

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

TOMMY ROBBINS, DANIEL CAMEY,
RAYMOND ALVANDI and GERARD BUTLER,
Individually and on behalf of all others similarly
situated,

Civil Action No. 16AC-CC00366

The Hon. Jon E. Beetem

Plaintiffs,

v.

GENCOR NUTRIENTS, INC., GENCOR
PACIFIC, INC., GE NUTRIENTS, INC., DIRECT
DIGITAL, LLC, PHARMAFREAK HOLDINGS,
INC., FORCE FACTOR, LLC, DREAMBRANDS,
INC., GENERAL NUTRITION CENTERS, INC.,
GENERAL NUTRITION CORPORATION, GNC
CORPORATION, S&G PROPERTIES, LLC, KING
FISHER MEDIA, LLC, and PREVENTION, LLC
d/b/a NATURADE,

Defendants.

**FINAL APPROVAL OF THE SETTLEMENT AGREEMENT; FINAL JUDGMENT;
AWARD OF ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVE
INCENTIVE AWARDS; AND ORDER OF DISMISSAL WITH PREJUDICE**

WHEREAS, on May 14, 2018, this Court entered a Preliminary Approval Order that conditionally certified pursuant to Mo. R. Civ. P. 52.08, for settlement purposes only, a class consisting of:

All Persons who bought Products or received a Trial Offer between January 1, 2010 and May 14, 2018, inclusive (the "Class Period"). The Settlement Class consists of the following four Subclasses:

Subclass Number 1: All Persons who purchased any Products during the Class Period which were sold by, through or under any retailer, distributor, person, or entity in the stream of commerce other than the Brand Defendants.

Subclass Number 2: All Persons who paid for shipping of Trial Offer during the Class Period which were distributed by, through, or under any of the Brand Defendants.

Subclass Number 3: All Persons who purchased Products during the Class Period which were sold in retail by the Brand Defendants.

Subclass Number 4: All Persons who purchased Products during the Class Period which were sold by, through, or under any of the Brand Defendants directly to Class Members.

Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Products for resale; (b) Defendants and their employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely request to Opt-Out; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); and (e) the judges to whom the Testofen Litigation is assigned and any member of their immediate family.

WHEREAS, this Court has received notice that counsel for certain plaintiffs in a related matters pending in the in the United States District Court, Central District of California, intends to appear at the Final Approval Hearing, the only other objection to this Settlement was not properly filed with this Court, and this Court finds that the papers are detailed and sufficient to rule on Plaintiffs' Motion for Final Approval on the papers; and

WHEREAS, this Court, having heard from Class Counsel on behalf of the Settlement Class, and from Defendants' counsel, and having reviewed all other arguments and submissions presented by all interested persons and entities with respect to the Settlement and the application of Plaintiffs' counsel for an award of attorneys' fees and reimbursement of expenses; and

WHEREAS, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement, it is hereby

ORDERED, ADJUDGED, DECREED, AND FOUND THAT:

1. This case arises out of Plaintiffs' allegations that Defendants that Defendants misrepresented the efficacy of Testofen Products to boost testosterone levels and the benefits such an increase would provide.

2. Plaintiffs' Petition included claims for violations of the Missouri Merchandising Practices Act, breaches of express and implied warranty, and unjust enrichment.

3. After extensive settlement negotiations, including in-person mediation and telephonic conferences before an experienced mediator, the Honorable Patrick King (Ret.), the Parties agreed to settle this case.

4. The Settlement Agreement provides substantial and meaningful relief to the Settlement Class, including injunctive relief that requires a change of the allegedly misleading labels, as well as monetary benefits to the Settlement Class.

5. The Settlement Agreement provides for a settlement under which Settlement Class Members, including those with and without receipts of their purchases, can make claims to receive monetary benefits for purchasing the Products.

6. The Settlement Class as provided in the Preliminary Approval Order is unconditionally certified pursuant to Mo. R. Civ. P. 52.08(b)(3). The prerequisites for a class action under Rule 52.08(b)(3) have been satisfied in that: (a) the members of the Settlement Class are so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

7. For purposes of the injunctive relief specified in Section 5.1 of the Settlement Agreement, the prerequisites for a class action under Mo. R. Civ. P. 52.08(b)(2) have been

satisfied in that: (a) the members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will fairly and adequately represent the interests of the Settlement Class; and (e) Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or declaratory relief with respect to the class as a whole.

8. The following are appointed as Class Representatives of the Settlement Class: Tommy Robbins, Daniel Camey, Raymond Alvandi and Gerard Butler.

9. The Court confirms the following as Class Counsel: David L. Steelman and Stephen F. Gaunt of Steelman, Gaunt & Horsefield, Ronald A. Marron of Law Offices of Ronald A. Marron, APLC, and Antonio Vozzolo of Vozzolo, LLC. The Settlement, as set forth in the Settlement Agreement, is in all respects fair, reasonable, and adequate, is in the best interests of the Settlement Class Members, and is approved in all respects in accordance with Rules 52.08(b)(2) and (b)(3).

10. The Settlement was negotiated at arm's-length by experienced counsel who were fully informed of the facts and circumstances of the Action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties engaged in extensive negotiations and a formal mediation before Judge King. Class Counsel and Defendants' Counsel are therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of protracted litigation over numerous questions of fact and law.

11. Notice to the members of the Settlement Class required by Mo. R. Civ. P. 52.08(b)(3) has been provided as directed by this Court in the Preliminary Approval Order, and

such notice having constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the members of the Settlement Class, has satisfied the requirements of the Missouri Rules of Civil Procedure, and all other applicable laws.

12. Plaintiffs and Defendants are directed to promptly consummate the Settlement in accordance with the Settlement Agreement and all of its terms.

13. The Settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of Defendants, Plaintiffs, or any of the Settlement Class Members, or Released Parties.

14. The Action is hereby dismissed, with prejudice, on the merits, as against the Plaintiffs and all members of the Settlement Class, on the terms and conditions set forth in the Settlement Agreement, and without costs to any party except as provided herein and in the Settlement Agreement.

15. Upon the Effective Date, Plaintiffs, each Settlement Class Member, and each Releasing Party shall be deemed to have, and by operation of this Final Approval Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties in the manner(s) set forth in Section VII of the Settlement Agreement.

16. Upon the Effective Date, Plaintiffs, each Settlement Class Member, and each Releasing Party shall be permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims.

17. A Service Award is hereby awarded to the following Class Representatives in the amount of \$2,500 each: Tommy Robbins, Daniel Camey, Raymond Alvandi and Gerard Butler,

paid pursuant to the terms of the Settlement Agreement, as compensation for their efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class.

18. Class Counsel are hereby awarded (i) attorneys' fees and (ii) reimbursement of their reasonable expenses in the amount of \$600,000. Such amounts are to be paid by Defendants in the manner(s) set forth in Section VIII of the Settlement Agreement by depositing the funds by wire exchange into an account to be identified by certain under Section VIII of the Settlement Agreement. Class Counsel shall provide to Defendants in a timely manner all information necessary to enable Defendants to make the payment in the time required.

19. The award of attorneys' fees to Class counsel shall be allocated among Class counsel in a fashion that, in the opinion of Class Counsel, fairly compensates them for their respective contributions in the prosecution of the Action. In making its award of attorneys' fees and reimbursement of expenses, in the amounts described in paragraph 18, above, the Court has considered and finds as follows:

- a. The Settlement has provided significant relief to the Settlement Class.
- b. Defendants' adoption of substantial changes to its labeling practices was a negotiated, material term of Settlement.
- c. The Settlement Notice constituted the best notice practicable to Settlement Class members consistent with the requirements of due process. There were two objections to the Settlement filed. Furthermore, this Court finds that the objections were not filed consistent with the terms of this Court's Preliminary Approval Order. Nonetheless, the objections are non-meritorious and misconstrue the terms and import of the Settlement. Thousands of class members received notice by publication and otherwise. The fact that there were two (2)

objections is indicative of the adequacy of the settlement. Moreover, the positive reaction by the Class demonstrates the strength of the Settlement.

d. The Settlement provides a fair opportunity for all members of the Class to file a claim and be compensated. The notice program combined with the length of the Claim Period provides a more than ample opportunity for any Class member who wishes to file a claim to do so. It is this opportunity to file a claim and be compensated that is the fairest measure of whether the Settlement is indeed fair, reasonable and adequate. In this case, this opportunity is without a cap on the benefit available, thus allowing each member of the Class to be compensated pursuant to the Settlement.

e. By providing this opportunity for compensation, Class Counsel have demonstrated that they have represented the Class well. Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy on behalf of Plaintiffs and the Settlement Class as a whole.

f. The Action involves complex factual and legal issues and, in the absence of Settlement, would involve further lengthy proceedings and uncertain resolution of such issues.

g. Had the Settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from Defendants, and that any recovery would have been significantly delayed, which would have resulted in the continued exposure of Settlement Class members to the challenged representations.

h. The amount of attorneys' fees and reimbursable expenses awarded to Class Counsel is fair and reasonable, given that the value of attorney time expended in this case to achieve the Settlement on behalf of Plaintiffs and the Settlement Class as a whole is in excess of \$640,305. In addition, the value of the settlement benefits available to the Settlement Class is

substantial given the procedural posture of the matter, allowing Settlement Class Members who timely file Claims, up to a cumulative total of \$7,000,000, inclusive of costs and attorneys' fees. Specifically, the Settlement provides cash payments to Settlement Class Members of between \$1.99 and \$14.52, depending on which Subclass they belong. Moreover, the injunctive relief obtained by Plaintiffs' provides additional benefits. Given the skills required to prosecute this case, the experience, reputation, and ability of Class Counsel, the fact that the fees were always contingent, that the fee is not disproportionately excessive in light of the benefits conferred on the members of the Settlement Class, and the risk taken by prosecuting this case, the Court finds that the negative multiplier requested of .92 is appropriate, fair, and reasonable. Moreover, the amount awarded and the multiplier is within the norms in class action cases in the state of Missouri.

20. Defendants and the Released Parties shall not be liable for any additional fees or expenses for Class Counsel or counsel of any Plaintiffs or Settlement Class Member in connection with the Action, beyond those expressly provided in the Settlement Agreement.

21. By reason of the Settlement, and approval hereof, there is no just reason for delay and this Final Order and Judgment shall be deemed a final judgment pursuant to Rule 74 of the Missouri Rules of Civil Procedure.

22. Jurisdiction is reserved, without affecting the finality of this Final Approval Order and Judgment, over:

a. Effectuating the Settlement and the terms of the Settlement Agreement, including the payment of Plaintiffs' counsel's attorneys' fees and reimbursement of expenses, including any interest accrued thereon;

b. Supervising all aspects of the administration of the Settlement;

c. Determining whether, in the event an appeal is taken from any aspect of this Final Approval Order and Judgment, notice should be given at the appellant's expense to some or all Settlement Class Members apprising them of the pendency of the appeal and such other matters as the Court may order;

d. Enforcing and administering the Settlement Agreement and the Settlement, including any releases executed in connection therewith, and the provisions of this Final Approval Order and Judgment;

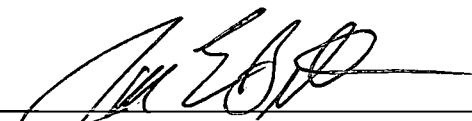
e. Adjudicating any disputes that arise under the Settlement Agreement; and

f. Any other matters related or ancillary to the foregoing.

23. The above-captioned Action is hereby dismissed in its entirety with prejudice.

SO ORDERED, ADJUDGED AND DECREED.

Dated: 8/29/18



The Hon. Jon E. Beetem
JUDGE OF THE CIRCUIT COURT