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)

SUPPLEMENTAL REGARDING
"PRESS RELEASES" CLAUSE IN SETTLEMENT AGREEMENT

Plaintiffs Dalit Cohen, Anastasia Kurtz and Tina Scott ("Plaintiffs"), with the consent of Defendant eSupplements, LLC d/b/a Nutricost ("Defendant"), respectfully submit this supplemental to address the Court's concerns regarding the "Press Releases" clause in the Parties' Class Action Settlement Agreement and whether the clause is appropriate or raises issues for approval. The subject clause is:

> **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.

Settlement Agreement Art. VII, ¶ 24 (Doc. No. 58-3 Page 41). "Parties" is defined at Art. II ¶ 21 as "Cohen, Kurtz, Scott and eSupplements." Doc. No. 58-3 Page 7.

The language of the clause is of the type that is typically approved in non-Fair Labor Standards Act ("FLSA") cases, albeit without much discussion by courts. *See, e.g., Douglass v.*

P.C. Richard & Son, LLC, 2023 WL 12083657, at *18 (W.D. Pa. June 27, 2023) (final approval of class settlement providing "The Parties and their respective counsel, agents, and representatives agree not to make any disparaging remarks about the other Party and their respective counsel relating to this Agreement or the negotiations leading to it."); *Jin Nakamura v. Wells Fargo Bank, Nat'l Ass'n*, 2019 WL 2193785, at *22 (D. Kan. May 21, 2019) (same with the following term "**V. Non-Disparagement**. Plaintiff's Counsel and Representative Plaintiff agree to refrain from intentionally disparaging Wells Fargo and its parent company, subsidiaries, affiliates, successors or assigns publicly or in the media with respect to any issue related to the Action.").

Issues may arise when such limitations on speech or publicity apply to absent class members but that is not a concern where the clause applies, as here, only to actual parties or their counsel and not the class. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 327 n.9 (N.D. Cal. 2018) (overruling objection to broad non-disparagement clause applicable to the parties and counsel) ("But the provision does not prevent [objector] from speaking out against the Settlement, as that provision by its terms does not apply to unnamed Settlement Class Members.").

In the FLSA context, "[d]istrict courts in the Second Circuit 'have taken varying and conflicting approaches to so-called non-publicity or 'no publicity' clauses in FLSA settlements.'" *Caccavale v. Hewlett-Packard Co.*, 2024 WL 4250337, at *25 (E.D.N.Y. Mar. 13, 2024) (*quoting Choc v. Corp. #1,* 2023 WL 8618746, at *5 (S.D.N.Y. Dec. 12, 2023), collecting cases). How courts treat any specific FLSA language is guided the strong Congressional policy that FLSA rights be broadcast and not muzzled. *Lopez v. Nights of Cabiria, LLC*, 96 F. Supp. 3d 170, 180 (S.D.N.Y. 2015) ("The FLSA evinces 'Congress's intent ... both to advance employees' awareness of their FLSA rights and to ensure pervasive implementation of the FLSA in the workplace.' '[F]ear of copycat lawsuits or embarrassing inquiries' does not 'suffice to defeat' these objectives.

Thus, while 'an employee whose rights have been vindicated through the FLSA may inform and encourage other employees to do the same, 'vindication of FLSA rights throughout the workplace is precisely the object Congress chose to preserve and foster through the FLSA.' ' It is difficult to imagine a scenario in which the parties' interest in non-disclosure trumps these congressional purposes."). Thus, approvals of FLSA settlements – whether individual or collective – with overly restrictive anti-publicity clauses have been denied for various reasons such as where they limit even true statements or ban publication through normal channels like social media. *E.g.*, *Caccavale*, 2024 WL 4250337 at *26.

The instant matter is not an FLSA case and the related policies and rules concerning non-publicity clauses do not apply. The point of the Press Release clause here was not to limit knowledge of the settlement or this case. Indeed, the Settlement Agreement is public and has a robust notice program to provide individual notice. *See* Email Notice (Doc. 58-3 Page 46-48); Postcard Notice (*id.* Page 66-68). The Parties negotiated the language in those notice documents to provide accurate descriptions of the settlement and proceedings to class members. Instead, the Press Release clause is meant to give the Parties a measure of control over other descriptions of the settlement and this action (should they appear) throughout the notice process.

However, upon further review of the clause and after conferral, the Parties have agreed to narrow and sharpen the language to avoid any potential overbreadth concerns. The amended language is:

> No Party may issue a press release regarding the Action or the Settlement excepting any statement that is true. 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, on the basis of the settlement or claim that the settlement amounts to an admission of liability.

Ex. A – Amendment. This amendment preserves the limited ability of a party to reasonably control

another party's press releases concerning the action. At the same time, true statements are not impacted and the prohibition on "issuing a public statement of any type", which could be considered vague, is removed. The language still does not impact the rights of absent class members nor does it offend the policy concerns in FLSA actions and merits approval.

With this amendment to the Settlement Agreement, Plaintiffs request, with Defendant's consent, that the Court grant preliminary approval to the Settlement Agreement.

February 5, 2026

Respectfully submitted,

By: /s/ *Stephen Taylor*

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Stephen Taylor
Joshua Markovits
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on February 5, 2026, the foregoing was filed through the Court's CM/ECF system which sent notice of such filing to all counsel of record.

/s/ Stephen Taylor
Stephen Taylor

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Dalit Cohen, Anastasia Kurtz, Tina Scott, Paige Vasseur, *on behalf of themselves and all others similarly situated*, Plaintiffs, vs. eSupplements, LLC d/b/a Nutricost, Defendant.	Civil Action No.: 23-cv-06387(NJC)(AYS)

AMENDMENT NO. 1 TO SETTLEMENT AGREEMENT

The Settlement Agreement entered into by and among Plaintiffs Dalit Cohen, Anastasia Kurtz, and Tina Scott ("Plaintiffs") on the one hand, and Defendant eSupplements, LLC d/b/a Nutricost ("Defendant" and, with the Plaintiffs, the "Parties"), which was signed by Plaintiffs and their counsel on December 19, 2025, and by Defendant and its counsel on December 22, 2025, is hereby amended set forth below.

Settlement Agreement Art. VII, ¶ 24 ("Press Releases") is deleted and replaced with the following:

24. Press Releases

No Party may issue a press release regarding the Action or the Settlement excepting any statement that is true. 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, on the basis of the settlement or claim 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 Amendment No. 1 to the Settlement Agreement to be executed on the date set forth beside their respective signatures.

DATED: 02/03/2026

DALIT COHEN, on behalf of herself and the Class

Dalit Cohen

By: _____

DATED: 02/03/2026

Anastasia Kurtz, on behalf of herself and the Class

Anastasia Kurtz

By: _____

DATED: 02/04/2026

Tina Scott, on behalf of herself and the Class

Tina Scott

By: _____

DATED: 02/03/2026

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

By: _____

DATED: 2/4/2026

ESUPPLEMENTS, LLC D/B/A NUTRICOST

By: Young Min Kim

ITS: President

DATED: 2/4/2026

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

By: