

LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
(SBN 175650)
ron@consumersadvocates.com
MICHAEL T. HOUCHIN
(SBN 305541)
mike@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665
Class Counsel

COHELAN KHOURY & SINGER
TIMOTHY D. COHELAN (SBN 60827)
TCohelan@CKSLaw.com
ISAM C. KHOURY (SBN 58759)
IKhoury@CKSLaw.com
MICHAEL D. SINGER (SBN 115301)
msinger@ckslaw.com
605 C Street, Suite 200
San Diego, California 92101
Telephone: (619) 239-8148
Facsimile: (619) 595-3000

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

VEDA WOODARD, TERESA RIZZO-MARINO, and DIANE MORRISON,
on behalf of themselves, all others
similarly situated, and the general
public,

Plaintiffs,

vs.

LEE LABRADA; LABRADA
BODYBUILDING NUTRITION, INC.;
LABRADA NUTRITIONAL
SYSTEMS, INC.; DR. MEHMET C.
OZ, M.D.; ENTERTAINMENT
MEDIA VENTURES, INC. d/b/a OZ
MEDIA; ZOCO PRODUCTIONS,
LLC; HARPO PRODUCTIONS, INC;
SONY PICTURES TELEVISION, INC;
NATUREX, INC.; and
INTERHEALTH
NUTRACEUTICALS, INC.,

Defendants.

CASE NO. 5:16-cv-00189-JGB-SP

CLASS ACTION

**PLAINTIFF’S NOTICE OF
MOTION AND MOTION FOR
COSTS AND INCENTIVE
AWARD**

Date: December 19, 2022
Time: 9:00 a.m.
Ctrm: 1
Judge: Hon. Jesus G. Bernal

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, on December 19, 2022 at 9:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 1 of the United States District Court for the Central District of California, Eastern Division, 3470 Twelfth Street Riverside, California 92501, before the Honorable Jesus G. Bernal, presiding, Plaintiff Veda Woodard (“Plaintiff”) will and hereby does move the Court, pursuant to Federal Rule of Civil Procedure 23(h), for an Order awarding Plaintiff costs and an incentive award in connection with Plaintiff’s settlement with Defendant Labrada Bodybuilding Nutrition, Inc. (“Defendant”). Plaintiff respectfully requests that the Court award costs to Class Counsel in the amount of \$187,500 and an incentive award to Plaintiff in the amount of \$5,000.

This motion is based on this Notice of Motion, the concurrently-filed Memorandum of Points and Authorities, the concurrently-filed Declaration of Timothy D. Cohelan and Exhibit 1 attached thereto, the concurrently-filed Declaration of Ronald A. Marron and Exhibit 2 attached thereto, all prior pleading and proceedings in this matter, and all other evidence and written and oral argument that will be submitted in support of the Motion.

DATED: November 3, 2022 Respectfully submitted,

/s/ Ronald A. Marron
RONALD A. MARRON

**LAW OFFICES OF
RONALD A. MARRON**
RONALD A. MARRON
ron@consumersadvocates.com
Michael T. Houchin
mike@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006

Facsimile: (619) 564-6665

COHELAN KHOURY & SINGER

TIMOTHY D. COHELAN

TCohelan@CKSLaw.com

ISAM C. KHOURY

IKhoury@CKSLaw.com

MICHAEL D. SINGER

msinger@ckslaw.com

605 C St #200

San Diego, California 92101

Telephone: (619) 239-8148

Facsimile: (619) 595-3000

Class Counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
(SBN 175650)
ron@consumersadvocates.com
MICHAEL T. HOUCHIN
(SBN 305541)
mike@consumersadvocates.com
LILACH HALPERIN
(SBN 323202)
lilach@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665
Class Counsel

COHELAN KHOURY & SINGER
TIMOTHY D. COHELAN (SBN 60827)
TCohelan@CKSLaw.com
ISAM C. KHOURY (SBN 58759)
IKhoury@CKSLaw.com
MICHAEL D. SINGER (SBN 115301)
msinger@ckslaw.com
605 C Street, Suite 200
San Diego, California 92101
Telephone: (619) 239-8148
Facsimile: (619) 595-3000

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

VEDA WOODARD, TERESA RIZZO-MARINO, and DIANE MORRISON,
on behalf of themselves, all others
similarly situated, and the general
public,

Plaintiffs,

vs.

LEE LABRADA; LABRADA
BODYBUILDING NUTRITION, INC.;
LABRADA NUTRITIONAL
SYSTEMS, INC.; DR. MEHMET C.
OZ, M.D.; ENTERTAINMENT
MEDIA VENTURES, INC. d/b/a OZ
MEDIA; ZOCO PRODUCTIONS,
LLC; HARPO PRODUCTIONS, INC;
SONY PICTURES TELEVISION, INC;
NATUREX, INC.; and
INTERHEALTH
NUTRACEUTICALS, INC.,

Defendants.

CASE NO. 5:16-cv-00189-JGB-SP

CLASS ACTION

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S
MOTION FOR COSTS AND
INCENTIVE AWARD**

Date: December 19, 2022
Time: 9:00 a.m.
Ctrm: 1
Judge: Hon. Jesus G. Bernal

TABLE OF CONTENTS

1

2 I. INTRODUCTION.....1

3 II. CLASS COUNSEL ARE ENTITLED TO COSTS.....1

4 A. The CLRA Requires Costs be Awarded to a “Prevailing Plaintiff”1

5 B. The Settlement Agreement Provides for Fees and Costs.....2

6 C. The Common Fund Doctrine Requires an Award of Costs3

7

8 III. THE REQUESTED COSTS ARE FAIR AND REASONABLE.....3

9 IV. THE REQUESTED INCENTIVE AWARD IS FAIR AND REASONABLE .5

10 V. CONCLUSION6

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

Broughton v. Cigna Healthplans,
21 Cal. 4th 1066 (1999)2

Carter v. Anderson Merchandisers, LP,
2010 WL 1946757 (C.D. Cal. May 11, 2010)4

Cook v. Niedert,
142 F.3d 1004 (7th Cir. 1998)6

Harris v. Marhoefer,
24 F.3d 16 (9th Cir. 1994)4

Hayward v. Ventura Volvo,
108 Cal. App. 4th 509 (2003)2

Hensley v. Eckerhart,
461 U.S. 424 (1983).....2

Hopson v. Hanesbrands Inc.,
2009 WL 928133 (N.D. Cal. Apr. 3, 2009)4

In re Apple Computer, Inc. Derivative Litig.,
2008 WL 4820784 (N.D. Cal. Nov. 5, 2008)3

In re Lorazepam & Clorazepate Antitrust Litig.,
205 F.R.D. 369 (D. D.C. Feb. 1, 2002).....5

In re Media Vision Technology Securities Litigation,
913 F.Supp. 1362 (N.D. Cal. 1996)4

In re Omnivision Tech., Inc.,
559 F. Supp. 2d 1036 (N.D. Cal. 2008).....3, 4

*In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act
(FACTA) Litig.*, 295 F.R.D. 438 (C.D. Cal. 2014)4

Johnson v. General Mills, Inc.,
2013 WL 3213832 (C.D. Cal. June 17, 2013)4

1 *Kim v. Euromotors West/The Auto Gallery,*
2 149 Cal. App. 4th 170 (2007)2
3 *Neary v. Regents of Univ. of Cal.,*
4 3 Cal. 4th 273 (1992)2
5 *Nicholson v. Barab,*
6 233 Cal. App. 3d 1671 (1991)2
7 *Paul, Johnson, Alston & Hunt v Graultry,*
8 886 F.2d 268 (9th Cir. 1989)3
9 *Rider v. Cnty. of San Diego,*
10 11 Cal. App. 4th 1410 (1992)3
11 *Rodriguez v. W. Publ'g Corp.,*
12 563 F.3d 948 (9th Cir. 2009)5, 6
13 *Rutti v. Lojack Corp., Inc.,*
14 2012 WL 3151077 (C.D. Cal. July 31, 2012).....4
15 *Sheppard v. Consol. Edison Co. of N.Y., Inc.,*
16 2002 WL 2003206 (E.D. N.Y. Aug. 1, 2002)5
17 *Staton v. Boeing Co.,*
18 327 F.3d 938 (9th Cir. 2003)3
19 *Victoria v. Super. Ct.,*
20 40 Cal. 3d 734 (1985)2
21 *Vincent v. Brand,*
22 557 F.2d 759 (9th Cir. 1977)3
23 **Statutes**
24 Cal. Civ. Code § 1750.....1
25 Cal. Civ. Code § 1760.....2
26 Cal. Civ. Code § 1780(e)1
27 **Rules**
28 Fed. R. Civ. P. 23(h)1, 4

Other Authorities

5 NEWBERG ON CLASS ACTIONS § 16:1 (5th ed.)3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 This Motion comes before the Court pursuant to Federal Rule of Civil
3 Procedure 23(h) and the Court’s July 7, 2022 Order Granting Preliminary Approval
4 of Class Action Settlement (Dkt. No. 474). Pursuant to the Class Action Settlement
5 Agreement (“Agreement”)¹ that was preliminarily approved by the Court, Class
6 Counsel may make “an application for an award of Attorneys’ Fees and Expenses in
7 the Action not to exceed 30% of the Settlement Fund or \$187,500, whichever is
8 less.” Agreement at ¶ 7.1. Here, Class Counsel are seeking an award of costs in the
9 amount of \$187,500 and an incentive award to Plaintiff Veda Woodard (“Plaintiff”)
10 in the amount of \$5,000.

11 Class Counsel’s costs in this action that have not been reimbursed total
12 \$281,597.16. Because Class Counsel’s costs alone exceed the \$187,500 amount set
13 forth in the Agreement, Class Counsel are not seeking an award of attorneys’ fees.
14 Instead, Class Counsel are seeking costs in the amount of \$187,500 (or 66.6% of
15 their total costs incurred that have not been reimbursed). For the reasons set forth
16 below, the Court should grant Plaintiff’s motion.

17 **II. CLASS COUNSEL ARE ENTITLED TO COSTS**

18 **A. The CLRA Requires Costs be Awarded to a “Prevailing Plaintiff”**

19 The Court previously certified two classes based on, among other laws,
20 Plaintiff’s claims under California’s Consumers Legal Remedies Act, Cal. Civ. Code
21 §§1750, *et seq.* (“CLRA”) (Dkt. No. 444 at 56-57). The CLRA provides the “court
22 shall award court costs and attorney’s fees to a prevailing plaintiff in litigation filed
23 pursuant to this section.” Cal. Civ. Code § 1780(e) (emphasis added).

24 “The legislative policy to allow prevailing plaintiffs reasonable attorneys’ fees
25 is clear. Section 1780 provides remedies for consumers who have been victims of
26 unfair or deceptive business practices. The provision for recovery of attorney’s fees

27 _____
28 ¹ The Agreement was previously filed with the Court in connection with Plaintiff’s
Motion for Preliminary Approval on June 1, 2022 at Docket Number 468-3.

1 allows consumers to pursue remedies in cases...where the compensatory damages
2 are relatively modest.” *Hayward v. Ventura Volvo*, 108 Cal. App. 4th 509, 512
3 (2003) (internal citation omitted). This provision is “integral to making the CLRA
4 an effective piece of consumer legislation, increasing the financial feasibility of
5 bringing suits under the statute,” *Broughton v. Cigna Healthplans*, 21 Cal. 4th 1066,
6 1086 (1999), and must “be liberally construed and applied to promote [the statute’s]
7 underlying purposes, which are to protect consumers against unfair and deceptive
8 business practices and to provide efficient and economical procedures to secure such
9 protection.” *See* Cal. Civ. Code § 1760; *accord Hayward*, 108 Cal. App. 4th at 512-
10 13 (“section 1760 expressly directs [courts] to liberally construe section 1780 to
11 protect consumers”). A fee and cost award to a prevailing plaintiff in a CLRA action
12 is thus mandatory, even when resolved before trial. *Kim v. Euromotors West/The*
13 *Auto Gallery*, 149 Cal. App. 4th 170, 178-79, 181 (2007).

14 **B. The Settlement Agreement Provides for Fees and Costs**

15 “A request for attorney’s fees should not result in a second major litigation.
16 Ideally...litigants will settle the amount of a fee.” *Hensley v. Eckerhart*, 461 U.S.
17 424, 437 (1983). That is what the Parties have done in the Agreement. The
18 Agreement provides that Class Counsel may make “an application for an award of
19 Attorneys’ Fees and Expenses in the Action not to exceed 30% of the Settlement
20 Fund or \$187,500, whichever is less.” Agreement at ¶ 7.1. Because Class Counsel’s
21 costs exceed the \$187,500 amount set forth in the Agreement, Class Counsel are
22 only seeking an award of costs and not their attorneys’ fees.

23 Settlements such as these “are highly favored,” in part because they promote
24 efficient resolution of disputes, and therefore interpretation ought to be made in
25 favor of enforcement wherever possible. *See Neary v. Regents of Univ. of Cal.*, 3
26 Cal. 4th 273, 277-78 (1992); *Nicholson v. Barab*, 233 Cal. App. 3d 1671, 1683
27 (1991); *Victoria v. Super. Ct.*, 40 Cal. 3d 734, 753, n.8 (1985). The parties are in
28 agreement as to the appropriate amount of compensation for Class Counsel’s efforts

1 in obtaining the monetary and injunctive relief on behalf of the Class. Where, as
2 here, the parties have negotiated an arms’ length settlement, “[a] court should refrain
3 from substituting its own value for a properly bargained-for agreement.” *In re Apple*
4 *Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at
5 *3 (N.D. Cal. Nov. 5, 2008). This case was negotiated with the assistance of a third-
6 party neutral mediator (Dkt. No. 468-2 [Declaration of Ronald A. Marron filed in
7 Support of Plaintiff’s Motion for Preliminary Approval at ¶¶ 7-8]) and the fee and
8 cost provision was negotiated at arm’s length.

9 **C. The Common Fund Doctrine Requires an Award of Costs**

10 “[A] plaintiff or his attorney, whose efforts create, discover, increase or
11 preserve a fund to which others also have a claim is entitled to recover from the fund
12 the costs of his litigation, including attorneys’ fees.” *Vincent v. Brand*, 557 F.2d 759,
13 769 (9th Cir. 1977). “This rule...is designed to prevent unjust enrichment by
14 distributing the costs of litigation among those who benefit from the efforts of the
15 litigants and their counsel.” *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1046
16 (N.D. Cal. 2008) (citing *Paul, Johnson, Alston & Hunt v Grawly*, 886 F.2d 268, 271
17 (9th Cir. 1989)).

18 Here, the Agreement creates a common fund in the amount of \$625,000 that
19 will be used to pay valid claims to class members. Dkt. No. 474 at 3-4. Class Counsel
20 are seeking reimbursement of their out-of-pocket costs in the amount of \$187,500,
21 which is less than the amount of costs actually incurred by class counsel.

22 **III. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

23 Both California and Ninth Circuit courts allow recovery of pre-settlement
24 litigation costs in the context of class action settlements. *See Staton v. Boeing Co.*,
25 327 F.3d 938, 974 (9th Cir. 2003); *Rider v. Cnty. of San Diego*, 11 Cal. App. 4th
26 1410, 1424, n. 6 (1992); *see also Costs and expenses—Generally*, 5 NEWBERG ON
27 CLASS ACTIONS § 16:1 (5th ed.). The analysis to apply in deciding which expenses
28 are compensable in a common fund case of this type is whether the particular costs

1 “would typically be billed to paying clients in non-contingency matters.” *See In re*
2 *Omnivision Tech.*, 559 F. Supp. 2d at 1048 (“Attorneys may recover their reasonable
3 expenses that would typically be billed to paying clients in non-contingency
4 matters”); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (same); *Carter v.*
5 *Anderson Merchandisers, LP*, Nos. EDCV 08-0025-VAP (OPx), EDCV 09-0216-
6 VAP (OPx), 2010 WL 1946757, at *3 (C.D. Cal. May 11, 2010) (awarding litigation
7 costs under a ‘reasonableness’ standard) (citing *Hopson v. Hanesbrands Inc.*, No.
8 CV-08-0844 EDL, 2009 WL 928133, at *13 (N.D. Cal. Apr. 3, 2009)).

9 Costs compensable include “nontaxable costs that are authorized by law or by
10 the parties’ agreement.” Fed. R. Civ. P. 23(h). “Expenses such as reimbursement for
11 travel, meals, lodging, photocopying, long-distance telephone calls, computer legal
12 research, postage, courier service, mediation, exhibits, documents scanning, and
13 visual equipment are typically recoverable.” *In re Toys R Us-Delaware, Inc.--Fair*
14 *& Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 469 (C.D. Cal.
15 2014) (quoting *Rutti v. Lojack Corp., Inc.*, No. SACV 06–350 DOC (JCx), 2012 WL
16 3151077, *12 (C.D. Cal. July 31, 2012)). “Courts also have discretion to reimburse
17 consulting and expert witness fees.” *Id.* (citing *In re Media Vision Technology*
18 *Securities Litigation*, 913 F.Supp. 1362, 1366–67 (N.D. Cal. 1996); *see also Johnson*
19 *v. General Mills, Inc.*, No. SACV-10-00061-CJC(ANx), 2013 WL 3213832, at *6
20 (C.D. Cal. June 17, 2013) (awarding costs in a class action).

21 Class Counsel has incurred \$281,597.16 in costs that have not been
22 reimbursed. *See* Declaration of Ronald A. Marron filed concurrently herewith
23 (“Marron Decl.”), ¶¶ 3-7; Declaration of Timothy D. Cohelan filed concurrently
24 herewith (“Cohelan Decl.”), ¶ 3-5. On August 16, 2019, Class Counsel filed a
25 Motion for Attorneys’ Fees, Costs, and Incentive Awards in connection with the
26 partial class action settlement with former Defendant Naturex, Inc. Dkt. No. 295-1.
27 At that time, Class Counsel had total costs in the amount of \$245,286.25. Dkt. No.
28 295-1 at 22; Dkt. No. 295-2 at ¶¶ 25-26 (\$107,169.65 total costs incurred by the

1 Marron Firm); Dkt. No. 295-6 at ¶ 26 (\$138,116.60 total costs incurred by the
2 Cohelan Firm). Out of the \$245,286.25 in total costs incurred at the time of the
3 Naturex settlement, the Court awarded Class Counsel costs in the amount of
4 \$61,321.56 (25% of \$245,286.25 in total costs). *See* Dkt. No. 321 [October 7, 2019
5 Naturex Final Approval Order at 13]. Accordingly, Class Counsel has \$186,964.69
6 in costs that were not reimbursed following the Naturex settlement. After the
7 approval of the Naturex settlement, Class Counsel has incurred an additional
8 \$97,632.47 in costs that have not yet been reimbursed. *See* Marron Decl., ¶ 6 & Ex.
9 2 (\$63,257.54 in costs incurred by the Marron Firm following the Naturex
10 Settlement); Cohelan Decl., ¶ 5 & Ex. 1 (\$34,374.93 in costs incurred by the Cohelan
11 Firm following the Naturex Settlement). Therefore, Class Counsel’s costs that have
12 not been reimbursed total \$281,597.16 (\$183,964.69 in costs not reimbursed by the
13 Naturex Settlement plus \$97,632.47 in costs incurred after the Naturex Settlement).

14 Here, Class Counsel is seeking an award of costs in the amount of \$187,500,
15 which accounts for just 66.6% of Class Counsel’s total costs that have not been
16 reimbursed. Accordingly, the Court should find Class Counsel’s request for a cost
17 award in the amount of \$187,500 to be fair and reasonable.

18 **IV. THE REQUESTED INCENTIVE AWARD IS FAIR AND**
19 **REASONABLE**

20 Finally, Plaintiff Veda Woodard respectfully requests an incentive award for
21 her efforts in prosecuting this action. Incentive awards “are fairly typical in class
22 action cases,” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), and
23 “serve an important function in promoting class action settlements.” *Sheppard v.*
24 *Consol. Edison Co. of N.Y., Inc.*, No. 94-CV-0403(JG), 2002 WL 2003206, at *5
25 (E.D. N.Y. Aug. 1, 2002). Incentive awards for class representatives are routinely
26 provided to encourage individuals to undertake the responsibilities of representing
27 the class and recognize the time and effort spent in the case. *See In re Lorazepam &*
28 *Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 369 (D. D.C. Feb. 1, 2002). Such

1 awards “are intended to compensate class representatives for work done on behalf
2 of the class, to make up for financial or reputational risk undertaken in bringing the
3 action, and, sometimes, to recognize their willingness to act as a private attorney
4 general.” *Rodriguez*, 563 F.3d at 958-959.

5 Incentive awards are committed to the sound discretion of the trial court and
6 should be awarded based upon the court’s consideration of: (1) the actions the class
7 representatives took to protect the interests of the class; (2) the degree to which the
8 class benefited from those actions; and (3) the amount of time and effort the class
9 representatives expended in pursuing the litigation. *See, e.g., Cook v. Niedert*, 142
10 F.3d 1004, 1016 (7th Cir. 1998). These factors, as applied to this Action,
11 demonstrate the reasonableness of the requested incentive award to Plaintiff.

12 Plaintiff provided substantial assistance that enabled Class Counsel to
13 successfully prosecute the Action including sitting for a deposition; reviewing
14 material filings; continuous communications with Class Counsel throughout the
15 litigation including being on stand-by during the mediations of the action; reviewing
16 and approving the Settlement Agreement; and being committed to secure substantive
17 relief on behalf of the Class. Marron Decl., ¶ 8; Dkt. No. 351-45 [Declaration of
18 Plaintiff Veda Woodard]. In so doing, Plaintiff was integral to forming the theory of
19 the case, and litigating it through settlement. The incentive award is reasonable when
20 taking into account the additional time, effort, and risk that Plaintiff contributed to
21 vindicate the rights of the Class. Marron Decl., ¶ 9. Accordingly, the Court should
22 award Plaintiff Woodard an incentive award in the amount of \$5,000.

23 **V. CONCLUSION**

24 For the foregoing reasons, Plaintiff respectfully requests that the Court award
25 Class Counsel costs in the amount of \$187,500 and an incentive award to Plaintiff
26 in the amount of \$5,000.

1 DATED: November 3, 2022 Respectfully submitted,

2
3 /s/ Ronald A. Marron

4 RONALD A. MARRON

5 **LAW OFFICES OF**
6 **RONALD A. MARRON**

7 RONALD A. MARRON

8 *ron@consumersadvocates.com*

9 Michael T. Houchin

10 *mike@consumersadvocates.com*

11 651 Arroyo Drive

12 San Diego, California 92103

13 Telephone: (619) 696-9006

14 Facsimile: (619) 564-6665

15 **COHELAN KHOURY & SINGER**

16 TIMOTHY D. COHELAN

17 *TCohelan@CKSLaw.com*

18 ISAM C. KHOURY

19 *IKhoury@CKSLaw.com*

20 MICHAEL D. SINGER

21 *msinger@ckslaw.com*

22 605 C St #200

23 San Diego, California 92101

24 Telephone: (619) 239-8148

25 Facsimile: (619) 595-3000

26 ***Class Counsel***

LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
(SBN 175650)
ron@consumersadvocates.com
MICHAEL T. HOUCHIN
(SBN 305541)
mike@consumersadvocates.com
LILACH HALPERIN
(SBN 323202)
lilach@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665

COHELAN KHOURY & SINGER
TIMOTHY D. COHELAN (SBN 60827)
tcohelan@ckslaw.com
ISAM C. KHOURY (SBN 58759)
ikhoury@ckslaw.com
MICHAEL D. SINGER (SBN 115301)
msinger@ckslaw.com
605 C Street, Suite 200
San Diego, California 92101
Telephone: (619) 239-8148
Facsimile: (619) 95-3000

Attorneys for Plaintiff Veda Woodard and the Class

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

VEDA WOODARD, TERESA RIZZO-MARINO, and DIANE MORRISON, on behalf of themselves, all others similarly situated, and the general public,

Plaintiffs,

vs.

LEE LABRADA; LABRADA BODYBUILDING NUTRITION, INC.; LABRADA NUTRITIONAL SYSTEMS, INC.; DR. MEHMET C. OZ, M.D.; ENTERTAINMENT MEDIA VENTURES, INC. D/B/A OZ MEDIA; ZOCO PRODUCTIONS, LLC; HARPO PRODUCTIONS, INC; SONY PICTURES TELEVISION, INC; NATUREX, INC.; AND INTERHEALTH NUTRACEUTICALS, INC.,

Defendants.

Case No. 5:16-cv-00189-JGB-SP

CLASS ACTION

DECLARATION OF TIMOTHY D. COHELAN IN SUPPORT OF PLAINTIFF’S MOTION FOR COSTS AND INCENTIVE AWARD

Date: December 19, 2022
Time: 9:00 a.m.
Ctrm: 1
Judge: Hon. Jesus Bernal

1 I, Timothy D. Cohelan, declare as follows:

2 1. I am a member in good standing of the State Bar of California and of
3 the United States District Courts for the Central District of California. I submit this
4 Declaration in Support of Plaintiff Veda Woodard's Motion for Costs and Incentive
5 Award. I make this Declaration based on my personal knowledge and if called to
6 testify, I could and would competently testify to the matters contained herein.

7 2. In connection with the pending settlement, our firm has worked closely
8 with co-counsel Ronald Marron and Michael Houchin in prosecuting the instant
9 action since our association, sharing litigation duties and costs.

10 3. By this Motion, Class Counsel seeks an award of attorneys' fees and
11 costs of \$187,500, which represents 30% of the \$625,000 Settlement Fund. Because
12 attorneys' fees and expenses are together capped at 30% of the Settlement Fund (or
13 \$187,500), Class Counsel expects that due to the fact that costs of both firms
14 incurred cost exceed that which could be reasonable apportioned for fees and costs
15 from this settlement this application is only for reasonable cost reimbursement.

16 4. Cohelan Khoury & Singer's costs as of August 16, 2019 are detailed in
17 the Declaration of Timothy D. Cohelan that was filed in connection with the Naturex
18 Settlement. *See* Dkt. No. 295-6 at ¶¶26 and Dkt. No. 295-10.

19 5. Following the Naturex Settlement, my firm has incurred an additional
20 \$34,374.93 in costs. My firm has \$137,962.38 in unrecovered costs that were
21 reasonably necessary for prosecution of this litigation (\$103,587.45 in costs that
22 were not reimbursed by the Naturex Settlement, plus \$34,374.93 in costs that were
23 incurred after the Naturex Settlement). Attached as **Exhibit 1** is a copy of Cohelan
24 Khoury & Singer's Itemization of Costs incurred in this matter to date.

25 I declare under the penalty of perjury under the laws of the United States of
26 America that the foregoing is true and correct and that this declaration was executed
27 on October 21, 2022 in San Diego, California.

28

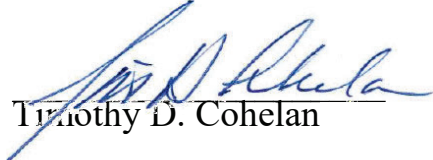

Timothy D. Cohelan

EXHIBIT 1

COHELAN/KHOURY SINGER

Litigation Costs

Woodard, et al. v. Lee Labrada, et al.

U.S.D.C. Case No. 5:16-cv-00189-JGB-SP

<u>Date</u>	<u>Payee</u>	<u>Details</u>	<u>Amount</u>
11/7/2019	Cost balance after Naturex payment:		\$103,587.45
2/11/2020	Dr. Ran Kivetz	Expert Deposition Fee	\$2,000.00
2/11/2020	Delta Airlines	New York Depos ICK Flight	\$1,235.80
2/12/2020	Express Network	Photocopies	\$305.00
2/16/2020	Dr. Arne Astrup	Expert Deposition Fee	\$1,800.00
2/17/2020	Federal Express	Delivery	\$48.19
2/17/2020	Isam Khoury	NY Cabs	\$155.00
2/17/2020	Richard Bloomer	Expert Deposition Fee	\$1,000.00
2/17/2020	Diane Morrison	Travel Expenses (G. Morrison Depo)	\$379.15
3/3/2020	Isam Khoury	New York Depo - ICK Hotel	\$1,875.58
3/5/2020	Timothy Cohelan	New York Depo. - Hotel, Taxis, Meals	\$2,042.28
3/5/2020	Timothy Cohelan	Memphis Depo. - Hotel, Flight, Taxi, Meal	\$1,960.22
3/5/2020	Timothy Cohelan	Dianne Morrison - Hotel	\$765.71
3/5/2020	Express Network	Records	\$640.00
3/5/2020	Timothy Cohelan	Gary & Diane Morrison Flights - Depo	\$1,634.78
3/5/2020	Delta Airlines	Dianne Morrison - Flight 2/9/20	\$817.39
3/5/2020	Delta Airlines	Gary Morrison - Flight 2/9/20	\$817.39
6/2/2020	Peterson Reporting	Dr. Astrup/Dr. Kivetz	\$3,974.14
6/3/2020	Alpha Reportng	Dr. Richard Bloomer	\$867.00
6/3/2020	Veritext	Gary Morrison/Katie Cottingham	\$1,209.80
7/14/2020	Freeman & Mills	Consultant	\$6,097.50
10/11/2021	Judicate West	Mediation Fee	\$4,500.00
10/14/2021	Judicate West	Case Management Fee	\$250.00
		Total:	\$137,962.38

LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
(SBN 175650)
ron@consumersadvocates.com
MICHAEL T. HOUCHIN
(SBN 305541)
mike@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665
Class Counsel

COHELAN KHOURY & SINGER
TIMOTHY D. COHELAN (SBN 60827)
TCohelan@CKSLaw.com
ISAM C. KHOURY (SBN 58759)
IKhoury@CKSLaw.com
MICHAEL D. SINGER (SBN 115301)
msinger@ckslaw.com
J. JASON HILL (SBN 179630)
JHill@CKSLaw.com
605 C Street, Suite 200
San Diego, California 92101
Telephone: (619) 239-8148
Facsimile: (619) 595-3000

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

VEDA WOODARD, TERESA RIZZO-MARINO, and DIANE MORRISON,
on behalf of themselves, all others
similarly situated, and the general
public,

Plaintiffs,

vs.

LEE LABRADA; LABRADA
BODYBUILDING NUTRITION, INC.;
LABRADA NUTRITIONAL
SYSTEMS, INC.; DR. MEHMET C.
OZ, M.D.; ENTERTAINMENT
MEDIA VENTURES, INC. d/b/a OZ
MEDIA; ZOCO PRODUCTIONS,
LLC; HARPO PRODUCTIONS, INC;
SONY PICTURES TELEVISION, INC;
NATUREX, INC.; and
INTERHEALTH
NUTRACEUTICALS, INC.,

Defendants.

CASE NO. 5:16-cv-00189-JGB-SP

CLASS ACTION

**DECLARATION OF RONALD A.
MARRON IN SUPPORT OF
PLAINTIFF'S MOTION FOR
COSTS AND INCENTIVE
AWARD**

Date: December 19, 2022

Time: 9:00 a.m.

Ctrlm: 1

Judge: Hon. Jesus G. Bernal

1 I, Ronald A. Marron, declare as follows:

2 1. I am a member in good standing of the State Bar of California and of
3 the United States District Courts for the Central District of California. I submit this
4 Declaration in Support of Plaintiff Veda Woodard’s Motion for Costs and Incentive
5 Award. I make this Declaration based on my personal knowledge and if called to
6 testify, I could and would competently testify to the matters contained herein.

7 2. Pursuant to the terms of the Settlement Agreement, Class Counsel are
8 seeking an award of costs in the total amount of \$187,500.

9 3. My firm, the Law Offices of Ronald A. Marron, APLC (the “Marron
10 Firm”), has incurred \$143,634.78 in costs that have not been reimbursed. It is also
11 my understanding that my co-counsel at the law firm of Cohelan, Khoury, and Singer
12 (the “Cohelan Firm”) has incurred \$137,962.38 in costs that have not been
13 reimbursed. Accordingly, the costs incurred by Class Counsel that have not been
14 reimbursed total \$281,597.16.

15 4. On August 16, 2019, Class Counsel filed a Motion for Attorneys’ Fees,
16 Costs, and Incentive Awards in connection with the partial class action settlement
17 with former Defendant Naturex, Inc. Dkt. No. 295-1. At that time, Class Counsel
18 had total costs in the amount of \$245,286.25. Dkt. No. 295-1 at 22; Dkt. No. 295-2
19 at ¶¶ 25-26 (\$107,169.65 total costs incurred by the Marron Firm); Dkt. No. 295-6
20 at ¶ 26 (\$138,116.60 total costs incurred by the Cohelan Firm). Out of the
21 \$245,286.25 in total costs incurred at the time of the Naturex settlement, the Court
22 awarded Class Counsel costs in the amount of \$61,321.56 (25% of \$245,286.25 in
23 total costs). *See* Dkt. No. 321 [October 7, 2019 Naturex Final Approval Order at 13].
24 Accordingly, Class Counsel has \$186,964.69 in costs that were not reimbursed
25 following the Naturex settlement.

26 5. The Marron Firm’s costs as of August 16, 2019 are detailed in the
27 Declaration of Ronald A. Marron that was filed in connection with the Naturex
28 Settlement. *See* Dkt. No. 295-2 at ¶¶ 25-26. As of August 16, 2019, my firm had

1 incurred \$107,169.65 in total costs. *See id.* As part of the Naturex Settlement,
2 \$26,792.41 (25%) of these costs were reimbursed. Accordingly, my firm has
3 \$80,377.24 in costs that were not reimbursed as part of the Naturex Settlement.

4 6. Following the Naturex Settlement, my firm has incurred an additional
5 \$63,257.54 in costs. Attached hereto as **Exhibit 2** is a true and correct copy of a
6 summary of costs that were incurred by my firm following the Naturex Settlement.

7 7. Accordingly, my firm's total costs that have not been reimbursed total
8 \$143,634.78 (\$80,377.24 in costs that were not reimbursed by the Naturex
9 Settlement plus \$63,257.54 in costs that were incurred after the Naturex Settlement).

10 8. In addition to Class Counsel's costs, Plaintiff Veda Woodard
11 respectfully requests an incentive award in the amount of \$5,000. Plaintiff Woodard
12 devoted extensive time to the successful prosecution of this case and serving as a
13 Class Representative on behalf of the Class. Plaintiff provided substantial assistance
14 that enabled Class Counsel to successfully prosecute the Action including sitting for
15 a deposition; reviewing material filings; continuous communications with Class
16 Counsel throughout the litigation including being on stand-by during mediations of
17 the action; reviewing and approving the Settlement Agreement; and being
18 committed to secure substantive relief on behalf of the Class.

19 9. In so doing, Plaintiff was integral to forming the theory of the case and
20 litigating it through settlement. In my opinion, the requested incentive award is
21 reasonable when taking into account the additional time, effort, and risk Plaintiff
22 Woodard contributed to vindicate the rights of the Class.

23 I declare under penalty of perjury of the laws of the United States that the
24 foregoing is true and correct.

25
26 Executed on this 3rd day of November, 2022 in San Diego, California.

27
28 /s/ Ronald A. Marron
RONALD A. MARRON

EXHIBIT 2

Date	Description	Amount
10/12/2021	Judicate West- Mediation Fees	\$4,500.00
4/3/2020	Exponent- Dr. Petersen Deposition Time	\$3,375.00
3/30/2020	Expert Witness Fees- Dr. Allison	\$15,016.67
3/23/2020	Veritext- Chin Yu Deposition Remote Fee	\$495.00
3/23/2020	Veritext- Chin Yu Deposition Transcript	\$768.15
3/6/2020	Expert Witness Fees- Charlene Podlipna	\$13,061.25
3/2/2020	ACE Legal- Courtesy Copy Printing and Delivery	\$1,242.28
2/20/2020	U.S. Legal Support- Sanford Climan Dep. Transcript	\$807.85
2/20/2020	U.S. Legal Support- Sanford Climan Dep. Video	\$922.25
2/19/2020	GAAS- Labortory analysis of products	\$600.00
2/18/2020	Veritext- Dr. Belch Deposition Transcript	\$1,724.60
2/18/2020	Veritext- Dr. Clevenger and Kilham dep. Transcripts	\$2,107.24
2/14/2020	Veritext- Charlene Podlipna Deposition Transcript	\$974.60
2/11/2020	L. Halperin Meal re: Kilham Deposition	\$37.95
2/11/2020	Expert Witness Fees- Dr. Belch	\$7,500.00
2/10/2020	Exponent- expert deposition time	\$1,098.00
2/9/2020	L. Halperin Lyft re Kilham Deposition	\$13.36
2/9/2020	L. Halperin Lyft re Kilham Deposition	\$22.69
2/9/2020	L. Halperin hotel re: Kilham Deposition	\$186.15
2/8/2020	M. Houchin Lyft re Wagner Deposition	\$19.41
2/8/2020	U.S. Legal Support- Dr. Wagner Deposition Transcript	\$861.05
2/7/2020	Lyft re Wagner Deposition	\$41.81
2/7/2020	Veritext- Transcript of Dr. Allison Deposition	\$3,428.06
2/6/2020	L. Halperin Flight for Kilman deposition	\$280.00
2/6/2020	M. Houchin Lyft after Podlipna Deposition	\$22.79
2/6/2020	M. Houchin Lyft re Podlipna Deposition	\$26.99
2/2/2020	Hotel for Dr. Allison Deposition (Dr. Allison)	\$162.63
2/1/2020	Hotel for Dr. Allison Deposition (R. Marron)	\$444.60
1/31/2020	Flight for Podlipna Depososition	\$237.40
1/31/2020	M. Houchin flight for Dr. Wagner Deposition	\$129.98
1/31/2020	M. Houchin flight for Dr. Wagner Deposition	\$147.98
1/30/2020	M. Houchin Hotel for Dr. Wagner Deposition	\$132.91
1/28/2020	M. Houchin Hotel for Climan and Podlipna depositions	\$616.59
1/24/2020	M. Houchin Flight to New York for Deposition	\$698.00
1/24/2020	R. Marron Flight for Dr. Allison Deposition	\$504.40
1/23/2020	Process Server for Chris Kilham Subpoena	\$390.00
1/21/2020	M. Houchin Lyft to Newark airport	\$104.89
1/18/2020	M. Houchin Hotel- New York Deposition	\$481.69
1/18/2020	M. Houchin Lyft for Deposition	\$20.38
1/18/2020	M. Houchin Lyft for Deposition	\$52.94
	TOTAL	\$63,257.54

LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
(SBN 175650)
ron@consumersadvocates.com
MICHAEL T. HOUCHIN
(SBN 305541)
mike@consumersadvocates.com
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665
Class Counsel

COHELAN KHOURY & SINGER
TIMOTHY D. COHELAN (SBN 60827)
TCohelan@CKSLaw.com
ISAM C. KHOURY (SBN 58759)
IKhoury@CKSLaw.com
MICHAEL D. SINGER (SBN 115301)
msinger@ckslaw.com
605 C Street, Suite 200
San Diego, California 92101
Telephone: (619) 239-8148
Facsimile: (619) 595-3000

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

VEDA WOODARD, TERESA RIZZO-MARINO, and DIANE MORRISON,
on behalf of themselves, all others
similarly situated, and the general
public,

Plaintiffs,

vs.

LEE LABRADA; LABRADA
BODYBUILDING NUTRITION, INC.;
LABRADA NUTRITIONAL
SYSTEMS, INC.; DR. MEHMET C.
OZ, M.D.; ENTERTAINMENT
MEDIA VENTURES, INC. d/b/a OZ
MEDIA; ZOCO PRODUCTIONS,
LLC; HARPO PRODUCTIONS, INC;
SONY PICTURES TELEVISION, INC;
NATUREX, INC.; and
INTERHEALTH
NUTRACEUTICALS, INC.,

Defendants.

CASE NO. 5:16-cv-00189-JGB-SP

CLASS ACTION

**[PROPOSED] ORDER
GRANTING PLAINTIFF'S
MOTION FOR COSTS AND
INCENTIVE AWARD**

1 Before the Court is a Motion for Costs and Incentive Award (the “Costs
2 Motion”) filed by Plaintiff Veda Woodard. Plaintiff’s Costs Motion is submitted in
3 connection with her class action settlement with Defendant Labrada Bodybuilding
4 Nutrition, Inc. (“Defendant” or “Labrada”). On July 7, 2022, this Court granted
5 preliminary approval of the proposed settlement. (Dkt. No. 474).

6 Having reviewed and considered Plaintiff’s Costs Motion and the supporting
7 materials filed by Class Counsel, the Court hereby **GRANTS** Plaintiff’s Costs
8 Motion. Accordingly, the Court orders as follows:

9 1. The Court awards Class Counsel \$187,500 in litigation costs, to be paid
10 at the time and manner provided in the Settlement Agreement. Based on the
11 declarations of Class Counsel, the Court finds that Class Counsel has incurred
12 \$281,597.16 in litigation costs that have not been reimbursed. However, Class
13 Counsel are only seeking an award of costs in the amount of \$187,500 that accounts
14 for 66.6% of their total litigation costs. The Court finds this amount to be reasonable
15 given the fact that Class Counsel are not seeking the total amount of their out-of-
16 pocket litigation costs and because Class Counsel are not seeking an award of
17 attorneys’ fees. This amount is further reasonable given the results obtained by the
18 Settlement and the fact that the costs award amounts to just 30% of the total
19 \$625,000 Settlement Fund.

20 2. The Court further awards Plaintiff Veda Woodard an incentive award
21 in the amount of \$5,000, to be paid at the time and manner provided in the Settlement
22 Agreement. The Court finds that Plaintiff has participated in discovery, sat for a
23 deposition, reviewed material case filings, and was committed to securing
24 substantive relief on behalf of the Class. The Court further finds that the requested
25 incentive award is presumptively reasonable and is in line with Ninth Circuit
26 authority. *See Wren v. RGIS Inventory Specialists*, No. C06-05778 JCS, 2011 WL
27 1230826, at *36 (N.D. Cal. Apr. 1, 2011) (“there is ample case law finding \$5,000
28 to be a reasonable amount for an incentive payment.”).

1 **IT IS SO ORDERED.**

2
3
4 DATED: _____, 2022

5 HON. JESUS G. BERNAL
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28