and ultimate users of its products, Jeunuesse requires an ever-expanding network of new Distributors in order to keep the pyramid scheme running.

46. Under the public compensation plan, Distributors earn income from a) bonuses for recruiting and sponsoring new representatives, and b) commissions from sales of products and services to themselves and to the recruit in their downline include a 20% Check match on all commissions received by personally sponsored distributors.

47. Jeunesse's message, at all times, has been centered around a recruitment driven message, in which a Distributor's compensation derives from successful recruitment of new distributors. All of the exorbitant costs are paid in order to stay "active" and "qualified, which is necessary to be compensated under the scheme.

48. Because Jeunesse's Distributors essentially do not sell products to consumers (who are not also distributors), they only obtain return on their investment by recruiting new distributors (who then buy products).

49. This results in payouts alleged to be "bonuses" and "commissions"

50. Jeunesse's emphasis on selling product packages to recruits is not based upon real consumer demand for its products but instead by the new recruit's

desire to earn greater commissions and bonuses under the Jeunesse Public Compensation Plan.

51. When a Jeunesse distributor recruits a new individual in his or her downline, and the new individual "activates" by purchasing a Jeunesse product package, the distributor who enrolled the new individual into his downline receives a "Customer Acquisition Bonus" ranging from $25 to $250, depending on the price of the produce package purchased.

52. When a Jeunesse distributor recurs a new distributor who purchase a product package, the following recruitment commissions are paid out:

- Basic Package ($199.95)- $25 commission
- Supreme Package ($499.95) - $100 commission
- Jumbo Package ($799.95) - $200 commission;
- 1-Year Jumbo Package ($1799.95) - $200 commission
- Ambassador Package ($1099.95) - $250 commission

53. These bonuses are paid regardless of whether any Jeunesse product is sold to ultimate end-users outside the distribution channel. As one Jeuness recruitment video states: "These bonuses are paid when you introduce a new distributor who goes on to purchase one of the Jeunesse product packages when they get started."

54. Jeunesse does not provide adequate, if any, "safeguard" policies and procedures sufficient to ensure adequate product sales to ultimate end users and to prevent inventory loading. Such safeguards are necessary, as a structure with insufficient retail sales will inevitably generate a pyramid scheme that relies on ongoing recruitment to fund commission payments.

55. Jeunesse has a 70% rule within its Policies & Procedures. It states: "In order to qualify for commission and overrides, each distributor must certify with the purchase of product that he/she has sold to retail customers and/or has consumed

seventy percent (70%) of all products previously purchased. This is known in the industry as the 'Seventy Percent Rule'."

56. Jeunesse's Seventy Percent Rule depends entirely on self-verification and there are no explicit sanctions for a violation. Even if Jeunesse were to take steps to verify this certification, a distributor could meet the terms of the Policy and Procedures by merely consuming the product personally, even if the purchase was motivated by the desire to earn commissions. As such, even if enforced, this rule would not be effective to ensure product sales to individuals outside the distribution network.

57. Jeunesse also has no Jeunesse-like "10 Customer Rule" or similar policy. Jeunesse does not even require that a distributor make any product sales to ultimate consumers outside the distribution channel. Pursuant to the Jeunesse Policies & Procedures: "In order to qualify for any compensation payable under the Jeunesse Rewards plan, a distributor should make retail sales to the ultimate consumer."

58. Jeunesse has a 1-year return policy for distributors who leave the business. The ability to return product, however, is limited by potential expiration of the product (the product must be in "CURRENT, REUSABLE AND RESALABLE condition") and, more significantly, by the 70% certification assumed in every distributor's purchase. If the purchase itself certifies that 70% will be sold.

59. Upon information and belief, recipients of such deals include Jeunesse top earners Defendants Kim Hui.

60. Jeunesse also recommends its Chinese distributors to transfer products out of Hong Kong to avoid and flout Chinese laws concerning imports from countries such as the United States. Thus, Jeunesse encourages its distributors to violate laws of other countries.

61. Jeunesse was not complying with China's direct selling and anti-pyramid selling regulations. In fact, quite the opposite - Defendants were permitting

the establishment of downlines in China in direct violation of China's rules prohibiting multi-level marketing. Moreover, Defendants knowingly failed to put in place a system of internal controls that would have ensured that new sales representatives and direct sellers were trained in a way that complied with Chinese law. The training that did exist was lax and inconsistent and not at all enforced – another violation of China's regulations on direct selling.

VII. CLASS ACTION ALLEGATIONS

62. Plaintiffs are bringing a class-wide claim for California residents only to alter, change, amend, modify, and subtract all provisions of the Policies, Distributor Agreement, and Rewards Plan, such that these documents will be rescinded on a class-wide basis in Court. Plaintiffs also seek a class-wide injunctive relief California claim to modify the agreements and contractual relationship such that Jeunesse is prohibited from operating a business that relies primarily in California.

63. Plaintiffs bring this action as a class action under Federal Rule of Civil Procedure 23.

64. Plaintiffs seek to certify a class pursuant to Fed. R. Civ. Proc. 23(a), 23(b), 23(c)(4), and 23(c)(5), if necessary.

65. Plaintiffs seek to represent a California class defined as follows: "All participants in Jeuneusse who registered in the State of California for whom the gross amounts paid to Jeunesse exceed the income paid by Jeunesse in commissions and bonuses."

66. Excluded from the class are the Defendants, family members, this Court, any person who registered outside of the State of California, and any Diamond Distributor.

67. Plaintiffs seek to pursue a private attorney general action for injunctive relief for themselves and all members of the class, and they satisfy the standing and class action requirements.

68. While the exact number of members in the Class are unknown to Plaintiffs at this time and can only be determined by appropriate discovery, membership in the class and subclasses is ascertainable based upon the records maintained by Defendant.

69. Therefore, the Class and Subclasses are so numerous that individual joinder of all Class and Subclass members is impracticable under Fed. R. Civ. P. 23(a)(1).

70. There are questions of law and/or fact common to the class and subclasses, including but not limited to:

a. Whether Jeunesse is operating an endless chain as that is defined;

b. Whether the participant received more than he/she paid.

71. These and other questions of law and/or fact are common to the class and subclasses and predominate over any question affecting only individual class members.

72. Plaintiffs' claims are typical of the claims of the class in that Plaintiffs were distributors for Defendant Jeunesse and lost money because of the illegal scheme, and each received false financial disclosures.

73. Plaintiffs will fairly and adequately represent the interests of the class and subclasses. Plaintiffs' claims are typical of those of the class and subclasses.

74. Plaintiffs' interests are fully aligned with those of the class and subclasses. And Plaintiffs have retained counsel experienced and skilled in complex class action litigation.

75. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged, because such treatment will allow many similarly-situated persons to pursue their common claims in a single forum simultaneously, efficiently and without unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender.

76. Plaintiffs know of no difficulty likely to be encountered in the management that would preclude its maintenance as a class action.

VIII. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

ENDLESS CHAIN SCHEME; California Penal Code §327 and Section 1689.2 of the California Civil Code

(Plaintiffs Xiong On Behalf of Themselves and on Behalf of all Classes against all Defendants, including DOES 1 through 10)

77. Plaintiffs reallege all allegations, and incorporates previous allegations by reference.

78. Section 1689.2 of the California Civil Code provides:

> A participant in an endless chain scheme, as defined in Section 327 of the Penal Code, may rescind the contract upon which the scheme is based, and may recover all consideration paid pursuant to the scheme, less any amounts paid or consideration provided to the participant pursuant to the scheme.

79. Defendant Jeunesse is operating an endless chain scheme.

80. Defendant Hui is operating the endless chain, and making representations thereunder.

81. Plaintiffs and the class have suffered an injury in fact and have lost money or property because of Jeunesse's operation of an endless chain, business acts, omissions, and practices.

82. Plaintiffs seek to alter, change, amend, modify, and subtract all provisions of the Policies, Distributor Agreement, and Rewards Plan.

83. Plaintiffs and the class are entitled to:

a. rescind the contract upon which the scheme is based and recover all consideration paid under the scheme, less any amounts paid or consideration provided to the participant under the scheme;

b. restitution, compensatory and consequential damages (where not inconsistent with their request for rescission or restitution); and

c. attorneys' fees, costs, pre- and post-judgment interest.

SECOND CLAIM FOR RELIEF

Unfair and Deceptive Practices Claims Under Cal. Bus, & Prof. Code § 17200, *et seq.*

Against All Defendants, including DOES 1 to 10

(On Behalf of the Class)

84. Plaintiffs reallege all allegations, and incorporate previous allegations by reference.

85. All claims brought under this Second Cause of action that refer or relate to the unlawful, fraudulent or unfair "endless chain" of Defendants are brought on behalf of Plaintiffs and the Class.

86. All claims brought under this Second Cause of Action that refer or relate to the unlawful, fraudulent or unfair the statements, the touted Jeunesse "business opportunity" are brought on behalf of Plaintiffs and the Subclasses.

87. Jeunesse has engaged in constant and continuous unlawful, fraudulent and unfair business acts or practices, and unfair, deceptive, false and misleading advertising within the meaning of the California Business and Professions Code § 17200, et seq. The acts or practices alleged constitute a pattern of behavior, pursued as a wrongful business practice that has victimized and continues to victimize thousands of consumers. The Jeunesse sales and marketing plan is unlawful.

88. Under California Business and Professions Code § 17200, an "unlawful" business practice is one that violates California law.

89. Jeunesse's business practices are unlawful under § 17200 because they constitute an illegal "endless chain" as defined under, and prohibited by, California Penal Code § 327.

90. Jeunesse utilizes its illegal "endless chain" with the intent, directly or indirectly, to dispose of property in Jeunesse products and to convince distributors to recruit others to do the same.

91. Jeunesse's business practices are unlawful §17200 because they violate §17500 *et seq.*, as alleged in the Third Cause of Action.

92. Under California Business and Professions Code § 17200, a "fraudulent" business practice is one that is likely to deceive the public.

93. Jeunesse's business practices are fraudulent in four separately actionable ways: (1) Jeunesse's illegal and deceptive "endless chain;" (2) the touted, yet non-existent, Jeunesse "business opportunity" for everyone, including but not limited to Jeunesse's massive advertising campaign and the misleading statements of compensation.

94. First, as detailed herein, Defendants promoted participation in the Jeunesse endless chain, which has a compensation program based on payments to participants for the purchase of product by participants, not the retail sale of products or services.

95. Jeunesse has made numerous misleading representations about the business opportunity of Jeunesse and the income that a recruit or a distributor can realize by becoming a distributor and participating in the scheme.

96. Jeunesse knew, or should have known, that the representations about the business opportunity of Jeunesse were misleading in nature.

97. As a direct result of Jeunesse's fraudulent representations and omissions regarding the Jeunesse endless chain described herein, Jeunesse wrongly acquired money from Plaintiffs and the members of the classes.

98. Second, Jeunesse touted, in numerous different ways as part of a massive advertising campaign, a "business opportunity," which Jeunesse also repeatedly and in many ways represented, among other things, as being "for everyone" and allowing "full time" or "part time" opportunities.

99. The massive advertising campaign included among other things, the website, emails, websites, presentations by Jeunesse, training, word of mouth among distributors, television, radio, and events.

100. As part of this campaign and a further inducement to potential distributors, Jeunesse made and disseminated statements of compensation that further misled the public, among other things: (1) by using cryptic and technical terms known to Jeunesse but not to the general public or to those exploring the claimed "business opportunity," (2) by highlighting the "winners," i.e., those that received compensation from Jeunesse, and the average gross compensation paid by Jeunesse to those winners, (3) by failing to disclose the actual number of "winners" as compared to the number of distributors who received no compensation from Jeunesse (i.e., the "losers"); and (4) by downplaying and omitting the risks and costs involved in starting an Jeunesse distributorship and succeeding in such a distributorship.

101. In reality, the touted "business opportunity" was only for a select few, and those that were recruited specially. And these numbers did not include expenses incurred by distributors in the operation or promotion of their businesses, meaning there were likely more net losers who made no profit at all.

102. Jeunesse knew, or should have known, that the selective information presented to distributors in the compensation package, the Income Disclosures, and its massive adverting campaign during that time frame touting its purported "business opportunity" was likely to mislead the public and did in fact mislead the public into believing there was a legitimate "business opportunity" in which distributors, or a large portion of them, could make money in either a full or part

time capacity. In fact, however, there was no such "business opportunity," except for a very select few.

103. As a direct result of Jeunesse's fraudulent representations and omissions regarding the Statement and the massive adverting campaign during that time frame and thereafter touting Jeunesse's purported "business opportunity" described herein, Jeunesse wrongly acquired money from Plaintiffs and the members of the Class/subclasses.

104. Plaintiffs and the class purchased Jeunesse products and were charged a significant flat shipping fee.

105. Jeunesse knew, or should have known, that the misrepresentations and omissions about the handling fees were likely to mislead the public and its distributors.

106. As a direct result of Jeunesse's fraudulent representations and omissions regarding the purported handling fees described herein, Jeunesse wrongly acquired money from Plaintiffs and the members of the classes.

107. The named Plaintiffs have standing to bring these Section 17200 claims under the fraudulent prong and can demonstrate actual reliance on the alleged fraudulent conduct.

108. For instance, Plaintiffs received the IBP or mini-IBP, which promoted the Jeunesse Scheme and claimed "business opportunity" and contained material false representations regarding the success distributors could achieve through Jeunesse by purchasing products and recruiting others to do the same.

109. There were other representations made to distributors as part of the massive advertising campaign regarding the claimed "business opportunity," on which Plaintiffs or some of them, reasonably believed the representations they could succeed in the "business opportunity," did not return the refund, purchased Jeunesse products and did not immediately return them, signed up as Jeunesse distributors,

and attempted to and recruited others to do the same. These other representations include, but are not limited to the following:

a. Emails from Jeunesse that promoted Jeunesse and contained material false representations regarding the success that a distributor could achieve through Jeunesse by purchasing products and recruiting others to do the same.

b. Websites, such as Jeunesse's own website, which promoted the fraudulent scheme through videos of Diamond distributors containing material false representations regarding the "business opportunity" available to distributors and the wealth that a distributor could get by agreeing to become an Jeunesse distributor.

c. Presentations by Jeunesse distributors which contained material false representations regarding the "business opportunity" and the success that a distributor could get through Jeunesse by purchasing products and recruiting others to do the same.

d. Presentations by Jeunesse, including the presentations described in this complaint, which contained material false representations regarding the "business opportunity" and the success that a distributor could get through Jeunesse by purchasing products and recruiting others to do the same.

e. Training and events, such as the Extravaganza as described in this complaint, where Jeunesse distributors made material false representations regarding the "business opportunity" and the success that a distributor could get through Jeunesse by purchasing products and recruiting others to do the same.

110. To the extent proof of reliance is required of Plaintiffs, Jeunesse and the Diamond Distributors knew that Plaintiffs and the class would reasonably rely on their representations and omissions, which would cause the Plaintiffs and the class joining the fraudulent endless chain scheme and purchasing the products, and Plaintiffs did in fact reasonably rely upon such representations and omissions.

111. Indeed, had Plaintiffs and the class known that Jeunesse and its Diamond Distributors were promoting an endless chain, they would not have

become Jeunesse distributors in the first place and, if learned after becoming a distributor, they would not have purchased Jeunesse products thereafter.

112. Had Plaintiffs and the class known that Jeunesse was promoting a "business opportunity" that did not exist except for a select few, they would not have become Jeunesse distributors in the first place and, if learned after becoming a distributor, they would not have purchased Jeunesse products thereafter.

113. Finally, the fraudulent acts, representations and omissions described herein were material not only to Plaintiffs and the class (as described in this complaint), but also to reasonable persons. For instance, regarding the alleged "business opportunity" and representations in, and omissions from, the Income Disclosures (and prior disclosures thereto), and on information and belief, a large percentage of individuals who signed up as Jeunesse distributors during this time frame expected that they could and would receive annual compensation at the approximate level of the "average earnings compensation," in total, disclosed in the Statements of Average Gross Compensation. Unfortunately, no such large percentage actually could or did earn such an amount.

114. Under California Business and Professions Code § 17200, a business practice is "unfair" if it violates established public policy or if it is immoral, unethical, oppressive or unscrupulous and causes injury which outweighs its benefits.

115. For the reasons set forth herein and above, Jeunesse's promotion and operation of an unlawful and fraudulent endless chain, and its fraudulent representations and omissions regarding its purported "business opportunity," are also unethical, oppressive, and unscrupulous in that Jeunesse is and has been duping Plaintiffs and the class out of billions, or at least hundreds of millions, of dollars.

116. Jeunesse's actions have few, if any, benefits. Thus, the injury caused to Plaintiffs and the class easily and dramatically outweighs the benefits, if any.

117. Defendants should be made to disgorge all ill-gotten gains and return to Plaintiffs and the class all wrongfully taken amounts.

118. Finally, Defendants' unlawful, fraudulent and unfair acts and omissions will not be completely and finally stopped without orders of an injunctive nature. Under California Business and Professions Code section 17203, Plaintiffs and the class seek a judicial order of an equitable nature against all Defendants, including, but not limited to, an order declaring such practices as complained of to be unlawful, fraudulent and unfair, and enjoining them from further undertaking any of the unlawful, fraudulent and unfair acts or omissions described herein.

THIRD CLAIM FOR RELIEF

False Advertising

(California Business and Professions Code § 17500, et seq.)

(On Behalf of the Class, and All Subclasses)

Against All Defendants, including Does 1 to 10

119. Plaintiffs reallege all allegations, and incorporate previous allegations by reference.

120. All claims brought under this Third Claim for Relief that refer or relate to the false, untrue, fraudulent or misleading endless chain of Defendants are brought on behalf of Plaintiffs and the Class.

121. All claims brought under this Third Cause of Action that refer or relate to the false, untrue, fraudulent or misleading Income Disclosures of Average Gross Compensation and the touted Jeunesse "business opportunity" are brought on behalf of Plaintiffs and the sub-class

122. Defendants' business acts, false advertisements and materially misleading omissions constitute false advertising, in violation of the California Business and Professions Code § 17500, *et seq.*

123. Defendants engaged in false, unfair and misleading business practices, consisting of false advertising and materially misleading omissions regarding the

purported "business opportunity," likely to deceive the public and include, but are not limited to, the items set forth above. Jeunesse knew, or should have known, that the representations about the business opportunity of Jeunesse were misleading in nature.

124. Because of Defendants' untrue and/or misleading representations, Defendants wrongfully acquired money from Plaintiffs and the class members to which they was not entitled. The Court should order Defendants to disgorge, for the benefit of Plaintiffs and all other Jeunesse distributors in the class who signed an agreement with Jeunesse governed by California law their profits and compensation and/or make restitution to Plaintiffs and the class.

125. Because of Defendants' untrue and/or misleading representations, Defendants wrongfully acquired money from Plaintiffs and the class members to which it was not entitled. The Court should order Defendants to disgorge, for the benefit of Plaintiffs and all other Jeunesse distributors in the class who signed a Distributor Agreement with Jeunesse governed by California law their profits and compensation and/or make restitution to Plaintiffs and the class.

126. Under California Business and Professions Code Section 17535, Plaintiffs and the class seek a judicial order directing Defendants to cease and desist from all false advertising related to the Defendants' illegal e scheme, shipping charges, false claims regarding the Defendants' products' efficacy, and such other injunctive relief as the Court finds just and appropriate.

FOURTH CLAIM FOR RELIEF

THE PRIVATE ATTORNEYS GENERAL ACT LABOR CODE VIOLATIONS ARISING FROM MISCLASSIFICATION (California Labor Code § 2698 *et seq.*)

(Plaintiffs on behalf of herself and the Class Against All Defendants including DOES 1 through 10)

127. Plaintiffs re-allege and incorporate by reference the allegations

contained in the paragraphs above as if fully set forth herein.

128. Plaintiffs are each "aggrieved employees" under PAGA, as they were employed by Jeunesse during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, each of them seeks to recover on behalf of themselves and all other current and former aggrieved employees of Jeunesse, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

129. Plaintiff Xiong seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims is not required, but Plaintiffs Xiong may choose to seek certification of the PAGA claims.

130. Plaintiffs Xiong and all other current and former aggrieved employees of Jeunesse seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

a. failure to provide prompt payment of wages to representative employees upon termination and resignation in violation of Labor Code §§ 201, 202, 203;

b. failure to provide itemized wage statements to representative employees in violation of Labor Code §§ 226(a), 1174, and 1174.5;

c. failure to provide meal and rest periods in violation of Wage Order No. 9 and Labor Code §§ 226.7, 512, and 558;

d. willfully misclassifying its representative employees in violation of Labor Code § 226.8;

e. failure to provide gratuities intended for representative employees in violation of Labor Code § 351;

f. failure to keep required payroll records in violation of Wage Order No. 9 and Labor Code §§ 1174 and 1174.5;

g. failure to pay overtime wages in violation of Wage Order No. 9 and Labor Code §§ 510, 558, 1194 and 1198;

h. failure to pay minimum wages in violation of Wage Order No. 9 and Labor Code §§ 1182.12, 1194, and 1197;

i. failure to reimburse representative employees for all reasonably necessary expenditures and losses incurred by representative employees in direct consequence of the discharge of their duties, including but not limited to fuel, insurance, maintenance, and toll costs, in violation of Labor Code § 2802.

131. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars ($250) per aggrieved employee for the first violation, and one thousand dollars ($1,000) per aggrieved employee for each subsequent violation of Labor Code § 226(a).

132. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars ($50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars ($100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Moreover, Plaintiffs Xiong seeks civil penalties in the amount of unpaid wages owed to aggrieved employees pursuant to Labor Code § 558(a)(3).

133. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a civil penalty of $500.

134. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars ($100) per pay period, per aggrieved employee for initial violations, and two hundred dollars ($200) pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically

provided, including Labor Code §§ 226.7, 226.8, 1174, 1182.12, 1194, 1197, 1198, and 2802.

PRAYER FOR RELIEF

The named Plaintiffs and the Plaintiff class and subclasses request the following relief:

a. Certification of the class and subclasses;

b. A jury trial and judgment against Defendants;

c. Rescission of the agreements upon which the scheme is based, and recovery of all consideration paid pursuant to the scheme, less any amounts paid or consideration provided to the participant pursuant to the scheme;

d. Damages for the financial losses incurred by Plaintiffs and by the class and subclasses because of the Jeunesse Defendants' conduct and for injury to their business and property;

e. Restitution and disgorgement of monies;

f. Temporary and permanent injunctive relief enjoining Jeunesse from paying its Distributors recruiting rewards that are unrelated to retail sales to ultimate users and from further unfair, unlawful, fraudulent and/or deceptive acts;

g. The cost of suit including reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, Civil Code §1689.2, and otherwise by law.

h. For damages in an amount yet to be ascertained as allowed by law; and

i. For such other damages, relief and pre- and post-judgment interest as the Court may deem just and proper.

LINDEMANN LAW FIRM, APC

Dated: August 10, 2018

By: _____

BLAKE J. LINDEMANN, SBN 255747
433 N. Camden Drive, 4th Floor
Beverly Hills, CA 90210
Telephone: (310) 279-5269
Facsimile: (310) 300-0267

Attorneys For Plaintiff
HELEN XIONG AND THOSE SIMILARLY SITUATED

DEMAND FOR JURY TRIAL

Plaintiff Helen Xiong, on behalf of herself and those similarly situated, hereby demand a jury trial on all matters so triable.

LINDEMANN LAW FIRM, APC

Dated: August 10, 2018

By: _____

BLAKE J. LINDEMANN, SBN 255747
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Beverly Hills, CA 90210
Telephone: (310) 279-5269
Facsimile: (310) 300-0267

Attorneys For Plaintiff
HELEN XIONG AND THOSE SIMILARLY SITUATED

EXHIBIT 2

OPT-OUT FORM

Aboltin et. al. v. Jeunesse, LLC
United States District Court, Middle District of Florida, Orlando Division
Case No. 6:17-cv-01624-PGB-KRS

This is NOT a Claim Form. It EXCLUDES you from the monetary portion of this Class Action.
DO NOT use this Form if you wish to remain IN this Class Action.

Name of Class Member: Helen Xiong

Address: c/o Lindemann Law Firm, APC, 433 N. Camden Drive, 4th Floor, Beverly Hills, CA 90210
Street City State Postal Code

Telephone: (310) 279-5269
Area Code/Phone No. (Ext. if applicable)

I understand that by opting out of this Class Action, I will not be eligible to receive any money that may result from any trial or settlement of this lawsuit, if there is one. I do not wish to receive monetary compensation under the terms of any judgment or settlement or to otherwise participate in the monetary portion of this Class Action. I further understand that by opting out, all personal representatives, spouses and relatives who on account of a personal relationship to me might assert a derivative claim for money will be deemed to have opted out as well.

If you wish to opt out of the monetary portion of this Class Action, please check the box below.

☒ By checking this box, I affirm that I wish to be excluded from the monetary portion of this Class Action.

11/26/2018
Date Signed

Hui Jin Xiong
Signature of Class Member or Executor, Administrator or Personal Representative

This form must be mailed to the address below, and postmarked NO LATER THAN November 26, 2018, or else you will lose your right to opt out.

Jeunesse Distributor Settlement
Exclusions
P.O. Box 5270
Portland, OR 97208-5270

ADDENDUM

Helen Xiong has brought a class action case on behalf of herself and all others similarly situated on August 10, 2018, Case No. 8:18-cv-01430-DOC-KES. The release provision in the settlement improperly seek to release California causes of action that the putative class members in Ms. Xiong's case may assert. The Plaintiffs in Aboltin lack standing and have not established jurisdiction to permit California claims to be released. To the extent permitted by law, and with reservation to object on this point, any purported class member that has California claims should have such claims carved out from the agreement, and to such extent, their claims should be excluded.

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions