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BY ECF

Hon. Nusrat J. Choudhury
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *Cohen, et. al v. eSupplements, LLC d/b/a Nutricost*; 2:23-cv-06387 (NJC)(AYS)
Joint Letter Regarding Personal Jurisdiction Over Out-of-State Class Members

Your Honor:

As directed, Plaintiffs and Defendant respectfully submit this joint letter providing legal authority supporting the Court's exercise of personal jurisdiction over out-of-state class members in approving the proposed class action settlement where the Court's subject matter jurisdiction is on based diversity jurisdiction and the defendant has waived personal jurisdiction for purposes of the proposed class settlement.

Courts have held that, in a Fed. R. Civ. P. 23 class action, "specific jurisdiction over a nationwide class action is assessed based on the citizenship of the named plaintiff, without inquiry into the citizenship of unnamed class members." *Hines v. Equifax Information Services LLC*, 2024 WL 4132333, at *2 (E.D.N.Y., 2024) ("The citizenship of unnamed class members is disregarded in determining whether a lawsuit satisfies the complete diversity requirement needed for subject-matter jurisdiction under 28 U.S.C. § 1332."); *Peck Garrido v. Xgimi Technology Incorporated*, 2025 WL 3165671, at *9 (E.D.N.Y., 2025) (same); *In re Actos Antitrust Litigation*, 2024 WL 4345568, at *7-8 (S.D.N.Y., 2024) (same). See also, *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 447–48 (7th Cir. 2020); *Lyngaas v. Curaden Ag*, 992 F.3d 412, 433–36 (6th Cir. 2021); and *Fischer v. Fed. Express Corp.*, 42 F.4th 366, 375 (3d Cir. 2022) ("*Bristol-Myers* did not change the personal jurisdiction question with respect to class actions."), *cert. denied*, — U.S. —, 143 S. Ct. 1001, 215 L. Ed. 2d 137 (2023). The Court has personal jurisdiction over the Plaintiffs (Cohen is domiciled in New York and Defendant has already waived any personal jurisdictional challenges as to the other named Plaintiffs). Also, without prejudice to any personal jurisdiction arguments Defendant may attempt to assert absent a settlement, Defendant waives any personal jurisdiction defenses as to the class for purposes of the settlement. Accordingly, there is no issue with respect to the Court exercising jurisdiction over a certified nationwide settlement class the Plaintiffs represent. And to the extent any member of the nationwide class seeks to avoid the Court's jurisdiction, they will have the opportunity to exclude themselves from this proceeding by opting out.

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In addition, during our April 27, 2026, conference, the Parties referenced the Supreme Court case *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cnty.*, 137 S. Ct. 1773, 582 U.S. 255 (U.S., 2017). In *Bristol-Myers*, the Supreme Court upheld a challenge to a California state court’s lack of specific personal jurisdiction in a mass-tort action consisting of 600 named plaintiffs, many of whom were outside of California. *Id.* at 1781-82. Critically, Bristol-Myers did not waive personal jurisdiction over it as to out-of-state plaintiffs. And as seen in the authorities cited herein, Plaintiffs’ position is that a mass-tort action aggregating hundreds of named plaintiffs is fundamentally different from a representative Rule 23 class action, and *Bristol-Myer* did not create new personal jurisdictions requirements for absent class members:

As the court in *Mussat* observed, “[c]lass actions ... are different from many other types of aggregate litigation.” 953 F.3d at 446–47. “[T]he lead plaintiffs earn the right to represent the interests of absent class members.” *Id.* at 447. “[A] class action is formally one suit in which, as a practical matter, a defendant litigates against only the class representative.” *Lyngaas*, 992 F.3d at 435. “[A]bsent class members,” moreover, “are not considered parties, as a class representative is, for certain jurisdictional purposes,” *id.*, including diversity jurisdiction, *see Devlin v. Scardelletti*, 536 U.S. 1, 10, 122 S.Ct. 2005, 153 L.Ed.2d 27 (2002); *see also id.* (“The label party does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context.”). They should likewise not be considered parties for the purpose of personal jurisdiction. *See Mussat*, 953 F.3d at 447; *Lyngaas*, 992 F.3d at 437; *Fischer*, 42 F.4th at 375.12

In re Actos Antitrust Litigation, 2024 WL 4345568 at *8. Instead, “if the court has personal jurisdiction over the defendant with respect to the class representative’s claim, the case may proceed.” *Mussat*, 953 F.3d at 448. As noted, for purposes of the proposed settlement and settlement class, Defendant waives any argument to the contrary.

Respectfully submitted,

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