

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)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement,” “Settlement,” or “Settlement Agreement”) is entered into by and among Plaintiffs Dalit Cohen, Anastasia Kurtz, and Tina Scott (“Cohen”, “Kurtz”, “Scott” and, together, “Plaintiffs” or “Class Representatives”) on the one hand, and Defendant eSupplements, LLC d/b/a Nutricost (“eSupplements” or “Defendant” and, with the Plaintiffs, the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the Released Claims (as the term is defined below), upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court. This Agreement is entered into as of the date it is signed by the last of the Parties to sign it.

I. RECITALS

A. **WHEREAS**, on August 25, 2023, Cohen filed a class action complaint in the Eastern District of New York, titled *Dalit Cohen, on behalf of herself and all others similarly situated, v. Nutricost*, and with docket number 2:23-cv-06387, initiating this action (as amended,

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: PresidentDATED: 12/22/2025Reviewed and approved by eSupplements' Counsel,
and agreement to be bound to all provisions in the
Agreement that apply to eSupplements' CounselBy: *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.\[\]\].com](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.\[\]\].com](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 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,*

Plaintiffs,

vs.

eSupplements, LLC d/b/a Nutricost,

Defendant.
-----X

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

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.settlement.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]]]

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]

PRESORTED
FIRST-CLASS
MAIL

U.S. POSTAGE
PAID

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.xyz.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

**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] FINAL APPROVAL ORDER

WHEREAS, on _____, a Preliminary Approval Order was entered by the Court preliminarily approving the proposed Settlement pursuant to the terms of the Settlement Agreement (Dkt. _) between Plaintiffs Dalit Cohen, Anastasia Kurtz and Tina Scott (“Plaintiffs”) and Defendant eSupplements, LLC d/b/a Nutricost (“Nutricost”), and directing that notice be given to the Settlement Class (Dkt. _);

WHEREAS, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to opt out, and of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this Action with prejudice;

WHEREAS, prior to the Final Approval Hearing, a declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was

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