



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

*[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*  
*William POC*