

In support, Plaintiffs submits the accompanying Memorandum of Law in Support of Unopposed Motion to Preliminarily Approve Class Action Settlement, the executed Settlement Agreement and its exhibits, and the Declarations of Stephen F. Taylor and Sergei Lemberg.

Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order in the form attached as Exhibit A and schedule a Final Approval Hearing (Preliminary Approval Order ¶ 10) no earlier than 150 days after entry of the proposed Preliminary Approval Order to provide time for the notice process, exclusions and objections.

Undersigned counsel has conferred with counsel for Nutricost regarding this motion. Nutricost does not oppose the relief sought in this motion and entry of the proposed Preliminary Approval Order.

Dated: December 29, 2025

Respectfully submitted,

By: /s/ Stephen Taylor
Sergei Lemberg
Stephen Taylor
Joshua Markovits
Lemberg Law, LLC
43 Danbury Road
Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on December 29, 2025, the foregoing was filed through the Court's CM/ECF system which sent notice of such filing to all counsel of record.

/s/ Stephen Taylor
Stephen Taylor

Exhibit A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Dalit Cohen, Anastasia Kurtz, Tina Scott, Paige
Vasseur, *on behalf of themselves and all others*
similarly situated,

Plaintiffs,

vs.

eSupplements, LLC d/b/a Nutricost,

Defendant.

Civil Action No.: 23-cv-06387(NJC)(AYS)

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT;
CERTIFYING SETTLEMENT CLASS; APPROVING NOTICE; AND SETTING
DATE FOR FINAL APPROVAL HEARING**

WHEREAS, Plaintiffs Dalit Cohen, Anastasia Kurtz and Tina Scott (“Plaintiffs”) and Defendant eSupplements, LLC d/b/a Nutricost (“Nutricost”) have reached a proposed Settlement of the Action, which is set forth in the Settlement Agreement filed with the Court; and

WHEREAS, Plaintiffs have applied to the Court for preliminary approval of the proposed Settlement, the terms and conditions of which are set forth in the Settlement Agreement; and

WHEREAS, the Court has fully considered the record of these proceedings, the Settlement Agreement and all exhibits thereto, the representations, arguments and recommendation of counsel for the Parties and the requirements of law; and

WHEREAS, it appears to the Court upon preliminary examination that the proposed Settlement is fair, reasonable and adequate, and that a hearing should be held after notice to the Settlement Class of the proposed Settlement to finally determine whether the proposed Settlement

is fair, reasonable and adequate and whether a Final Approval Order and Judgment should be entered in this Action.

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Preliminary Approval Order shall have the same meaning as defined in the Settlement Agreement, unless otherwise defined herein and as may otherwise be ordered.

2. The Court preliminarily approves the Settlement Agreement as fair, reasonable and adequate to the Settlement Class, as falling within the range of possible final approval, having no obvious deficiencies, and as meriting notice of the Settlement to persons in the Settlement Class for their consideration and a hearing on the approval of the Settlement.

3. The Settlement Agreement was entered into by experienced counsel and only after extensive arm's-length negotiations involving mediation before the Hon. Leonidas Papas, former United States Magistrate Judge, Southern District of California, and an experienced mediator.

4. For purposes of the Settlement only, the Court conditionally certifies the following Settlement Class:

All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period.

5. The Court preliminarily finds, for Settlement purposes only, that:
 - a. The above-described Settlement Class is so numerous that joinder of all members is impracticable;
 - b. There are questions of law or fact common to the Settlement Class;
 - c. The claims of the Settlement Class Representatives are typical of the claims of the Settlement Class;
 - d. The Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class;
 - e. The questions of fact or law common to the members of the Settlement Class predominate over the questions affecting only individual members; and
 - f. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy. The Court notes that, because the litigation is being settled, rather than litigated, it need not consider any manageability issues that would be presented by this litigation. *Amchem Prods. Inc. v. Windsor*, 117 S. Ct. 2231, 2240 (1997).

6. The Court finds that it has personal jurisdiction over all Class Members, including the absent Class Members.

7. Dalit Cohen, Anastasia Kurtz and Tina Scott shall be the Settlement Class Representatives of the Settlement Class. This Court preliminarily finds they will fairly and adequately represent and protect the interests of the absent Class Members.

8. The Court approves Lemberg Law, LLC as Class Counsel. This Court preliminarily finds that they are competent, capable of exercising all responsibilities as Class Counsel and will fairly and adequately represent and protect the interests of the absent Class Members.

9. The Court approves JND Legal Administration to serve as the Settlement Administrator in this Action.

10. A Final Approval Hearing shall be held before this Court on _____, 2026, at [TIME], at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722, to address: (a) whether, for purposes of the Settlement only, the Court should finally certify the Settlement Class and whether the Settlement Class Representatives and Class Counsel have adequately represented the Settlement Class; (b) whether the proposed Settlement should be finally approved as fair, reasonable and adequate and whether the Final Approval Order and Judgment should be entered; (c) whether the Released Claims of the Settlement Class in this Action should be dismissed on the merits and with prejudice; (d) whether Class Counsel's Attorney's Fees and Costs application and the Incentive Awards for Class Representatives should be approved; (e) to hear any objections by members of the Settlement Class; and such other matters as the Court may deem necessary or appropriate. Papers in support of final approval of the Settlement, the Incentive Award to Named Plaintiff, and Class Counsel's Attorney's Fees and Costs application shall be filed with the Court according to the schedule set forth in Paragraph 20 below. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all Settlement Class Members with respect to the Released Claims being settled. The Court may finally approve the Settlement at or after the Final Approval Hearing with any modifications agreed to by Nutricost and the Class Representatives and without further notice to the Settlement Class.

11. The Court approves, as to form and content, the use of a Claim Form, Email Notice, Long Form Notice, and Short Form/Postcard Notice substantially similar to the forms attached as

Exhibits A, B, C and E to the Settlement Agreement, respectively. Written Notice will be provided to members of the Settlement Class by first-class U.S. mail and/or e-mail as well as other methods deemed appropriate by the Settlement Administrator, and updated by the Settlement Administrator in the normal course of business. Within 30 days of the date of entry of this Preliminary Approval Order, all Notices shall be mailed and posted on the case-designated website. Prior to the Final Approval Hearing, the Parties will submit to the Court a declaration of compliance with these notice provisions.

12. The Notice, as directed in this Order, constitutes the best notice practicable under the circumstances of this case and is reasonably calculated to apprise the members of the Settlement Class of the pendency of this Action and of their right to object to the Settlement or exclude themselves from the Settlement Class. The Court further finds that the Notice program is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive such notice and that it meets the requirements of due process and of Federal Rule of Civil Procedure 23. As set forth in Paragraph 19 below, the notice mailing deadline is 30 days from the entry of this Preliminary Approval Order.

13. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must submit to the Settlement Administrator, pursuant to the instructions and requirements set forth in the Notice, a timely and valid written request for exclusion postmarked no later than 60 days after the notice mailing deadline.

14. Each Request for Exclusion, or “Opt-Out”, must be personally signed by the individual Class Member; any so-called “mass” or “class” opt-outs shall not be allowed. Further, to be valid and treated as a successful exclusion or “Opt-Out” the request must include: (a) the

Requester's full name, address and the name of the Action; (b) the Requester's personal and original signature, or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a valid power of attorney, to act on behalf of the Requester; and (c) state unequivocally that the Requester desires to be excluded from the Settlement Class, to be excluded from the Settlement, to not participate in the Settlement, and/or to waive all rights and benefits of the Settlement.

15. No person shall purport to exercise any exclusion rights for any other person, or purport to exclude any other Class Member as a group, aggregate or class involving more than one Class Member, or as an agent or representative. Any such purported exclusion shall be void and the Person that is the subject of the purported opt-out shall be treated as a member of the Settlement Class and be bound by the Settlement.

16. Any member of the Settlement Class who elects to be excluded shall have no rights under the Settlement Agreement, not be entitled to receive any of the benefits of the Settlement, shall not be entitled to object to the Settlement or appear at the Final Approval Hearing, and shall not be bound by the Settlement Agreement or any final judgment.

17. Any Settlement Class Member who does not submit a valid and timely request for exclusion may object to the proposed Settlement. Any such Settlement Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class Member's own expense. Any such Settlement Class Member must file a written Objection providing notice of intention to appear with the Clerk of the United States District Court for the Eastern District of New York and mail copies thereof to the Settlement Administrator delivered or postmarked no later than 60 days after the notice mailing deadline. Each Objection must (i) set forth the Settlement Class Member's full name,

address, and telephone number; (ii) contain the Settlement Class Member’s original signature or the original signature of counsel for the Settlement Class Member; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth the complete legal and factual bases for the objection, including citations to relevant authorities; (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and (vi) state whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

18. Any Class Member that fails to object in the manner set forth herein shall be foreclosed from making such objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of this Settlement upon Final Approval and by all proceedings, orders and judgments, including but not limited to the Release in the Action.

19. Pending final determination of whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) any Released Claim against any of the Released Parties in any action, arbitration or proceeding in any court, arbitration forum or tribunal.

20. Further settlement proceedings in this matter shall proceed according to the following schedule:

<u>EVENT</u>	<u>SCHEDULED DATE</u>
Notice mailing deadline	30 days after entry of Preliminary Approval Order
Attorney’s Fees and Costs application due by	30 days following the Notice mailing deadline
Incentive Award application due by	30 days following the Notice mailing deadline

Last day for Settlement Class Members to opt-out of Settlement	60 days following the Notice mailing deadline
Last day for Settlement Class Members to Object to the Settlement	60 days following the Notice mailing deadline
Last day to submit a Claim Form	60 days following the Notice mailing deadline
Briefs in support of Final Approval due by	14 days prior to the Final Approval Hearing
Settlement Administrator to file declaration regarding notice requirements of Class Action Fairness Act, 28 U.S.C. § 1715	14 days prior to the Final Approval Hearing
Final Approval Hearing	On the date set in paragraph 10, but no earlier than 120 days after the Notice mailing deadline

21. Service of all papers on counsel for the parties shall be made as follows: for Settlement Class Counsel to Stephen F. Taylor, Lemberg Law, LLC, 43 Danbury Road, Wilton, CT 06897; for Defendant to William P. Cole, Matthew R. Orr, Amin Wasserman Gurnani, LLP, 515 South Flower Street, 18th Floor, Los Angeles, CA, 90071. If the Settlement fails to become effective, is terminated, or is not consummated for any reason, the Settlement Agreement, including any amendments thereof, except as expressly provided in the Settlement Agreement, and this Order and all orders entered in connection therewith shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be deemed to have reverted to their respective litigation positions immediately prior to the execution of the Settlement Agreement.

22. The Court may, for good cause, extend the deadlines set forth in this Order without further individual notice to the Settlement Class.

23. All discovery and other litigation activity in this Action is hereby stayed pending final approval of the Settlement.

24. The Settlement shall not constitute an admission, concession, or indication of the validity of any claims or defenses in the Action, or of any wrongdoing, liability, or violation by Nutricost, which vigorously denies all of the claims and allegations raised in the Action.

IT IS SO ORDERED.

Dated: _____, 2026

By: _____
United States District Judge

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

RELEVANT BACKGROUND4

TERMS OF THE SETTLEMENT.....5

ARGUMENT.....9

 I. STANDARD.....9

 II. THE RULE 23(E)(2) FACTORS SUPPORT APPROVAL.....11

 A. Plaintiffs and Class Counsel Have Adequately Represented the Class11

 B. The Proposal was Negotiated at Arm’s Length.....12

 C. The Relief Provided for the Settlement Class is Adequate.....13

i. The relief is adequate in light of the costs, risks, and delay of trial and appeal.....15

ii. The effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.17

iii. The terms of any proposed award of attorney’s fees, including timing of payment. .19

iv. Any agreement required to be identified under Rule 23(e)(3).19

 D. The Proposal Treats Class Members Equitable Relative to Each Other.....19

 III. THE ADDITIONAL GRINNELL CONSIDERATIONS SUPPORT APPROVAL20

 A. Reaction of the Class.20

 B. Stage of Proceedings and the Amount of Discovery Completed.21

 C. Ability of Defendant to Withstand a Greater Judgment.21

 D. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and in Light of all the Attendant Risks of Litigation.....22

 IV. THE COURT WILL BE ABLE TO CERTIFY THE SETTLEMENT CLASS FOR PURPOSES OF SETTLEMENT24

 A. The Settlement Class Members Are Too Numerous to Be Joined.....24

 B. There Are Common Questions of Law and Fact.....24

 C. Plaintiffs Are Typical of the Settlement Class25

 D. Adequacy of Representation is Satisfied26

 E. The Requirements of Rule 23(B)(3) are Satisfied.....27

CONCLUSION.....29

TABLE OF AUTHORITIES

Cases

<i>Abarza v. Spirit Pharms. LLC</i> , 2025 WL 1519147 (E.D.N.Y. May 28, 2025)	19, 22
<i>Adkins v. Morgan Stanley</i> , 307 F.R.D. 119 (S.D.N.Y. 2015).....	11, 27
<i>Amchem Products., Inc. v. Windsor</i> , 521 U.S. 591 (1997)	27, 28
<i>Beckman v. KeyBank, N.A.</i> , 293 F.R.D. 467 (S.D.N.Y. 2013).....	21
<i>Berni v. Barilla S.p.A.</i> , 964 F.3d 141 (2d Cir. 2020).....	10
<i>Caridad v. Metro North Commuter R.R.</i> , 191 F.3d 283 (2d Cir. 1999).....	25
<i>Chavarria v. New York Airport Serv., LLC</i> , 875 F. Supp. 2d 164 (E.D.N.Y. 2012).....	22
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....	9, 10, 22
<i>Copley v. Bactolac Pharm., Inc.</i> , 2023 WL 2470683 (E.D.N.Y. Mar. 13, 2023)	11, 13, 14, 23
<i>Dickerson v. York Int’l Corp.</i> , 2017 WL 3601948 (M.D. Pa. Aug. 22, 2017)	23
<i>Ebin v. Kangadis Food Inc.</i> , 297 F.R.D. 561 (S.D.N.Y. 2014).....	25, 28
<i>Hall v. Accolade, Inc.</i> , 2019 WL 3996621 (E.D. Pa. Aug. 23, 2019).....	17
<i>Hyland v. Navient Corp.</i> , 48 F.4th 110 (2d Cir. 2022).....	18
<i>In re “Agent Orange” Product Liability Litigation</i> , 818 F.2d 145 (2d Cir. 1987).....	25
<i>In re 3D Sys. Sec. Litig.</i> , 2024 WL 50909 (E.D.N.Y. Jan. 4, 2024)	10
<i>In re Am. Int’l Grp., Inc. Sec. Litig.</i> , 293 F.R.D. 459 (S.D.N.Y. 2013).....	18
<i>In re Am. Int’l Grp., Inc. Sec. Litig.</i> , 689 F.3d 229 (2d Cir. 2012).....	10, 27, 28

In re Barrick Gold Sec. Litig.,
314 F.R.D. 91 (S.D.N.Y. 2016)..... 11, 12

In re Drexel Burnham Lambert Group, Inc.,
960 F.2d 285 (2d Cir. 1992).....26

In re Literary Works in Elec. Databases Copyright Litig.,
654 F.3d 242 (2d Cir. 2011).....8

In re MetLife Demutualization Litig.,
689 F. Supp. 2d 297 (E.D.N.Y. 2010).....10

In re Montero,
2021 WL 4173170 (E.D.N.Y. Aug. 13, 2021).....22

In re Namenda Direct Purchaser Antitrust Litig.,
331 F. Supp. 3d 152 (S.D.N.Y. 2018)25

In re Packaged Seafood Prods. Antitrust Litig.,
2023 WL 2483474 (S.D. Cal. Mar. 13, 2023).....7

In re Painewebber Ltd. P’ships Litig.,
171 F.R.D. 104 (S.D.N.Y.1997).....16

In re Parking Heaters, Antitrust Litig.,
2019 WL 8137325 (E.D.N.Y. Aug. 15, 2019).....23

In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,
330 F.R.D. 11 (E.D.N.Y. 2019)15

In re Philips/Magnavox Television Litig.,
2012 WL 1677244 (D.N.J. May 14, 2012).....28

In re U.S. Foodservice Inc. Pricing Litig.,
729 F.3d 108 (2d Cir. 2013).....28

In re Virtus Inv. Partners, Inc.,
2018 WL 6333657 (S.D.N.Y. Dec. 4, 2018)22

In re Visa Check/MasterMoney Antitrust Litig.,
280 F.3d 124 (2d Cir.2001).....27

In re Vitamin C Antitrust Litig.,
2012 WL 5289514 (E.D.N.Y., Oct. 23, 2012).....16

Jackson v. Ampac Paper, LLC,
2025 WL 2346065 (S.D.N.Y. Aug. 13, 2025).....21

Jefferson v. Gen. Motors, LLC,
344 F.R.D. 175 (W.D. Tenn. 2023).....12

Lee v. Springer Nature Am., Inc.,
2025 WL 3523134 (S.D.N.Y. Dec. 9, 2025)19

Lerma v. Schiff Nutrition Int’l, Inc.,
2015 WL 11216701 (S.D. Cal. Nov. 3, 2015) 13, 23

Marisol A. v. Giuliani,
126 F.3d 372 (2d Cir. 1997)..... 25, 26

Martens v. Smith Barney,
181 F.R.D. 243 (S.D.N.Y. 1998)..... 26

Martinez v. Morris I LLC,
2025 WL 2986624 (S.D.N.Y. Aug. 29, 2025) 12

Massiah v. MetroPlus Health Plan, Inc.,
2012 WL 5874655 (E.D.N.Y., Nov. 20, 2012)..... 16, 17, 20, 22

Masters v. Wilhelmina Model Agency, Inc.,
473 F.3d 423 (2d Cir. 2007)..... 18

McIntosh v. Katapult Holdings, Inc.,
2025 WL 3451994 (S.D.N.Y. Dec. 1, 2025) 7

McLaughlin v. IDT Energy,
2018 WL 3642627 (E.D.N.Y. July 30, 2018)..... 10

Moses v. New York Times Co.,
79 F.4th 235 (2d Cir. 2023)..... 9, 10

Polvay v. FCTI, Inc.,
713 F. Supp. 3d 1 (S.D.N.Y. 2024) 26

Powers v. Receivables Performance Mgmt., LLC,
2025 WL 2734706 (D. Mass. Sept. 25, 2025) 12

Sanchez v. Kia Motors Am., Inc.,
2024 WL 4730654 (C.D. Cal. Nov. 7, 2024)..... 12

Seijas v. Republic of Argentina,
606 F.3d 53 (2d Cir. 2010)..... 29

Story v. SEFCU,
2021 WL 736962 (N.D.N.Y. Feb. 25, 2021) 18, 22

Sullivan v. DB Invs., Inc.,
667 F.3d 273 (3d Cir. 2011)..... 28

Sykes v. Mel S. Harris & Assocs. LLC,
780 F.3d 70 (2d Cir. 2015)..... 27

TBK Partners, Ltd. v. Western Union Corp.,
675 F.2d 456 (2d Cir. 1982)..... 8

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011) 10, 25

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005)..... 8

Whyble v. Nature’s Bounty Co.,
2025 WL 968784 (S.D.N.Y. Mar. 31, 2025) 16

Willix v. Healthfirst, Inc.,
2011 WL 754862 (E.D.N.Y. Feb. 18, 2011).....16

Zivkovic v. Laura Christy LLC,
329 F.R.D. 61 (S.D.N.Y. 2018).....24

Rules

Fed. R. Civ. P. 23(a)(1)24

Fed. R. Civ. P. 23(a)(2)24

Fed. R. Civ. P. 23(a)(4)26

Fed. R. Civ. P. 23(b)(3)27, 29

Fed. R. Civ. P. 23(e)(1).....9

Fed. R. Civ. P. 23(e)(2)9

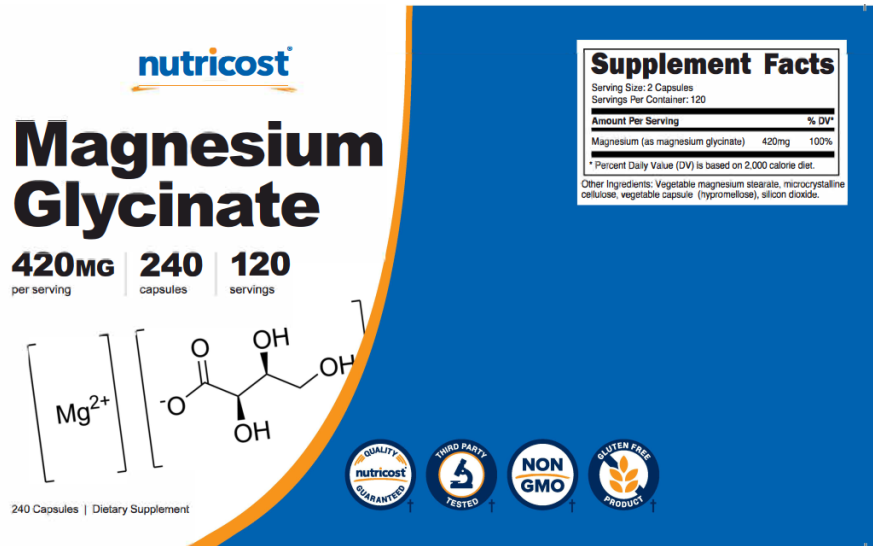
Plaintiffs Dalit Cohen (“Cohen”), Anastasia Kurtz (“Kurtz”), and Tina Scott (“Scott,” with Cohen and Kurtz, the “Plaintiffs”) respectfully submit this Memorandum in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of the Parties’ Class Action Settlement.¹

INTRODUCTION

Plaintiffs alleged, for themselves and those similarly situated, that Defendant sold magnesium glycinate supplements (the “Supplements”) marketed as containing 420 mg of magnesium “as Magnesium Glycinate” per serving when, in fact, they did not. Magnesium glycinate is a form of magnesium with purported calming properties and easier for a body to absorb. Thus, it is alleged, magnesium glycinate is more attractive to consumers searching for these benefits than alternate forms of magnesium. The Supplements had the following label:

¹ Defendant eSupplements, LLC d/b/a Nutricost (“Defendant” or “Nutricost”), does not oppose this motion or entry of the proposed Preliminary Approval Order. The executed Settlement Agreement is attached hereto as Exhibit A. Appended to the Settlement Agreement and incorporated therein are the following exhibits:

- Exhibit A – the Claim Form
- Exhibit B – the Email Notice
- Exhibit C – the Long Form Notice
- Exhibit D – the Preliminary Approval Order
- Exhibit E – the Postcard Notice
- Exhibit F – the Final Order and Judgment



(Ex A to the Declaration of Stephen Taylor (“Taylor Decl.”); transcript of the deposition of Anthon Gillespie, Nutricost Vice President of Online Marketplaces (“Gillespie Tr.”)² 9:17-20; 20:21-21:21; *see also* Doc. 1 (the “Complaint”) ¶¶ 12, 13; Doc. 43 (Second Amended Complaint or “SAC”) ¶¶ 15, 16). Plaintiffs alleged the label was false as it was not possible for the Supplements to contain 420mg of magnesium as magnesium glycinate per serving. (Complaint ¶¶ 18-25; SAC ¶¶ 21-28). Plaintiffs alleged that the advertisements were deceptive, knowingly so, and sought relief. Defendant denies that the products were deceptively labeled and denies that a product cannot be described as magnesium glycinate merely because it could be buffered with other forms of magnesium. (Doc. 46 (“Answer”) ¶¶ 22, 24). Nutricost sold approximately 244,280 Supplements throughout the United States and prices ranged from approximately \$19.95 to \$14.95 per unit with some people purchasing more than one bottle. Taylor Decl. ¶ 10.

Following Rule 12(b)(6) motion practice, discovery, Plaintiffs’ service of their motion for class certification and mediation with the Honorable Leonidas Papas (Ret.), former magistrate Judge for the Southern District of California and current mediator with Judicate West alternative

² Taylor Decl. Ex B.

dispute resolution services³, the Parties reached a settlement. Under the Settlement Agreement, Nutricost will pay \$1,835,000.00 into a non-reversionary common fund from which Settlement Class Members will recover. Settlement Agreement (“SA”) Art. II ¶ 32. The fund, after deductions for administrative costs and attorney’s fees, costs and incentive awards, will be distributed *pro rata* to valid claimants based on the number of Supplements purchased. Specifically, Settlement Class Members who submit a Valid Claim Form will be entitled to one Award Unit per Supplement purchased as reflected in the records of sales. SA, Art. III(1)(d)(1). A Settlement Class Member submitting a Valid Claim Form without a claim ID and pin⁴ will be entitled to one Award Unit. Each Award Unit will have an equal monetary value not to exceed \$19.95 and will be calculated by dividing the Net Settlement Fund (the gross fund minus fees, costs and incentive awards) by the total number of Supplements encompassed by the Valid Claims. SA, Art. III(1)(d)(3).

To the extent Settlement Checks remain uncashed, and it is administratively feasible to do so, a Second Distribution matching the same *pro rata* distribution of the first will be made to those members that cashed their first checks and only thereafter may residuals be distributed *cy pres*. SA, Art. III (1)(h). Under no circumstances will any portion of the fund return to Nutricost. SA, Art. II ¶ 32.

This Settlement enables those who claim they were injured by the allegedly deceptive labeling to receive substantial compensation. Settlement Class Members will receive these benefits now without the risks of non-recovery, non-certification, and risk and delays in any potential recovery that would be involved in continued litigation.

³ <https://www.judicatemwest.com/adr/leo-papas>.

⁴ The claim IDs and pins are used by the administrator to tie the records of sales of specific Supplements to claims.

Plaintiffs respectfully request that this Court grant this motion and enter the Parties' proposed Preliminary Approval Order (Mot. Ex. A), adopt the case deadlines set forth therein at ¶ 20, and schedule a final approval hearing no earlier than **150** days after entry of the Preliminary Approval Order (*id.* ¶ 10).

RELEVANT BACKGROUND

Cohen initiated this action on August 25, 2023, alleging for herself and a putative nationwide class and a putative New York sub-class, claims against Nutricost arising from the allegedly unlawful sale and marketing of the Supplements. (Doc. 1). On February 1, 2024, Nutricost moved to dismiss the Complaint and Plaintiff opposed. (Doc. 22, 23). On August 20, 2024, the Court denied the motion to dismiss as to Cohen's express warranty and New York General Business Law §§ 349 & 350 claims and granted the motion as to the claims for fraudulent concealment on behalf of the proposed nationwide class. (Doc. 32).

On October 14, 2024, pursuant to Fed. R. Civ. P. 15(a)(2) Cohen filed a first amended complaint that, among other things, added Kurtz, Scott and Paige Vasseur to the Action as named Plaintiffs. (Doc. 38). On October 28, 2024, also pursuant to 15(a)(2), Cohen, Kurtz, Scott and Vasseur filed a Second Amended Complaint. (Doc. 43).⁵ On October 29, 2024, the scheduling order entered. (Doc. Entry 10/29/2024).

Discovery was extensive and involved written discovery whereby Plaintiffs' counsel obtained and reviewed extensive internal documentation and communications concerning the Supplements, their formulation, sale and the practices of Nutricost. Taylor Decl. ¶ 8. Plaintiffs also responded to Nutricost's written discovery demands. *Id.* ¶ 7. Plaintiffs subpoenaed Nutricost's supplier of precursor ingredients for documents and testimony and subpoenaed online

⁵ Vasseur would subsequently dismiss her claims without prejudice. (Doc. 47).

retailers which were avenues for sales. *Id.* ¶ 7. Each of the named Plaintiffs were deposed as were six Nutricost employees and a representative from Nutricost’s supplier of the precursor ingredient. *Id.* Plaintiffs retained an expert, served an expert report regarding the contents of the Supplements and their value and, on August 29, 2025, moved for class certification. *Id.*; Doc. 52.

In the early stages of the case, the Parties engaged Judge Papas to serve as a mediator. Taylor Decl. ¶ 11. Discussions through Judge Papas in the summer of 2025 were ultimately successful and, on October 13, 2025, the Parties reached a settlement in principal. *Id.* The Parties then drafted and agreed to the Settlement Agreement and now present it to the Court for approval.

TERMS OF THE SETTLEMENT

The Settlement Class is “All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period.” SA, Art. II ¶ 30.

“Nutricost Magnesium Glycinate Supplements” means “the dietary supplements offered for sale by eSupplements contained within packaging substantially similar to the packaging presented at paragraphs 15 & 16 (pp. 6-7) of the Second Amended Complaint (Dkt 43), and includes the 240 capsule and 120 capsule variants.” SA, Art. II ¶ 36.

The “Class Period” is February 1, 2021, through the date notice is sent to the Class pursuant to the Notice Plan. SA, Art. II ¶ 4. Discovery showed Nutricost started selling the Supplements in February of 2021 and ceased sales with the allegedly problematic label in September of 2023 after Cohen sued. Taylor Decl. ¶ 9.

Sales records produced in discovery and negotiations show that Nutricost sold approximately 244,280 Supplements during the Class Period. *Id.* ¶ 10.

I. Common Fund Relief

Nutricost will create a Settlement Fund of one million eight hundred thirty-five thousand dollars (\$1,835,000.00) to pay Settlement Class Members who purchased Supplements, any attorney's fees and costs, any incentive awards and to pay administrative costs. SA, Art. II ¶ 32. This is a non-reversionary fund; no amount will return to Nutricost. *Id.*

Using an award unit formula, each Settlement Class Member may receive a pro-rata share of the Settlement Fund weighted by the number of Supplements they purchased. SA, Art. III(1)(d). Settlement Class Members who submit a Valid Claim Form will be entitled to one Award Unit per Supplement purchased as reflected in the records of sales. SA, Art. III(1)(d)(1). A Settlement Class Member submitting a Valid Claim form without a claim ID and pin will be entitled to one Award Unit. Each Award Unit will have an equal monetary value not to exceed \$19.95 and will be calculated by dividing the Net Settlement Fund (the gross fund minus, fees, costs and incentive awards) by the total number of Supplements encompassed by Valid Claims. SA, Art. III(1)(d)(3).

Members will be notified to submit claims via the notice (the Long Form, the Email, and/or the Postcard which will contain their unique claim id and pin number) through the claim portal on the settlement website (SA, Exhibits A, B, C, & E) or can download and mail in a claim form. SA, Art. II ¶ 37; Art. III(2)(h).

II. Attorney's Fee and Incentive Awards

Plaintiffs' counsel intends to move for an award of attorneys' fees and cost award of up to 1/3 of the Settlement Fund. *E.g.*, SA, Ex. B, pg. 1; Ex. C, No. 8; Ex. E, pg. 2. The Settlement Agreement is not contingent on any amount, Nutricost has not agreed to this set amount and is free to oppose the application. SA, Art. VI(1). The Court, and only the Court, shall determine the final amount of the Fee Award. *Id.*

Plaintiffs also intend to move for an Incentive Award of up to \$10,000 for each Class Representative. SA, Ex. B, pg 1; Ex. C, No. 7; Ex. E, pg. 2. As with fees and costs, Nutricost has not agreed to any amount in Incentive Awards, is free to oppose the applications, and only the Court shall determine the amount. *Id.* Art. VI(1).

Both the Fee and Incentive Award applications will be filed 30 days before the objection deadline and posted on the Settlement Website. *Id.* & Art. III(2)(h).

III. Notice Plan

The Parties have selected and agreed on JND Legal Administration (the “Settlement Administrator”) to administer the notice process and claims. JND is an experienced class action administrator. *See, e.g. In re Packaged Seafood Prods. Antitrust Litig.*, 2023 WL 2483474, at *1 (S.D. Cal. Mar. 13, 2023) (JND appointed as class notice administrator); *McIntosh v. Katapult Holdings, Inc.*, 2025 WL 3451994, at *1 (S.D.N.Y. Dec. 1, 2025) (in which JND serves as administrator in class settlement). The Preliminary Approval Order asks that the Court approve JND as the Settlement Administrator. (Mot. Ex. A. ¶ 9).

Within thirty days of entry of the Preliminary Approval Order, Notice will commence. SA, Art. III(2)(a). By that date, the Settlement Administrator will send the Short Form/Postcard Notice by first class mail to those Settlement Class Members whose names and addresses are available in Defendant’s Records. SA, Art. III(2)(c) & Exhibit E (the Postcard Notice).

Because Nutricost sold the Supplements primarily through online retailers, the Settlement Administrator will coordinate sending of the Email Notice to Settlement Class Members who purchased through online retailers. *Id.* Art. III(2)(e) & Exhibit B (the Email Notice). In discovery, Plaintiffs subpoenaed Walmart, Amazon and eBay – online retailers that sold the Supplements – for the purchaser information. Taylor Decl. ¶ 8.

The Settlement Administrator will establish the Settlement Website. SA, Art. III(2)(h). The website will contain the Long Form Notice, a downloadable Claim Form that may be printed and mailed to the Settlement Administrator, an electronic version of the Claim Form that may be completed and submitted electronically, the Settlement Agreement, the Preliminary Approval Order, and other relevant documents. *Id.* The Settlement Administrator will post Class Counsel’s application for a Fee Award and the motion seeking approval of the Incentive Award online. *Id.*

The Settlement Administrator will also set up a toll-free telephone number that will provide information about the Settlement, the Settlement Class Members’ rights, important deadlines, and instructions as to how Settlement Class Members may request and obtain hard-copy settlement documents. *Id.* Art. III(2)(i).

IV. The Release

“Plaintiffs in a class action may release claims that were or could have been pled in exchange for settlement relief.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 106 (2d Cir. 2005). Released claims must be “based on the identical factual predicate as that underlying the claims in the settled class action.” *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 247–48 (2d Cir. 2011) (*quoting TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 460 (2d Cir. 1982)). Settlement Class Members will release all claims limited to the identical factual predicate as the underlying claims: all claims “regarding the marketing, advertising, labeling, or sale of the Supplements to the Settlement Class Members.” SA, Art. V(1)(c).

ARGUMENT

I. STANDARD

Before a settlement of a class action can receive final approval, the Court must determine that it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). At the preliminary approval stage, the Court must make a determination that it “will be likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B)(i–ii). In evaluating the proposal, Rule 23(e)(2) requires the Court to consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *Moses v. New York Times Co.*, 79 F.4th 235, 242 (2d Cir. 2023).

The Rule 23(e)(2) factors do not displace the traditional factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974)⁶ which continue to provide guidance on whether a

⁶ The *Grinnell* factors are:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;

settlement is fair, reasonable and adequate within the Rule(e)(2) framework. *Moses*, 79 F.4th at 243 & 246 (Rule 23(e)(2) factors do not displace consideration of *Ginnell* factors though there is substantial overlap).

In addition to determining if a settlement is fair, reasonable and adequate, the court must determine if the certification requirements of Rule 23(a) and (b) are satisfied. *Berni v. Barilla S.p.A.*, 964 F.3d 141, 146 (2d Cir. 2020) (citing *In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 238 (2d Cir. 2012)). “Thus, a proposed settlement class must satisfy all the requirements for class certification under Rule 23, meaning that (1) all the prerequisites of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—must be met; and (2) at least one of the three requirements of Rule 23(b) must be met.” *McLaughlin v. IDT Energy*, 2018 WL 3642627, at *4 (E.D.N.Y. July 30, 2018) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011)).

The Court’s consideration of the proposal is also informed by the “strong judicial policy in favor of settlements, particularly in the class action context.” *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 330 (E.D.N.Y. 2010) (collecting cases); *In re 3D Sys. Sec. Litig.*, 2024 WL 50909, *5 (E.D.N.Y. Jan. 4, 2024). Here, the various considerations and requirements support approval or are met and the motion for preliminary approval should be granted.

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- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and
 - (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974).

II. THE RULE 23(E)(2) FACTORS SUPPORT APPROVAL

A. Plaintiffs and Class Counsel Have Adequately Represented the Class

In regard to the adequacy of class representatives, the Court considers whether their interests are antagonistic to those of the other potential class members. *See In re Barrick Gold Sec. Litig.*, 314 F.R.D. 91, 99 (S.D.N.Y. 2016). A class representative must be part of the class and have the same interest and injury as class members. *Adkins v. Morgan Stanley*, 307 F.R.D. 119, 140 (S.D.N.Y. 2015), *aff'd*, 656 F. App'x 555 (2d Cir. 2016) (internal citations and quotation marks omitted).

Here, Plaintiffs are members of the Settlement Class. They each purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variants during the Class Period while residing in the United States. Scott Tr.⁷ 14:11-15:11, 24:18-25:14 & Scott Tr. Exs. 1 & 2; Cohen Tr.⁸ 13:11-25, 45:5-46:19 & Cohen Tr. Ex. 2; Kurtz Tr.⁹ 36:13-37:6 & Kurtz Tr. Ex. 2. They each participated in discovery (*id.*) and according to Plaintiffs' theory of liability, like all Settlement Class Members, suffered the same injury by paying for allegedly deceptively marketed supplements. They are, therefore, adequate representatives of the Settlement Class. *Copley v. Bactolac Pharm., Inc.*, 2023 WL 2470683, at *7 (E.D.N.Y. Mar. 13, 2023) (finding adequacy, stating "the Class Representatives have the same interests and similar injuries to those of the other eligible class members. They are all purchasers of canisters of ADEG from the recalled lots which were misleadingly labeled, possibly resulting in gastrointestinal distress. The Class Representatives all actively participated in discovery and were deposed, as well.").

⁷ Taylor Decl. Ex C.

⁸ Taylor Decl. Ex D.

⁹ Taylor Decl. Ex E.

In regard to the adequacy of counsel, Courts consider “whether plaintiffs’ attorneys are qualified, experienced and able to conduct the litigation.” *Copley*, 2023 WL 2470683 at *7 (*citing In re Barrick Gold Sec. Litig.*, 314 F.R.D. 91, 99 (S.D.N.Y. 2016)). Plaintiffs’ counsel, Lemberg Law, has extensive experience in complex, difficult class action litigation. Taylor Decl. at ¶¶ 2-5; Lemberg Decl. at ¶¶ 2-6; *see, e.g., Sanchez v. Kia Motors Am., Inc.*, 2024 WL 4730654 (C.D. Cal. Nov. 7, 2024); *Powers v. Receivables Performance Mgmt., LLC*, 2025 WL 2734706 (D. Mass. Sept. 25, 2025); *Jefferson v. Gen. Motors, LLC*, 344 F.R.D. 175 (W.D. Tenn. 2023). In this proceeding, Plaintiffs’ counsel responded to the motion to dismiss, conducted extensive discovery into the sale and formulation of the Supplements, took six party (and one non-party) depositions and conducted expert discovery. They drafted and served a motion for class certification and negotiated a comprehensive class settlement agreement. Plaintiffs’ counsel are qualified, experienced and able to conduct the litigation.

Upon review of the facts, law and consideration of the risks in the case, it is the judgment of Plaintiffs and Plaintiffs’ counsel that the settlement proposal is fair, adequate and in the best interests of the Settlement Class. SA, I(L). Thus, the adequacy consideration supports approval.

B. The Proposal was Negotiated at Arm’s Length.

The settlement terms were agreed after several years of litigation, extensive discovery and with the aid of a neutral. Therefore, the agreement was negotiated at arm’s length and this consideration supports approval. *Martinez v. Morris I LLC*, 2025 WL 2986624, at *3 (S.D.N.Y. Aug. 29, 2025) (collecting cases), *report and recommendation adopted*, 2025 WL 2986448 (S.D.N.Y. Oct. 23, 2025) (“The Settlement Agreement is the result of negotiations between the parties over the course of three months, including a mediation, albeit one that did not immediately

lead to a settlement. The Settlement Agreement was therefore the result of arms'-length negotiations.”).

C. The Relief Provided for the Settlement Class is Adequate.

The relief, a \$1,835,000 common fund, is a very strong settlement in a case with modest claims for individual damages. Approximately 244,000 challenged Supplements were sold with a maximum price of \$19.95. Thus, if a claim was made for *each and every* Supplement, the per unit recovery would be approximately \$4.40 for each Supplement.¹⁰ It is not expected that *all* Supplements sold will have a corresponding claim but, even if they did, the relief would be very reasonable and compare favorably to other supplement settlements. *See Copley v. Bactolac Pharm., Inc.*, 2023 WL 2470683, at *5, *15 (E.D.N.Y. Mar. 13, 2023) (finding as fair a blended coupon/cash recovery where 5% of a nationwide class filed claims, approximately 3% of the class would receive \$15.85 in cash, and 2% would receive only a \$10 coupon, for claims arising from alleged mislabeling of a \$39.95 dietary supplement. Unlike here, the recovery was not weighted by the number of supplements purchased)¹¹; *Lerma v. Schiff Nutrition Int'l, Inc.*, 2015 WL

¹⁰ Net Settlement Fund (\$1,074,333)/244,000. The Net Settlement Fund is calculated assuming the Court awarded the most Class Counsel will ask for in Fee and Incentive Award requests: \$1,835,000.00 gross fund - fees and costs (\$611,666.66) - incentive awards (\$30,000) – approximate administrative costs (\$119,000)).

¹¹ In *Copley*, which is addressed more *supra*, the Court found that recovery of \$15.85 to 3% of the class for purchases of a \$39.95 supplement was itself fair but found it unreasonable that counsel would receive drastically more in fees than the total class payment. *Copley*, 2023 WL 2470683 at *14 (“Consequently, each of those class members is projected to receive \$15.85. The result is sufficient to satisfy the Court of the Settlement’s overall fairness, but it still means that class counsel would receive approximately ten times more than the class.”). The Court held that if the amount made available for claimant payments were increased by \$145,333.20, providing a full purchase price per claimant, and Counsel’s fee request were reduced by the same amount, the settlement would be more palatable. The Parties made that change and the Court subsequently approved the settlement. *See* 2:18-cv-00575, Doc. 269-1, pg. 5; *Copley v. Bactolac Pharm., Inc.*, 2023 WL 4490286, at *4 (E.D.N.Y. May 23, 2023) (approving amended settlement).

11216701, at *5 (S.D. Cal. Nov. 3, 2015) (granting final approval to deceptive labeling class action settlement providing for reimbursement of \$3 without proof of purchase or \$10 with proof of purchase and capping recovery at 4 and 5 products respectively. Though not stated in the opinion, the sales price of the product was \$30. Also noting “restitutionary disgorgement, which is the price paid minus the value actually received—not nonrestitutionary disgorgement of profits—is the proper measure of damages”); *Casey v. Doctor’s Best, Inc.*, 2022 WL 1726080, at *2 (C.D. Cal. Feb. 28, 2022) (granting preliminary approval to deceptive labeling settlement providing \$5 to claimants, per product and without proof of purchase, to a maximum of \$25.00 per household, and a refund of “60%” of the purchase price with proof of purchase, up to a maximum of twelve products, with products ranging in price from \$10-\$65.99).

The Court will note, and Plaintiffs are highlighting it, the values listed in the above cases were to actual claimants only. For instance, in *Copley* \$15.85 to 3% of the class occurred because only 3% of the class submitted claims for cash. The *Copley* Court had also preliminarily approved the Settlement with an initial estimate that *claiming* class members would recover only \$5, no matter how many of the \$39.95 cannisters they purchased. *Copley*, 2023 WL 2470683 at *5 (“The award to each claimant was initially estimated to be \$5”). Here, by contrast, there is one big non-reversionary cash fund and if 100% of the Supplements are claimed, the recovery per each Supplement purchased would be \$4.40. Thus, under a conservative view of the value of this Settlement to the Settlement Class (net fund divided by all supplements sold), its worth is substantially greater than comparable supplement cases and the relief is adequate.

And, as implied in the foregoing, it is not expected that all the Supplements will be claimed. The expectation is that a percentage of the Settlement Class will submit Valid Claims and individual member recovery will be much greater than \$4.40 per product and, instead, much closer

or matching the actual purchase price. Thus, the actual recovery here will be greater than in comparable cases and, to get members to submit claims, the Parties have agreed to a robust notice program including reminder notices to prompt members who do not submit claims to do so. SA, Art. III(2)(e)&(f).

i. The relief is adequate in light of the costs, risks, and delay of trial and appeal.

Against the foregoing substantial relief, Plaintiffs could lose and the Settlement Class Members would get nothing. Defendant has vigorously denied liability, denied any class can be certified for litigation purposes, denied that the labeling was misleading and denied that, even if the labeling were misleading, Plaintiffs or putative class members were entitled to the purchase price of the Supplements rather than a possible price premium or the difference in value, if any, between a differently-labeled magnesium glycinate supplement and what was actually purchased. Though the Court addressed some of these issues when ruling on the motion to dismiss, resolving them through judgment and appeal would be time-consuming, expensive and exceedingly risky.

In assessing this Rule 23(e)(2)(C)(i) factor, Courts consider the *Grinnell* factors of “(i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial.” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 36 (E.D.N.Y. 2019). All support approval.

The complexity, expense and likely duration of the litigation: This litigation has been filed since 2023 and involves complex legal and factual issues, with an added layer of complexity given that this case is a class action as opposed to ordinary litigation. The briefing on Defendant’s motion to dismiss and the extensive discovery reflects this reality. Class certification would represent only one milestone on the road to final resolution of the case on the merits. For example, if the Court granted, in whole or in part, a motion for class certification, an appeal under Rule 23(f)

would inevitably have followed, requiring the Parties to incur additional time and expense re-litigating class certification issues. Additionally, if the Second Circuit reversed, in whole or in part, the Court's determinations on the Rule 12(b)(6) motion or class certification an additional round of discovery or certification briefing may have taken place. Further, if the litigation continues, additional time will be implicated in preparing and opposing any motions for summary judgment. Simply put, "[l]itigation through trial would be complex, expensive, and long" (*Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *3 (E.D.N.Y., Nov. 20, 2012)) and the *Grinnell* factor supports approval.

Litigation Risks

The fourth, fifth, and sixth *Grinnell* factors, *i.e.*, the risks of establishing liability, damages and maintaining the class action through trial, "all relate to continued litigation risks." *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *5 (E.D.N.Y., Oct. 23, 2012). "Litigation inherently involves risks." *Willix v. Healthfirst, Inc.*, 2011 WL 754862, at *4 (E.D.N.Y. Feb. 18, 2011) (*quoting In re Painwebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y.1997)). "One purpose of a settlement is to avoid the uncertainty of a trial on the merits." *Id.* (quotation omitted).

To be sure, this case involved significant risks related to establishing, on a state *or* nationwide basis, that Nutricost engaged in unfair, deceptive, or unlawful conduct in marketing the Supplements. *See, e.g., Whyble v. Nature's Bounty Co.*, 2025 WL 968784, at *3 (S.D.N.Y. Mar. 31, 2025) (dismissing claims for breach of express warranty, unjust enrichment, negligent misrepresentation, fraud, and violations of state consumer protection acts arising from allegedly deceptively labeled supplements). While Plaintiffs believe the evidence would lead to a favorable decision for Plaintiffs and class members, the reality remains that the trier of fact could nevertheless disagree with Plaintiffs' analyses regarding what the Supplement said, what was inside, whether there was a material discrepancy between the two and Nutricost's knowledge.

Moreover, even if class(es) were certified, they could later be decertified. Thus, “[t]he risk of obtaining and maintaining class status throughout trial also weighs in favor of final approval,” particularly where “[a] motion to certify and/or decertify the class would likely require more extensive discovery and briefing, possibly followed by an appeal, which would require additional rounds of briefing.” *Massiah*, 2012 WL 5874655, at *5. And the risks of establishing damages existed where Plaintiffs maintained they were damaged in the amount of the full purchase price of the Supplements while Defendant not only disputes liability but maintained that even if liability were established a price premium would be the correct measure of damages and Defendant disputes there was any price premium. *See, e.g.*, Doc. 22-1 pg. 12 (“she fails to allege factual content plausibly establishing that she paid a price premium.”). Accordingly, consideration of these *Grinnell* factors and Rule 23(e)(2)(C)(i) support approval.

ii. The effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.

Under this factor, the Court “scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims” and “should be alert to whether the claims process is unduly demanding.” *Hall v. Accolade, Inc.*, 2019 WL 3996621, at *5 (E.D. Pa. Aug. 23, 2019) (*quoting* Fed. R. Civ. P. 23 advisory comm.’s notes to 2018 amendment). This factor is likely to be satisfied because the Settlement Agreement provides for individualized notice to all identifiable Class Members and the Notices (SA, Ex. B, C, E) clearly describe the process for Class Members to object and/or claim or to exclude themselves. *See Hall*, 2019 WL 3996621, at *5. Settlement Class Members will be sent a copy of the Notice via direct mail or email with all relevant documents available on the website. SA, Art. III(2)(h). The claim form (SA, Ex. A) is straightforward and can be completed online or mailed in (SA, Art. III(1)(e)). Further, by using a claim id and pin, which are tied to actual records of sales of the Supplements, the plan is designed

to facilitate the filing of legitimate claims while not presenting undue demands on Settlement Class Members.

In addition, the Settlement Agreement provides for reminder notices to prompt members who have not submitted claims to do so prior to the claim deadline. *Id.* Art. III(2)(f). When checks are ultimately issued, and if Settlement Checks remain uncashed after their Void Date, the administrator will distribute uncashed funds *pro rata* to members that cashed their first check. SA, Art. III(1)(h). After that point, and if amounts remain in the Settlement Fund, the funds will go to a *cy pres* recipient approved by the Court. *Id.*

The Parties do not select a *cy pres* now as the amounts to go *cy pres* cannot be reasonably estimated until after the claims process. At that point the Parties may nominate one, or more, *cy pres* recipients. Or, depending on the claims figures and amount expected to be expended, the Parties may seek to do another claims process. Courts reserve approval of a *cy pres* until, or after, final approval. *See, e.g., Story v. SEFCU*, 2021 WL 736962, at *14 (N.D.N.Y. Feb. 25, 2021); *In re Am. Int'l Grp., Inc. Sec. Litig.*, 293 F.R.D. 459, 463 (S.D.N.Y. 2013) (“‘Of course,’ as the Court in *Masters v. Wilhelmina Model Agency, Inc.* noted, ‘it [is] not certain at the time [of] the Agreement ... whether there [will] be [e]xcess [f]unds’ after all distributions are made pursuant to the Plan of Allocation.”) (*quoting Masters v. Wilhelmina Model Agency, Inc.* 473 F.3d 423, 435 (2d Cir. 2007)). Here, by requiring that residual funds go *cy pres* as approved by the Court, the Settlement Agreement requires that those funds would only go to a designee that has a direct and substantial nexus to the interests of the class. *Hyland v. Navient Corp.*, 48 F.4th 110, 121 (2d Cir. 2022). This method of distribution is fair, reasonable and adequate and likely to gain final approval.

iii. The terms of any proposed award of attorney's fees, including timing of payment.

The Settlement Agreement provides that the Settlement Fund will be used to pay any attorneys fees and costs. SA, Art. I ¶ 32. The Settlement Agreement provides that Class Counsel may make written application to the Court for a Fee Award and the Court will determine the amount of fees. *Id.* Art. VI(1)(a). The application will be made 30 days before the objection deadline and posted on the settlement website. *Id.* & Art. III(2)(h). The Settlement Agreement provides no set amount in fees, is not contingent on any set amount, nor has Nutricost agreed to not to oppose any application. Thus, the agreement contains no clear sailing provision that may draw heightened scrutiny. *See, e.g., Lee v. Springer Nature Am., Inc.*, 2025 WL 3523134, at *6 (S.D.N.Y. Dec. 9, 2025) (collecting cases).

Counsel will petition the Court for up to 1/3 of the Settlement Fund in fees and costs which is explained in the notice. A third of a common fund in fees alone is within the range of reasonableness awarded by courts. *See, e.g. Abarza v. Spirit Pharms. LLC*, 2025 WL 1519147, at *10 (E.D.N.Y. May 28, 2025) (collecting cases). Thus, the arrangements on fees are fair, reasonable and adequate and the Rule 23(e)(2)(C)(iii) consideration supports approval.

iv. Any agreement required to be identified under Rule 23(e)(3).

There are no other agreements other than the Settlement Agreement therefore the Rule 23(e)(2)(C)(iv) is neutral or supports approval.

D. The Proposal Treats Class Members Equitably Relative to Each Other.

This factor is satisfied because, as discussed above, Settlement Class Member awards are weighted by the number of Supplements purchased. Thus, while some members may recover more than others, that is a function of the difference in their claimed injuries (e.g. they bought one Supplement vs two or more) and is equitable. Only Settlement Class Members who submit Valid

Claims without a claim id and pin will receive one Award Unit. SA, Art. III(1)(d)(2). However, the notice with unique claim ids and pins will go to all noticed members as the purchase records have emails or addresses and the claim id and pin requirement is used to prevent fraud in the claims process. Thus, while some members might opt to submit Valid Claims without a claim id and pin, this is a fair, just and rational accommodation to the administration process and not inequitable.

Similar to fees and costs, the Settlement Agreement provides that the three Settlement Class Representatives may apply to the Court for incentive awards to be paid out of the Settlement Fund. SA, Art. I ¶ 32; Art. VI(1)(b). The agreement is not contingent on any particular amount, Nutricost has not agreed to not oppose the applications and the notices advise the applications will be up to \$10,000 for each representative. The upper bound, \$10,000, is within the range of approved awards and does not render distribution of the fund inequitable. *See Massiah*, 2012 WL 5874655 at *8 (collecting cases in the Second Circuit approving service awards ranging from \$5,000 to \$30,000). Therefore, consideration of all Rule 23(E)(2) factors shows that the proposal is likely to be approved.

III. THE ADDITIONAL GRINNELL CONSIDERATIONS SUPPORT APPROVAL

The *Grinnell* factors not included in the above analysis (the reaction of the class to the settlement, the stage of the proceedings and the amount of discovery completed, the ability of the defendants to withstand a greater judgment, the range of reasonableness of the settlement fund in light of the best possible recovery and in light of all the attendant risks of litigation) either support approval or are neutral.

A. Reaction of the Class.

This factor is evaluated at final approval after notice. Class members will be given notice of the settlement, its terms, their options to object and/or claim or, alternatively, to opt out.

Petitions for fee, expense and incentive awards will be posted online for members to review. At this stage the factor is neutral though the process shows it can be addressed at final approval.

B. Stage of Proceedings and the Amount of Discovery Completed.

The relevant question is “whether counsel had an adequate appreciation of the merits of the case before negotiating.” *Jackson v. Ampac Paper, LLC*, 2025 WL 2346065, at *8 (S.D.N.Y. Aug. 13, 2025) (quoting *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 475 (S.D.N.Y. 2013)). “The Court must be assured that counsel for Plaintiffs have weighed their position based on a full consideration of the possibilities facing them.” *Id.* (internal citation and bracketing omitted).

The case settled after extensive discovery. This included eleven depositions, the production and review and internal documents including emails by and between Nutricost or with suppliers or other third-parties, sales records, production batch records, Supplement formulation records and Plaintiffs’ expert analysis. Plaintiffs’ counsel had ample evidence to reach an appreciation of the merits of the claims before settling. Their appreciation was informed by their extensive class action litigation experience where counsel has litigated class cases for years. *See, e.g., Johnson v. Comodo Group, Inc.*, 16-4469 (D.N.J) (class case filed in 2016, certified in 2020 (2020 WL 52898), with settlement preliminary approved in 2025 (Doc. 350); *Sanchez v. Kia Motors America, Inc.*, 20-cv-01604 (filed in 2020, certified in 2024 (2024 WL 4730654), and currently in final pretrial proceedings). Thus, Class Counsel obtained the discovery, and had the experience, necessary to make informed negotiation decisions and this factor supports approval.

C. Ability of Defendant to Withstand a Greater Judgment.

“This factor stands for the proposition that if a defendant could not withstand a greater judgment than what is provided for in the settlement, then the settlement is more likely to be reasonable, fair, and adequate.” *In re Montero*, 2021 WL 4173170 at *14, (E.D.N.Y. Aug. 13,

2021). The factor is intended to bolster a settlement where a defendant, usually distressed, cannot pay more. *See, e.g., Abarza*, 2025 WL 1519147, at *12 (settling defendant in the midst of dissolving). However, “the ability of defendants to withstand greater judgment does not alone suggest the settlement is unfair or unreasonable.” *In re Virtus Inv. Partners, Inc.*, 2018 WL 6333657, at *3 (S.D.N.Y. Dec. 4, 2018). Here, while likely possible that Nutricost can withstand a judgment greater than \$1.835MM, its wherewithal to pay did not drive the settlement negotiations from Class Counsel’s perspective nor is its financial situation being offered as a reason to approve the Settlement Agreement. Thus, this factor is neutral on approval of the settlement.

D. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and in Light of all the Attendant Risks of Litigation

In analyzing the range of reasonableness, “a reviewing court “consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.” *Story*, 2021 WL 736962, at *9 (*quoting Grinnell*, 495 F.2d at 462). “The determination of whether a settlement amount is reasonable ‘does not involve the use of a mathematical equation yielding a particularized sum.’ ” *Id.* (*quoting Massiah*, 2012 WL 5874655, at *5). “Rather, there is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Id.* (internal quotation marks and citation omitted). “Moreover, the settlement amount must be judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs case.” *Id.* (internal quotation marks and citation omitted); *Chavarría v. New York Airport Serv., LLC*, 875 F. Supp. 2d 164, 175 (E.D.N.Y. 2012) (“As the Second Circuit has stated, ‘the fact that a proposed

settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.’ *Grinnell* 495 F.2d at 455. ‘In fact, there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.’ *Id.* at 455 n. 2.”).

The reasonable best possible recovery for the Settlement Class is a full refund of every purchase price for Supplements without any reduction in damages reflecting a price-premium (in which members recover the difference in value between Supplement and a conforming product) or amount of the products used. *Copley*, 2023 WL 2470683 at *8 (“the best possible recovery would have been a one-hundred percent refund for all class members”). And while it is possible a jury could award a Settlement Class Member punitive damages or treble damages, under a fraud theory or under state consumer protection statutes, those amounts are more speculative and carry higher risks in establishing the requisite knowledge by Nutricost. *E.g., Dickerson v. York Int’l Corp.*, 2017 WL 3601948, at *8 (M.D. Pa. Aug. 22, 2017).

A full refund for all Settlement Class Members would equal approximately \$4,392,000 of which the gross fund is 41% and the net fund is 24%. By either measure (gross or net), the Settlement is well within the bounds of reasonable where courts approve settlements with lower comparative values. *See, e.g., Copley*, 2023 WL 2470683; *Lerma*, 2015 WL 11216701; *Casey*, 2022 WL 1726080; *In re Parking Heaters, Antitrust Litig.*, 2019 WL 8137325, at *5 (E.D.N.Y. Aug. 15, 2019) (approving gross fund representing 7-10% of dollar value of sales). And as discussed above under the adequacy of the settlement, the expectation here is that claiming Settlement Class Members will recover amounts close to if not at purchase price damages.

The Settlement provides members significant cash relief now without the risks and uncertainties of litigation. Under the *Grinnell* considerations and applying Rule 23(e)(2) factors, this Court is likely to determine the Settlement Agreement is “fair, reasonable and adequate” such that preliminary approval should be granted.

IV. THE COURT WILL BE ABLE TO CERTIFY THE SETTLEMENT CLASS FOR PURPOSES OF SETTLEMENT

Plaintiffs seek to certify a Settlement Class of:

“All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period.”

SA, Art. II ¶ 30. The Rule 23(a) and (b) requirements are met and the Court will likely be able to grant final certification to the Settlement Class.

A. The Settlement Class Members Are Too Numerous to Be Joined

For certification of a class to be appropriate, its members must be so numerous that their joinder would be “impracticable.” Fed. R. Civ. P. 23(a)(1). Precise quantification of a class size is not required and “numerosity is presumed when the putative class has at least forty members.” *Maroney v. Woodstream Corp.*, 2025 WL 945874, at *4 (S.D.N.Y. Mar. 28, 2025) (quoting *Zivkovic v. Laura Christy LLC*, 329 F.R.D. 61, 68-69 (S.D.N.Y. 2018); *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993)). Nutricost sold approximately 244,280 Supplements throughout the United States and the sales records reflect sales to thousands of persons. Taylor Decl. ¶ 10. Thus, numerosity is established.

B. There Are Common Questions of Law and Fact

Pursuant to Rule 23(a)(2), a court must determine whether “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). To satisfy commonality, class members’ claims “must depend upon a common contention” that “must be of such a nature that it is capable

of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011). However, common claims need not be identical. *Caridad v. Metro North Commuter R.R.*, 191 F.3d 283, 293 (2d Cir. 1999) *overruled on other grounds*; *see also In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 145, 166-67 (2d Cir. 1987). That the class members’ individual circumstances differ is of no moment, provided that “their injuries derive from a unitary course of conduct by a single system.” *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997).

Here, the common questions include: (1) whether the “Magnesium Glycinate” Supplements are in fact “Magnesium Glycinate”, (2) whether the Supplements contained 420mg of magnesium as magnesium glycinate, (3) whether the “Magnesium Glycinate” Supplement label is likely to deceive a reasonable consumer, (4) whether the Supplements representations were material, and (5) whether Nutricost knew the Supplements were mislabeled, if indeed they were. These questions satisfy the commonality requirement. *See Maroney*, 2025 WL 945874 at *13 (uniform misrepresentation establish commonality); *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 570 (S.D.N.Y. 2014) (“The common questions in this case are whether the pomace packed into Capatriti tins was ‘100% Pure Olive Oil,’ whether Gourmet Factory negligently misrepresented that Capatriti was ‘100% Pure Olive Oil,’ and whether Gourmet Factory defrauded purchasers by labeling Capatriti as ‘100% Pure Olive Oil.’”).

C. Plaintiffs Are Typical of the Settlement Class

“Typicality ‘is satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.’” *In re Namenda Direct Purchaser Antitrust Litig.*, 331 F. Supp. 3d 152, 203 (S.D.N.Y. 2018) (*quoting Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997)). “If it is ‘alleged that the

same unlawful conduct was directed at or affected both the named plaintiff and class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying the individual claims.” *Polvay v. FCTI, Inc.*, 713 F. Supp. 3d 1, 11 (S.D.N.Y. 2024) (quoting *Robidoux*, 987 F.2d at 936–37).

Plaintiffs are typical. Like all Settlement Class Members, they purchased the Supplement in the United States during the Class Period. Like all Settlement Class Members, their Supplements had the allegedly false and deceptive label. Accordingly, the typicality requirement is met. *Maroney*, 2025 WL 945874 at *5 (typicality met where the claims of plaintiffs and the class arise out of the same course of conduct, defendant’s alleged misrepresentations about the product); *Ebin*, 297 F.R.D. at 565–66.

D. Adequacy of Representation is Satisfied

Rule 23(a)(4) asks if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This is a two-part inquiry akin to the adequacy inquiry of representatives and counsel in Rule 23(e)(2)(A). “Rule 23(a)(4) requires that plaintiffs demonstrate that ‘class counsel is qualified, experienced, and generally able to conduct the litigation.’ Plaintiff[] also must demonstrate that there is no conflict of interest between the named plaintiff[] and other members of the plaintiff class.” *Marisol A. v. Giuliani*, 126 F.3d 372, 378 (2d Cir. 1997) (quoting *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 291 (2d Cir. 1992)). The conflict of interest inquiry “merely requires that plaintiffs not have antagonistic interests, so only a conflict that goes to the very subject matter of the litigation will defeat a party’s claim of representative status.” *Martens v. Smith Barney*, 181 F.R.D. 243, 259 (S.D.N.Y. 1998) (internal quotation marks omitted).

With respect to the first component, Plaintiffs’ counsel will fairly, responsibly, vigorously, and adequately represent the interests of the class members, and Plaintiffs’ counsel has ample

experience acting as class counsel. Taylor Decl. at ¶¶ 2-5; Declaration of Sergei Lemberg “Lemberg Decl.” at ¶¶ 2-6.

With regard to the second component, a class representative “must be part of the class and possess the same interest and suffer the same injury as the class members.” *Adkins v. Morgan Stanley*, 307 F.R.D. 119, 140 (S.D.N.Y. 2015), *aff’d*, 656 F. App’x 555 (2d Cir. 2016) (internal citations and quotation marks omitted). Here, Plaintiffs are adequate because they are members of the Settlement Class, were sold the same labeled product and suffered the same injury. Thus, the adequacy requirement is met.

E. The Requirements of Rule 23(B)(3) are Satisfied

The Settlement Class should be certified pursuant to Rule 23(b)(3) which requires that common questions of law or fact “predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3).

i. Predominance is Satisfied

Predominance examines whether a class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 624 (1997). Predominance is satisfied “if resolution of some of the legal or factual questions that qualify each class member’s case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.” *In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 240 (2d Cir. 2012) (internal citations omitted). “ ‘[C]ommon issues may predominate when liability can be determined on a class-wide basis, even when there are some individualized damage issues.’ ” *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 81 (2d Cir. 2015) (*quoting In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 139 (2d Cir. 2001)).

In the context of a settlement class, predominance “concerns about whether individual issues would create ‘intractable management problems’ at trial drop out of the predominance analysis because ‘the proposal is that there be no trial.’ ” *In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d 229 at 240 (quoting *Amchem*, 521 U.S. at 620). Common issues predominate where “[a]ll Plaintiffs here claim injury that by reason of defendants’ conduct ... has caused a common and measurable form of economic damage.... [a]ll claims arise out of the same course of defendants’ conduct; all share a common nucleus of operative fact, supplying the necessary cohesion.” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 338 (3d Cir. 2011) (Scirica, J., concurring) (as approvingly quoted by the Second Circuit in *In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d at 240).

Here, the Supplements had a uniform, and allegedly false, representation regarding the contents of the product. Taylor Decl. Ex. A; Gillespie Tr¹² 9:17-20; 20:21-21:21. Fraud based claims based on such uniform representations satisfy predominance. *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 118 (2d Cir. 2013); *Ebin*, 297 F.R.D. 561 at 570; *Maroney*, 2025 WL 945874, at *12. So too, the actual contents of the formula, and whether it matched the labeling, is a related and predominate question to all member claims. In addition, Defendant’s knowledge is a common predominate question. *Ebin*, 297 F.R.D. 561 at 570; *see also In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at *7 (D.N.J. May 14, 2012) (common questions predominate in settlement class where “Class Members share common questions of law and fact, such as whether Philips knowingly manufactured and sold defective televisions without informing consumers and when Philips obtained actual knowledge of the alleged defect.”).

¹² Taylor Decl. Ex B.

ii. A Class Action Settlement Is a Superior Means of Resolving This Controversy

Rule 23(b)(3) requires that the proposed “class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Where, as here, “proceeding individually would be prohibitive for class members with small claims . . . the class action device is frequently superior to individual actions.” *Seijas v. Republic of Argentina*, 606 F.3d 53, 58 (2d Cir. 2010).

Adjudicating the putative class member’s claims on a class-wide basis is superior to other available methods for the fair and efficient adjudication of this controversy because it is neither economically feasible, nor judicially efficient, for the thousands of Settlement Class Members to pursue their claims against Nutricost on an individual basis. By utilizing the class action vehicle, relief may be provided to class members without the need for numerous separate trials on the same facts. Hence, a class action will achieve economies of time, effort and expense, as well as promote uniformity of decision as to persons similarly situated. *See Maroney*, 2025 WL 945874 at *15 (finding class action superior in false marketing case); *Ebin*, 297 F.R.D. 561 at 568 (same).

For these reasons, consistent with Rule 23(e)(1)(B), the Court will likely be able to certify the Settlement Class and the request for preliminary certification and approval should be granted.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) grant preliminary approval of the proposed Class Settlement Agreement; (2) preliminarily certify the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3) for settlement purposes; (3) direct notice to the Settlement Class as set forth in the Settlement Agreement; (4) preliminarily appoint Plaintiffs as Settlement Class Representatives and Lemberg Law, LLC as Class Counsel; (5)

preliminarily appoint the settlement notice/claim administrator requested by the Parties; and (6) set a schedule for settlement proceedings, including the final fairness hearing.

Dated: December 29, 2025

Respectfully submitted,

By: /s/ Stephen Taylor
Sergei Lemberg
Stephen Taylor
Joshua Markovits
Lemberg Law, LLC
43 Danbury Road
Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on December 29, 2025, the foregoing was filed through the Court's CM/ECF system which sent notice of such filing to all counsel of record.

/s/ Stephen Taylor
Stephen Taylor

Exhibit A

the “Action”), and alleging, for herself, a putative Nationwide Class and a putative New York Sub-Class, claims arising from sale of certain Magnesium Glycinate Supplements which Cohen alleged, inter alia, were falsely labeled. Defendant denies all of Plaintiff’s allegations and maintains that its marketing, advertising, and labeling has been accurate at all times and compliant with the regulations that govern the labeling of dietary supplements under the Food, Drug, and Cosmetic Act (the “FDCA”).

B. **WHEREAS**, on June 18, 2024, Kurtz filed a putative class action against Nutricost in the United States District Court, Northern District of Ohio (Case No. 3:24-cv-01020) (the “Ohio Action”). On October 14, 2024, Kurtz dismissed the Ohio Action without prejudice.

C. **WHEREAS**, on September 3, 2024, Defendant filed an answer to the complaint and denied all of Plaintiffs’ allegations and maintains that its marketing, advertising, and labeling has been accurate at all times and compliant with the regulations that govern the labeling of dietary supplements under the FDCA.

D. **WHEREAS**, on October 14, 2024, Cohen filed a first amended complaint that, among other things, added Kurtz, Scott, and Paige Vasseur to the Action as named plaintiffs.

E. **WHEREAS**, on October 28, 2024, Cohen, Kurtz, Scott and Vasseur filed a Second Amended Complaint.

F. **WHEREAS**, on November 11, 2024, Defendant filed an answer to the Second Amended Complaint and denied all of Plaintiffs’ and Vasseur’s allegations maintaining that its marketing, advertising, and labeling have been accurate at all times and compliant with the regulations that govern the labeling of dietary supplements under the FDCA

G. **WHEREAS**, on April 1, 2025, Vasseur dismissed her individual claims without prejudice;

H. **WHEREAS**, counsel for the Parties have extensively investigated the facts relating to the claims alleged and defenses raised and the underlying events in the Action and have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Action, and have conducted a thorough assessment of the strengths and weaknesses of their respective claims and defenses;

I. **WHEREAS**, eSupplements vigorously denies all claims asserted against it in the Action, denies all allegations of wrongdoing and liability, and denies that Plaintiffs and the putative class members are entitled to any relief from eSupplements;

J. **WHEREAS**, counsel for the Parties have engaged in extensive arm's-length negotiations concerning the settlement of the claims asserted in the Action, including a full-day mediation session before the Hon. Leonidas Papas, former United States Magistrate Judge, Southern District of California, and in multiple conferences involving the Parties and the mediator;

K. **WHEREAS**, eSupplements, without admitting or conceding any wrongdoing or liability, has concluded that it is desirable and beneficial to fully and finally settle and terminate the Action in the manner and upon the terms and conditions set forth in this Settlement Agreement, subject to Court approval;

L. **WHEREAS**, Plaintiffs, and their counsel, on behalf of the Settlement Class (as defined below), after receiving information and conducting discovery have concluded based upon their investigation, and taking into account the contested issues involved, the legal principles at issue, the expense and time necessary to prosecute the Action through trial, the risks and costs associated with further prosecution of the Action, the uncertainties of complex litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with eSupplements on the terms set forth is fair reasonable, and adequate, and in the best interest of the

Plaintiffs and the Settlement Class;

M. **WHEREAS**, the Parties and their counsel agreed to settle this Action on the terms set forth herein and to have judgment entered pursuant to this Settlement Agreement without trial or adjudication of any issue of fact or law excepting approval of this Settlement Agreement; and

N. **WHEREAS**, This Settlement Agreement reflects a compromise between the Parties and in no event shall be construed as or deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Action, or of any fault on the part of the Defendant, and all such allegations are expressly denied. Nothing in this Settlement Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

O. **NOW THEREFORE**, it is hereby agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to the terms and conditions set forth herein, including but not limited to the preliminary and final approval of the Court, the Action shall be fully and finally settled on a class-wide basis and dismissed with prejudice.

II. DEFINITIONS

Unless defined elsewhere in this Settlement Agreement, as used herein and in the documents attached hereto as exhibits, the terms set forth below shall have the meanings set forth below. The singular includes the plural and vice versa.

1. “Claims Deadline” means sixty (60) days following the date Notice is disseminated to the Settlement Class pursuant to the Notice Plan.

2. “Claim Form” means the document(s) substantially in the form attached hereto as Exhibit A.

3. “Class Counsel” or “Settlement Class Counsel” means Lemberg Law LLC.
4. “Class Period” means the period from February 1, 2021, through the date notice is disseminated to the Settlement Class pursuant to the Notice Plan.
5. “Counsel for eSupplements” or “eSupplements’ Counsel” means Amin Wasserman Gurnani, LLP.
6. “Court” means the United States District Court for the Eastern District of New York.
7. “*Cy Pres* Recipient” means the organization that the Parties agree to, and that the Court finds appropriate, to potentially receive funds from uncashed Settlement Checks, if any.
8. “Defendant” or “eSupplements” means eSupplements, LLC d/b/a Nutricost.
9. “Effective Date” means one (1) business day after the Final Approval Order and Judgment has been entered and has become final. For this Agreement’s purposes, the Final Approval Order and Judgment becomes final at the later of the following occurrences: (a) the time for an appeal has expired without an appeal having been timely filed; (b) an appeal was filed and the appellate court has affirmed Final Approval Order and Judgment without any material change, and its mandate has issued; or (c) an appeal was filed and, on remand, the Court enters a further order or orders approving the settlement on the terms set forth herein, and either no further appeal is taken from any such order or any such appeal results in affirmance.
10. “Email Notice” means the form of notice to the Settlement Class in substantially the same form as Exhibit B.
11. “Fee Award” means any award of reasonable attorneys’ fees and reimbursement of costs and expenses to be awarded by the Court to Class Counsel.
12. “Final Approval Hearing” means the hearing at which the Court will be asked to

grant final approval to this Settlement Agreement in all material respects as fair, reasonable, and adequate, consider any timely objections to this Settlement Agreement, authorize the entry of a final judgment, and determine any Fee Award and Incentive Award.

13. “Final Approval Order and Judgment” means the order in which the Court certifies the Settlement Class, grants final approval of this Settlement Agreement, authorizes the entry of a final judgment, and dismisses the Action with prejudice.

14. “Funding Date” means fifteen (15) days after the Effective Date.

15. “Incentive Award” means the payment to be made to the Plaintiffs as set forth in this Settlement Agreement, subject to the approval of the Court.

16. “Long Form Notice” means the notice substantially in the form of Exhibit C hereto.

17. “Notice” means the notice which is to be provided substantially in the manner set forth in this Agreement and the exhibits thereto, including Long Form Notice, Short Form/Postcard Notice, E-Mail Notice and the Settlement Website.

18. “Notice Plan” means and refers to the plan to disseminate Notice of the Settlement to the Settlement Class.

19. “Objection Deadline” means sixty (60) days following the date Notice is disseminated to the Settlement Class pursuant to the Notice Plan.

20. “Opt-Out Deadline” means sixty (60) days following the date Notice is disseminated to the Settlement Class pursuant to the Notice Plan.

21. “Parties” means Cohen, Kurtz, Scott and eSupplements.

22. “Person” means, without limitation, any individual, and any entity including without limitation, a corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, estate, legal representative, trust,

unincorporated association, and any other business or legal entity and their respective predecessors, successors, representatives, and assigns.

23. “Plaintiffs” or “Class Representatives” means Cohen, Kurtz and Scott.

24. “Preliminary Approval Order” means the Court’s Order entered in connection with the hearing at which the Court, *inter alia*, preliminarily certifies the Settlement Class, grants its preliminary approval to this Settlement Agreement, authorizes the dissemination of Notice to the Settlement Class, and schedules the Final Approval Hearing. The Preliminary Approval Order shall be substantially consistent with Exhibit D to this Agreement.

25. “Release,” or “Releases” means the releases set forth in Section V of this Settlement Agreement.

26. “Settlement Administration Costs” means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, and mailing checks for Settlement Class Members.

27. “Settlement Administrator” means the firm approved by the Court to issue Notice to the Settlement Class Members and to administer the settlement.

28. “Settlement Agreement,” “Settlement,” or “Settlement Agreement and Release” or “Agreement” means this settlement agreement and release, including the attached exhibits.

29. “Settlement Check” means the negotiable checks to be sent to those Settlement Class Members who submit Valid Claim Forms.

30. “Settlement Class” is specifically defined as “All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period.”

31. “Settlement Class Member” or “Class Member” means a Person who falls within

the definition of the Settlement Class and who has not submitted a Successful Opt-Out.

32. “Settlement Fund” means one million eight hundred thirty-five thousand dollars (\$1,835,000.00 USD) and constitutes eSupplements’ maximum and exclusive payment obligation under this Settlement Agreement to settle the Action in full. One million eight hundred thirty-five thousand dollars (\$1,835,000.00 USD) represents the total extent of eSupplements’ monetary obligations under this Agreement and in no event shall eSupplements be obligated for any reason to pay more than \$1,835,000.00. The Settlement Fund is a non-reversionary fund; all portions of the fund will be used to pay Valid Claims, any Attorney’s Fees and Costs, any Incentive Awards, Administrative Costs and any *cy pres* distribution and no part of the fund will revert to eSupplements. The Settlement Fund shall be paid by eSupplements to a bank account chosen by Class Counsel and the Settlement Administrator (the “Settlement Fund Bank Account”). Any costs associated with opening and/or maintaining the bank account to hold the Settlement Fund shall be deducted from the Settlement Fund. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings.

33. “Settlement Website” means the website to be created by the Settlement Administrator containing details and information about the Settlement, including this Agreement, the Preliminary Approval Order, and the Long Form Notice, and providing Settlement Class Members means to submit claims online.

34. “Short Form/Postcard Notice” means written notice of the settlement in the form attached hereto as Exhibit E.

35. “Successful Opt-Out” means a properly completed and timely opt out request but shall not include (a) any requests that are not treated as requests for exclusion, and (b) any requests

that are invalid, untimely, or are otherwise void pursuant to the provisions of this Agreement.

36. “Supplement(s)” or “Nutricost Magnesium Glycinate Supplement(s)” means the dietary supplements offered for sale by eSupplements contained within packaging substantially similar to the packaging presented at paragraphs 15 & 16 (pp. 6-7) of the Second Amended Complaint (Dkt 43), and includes the 240 capsule and 120 capsule variants.

37. “Valid Claim Form” shall mean a Claim Form that:

a. is filled out truthfully and completely by a Settlement Class Member or a person authorized by law to act on behalf of a Settlement Class Member in accordance with the directions and requirements for submitting a Claim Form;

b. is executed and certified (physically or electronically) by the Settlement Class Member for whom the Claim Form is being submitted (or by his, her, or their legal representative) with the required affirmation;

c. is timely, as judged by the fact that it is postmarked (if mailed to the Settlement Administrator) or time-stamped (if submitted to the Settlement Administrator via the Settlement Website) by the Claims Deadline;

d. is not deemed fraudulent by the Settlement Administrator; and

e. is not successfully challenged.

38. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal Court holiday, the deadline or date shall be extended to the next business day that is not a weekend or legal Court holiday.

39. All references to “his,” “her,” and similar terms are intended to be gender-neutral and apply equally to Persons who are businesses, organizations, or other non-natural Persons.

40. Other terms are defined in the text of this Settlement Agreement and shall have the

meaning given to those terms in the text. It shall be the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Settlement Agreement, unless otherwise specified.

III. SETTLEMENT CONSIDERATION AND CLAIMS PROCEDURE

In consideration of a full, complete, and final settlement of the Action, dismissal of the Action with prejudice, and the Releases set forth in Section V below, and subject to the Court's preliminary and final approval, the Parties agree to the following relief:

1. Relief to Settlement Class Members.

a. No later than the Funding Date, eSupplements shall pay to the Settlement Administrator for deposit into the Settlement Bank Account the Settlement Fund. eSupplements shall not be responsible for any payments or obligations other than those specified in this Agreement. Under no circumstances will eSupplements be obligated to pay any amounts greater than the Settlement Fund. Under no circumstances will any portion of the Settlement Fund revert to eSupplements except as otherwise expressly provided in this Agreement.

b. In order to facilitate the notice and claims administration process, within fifteen days after entry of Preliminary Approval Order, the Parties shall provide the Settlement Class Administrator with the last known name, email or mailing address, and order information of Settlement Class Members available to the Parties. The Parties will work cooperatively to facilitate the transfer of known name, address, and order information, to the extent needed, from third party retailers such as Amazon to the Settlement Administrator for the same purposes. Any information provided to the Settlement Class Administrator shall be provided solely for the purpose of providing Notice to the Settlement Class, shall be kept in strict confidence, shall not be disclosed to any third party other than the Parties to this Agreement and their counsel if necessary to

effectuate the terms of the Agreement or the administration process, shall be used for no other cases, shall be used for no other purpose, and shall be destroyed or returned to the party that provided it upon completion of the Notice Plan.

c. Subject to the terms and conditions of this Agreement, Settlement Class Members shall qualify for payment from the Settlement Fund if they submit a Valid Claim Form before the Claims Deadline.

d. Each Settlement Class Member who submits a timely and Valid Claim Form shall receive a pro-rata share of the Settlement Fund based on the number of Supplements they purchased after payment of Settlement Administration Costs, the Fee Award, and the Incentive Awards according to the following formula (“Award Unit Formula”):

1. Settlement Class Members who submit a Valid Claim Form with a valid claim id and pin will be entitled to one award unit (“Award Unit”) per Supplement purchased as reflected in the records of sales in the possession of the Parties.
2. Settlement Class Members who submit a Valid Claim Form without a valid claim id and pin will be entitled to one Award Unit.
3. Each Award Unit will have an equal monetary value not to exceed \$19.95. The Award Units will be determined by dividing the Net Settlement Fund (calculated and defined as the total Settlement Fund less Settlement Administration Costs, the Fee Award and Incentive Awards) by the total number of Supplements identified by Valid Claims.

e. As set forth herein, Claim Forms shall be returned or submitted to the Settlement Administrator through the Settlement Website or by U.S. Mail by the Claims Deadline

or be forever barred.

f. If a Settlement Class Member who is an individual and is entitled to receive \$600 or more fails to deliver a signed and completed Form W-9 as directed by the Settlement Administrator, the Settlement Class Member's payment will be subject to appropriate treatment as required by then-existing rules and regulations of the Internal Revenue Service. Any Settlement Class Member who does not submit a Valid Claim Form by the Claims Deadline, as shown by postmark or other identifiable date of transmission, shall receive no monetary payment from the Settlement Fund, but will nevertheless be subject to the releases set forth in Paragraph V. All Settlement Class Members will be informed that Settlement Checks must be cashed within sixty (60) days of issuance or else the Check (the Void Date") will be void and they will have no further right or entitlement to any payment under the terms of this settlement.

g. Notwithstanding any judgment, principle, common law rule or statute, there shall be no interest accrued, owing, or paid by eSupplements on Valid Claim Forms, Settlement Checks, the Settlement Fund, or on any other benefit available (or potentially available) under this Agreement.

h. To the extent that any Settlement Checks remain uncashed after the Void Date, if it is administratively feasible, the Settlement Administrator shall distribute the funds associated with those checks to Settlement Class Members who cashed their check from the first distribution on the same *pro rata* basis as set forth in Section III(1)(d) *supra*. If a second distribution is not administratively feasible, or if any amounts remain in the Settlement Fund after the second distribution, the Class Administrator will pay any such funds to the *Cy Pres* Recipient(s) approved by the Court.

2. Class Notice and Administration of Claims

a. Within thirty (30) days of entry of the Preliminary Approval Order, Notice will issue.

b. Within fifteen (15) days following entry of the Preliminary Approval Order, the Parties shall provide the Settlement Administrator with the names and addresses and/or email addresses of Settlement Class members in their possession. The Settlement Administrator shall, by using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“Postal Service”), obtain updated mailing addresses, if available.

c. Within thirty (30) days following entry of the Preliminary Approval Order, the Settlement Administrator shall send the Short Form/Postcard Notice to each Class Member via first class mail whose names and addresses have been provided to the Settlement Administrator pursuant to the preceding paragraph. To the extent deemed necessary by the Settlement Administrator, the last known address of Persons in the Settlement Class will be subject to confirmation or updating as follows: (a) the Settlement Administrator may conduct a reasonable search to locate an updated address for any Person in the Settlement Class whose Short Form/Postcard Notice is returned as undeliverable; (b) the Settlement Administrator may update addresses based on any forwarding information received from the United States Post Office; and (c) the Settlement Administrator may update addresses based on information it receives and through any requests received from Persons in the Settlement Class.

d. If any Short Form/Postcard Notice sent under this Section is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Short Form/Postcard Notice once to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. Other than as set forth in this paragraph, neither the Parties nor the

Settlement Administrator shall have any other obligation to re-mail the Short Form/Postcard Notice.

e. Within thirty (30) days following entry of the Preliminary Approval Order, the Settlement Administrator will coordinate the Email Notice to be sent via email to Settlement Class Members identified from the records obtained from the Parties and other retailers of all Supplement sales in the United States during the Class Period. The Settlement Administrator will coordinate with retailers or use information from the retailers to transmit the Email Notice following industry-standard best practices for the Email Notice creation and dissemination. If a “bounce message” is received by the sender that indicates that an Email Notice has not been delivered for reasons other than that the email address does not exist (such as a full mailbox, an inactive account, or rejection as spam), at least one additional attempt will be made to send the Email Notice.

f. At the direction of a Party, the Settlement Administrator may send reminder mail notices or postcards to Settlement Class Members during the pendency of the claim period to remind members to submit a claim before the Claims Deadline.

g. The Settlement Class Administrator will process claims, reasonably assist Settlement Class Members in obtaining information regarding submitting forms and distribute a list of accepted and rejected claims to counsel for the Parties. The Settlement Administrator shall determine if each claim constitutes a Valid Claim Form eligible to receive the Settlement Check described above. The Settlement Administrator will reject any claim where there is evidence of fraud. For avoidance of doubt, the Claim Administrator may require Settlement Class Members to provide additional information on the Claim Form to facilitate the identification of valid claims, as well as to identify potentially fraudulent or otherwise invalid claims. The decision of the

Settlement Administrator regarding the validity of a Claim Form is final and binding on the Parties. Upon request, the Settlement Administrator will provide copies of all Claim Forms submitted by Class Members to counsel for the Parties.

h. No later than thirty (30) days following the entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Long Form Notice, a printable Claim Form, an electronic Claim Form that may be completed and submitted electronically with a claim id and pin, this Settlement Agreement, the Complaint and Second Amended Complaint, the Answer to the Second Amended Complaint, and the Preliminary Approval Order to be made available on a dedicated Settlement Website, the website name/URL for which is to be agreed upon by the Parties, to be administered by the Settlement Administrator. When available, the Settlement Administrator shall make available on the Settlement Website Class Counsel's application for a Fee Award and any motion seeking approval of any Incentive Awards as well as the Final Approval Order. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by Class Counsel and eSupplements' Counsel. Such approvals shall not be unreasonably withheld.

i. Within thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall set up a toll-free telephone number that will provide automated information about the Settlement, Settlement Class Members' rights, important deadlines, and instructions as to how Settlement Class Members may request and obtain hard-copy Settlement documents. That telephone number shall be maintained until the Claims Deadline. After that time, and through the date the Final Approval Order is entered, a recording will advise any caller to the toll-free telephone number that the Claims Deadline has passed and that details regarding the Settlement may be reviewed on the Settlement Website.

j. The Settlement Administrator shall serve notice of this Settlement to the appropriate state and federal officials pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715. The Settlement Administrator shall be responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715 and for identifying the appropriate state and federal officials to be notified and shall prepare drafts of those documents to Class Counsel and eSupplements’ counsel at least five (5) days before serving such notices. The Settlement Administrator shall provide proof of such compliance by preparing a confirmation declaration to be filed with the Court at least fourteen (14) days prior to the Final Approval Hearing.

3. Payment of Settlement Administration Costs

a. All Settlement Administration Costs, including the Settlement Administrator’s fees and expenses, shall be paid out of the Settlement Fund.

b. The Settlement Administrator will, as early as practicable, estimate the Settlement Administration costs, and communicate that estimate to the Parties.

c. Within thirty (30) days after entry of the Preliminary Approval Order, or within thirty (30) days after receiving an estimate from the Settlement Administrator of initial administration costs associated with implementing the Plan of Notice, whichever is later, eSupplements will advance initial administration costs to the Settlement Administrator.

4. Payment of Benefits

a. Subject to the terms and conditions of this Settlement Agreement, after the Funding Date, the Settlement Administrator shall make the following disbursements from the Settlement Fund in this order:

i. Pay all taxes and tax-related expenses, if any or, at the Settlement Administrator's discretion, it shall reserve the amount of the Settlement Fund sufficient to pay taxes and tax-related expenses;

ii. Pay to the Settlement Class Representatives any Incentive Awards ordered by this Court;

iii. Pay to Class Counsel any Fee Award ordered by the Court;

iv. Pay all remaining Settlement Administration Costs and, if additional costs are to be incurred in the future, reserve the amount of the Settlement Fund sufficient to pay all Settlement Administration Costs.

v. Mail Settlement Checks, or make such electronic payment if that option is selected by a Settlement Class Member on a Claim Form, to all Settlement Class Members pursuant to the Award Unit Formula of Section III(1)(d) of this Agreement who submitted Valid Claim Forms and who have not submitted a Successful Opt-Out or had their claim rejected including, if necessary and administratively feasible as set forth herein, a second *pro rata* distribution of funds consisting of uncashed checks to Settlement Class Members who cashed their Settlement Check or received an electronic payment from the first distribution.

vi. Pay any remaining amounts in the Settlement Fund to the *Cy Pres* Recipient(s).

b. The Settlement Checks shall be mailed to the addresses provided by Settlement Class Members on their Valid Claim Form.

c. All Settlement Checks issued under this section shall be void if not negotiated within sixty (60) days of their date of issue and shall contain a disclosure to that effect.

d. The Settlement Administrator's and the Parties' respective obligations with

respect to the distribution of Settlement Checks, the Settlement Administration Costs, any Fee Award, any Incentive Awards, and the amount of unclaimed and uncashed Settlement Checks, if any, shall be performed reasonably and in good faith. So long as such obligations are performed in good faith, the Parties and the Settlement Administrator shall not be liable for erroneous, improper, or inaccurate distribution, and the Release and any judgment shall be effective upon entry of the Final Approval Order and Judgment.

IV. SETTLEMENT PROCEDURES

1. Settlement Class Certification

eSupplements does not object to the certification of the Settlement Class strictly and solely for settlement purposes. Certification of the Settlement Class will be effective only with respect to the Settlement of this Action and is without prejudice to the rights of eSupplements to oppose class certification and/or to contest issues of liability in this Action should this Settlement Agreement be terminated, or the Effective Date not occur for any reason. This Settlement Agreement shall be inadmissible as evidence in the Action for any reason, shall be inadmissible in any other action against eSupplements, and shall not be construed as an admission by eSupplements as to any matter. In the event that this Agreement is terminated pursuant to its terms or the Effective Date does not occur for any reason, then certification of the Settlement Class, which is strictly and solely for settlement purposes only, will be vacated and of no further force or effect, and the Action will proceed as it existed before execution of this Settlement Agreement.

2. Preliminary and Final Approval Orders

a. Plaintiffs will file a motion for entry of an order preliminarily approving this settlement. Plaintiffs will request that the Court enter an “Order Preliminarily Approving Class Action Settlement and Approving Class Notice” in the form attached hereto as Exhibit D.

Additionally, Plaintiffs will request that the Court approve a “Notice of Class Action and Proposed Settlement,” including a Claim Form attached hereto as Exhibit A, and request that the Court permit the Parties to direct the Settlement Administrator to issue Notice as set forth in the Notice Plan and this Agreement.

b. The Preliminary Approval Order will set a date for a Final Approval Hearing. At the time Plaintiffs move for the Preliminary Approval Order as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

c. After Notice is provided, Plaintiffs shall request and obtain from the Court a Final Approval Order in the form attached hereto as Exhibit F. The fact that the Court may require non-substantive changes in the Final Approval Order will not invalidate this Agreement or the Settlement. If the Court does not enter a Final Approval Order substantially in the form of Exhibit F or a modified version thereof that is acceptable to all Parties, which becomes a final and non-appealable order, then this Agreement shall be null and void.

d. eSupplements’ failure to oppose the Plaintiffs’ request for entry of a Preliminary Approval Order, a Final Approval Order, or any other submission or filing related to this Settlement shall not constitute an admission by eSupplements as to any matter.

3. Right and Effect of Members of the Class to Opt-Out

a. Each Person who falls within the definition of the Settlement Class shall have the right to opt-out and not participate in the Settlement Agreement as provided for in the Preliminary Approval Order.

b. The Notice shall explain the right to request exclusion from the Settlement Class and to not be bound by this Settlement Agreement, if, before the Opt-Out Deadline, the

Person who falls within the definition of the Settlement Class (a “Requester”) completes and mails a valid request for exclusion (an “Opt-Out”) to the Settlement Administrator at the address set forth in the Notice. The Opt-Out must be postmarked on or before the Opt-Out Deadline.

c. For an Opt-Out request to be valid and treated as a Successful Opt-Out, it must include: (a) the Requester’s full name, address and the name of the Action; (b) the Requester’s personal and original signature, or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a valid power of attorney, to act on behalf of the Requester; and (c) state unequivocally that the Requester desires to be excluded from the Settlement Class, to be excluded from the Settlement, to not participate in the Settlement, and/or to waive all rights and benefits of the Settlement. The Settlement Administrator shall promptly inform eSupplements’ Counsel and Class Counsel of any Opt-Out requests it receives.

d. Persons who submit Successful Opt-Outs shall receive no benefit or compensation under this Settlement Agreement, shall have no right to object to the proposed Settlement Agreement or participate at the Final Approval Hearing, and shall not be bound by any order or judgment entered in this Action.

e. A request to Opt-Out that does not comply with all of the foregoing, or that is not timely submitted or postmarked by the Opt-Out deadline, or that is sent to an address other than that set forth in the Notice, shall be invalid and the person serving such request shall be treated as a Settlement Class Member and be bound by this Settlement Agreement and the Release contained herein if finally approved.

f. No Person shall purport to exercise any exclusion rights of any other Person, or purport to: (i) Opt-Out Persons who fall within the definition of the Settlement Class as a group, aggregate, or class involving more than one Person; or (ii) Opt-Out more than one Person who

falls within the definition of the Settlement Class on a single paper, or as an agent or representative. Any such purported Opt-Outs shall be void, and any Person(s) who are the subject of such purported Opt-Outs shall be treated as Settlement Class Members.

g. Before the Final Approval Hearing, the Settlement Administrator shall create a comprehensive list of Successful Opt-Outs. The Parties shall, if possible, agree as to whether a communication from or on behalf of a Person who falls within the definition of the Settlement Class is a request to Opt-Out. eSupplements' Counsel and Class Counsel may dispute an Opt-Out or purported Opt-Out, and if the Parties are unable to resolve such dispute, they shall present the issue to the Court for resolution.

4. Inquiries to the Settlement Administrator

It shall be the responsibility of the Settlement Administrator to respond to all inquiries from or on behalf of potential Settlement Class Members with respect to this Settlement. Class Counsel and Counsel for eSupplements must both approve any FAQs or other material the Settlement Administrator may use to answer inquiries and shall confer and assist the Settlement Administrator as it requests.

5. Objections to the Settlement and Appearance at Final Approval Hearing

a. Any Settlement Class Member may comment in support of, or in opposition to, the Settlement at his or her own expense; provided, however, that all comments and/or objections must be in writing and mailed or hand-delivered to the Clerk of the Court and the Settlement Administrator and postmarked or delivered by no later than the Objection Deadline. Objections may be filed by counsel for a Settlement Class Member, retained at the Settlement Class Member's expense, though any such counsel must file an appearance in the Action.

b. Each objection must:

(i) set forth the Settlement Class Member's full name, address, and telephone number;

(ii) contain the Settlement Class Member's original signature or the original signature of counsel for the Settlement Class Member;

(iii) state that the Settlement Class Member objects to the Settlement, in whole or in part;

(iv) set forth the complete legal and factual bases for the objection, including citations to relevant authorities;

(v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and

(vi) state whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

c. An objector is not required to attend the Final Approval Hearing. However, any Settlement Class Member who objects may appear at the Final Approval Hearing, either in person or through an attorney hired who has entered an appearance at his or her own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the underlying settlement. A Settlement Class Member or his or her attorney who wishes to speak at the Final Approval Hearing must so state in his or her written objection or submit a separate notice of intention to appear to the Clerk of Court no later than the Objection Deadline. No Settlement Class Member shall be permitted to raise matters at the Final Approval Hearing that the Settlement Class Member could have raised in a written objection but failed to do so.

d. Any Settlement Class Member who fails to timely submit a written

objection with the Court shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Agreement by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other related action or proceeding.

6. Final Approval Hearing

a. The Parties will request that the Court schedule a Final Approval Hearing after the Claims Deadline, Objection Deadline and Opt-Out Deadline.

b. Class Counsel shall file their petition for a Fee Award and Incentive Awards no later than thirty (30) days prior to the Objection Deadline.

c. Class Counsel shall file their motion for entry of a Final Approval Order and Judgment no later than fourteen (14) days prior to the Final Approval Hearing.

d. No more than fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall with Class Counsel's cooperation file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order and that notice was completed in accordance with CAFA, 28 U.S.C. § 1715.

e. If the Settlement Agreement is preliminarily approved by the Court, and all other conditions precedent to the Settlement have been satisfied, then Plaintiffs shall file a Motion for Final Approval asking, *inter alia*, that the Court enter a Final Approval Order and Judgment, with Plaintiffs filing a memorandum of points and authorities in support of the motion. Any Party may file a memorandum addressing any objection to the Settlement that has been submitted. Any request by eSupplements for entry of the Final Approval Order and Judgment, or failure to object to Plaintiffs' request for entry of the Final Approval Order and Judgment, shall not be an admission

or concession by eSupplements as to any matter pertaining to Plaintiffs' claims or the Action.

f. At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be finally approved as fair, reasonable, and adequate, whether any objections to the Agreement should be overruled, whether the requested Fee Award and the requested Incentive Awards should be approved, and whether a judgment finally approving the Settlement Agreement should be entered.

g. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order that grants final approval of this Agreement and:

(i.) finds that the Notice provided satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process under the Constitution of the United States;

(ii.) finds that Settlement Class Members have been adequately represented by the Class Representatives and Class Counsel;

(iii.) finds that the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class, that each Settlement Class Member shall be bound by this Agreement, including the releases in Section V, and that this Settlement Agreement should be and is approved;

(iv.) dismisses on the merits and with prejudice all claims of the Settlement Class Members asserted against eSupplements, without fees or costs to any Party except as provided in this Agreement; and

(v.) retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement.

7. Litigation Stay

Except as necessary to secure approval of this Settlement Agreement or as otherwise provided herein, the Parties shall take no further steps to prosecute the Action in this Court or in

any other court. In the event the Settlement Agreement is not approved or is terminated according to its terms, the Parties may resume litigation no sooner than fourteen (14) days after such event or as otherwise directed by the Court.

8. Conditions of Settlement; Effect of Disapproval, Cancellation, Termination or Nullification of Settlement

a. The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last in time of the following events occurs:

(i) This Agreement has been signed by the Parties, Settlement Class Counsel, and eSupplements' Counsel;

(ii) The Court has entered the Preliminary Approval Order;

(iii) The Court has entered the Final Approval Order and Judgment substantially consistent with the Order attached hereto as Exhibit F; and

(iv) The Final Approval Order and Judgment has been entered and has become final.

b. If any condition specified in Section IV(8)(a) is not met, or in the event that this Settlement Agreement is not approved by the Court, or the Settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be void and/or terminated subject to Section IV(8)(c) below, unless Class Counsel and eSupplements' Counsel agree in writing to proceed with this Agreement. Notwithstanding anything herein, the Parties agree that unless it causes eSupplements' financial obligations to exceed the Settlement Fund, the Court's decision as to the amount of the Fee Award to Class Counsel, or the Incentive Awards to the Class Representatives, regardless of the amounts

awarded, shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

c. The Settlement Agreement shall be null and void, if (i) the Court fails to give preliminary approval to this Settlement Agreement or any aspect of the Settlement, or fails to give final approval to this Settlement Agreement or any aspect of the Settlement; (ii) the Court materially alters the Agreement, the proposed Preliminary Approval Order or proposed Final Approval Order; (iii) an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand; (iv) the Effective Date does not occur; or (v) any other ground for termination provided for elsewhere in this Agreement occurs. In the event eSupplements contends termination of the Agreement is justified under Section (v), such termination shall be communicated in writing to Class Counsel within thirty (30) days of the occurrence of the event giving rise to eSupplements' election to terminate.

d. If this Agreement is terminated or fails to become effective for any reason, the Parties—to the fullest extent possible—shall be restored to their respective positions as of the date of the signing of this Agreement. In such event, any Judgment or other order entered by any court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* as if this Agreement had never been entered into.

9. No Admission of Liability; Non-Use

a. eSupplements has agreed to the terms of this Agreement to end all controversy with Plaintiffs and the Settlement Class Members and to avoid the burden and expense of litigation, without in any way acknowledging fault or liability. Nothing herein shall constitute an admission by eSupplements that the Action was properly brought on a class or representative

basis other than for settlement purposes. eSupplements denies any liability or wrongdoing of any kind associated with the alleged claims in the Action. eSupplements has denied and continues to deny each and every material factual allegation and all claims asserted against it in the Action. Nothing herein shall constitute an admission by eSupplements or any Released Party (defined below) of wrongdoing or liability, or of the truth of any allegations in the Action. The settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of eSupplements or any Released Party, or as a concession by eSupplements or any Released Party as to the truth of any of the allegations in the Action, or the veracity of any claim for relief or defense, or as an admission regarding any other matter in the Action.

b. This Agreement, whether or not consummated, and any proceedings taken pursuant to it:

i. shall not be offered or received against eSupplements or any Released Party (defined below) as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by eSupplements or any Released Party concerning the truth of any fact alleged by the Plaintiffs or the validity of any claim that was or could have been asserted against eSupplements or any Released Party in the Actions or in any litigation, or of any liability, fault, misconduct or wrongdoing of any kind of eSupplements or any Released Party;

ii. shall not be offered or received against eSupplements or any Released Party (defined below) as evidence of a presumption, concession or admission of any liability, fault, misconduct or wrongdoing by eSupplements or the Released Parties, or against the Plaintiffs or any Settlement Class Member as evidence of any infirmity in the claims of the

Plaintiffs or the other Settlement Class Members;

iii. shall not be offered or received against eSupplements or any Released Party (defined below), or against the Plaintiffs or any other Settlement Class Members, as evidence of a presumption, concession or admission concerning any liability, fault, misconduct or wrongdoing of any kind, or in any way referred to for any other reason as against eSupplements or any Released Party, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; except, if this Agreement is approved by the Court, then eSupplements or any other Released Party may refer to it to effectuate the protection from liability granted them by this Agreement;

iv. shall not be construed against eSupplements or any Released Party (defined below), or against the Plaintiffs or any other Settlement Class Members as an admission, concession, or presumption that the consideration to be given by this Agreement represents the amount which could be or would have been recovered after trial; and

v. shall not be construed against the Plaintiffs or any Settlement Class Member as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable in this Action would not have exceeded the Settlement Fund.

c. This Agreement may be pleaded by eSupplements and any Released Party (defined below) as a full and complete defense to, and may be used as the basis for, an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained in Section V herein.

V. RELEASE

1. Releases; Binding and Exclusive Nature of Settlement Agreement

a. In connection with the Settlement, the Final Approval Order and Judgment shall provide that the Action is dismissed with prejudice as to the Class Representatives and all Settlement Class Members. As of the Effective Date, the Releasing Parties (defined below) shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever released, resolved, relinquished and discharged each and all of the Released Parties (defined below) from each of the Released Claims (defined below). Upon the Effective Date, this Settlement shall be the exclusive remedy for any and all Released Claims of the Releasing Parties. The Releasing Parties shall be permanently barred from instituting any actions or causes of action (in law, in equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal, or local government agency or with any administrative or advisory body, in any jurisdiction, including in any federal, state, or local court or tribunal arising from or related to the Released Claims against any person or entity, including the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, or whether individually or collectively. The Release does not apply to Persons who fall within the definition of the Settlement Class but who submit a Successful Opt-Out in accordance with the term of this Agreement.

b. For purposes of this Settlement Agreement, “Released Parties” means eSupplements, its predecessors, successors, affiliates, parent companies, and subsidiaries (collectively, “Affiliates”), and all of their past or present predecessors, successors, direct or indirect parents, subsidiaries, associates, affiliates, assigns, employers, employees, shareholders,

principals, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, vendors, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, franchisees and persons, firms, trusts, corporations (each solely in their respective capacity as such), and any and all of eSupplements' suppliers, manufacturers, and other entities or persons who served as a supplier or manufacturer to eSupplements for all or part of any Supplement or who was upstream and/or downstream in the production/distribution/sales channels including any and all online and brick-and-mortar sellers of the Supplements; and any other individuals or entities in which eSupplements or its affiliates has or had a controlling interest, to which they are related, or with which they are affiliated and any other representatives of any of these individuals or entities. It is expressly understood that each named or unnamed Released Party that is not a party to this Settlement Agreement is an intended and express third-party beneficiary of this Settlement Agreement, and each may seek to enforce any provision of this Settlement Agreement.

c. For purposes of this Settlement Agreement, "Released Claims" means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct individual or representative, of every nature and description whatsoever, that were, or could have been, asserted in the Action regarding the marketing, advertising, labeling, or sale of the Supplements to the Settlement Class Members.

d. For purposes of this Settlement Agreement, “Releasing Parties” means the Class Representatives, all Settlement Class Members and: (1) with respect to any Settlement Class Member that is not an individual, all of its present, former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, predecessors-in-interest, and all of the aforementioned’s present, former, and future officers, directors, employees, shareholders, attorneys, agents, independent contractors and any other representatives; (2) with respect to any Settlement Class Member who is an individual, any present, former, and future spouses, dependents, children, and parents, as well as the present, former, and future estates, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns and any other representatives of each of them; (3) any other person or entity (including governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as a representative of the Class Representatives and/or any Settlement Class Member, and all those who claim through them or on their behalf; and (4) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above-identified persons or entities.

e. Releasing Parties shall not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, whether on behalf of themselves or others, or whether individually or collectively, against any person or entity, including the Released Parties, in any jurisdiction, on or after the Effective Date.

f. Plaintiffs expressly understand and acknowledge that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs explicitly took that into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained herein, having been bargained for between Plaintiffs and eSupplements with the knowledge of the possibility of such unknown claims, was given in exchange for a full accord, satisfaction, and discharge of all such claims. Consequently, the Plaintiffs and Settlement Class Members expressly waive and relinquish, to the fullest extent permitted by law, all provisions, rights, and benefits of California Civil Code Section 1542, to the extent it is applicable, (and equivalent, comparable, or analogous provisions of the laws of the United States or any state or territory thereof, or of the common law). Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

g. Hereafter discovered facts other than or different from those known or believed to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims, may change. Nonetheless, as of the Effective Date, the Releasing Parties shall have, fully, finally, and forever released, resolved, relinquished and discharged each and all of the Released Parties from each of the Released Claims and their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement so long as the Notice Plan is effectuated pursuant to the terms of this Agreement.

VI. ATTORNEYS' FEES AND INCENTIVE AWARD

1. Attorneys' Fees and Incentive Awards

a. No later than thirty (30) days prior to the Objection Deadline, Class Counsel may make written application to the Court for a Fee Award. The Parties agree that the Court (and only the Court) shall determine the final amount of the Fee Award in this Action.

b. No later than thirty (30) days prior to the Objection Deadline, Class Counsel may make written application to the Court for an Incentive Awards to be paid to the Class Representatives for representing the Settlement Class. The Parties agree that the Court (and only the Court) shall determine the final amount of the Incentive Awards in this Action.

c. Any Fee Award and Incentive Awards awarded by the Court shall be paid by the Settlement Administrator out of the Settlement Fund no later than thirty (30) days after the Effective Date.

2. Effect on Settlement

The Parties agree that the rulings of the Court regarding the amount of the Fee Award and Incentive Award, and any claim or dispute relating thereto, will be considered by the Court separately from the remaining matters to be considered at the Final Approval Hearing as provided for in this Settlement Agreement and that any determination in that regard may be embodied in a separate order from the Court. Any order or proceedings relating to the amount of the Fee Award or the Incentive Award, including any appeals from or modifications or reversals of any orders related thereto, shall not operate to modify, reverse, terminate, or cancel the Settlement Agreement, affect the releases provided for in the Settlement Agreement, or affect whether the Final Approval Order and Judgment becomes final as defined herein except and unless the order pertaining to fees causes eSupplements' financial obligations under the Agreement to exceed the Settlement Fund

and further, that the Payment of Benefits procedures as set forth in Section III(4) *supra* shall not commence until the final resolution of any appeals or modification or reversals of any orders related to the amount of the Fee Award and Incentive Award.

VII. MISCELLANEOUS PROVISIONS

1. Court Submission

Class Counsel will submit this Agreement and the exhibits hereto, along with such other supporting papers as may be appropriate, to the Court for preliminary approval of this Agreement pursuant to Rule 23 of the Federal Rules of Civil Procedure. If the Court declines to grant preliminary approval of this Agreement, or if the Court declines to grant final approval, this Agreement will terminate as soon as the Court enters an order unconditionally and finally adjudicating that this Agreement and Settlement will not be approved.

2. Integration Clause

This Agreement contains the full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among the Parties, which prior agreements may no longer be relied upon for any purpose. This Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Parties supported by acknowledged written consideration.

3. Headings

Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

4. Binding and Benefiting Others

This Agreement shall be binding upon and inure to the benefit or detriment of the Parties,

and the Settlement Class Members who do not Opt-Out, and to their respective agents, employees, representatives, trustees, members, managers, officers, directors, shareholders, divisions, parent corporations, subsidiaries, heirs, executors, assigns, and successors in interest.

5. Representations and Warranties

The Parties each represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights that they may have with respect to the claims released in this Agreement and that they have received independent legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each of the individuals executing this Agreement warrants that he or she has the authority to enter into this Agreement and to legally bind the party for which he or she is signing. Plaintiffs hereby warrant and represents that they have not assigned any claim, right, or interest relating to the Released Claims to any other person or party and is fully entitled to release same.

6. Governing Law

The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of New York without regard to its conflict of laws and/or choice of law principles.

7. Mutual Interpretation

The Parties agree and stipulate that this Agreement was negotiated on an arm's-length basis between Parties of equal bargaining power. Also, the Agreement has been drafted jointly by Class Counsel and counsel for eSupplements. Accordingly, no ambiguity shall be construed in favor of or against any of the Parties. Plaintiffs acknowledge, but do not concede or agree with, eSupplements' statements regarding the merits of the claims, and eSupplements acknowledges,

but does not concede or agree with, and expressly denies, Plaintiffs' statements regarding the merits of the claims.

8. Incorporation of Recitals

Each of the Recitals stated above are hereby incorporated into this Settlement Agreement as if stated fully herein.

9. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Facsimile and pdf signatures shall bind the Parties to this Agreement as though they are original signatures.

10. Severability

In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

11. Claims Against Settlement Benefits

In the event a third party, such as a bankruptcy trustee, former spouse, or other third party has or claims to have a claim against any payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to resolve such a claim or to transmit the funds to such third party.

12. Execution of Documents

The Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Settlement Agreement.

13. Exhibits

The exhibits to this Settlement Agreement are an integral and material part of this Settlement Agreement and are hereby incorporated and made a part of this Settlement Agreement.

14. No Assignments: Binding on Assigns

Each Party represents, covenants, and warrants that she or it has not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, cause of action, or rights that she or it herein releases. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

15. Terms and Conditions Not Superseded

Nothing in this Settlement Agreement abrogates, supersedes, modifies, or qualifies in any way any of the contractual terms and conditions applicable in the ordinary course to the relationship between eSupplements and Affiliates and their customers, or to the products and services provided by eSupplements and Affiliates purchased by their customers.

16. Waiver of Compliance

Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived or excused in writing, to the extent permitted under applicable law, by the Party entitled to the benefit of such obligation, covenant, agreement, or condition, and such party's counsel. A waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of or estoppel with respect to any subsequent or other failure.

17. No Collateral Attack

This Settlement Agreement shall not be subject to collateral attack by any Settlement Class

Members or their representatives any time on or after the Effective Date. Such prohibited collateral attacks shall include, but shall not be limited to, claims that a Settlement Class Member's claim should have been heard or decided by another court or in another suit, that a Settlement Class Member's claim was improperly denied, that the payment to a Settlement Class Member was improperly calculated, and/or that a Settlement Class Member failed to receive timely notice of the Settlement.

18. Authorization

The signatories hereto represent that they are fully authorized to enter into the Settlement Agreement and bind the Parties to the terms and conditions hereof.

19. Settlement Class Member Signatures

It is agreed that, because the Settlement Class is so numerous, it is impractical to have each Settlement Class Member execute this Settlement Agreement. The Plan of Notice, Notice and/or Claim Form will advise or will have deemed to have advised all Settlement Class Members and/or their representatives of the binding nature of the Releases and of this Settlement Agreement, and in the absence of a Successful Opt-Out, all Settlement Class Members shall be subject to the Settlement by the same force and effect as if each Settlement Class Member had executed this Settlement Agreement.

20. Drafter of Agreement

None of the Parties will be considered to be the drafter of this Settlement Agreement or any of its provisions for purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement.

21. Limitations on Use

Neither this Settlement Agreement nor any related documents filed or created in connection with this Settlement Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Settlement Agreement.

22. Jurisdiction

After entry of the Final Approval Order and Judgment the Court shall retain jurisdiction with respect to enforcement of the terms of this Settlement Agreement and all Parties and Settlement Class Members submit to the exclusive jurisdiction of the Court with respect to the enforcement of this Settlement Agreement and any dispute relating thereto.

23. Taxes

a. The account into which the Settlement Fund is deposited is intended to be and will at all times constitute a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1.

b. For the purpose of §1.468B of the Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the “administrator” of the Settlement Fund. The Settlement Administrator shall cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

c. Any expenses reasonably incurred by the Settlement Administrator in carrying out the duties described in this Agreement, including fees of tax attorneys and/or accountants, shall be paid by the Settlement Administrator from the Settlement Fund pursuant to its estimates and invoice for services rendered.

d. Any Person that receives a distribution from the Settlement Fund shall be solely

responsible for any taxes or tax-related expenses owed or incurred by that Person by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund. The Parties will reasonably cooperate with the Settlement Administrator to obtain appropriate reporting information for all Settlement Class Members who receive over \$600.

e. Plaintiffs and Class Counsel shall fully bear all the tax consequences of any and all benefits received by them in connection with this Agreement. Plaintiffs acknowledge that eSupplements and its attorneys provided no tax advice related to this Agreement and that eSupplements may be required to file certain Form 1099 or other information reports with the United States Internal Revenue Service. Plaintiffs have been advised to consult with tax counsel of Plaintiffs' own choice to seek legal and tax advice regarding the taxability or non-taxability of consideration provided herein. In no event shall eSupplements or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Plaintiffs, Class Counsel, the Settlement Class Members, the *Cy Pres* or any other Person.

24. Press Releases

No Party may issue a press release or public statement of any type, whether oral or written, regarding the Action or the Settlement. No Party may make any statement disparaging any other Party, or suggesting that eSupplements or any Released Party has been found to have violated any law, or that the settlement amounts to an admission of liability.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date set forth beside their respective signatures.

DATED: 12/19/2025

DALIT COHEN, on behalf of herself and the Class

Dalit Cohen

By: _____

DATED: 12/19/2025

Anastasia Kurtz, on behalf of herself and the Class

Anastasia Kurtz

By: _____

DATED: 12/19/2025

Tina Scott, on behalf of herself and the Class

Tina Scott

By: _____

DATED: 12/19/2025

Reviewed and approved by Class Counsel, and agreement to be bound to all provisions in the Agreement that apply to Class Counsel

[Handwritten Signature]

By: _____

DATED: 12/22/2025

ESUPPLEMENTS, LLC D/B/A NUTRICOST

By: *Yong Min Kim*
Yong Min Kim (Dec 22, 2025 22:46:12 MST)

ITS: President

DATED: 12/22/2025

Reviewed and approved by eSupplements' Counsel,
and agreement to be bound to all provisions in the
Agreement that apply to eSupplements' Counsel

By: *Yong Min Kim*


Exhibit A

Claim Form

Cohen et al. v. eSupplements, LLC d/b/a Nutricost, No. 23-cv-06387
(Eastern District of New York)

If you wish to recover in the settlement, please complete, sign, and return this **Settlement Claim Form**.

You must complete and submit a Claim Form by _____. You may submit a Claim Form online at SETTLEMENTWEBSITE.com or by completing and submitting this Claim Form.

Claim ID: _____

Pin: _____

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Current Phone Number (optional) _____

Email (optional) _____

Certification

By signing and submitting this Claim Form, I certify and affirm that the information I am providing is true and correct to the best of my knowledge and belief, I am over the age of 18 and I wish to claim my share of the Settlement Fund.

Signature: _____ Date: ___/___/___

Exhibit B

Email Notice

Subject: Notice of Class Action and Proposed Settlement

Your Claim ID: _____
Your PIN: _____

Our records indicate that you may have purchased magnesium supplements by eSupplements, LLC d/b/a Nutricost (“Nutricost”) through _____. Those products are the subject of a class action settlement which may affect your rights. Visit www.SETTLEMENTWEBSITE.com for more information or to submit a claim.

YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT. A settlement fund of \$1,835,000.00 will be used to pay valid claims as set forth below and in the Settlement Agreement. To recover you must file a claim by _____, you can file a claim on the settlement website [www.\[\]](http://www.[]).com or mail a claim to the Settlement Administrator.

THIS NOTICE IS ONLY A SUMMARY. Details of the settlement are available at [www.\[\]](http://www.[]).com or by writing to or calling the Class Action Settlement Administrator at the address or toll-free number below.

WHAT IS THIS CASE ABOUT? In the lawsuit entitled *Cohen et al. v. eSupplements, LLC d/b/a Nutricost*, No. 23-cv-06387, United States District Court Eastern District of New York, Plaintiffs allege that Nutricost violated consumer protection statutes, breached express and/or implied warranties by marketing and selling the Supplements as 420 mg of magnesium “as magnesium glycinate” when, in fact, they were not. Nutricost denies any wrongdoing and denies that that it violated any state or federal law. The Court has not ruled on the merits of the claims or Nutricost’s defenses.

WHO IS A CLASS MEMBER? All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period. The Class Period is February 1, 2021, through _____.

WHAT ARE THE TERMS OF THE SETTLEMENT? Nutricost has agreed to pay a \$1,835,000.00 Settlement Fund, as described in the Settlement. The Settlement Fund will be used to pay Settlement Class Members who send in a valid Claim Form, after attorneys’ fees and costs, notice and settlement administration costs, and an incentive award to the Class Representative have been deducted. Class Counsel will request up to one-third of the Settlement Fund in attorneys’ fees, reimbursement of costs, and Incentive Awards of up to \$10,000 for each of the Class Representatives.

Settlement Class Members that submit a Valid Claim Form with their valid Claim Id and Pin (set forth above) will be entitled to an Award Unit for each Supplement purchased as reflected in the records. Settlement Class Members who submit a Valid Claim Form without a valid claim id and pin will be entitled to one Award Unit. Each Award Unit will have an equal monetary value not to exceed \$19.95. The Award Units will be determined by dividing the Net Settlement Fund (calculated and defined as the total Settlement Fund less Settlement Administration Costs, the Fee Award and Incentive Awards) by the total number of Supplements identified by Valid Claims.

HOW DO I MAKE A CLAIM? To receive a Settlement Award, you must submit a completed Claim Form online to the Class Action Settlement Administrator by NO LATER THAN _____, or by mail to the Settlement Administrator postmarked NO LATER THAN _____. The Claim Form is available for online submission and download at www.SETTLEMENTWEBSITE.com.

WHAT ARE MY OTHER OPTIONS? If you do not want to be legally bound by the Settlement, you may opt out of the Settlement by sending a request for exclusion to the Class Action Settlement

Administrator by NO LATER THAN _____. If you opt out, you will not receive any money from the Settlement. If you stay in the Settlement, you may object to the Settlement by writing to the Court explaining why you do not like the Settlement by NO LATER THAN _____. You will be bound by the Settlement if your objection is rejected and the Settlement is approved. If you do nothing (i.e., submit no Claim Form), you will not receive any benefits from the Settlement, but will nevertheless be bound by any judgment approving the Settlement and will give up any right to sue Defendant or related parties as described in the Settlement.

FINAL APPROVAL HEARING. The Court will hold a hearing in this case to consider whether to approve the Settlement on _____, at _____ p.m., at _____. The date of the Final Approval Hearing may change without further notice to the Settlement Class. Settlement Class Members should be advised to check the settlement website to confirm that the date has not been changed.

THIS NOTICE IS ONLY A SUMMARY. MORE INFORMATION IS AVAILABLE AT WWW.SETTLEMENTWEBSITE.COM, OR FROM THE CLASS ACTION SETTLEMENT ADMINISTRATOR AT [[]] OR [[[]] (TOLL-FREE), OR BY VISITING THE COURT IN-PERSON.

PLEASE DO NOT RESPOND TO THIS EMAIL DIRECTLY OR TELEPHONE THE COURT.

Exhibit C

Long Form Notice to be Posted Online

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
Dalit Cohen, et al, *on behalf of themselves and all others similarly situated,*

**NOTICE REGARDING RIGHT TO
BENEFIT FROM CLASS ACTION
SETTLEMENT**

Plaintiffs,

vs.

eSupplements, LLC d/b/a Nutricost,

Defendant.

-----X
MAGNESIUM SUPPLEMENT SETTLEMENT

A Settlement Agreement has been reached in a class action lawsuit alleging eSupplements, LLC d/b/a Nutricost (“Nutricost”) violated the law by selling Nutricost Magnesium Glycinate Supplements marketed as 420 mg of magnesium “as magnesium glycinate” when, in fact, they were not. You may be a Settlement Class Member and your rights are impacted under the Settlement Agreement reached in the case. Nutricost denies any wrongdoing and denies that it violated any state or federal law.

A settlement fund of \$1,835,000.00 has been agreed to pay Settlement Class Members, attorney’s fees, costs, incentive awards to the Class Representatives (Dalit Cohen, Anastasia Kurtz and Tina Scott) and settlement administration costs. The Settlement has been preliminarily approved, if the Settlement is finally approved, Settlement Class Members may receive payments from the Settlement Fund. Your legal rights are affected whether you act or don’t act so read this notice carefully. All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Settlement Agreement which is available at SETTLEMENTWEBSITE.com.

YOUR OPTIONS	
Option 1: Submit a Claim Deadline: _____	Submit a Claim and recover from the Settlement Fund The only way to receive a share of the Settlement Fund is to submit a claim by _____.
Option 2: Ask to be Excluded Deadline: _____	Get out of this lawsuit and get no benefits from it You may ask to be excluded from the class. By excluding yourself, you cannot recover as part of this settlement, you remove yourself from the lawsuit, you will not release any claims.
Option 3: Object Deadline: _____	Object to the terms of the Settlement Agreement. You may object to the terms of the Settlement Agreement and have your objections heard at the Final Approval Hearing.
Option 4: Do Nothing:	You will receive no payment. You will still be a Settlement Class Member and give up your right to be part of any other lawsuit against Nutricost or any other Released Party.

1. What is this lawsuit about?

In the lawsuit, the Plaintiffs allege that Nutricost violated consumer protection statutes, breached express and/or implied warranties by marketing and selling the Supplements as 420 mg of magnesium “as magnesium glycinate” when, in fact, they were not.

Nutricost denies any wrongdoing and denies that it violated any state or federal law.

Both sides have agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of further litigation.

You can read Plaintiffs’ lawsuit, the Settlement Agreement, other case documents, and submit a claim at www._____.com

2. How do I know if I am a part of the settlement?

For settlement purposes, the Court has preliminarily certified a Settlement Class consisting of all people who meet the following definition:

All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period.

The Class Period is February 1, 2021, through _____.

The “Supplement(s)” are the dietary supplements offered for sale by Nutricost as “Magnesium Glycinate” with “420 MG per serving” in 240 capsule and 120 capsule variants.

3. Why is this a class action?

In a class action, a Class Representative (in this case the Plaintiffs) sues on behalf of a group (or a “Class”) of people. Here, the Class Representatives sued on behalf of people who purchased the Supplements.

4. Why is there a settlement?

To avoid the cost, risk, and delay of litigation, the Parties reached a settlement as to Plaintiffs’ and the Settlement Class claims. The Court has not ruled on the merits of the claims or Nutricost’s defenses. Instead, both sides agreed to a settlement that they believe is a fair, reasonable, and adequate compromise of their respective positions.

The Settlement provides that Nutricost will create a Settlement Fund of \$1,835,000.00 to pay Settlement Class Members, attorney’s fees, costs, incentive awards to the Class Representatives (Dalit Cohen, Anastasia Kurtz and Tina Scott) and settlement administration costs.

The Parties reached this agreement only after extensive negotiations, an exchange of

information, and consideration of the risks and benefits of settlement.

5. How do I recover?

Submit a Claim Form. This is the only way to get a payment. You have the right as a member of the Settlement Class to receive a share of the Settlement Fund.

Settlement Class Members who submit a Valid Claim Form with a valid claim id and pin will be entitled to one award unit (“Award Unit”) per Supplement purchased as reflected in the records of sales in the possession of the parties. Settlement Class Members who submit a Valid Claim Form without a valid claim id and pin will be entitled to one Award Unit. Each Award Unit will have an equal monetary value not to exceed \$19.95. The Award Units will be determined by dividing the Net Settlement Fund (calculated and defined as the total Settlement Fund less Settlement Administration Costs, the Fee Award and Incentive Awards) by the total number of Supplements identified by Valid Claims.

Individual payment amounts will depend on the total number of valid and timely claims filed by all Settlement Class Members.

You can submit a Claim Form online at www._____.com

Or you can download the Claim Form online and mail it to: [[]]

All Claim Forms must be submitted online to the Class Action Settlement Administrator NO LATER THAN _____ or mailed to the Class Action Settlement Administrator postmarked NO LATER THAN _____. The Claim Form is available for online submission and download at www.[]].com. You may also obtain a Claim Form by calling_____.

After all Valid Claim Forms are counted, and the Settlement is given final approval by the Court, the Settlement Administrator will provide (through one or more rounds of Settlement Checks) each claiming Settlement Class Member their share of the Settlement Fund after the deductions above. Any excess from the Net Settlement Funds from uncashed Settlement Checks or because of any other reason may be provided to a charitable organization.

6. What am I giving up to receive these benefits?

By staying in the class, all of the Court’s orders will apply to you, and you give a “release” for any claims regarding the marketing, advertising, labeling or sale of the Supplements. A release means you cannot sue or be part of any other lawsuit against Nutricost and the Released Parties about the claims or issues in this lawsuit and you will be bound by the Settlement Agreement.

7. How much will the Class Representative receive?

The Class Representatives may receive their Award Units as Settlement Class Members and incentive awards for having pursued this action. Any incentive payment is subject to Court Approval. The Class Representatives will request Incentive Awards of up to \$10,000 each.

8. Do I have a lawyer in this case?

To represent the Settlement Class, the Court has appointed attorneys with the law firm of Lemberg Law, LLC, 43 Danbury Road, Wilton, CT 06897 as “Class Counsel.”

Class Counsel will request an award of attorney’s fees of up to one-third of the Settlement Fund in attorneys’ fees and reimbursement of costs. Any attorney’s fee and expense award is subject to Court Approval. You may hire your own attorney, but only at your own expense.

9. I don’t want to be part of this case, how do I ask to be excluded?

Answer: Send a Request to Be Excluded.

If you do not want to be legally bound by the Settlement, you may, upon request, be excluded (or “opt out”) from the Settlement by sending a request for exclusion (“Request for Exclusion”) that includes (a) the Requester’s full name, address and the name of the Action; (b) the Requester’s personal and original signature, or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a valid power of attorney, to act on behalf of the Requester; and (c) state unequivocally that the Requester desires to be excluded from the Settlement Class, to be excluded from the Settlement, to not participate in the Settlement, and/or to waive all rights and benefits of the Settlement. Your Request for Exclusion from the settlement must be sent to the Class Action Settlement Administrator at _____ by NO LATER THAN _____.

The Request for Exclusion shall not be effective unless it provides the required information and is *postmarked* by no later than _____.

Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the date specified, shall be bound by all terms of the Settlement Agreement and the Final Order and Judgment, regardless of whether they have requested exclusion from the Settlement Agreement.

10. How do I object?

Any Settlement Class Member who has not requested to be excluded from the Settlement Class may object to the Settlement. In order to exercise this right, you must submit your objection to the Court by the Objection Deadline. Your objection must include the following information in writing:

- (i) set forth the Settlement Class Member’s full name, address, and telephone number;
- (ii) contain the Settlement Class Member’s original signature or the original signature of counsel for the Settlement Class

Member;

- (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part;
- (iv) set forth the complete legal and factual bases for the objection, including citations to relevant authorities;
- (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and
- (vi) state whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either pro se or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

You must file your objection before _____, 2026 with the Clerk of the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722, and served at that same time upon the Settlement Administrator at:

[[]]

You will be bound by the Settlement if your objection is rejected and the Settlement is approved. If you do nothing (*i.e.*, submit no Claim Form), you will not receive any benefits from the Settlement, but will nevertheless be bound by any judgment approving the Settlement and will give up any right to sue Defendant or related parties as described in the Settlement.

THE FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing on _____, 2026, in the courtroom of [[]]. The hearing may be continued or rescheduled by the Court without further notice. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable, and adequate and in the best interests of the Class and to rule on applications for compensation for Class Counsel and incentive awards for the Class Representatives. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement. The Court may decide these issues at the hearing or take them under consideration. We do not know how long these decisions will take.

YOU ARE **NOT** REQUIRED TO ATTEND THIS HEARING TO BENEFIT FROM THIS SETTLEMENT.

FOR MORE INFORMATION

This Notice only summarizes the Settlement. Additional information and documents, including case documents, are available at www.SETTLEMENTWEBSITE.com, or you can call [[]].

In the event of a conflict between the terms of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will govern.

Exhibit D

Preliminary Approval Order

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Dalit Cohen, Anastasia Kurtz, Tina Scott, Paige
Vasseur, *on behalf of themselves and all others*
similarly situated,

Plaintiffs,

vs.

eSupplements, LLC d/b/a Nutricost,

Defendant.

Civil Action No.: 23-cv-06387(NJC)(AYS)

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT;
CERTIFYING SETTLEMENT CLASS; APPROVING NOTICE; AND SETTING
DATE FOR FINAL APPROVAL HEARING**

WHEREAS, Plaintiffs Dalit Cohen, Anastasia Kurtz and Tina Scott (“Plaintiffs”) and Defendant eSupplements, LLC d/b/a Nutricost (“Nutricost”) have reached a proposed Settlement of the Action, which is set forth in the Settlement Agreement filed with the Court; and

WHEREAS, Plaintiffs have applied to the Court for preliminary approval of the proposed Settlement, the terms and conditions of which are set forth in the Settlement Agreement; and

WHEREAS, the Court has fully considered the record of these proceedings, the Settlement Agreement and all exhibits thereto, the representations, arguments and recommendation of counsel for the Parties and the requirements of law; and

WHEREAS, it appears to the Court upon preliminary examination that the proposed Settlement is fair, reasonable and adequate, and that a hearing should be held after notice to the Settlement Class of the proposed Settlement to finally determine whether the proposed Settlement

is fair, reasonable and adequate and whether a Final Approval Order and Judgment should be entered in this Action.

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Preliminary Approval Order shall have the same meaning as defined in the Settlement Agreement, unless otherwise defined herein and as may otherwise be ordered.

2. The Court preliminarily approves the Settlement Agreement as fair, reasonable and adequate to the Settlement Class, as falling within the range of possible final approval, having no obvious deficiencies, and as meriting notice of the Settlement to persons in the Settlement Class for their consideration and a hearing on the approval of the Settlement.

3. The Settlement Agreement was entered into by experienced counsel and only after extensive arm's-length negotiations involving mediation before the Hon. Leonidas Papas, former United States Magistrate Judge, Southern District of California, and an experienced mediator.

4. For purposes of the Settlement only, the Court conditionally certifies the following Settlement Class:

All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period.

5. The Court preliminarily finds, for Settlement purposes only, that:
 - a. The above-described Settlement Class is so numerous that joinder of all members is impracticable;
 - b. There are questions of law or fact common to the Settlement Class;
 - c. The claims of the Settlement Class Representatives are typical of the claims of the Settlement Class;
 - d. The Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class;
 - e. The questions of fact or law common to the members of the Settlement Class predominate over the questions affecting only individual members; and
 - f. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy. The Court notes that, because the litigation is being settled, rather than litigated, it need not consider any manageability issues that would be presented by this litigation. *Amchem Prods. Inc. v. Windsor*, 117 S. Ct. 2231, 2240 (1997).

6. The Court finds that it has personal jurisdiction over all Class Members, including the absent Class Members.

7. Dalit Cohen, Anastasia Kurtz and Tina Scott shall be the Settlement Class Representatives of the Settlement Class. This Court preliminarily finds they will fairly and adequately represent and protect the interests of the absent Class Members.

8. The Court approves Lemberg Law, LLC as Class Counsel. This Court preliminarily finds that they are competent, capable of exercising all responsibilities as Class Counsel and will fairly and adequately represent and protect the interests of the absent Class Members.

9. The Court approves JND Legal Administration to serve as the Settlement Administrator in this Action.

10. A Final Approval Hearing shall be held before this Court on _____, 2026, at [TIME], at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722, to address: (a) whether, for purposes of the Settlement only, the Court should finally certify the Settlement Class and whether the Settlement Class Representatives and Class Counsel have adequately represented the Settlement Class; (b) whether the proposed Settlement should be finally approved as fair, reasonable and adequate and whether the Final Approval Order and Judgment should be entered; (c) whether the Released Claims of the Settlement Class in this Action should be dismissed on the merits and with prejudice; (d) whether Class Counsel's Attorney's Fees and Costs application and the Incentive Awards for Class Representatives should be approved; (e) to hear any objections by members of the Settlement Class; and such other matters as the Court may deem necessary or appropriate. Papers in support of final approval of the Settlement, the Incentive Award to Named Plaintiff, and Class Counsel's Attorney's Fees and Costs application shall be filed with the Court according to the schedule set forth in Paragraph 20 below. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of all Settlement Class Members with respect to the Released Claims being settled. The Court may finally approve the Settlement at or after the Final Approval Hearing with any modifications agreed to by Nutricost and the Class Representatives and without further notice to the Settlement Class.

11. The Court approves, as to form and content, the use of a Claim Form, Email Notice, Long Form Notice, and Short Form/Postcard Notice substantially similar to the forms attached as

Exhibits A, B, C and E to the Settlement Agreement, respectively. Written Notice will be provided to members of the Settlement Class by first-class U.S. mail and/or e-mail as well as other methods deemed appropriate by the Settlement Administrator, and updated by the Settlement Administrator in the normal course of business. Within 30 days of the date of entry of this Preliminary Approval Order, all Notices shall be mailed and posted on the case-designated website. Prior to the Final Approval Hearing, the Parties will submit to the Court a declaration of compliance with these notice provisions.

12. The Notice, as directed in this Order, constitutes the best notice practicable under the circumstances of this case and is reasonably calculated to apprise the members of the Settlement Class of the pendency of this Action and of their right to object to the Settlement or exclude themselves from the Settlement Class. The Court further finds that the Notice program is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive such notice and that it meets the requirements of due process and of Federal Rule of Civil Procedure 23. As set forth in Paragraph 19 below, the notice mailing deadline is 30 days from the entry of this Preliminary Approval Order.

13. Any member of the Settlement Class who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must submit to the Settlement Administrator, pursuant to the instructions and requirements set forth in the Notice, a timely and valid written request for exclusion postmarked no later than 60 days after the notice mailing deadline.

14. Each Request for Exclusion, or “Opt-Out”, must be personally signed by the individual Class Member; any so-called “mass” or “class” opt-outs shall not be allowed. Further, to be valid and treated as a successful exclusion or “Opt-Out” the request must include: (a) the

Requester's full name, address and the name of the Action; (b) the Requester's personal and original signature, or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a valid power of attorney, to act on behalf of the Requester; and (c) state unequivocally that the Requester desires to be excluded from the Settlement Class, to be excluded from the Settlement, to not participate in the Settlement, and/or to waive all rights and benefits of the Settlement.

15. No person shall purport to exercise any exclusion rights for any other person, or purport to exclude any other Class Member as a group, aggregate or class involving more than one Class Member, or as an agent or representative. Any such purported exclusion shall be void and the Person that is the subject of the purported opt-out shall be treated as a member of the Settlement Class and be bound by the Settlement.

16. Any member of the Settlement Class who elects to be excluded shall have no rights under the Settlement Agreement, not be entitled to receive any of the benefits of the Settlement, shall not be entitled to object to the Settlement or appear at the Final Approval Hearing, and shall not be bound by the Settlement Agreement or any final judgment.

17. Any Settlement Class Member who does not submit a valid and timely request for exclusion may object to the proposed Settlement. Any such Settlement Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class Member's own expense. Any such Settlement Class Member must file a written Objection providing notice of intention to appear with the Clerk of the United States District Court for the Eastern District of New York and mail copies thereof to the Settlement Administrator delivered or postmarked no later than 60 days after the notice mailing deadline. Each Objection must (i) set forth the Settlement Class Member's full name,

address, and telephone number; (ii) contain the Settlement Class Member’s original signature or the original signature of counsel for the Settlement Class Member; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth the complete legal and factual bases for the objection, including citations to relevant authorities; (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and (vi) state whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

18. Any Class Member that fails to object in the manner set forth herein shall be foreclosed from making such objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of this Settlement upon Final Approval and by all proceedings, orders and judgments, including but not limited to the Release in the Action.

19. Pending final determination of whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) any Released Claim against any of the Released Parties in any action, arbitration or proceeding in any court, arbitration forum or tribunal.

20. Further settlement proceedings in this matter shall proceed according to the following schedule:

<u>EVENT</u>	<u>SCHEDULED DATE</u>
Notice mailing deadline	30 days after entry of Preliminary Approval Order
Attorney’s Fees and Costs application due by	30 days following the Notice mailing deadline
Incentive Award application due by	30 days following the Notice mailing deadline

Last day for Settlement Class Members to opt-out of Settlement	60 days following the Notice mailing deadline
Last day for Settlement Class Members to Object to the Settlement	60 days following the Notice mailing deadline
Last day to submit a Claim Form	60 days following the Notice mailing deadline
Briefs in support of Final Approval due by	14 days prior to the Final Approval Hearing
Settlement Administrator to file declaration regarding notice requirements of Class Action Fairness Act, 28 U.S.C. § 1715	14 days prior to the Final Approval Hearing
Final Approval Hearing	On the date set in paragraph 10, but no earlier than 120 days after the Notice mailing deadline

21. Service of all papers on counsel for the parties shall be made as follows: for Settlement Class Counsel to Stephen F. Taylor, Lemberg Law, LLC, 43 Danbury Road, Wilton, CT 06897; for Defendant to William P. Cole, Matthew R. Orr, Amin Wasserman Gurnani, LLP, 515 South Flower Street, 18th Floor, Los Angeles, CA, 90071. If the Settlement fails to become effective, is terminated, or is not consummated for any reason, the Settlement Agreement, including any amendments thereof, except as expressly provided in the Settlement Agreement, and this Order and all orders entered in connection therewith shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be deemed to have reverted to their respective litigation positions immediately prior to the execution of the Settlement Agreement.

22. The Court may, for good cause, extend the deadlines set forth in this Order without further individual notice to the Settlement Class.

23. All discovery and other litigation activity in this Action is hereby stayed pending final approval of the Settlement.

24. The Settlement shall not constitute an admission, concession, or indication of the validity of any claims or defenses in the Action, or of any wrongdoing, liability, or violation by Nutricost, which vigorously denies all of the claims and allegations raised in the Action.

IT IS SO ORDERED.

Dated: _____, 2026

By: _____
United States District Judge

Exhibit E

Short Form/Post Card Notice

NOTICE FROM UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
(not a lawyer solicitation)

A Settlement Agreement has been reached in a class action lawsuit alleging that eSupplements, LLC d/b/a Nutricost (“Nutricost”) violated the law by selling Nutricost Magnesium Glycinate Supplements marketed as 420 mg of magnesium “as magnesium glycinate” when, in fact, they were not. Nutricost denies any wrongdoing and denies that that it violated any state or federal law. The records show that you may be a class member and may be entitled to payment under the Settlement Agreement reached in the case.

A settlement fund of \$1,835,000 will pay Settlement Class Members, attorney’s fees, costs, an incentive awards to the Class Representatives and settlement administration costs. Each Class Member is entitled to a share of the fund. If the settlement is approved, Settlement Class Members shall qualify for payments from the Settlement Fund. Your legal rights are affected whether you act or don’t act so read this notice carefully.

This Postcard Notice contains limited information about the Settlement. For more information or to submit an online Claim Form, visit www.xyz.com

[[[Admin Address]]]

PRESORTED
FIRST-CLASS
MAIL

U.S. POSTAGE
PAID

CLAIM ID [IN DIGITS]
PIN [IN DIGITS]
[NOTICE ID IN BARCODE]

Postal Service: Please Do Not Mark or Cover Barcode

[FIRST1] [LAST1]
[BUSINESSNAME]
[ADDR1] [ADDR2]
[CITY] [ST] [ZIP]

Cohen et al. v. eSupplements, LLC d/b/a Nutricost, No. 23-cv-06387
(Eastern District of New York)

THIS CARD PROVIDES LIMITED INFORMATION ABOUT THE SETTLEMENT VISIT www.xyz.com FOR MORE INFORMATION

In the lawsuit, the Plaintiffs allege that Nutricost violated consumer protection statutes, breached express and/or implied warranties by marketing and selling supplements as 420 mg of magnesium “as magnesium glycinate” when, in fact, they were not. Nutricost denies any wrongdoing and denies that it violated any state or federal law. Both sides have agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of further litigation. You can read Plaintiffs’ lawsuit, the Settlement Agreement, other case documents, and submit a claim at www. .com

Who’s Included in the Settlement Class? All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period. The Class Period is February 1, 2021, through _____.

What Can You Get? If the Settlement Agreement is approved, Settlement Class Member will be entitled to a share of the \$1,835,000 Settlement Fund after deductions for administrative costs, attorneys’ fees and costs and any incentive awards to the Class Representatives. Settlement Class Members that submit claims will be entitled to a share of the fund based on the number of Nutricost Magnesium Glycinate Supplements they purchased with a maximum of \$19.95 for each bottle purchased when a Settlement Class Member submits a Valid Claim with Claim ID and Pin. Class Counsel will request up to one-third of the Settlement Fund in attorneys’ fees, reimbursement of costs, and up to \$10,000 as an incentive award to each of the three Class Representatives for their services on behalf of the Settlement Class. The Settlement is explained in detail in the Full Notice and in the Settlement Agreement available at www.xyz.com.

How to Get Money? You must submit a claim. You can submit a claim online or by the mail. You can submit a claim form at www.xyz.com or download a claim form.

Your Other Rights. If you do not want to be legally bound by the Settlement, you must exclude yourself by **DATE** or you will not be able to sue the Defendant for any claims relating to this case. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement Class, you may object to the Settlement by **DATE**. The Full Notice, located at the website listed below, explains how to exclude yourself from, or object to, the Settlement. The Court will hold a hearing in this case on **DATE** at **TIME** p.m. to consider whether to approve the Settlement and a request by the lawyers representing all Class Members for fees and for reimbursement of expenses for litigating the case in addition to Incentive Awards to the Class Representatives. You may attend the hearing and ask to be heard by the Court, but you do not have to. **If you do not take any action, you will be legally bound by the Settlement and any orders or judgments entered in the Action, and will fully, finally, and forever give up any rights to prosecute Released Claims.**

For more information or a Claim Form, call 800-xxx-xxxx or visit www.xyz.com

Do not contact the Court, Defendant or its counsel with questions.

Exhibit F

Final Approval Order

filed with the Court as prescribed in the Preliminary Approval Order, and Class Members were therefore notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement, the award of Attorney's Fees and Costs to Class Counsel, and the payment of Incentive Awards;

NOW, THEREFORE, the Court having heard the presentation of Class Counsel and counsel for the Defendant, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, adequate and reasonable, having considered the Attorney's Fees and Cost application made by Class Counsel and the application for an Incentive Awards to the Settlement Class Representatives, and having reviewed the materials in support thereof, and good cause appearing;

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement, except as may otherwise be indicated.
2. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Settlement Class, and venue is proper.
3. The Court hereby approves the Settlement, including the plans for implementation and distribution of the settlement relief, and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Class Members, within the authority of the Parties and the result of extensive arm's-length negotiations. In reaching this conclusion, the Court considered the factors set forth in Fed. R. Civ. P. 23(e)(2): (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of

processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) whether the proposal treats class members equitably relative to each other.

4. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

5. The Settlement Class, which will be bound by this Final Approval Order and Judgment hereon, shall include all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class.

6. For purposes of the Settlement and this Final Approval Order, the Court hereby certifies the following Settlement Class:

All Persons who while residing in the United States of America purchased Nutricost Magnesium Glycinate Supplements in the 240 capsule or 120 capsule variant, during the Class Period.

7. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Rules 23(a) and (b)(3) set forth in the Preliminary Approval Order and notes again that because this certification of the Settlement Class is in connection with the Settlement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement.

8. For purposes of Settlement only, Dalit Cohen, Anastasia Kurtz and Tina Scott are appointed Class Representatives of the Settlement Class and Class Counsel is appointed counsel to the Settlement Class. The Court concludes that Class Counsel and the Class Representatives have fairly and adequately represented the Settlement Class with respect to the Settlement.

9. Notwithstanding the certification of the foregoing Settlement Class and

appointment of the Class Representatives for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Class Representatives shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

10. The Court finds that the plan for Notice effectuated pursuant to the Preliminary Approval Order was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and of their right to object and to appear at the Final Approval Hearing or to exclude themselves from the Settlement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and other applicable law.

11. The Settlement Agreement is, in all respects, fair, reasonable and adequate, is in the best interests of the Settlement Class, and is therefore approved.

12. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

13. The cash distributions provided for in the Settlement Agreement shall be paid to Settlement Class members, pursuant to the terms and conditions of the Settlement Agreement.

14. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

15. Upon the Effective Date, members of the Settlement Class who did not validly and

timely opt-out shall, by operation of this Final Approval Order, have fully, finally and forever released, relinquished and discharged the Released Parties from the Released Claims as specified in the Release set forth in Section V of the Settlement Agreement, which is incorporated by reference herein in all respects.

16. Plaintiffs and each Settlement Class Member are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action and/or as a result of or in addition to those provided by the Settlement Agreement. In addition, Plaintiffs and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a setoff or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

17. The terms of the Settlement Agreement, this Final Approval Order and the Judgment to be entered hereon shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Action or are in any way related to the Action.

18. The above-captioned Action, including all individual claims and class claims presented herein, is hereby dismissed in its entirety with prejudice. Without affecting the finality of this Final Order in any way, the Court reserves jurisdiction over all matters relating to the

interpretation, administration, implementation, effectuation and enforcement of this Order and the Settlement.

IT IS SO ORDERED.

Dated: _____, 2026

By: _____
United States District Judge

4. I have extensive experience in consumer rights litigation including matters brought under a variety of state consumer protection laws, the Magnuson Moss Warranty Act, the Truth in Lending Act, Telephone Consumer Protection Act (“TCPA”), the Fair Debt Collection Practices Act (“FDCPA”).

5. I have extensive experience in class action litigation. Lemberg Law has served as class counsel in myriad cases throughout the country. *See, e.g., Sanchez v. Kia Motors Am., Inc.*, 2024 WL 4730654 (C.D. Cal. Nov. 7, 2024) (contested class certification; certifying 10 state classes of automobile purchasers and lessees bringing consumer protection and breach of warranty claims); *Guthrie et al. v. Mazda Motor of America, Inc.*, No. 8:22-cv-01055-DOC-DFM (C.D. Cal., Oct. 8, 2024) (ECF No. 167) (final approval of class action settlement for alleged consumer protection and breach of warranty claims arising out of sale of multiple vehicle models with alleged oil consumption defect); *Riley v. Gen. Motors LLC*, 2024 WL 1256056, at *1 (S.D. Ohio Mar. 25, 2024) (contested certification of class of Ohio vehicle purchasers and lessees asserting breach of warranty claims regarding alleged common defect with shifter assemblies); *Jefferson v. Gen. Motors, LLC*, 344 F.R.D. 175 (W.D. Tenn. 2023) (same); *Powers v. Receivables Performance Mgmt., LLC*, 2025 WL 2734706 (D. Mass. Sept. 25, 2025); *Sager et al. v. Volkswagen Group of America, Inc. et al.*, No. 18-cv-135560ES-MAH (D.N.J. June 22, 2021) (final approval of class action settlement for alleged breach of express and implied warranties, violation of the Magnuson-Moss Warranty Act and violation of the Texas Deceptive Trade Practices Act arising out of sale of vehicles with allegedly defective Electric (After-Run) Coolant Pumps); *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at *1 (D.N.J. Jan. 31, 2020) (TCPA contested class action); *Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action settlement for alleged violations of Chapter 93A and 940 C.M.R. § 7.04(1)(f)); *Nyby v. Convergent Outsourcing, Inc.*, 2017 WL 3315264, at *5 (D.N.J. Aug. 3, 2017) (final approval of class action settlement agreement in FDCPA matter); *Lavigne v.*

First Community Bancshares, Inc., et al., 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (certifying TCPA class action and appointing undersigned as class counsel); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of \$2.75MM in TCPA action); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of \$3MM common fund in TCPA action); *Vinas v. Credit Bureau of Napa County Inc.*, Dkt. No. 112, 14-cv-3270 (D. Md. February 22, 2017) (order granting final approval of FDCPA class action settlement); *Duchene v. Westlake Servs., LLC*, No. 2:13-CV-01577-MRH, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of \$10MM in TCPA action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Ma. July 13, 2016) (order granting final approval of FDCPA class action settlement); *Butto v. Collecto, Inc.*, 290 F.R.D. 372 (E.D.N.Y. 2013) (certifying FDCPA class action); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA class action).

6. I, and my firm, are committed to litigating this matter on behalf of the Plaintiffs and the Settlement Class.

7. Plaintiffs Dalit Cohen, Anastasia Kurtz and Tina Scott have each been counseled on their duties and obligations as class representatives. Each has been an exemplary putative representative, working with their counsel and participating in this case, including providing documentation, responding to written discovery demands and sitting for depositions. I am unaware of any conflicts of interests between the Plaintiffs, myself, or my firm, and the Settlement Class.

8. Plaintiffs conducted extensive discovery. Through written discovery, we obtained and reviewed internal documentation and communications concerning Nutricost's magnesium glycinate supplements (the "Supplements"). This included production of emails by and between Nutricost

employees or with suppliers or other third-parties, sales records, production batch records and Supplement formulation records. Through testimonial discovery, Plaintiffs deposed six Nutricost employees and a representative of the supplier for the Supplement precursor ingredient. Four Plaintiffs were deposed (this includes Ms. Vasseur who subsequently dismissed her claims). In addition to the foregoing, Plaintiffs retained an expert and produced an expert report regarding the Supplement contents and their value. Plaintiffs also subpoenaed online retailers of the Supplements (Walmart, Amazon and eBay) for purchaser information.

9. Discovery showed Nutricost started selling the Supplements in February of 2021 and ceased sales with the allegedly problematic label in September of 2023, after Cohen initiated this action.

10. Nutricost produced sales data and records reflecting the sales of Supplements during the Class Period. These include summaries of sales in addition to detailed granular sales records (e.g. ESU000815-818, ESU000820-821, ESU001202, ESU001207-1208). These records reflect sales of 222,850 Supplements with prices of \$19.95 to \$14.95 per unit sold during the class period.

11. In January of 2024, the Parties attended a mediation before the Honorable Leonidas Papas (Ret.), former magistrate Judge for the Southern District of California and current mediator with Judicate West alternative dispute resolution services.¹ That mediation session did not result in resolution. Subsequent discussions through Judge Papas in the summer of 2025 were ultimately successful and on October 13, 2025, the Parties reached a settlement in principal.

12. Plaintiffs' counsels' endorsement of the settlement is informed by our familiarity with the case, the facts and the law. This is a good, fair and reasonable settlement and it is in the best interest of Settlement Class Members that it be accepted and approved.

¹ <https://www.judicatewest.com/adr/leo-papas>.

13. The proposed administrator, JND, has provided an initial estimate of approximately \$119,000 for the cost of administering the Class Settlement. A variable for the estimate is the number of claims received which will impact the final cost.

14. Attached as Exhibit A is a copy of the Supplement label template produced by Defendant and bates-labeled ESU 000434.

15. Attached as Exhibit B are transcript excerpts from the April 22, 2025, deposition of Anthon Gillespie.

16. Attached as Exhibit C are transcript excerpts from the February 3, 2025, deposition of Tina Scott. Also included at the end of the exhibit are two deposition exhibits Scott 1 & 2.

17. Attached as Exhibit D are transcript excerpts from the April 9, 2024, deposition of Dalit Cohen. Also included at the end of the exhibit is the deposition exhibit Cohen 2.

18. Attached as Exhibit E are transcript excerpts from the June 26, 2025, deposition of Anastasia Kurtz. Also included at the end of the exhibit are two deposition exhibits Kurtz 2 & 3.

I declare under penalty of perjury that the above is true and correct.

Dated: December 29, 2025

/s/ Stephen Taylor
Stephen Taylor

Exhibit A

Recommended Use: As a dietary supplement, take 1-2 capsules daily with 8-12 oz of water or as directed by your physician.

Warning: For healthy individuals 18 years and older. Consult a physician prior to use if you are pregnant or nursing, taking medication, or have a medical condition. Keep out of reach of children. Do not use if safety seal is broken or missing.

Notice: Store in a cool, dry place.

† These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Distributed by Nutricost®
351 E 1750 N Vineyard, UT 84059
(866) 438-3694 | support@nutricost.com

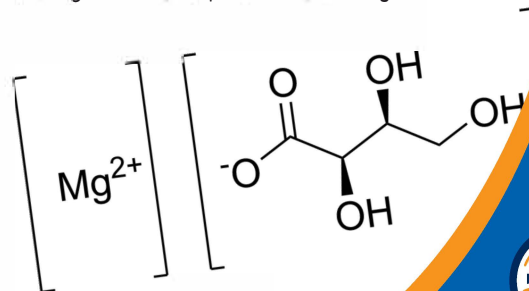
www.nutricost.com



nutricost

Magnesium Glycinate

420MG | **240** | **120**
per serving | capsules | servings



240 Capsules | Dietary Supplement

Supplement Facts		
Serving Size: 2 Capsules		
Servings Per Container: 120		
Amount Per Serving		% DV*
Magnesium (as magnesium glycinate)	420mg	100%
* Percent Daily Value (DV) is based on 2,000 calorie diet.		
Other Ingredients: Vegetable magnesium stearate, microcrystalline cellulose, vegetable capsule (hypromellose), silicon dioxide.		



Exhibit B

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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DALIT COHEN, ANASTASIA KURTZ, TINA SCOTT,
PAIGE VASSEUR, on behalf of themselves and
all others similarly situated,

Plaintiffs,

Civil Action No.:
2:23-cv-03687

- against -

eSUPPLEMENTS, LLC d/b/a NUTRICOST,

Defendant.

-----x

Zoom Video

April 22, 2025
12:04 p.m.

DEPOSITION of eSUPPLEMENTS, LLC d/b/a
NUTRICOST, (BY: ANTHON GILLESPIE) the
Defendant, in the above-titled action, at
the above-mentioned place, before Nancy
Dionisio, a Notary Public of the State of
New York, taken pursuant to Federal Rules of
Civil Procedure and pursuant to Notice, and
stipulations between Counsel.

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A P P E A R A N C E S:

LEMBERG LAW, LLC

Attorneys for Plaintiffs

43 Danbury Road

Wilton, Connecticut, 06897

BY: STEPHEN TAYLOR, ESQ.

AMIN WASSERMAN GURNANI, LLP

Attorneys for Defendant

515 South Flower Street - 18th Floor

Los Angeles, California 90071

BY: RICHARD HYDE, ESQ.

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Gillespie 9

MR. HYDE: Sorry, was that in preparation for the deposition?

MR. TAYLOR: Correct.

Q Have you reviewed documents related to this case otherwise?

A No.

Q Today we're going to be talking about eSupplements and Nutricost. When I say eSupplements, LLC or Nutricost I'm referring to the same entity, the eSupplements company doing business as Nutricost, okay?

A Okay.

Q Is that your employer?

A Yes, it is.

Q What is your position at Nutricost?

A Vice president of online marketplaces.

Q What are your duties as vice president of online marketplaces?

A Make sure that our listings are up for sale, that we are advertising for them, that if there's any problems

Gillespie

20

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2 Q Let's say there is an
3 Amazon -- and the product we're talking
4 about is the magnesium glycinate
5 supplement that maybe I should pullup a
6 picture of that. Let me do that so we
7 are on the same page, okay?

8 MR. TAYLOR: I am introducing
9 a document that's been Bates
10 labeled ESU 434 and this will be
11 Exhibit 1.

12 (Plaintiff's Exhibit 1, Bates
13 ESU 434, marked for
14 identification.)

15 MR. TAYLOR: (Screen
16 sharing.)

17 MR. HYDE: Alright, Stephen,
18 the computer is doing something
19 funny here.

20 MR. TAYLOR: I'm sharing it.

21 MR. HYDE: Yes, I see that.

22 MR. TAYLOR: This is a simple
23 one, it's just this page, so if
24 there's more complicated ones that
25 you need to download later on.

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Gillespie

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MR. HYDE: I can see you sharing it, but it's requiring administrator permissions to save and it doesn't like the file. We might need to reboot when we get into more complicated ones later, but in the meantime we can see it on the screen.

Q Can you see this label on the screen, sir?

MR. TAYLOR: (Enlarging.)

A Oh, now that you zoomed in yes, I can see it a little better.

Q Is this a Nutricost label?

A Yes, it is.

Q Is this your understanding of what the problematic magnesium glycinate product, what it looked like?

A That is my understanding, yes.

Q You see under Supplement Facts where it says magnesium (as magnesium glycinate)?

A Correct.

Exhibit C

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DALIT COHEN, ANASTASIA KURTZ,)
TINA SCOTT, PAIGE VASSEUR, on)
behalf of themselves and all)
others similarly situated,)
Plaintiffs,) Civil Action No.:
) 2:23:cv-06387-NJC-AYS
) vs.)
))
eSUPPLEMENTS, LLC d/b/a)
NUTRICOST,)
Defendant.)

VIDEO-RECORDED DEPOSITION OF TINA MICHELLE SCOTT
February 3, 2025

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

STEPHEN F. TAYLOR, ESQ.
Lemberg Law, LLC
43 Danbury Road
Wilton, Connecticut 06897
Phone: 203-653-2250
E-mail: staylor@leberglaw.com

ON BEHALF OF THE DEFENDANT:

WILLIAM COLE, ESQ
Amin Wasserman Gurnani
515 South Flower Street
18th Floor
Los Angeles, California 90071
Phone: 213-985-7206
E-mail: wcole@awglaw.com

Also present: Barbara Horn, Videographer

JOB NO. 7127121

1 PURSUANT TO WRITTEN NOTICE and the
2 appropriate rules of civil procedure, the Deposition
3 of TINA MICHELLE SCOTT, called for examination by the
4 Defendant, was taken at 1434 Sprue Street, Suite 100,
5 Boulder, Colorado 80302, commencing at 10:03 a.m. on
6 February 3, 2025, before Jennifer Windham, Certified
7 Shorthand Reporter and Notary Public in and for the
8 State of Colorado.

9
10 I N D E X

11	EXAMINATION:	PAGE
12	By Mr. Cole	4, 92
13	By Mr. Taylor	85

14	EXHIBITS:	PAGE
15	Exhibit 1 Amazon Order Details, 3/21/23	24
16	Exhibit 2 Amazon Order Details, 3/21/23	26
17	Exhibit 3 Amazon Order Details, 8/16/23	31
18	Exhibit 4 Amazon Order Details, 12/11/23	33
19	Exhibit 5 Text Messages (Confidential)	36
20	Exhibit 6 View Order Details, 4/15/24	54
21	Exhibit 7 Letter to Nutricost from Lemberg, 7/16/24	76
22	Exhibit 8 Plaintiff Tina Scott's Responses to Defendant's First Requests for Production of Documents	77
23		
24	Exhibit 9 Order Date/Order Details	83
25		

1 A. A year.

2 Q. And after that employment?

3 A. Caregiver.

4 Q. Like in-home caregiver?

5 A. Yes.

6 Q. For how long?

7 A. I did that about a year.

8 Q. Also in Texas?

9 A. Yes.

10 Q. And after that?

11 A. I didn't work for a while, so my next
12 job would be when we moved up here to Colorado.

13 Q. Okay.

14 A. I did DoorDash, Grubhub and Instacart.

15 Q. When did you start that, approximately?

16 A. We moved here in 2021, so 2021.

17 Q. Where in Colorado did you -- so did you
18 move from Texas to Colorado?

19 A. Yes. To Longmont.

20 Q. Longmont. How long did you live in
21 Longmont?

22 A. Nearly four years. I put, like,
23 3 years 9 months.

24 Q. And while in Longmont, did you work
25 anything other than DoorDash, Grubhub and Instacart?

1 A. No.

2 Q. Are you -- where do you live now?

3 A. Cheyenne, Wyoming.

4 Q. Are you working in Cheyenne?

5 A. No.

6 Q. What's your current residential
7 address?

8 A. 3521 Dunn, D-u-n-n, Avenue, Cheyenne
9 Wyoming 82001.

10 Q. How long have you lived there?

11 A. Since September the 15th, 2024.

12 Q. Do you own or rent?

13 A. Rent.

14 Q. And who else resides there with you?

15 A. My husband.

16 Q. Jeffrey?

17 A. Yes.

18 Q. Do you and Jeffrey have any children?

19 A. Not together. We have -- he has his
20 and I have mine.

21 Q. Gotcha. Did any of your children live
22 with you while you were in Longmont?

23 A. No.

24 Q. And what was your prior residential
25 address before Cheyenne?

1 A. You just scroll.

2 Q. Scroll it, right. And what did you
3 see?

4 A. It said magnesium as magnesium
5 glycinate.

6 Q. Anything else?

7 A. It had like the other ingredients below
8 it.

9 Q. Do you recall anything else in
10 particular?

11 A. No, not that I recall.

12 Q. Okay. And did you look at any other
13 magnesium glycinate products that day on Amazon?

14 A. No.

15 Q. So you just looked at the Nutricost one
16 and not any others?

17 A. Exactly.

18 (Deposition Exhibit 1 was marked.)

19 Q. (BY MR. COLE) I'll show you what we'll
20 mark as Exhibit 1.

21 MR. TAYLOR: You can look at that.

22 THE DEPONENT: Oh, okay.

23 MR. TAYLOR: That's the exhibit. So
24 he'll ask you questions about it.

25 THE DEPONENT: Okay.

1 Q. (BY MR. COLE) Ms. Scott, I'll represent
2 that this is a document that was produced by your
3 counsel to me.

4 A. Yes.

5 Q. And do you recall what this is?

6 A. Yes.

7 Q. What is this?

8 A. This is my purchase.

9 Q. Okay. So you took a screenshot of this
10 to provide in discovery in this case?

11 A. Yes.

12 Q. Okay. And so the purchase -- is this
13 correct, the purchase was on March 21, 2023?

14 A. Yes.

15 Q. And the order total was \$25.21.

16 A. Yes. Well, I can't see the order
17 total. I can just see -- oh, no, there it is right
18 there. I'm sorry.

19 Q. No. That's okay.

20 And the price of the product itself was
21 19.95?

22 A. Yes.

23 Q. Okay. So I guess there was some tax
24 and shipping?

25 A. Tax and -- no, shipping was free but

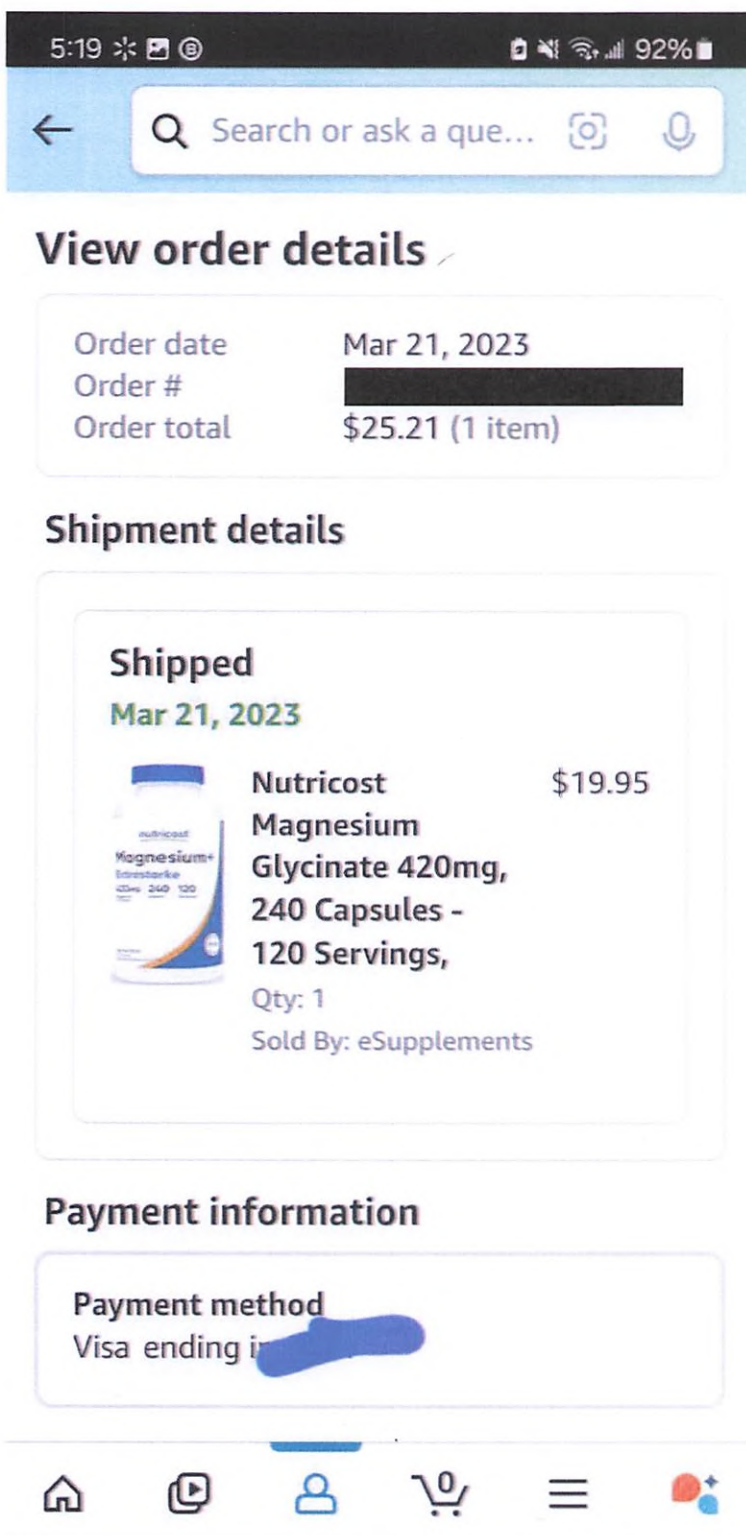


EXHIBIT 1
WIT: Scott
DATE: 2/3/25
Jennifer Windham, CSR

CONFIDENTIAL

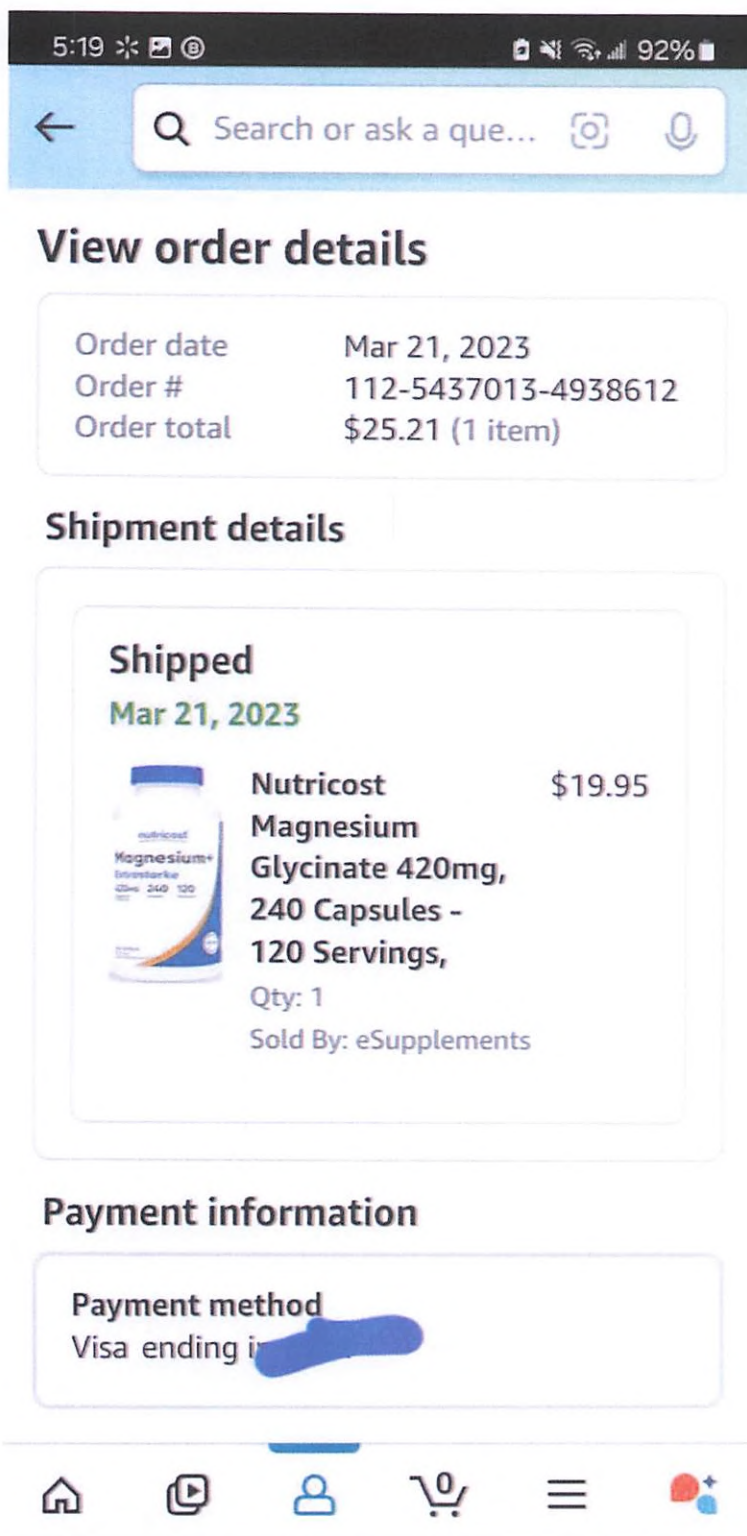


EXHIBIT 2

WIT: Scott

DATE: 2/3/25

Jennifer Windham, CSR

CONFIDENTIAL

SCOTT 004

Exhibit D

CONFIDENTIAL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DALIT COHEN, on behalf of herself and all
others similarly situated,

PLAINTIFF,

- against -

Case No.:

2:23-cv-06387-NJC-AYS

NUTRICOST,

DEFENDANT.

-----X

DATE: April 9, 2024

TIME: 9:53 A.M.

DEPOSITION of the Plaintiff,
DALIT COHEN, taken by the Defendant,
pursuant to a Notice and to the Federal
Rules of Civil Procedure, held at the
offices of Regus, 300 Cadman Plaza,
Brooklyn, New York 11201, before Anna
Khodachnik, a Notary Public of the State of
New York.

CONFIDENTIAL

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A P P E A R A N C E S:

LEMBERG LAW, LLC

Attorneys for the Plaintiff

DALIT COHEN

43 Danbury Road

Wilton, Connecticut 06897

BY: STEPHEN TAYLOR, ESQ.

AMIN TALATI WASSERMAN, LLP

Attorneys for the Defendant

NUTRICOST

515 South Flower Street, 18th Floor

Los Angeles, California 90071

BY: WILLIAM COLE, ESQ.

ALSO PRESENT:

JON DIFILIPPO - Videographer

Veritext Legal Solutions

* * *

CONFIDENTIAL

1 D. COHEN

2 Q. Have you ever used any names
3 other than Dalit Cohen?

4 A. My maiden name.

5 Q. What was that?

6 A. Dalit Tubero, T-U-B-E-R-O.

7 Q. T-U-B-E-R-O?

8 A. Yes.

9 Q. Are you currently married?

10 A. Yes.

11 Q. And I think you already gave
12 the residence address. How long have you
13 lived at that address?

14 A. Seventeen years.

15 Q. Do you own that residence?

16 A. Yes.

17 Q. As an adult, have you lived
18 anywhere other than the New York City area?

19 A. I mean -- no, no.

20 Q. You are currently on Long
21 Island?

22 A. Long Island.

23 Q. Have you lived on Long Island
24 your whole adult life?

25 A. Yes.

Page 13

CONFIDENTIAL

1 D. COHEN

2 months, but you don't recall the brand, is
3 that all right?

4 A. Yeah.

5 Q. When you took the -- let's talk
6 about the Nutricost product again. When
7 you purchased that in June of 2023, when
8 did you start using it?

9 A. Right away.

10 Q. How much of it did you use?

11 A. Two weeks worth, two and-a-half
12 weeks worth. About two, two and-a-half
13 weeks worth.

14 Q. And there is 120 servings?

15 A. There's two capsules, you take
16 two capsules at a time.

17 Q. So, approximately two to two
18 and-a-half weeks worth of capsules?

19 A. Yes.

20 Q. And is it two a day?

21 A. Yes.

22 Q. I will share what we will mark
23 as Exhibit 2.

24 (Whereupon, photographs were
25 marked as Defendant's Exhibit 2 for

CONFIDENTIAL

1 D. COHEN

2 identification as of this date by the
3 Reporter.)

4 Q. Ms. Cohen, I will represent to
5 you that these are documents produced by
6 your attorney to my office in this case.
7 Do you recognize these photos?

8 A. Yes.

9 Q. Is that your hand in the photo?

10 A. Yes.

11 Q. So, did you take the pictures
12 that are depicted on the first and second
13 page of Exhibit 2?

14 A. Yes.

15 Q. Why did you take these
16 pictures?

17 A. To prove that I have it.

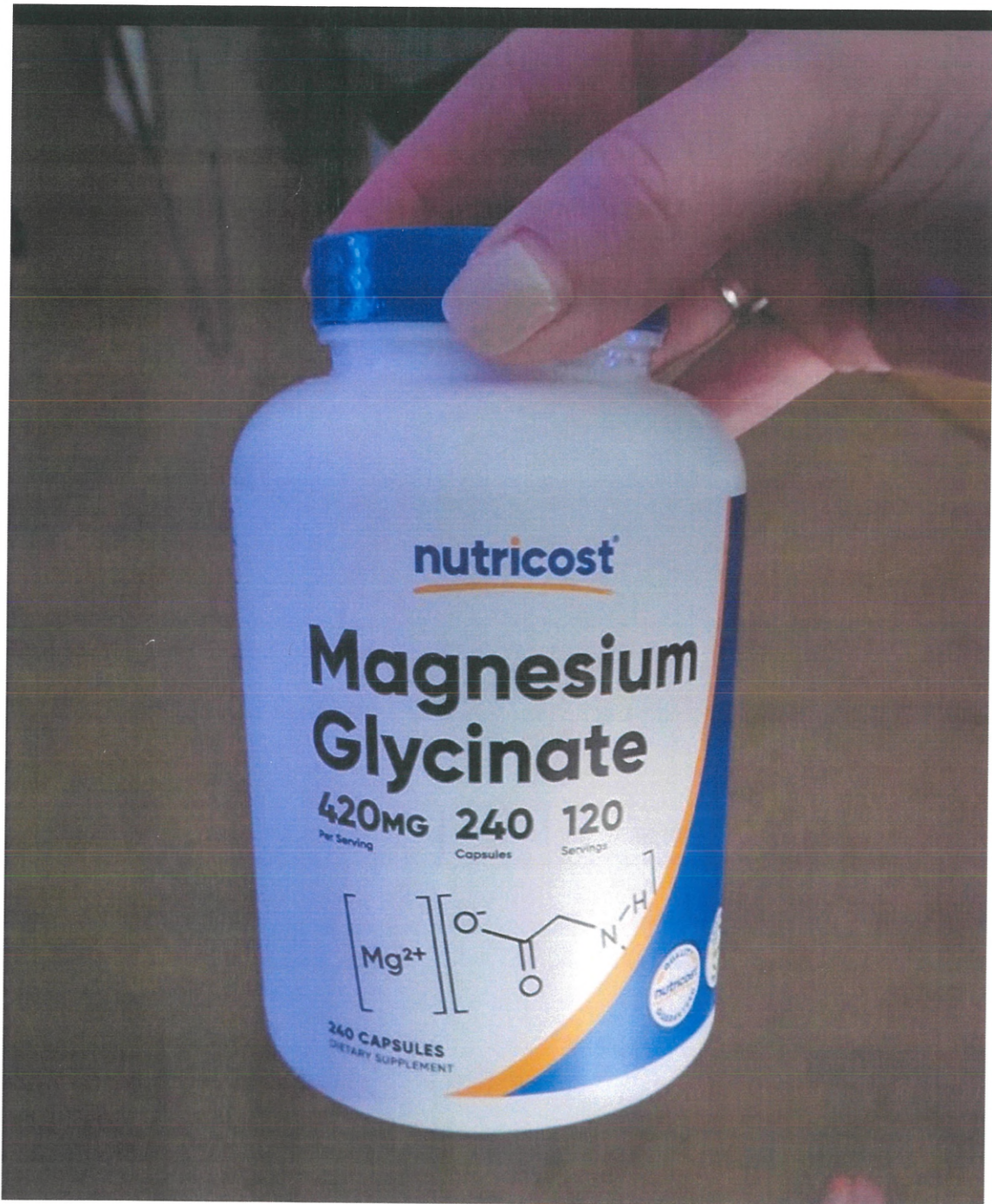
18 Q. To prove that you had it?

19 A. Yeah.

20 Q. And why did you want to prove
21 that you had it?

22 A. Because I was upset that this
23 magnesium claims it has 420 milligrams,
24 which is a hundred percent of your daily
25 allowance as magnesium, as magnesium

COHEN 001



DEFENDANT'S
EXHIBIT
4924
ax
PENGAD 800-881-6888

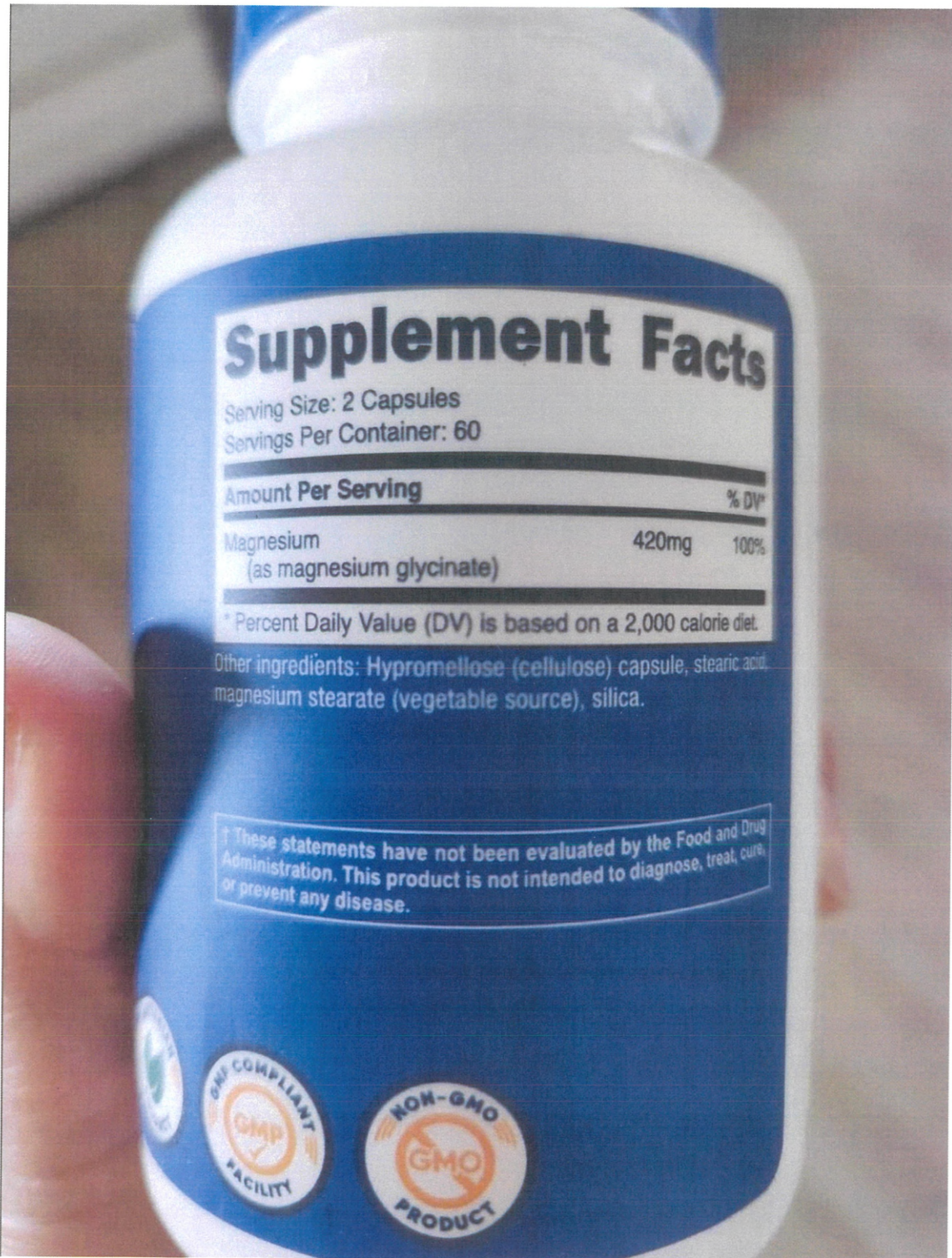


Exhibit E

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Dalit Cohen, Anastasia Kurtz, :
Tina Scott, Paige Vasseur, on
behalf of themselves and all :
others similarly situated,

Plaintiffs, :

vs. :

eSupplements, LLC d/b/a
Nutricost, :
Defendant. :

Civil Action No.:
2:23-cv-06387-NJC-AYS

VIDEORECORDED DEPOSITION OF
ANASTASIA KURTZ

June 26, 2025

APPEARANCES:

ON BEHALF OF THE PLAINTIFFS:

STEPHEN F. TAYLOR, ESQ.
Lemberg Law, LLC
43 Danbury Road
Wilton, Connecticut 06897
Phone: (203) 653-2250
Email: staylor@lemborglaw.com

ON BEHALF OF THE DEFENDANT:

WILLIAM COLE, ESQ.
Amin Wasserman Gurnani LLP
515 South Flower Street, Eighteenth Floor
Los Angeles, California 90071
Phone: (213) 985-7206
Email: william@amintalati.com

Also present:

Dustin Brown, Videographer

1 (Exhibit 1 marked.)

2 Q. (By Mr. Cole) Have you ever seen this
3 document before?

4 A. I don't -- I don't know if it looked like
5 this.

6 Q. Okay. So you're not sure if you've seen
7 this before?

8 A. I don't think it was this exact thing.

9 Q. Okay.

10 A. You can set -- we want to keep those in
11 front of you. Just sort of maybe push that up out of
12 your way. Yep.

13 I'll show you what will be marked as
14 Exhibit 2.

15 (Exhibit 2 marked.)

16 Q. (By Mr. Cole) If you look at page 1,
17 do you recognize page 1?

18 A. Yes.

19 Q. What is this?

20 A. I -- I took a screenshot of -- I think
21 this was my purchase -- this is the history of my
22 purchase on the Walmart website.

23 Q. Okay. Earlier you said March. Do you
24 think it was actually April?

25 A. Yes.

1 Q. Okay. April 24, 2023.

2 And at that time -- we've gone through
3 your -- your work history and kind of where you've
4 lived. Put me -- reorient me where you were living at
5 the time of this order.

6 A. I was living in Bowling Green, Ohio.

7 Q. Okay. And you -- it says here that there
8 was a quantity, one, and it was 19.95. Does that sound
9 accurate to you?

10 A. Yes.

11 Q. And it was paid for with a MasterCard
12 ending [REDACTED]?

13 A. Yes.

14 Q. Is that your card?

15 A. It was.

16 Q. It was.

17 When did that card close?

18 A. I don't remember if I closed it when I
19 moved or if I closed it because of fraud. I know I had
20 some fraudulent activities.

21 Q. Okay. But that was a card in your name?

22 A. It was.

23 Q. Okay. To your knowledge, is -- the
24 information here about the subtotal and the taxes, is
25 that accurate?

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4:08 61%

< **Apr 24, 2023 order** \$0.00



Nutricost Magnesium+ **\$19.95**

Extra Strength 420mg,

240 Capsules - 120

Servings. Magnesium

Glycinate, Oxide -

Non-GMO, Gluten

Free, Vegan Friendly

Qty 1

+ Add

☆ [Write a review](#)

✉ [Contact Seller](#) to ask about your order

Payment method

Ending in

Subtotal \$19.95

Taxes \$1.35



CONFIDENTIAL

KURTZ 015

CONFIDENTIAL



Order# 2000108-59336095

Have an issue with your order? [Get help](#)


Delivery

Delivered on Apr 27

Delivery Address

Anastasia Kurtz
854 8th St, Apt 4, Bowling Green, OH
43402

Delivery instructions 

Sold and shipped by
[eSupplements, llc](#)  **Pro Seller**

1 item 



Nutricost Magnesium+ **\$19.95**
Extra Strength 420mg,



CONFIDENTIAL

4:08 61%

< **Apr 24, 2023 order** \$0.00

[Write a review](#)

[Contact Seller](#) to ask about your order

Payment method

Ending in

Subtotal	\$19.95
Taxes	\$1.35
Total	\$21.30

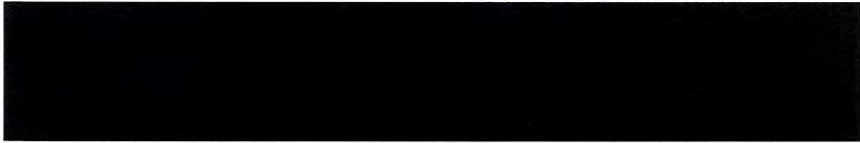
Order# 2000108-59336095



CONFIDENTIAL

KURTZ 017


CONFIDENTIAL
033



--- Forwarded Message ---

From: "Walmart.com" <help@walmart.com>
To: "lady_eightyseven@yahoo.com" <lady_eightyseven@yahoo.com>
Sent: Mon, Apr 24, 2023 at 8:55 AM
Subject: Ana, thanks for your order



Walmart 

Order date: Mon, Apr 24, 2023

Thanks for your order, Ana!

We'll get to work on [order #2000108-59336095](#) right away.

- Your shipment is set to arrive by end of day **Tue, May 2**

You're all set for now. We'll keep you posted, and you can always track your order's progress in [order details](#).

[View order](#)

P.S. For more information and FAQ, visit our [Help Center](#).

Shipping

Address
Anastasia Kurtz

CONFIDENTIAL
834

854 8th St
Apt 4
Bowling Green, OH 43402
Delivery date
Tue, May 2

Order total

Includes all fees, taxes, discounts and driver tip

\$21.30

Payment method

 MASTERCARD ending in 

Explore more savings



Bella Verde Waxing Kit - 17.5oz of Lavender Wax Beans - Wax Warmer - Pre and Post Waxing Care - 20 Application Sticks



TAL Stainless Steel Ranger Tumbler 24 fl oz, Pink

CONFIDENTIAL



LEGO Speed Champions Fast & Furious 1970 Dodge Charger R/T 76912, Toy Muscle Car Model Kit for Kids, Collectible Set with Dominic Toretto Minifigure



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Questions? Visit our [Help Center](#)

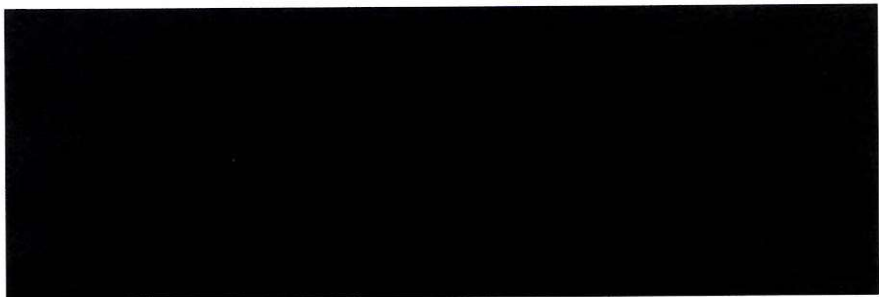


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----- Forwarded Message -----
From: "Walmart.com" <help@walmart.com>
To: "lady_eightyseven@yahoo.com" <lady_eightyseven@yahoo.com>
Sent: Thu, Apr 27, 2023 at 3:18 PM
Subject: 🙌 Your order was delivered



Walmart 

Order date: Mon, Apr 24, 2023

Your order has been delivered

Hi Ana,

Order [2000108-59336095](#) was delivered. We hope everything went smoothly and welcome your feedback!

Thanks for shopping with us,
Team Walmart

How was your experience?
Your feedback is valuable! We'd love to hear your thoughts.

☆☆☆☆☆

CONFIDENTIAL

[Give feedback](#)

1 item

Sold and shipped by eSupplements, llc



Nutricost Magnesium Glycinate 420mg, 240 Capsules - Non-GMO, Gluten Free Supplement

\$19.95

\$19.95/EA

Qty: 1

Payment method

MASTERCARD ending in [REDACTED]

Your payment method has been charged for the final total
Previous temporary holds should be removed from your credit card or debit card within 7 business days. If you paid with a card with a preloaded balance, such as gift card or EBT card, you'll be credited back within 3 hours [Learn more](#)

Explore more savings



Welch Alllyn Thermometer Probe Covers for SureTemp 692 & 690 - Box of 250 Probe Covers



Spring Summer Front Door Teardrop Tulip Wreath Artificial Floral Swag Wreath for Home Décor



Gigi Spa Strip Free Microwave Hair Removal Wax, 8 oz (226 g)



Kent Bicycles 18 inch Girl's Sparkles Bicycle, Black and Pink

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price drops & more.

[Enroll now](#)

Shop anywhere with the Walmart app



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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Dalit Cohen, Anastasia Kurtz, Tina Scott, Paige :
Vasseur, *on behalf of themselves and all others* :
similarly situated, :

Plaintiffs, :

vs. :

eSupplements, LLC d/b/a Nutricost, :

Defendant. :

Civil Action No.: 23-cv-06387(NJC)(AYS)

**DECLARATION OF SERGEI LEMBERG IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

I, Sergei Lemberg, under penalty of perjury under the laws of the United States of America, affirm and state as follows:

1. I am the principal of Lemberg Law, LLC. I am a consumer rights attorney experienced in prosecuting actions under various federal and state consumer protection statutes. I have personal knowledge as to all matters set forth in this Declaration and could testify to the same if called to do so.

2. I am a 1997 graduate of Brandeis University with a degree in Economics and a Minor in Accounting, a 2001 graduate of University of Pennsylvania School of Law and now the principal of Lemberg Law L.L.C.

3. Prior to starting my own law firm, I held positions in the New York offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and practiced corporate bankruptcy and reorganization law at Andrews Kurth LLP and Day Pitney LLP.

4. I am a member in good standing of the bars of Pennsylvania, Connecticut, Florida, Georgia, Massachusetts, New Jersey and New York. I am also admitted to practice before the First,

Second, Third, Fifth, Seventh, and Ninth Circuit Courts of Appeal. I am admitted to practice before the following Federal courts: the District of Massachusetts, Eastern and Western Districts of Arkansas; the District of Connecticut; the Northern and Middle Districts of Georgia; the Northern, Central and Southern Districts of Illinois; the District of Maryland; the Eastern and Western Districts of Michigan; the Eastern District of Missouri; the District of Nebraska; the Northern, Southern, Eastern and Western Districts of New York; the Northern District of Ohio; the Northern, Eastern and Western Districts of Oklahoma; the Western District of Texas; the Eastern, Middle and Western Districts of Pennsylvania; the Northern, Middle and Southern Districts of Florida; and the District of New Jersey.

5. My firm's decisions on consumer rights matters include but are not limited to: *Manuel v. NRA Grp. LLC*, 722 F. App'x 141, 142 (3d Cir. 2018); *Pollard v. Law Office of Mandy L. Spaulding*, 766 F.3d 98 (1st Cir. 2014); *Scott v. Westlake Servs. LLC*, 2014 WL 250251 (7th Cir. Jan. 23, 2014); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012); *LaVigne v. First Cmty. Bancshares, Inc.*, No. 1:15-CV-00934-WJ-LF, 2016 WL 6305992 (D.N.M. Oct. 19, 2016); *Butto v. Collecto, Inc.*, 290 F.R.D. 372, 395-396 (E.D.N.Y. 2013); *Cerrato v. Solomon & Solomon*, 909 F.Supp.2d 139 (D. Conn. 2012); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011); *Davis v. Diversified Consultants, Inc.*, 2014 WL 2944864 (D. Mass. June 27, 2014); *Hudak v. The Berkley Grp., Inc.*, 2014 WL 354666 (D. Conn. Jan. 23, 2014); *Zimmerman v. Portfolio Recovery Assocs., LLC*, 2013 WL 6508813 (S.D.N.Y. Dec. 12, 2013); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012).

6. I and my firm have been certified as class counsel, in both contested proceedings and in settlement. *See, e.g., Sanchez v. Kia Motors Am., Inc.*, 2024 WL 4730654 (C.D. Cal. Nov. 7, 2024) (contested class certification; certifying 10 state classes of automobile purchasers and lessees bringing consumer protection and breach of warranty claims); *Guthrie v. Mazda Motor of America, Inc.*, No.

8:22-cv-01055-DOC-DFM (C.D. Cal. Oct. 8., 2024) (ECF No. 167) (final approval of nationwide class action settlement arising from alleged automotive defect); *Sager, et al. v. Volkswagen Group of America, Inc., and Audi of America, Inc.*, 18-cv-13556 (D.N.J) (settlement class counsel representing nation-wide class of approximately 340,000 members alleging breach of various warranties and state consumer law owing to allegedly defective after-run electric coolant pumps); *Riley v. Gen. Motors LLC*, 2024 WL 1256056 (S.D. Ohio Mar. 25, 2024) (in which the court certified a class of Ohio vehicle owners for breach of warranty claims flowing from General Motors failure to comply with its warranty obligations to repair defective shifters); *Carlson v. Target Enter., Inc.*, 2020 WL 1332839 (D. Mass. Mar. 23, 2020) (final approval of class action settlement for alleged violations of Chapter 93A and 940 C.M.R. § 7.04(1)(f)); *Johnson v. Comodo Grp., Inc.*, 2020 WL 525898, at *1 (D.N.J. Jan. 31, 2020) (contested class certification decision in TCPA action); *Acklin v. Homesite Group Inc.*; No. 1:18-cv-12183-MBB (D. Mass. Sept. 15, 2019) (final approval of FLSA collective action settlement); *Lavigne v. First Community Bancshares, Inc., et al.*, 2018 WL 2694457, at *5 (D.N.M. June 5, 2018) (certification in Telephone Consumer Protection Act (“TCPA”) action); *Munday v. Navy Federal Credit Union*, ECF No. 60, 15-cv-01629 (C.D. Cal., July 14, 2017) (final approval of class settlement of \$2.75MM in TCPA action); *Brown v. Rita’s Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 1021025, at *1 (E.D. Pa. Mar. 16, 2017) (final approval of class settlement of \$3MM common fund in TCPA action); *Duchene v. Westlake Servs., LLC*, No. 2:13-CV-01577-MRH, 2016 WL 6916734 (W.D. Pa. July 14, 2016) (final approval of class settlement of \$10MM common fund in TCPA action); *In Re: Convergent Telephone Consumer Protection Act Litigation*, ECF No. 268, 3:13-md-02478 (D. Conn., November 10, 2016) (final approval of class settlement consisting of \$5.5MM common fund in TCPA action); *Oberther v. Midland Credit Management*, Doc. No. 90, 14-cv-30014 (D. Mass. July 13, 2016) (Fair Debt Collection Practice Act (“FDCPA”) class action); *Zimmerman v. Portfolio Recovery Assoc., LLC*, 276 F.R.D. 174 (S.D.N.Y. 2011) (certifying FDCPA

class action); *Seekamp v. It's Huge, Inc.*, 2012 WL 860364 (N.D.N.Y. Mar. 13, 2012) (certifying auto fraud class action); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012) (FDCPA class action); *Butto v. Collecto, Inc.*, 290 F.R.D. 372 (E.D.N.Y. 2013) (certifying FDCPA class action); *Douma v. Law Offices of Mitchell N. Kay P.C.*, 09-cv-9957 (S.D.N.Y.) (FDCPA class action); *Walters v. Collection Tech., Inc.*, 10-cv-02514 (S.D.N.Y.) (FDCPA class action).

7. I have been interviewed and asked to contribute on multiple occasions by the media regarding various matters that I worked on, such as the Boston Herald, NorthJersey.com, Newsweek, The Leader Herald, PatriotLedger.com, Law360, Texas Lawyer, ABC News, Chanel 7 in Boston, McClatchy, AOL Autos, Connecticut Law Tribune, Philly.com, the Los Angeles Times, Consumer Reports.org, Syracuse.com, Daily News, Harford Advocate.com and the Boston Herald.

8. I have co-authored the definitive compilation of form complaints in Connecticut, Connecticut Civil Complaints for Business Litigation, contributing form complaints for the Lemon Law and Auto Fraud sections.

9. I am also the former Chair of the Consumer Law Section of the Connecticut Bar Association. I held that position from 2014 to 2015. I have been a guest speaker at the Professional Association for Customer Engagement conference in 2014 and the National Debt Collection Forum in 2016. In both instances I spoke about best practices that should be or are adopted in the debt collection profession from the perspective of a consumer advocate.

10. My experience with federal class actions and consumer protection laws, is more than sufficient to act as Class Counsel in this case. I, and my firm, are committed to litigating this matter on behalf of Plaintiffs and the Settlement Class.

I declare under penalty of perjury that the above is true and correct.

Dated: December 29, 2025

/s/ Sergei Lemberg
Sergei Lemberg