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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**IN RE COBRA SEXUAL ENERGY
SALES PRACTICES LITIGATION**

Case No. 2:13-cv-05942-AB-Ex

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: The Honorable André Birotte, Jr.
Date: November 6, 2020
Time: 10:00 a.m.
Location: Courtroom 7B

1 Plaintiff Troy Lambert, individually and on behalf of the Class defined below, moves
2 for preliminary approval of the class action settlement negotiated with the defendant in this
3 action. Now, having considered the record and the requirements of law, this Court orders
4 that the Motion for Preliminary Approval is **GRANTED** as set forth below. The settlement
5 is **PRELIMINARILY APPROVED**. The Court further preliminarily finds and orders as
6 follows:

7 1. The Court finds that the Settlement Agreement is the product of arms-length
8 negotiation conducted by experienced legal counsel after extensive discovery and
9 settlement negotiations. The Settlement Agreement is not the result of collusion.

10 2. The Court finds that the proceedings that occurred before the Parties reached
11 the Settlement Agreement gave counsel and the Parties an opportunity to adequately assess
12 the strengths and weaknesses of their respective positions in this case, and, therefore, to
13 structure the settlement in a way that adequately accounts for those strengths and
14 weaknesses.

15 3. The Court finds that, subject to the Final Approval hearing, the Settlement
16 Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class.
17 The Court further finds that the settlement falls well within the range of reason and has no
18 obvious deficiencies.

19 4. Because the settlement meets the standards for preliminary approval, the
20 Court preliminarily approves all terms of the settlement, including the Settlement
21 Agreement and all of its exhibits.

22 5. The Court previously found that all requirements of Federal Rules of Civil
23 Procedure 23(a), 23(b)(3), and 23(b)(2) have been satisfied. *Lambert v. Nutraceutical*
24 *Corp.*, 2020 U.S. Dist. LEXIS 6391 (C.D. Cal. Jan. 8, 2020). The Court finds that all
25 requirements of Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(b)(2) have been
26 satisfied with respect to the Settlement Class, which is the same class that the Court
27 certified, except that it now has a definite end date of December 31, 2020.

1 6. The Settlement Class is defined as follows:

2 All individuals who purchased Cobra Sexual Energy for personal or household
3 use and not for resale or distribution from August 14, 2009 to December 31, 2020.
4 Excluded from the class are officers and directors of Nutraceutical and any
5 judicial officer hearing the case.

6 7. The Court has reviewed the content of the Parties’ proposed notice plan, the
7 long-form and short-form notices, and the claim form and finds that they satisfy the
8 requirements of F.R.C.P 23(c)(2), (e)(1), and the Due Process Clause of the U.S.
9 Constitution. Accordingly, the Court approves the notices and the claim form.

10 8. The Court further approves the methods for giving notice of the settlement to
11 the members of the Settlement Class, as reflected in the Settlement Agreement and
12 Plaintiff’s Motion for Preliminary Approval, and the supporting Declaration of Gajan
13 Retnasaba of Classaura, LLC. In addition to the Notices, the Court has also reviewed the
14 notice procedures and finds that the members of the Settlement Class will, thereby, receive
15 the best notice practicable under the circumstances. The Court also approves payment of
16 the costs of notice as provided for in the Settlement Agreement. The Court finds that the
17 notice procedures, carried out with reasonable diligence, will constitute the best notice
18 practicable under the circumstances as required by Rule 23.

19 9. The Court further approves the appointment of Classaura LLC to administer
20 and oversee, among other things, the processing, handling, reviewing, and approving of
21 claims made by claimants; communicating with claimants; and distributing payments to
22 authorized claimants whose claim forms have been accepted and validated.

23 10. The Court directs that, pursuant to Federal Rule of Civil Procedure 23(e)(2),
24 a hearing will be held on February 19, 2021, at 10:00 a.m. to consider final approval of the
25 settlement (“Fairness Hearing”) including, but not limited to, the following issues: (1) the
26 fairness, reasonableness, and adequacy of the settlement; (2) Class Counsel’s application
27 for an award of fees and costs; and (3) approval of an incentive award to the Class
28 Representative. Any member of the Settlement Class wishing to object (an “Objector”) to

1 the proposed settlement and/or be heard at the Final Approval Hearing shall comply with
2 the following procedures:

3 a. To object, a member of the Settlement Class, individually or through
4 counsel, must file a written objection with the Court, with a copy delivered to Class
5 Counsel and Defendant's Counsel at the addresses set forth below:

6 Gregory S. Weston
7 **THE WESTON FIRM**
8 1405 Morena Blvd., Suite 201
9 San Diego, CA 92110
10 Email: *greg@westonfirm.com*

11 Ronald A. Marron
12 **LAW OFFICES OF RONALD A. MARRON**
13 651 Arroyo Drive
14 San Diego, CA 92103
15 Email: *ron@consumersadvocates.com*

16 **Class Counsel**

17 John C. Hueston
18 Steven Feldman
19 **HUESTON HENNIGAN LLP**
20 523 West 6th Street, Suite 400
21 Los Angeles, CA 90014
22 Email: *jhueston@hueston.com*

23 **Counsel for Defendant**

24 b. A written objection filed with the Court regarding or related to the
25 settlement shall contain all of the following information: (a) a reference, to the name of
26 number of the lawsuit, which is *In re Cobra Sexual Energy Sales Practices Litig.*, No. 2:13-
27 cv-13-05942-AB-Ex; (b) the objector's legal name, residential address, telephone number,
28 and email address (and the objector's lawyer's name, business address, telephone number
and email address if objecting through counsel); (c) a statement describing the objector's
membership in the settlement class, including a verification under oath as to the time and

1 place of the objector's purchase, and name of the retailer from whom he or she purchased
 2 Cobra; (d) a written statement of all grounds for the objection, accompanied by any legal
 3 support for such objection; (e) copies of any papers, briefs, or other documents upon which
 4 the objection is based; (f) a statement indicating whether the objector intends to appear at
 5 the final approval hearing, and if objecting through counsel, a statement providing the
 6 identity of all attorneys who will appear at the final approval hearing on the objector's
 7 behalf; (g) a list of any other objections the objector and the objector's counsel have made
 8 in the prior two years; and (h) the objector's signature.

9 c. Any member of the Settlement Class who files and serves a timely
 10 written objection in accordance with this order may also appear at the Fairness Hearing,
 11 either pro se or through an attorney hired at the objector's expense, to object to the fairness,
 12 reasonableness, or adequacy of the proposed settlement.

13 11. Members of the Settlement Class who elect not to participate in the settlement
 14 (i.e., "opt-out") must submit a written Request for Exclusion that is postmarked no later
 15 than January 23, 2021.

16 12. The deadlines for key events are as follows:

EVENT	DEADLINE
Motion for Final Approval of Settlement	January 15, 2021
Fee, Expense, and Incentive Award Application	January 15, 2021
Deadline to submit online claims or postmark mail claims	January 23, 2021
Deadline to opt-out or object	January 23, 2021
Response to Objections	February 12, 2021
Fairness Hearing	February 19, 2021

26 13. In the event the settlement does not become effective for any reason, the
 27 Parties shall be restored to their respective pre-settlement positions in the action.
 28

1 14. Upon final approval of the Settlement, all Class Members who do not timely
2 and validly exclude themselves from the Class shall be forever enjoined and barred from
3 asserting any of the matters, claims, or causes of action released pursuant to the Settlement
4 Agreement against any of the Released Parties, and any such Class Member shall be
5 deemed to have forever released any and all such matters, claims, and causes of action
6 against any of the Released Parties as provided for in the Agreement.

7 15. The Court shall retain continuing jurisdiction over the Parties and the
8 implementation and enforcement of the terms of the Settlement Agreement, and to assure
9 that all payments and other actions required of any of the Parties by the Settlement
10 Agreement are properly made or taken.

11 **IT IS SO ORDERED.**

12
13 Dated: November 09, 2020



14 _____
15 The Honorable André Birotte Jr.
16 United States District Court Judge