

1 BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
2 THOMAS J. O'REARDON II (247952)
501 West Broadway, Suite 1490
3 San Diego, CA 92101
Tel: 619/338-1100
4 619/338-1101 (fax)
tblood@bholaw.com
5 toreardon@bholaw.com

6 Class Counsel

7 [Additional Counsel Appear on Signature Page]

8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

10 GORDON NOBORU YAMAGATA and
11 STAMATIS F. PELARDIS, individually and
on behalf of all others similarly situated,

12 Plaintiffs,

13 v.

14 RECKITT BENCKISER LLC,

15 Defendant.

Case No. 3:17-cv-03529-VC

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM IN SUPPORT THEREOF**

CLASS ACTION

Hrg Date: October 28, 2021

Time: 2:00 p.m.

District Judge Vince Chhabria
Courtroom 4, 17th Floor

Complaint Filed: June 19, 2017

JURY TRIAL DEMANDED

BLOOD HURST & O' REARDON, LLP

19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on October 28, 2021, at 2:00 p.m., in Courtroom 4, 17th Floor, 450 Golden Gate Avenue, San Francisco, California, before the Honorable Vince Chhabria, and pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs, individually and on behalf of the proposed Settlement Class will and hereby do move for final approval of the class action Settlement Agreement.

Plaintiffs respectfully move for entry of an Order substantially similar to the Proposed Order Granting Final Approval of Class Action Settlement (ECF No. 221-2 at Ex. 2) which: (1) grants final approval of the class action Settlement and finds the Settlement to be fair, reasonable, and adequate; (2) confirms certification of the Settlement Class for Settlement purposes; (3) finds the Class Notice Program was the best practicable notice under the circumstances and satisfied all Constitutional and other requirements; (4) releases the Released Claims of Settlement Class in accordance with the terms of the Settlement Agreement; (5) overrules any objections to the Settlement; (6) enters judgment and dismisses the action with prejudice as provided for by the Settlement Agreement; (7) awards service awards to the Class Representatives in the amount of \$7,500 each to Class Representatives Gordon Noboru Yamagata, Stamatis F. Pelardis, and Maureen Carrigan, and \$500 each to Class Representatives Lori Coletti, Ann-Marie Maher, Carol Marshall, Deborah A. Rawls, Oneita Steele, and Maxine Tishman; and (8) awards attorneys' fees of \$12,500,000 plus reimbursement of expenses of \$658,050.95.

This motion is based upon this notice of motion, Plaintiffs' memorandum in support of this motion and its accompanying documents and declarations, the previously filed motions for preliminary approval and accompanying documents and declarations (ECF Nos. 203, 203-1 through 203-4, 221, and 221-1 through 221-4), the previously filed motion for award of attorneys' fees, reimbursement of expenses, and service awards for Class Representatives and accompanying documents and declarations (ECF Nos. 230 and 230-1 through 230-5), the complete file and record in this action and the related action filed in the United States District Court for the Northern District

///

BLOOD HURST & O' REARDON, LLP

1 of Illinois captioned *Carrigan v. Reckitt Benckiser, LLC*, No. 1:18-cv-07073, and such oral
2 argument as the Court may consider in deciding this motion.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: September 23, 2021

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)

By: s/ Timothy G. Blood
TIMOTHY G. BLOOD

BLOOD HURST & O' REARDON, LLP

BLOOD HURST & O' REARDON, LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. PROCEDURAL HISTORY	2
III. THE PRELIMINARY APPROVAL ORDER	3
IV. THE SETTLEMENT AGREEMENT.....	3
A. The Settlement Class Definition	3
B. Settlement Benefits	3
C. The Court-Approved Class Notice Program Was Successful.....	4
V. THE STANDARDS FOR FINAL APPROVAL	5
VI. THE SETTLEMENT MERITS FINAL APPROVAL.....	7
A. Certification of the Settlement Class.....	7
B. The Strengths of Plaintiffs’ Case and Inherent Risks of Continued Litigation.....	7
C. The Settlement Provides Significant Relief and Favorably Compares to Similar Approved Settlements	8
D. The Extent of Discovery and Stage of Proceedings	8
E. The Experience and Views of Counsel	9
F. The Reaction of Settlement Class Members Favors Final Approval	9
VII. CONCLUSION	10

BLOOD HURST & O' REARDON, LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

Chun-Hoon v. McKee Foods Corp.,
716 F. Supp. 2d 848 (N.D. Cal. 2010) 8

Churchill Village, LLC v. Gen. Elec.,
361 F.3d 566 (9th Cir. 2004)..... 9

Class Plaintiffs v. Seattle,
955 F.2d 1268 (9th Cir. 1992)..... 6

Franco v. E-3 Sys.,
No. 19-cv-01453-HSG, 2021 U.S. Dist. LEXIS 107399
(N.D. Cal. June 8, 2021)..... 7

Garner v. State Farm Mut. Auto. Ins. Co.,
No. CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477
(N.D. Cal. Apr. 22, 2010)..... 10

In re LinkedIn User Privacy Litig.,
309 F.R.D. 573 (N.D. Cal. 2015) 9

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000)..... 9

Nachshin v. AOL, LLC,
663 F.3d 1034 (9th Cir. 2011)..... 5

Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.,
221 F.R.D. 523 (C.D. Cal. 2004) 9

Officers for Justice v. Civil Serv. Comm’n,
688 F.2d 615 (9th Cir. 1982)..... 5, 6

In re Omnivision Techs.,
559 F. Supp. 2d 1036 (N.D. Cal. 2007) 9

Rodriguez v. West Publ’g Co.,
563 F.3d 948 (9th Cir. 2009)..... 6

Six (6) Mexican Workers v. Ariz. Citrus Growers,
904 F.2d 1301 (9th Cir. 1990)..... 5

BLOOD HURST & O' REARDON, LLP

1 *In re TD Ameritrade Account Holder Litig.*,
 No. C 07-2852 SBA, 2011 U.S. Dist. LEXIS 103222
 2 (N.D. Cal. Sept. 12, 2011)..... 6
 3 *Van Bronkhorst v. Safeco Corp.*,
 4 529 F.2d 943 (9th Cir. 1976)..... 6
 5 *Warner v. Toyota Motor Sales, U.S.A., Inc.*,
 No. CV 15-2171 FMO, 2017 U.S. Dist. LEXIS 77576
 6 (C.D. Cal. May 21, 2017)..... 10
 7 **Statutes**
 8 28 U.S.C. § 1332(d) 5
 9 28 U.S.C. § 1715 5
 10 **Secondary Sources**
 11 4 William B. Rubenstein, et al., *Newberg on Class Actions* § 13:42 (5th ed.) 6
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs submit this memorandum in support of the Motion for Final Approval of Class Action Settlement.¹ The Declaration of Timothy G. Blood (“Blood Final Approval Decl.”) in support of this motion is concurrently filed.

I. INTRODUCTION

After over four years of hard-fought litigation, the Parties reached a Settlement of this class action. Plaintiffs now seek final approval.

The Settlement consists of an all cash \$50 million non-reversionary Common Fund from which claimants will receive a cash payment of \$22 per purchase of Move Free Advanced. This cash payment represents the average retail price of Move Free Advanced. Claimants may receive reimbursement for up to three purchases without proof of purchase, which is slightly more than the 2.6 average number of bottles purchased by Class Members. Reimbursement for more than three purchases can be claimed with proof of purchase. Given purchase records available to numerous Class Members, many have submitted claims for more than three purchases.

On June 24, 2021, after briefing, hearing, and due consideration, the Court granted preliminary approval of the Settlement, finding the Settlement to be “fair, reasonable, and adequate,” particularly when considering “the current posture of this litigation and the risks and benefits to the Parties involved in both settlement of these claims and continuation of the litigation.” ECF No. 227 at 1. Nothing has changed that should affect the Court’s ruling on final approval. The robust Class Notice Program has been successful, Class Members will receive significant cash awards, and their reaction has been overwhelmingly positive.

The Class Notice Program was implemented on July 23, 2021 and has been completed in accordance with the Preliminary Approval Order. *See* concurrently filed Declaration of Cameron R. Azari re Settlement Administration (“Azari Second Supplemental Declaration”), ¶ 7. Approximately 4.6 million Class Members received direct notice. *See* ECF No. 230-5 (“Azari

¹ Throughout this memorandum, all capitalized terms have the same meaning as defined in the Stipulation of Settlement (ECF No. 221-2) (“Settlement Agreement” or “SA”), unless otherwise stated.

1 Supplemental Declaration”), ¶¶ 21, 24. A reminder email notice was also sent in September to those
 2 who had not yet filed a claim. *Id.*, ¶ 30. As directed, Class Notice was also provided through Internet
 3 and other publication methods. *Id.*, ¶¶ 31-44. Forty-six days remain until the Claim filing deadline,
 4 and approximately 292,000 Class Members have submitted Claims. *See* Blood Final Approval
 5 Decl., ¶ 5. Given the current rate of Claims, the individual cash awards are expected to slightly
 6 increase over \$22 on a pro rata basis to exhaust the fund. It is unlikely that Claims will be reduced.
 7 *Id.*

8 The reaction of the Settlement Class has been overwhelmingly positive. The opt-out and
 9 objection period will expire on October 14, 2021. Approximately 292,000 Class Members have
 10 submitted Claims, while only four objections and 79 opt-outs have been received. *See id.*, ¶¶ 4-5.

11 The Settlement provides an excellent benefit to the Class. Plaintiffs respectfully submit that
 12 the Settlement readily meets the “fair, reasonable, and adequate” standard and it should be finally
 13 approved.

14 **II. PROCEDURAL HISTORY**

15 The Motion for Preliminary Approval and Declaration of Timothy G. Blood in Support of
 16 Motion for Preliminary Approval described in detail the lengthy procedural history of this matter
 17 and the extensive settlement negotiations that culminated in the Settlement Agreement. *See* ECF
 18 Nos. 203, 221 and 221-1 (“Blood Preliminary Approval Decl.”). Rather than repeat those details
 19 here, they are incorporated by this reference and summarized below.

20 Plaintiffs allege Defendant falsely advertised its glucosamine joint health dietary supplement
 21 “Move Free Advanced” (“MFA”)² by claiming it provides joint health benefits that it does not
 22 provide. The litigation consisted of two separate class actions in two different districts, has lasted
 23 over four years, involved discovery motions, class certification in two courts, a petition for
 24 permissive appeal, summary judgment, 30 depositions, over 20 third party subpoenas, more than
 25 303,000 pages of documents (exceeding 116 GB), reports and declarations from 15 designated

26 _____
 27 ² “Move Free Advanced” or “MFA” refers to the glucosamine supplement products at issue
 28 marketed and distributed by Reckitt Benckiser called Move Free Advanced, Move Free Advanced
 Plus MSM, and Move Free Advanced Plus MSM & Vitamin D.

1 experts, and many days of mediations with three different neutrals at various stages throughout the
 2 Action. *See* ECF No. 221-1 (Blood Preliminary Approval Decl.), ¶¶ 4-36. The Settlement was
 3 reached only after this significant amount of litigation while the Parties were preparing for trial and
 4 just weeks away from the final pretrial conference.

5 **III. THE PRELIMINARY APPROVAL ORDER**

6 After briefing, a hearing, and due consideration, on June 24, 2021, the Court entered the
 7 Preliminary Approval Order. ECF No. 227. The Court analyzed the requirements of Fed. R. Civ. P.
 8 23(a) and 23(b)(3), found the requirements to be satisfied, and certified the Class for Settlement
 9 purposes. *Id.* at 2.

10 The Order also analyzed the Class Notice Program and found it “(a) meet[s] the requirements
 11 of due process and Fed. R. Civ. P. 23(c) and (e); (b) constitutes the best notice practicable under the
 12 circumstances to all persons entitled to notice; and (c) satisfies the Constitutional requirements
 13 regarding notice. In addition, the forms of Class Notice: (a) apprise Class Members of the terms of
 14 the proposed Settlement and their rights and deadlines under the Settlement; (b) are written in simple
 15 terminology; (c) are readily understandable by Class Members; and (d) comply with the Federal
 16 Judicial Center’s illustrative class action notices.” ECF No. 227 at 4.

17 **IV. THE SETTLEMENT AGREEMENT**

18 **A. The Settlement Class Definition**

19 The Settlement Class definition is provided in the Settlement Agreement (SA, § II.44) and
 20 in the Court’s Preliminary Approval Order (ECF No. 227 at 2).

21 **B. Settlement Benefits**

22 Under the Settlement, Defendant will create a \$50 million non-reversionary Common Fund
 23 to compensate Class Members and pay for Class Notice, any award of attorneys’ fees and expenses,
 24 and service awards to the Class Representatives. *See* SA, § IV.

25 Class Members will receive \$22 cash for each bottle of MFA they purchased. *Id.*, § IV.3.
 26 This amount is about the average retail price paid by Class Members. *See* ECF No. 221-1 (Blood
 27 Preliminary Approval Decl.), ¶ 43. Class Members may claim reimbursement for up to three
 28

1 purchases without proof of purchase, for a total of \$66. Three purchases are slightly more than the
 2 average number of bottles purchased made by Class Members, which is 2.6. *Id.*, ¶ 44. Those with
 3 proof of purchase may claim refunds for as many bottles as they have proofs of purchase. Because
 4 many purchases were made from club stores like Costco and through Amazon, many Class Members
 5 have proof of purchase. ECF No. 230-5 (Azari Supplemental Decl.), ¶ 51.

6 No portion of the Common Fund will revert to the Defendant. Any funds remaining after
 7 calculating valid claims will be distributed to Claimants by increasing the amount of their valid
 8 Claims up to three times the original claim amount. SA, § IV.4.b. However, in the event such
 9 increased amount would exceed three times the original claim amount, a second round of Class
 10 Notice and an additional claim-in opportunity will occur. SA, § IV.4.c. If money remains after this
 11 Supplemental Claim Deadline, the valid claims will again be calculated and increased pro rata until
 12 the fund is exhausted. *Id.* If there is not enough money to cover all valid claims, claims will be
 13 reduced pro rata. *Id.*, § IV.4.a. If any funds remain after distribution such as uncashed checks, they
 14 will be distributed to the Orthopaedic Research Society, the designated *cy pres* recipient. *Id.*,
 15 § IV.4.f.. Given the current claims rate, the cash awards may be increased slightly, which will
 16 exhaust the fund. *See* Blood Final Approval Decl., ¶ 5.

17 Pursuant to Rule 23(h), Plaintiffs' Motion for Attorneys' Fees, Costs, and Expenses and
 18 Service Awards and related documents were filed on September 14, 2021 (ECF Nos. 230, 230-1
 19 through 230-5) and posted to the settlement website on September 15, 2021. ECF No. 230-5 (Azari
 20 Supplemental Decl.), ¶ 30.

21 **C. The Court-Approved Class Notice Program Was Successful**

22 The Class Notice Program was excellent, readily meeting Federal Rule of Civil Procedure
 23 23(e)(2)(C)(ii). As a result of Plaintiffs' Counsel's efforts to obtain sales information from numerous
 24 third-party retailers, approximately 4.6 million Class Members received direct notice by email or
 25 mail. ECF No. 230-5 (Azari Supplemental Decl.), ¶¶ 21, 24; *see also* concurrently filed Declaration
 26 of Syed Moiz on behalf of Amazon.com, Inc., ¶ 5. Class Notice was also widely disseminated
 27 through print publications and a multi-pronged online advertising campaign involving targeted
 28

1 search engine and social media advertising. ECF No. 230-5 (Azari Supplemental Decl.), ¶¶ 24-45.
 2 Further, for those Class Members that had not filed a Claim, a Reminder Email Notice was sent
 3 from September 10, 2021 to September 12, 2021. *Id.*, ¶ 30. In total, over seven million mailings
 4 were sent directly to Class Members. *Id.*, ¶¶ 22, 30.

5 Although the claims period is still open and the Claims are still being processed and verified,
 6 the Claims Administrator expects all valid claims will receive at least full reimbursement plus a
 7 slight additional pro rata increase that will exhaust the Common Fund. Blood Final Approval Decl.,
 8 ¶ 5; *see also* SA, § IV.3.d. Should any money remain in the Common Fund as a result of uncashed
 9 checks or other similar issues, the remaining funds will be paid to the designated *cy pres* recipient,
 10 the Orthopaedic Research Society. The Orthopaedic Research Society is an appropriate *cy pres*
 11 recipient because it funds scientific research, education, and advocacy efforts related to the treatment
 12 of Osteoarthritis and its symptoms and is related to the nature of the lawsuit and the Class Members.
 13 *See* ECF No. 203-3 (Declaration of Brenda Frederick Re: Orthopaedic Research Society), ¶ 3; *see*
 14 *also* *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011); *Six (6) Mexican Workers v. Ariz. Citrus*
 15 *Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990).³

16 In compliance with CAFA's notice requirements, 28 U.S.C. § 1715, the Settlement
 17 Administrator mailed notice of the Settlement to government officials on March 12, 2021 and sent
 18 supplemental CAFA notice on May 20, 2021. ECF No. 230-5 (Azari Supplemental Decl.), ¶¶ 9-10
 19 and Attachments 1 and 2 thereto (Declarations of Stephanie J. Fioreck). No government officials
 20 have contacted Defendant or Class Counsel about the Settlement.

21 **V. THE STANDARDS FOR FINAL APPROVAL**

22 Pursuant to Rule 23(e), after directing notice to settlement class members in a reasonable
 23 manner and prior to granting final approval of a proposed settlement, the Court must conduct a
 24 fairness hearing and determine whether the settlement's terms, as a whole, are "fair, reasonable, and
 25 adequate." Fed. R. Civ. P. 23(e)(2); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625
 26 (9th Cir. 1982) (the court's role is to determine whether the settlement is not collusive and, "taken

27
 28 ³ All internal citations and quotations are omitted unless otherwise stated.

1 as a whole, is fair, reasonable and adequate to all concerned”); *Rodriguez v. West Publ’g Co.*, 563
 2 F.3d 948, 965 (9th Cir. 2009) (“In this case, the negotiated amount is fair and reasonable no matter
 3 how you slice it. There is no evidence of fraud, overreaching, or collusion.”); *see generally Manual*
 4 *for Complex Litigation (Fourth)* § 21.62 (2004) (“Rule 23(e)(1)(C) establishes that the settlement
 5 must be fair, reasonable, and adequate.”); 4 William B. Rubenstein, et al., *Newberg on Class Actions*
 6 § 13:42 (5th ed.). In making its determination, “[i]t is neither for the court to reach any ultimate
 7 conclusions regarding the merits of the dispute, nor to second guess the settlement terms.” *In re TD*
 8 *Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 U.S. Dist. LEXIS 103222, at *11-12
 9 (N.D. Cal. Sept. 12, 2011) (citing *Officers for Justice*, 688 F.2d at 625).

10 Judicial policy strongly favors the settlement of class actions. *Class Plaintiffs v. Seattle*, 955
 11 F.2d 1268, 1276 (9th Cir. 1992). “[V]oluntary conciliation and settlement are the preferred means
 12 of dispute resolution.” *Officers for Justice*, 688 F.2d at 625. Class action suits readily lend
 13 themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and
 14 the typical length and size of the litigation. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th
 15 Cir. 1976) (“[T]here is an overriding public interest in settling and quieting litigation. This is
 16 particularly true in class action suits”).

17 As part of the preliminary approval process, the Court has already considered the non-
 18 exhaustive factors recognized as guideposts to the “fair, adequate and reasonable” determination:
 19 (1) the strength of plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further
 20 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount achieved
 21 or recovered in resolution of the action; (5) the extent of discovery completed, and the stage of the
 22 proceedings; (6) the experience and views of counsel; and (7) the reaction of the class members to
 23 the proposed settlement. *See Class Plaintiffs*, 955 F.2d at 1291; *Officers for Justice*, 688 F.2d at 625.
 24 A settlement is entitled to a presumption of fairness when reached by experienced counsel. *See*
 25 *Rodriguez*, 563 F.3d at 965 (“We put a good deal of stock in the product of an arms-length, non-
 26 collusive, negotiated resolution”). Each of these factors supports approval of the Settlement.

BLOOD HURST & O' REARDON, LLP

1 **VI. THE SETTLEMENT MERITS FINAL APPROVAL**

2 The Motion for Preliminary Approval, the Declaration of Timothy G. Blood in Support of
3 Motion for Preliminary Approval, Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class
4 Representatives Service Awards, and accompanying declarations and documents describe in detail
5 why the above-described factors used to evaluate the fairness of a class action settlement weigh in
6 favor of approval and are incorporated by this reference. *See* ECF Nos. 203, 221, and 230.

7 The Court's Standing Order governing preliminary approval of class action settlements
8 requires that the Settlement meet the "rigorous" scrutiny required at final approval. *See* Standing
9 Order for Civil Cases Before Judge Vince Chhabria at 14. Rather than repeat what was previously
10 briefed in detail (ECF Nos. 203, 221, 230), each fairness factor is briefly addressed below. *See*
11 *Franco v. E-3 Sys.*, No. 19-cv-01453-HSG, 2021 U.S. Dist. LEXIS 107399, at *14 (N.D. Cal. June
12 8, 2021) (granting final approval and noting "no facts have changed that would affect the Court's
13 previous findings in its preliminary approval order"). Because Class Notice had not been fully
14 disseminated, the only approval factor not entirely addressed in previous filings is the reaction of
15 the Class Members to the proposed Settlement. That factor is now discussed in § VI.F below.

16 **A. Certification of the Settlement Class**

17 The Court's Preliminary Approval Order analyzed the requirements of Fed. R. Civ. P. 23(a)
18 and 23(b)(3), found the requirements to be satisfied, and certified the Settlement Class for settlement
19 purposes only. ECF No. 227 at 2. Nothing has changed that would affect the Court's ruling on class
20 certification.

21 **B. The Strengths of Plaintiffs' Case and Inherent Risks of Continued Litigation**

22 Plaintiffs discussed the real risks of continued litigation in connection with preliminary
23 approval and in the recently filed motion for attorneys' fees. *See* ECF No. 221 (Preliminary
24 Approval Mem.) at 15-18, and ECF No. 230 (Motion for Attorneys' Fees) at 6-10. The Parties
25 disagree about the merits of the case and there is significant uncertainty about the ultimate outcome
26 at trial. This uncertainty springs from risks that include substantial procedural hurdles that limit
27 determination of cases on the merits or for full relief in federal court. There are also risks with
28

1 persuading the trier of fact about scientific falsity in any case, let alone one that involves relatively
 2 inexpensive over-the-counter supplements and a battle between 15 well credentialed experts. A
 3 number of recent class trials involving false advertising of products advertised for health benefits
 4 having ended in favor of defendants. ECF No. 221 (Preliminary Approval Mem.) at 15-16. In
 5 comparison to these risks, the guaranteed recovery this Settlement provides weighs in favor of final
 6 approval.

7 **C. The Settlement Provides Significant Relief and Favorably Compares to Similar**
 8 **Approved Settlements**

9 The \$50 million all-cash Settlement is the largest in a dietary supplement false advertising
 10 action. *See* ECF No. 221-1 (Blood Preliminary Approval Decl.), ¶ 71. The substantial Common
 11 Fund allows for full refunds for the Settlement Class—awards that are commensurate with the
 12 amount an individual Class Member might receive after a fully successful trial. In comparison to
 13 this one, dietary supplement settlements are typically below \$10 million even when product sales
 14 are far greater than those here. ECF No. 221 (Preliminary Approval Mem.) at 12-14. This includes
 15 a previous Move Free Advanced false advertising case that included far more sales but settled for
 16 \$6.51 million. *Id.* at 12. The Settlement represents an outstanding result for the Settlement Class.

17 **D. The Extent of Discovery and Stage of Proceedings**

18 The extent of discovery completed and the stage of the litigation also supports this
 19 Settlement. As explained above and in previous briefing, the Settlement was reached shortly before
 20 the final pre-trial conference, and after significant discovery efforts including 30 depositions, over
 21 20 third party subpoenas, 303,000 pages of documents, class certification, summary judgment, and
 22 reports and declarations from 15 designated experts. *See* ECF No. 221-1 (Blood Preliminary
 23 Approval Decl.), ¶¶ 4-32. Moreover, the Settlement was negotiated over the course of numerous
 24 mediation sessions spanning the length of the litigation with several experienced mediators. *Id.*,
 25 ¶¶ 33-36. These combined facts demonstrate that Class Counsel “possess a sufficient understanding
 26 of the issues involved and the strengths and weaknesses of the case.” *See Chun-Hoon v. McKee*

BLOOD HURST & O' REARDON, LLP

1 *Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010); *see also In re LinkedIn User Privacy*
2 *Litig.*, 309 F.R.D. 573, 588 (N.D. Cal. 2015).

3 **E. The Experience and Views of Counsel**

4 Class Counsel have substantial experience serving as class counsel in consumer fraud class
5 actions and believe the Settlement as fair, reasonable, and adequate. ECF No. 221-1 (Blood
6 Preliminary Approval Decl.), ¶¶ 33, 81, and Ex. C thereto (Class Counsel’s Firm Resume); *In re*
7 *Omnivision Techs.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) (noting the experience of plaintiffs’
8 counsel and that “[t]he recommendations of plaintiffs’ counsel should be given a presumption of
9 reasonableness”).

10 **F. The Reaction of Settlement Class Members Favors Final Approval**

11 A favorable reaction by class members to the proposed settlement supports final approval.
12 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). “It is established that the
13 absence of a large number of objections to a proposed class action settlement raises a strong
14 presumption that the terms of a proposed class settlement action are favorable to the class members.”
15 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004).

16 The terms of the Settlement were provided to Class Members in the Court-approved Class
17 Notice, including in the forms of Class Notice directly emailed and mailed to approximately 4.6
18 million Class Members, and on the Settlement Website. *See* ECF No. 230-5 (Azari Supplemental
19 Decl.), ¶¶ 21, 24, 45-47. The last day to object or opt-out of the Settlement is October 14, 2021. To
20 date, out of the millions of Class Members receiving notice, just four have submitted objections and
21 only 79 have opted out. *See* Blood Final Approval Decl., ¶ 4.

22 This is a very positive reaction to the Settlement. *See, e.g., In re Mego*, 213 F.3d at 459
23 (where just a “handful” objected, “[t]he reaction of the class members to the proposed settlement
24 further supports the conclusion that ... the Settlement was fair, adequate and reasonable”); *Churchill*
25 *Village, LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming approval of a class action
26 settlement where forty-five objections were received out of 90,000 notices); *In re Omnivision*, 559
27 F. Supp. 2d at 1043 (“objections from only 3 out of 57,630 potential Class Members who received
28

BLOOD HURST & O' REARDON, LLP

1 the notice” shows the class favors the settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No.
2 CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477, at *40 (N.D. Cal. Apr. 22, 2010) (“only
3 101 out of the over 24,000 who received notice have elected to opt out of the Settlement Class ...
4 which is a further indication of the fairness of the Settlement.”); *Warner v. Toyota Motor Sales,*
5 *U.S.A., Inc.*, No. CV 15-2171 FMO (FFMx), 2017 U.S. Dist. LEXIS 77576, at *25 (C.D. Cal. May
6 21, 2017) (22 objections out of 2.6 million noticed class members found to be “extremely low”). By
7 any standard, the lack of objection of the Class Members here favors approval of the Settlement. *Id.*

8 The four objections, along with any others that may be submitted, will be addressed after the
9 close of the opt out and objection period in Plaintiffs’ reply brief.

10 **VII. CONCLUSION**

11 For all the foregoing reasons, Plaintiffs respectfully request that the Court confirm
12 certification of the Settlement Class, grant final approval of the Settlement, and approve Class
13 Counsel’s request for attorneys’ fees and expenses and service awards for the Class Representatives.

14 Respectfully submitted,

15 Dated: September 23, 2021

BLOOD HURST & O’REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O’REARDON II (247952)

17 By: s/ Timothy G. Blood
18 TIMOTHY G. BLOOD

19 501 West Broadway, Suite 1490
20 San Diego, CA 92101
21 Tel: 619/338-1100
22 619/338-1101 (fax)
tblood@bholaw.com
toreardon@bholaw.com

23 ALTAIR LAW
24 CRAIG M. PETERS (184018)
25 465 California Street, 5th Floor
26 San Francisco, CA 94104-3313
Tel: 415/988-9828
415/988-9815 (fax)
c.peters@altair.us

27 *Attorneys for Plaintiffs*

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 23, 2021.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

BLOOD HURST & O'REARDON, LLP
501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com

BLOOD HURST & O' REARDON, LLP