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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No: 2:13-cv-05942-AB-Ex

IN RE COBRA SEXUAL ENERGY
SALES PRACTICES LITIGATION

**CLASS ACTION SETTLEMENT
AGREEMENT**

Judge: The Honorable André Birotte, Jr.

1 This Class Action Settlement Agreement (the “Settlement Agreement”) is made
2 and entered into by and between Plaintiff Troy Lambert, on behalf of himself and the
3 settlement class defined herein in this Litigation (hereinafter “Plaintiffs” or “Class”), and
4 Defendant Nutraceutical Corporation (hereinafter “Nutraceutical” or “Defendant”)
5 (collectively “the Settling Parties”) to settle and compromise this Litigation, and settle,
6 resolve, and discharge the Released Claims, as defined below, according to the terms
7 and conditions herein.

8 **RECITALS**

9 **PROCEDURAL BACKGROUND**

10 WHEREAS, this action, entitled *In re Cobra Sexual Energy Sales Practices Litig.*,
11 2:13-cv-5942-AB-Ex (C.D. Cal.), was filed in the U.S. District Court for the Central
12 District of California against Nutraceutical, bringing claims under California’s
13 Consumer Legal Remedies Act (Civ. Code § 1750, *et seq.* [“CLRA”]), Unfair
14 Competition Law (Bus. & Prof. Code § 17200, *et seq.* [“UCL”]), and False Advertising
15 Law (*id.* § 17500, *et seq.* [“FAL”]) arising from Defendant’s marketing and sale of
16 Nutraceutical’s Cobra products , as defined below (hereinafter “the Litigation”);

17 WHEREAS, based upon extensive discovery, investigation, and evaluation of the
18 facts and law relating to the matters alleged in the pleadings of the Litigation, plus the
19 risks and uncertainties of continued litigation and all factors bearing on the merits of
20 settlement, the parties have conducted arm’s-length negotiations both before and during
21 a formal mediation, and have agreed to settle the claims asserted in the Litigation
22 pursuant to the provisions of this Settlement Agreement;

23 **NOW THEREFORE**, subject to the final approval of the Court as required
24 herein and by applicable law and rules, the Settling Parties hereby agree, in
25 consideration of the mutual promises and covenants contained herein, and for other good
26 and valuable consideration, the sufficiency of which is hereby acknowledged, that any
27 Released Claims, as defined below, against any Released Parties, as defined below, shall
28 be settled, compromised and forever released upon the following terms and conditions.

1 **TERMS AND CONDITIONS OF THE SETTLEMENT**

2 **1. DEFINITIONS**

3 As used herein, the following terms have the meanings set forth below.

4 “CAFA Notice” means the notice of this Settlement to the appropriate federal and
5 state officials in the United States, as provided by the Class Action Fairness Act of 2005,
6 28 U.S.C. § 1715.

7 “Class” means those individuals who purchased Cobra products from August 14,
8 2009 through December 31, 2020 as defined in Section 12 of this Agreement.

9 “Class Counsel” means The Weston Firm and The Law Offices of Ronald A.
10 Marron.

11 “Class Member(s)” means any person(s) who is/are included within the definition
12 of this Class and who do(es) not validly and timely request exclusion from the Class, in
13 accordance with the provisions of the Notice Plan.

14 “Class Period” means August 14, 2009 through December 31, 2020.

15 “Court” means the U.S. District Court for the Central District of California.

16 “Defendant” means Nutraceutical Corporation.

17 “Defense Counsel” means Defendant’s counsel of record in the Litigation, John C.
18 Hueston, Steven N. Feldman, and Joseph A. Reiter of Hueston Hennigan LLP.

19 “Effective Date” means the day the Court grants final approval to this settlement.

20 “Fairness Hearing” means the hearing that is to take place after entry of the Preliminary
21 Approval Order and after Notice is distributed pursuant to the Notice Plan for purposes
22 of determining (1) whether the terms and conditions of the Settlement Agreement are
23 fair, reasonable, and adequate, and therefore the Settlement Agreement should be finally
24 approved with entry of the Final Judgment and Order; and (2) whether a judgment
25 should be entered dismissing the Litigation on the merits and with prejudice in favor of
26 Defendant and against Plaintiff pursuant and subject to the terms of the Settlement
27 Agreement.

28 “Final Judgment and Order” means the order finally approving the terms of this

1 Settlement Agreement and a separate judgment to be entered by the Court, pursuant to
2 Federal Rule of Civil Procedure 58(a), dismissing the Litigation with prejudice.

3 The “Litigation” means the action entitled *In re Cobra Sexual Energy Sales*
4 *Practices Litig.*, 2:13-cv-5942-AB-Ex (C.D. Cal.).

5 “Notice” means the “Class Notice,” substantially in the form of **Exhibit A** hereto,
6 with substantial changes requiring the mutual consent of the Settling Parties or the order
7 or instruction or conditional approval of the Court, to be disseminated in accordance
8 with Preliminary Approval Order, informing the Class of, among other things, the
9 pendency of the Litigation, the material terms of the Settlement Agreement, and their
10 options with respect thereto.

11 “Notice Plan” means the method of providing the Class with Notice of the
12 Settlement.

13 “Personal Injury” means a disease or adverse physical condition.

14 “Representative Plaintiff” means the named plaintiff in this action, Troy Lambert.

15 “Plaintiffs” means the Representative Plaintiff and all Class Members.

16 “Preliminary Approval Order” means an order, providing for, among other things,
17 preliminary approval of the Settlement and dissemination of the Notice to the Class
18 according to the Notice Plan.

19 “Cobra” refers to Cobra Sexual Energy, the dietary supplement manufactured by
20 Nutraceutical at issue in the Litigation, in all packaging sizes and iterations.

21 “Release” and “Released Claims” are defined in the separate release section.

22 “Request for Exclusion” means a timely, written request from a Class Member
23 who does not wish to participate in the Settlement to the Class Action Administrator,
24 stating an intent to be “excluded from” or to “opt-out” of the Settlement.

25 “Settlement” means the settlement set forth in this Settlement Agreement.

26 “Settlement Agreement” means this agreement and its Exhibits, attached hereto
27 and incorporated herein, including all subsequent amendments agreed to in writing by
28 the Settling Parties and any exhibits to such amendments.

1 “Settling Parties” means, collectively, Plaintiffs (except for those Class Members
2 that opt out of the Settlement in the manner provided herein) and Nutraceutical.

3 **2. DENIAL OF WRONGDOING AND LIABILITY**

4 Nutraceutical denies the material factual allegations and legal claims asserted in
5 the Litigation, including any and all charges of wrongdoing or liability arising out of any
6 of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in
7 the Litigation. Similarly, this Settlement Agreement provides for no admission of
8 wrongdoing or liability by any of the Released Persons. This Settlement is entered into
9 solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

10 **3. THE BENEFITS OF SETTLEMENT**

11 Class Counsel and the Representative Plaintiff recognize and acknowledge the
12 expense and length of continued proceedings that would be necessary to prosecute the
13 Litigation through trial and further appeals. Class Counsel also has taken into account
14 the uncertain outcome and the risk of any litigation, especially in complex actions such
15 as the Litigation, as well as the difficulties and delays inherent in such litigation. Class
16 Counsel is mindful of the challenges it will face in maintaining class certification. These
17 challenges include, by way of example, jurisdictional challenges, statute of limitations
18 challenges, potential difficulties arising from different product packaging over the
19 course of the Class Period, and the fact that the Class Members did not pay a uniform
20 price. Class Counsel is also mindful of the inherent problems of proof related to the
21 claims and defenses to the claims asserted in the Litigation. Class Counsel believes that
22 the proposed Settlement confers substantial benefits upon the Class and provides much
23 of the relief sought in the Litigation, both monetary and injunctive. Based on their
24 evaluation of all of these factors, following briefing on the sufficiency of the complaint
25 and the evaluation of documents produced, the Representative Plaintiff and Class
26 Counsel have determined that the Settlement is in the best interests of the Representative
27 Plaintiff and the Class.

28 **4. INJUNCTIVE RELIEF – “POTENCY WOOD”**

1 Nutraceutical agrees to, within 180 days of the Effective Date, discontinue the use
2 of the phrase “potency wood” on the packaging of Cobra. This term does not require a
3 recall or destruction of existing product or packaging stock.

4 **5. INJUNCTIVE RELIEF – “VIRILITY”**

5 Nutraceutical agrees to, within 180 days of the Effective Date, discontinue the use
6 of the word “virility” on the packaging of Cobra. This term does not require a recall or
7 destruction of existing product or packaging stock.

8 **6. MONETARY RELIEF – SETTLEMENT FUND**

9 Nutraceutical to pay \$100,000 cash settlement to the class. Class members will
10 receive \$10 for claims not documented by receipts, and \$100 if documented by receipts.
11 Notice and administrative expenses of \$19,250 are to be paid out of this \$100,000
12 settlement fund. Nutraceutical will not have any responsibility for the allocation of the
13 settlement proceeds or the review of claims of class members.

14 If valid claims exceed the total amount to be paid, the payments will be reduced
15 on a pro rata basis. If valid claims are below the total amount of the fund, the payments
16 will be increased pro-rata such that the fund is exhausted. Any funds remaining after the
17 distribution, such as checks that are returned for incorrect addresses, or that are not
18 cashed within 90 days, shall be paid by the Class Action Administrator as a *cy pres*
19 payment to the Legal Aid Foundation of Los Angeles, 1550 W. 8th Street, Los Angeles,
20 CA 90017.

21 **7. MISCELLANEOUS RELIEF – STIPULATION OF CATALYST**

22 Solely for purposes of settlement, and without any admission of wrongdoing,
23 Defendant stipulates this action was the catalyst for the removal from the label of Cobra,
24 after the litigation was commenced, of “perform your best,” “intended to provide
25 nutritive support for blood flow” and “aphrodisiac.”

26 **8. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW**
27 **AND APPROVAL**

28 As soon as practicable, within 30 days following the signing of this Settlement

1 Agreement, Class Counsel shall seek preliminary approval of this agreement because it
2 is within the range of reasonableness such that Notice should be provided pursuant to
3 this Settlement Agreement.

4 **9. ADMINISTRATION AND NOTICE**

5 Class Counsel shall arrange for providing Notice to the Class in conjunction with
6 the Class Action Administrator. Nutraceutical has agreed to pay \$100,000 cash
7 settlement to the Class. Notice and administrative expenses are to be paid out of this
8 \$100,000 settlement fund.

9 **Appointment and Retention of Class Action Administrator**

10 The Class Action Administrator shall be Classaura LLC.

11 The Class Action Administrator shall be responsible for providing the Settling
12 Parties with assistance, as necessary, such as by preparing affidavits of work it has
13 performed with respect to implementing the Notice Plan, and providing regular updates
14 to the Settling Parties' counsel. Defendant shall pay \$19,250 to the Class Action
15 Administrator within five court days of an order granting preliminary approval to this
16 settlement. Defendant shall pay the balance of \$80,750 to the Class Action
17 Administrator within five court days of the later of (1) an order granting final approval
18 to the settlement, if there are no objections to the settlement; (2) the time to file a timely
19 appeal of the denial of objections has passed, if there are objections; (3) the day the
20 Ninth Circuit affirms the order granting final approval if there are both objections and
21 appeals of the denial of the objections.

22 **Class Settlement Website**

23 The Class Action Administrator will create and maintain a class settlement
24 website (the "Class Settlement Website"), to be activated within seven (7) calendar days
25 of its receipt of the Preliminary Approval Order. The Class Settlement Website will
26 contain Settlement information and case-related documents such as this Settlement
27 Agreement, the Preliminary Approval Order, the Notice, the Motion for Attorneys' Fees,
28 Costs and Incentive Award, the Final Approval Motion, and notices from the Court. In

1 addition, the Class Settlement Website will include procedural information regarding the
2 status of the Court-approval process, such as an announcement of the Fairness Hearing
3 date, when the Final Judgment and Order has been entered, and when the Effective Date
4 has been reached, including any appeal(s).

5 The Class Settlement Website will terminate (be removed from the internet) and
6 no longer be maintained by the Class Action Administrator on either (a) the Effective
7 Date or (b) the date on which the Settlement Agreement is terminated or otherwise not
8 approved by a court, whichever is later.

9 **CAFA Notice**

10 Defendant shall serve notice of the Settlement Agreement that meets the
11 requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials
12 no later than ten (10) days following the filing of Plaintiffs' motion for preliminary
13 approval of settlement with the Court.

14 Defendant will file a certification with the Court stating the date or dates on which
15 the CAFA Notice was sent. Alternatively, Defendant may separately arrange for the
16 Class Action Administrator to perform this task and either party may file the declaration
17 certifying CAFA notice to attorneys general has been provided.

18 **Notice Plan**

19 The Notice Plan, attached hereto as **Exhibit B**, shall conform to all applicable
20 requirements of the Federal Rules of Civil Procedure, the United States Constitution
21 (including the Due Process Clauses), and any other applicable law, and shall otherwise
22 be in the manner and form agreed upon by the Settling Parties and approved by the
23 Court.

24 The Class Action Administrator shall commence providing Notice to the Class
25 according to the Notice Plan as attached in **Exhibit B**, as ordered by the Court in its
26 Preliminary Approval Order.

27 The Settling Parties agree to the content of the Notice, substantially in the form
28 attached to this Settlement Agreement as **Exhibit A**, and as approved by the Court.

1 The Class Action Administrator shall be responsible for receiving all opt-out and
2 other requests and correspondence from the Class Members to exclude themselves from
3 the Settlement and provide to Class Counsel and Defense Counsel a copy thereof within
4 three (3) days of receipt. The Class Action Administrator shall also receive and maintain
5 all other correspondence from any Class Member regarding the Settlement and promptly
6 provide such correspondence to Class Counsel and Defense Counsel. No later than seven
7 (7) calendar days before the date of the Fairness Hearing, the Class Action Administrator
8 shall provide to the Settling Parties and file with the Court a list of those persons who
9 have submitted a valid Request for Exclusion, as described in Section 13 of this
10 Settlement Agreement.

11 **10. RELEASES AND DISMISSAL OF ACTION**

12 Upon the Effective Date, Plaintiff and all members of the Class, except for those
13 that have opted out, will be deemed to have, and by operation of the Final Judgment and
14 Order will have, fully, finally, and forever released, relinquished, and discharged the
15 Released Persons from all Released Claims, meaning, with the exception of claims for
16 Personal Injury, any and all causes of action, claims, suits, debts, damages, judgments,
17 liabilities, demands, and controversies of every nature and description whatsoever—
18 whether now known or unknown, asserted or not asserted, matured or unmatured,
19 liquidated or unliquidated, at law or in equity, for injunctive relief or damages, whether
20 before a local, state or federal court, or state or federal administrative agency,
21 commission, arbitrator(s) or otherwise—that such Plaintiffs now have or may have, and
22 for all times up to and including the Effective Date of the Settlement, for all claims that
23 were or could have been asserted relating to the manufacturing, preparation, handling,
24 distribution, advertising, marketing, packaging, sale, labeling, promotion, and
25 ingredients of Cobra. Plaintiffs (except for those that have opted out in the manner
26 provided for herein) also knowingly, expressly, and voluntarily waives all rights under
27 Section 1542 of the California Civil Code (or similar laws of other States) which states:

28 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**

1 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
2 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
3 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
4 **OR HER SETTLEMENT WITH THE DEBTOR.**

5 This Release includes all claims that such Plaintiffs and their heirs, successors,
6 and assigns have, has, or may have against the Released Persons arising out of, in
7 connection with, or related in any way, directly or indirectly, to Defendant's
8 manufacturing, preparation, handling, distribution, advertising, marketing, packaging,
9 sale, labeling, promotion, and ingredients of Cobra, that have been brought, or could
10 have been brought, in the Litigation against the Released Persons.

11 After entering into this Settlement Agreement, Plaintiffs may discover facts other
12 than, different from, or in addition to, those that they know or believe to be true with
13 respect to the Released Claims. Plaintiffs expressly waive and fully, finally, and forever
14 settle and release any known or unknown, suspected or unsuspected, contingent or non-
15 contingent claim, whether or not concealed or hidden, without regard to the subsequent
16 discovery or existence of such other, different, or additional facts. Notwithstanding
17 Section 1542 of the California Civil Code, or any other federal or state statute or rule of
18 law of similar effect, this Settlement Agreement shall be given full force and effect
19 according to each and all of its expressed terms and provisions, including those related
20 to any unknown or unsuspected claims, liabilities, demands, or causes of action which
21 are based on, arise from or are in any way connected with the Litigation.

22 The Settling Parties shall agree to continued jurisdiction over the Settling Parties to
23 this Settlement with respect to the future performance of the terms of this Settlement
24 Agreement. In the event that any applications for relief are made, such applications shall
25 be made to the Court.

26 Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any
27 and all Released Claims of Plaintiffs (except for those that opt out in the manner
28 provided herein), and (b) Plaintiffs (except for those that opt out in the manner provided

1 herein) stipulate to be and shall be permanently barred and enjoined by Court order from
2 initiating, asserting, or prosecuting against the Released Persons in any federal or state
3 court or tribunal any and/or all Released Claims.

4 As the exception to Class Members' broad release, claims of a *Personal Injury*
5 resulting from a defect in Cobra or packaging are specifically not included in the
6 Released Claims.

7 **11. MODIFICATION OF CLASS DEFINITION**

8 The current class is defined as extending from 8/14/2009 to "the present." For
9 purposes of settlement only, the parties stipulate to and move the Court to modify the
10 class definition to end on 12/31/20, such that the settlement class definition is:

11 All individuals who purchased Cobra Sexual Energy for personal or household
12 use and not for resale or distribution from August 14, 2009 to December 31,
13 2020. Excluded from the class are officers and directors of Nutraceutical and
14 any judicial officer hearing the case.

15 Defendant does not consent to certification of such Settlement Class (or to the
16 propriety of class treatment) for any purpose other than to effectuate the settlement of
17 the Litigation.

18 **12. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION 19 FROM THE SETTLEMENT**

20 Subject to modification by the Court, the Settling Parties agree and stipulate to the
21 following procedures:

22 **12.1. Procedures for Objecting to the Settlement**

23 Class Members shall have the right to appear and show cause, if they have any
24 reason why the terms of this Settlement Agreement should not be given final approval,
25 subject to each of the sub-provisions contained in this section. Any objection to the
26 Settlement or Settlement Agreement, including any of its terms or provisions, should be
27 in writing, filed with the Court, with a copy served on Class Counsel, Defense Counsel,
28 and the Class Action Administrator at the addresses set forth in the Notice, and
postmarked no later than thirty (30) calendar days prior to the Fairness Hearing date.

1 Class Members may object either on their own or through an attorney hired at their own
2 expense.

3 If a Class Member hires an attorney to represent him or her at the Fairness
4 Hearing, he or she must do so solely at his or her own expense unless the Court orders
5 otherwise. No Class Member represented by an attorney should be deemed to have
6 objected to the Settlement Agreement unless an objection signed by the Class Member is
7 also filed with the Court and served upon Class Counsel and Defense Counsel at the
8 addresses set forth in the Notice thirty (30) days before the Fairness Hearing.

9 Any objection regarding or related to the Settlement Agreement should contain (a)
10 the objector's full name, address and telephone number; (b) the name, address, and
11 telephone number of any attorney for the objector with respect to the objection; (c) the
12 factual and legal grounds for the objection(s); (d) documents sufficient to establish the
13 basis for his or her standing as a Class Member, *i.e.*, verification under oath as to the
14 approximate date(s) and location(s) of his or her purchase(s) of Cobra; (e) his or her
15 signature or the signature of the objector's counsel, if any; (f) the case name and case
16 number (*In re Cobra Sexual Energy Sales Practices Litig.*, 2:13-cv-05942-AB-Ex (C.D.
17 Cal.)); and (g) a list, including case names and numbers, of any other objections by the
18 objector, as well as by the objector's attorney, to any class action settlements submitted
19 to any state or federal court in the previous two years. Any objection should also contain
20 information sufficient to identify and contact the objecting Class Member (or his or her
21 attorney, if any). Any objections not containing the required information and/or not
22 submitted to the Court at least thirty (30) days prior to the Fairness Hearing may be
23 deemed waived and may not be considered by the Court. If an objecting party chooses to
24 appear at the hearing, that party should, in addition to filing his or her objection, file
25 with the Court, at least thirty (30) days before the Fairness Hearing, a notice of intent to
26 appear and that notice must list the name, address and telephone number of the attorney,
27 if any, who will appear on behalf of that party.

28 **12.2. Response to Objections**

1 Class Counsel and Defendant may respond to any objection, by filing opposition
2 papers no later than seven calendar days prior to the Fairness Hearing, or on such other
3 date as set forth in the Preliminary Approval Order, or any subsequent Court order(s)
4 modifying the briefing schedule for the Fairness Hearing. The Party responding shall file
5 a copy of the response with the Court, and shall serve a copy to the objector (or counsel
6 for the objector) to the extent the objector or their counsel do not receive notice of
7 electronic filing via the Court’s ECF filing system.

8 **12.3. Opt-Outs**

9 Any Class Member who does not wish to participate in the Settlement must
10 submit a Request for Exclusion to the Class Action Administrator, stating an intent to be
11 “excluded” from this Settlement. The written Request for Exclusion must be sent via
12 first class United States mail to the Class Action Administrator at the address set forth in
13 the Notice and postmarked no later than thirty (30) calendar days before the date set for
14 the Fairness Hearing (“Opt-Out Date”). The Request for Exclusion must be personally
15 signed by the Class Member and may only be on behalf of such signing Class Member.
16 So-called “mass” or “class” opt-outs shall not be allowed. Members who “opt-out” will
17 not release their claims pursuant to the Settlement Agreement. Members of the Class
18 who fail to submit a valid and timely Request for Exclusion on or before the date
19 specified in the Notice shall be bound by all terms of the Settlement Agreement and
20 Final Judgment and Order. Every Request for Exclusion must contain his or her (a) full
21 name, (b) current address, (c) a clear statement communicating that he or she elects to be
22 excluded from the Class, (d) his or her signature, and (e) the case name and case number
23 (*In re Cobra Sexual Energy Sales Practices Litig.*, 2:13-cv-05942-AB-Ex (C.D. Cal.)).

24 Any Class Member who requests exclusion from the Settlement does not have the
25 right to object to the Settlement. If a Class Member submits an objection and a written
26 Request for Exclusion, he or she shall be deemed to have complied with the terms of this
27 opt-out procedure. His objection will be considered void and he or she shall not be
28 bound by the Settlement Agreement if approved by the Court. However, any objector

1 who has not submitted a proper Request for Exclusion from the Settlement will be bound
2 by the terms of the Settlement Agreement upon final approval of the Settlement.

3 **13. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARD**

4 In accord with Federal Rule of Civil Procedure Rule 23(h) and relevant case law,
5 Plaintiff will petition the Court for attorneys' fees and expenses not to exceed \$490,000,
6 and a Representative Plaintiff incentive award not to exceed \$10,000. Defendant shall
7 not object to or oppose any such petition, provided it does not exceed these limits, nor
8 take any steps to encourage objectors to do so. For avoidance of doubt, the above-
9 described limit on attorneys' fees, expenses, and incentive award is a material term of
10 the Settlement Agreement and, as such, if Plaintiff petitions the Court for an amount in
11 excess of that limit, this Settlement Agreement will be void.

12 Upon a Court order so providing, any attorneys' fees, incentive award, and costs
13 awarded to Class Counsel by the Court shall be paid by Defendant within 30 calendar
14 days of the Effective Date.

15 Defendant shall bear its own attorney's fees and costs.

16 The incentive payment, if awarded, shall be paid separately from attorneys' fees
17 and costs in the form of a check sent in the care of Class Counsel made payable to the
18 Representative Plaintiff.

19 **14. MOTION FOR FINAL APPROVAL AND ORDER**

20 Defendant shall cooperate in good faith with the preparation of the motion for
21 final approval of the Settlement Agreement.

22 **15. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

23 The Effective Date of this Settlement Agreement shall be the date the Court grants
24 final approval of this agreement.

25 If this Settlement Agreement is not approved by the Court or the Settlement
26 Agreement is terminated or fails to become effective in accordance with the terms of this
27 Settlement Agreement, the Settling Parties will be restored to their respective positions
28 in the Litigation as of the day before the Motion for Preliminary Approval was filed. In

1 such event, except with respect to the Class Action Administrator’s fees, the terms and
2 provisions of this Settlement Agreement will have no further force and effect with
3 respect to the Settling Parties and will not be referenced or used in the Litigation or in
4 any other proceeding for any purpose, and any Judgment or order entered by the Court in
5 accordance with the terms of this Settlement Agreement will be treated as vacated. If for
6 whatever reason the Settlement Agreement fails to become effective, the Settling Parties
7 will split equally the Class Action Administrator’s fees paid prior to that date.

8 **16. MISCELLANEOUS PROVISIONS**

9 The Settling Parties acknowledge that it is their intent to consummate this
10 Settlement Agreement, and they agree to cooperate to the extent reasonably necessary to
11 effectuate and implement all terms and conditions of this Settlement Agreement and to
12 exercise their best efforts to accomplish the foregoing terms and conditions of this
13 Settlement Agreement.

14 The Settling Parties intend the Settlement to be a final and complete resolution of
15 all disputes between them with respect to the Litigation. The Settlement compromises
16 claims that are contested and will not be deemed an admission by any Settling Party as
17 to the merits of any claim or defense.

18 The Settling Parties agree that the consideration provided to the Class and the
19 other terms of the Settlement were negotiated at arm’s-length, in good faith by the
20 Settling Parties, and reflect a settlement that was reached voluntarily, after consultation
21 with competent legal counsel. The Litigation was filed in good faith, was not frivolous
22 and was in compliance with Rule 11 of the Federal Rules of Civil Procedure. This
23 Settlement Agreement is entered into to eliminate the uncertainties, burdens and
24 expenses of protracted litigation.

25 Neither this Settlement Agreement nor the Settlement, nor any act performed or
26 document executed pursuant to or in furtherance of this Settlement Agreement or the
27 Settlement is or may be deemed to be or may be used as an admission of, or evidence of,
28 the validity of any Released Claims, or of any wrongdoing or liability of Defendant or

1 any other Released Person; or is or may be deemed to be or may be used as an admission
2 of, or evidence of, any fault or omission of Defendant or any other Released Person in
3 any civil, criminal, or administrative proceeding in any court, administrative agency or
4 other tribunal. Any party to the Litigation or any other Released Person may file this
5 Settlement Agreement and/or the Judgment in any action that may be brought against it
6 in order to support any defense or counterclaim, including without limitation those based
7 on principles of res judicata, collateral estoppel, release, good faith settlement, judgment
8 bar or reduction, or any other theory of claim preclusion or issue preclusion or similar
9 defense or counterclaim.

10 All agreements made and orders entered during the course of the Litigation
11 relating to the confidentiality of information will survive this Settlement Agreement.

12 This Settlement Agreement and any exhibits attached hereto constitute the entire
13 agreement among the Settling Parties, and no representations, warranties, or
14 inducements have been made to any Party concerning this Settlement Agreement or its
15 exhibits other than the representations, warranties, and covenants covered and
16 memorialized in such documents. Except as otherwise provided herein, the Settling
17 Parties will bear their own respective costs.

18 Class Counsel, on behalf of the Class, is expressly authorized by the
19 Representative Plaintiff to take all appropriate action required or permitted to be taken
20 by the Class pursuant to this Settlement Agreement to effectuate its terms, and is
21 expressly authorized to enter into any modifications or amendments to this Settlement
22 Agreement on behalf of the Class that Class Counsel deems appropriate.

23 Each counsel or other person executing this Settlement Agreement or any of its
24 Exhibits on behalf of any Party hereby warrants that such person has the full authority to
25 do so.

26 This Settlement Agreement may be executed in one or more counterparts. A faxed
27 or electronic signature shall have the same force and effect as an original signature. All
28 executed counterparts and each of them will be deemed to be one and the same

1 instrument. A complete set of original counterparts will be filed with the Court.

2 This Settlement Agreement will be binding upon, and inure to the benefit of, the
3 successors and assigns of the Settling Parties.

4 None of the Settling Parties, or their respective counsel, will be deemed the drafter
5 of this Settlement Agreement or its exhibits for purposes of construing the provisions
6 thereof. The language in all parts of this Settlement Agreement and its exhibits will be
7 interpreted according to its fair meaning, and will not be interpreted for or against any of
8 the Settling Parties as the drafter thereof.

9 Plaintiff and Class Counsel agree not to make disparaging public statements
10 about the Defendant, the Defendant’s products, and/or Defense Counsel. Defendant and
11 Defense Counsel agree not to make disparaging public statements about Plaintiff, Class
12 Counsel, or the Settlement.

13 IN WITNESS WHEREOF, the Settling Parties have executed and caused this
14 Agreement to be executed by themselves, approved as to form and content by their
15 respective attorneys, dated as of _____, 2020.

16
17 Dated: _____

18 Plaintiff Troy Lambert

19
20 Dated: 10/22/2020
21 _____

DocuSigned by:
Jeff Burchfield
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22 Jeff Burchfield

23 Chief Legal Officer, on behalf of Nutraceutical
24 Corp.

25 APPROVED AS TO FORM AND CONTENT:

26
27 Dated: _____

28 Gregory S. Weston or Ronald Marron

1 instrument. A complete set of original counterparts will be filed with the Court.

2 This Settlement Agreement will be binding upon, and inure to the benefit of, the
3 successors and assigns of the Settling Parties.

4 None of the Settling Parties, or their respective counsel, will be deemed the drafter
5 of this Settlement Agreement or its exhibits for purposes of construing the provisions
6 thereof. The language in all parts of this Settlement Agreement and its exhibits will be
7 interpreted according to its fair meaning, and will not be interpreted for or against any of
8 the Settling Parties as the drafter thereof.

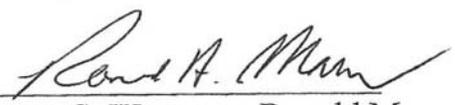
9 Plaintiff and Class Counsel agree not to make disparaging public statements
10 about the Defendant, the Defendant's products, and/or Defense Counsel. Defendant and
11 Defense Counsel agree not to make disparaging public statements about Plaintiff, Class
12 Counsel, or the Settlement.

13 IN WITNESS WHEREOF, the Settling Parties have executed and caused this
14 Agreement to be executed by themselves, approved as to form and content by their
15 respective attorneys, dated as of Oct. 16th, 2020.

16
17 Dated: 10/16/20 
18 Plaintiff Troy Lambert

19
20
21 Dated: _____
22 Jeff Burchfield
23 Chief Legal Officer, on behalf of Nutraceutical
24 Corp.

25 APPROVED AS TO FORM AND CONTENT:

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27 Dated: 10/14/2020 
28 Gregory S. Weston or Ronald Marron

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Class Counsel

Dated: October 22, 2020



Steven N. Feldman
HUESTON HENNIGAN LLP
Counsel for Nutraceutical Corp.