

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

TOMMY ROBBINS, DANIEL CAMEY,
RAYMOND ALVANDI and GERARD BUTLER,
Individually and on behalf of all others similarly
situated,

Civil Action No. 16AC-CC00366

The Hon. Jon E. Beetem

Plaintiffs,

v.

GENCOR NUTRIENTS, INC., GENCOR PACIFIC,
INC., GE NUTRIENTS, INC., DIRECT DIGITAL,
LLC, PHARMAFREAK HOLDINGS, INC.,
FORCE FACTOR, LLC, DREAMBRANDS, INC.,
GENERAL NUTRITION CENTERS, INC.,
GENERAL NUTRITION CORPORATION, GNC
CORPORATION, S&G PROPERTIES, LLC, KING
FISHER MEDIA, LLC, PREVENTION, and LLC
d/b/a NATURADE,

Defendants.

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, APPROVING
CLASS NOTICE, AND SCHEDULING FAIRNESS HEARING**

The Court has considered Plaintiffs' Motion for Preliminary Approval of Class Settlement pursuant to Mo. R. Civ. P. 52.08. Upon review of the Motion and the Settlement Agreement and its attachments, and after consideration of the Parties' submissions and the arguments at the hearing on this matter, if any, for good cause shown, the Court preliminarily finds that the terms of the settlement are fair, adequate, and reasonable. The Court further finds that the notice provisions provided for by the Settlement Agreement are adequate and appropriate to inform members of the class of the terms of the settlement.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court does hereby preliminarily approve the Settlement Agreement and the settlement set forth therein (the "Settlement"), subject to further consideration at the Final Approval Hearing described below.

2. A hearing (the “Final Approval Hearing”) shall be held before this Court on August 29, 2018, at 9:00 a.m. to determine whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, adequate, and reasonable to the Class and should be approved by the Court, and whether a Final Approval Order and Judgment should be entered herein.

3. Plaintiffs Tommy Robbins, Daniel Camey, Raymond Alvandi, and Gerard Butler are preliminarily appointed as representatives of the Settlement Class (“Class Representative”), and the following attorneys for Plaintiffs are preliminarily appointed as counsel for the Settlement Class (“Class Counsel”): David L. Steelman and Stephen F. Gaunt of STEELMAN, GAUNT & HORSEFIELD, Antonio Vozzolo of VOZZOLO, LLC and Ronald A. Marron of LAW OFFICES OF RONALD A. MARRON, APLC. This Court is familiar with Class Counsel and has found them to be experienced, thoughtful, and effective advocates in class actions who adequately, faithfully, and zealously represent the classes they represent.

4. For purposes of determining whether the terms of the Settlement should be finally approved as fair, adequate, and reasonable, the following Settlement Class is conditionally certified for settlement purposes only:

All Persons who bought Products or received a Trial Offer between January 1, 2010 and [date of entry of the Preliminary Approval Order], inclusive (the “Class Period”). The Settlement Class consists of the following four Subclasses:

Subclass Number 1: All Persons who purchased any Products during the Class Period which were sold by, through or under any retailer, distributor, person, or entity in the stream of commerce other than the Brand Defendants.

Subclass Number 2: All Persons who paid for shipping of Trial Offer during the Class Period which were distributed by, through, or under any of the Brand Defendants.

Subclass Number 3: All Persons who purchased Products during the Class Period which were sold in retail by the Brand Defendants.

Subclass Number 4: All Persons who purchased Products during the Class Period which were sold by, through, or under any of the Brand Defendants directly to Class Members.

Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Products for resale; (b) Defendants and their employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely request to Opt-Out; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); and (e) the judges to whom the Testofen Litigation is assigned and any member of their immediate family.

5. Should the Settlement not become final, Defendants may still oppose class certification and the fact that the Court ordered class certification as part of the Settlement, or that Defendants were willing to stipulate to class certification as part of the Settlement, shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in this Action or in any other proceeding.

6. The Court designates Heffler Claims Administration (“Heffler”) as the Settlement Administrator and instructs Heffler to perform the following functions, as set forth in the Settlement Agreement:

- a. Process requests for exclusion from the Settlement in accordance with § VI of the Settlement Agreement;
- b. Process objections to the Settlement in accordance with § VI of the Settlement Agreement;
- c. Process Claim Forms in accordance with § V of the Settlement Agreement;
- d. Before disseminating the Settlement Notice, establish the Settlement Website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement, including submission of claims; and

- e. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.

7. The Court approves, as to form and content, the Settlement Notice, the Publication Notice, and the Media Plan attached as Exhibits B, C, and E to the Settlement Agreement, and finds that the distribution of the Settlement Notice substantially in accordance with § V and Exhibit E of the Settlement Agreement meets the requirements of Mo. R. Civ. P. 52.08(b)(3), 52.08(c)(2) and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

8. On or before May 31, 2018, the Settlement Administrator shall disseminate the Settlement Notice by setting up the Settlement Website on the Internet and posting both the Settlement Notice and Publication Notice. On or before May 31, 2018, Defendants shall publish, cause to be published, or ensure that the Settlement Administrator has published, the Publication Notice pursuant to the Media Plan. The Publication Notice shall also be posted on the Settlement Website until the conclusion of the Claims Period, or such later date as may be agreed to by Class Counsel and Defendant's Counsel.

9. The Settlement Administrator shall prepare a declaration attesting to compliance with the Settlement Notice requirements and a statement of the number of Persons the Media Plan reached. Such declaration shall be provided to Defendant's Counsel and Class Counsel and filed with the Court on or before July 30, 2018.

10. The Court approves the Claim Form in form and content as Exhibit A to the Settlement Agreement.

11. As set forth in § I, ¶ 2.12 of the Settlement Agreement, claims shall be submitted on or before Sept- 28, 2018. (the "Claims Deadline"). To be timely, all Claims must be

submitted by the Claims Deadline in accordance with § IV of the Settlement Agreement.

12. Any Settlement Class Member who intends to object to the Settlement must do so no later than **July 30, 2018** (the “Objection Deadline”). In order to object, the Settlement Class Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendant’s Counsel, also prior to the Objection Deadline, a document that includes all of the following:

- a. a reference at the beginning to this case *Tommy Robbins, et al, Individually and On Behalf of All Other Similarly Situated Persons vs. Gencor Nutrients, Inc. et al*, Case No.: 16AC-CC00366 in the Circuit Court of Cole County, Missouri;
- b. the objector’s full name, address, and telephone number (and the objectors’ lawyer’s name, address and telephone number if they are objecting through counsel);
- c. a written statement of all grounds for the objection, accompanied by any legal support for such Objection;
- d. copies of any papers, briefs, or other documents upon which the Objection is based;
- e. a list of all persons who will be called to testify in support of the Objection;
- f. a statement of whether the objector intends to appear at the Final Approval Hearing. If the objector intends to appear at the Final Approval Hearing through counsel, the Objection must also state the identity of all attorneys representing the objector who will appear at the Final Approval Hearing;
- g. a statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and

h. a detailed list of any other Objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or federal, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this settlement.

13. Any Settlement Class Member who fails to file and serve timely: (a) a written objection containing all of the information listed in items (a) through (j) of the previous paragraph; and, (b) notice of his/her intent to appear at the Final Approval Hearing pursuant to this paragraph, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal

14. Any Settlement Class Member may request to be excluded (or “opt out”) from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so no later than **July 30, 2018** (the “Opt-Out Deadline”). In order to opt out, a Settlement Class Member must complete and mail to the Settlement Administrator a “Request for Exclusion” that is postmarked no later than the Opt-Out Deadline. Requests for Exclusion that are postmarked after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely submits a Request for Exclusion will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order and the Releases contemplated thereby.

15. Except for those Persons who have properly and timely submitted Requests for

Exclusion, all Settlement Class Members will be bound by the Settlement Agreement and the Final Approval Order, including the Releases, regardless of whether they file a Claim or receive any monetary relief. Any Person who timely and properly submits a Request for Exclusion shall not: (a) be bound by any orders or the Final Approval Order nor by the Releases contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Person requesting exclusion from the Settlement Class must personally sign his or her own individual Request for Exclusion. No Person may opt-out of the Settlement Class any other Person, or be opted-out by any other Person, and no Person shall be deemed opted-out of the Settlement Class through any purported “mass” or “class” opt-outs.

16. The Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with a final list of any timely Requests for Exclusion received by the Settlement Administrator on or before **August 9, 2018**.

17. On or before **August 9, 2018**, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file with the Court, and Defendants’ Counsel, a report stating the total number of Persons who have submitted timely and valid Requests for Exclusion from the Settlement Class and Objections to the Settlement, and the names of such Persons.

18. On or before **August 23, 2018**, Class Counsel shall submit papers in support of final approval of the certification of the Settlement Class, the designation of Plaintiffs as the representatives of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, and the Settlement; and Class Counsel’s Application for attorneys’ fees and expenses, and any response to any Objections.


19. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the

negotiations or proceedings connected with it, shall be construed as an admission or concession by the Class Representatives or Defendants of any fact or allegation, or of any liability, fault, or wrongdoing of any kind.

20. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties, if appropriate without further notice to the Class.

IT IS SO ORDERED.

Dated: 5/14/18



The Hon. Jon E. Beetem
JUDGE OF THE CIRCUIT COURT