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# **EXHIBIT 1**

## Class Action Settlement Agreement

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

MARCUS GIFFIN, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

UNIVERSAL PROTEIN SUPPLEMENTS  
CORPORATION d/b/a/ UNIVERSAL  
NUTRITION, UNIVERSAL USA, and/or  
ANIMAL PAK,

Defendant.

CASE NO. BC613414

Assigned to the Hon.: William F. Highberger

**CLASS ACTION**

**STIPULATION AND AGREEMENT OF  
SETTLEMENT**

1 It is hereby stipulated and agreed by and between the undersigned Parties, subject to the  
2 approval of the Court, that the settlement of this Action shall be effectuated pursuant to the terms  
3 and conditions set forth in this Settlement Agreement and/or Settlement.

4 **SECTION 1 – PREAMBLE**

5 1. WHEREAS Marcus Giffin (“Giffin” and/or “Plaintiff”) is the named plaintiff in an  
6 action entitled *Marcus Giffin, individually and on behalf of all others similarly situated, Plaintiff, v.*  
7 *Universal Protein Supplements Corporation d/b/a/ Universal Nutrition, Universal USA, And/Or*  
8 *Animal Pak*, Case No. (BC613414), commenced on or about March 21, 2016 (the “Action”);

9 2. WHEREAS Plaintiff filed a Complaint for Damages and Restitution against  
10 defendant Universal Protein Supplements Corporation d/b/a/ Universal Nutrition, Universal USA,  
11 And/Or Animal Pak (“Universal” and/or “Defendant”) for Violations of California’s Civil Code §§  
12 1750 *et seq*; California’s Bus. & Prof. Code § 17533.7; California’s Bus. & Prof. Code §§ 17200 *et*  
13 *seq.*; and for Negligent Misrepresentation and Intentional Misrepresentation, in the Action;

14 3. WHEREAS Plaintiff alleges that he relied on allegedly false and misleading  
15 statements contained on the labels and in advertisements and marketing materials for Defendant’s  
16 Animal Pak – 44pks consumable product (the “Product”) regarding the composition and ingredients  
17 of the Product, and that such statements violate state consumer protections laws (including  
18 California’s Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750 *et seq*; California’s  
19 False “Made in USA” Advertising Law (“FAL”), Bus. & Prof. Code §17533.7; and, California’s  
20 Unfair Competition Laws (“UCL”), Bus. & Prof. Code §17200 *et seq.*, as well as California’s  
21 common-law doctrines of negligent misrepresentation and intentional misrepresentation);

22 4. WHEREAS the Action seeks monetary and equitable remedies on behalf of Plaintiff  
23 and a class of similarly situated persons;

24 5. WHEREAS the Parties have negotiated this Settlement at arms-length, and have had  
25 a full and fair opportunity to evaluate the strengths and weaknesses of their respective positions;

26 6. WHEREAS Defendant denies the allegations of the Action, denies all allegations of  
27 wrongdoing and of liability, and denies any causation of harm or damage to the Settlement Class, as  
28 defined below (see Section 2.32, below);



1           1.       “Action” means the civil action entitled *Marcus Giffin, individually and on behalf of*  
2 *all others similarly situated, Plaintiff, v. Universal Protein Supplements Corporation d/b/a/*  
3 *Universal Nutrition, Universal USA, And/Or Animal Pak, Defendant*, Case No. BC613414.

4           2.       “Class Counsel” means Abbas Kazerounian and Andrei Armas of the law firm  
5 Kazerouni Law Group, APC, and Joshua B. Swigart of the law firm Hyde & Swigart.

6           3.       “Class Notice” means the Court-approved notice of this Agreement that is directed to  
7 Class Members and described in Section 4.1 of this Settlement Agreement and exemplified in  
8 **Exhibits C and D**. The Class Notice will be provided as set forth in the Preliminary Approval  
9 Order, pursuant to California Rule of Court 3.771(b).

10          4.       “Class Period” means four (4) years from the date that the Action was filed, up  
11 through the date the Preliminary Approval Order is entered.

12          5.       “Class Products” means the products identified in **Exhibit E**.

13          6.       “Class Released Claims” means any and all actions, causes of action, claims,  
14 demands, liabilities, obligations, fees, costs, sanctions, proceedings, and/or rights of any nature and  
15 description whatsoever, including, without limitation, violations of any state or federal statutes,  
16 rules or regulations, or principles of common law, whether liquidated or unliquidated, known or  
17 unknown, in law or in equity, whether or not concealed or hidden, by Plaintiff, members of the  
18 Settlement Class, or any of them (on their own behalf and/or on behalf of the proposed class or the  
19 general public) against Defendant, or any other Released Parties, through the date the Final  
20 Approval Order and Judgment is entered, and that are based on, arise out of, or in any way relate to  
21 the facts, transactions, events, occurrences, acts, disclosures, advertisements, omissions, or failure to  
22 act concerning the manufacturing, marketing, sale, labeling and/or advertising of Defendant’s Class  
23 Products or the lawfulness, composition and/or ingredients of the Class Products. Notwithstanding  
24 the above, “Class Released Claims” shall exclude any claims for personal injury on behalf of the  
25 Settlement Class.

26          7.       “Class Representative” means Plaintiff, Marcus Giffin.

27          8.       “Class Settlement Fund” means a minimum payment of \$125,000.00 (“Minimum  
28 Payment”) and a maximum payment of \$600,000.00 (“Maximum Payment”) that Defendant may

1 become obligated to pay by operation of the Settlement Agreement, if it gains Final Approval. The  
2 Class Settlement Fund shall pay for: (1) first, notice and settlement administration costs, (2)  
3 second, an incentive award, if any, to Representative Plaintiff, and (4) third, a Class recovery to  
4 Class Members who submit a Qualifying Settlement Claim Form, as follows:

5 i) Each Class Member who submits a Qualifying Settlement Claim Form affirming  
6 that the Class Member purchased a product at issue during the relevant class period and specifies  
7 the date of purchase, will be paid a maximum of \$20.00 from the \$125,000.00 Minimum Payment,  
8 applying the rules set forth in the definition of Settlement Class Member and/or Class Member. A  
9 Class Member that does not submit a Claim Form will not receive any monetary distribution, but  
10 will still be bound by the terms of this Agreement and the Court's judgment, unless the Class  
11 Member submits a valid Request for Exclusion.

12 ii) If the Minimum Payment calculated in accordance with this paragraph is less than  
13 \$20.00 per Participating Claimant, Defendant shall add an amount to the Minimum Payment so as  
14 to make the distribution equal to \$20.00 per Participating Claimant, but in no event shall Defendant  
15 become obligated to pay more than the Maximum Payment of \$600,000.00. If Defendant pays up to  
16 its cap of \$600,000.00, but the share to be distributed to each Participating Claimant is less than  
17 \$20.00, the Class Settlement Fund shall be whatever smaller *pro rata* sum as will deplete the  
18 maximum settlement amount of \$600,000.00. In no event shall Defendant pay more than  
19 \$600,000.00 in total in connection with the Settlement, this Agreement, and the Court's judgment.

20 iii) If valid and timely claims are less than the Minimum Payment, Defendant will  
21 donate the balance of the Minimum Payment to a non-profit organization (*cy pres*) to be agreed  
22 upon by the Parties and approved by the Court.

23 9. "Court" means the Superior Court of the State of California for the County of Los  
24 Angeles, Complex Claims Division.

25 10. "Effective Date" means the first date by which all of the following events shall have  
26 occurred: (a) the Court has entered the Preliminary Approval Order; (b) the Court has entered the  
27 Final Approval Order and Judgment; and (c) the Final Approval Order and Judgment have become  
28 Final.

1           11.     “Fee and Cost Application” means the written motion or application by which the  
2 Class Representative and/or Class Counsel request that the Court award attorneys’ fees, costs,  
3 expenses and incentive award.

4           12.     “Final” means that the Court has entered the Final Approval Order and Judgment on  
5 the docket in the Action, and (a) the time to appeal from such order has expired and no appeal has  
6 been timely filed, (b) if such an appeal has been filed, it has finally been resolved and has resulted  
7 in an affirmation of the Final Approval Order and Judgment, or (c) the Court, following the  
8 resolution of the appeal, enters a further order or orders approving settlement on the terms set forth  
9 herein, and either no further appeal is taken from such order(s) or any such appeal results in  
10 affirmation of such order(s). Neither the pendency of the Fee and Cost Application, nor any appeal  
11 pertaining solely to a decision on the Fee and Cost Application, shall in any way delay or preclude  
12 the Final Approval Order and Judgment from becoming Final.

13           13.     “Final Approval Hearing” means the hearing scheduled to take place at least one-  
14 hundred and twenty (120) days after the date of entry of the Preliminary Approval Order at which  
15 the Court shall: (a) determine whether to grant final approval to this Settlement Agreement and to  
16 certify the Settlement Class; (b) consider any timely objections to this Settlement and all responses  
17 thereto; and (c) rule on the Fee and Cost Application.

18           14.     “Final Approval Order and Judgment” means the order, substantially in the form of  
19 **Exhibit B** attached hereto, in which the Court grants final approval of this Settlement Agreement,  
20 certifies the Settlement Class, and authorizes the entry of a final judgment and dismissal of the  
21 Action with prejudice.

22           15.     “Individual Released Claims” means any and all of the Class Representative’s  
23 actions, causes of action, claims, demands, liabilities, obligations, fees, costs, sanctions,  
24 proceedings, and/or rights of any nature and description whatsoever, including, without limitation,  
25 violations of any state or federal statutes, rules or regulations, or principles of common law, whether  
26 liquidated or unliquidated, known or unknown, in law or in equity, whether or not concealed or  
27 hidden, against Defendant, or any other Released Parties, through the date the Final Approval Order  
28 and Judgment is entered, and that are based on, arise out of, or are related to the Class

1 Representative’s personal purchase, use, and consumption of any Class Products manufactured,  
2 sold, or otherwise distributed by Defendant, including, any claims relating to the manufacturing,  
3 marketing, sale, labeling and/or advertising of any Class Products and the lawfulness, composition  
4 and/or ingredients of any Class Products. Notwithstanding the above, “Individual Released Claims”  
5 shall exclude any claims for personal injury on behalf of the Settlement Class.

6 16. “Long-Form Notice” means the long-form of notice of the proposed class action  
7 settlement attached hereto as **Exhibit C**.

8 17. “Notice” means direct notice, Internet notice and publication notice, as set forth in  
9 Section 4.1 of this Settlement Agreement.

10 18. “Notice Provider” means the third-party agent(s) or administrator(s) agreed to by the  
11 Parties and appointed by the Court for purposes of providing direct notice, Internet and publication  
12 notice.

13 19. “Notice Response Deadline” means the deadline for all members of the Settlement  
14 Class to respond to the Notice, which shall be thirty (30) days prior to the Final Approval Hearing.

15 20. “Participating Claimant” means a Settlement Class Member who submits a  
16 Qualifying Settlement Claim Form (*see* Section 2.23, below) in response to the Notice.

17 21. “Parties” means Class Representative and Defendant.

18 22. “Person” means any natural person, firm, corporation, unincorporated association,  
19 partnership, or other form of legal entity or government body, including its agents and  
20 representatives.

21 23. “Preliminary Approval Order” means the order, substantially in the form of **Exhibit**  
22 **A** attached hereto, in which the Court grants its preliminary approval to this Settlement Agreement  
23 and preliminarily certifies the Settlement Class, appoints Plaintiff as Class Representative, appoints  
24 Abbas Kazerounian and Andrei Armas of Kazerouni Law Group, APC and Joshua B. Swigart of  
25 Hyde & Swigart as Class Counsel, appoints the Settlement Administrator and Notice Provider, and  
26 authorizes dissemination of Notice to the Settlement Class.

27 24. “Qualifying Settlement Claim Form” means a Settlement Claim Form that: (a) is  
28 fully completed, properly executed in accordance with Section 2.8.i, above, and timely returned to



1 the Settlement Administrator, *i.e.*, returned via the Internet or with a postmark on or before the  
2 Notice Response Deadline; and (b) confirms that the Settlement Class Member purchased a Class  
3 Product identified in the Claim Form during the Class Period, and that the Class Member did not  
4 purchase the product for re-sale.

5 25. “Released Parties” means Defendant and its past and present officers, directors,  
6 employees, stockholders, investors, owners, agents, representatives, attorneys, administrators,  
7 successors, subsidiaries, assigns, affiliates, joint-ventures, partners, members, divisions,  
8 predecessors, spokespersons, public relations firms, advertising and production agencies,  
9 manufacturers, distributors, suppliers, wholesalers, retailers, vendors, licensees and licensors.

10 26. “Releasing Parties” means all Settlement Class Members and/or Class Members.

11 27. “Request for Exclusion” means a valid request for exclusion from a Settlement Class  
12 Member. To be valid, a request for exclusion must (a) be submitted by the Settlement Class  
13 Member; (b) be submitted to the Settlement Administrator and postmarked by a date not later than  
14 twenty-one (21) days before the Final Approval Hearing; (c) contain the submitter’s name, address  
15 and telephone number; and (d) otherwise comply with the instructions set forth in the Notice.

16 28. “Settlement Administrator” means ILYM Group, Inc.

17 29. “Settlement Agreement,” “Settlement,” or “Agreement” means this Stipulation and  
18 Agreement of Settlement, including the attached exhibits.

19 30. “Settlement Claim” or “Claim” means a claim for reimbursement submitted by a  
20 Settlement Class Member to the Settlement Administrator as provided in this Agreement.

21 31. “Settlement Claim Form” or “Claim Form” means a claim form, in the form to be  
22 determined by the Settlement Administrator, that a Settlement Class Member seeking  
23 reimbursement must submit to the Settlement Administrator as provided in this Agreement.

24 32. “Settlement Class” means, collectively, all persons who purchased for personal  
25 consumption, and not for re-sale, Defendant’s Class Products, which are listed in **Exhibit E**  
26 attached hereto, in California during the Class Period. Excluded from the Settlement Class are any  
27 officers, directors, or employees of Defendant, and the immediate family member of any such  
28 person, as well as any individual who received remuneration from Defendant in connection with

1 that individual's use or endorsement of the Class Products. Also excluded is any judge who may  
2 preside over this case.

3 33. "Settlement Class Member" or "Class Member" means any member of the  
4 Settlement Class who does not submit a timely and valid Request for Exclusion.

5 34. "Settlement Website" means the Internet website to be established by the Settlement  
6 Administrator within thirty (30) days after the date of entry of the Preliminary Approval Order.

7 35. "Short-Form Notice" means the short-form of notice of the proposed class action  
8 settlement attached hereto **Exhibit D**.

9 36. "Special Master" means Honorable Joseph Biderman (Ret.).

10 37. "Universal" or "Defendant" means Defendant Universal Protein Supplements  
11 Corporation d/b/a/ Universal Nutrition, Universal USA, and/or Animal Pak.

12 38. "Universal's Counsel" or "Defendant's Counsel" means Carlson & Messer, LLP.

13 39. "Valid Claim" means a claim for a proportional payment not to exceed \$20.00 from  
14 the total Class Settlement Fund, submitted by a Settlement Class Member that satisfies all the  
15 criteria for submission of a Qualifying Settlement Claim Form.

### 16 SECTION 3 – SETTLEMENT CLASS RELIEF

17 In consideration of a full, complete, and final settlement of the Action, and the Releases in  
18 Section 7 below, and subject to the Court's approval, the Parties agree to the following relief:

#### 19 1. Class Settlement Fund

20 Defendant is not required to place all or any portion of the Settlement Fund to the Class  
21 Administrator and shall not be required to relinquish control of any funds until payments are due;  
22 except that Defendant must deposit with the Settlement Administrator funds sufficient to pay for  
23 Class Notice and initial Settlement Administration expenses. The amount deposited by Defendant is  
24 to be released from the trust only for distribution to Participating Claimants, as set forth below.

#### 25 2. Distribution of the Class Settlement Fund

26 Distribution of funds from the Class Settlement Fund to Participating Claimants shall  
27 commence as soon as practicable after the Effective Date, but in no event later than thirty one (31)  
28 days after the Effective Date.

1           3.       Settlement Class Member Claims

2                   a.       Relief to the Settlement Class

3           The Class Settlement Fund shall be available to pay Valid Claims submitted by Participating  
4 Claimants who purchased any of the Class Products for personal consumption, and not for re-sale,  
5 during the Class Period. Each Participating Claimant will be entitled to reimbursement in the  
6 maximum amount of \$20.00. All Settlement Class Members who submit a Claim must provide an  
7 affirmation that the Class Member personally purchased one or more of the Class Products during  
8 the Class Period.

9                   b.       Claim Forms

10           Settlement Class Members will be able to obtain a Settlement Claim Form by calling the  
11 toll-free number established for purposes of administering this Agreement, or by downloading the  
12 form from the Settlement Website established by the Settlement Administrator. The Claim Form  
13 shall include instructions for the submission process. Settlement Class Members may submit a  
14 Claim Form online or by mail to the Settlement Administrator at the address provided.

15                   c.       Waiver

16           If a Qualifying Settlement Claim Form is not actually received by the Settlement  
17 Administrator from a Settlement Class Member via the Internet or with a postmark on or before the  
18 Notice Response Deadline, then that Settlement Class Member will be deemed to have forever  
19 waived his or her right to be a Participating Claimant and to receive payment under this Settlement.  
20 As long as they do not properly submit a Request for Exclusion, Settlement Class Members who do  
21 not become Participating Claimants shall be deemed Members of the Settlement Class and shall be  
22 subject to the Judgment. Only Participating Claimants shall be entitled to payment pursuant to the  
23 Judgment.

24                   d.       Determination of Claims

25           Defendants shall have the right (but not the obligation) to verify the truthfulness of the  
26 representations on any Claim Form and the right (but not the obligation) to reject any claim on  
27 which a material misrepresentation appears. Representative Plaintiff(s) will have the option to  
28 contest any rejection and any dispute will be decided by the Court, as provided in Section 3(4),

1 below. If a Settlement Class Member’s Claim Form is properly completed, signed and submitted  
2 within the specified time, and Defendant does not direct the Settlement Administrator to deny the  
3 claim based on alleged material misrepresentation within fourteen (14) calendar days of Final  
4 Approval (or Defendant’s direction is reversed, as set forth below), that Settlement Class Member  
5 will be deemed an “Eligible Claimant” entitled to the Claim Payment.

6 4. Excess Funds

7 If the aggregate value of Valid Claims submitted by Settlement Class Members is less than  
8 the Minimum Payment of \$125,000, then the unclaimed balance shall be distributed *cy pres* to a  
9 charitable organization that benefits the Settlement Class, to be mutually agreed on by the Parties,  
10 subject to Court approval. Such unclaimed balance, if any, shall be paid no later than one-hundred  
11 and eighty (180) days after the Effective Date, provided that the Effective Date occurs.

12 5. Equitable Relief and Future Conduct by Universal

13 To the extent Defendant still markets or sells the Class Products in the United States after  
14 the Effective Date, Defendant has already confirmed that it has removed the “Made Proudly in the  
15 USA” language or mark, or language similar to or derivative thereof, from the labels of its Class  
16 Products. Nothing in this provision shall prevent Defendant from making changes to the Class  
17 Products’ labels not inconsistent with the foregoing, or as necessary to comply with governmental  
18 or regulatory requirements. Defendant also has the unfettered right to add the “Made Proudly in the  
19 USA” language to any of its products, so long as such labeling complies with applicable law.

20 6. Special Master

21 The Parties shall petition the Court to name Hon. Joseph Biderman (Ret.) as Special Master.  
22 The specific duties of the Special Master shall be defined by the Parties and approved by the Court.  
23 However, the Special Master’s duties shall include overseeing the activities of the Settlement  
24 Administrator under this Agreement and any subsequent order(s) of the Court. The Parties shall  
25 split the Special Master’s fee 50/50. The Special Master’s fee shall not be paid from the Class  
26 Settlement Fund.

1                                   **SECTION 4 – NOTICE AND REQUESTS FOR EXCLUSION**

2           1.     Provision of Class

3           Notice to the Settlement Class shall be provided in the forms approved by the Court in the  
4 Preliminary Approval Order, by those means set forth in the Preliminary Approval Order. The  
5 Notice shall be substantially in the same forms as the exemplars submitted as **Exhibit C and D.**

6                   a.     Direct Notice

7           Within five (5) days after entry of the Preliminary Approval Order, Defendant shall provide  
8 a list to the Claims Administrator and the Notice Provider of the names, address and/or email  
9 address, of all purchasers of whom it is aware who bought at least one of the Class Products. Within  
10 thirty (30) days after entry of the Preliminary Approval Order, the Claims Administrator shall mail  
11 or email the Short Form Notice (in the form attached to the Agreement as Exhibit E) to the  
12 identified Class Members. In the event that a Short Form Notice is returned as undeliverable with a  
13 forwarding address, the Claims Administrator shall re-mail the Short Form Notice to the indicated  
14 forwarding address within 5 business days from the date of receipt of the forwarding address. The  
15 Claims Administrator shall have no obligation to re-mail any Class Notice returned as undeliverable  
16 after 30 days from the date on which it was originally mailed.

17                   b.     Internet Notice

18           The Parties, the Settlement Administrator and the Notice Provider shall use best efforts to  
19 cause the Class Notice to commence online at the Settlement Website promptly after entry of the  
20 Preliminary Approval Order. The Settlement Website shall be administered by the Settlement  
21 Administrator and/or the Notice Provider. The Settlement Administrator and the Notice Provider  
22 shall use best efforts, within thirty (30) days after the date of entry of the Preliminary Approval  
23 Order, to cause Internet users that utilize search engines to search for specific phrases, such as  
24 “Universal” and/or “Animal Pak,” to be exposed to an Internet banner advertisement directing such  
25 users to the Settlement Website. The exact content of this banner advertisement will be drafted by  
26 Settlement Administrator and the Notice Provider and agreed upon by the Parties.

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1 c. Publication Notice

2 Within thirty (30) days after entry of the Preliminary Approval Order, or as soon as  
3 practicable thereafter, the Claims Administrator shall arrange for publication of the Class Notice, in a  
4 national publication.

5 2. Declarations Of Compliance

6 The Settlement Administrator and/or the Notice Provider shall prepare declarations attesting  
7 to compliance with the notice requirements set forth above. Such declarations shall be provided to  
8 Class Counsel and Defendant's Counsel and filed with the Court no later than ten (10) days prior to  
9 the Final Approval Hearing.

10 3. Best Notice Practicable

11 The Parties agree that compliance with the procedures described in this section is the best  
12 notice practicable under the circumstances and shall constitute due and sufficient notice to the  
13 Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of  
14 the Settlement Agreement, and the Final Approval Hearing, and shall satisfy the requirements of the  
15 California Rules of Court, the California Code of Civil Procedure, the Constitution of the State of  
16 California, the United States Constitution, and any other applicable law.

17 4. Report On Requests For Exclusion and Valid Claims

18 Not later than ten (10) days before the Final Approval Hearing, the Settlement Administrator  
19 shall prepare and deliver to Class Counsel, who shall file it with the Court and provide it to  
20 Defendant's Counsel, a report stating: (1) the total number of Persons that have submitted timely  
21 and valid Requests for Exclusion from the Settlement Class, and the names of such Persons; and (2)  
22 the total number of Persons that have submitted timely Valid Claims, and the aggregate value of  
23 those Valid Claims. Any Person that has submitted a timely and valid Request for Exclusion will  
24 not be entitled to receive any relief under this Settlement Agreement.

25 5. Inquiries From Settlement Class Members

26 It shall be the responsibility of Class Counsel to establish procedures for receiving and  
27 responding to all inquiries from Settlement Class Members with respect to this Settlement.  
28 Defendant's Counsel may respond, but are not required to respond, to such inquiries.



1           3.     Final Approval Hearing

2           The Parties shall request that the Court, on the date set forth in the Preliminary Approval  
3 Order, or on such other date that the Court may set, conduct a Final Approval Hearing to:  
4 (a) determine whether to grant final approval to this Settlement Agreement and to certify the  
5 Settlement Class; (b) consider any timely objections to this Settlement and the Parties' responses to  
6 such objections; and (c) rule on the Fee and Cost Application. At the Final Approval Hearing, the  
7 Parties shall ask the Court to give final approval to this Settlement Agreement. If the Court grants  
8 final approval to this Settlement Agreement, then the Parties shall ask the Court to enter a Final  
9 Approval Order and Judgment, substantially in the form of **Exhibit B** attached hereto, which  
10 approves this Settlement, certifies the Settlement Class, and authorizes entry of a final judgment.

11           4.     Disapproval, Cancellation, Termination, Or Nullification Of Settlement

12           a.     This Settlement Agreement shall terminate automatically if either (i) the  
13 Court denies preliminary approval or final approval to this Settlement Agreement, or (ii) the Final  
14 Approval Order and Judgment does not become Final by reason of a higher court reversing final  
15 approval by the Court, and the Court thereafter declining to enter a further order or orders approving  
16 settlement on the terms set forth herein.

17           b.     If this Settlement Agreement is terminated pursuant to its terms, then: (i) this  
18 Settlement Agreement shall be rendered null and void; (ii) this Settlement Agreement and all  
19 negotiations and proceedings relating hereto shall be of no force or effect, and without prejudice to  
20 the rights of the Parties; and (iii) all Parties shall be deemed to have reverted to their respective  
21 status in the Action, or the Dismissed Action, as of the date and time immediately preceding the  
22 execution of this Settlement Agreement and, except as otherwise expressly provided, the Parties  
23 shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and  
24 any related orders had never been executed, entered into, or filed, except that the Parties shall not  
25 seek to recover from one another any costs incurred in connection with this Settlement.

26           5.     Termination Based on Exclusion Requests

27           Defendant, in its sole and absolute discretion, may elect to terminate this Agreement if  
28 exclusion requests as provided for in the Preliminary Approval Order exceeds 1% of the Class.



1 Defendants may terminate under this Paragraph by providing written notice of termination to Class  
2 Counsel no later than seven (7) calendar days before the Settlement Hearing date set by the Court in  
3 the Preliminary Approval Order to consider objections, if any, to the settlement and to enter the  
4 Settlement Order and Final Judgment.

5 **SECTION 6 – ADMINISTRATIVE EXPENSES, ATTORNEYS’ FEES, COSTS**

6 1. Costs Of Notice

7 All costs of providing the Notice as provided herein, including the costs of direct notice,  
8 Internet and publication notice, shall be paid from the Class Settlement Fund.

9 2. Costs Of Administering Settlement

10 All costs of administering this Settlement, including all fees of the Settlement Administrator  
11 and the costs of generating and mailing any checks to be issued as part of this Settlement, shall be  
12 shall be paid from the Class Settlement Fund. In the event that this Settlement Agreement is  
13 terminated pursuant to its terms, Defendant shall bear any costs of administering this Settlement  
14 already incurred.

15 3. Attorneys’ Fees And Costs

16 Plaintiff and/or Class Counsel may make a Fee and Cost Application, to be heard at the  
17 Final Approval Hearing, seeking an award of attorneys’ fees and costs in an amount not to exceed  
18 one hundred thirty-seven thousand and five hundred dollars (\$137,500), inclusive of documented  
19 costs. Defendant has agreed not to oppose such application by Class Counsel. At least thirty (30) days  
20 prior to the deadline for written objections, Class Counsel shall file a motion requesting the Court’s  
21 approval of attorneys’ fees and costs. Defendant shall pay all attorneys’ fees and costs up to one  
22 hundred thirty-seven thousand and five hundred dollars (\$137,500) that are approved by the Court,  
23 no later than fifteen (15) days after the Effective Date, and only in the event that the Effective Date  
24 occurs. Any payments made under this provision will be exclusive of the Class Settlement Fund,  
25 and shall have no effect on the Minimum and Maximum Payment amounts. Payments under this  
26 provision shall be made to Kazerouni Law Group, APC. Class Counsel shall be solely responsible  
27 for further distributing any payments made under this provision.  
28

1           4.     Incentive Award

2           Plaintiff and/or Class Counsel on his behalf may make an application to be heard at the Final  
3 Approval Hearing for an incentive award to be paid from the Class Settlement Fund in an amount  
4 not to exceed five thousand dollars (\$5,000). Defendant has agreed not to oppose such a request. At  
5 least thirty (30) days prior to the deadline for written Objections, Class Counsel shall file a motion  
6 requesting the Court’s approval for Plaintiff’s incentive award. Such incentive award, if approved  
7 by the Court, shall be paid from the Class Settlement Fund no later than fifteen (15) days after the  
8 Effective Date, and only in the event that the Effective Date occurs. Such payment shall be  
9 compensation and consideration for the efforts of Plaintiff as the Class Representative in the Action.

10          5.     Effect On Settlement

11          The Parties agree that the rulings of the Court regarding the amount of attorneys’ fees or  
12 costs and any incentive award, and any claim or dispute relating thereto, will be considered by the  
13 Court separately from the remaining matters to be considered at the Final Approval Hearing as  
14 provided for in this Settlement Agreement and any determinations in that regard will be embodied  
15 in a separate order. Any order or proceedings relating to the amount of attorneys’ fees or incentive  
16 award, including any appeals from or modifications or reversals of any order related thereto, shall  
17 not operate to modify, reverse, terminate, or cancel the Settlement Agreement, affect the releases  
18 provided for in the Settlement Agreement, or affect whether the Final Approval Order and  
19 Judgment becomes Final as defined herein.

20                                   **SECTION 7 – RELEASES UPON EFFECTIVE DATE**

21          1.     Binding and Exclusive Nature of Settlement Agreement

22          On the Effective Date, if it occurs, the Parties and each and every Settlement Class Member  
23 shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits,  
24 rights, and remedies provided hereunder. No other action, demand, suit or other claim may be  
25 pursued against the Released Parties with respect to the Class Released Claims.

1           2.     Class Releases

2           On the Effective Date, if it occurs, the Releasing Parties shall be deemed to have, and by  
3 operation of this Settlement Agreement shall have, fully, finally and forever released, relinquished  
4 and discharged the Released Parties from any and all of the Class Released Claims.

5           3.     Class Representative's Individual Releases

6           On the Effective Date, if it occurs, the Class Representative shall be deemed to have, and by  
7 operation of this Settlement Agreement shall have, fully, finally and forever released, relinquished  
8 and discharged the Released Parties from any and all of the Class Representative's Individual  
9 Released Claims.

10          4.     Stay Of The Action

11          The Parties agree to request that the Court, in connection with Preliminary Approval of the  
12 Class Action Settlement, issue an immediate stay of the Action.

13          5.     Waiver of Unknown Claims

14          On the Effective Date, if it occurs, the Releasing Parties shall be deemed to have, and by  
15 operation of this Settlement Agreement shall have, with respect to the subject matter of the Class  
16 Released Claims and Individual Released Claims, expressly waived the benefits of any statutory  
17 provisions or common law rule that provides, in sum or substance, that a general release does not  
18 extend to claims which the party does not know or suspect to exist in its favor at the time of  
19 executing the release, which if known by it, would have materially affected its settlement with any  
20 other party. In particular, but without limitation, the Releasing Parties waive the provisions of  
21 California Civil Code § 1542 (or any like or similar state or federal statute or common law  
22 doctrine), and do so understanding the significance of that waiver. Section 1542 provides:

23                   **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
24                   **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**  
25                   **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
26                   **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
27                   **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
28                   **HER SETTLEMENT WITH THE DEBTOR.**

1 The releases provided for in this Settlement Agreement are limited to the Class Released Claims as  
2 defined in Section 2(6) above and the Individual Released Claims as defined in Section 2(15)  
3 above.

4 6. Assumption of Risk

5 In entering into this Settlement Agreement, each of the Parties assumes the risk of any  
6 mistake of fact or law. If either Party should later discover that any fact which the Party relied upon  
7 in entering this Settlement Agreement is not true, or that the Party's understanding of the facts or  
8 law was incorrect, the Party shall not be entitled to modify, reform, or set aside this Settlement  
9 Agreement, in whole or in part, by reason thereof. The Parties agree that at the time this Settlement  
10 Agreement was executed, there were unsettled issues of law, and the Parties agree to honor this  
11 Agreement regardless of developments in the law after execution; specifically, the Class  
12 Representative and Class Counsel recognize and agree that, given these uncertainties in the law, the  
13 Class Representative and Class Counsel are receiving valuable consideration for the settlement of  
14 the Action at this time and per the terms of this Agreement. The Parties will advocate for Court  
15 approval of this Settlement Agreement.

16 **SECTION 8 – LIMITATIONS ON USE OF SETTLEMENT AGREEMENT**

17 1. No Admission

18 Neither the acceptance by Defendant of the terms of this Settlement Agreement nor any of  
19 the related negotiations or proceedings constitutes an admission with respect to the merits of the  
20 claims alleged in the Action, the validity of any claims that could have been asserted by any of the  
21 Settlement Class Members in the Action, or the liability of Defendant in the Action. Defendant  
22 specifically denies any liability or wrongdoing of any kind associated with the claims alleged in the  
23 Action. Neither the acceptance by Plaintiff of the terms of this Settlement Agreement, nor any of  
24 the related negotiations or proceedings constitutes an admission with respect to the merits of the  
25 claims alleged in the Action.

26 2. Limitations on Use

27 This Settlement Agreement shall not be used, offered, or received into evidence in the  
28 Action for any purpose other than to enforce, to construe, or to finalize the terms of the Settlement

1 Agreement or to obtain the preliminary and final approval by the Court of the terms of the  
2 Settlement Agreement. Neither this Settlement Agreement nor any of its terms shall be offered or  
3 received into evidence in any other action or proceeding except that Defendant may file this  
4 Settlement Agreement or the Judgment in any action that may be brought against a Released Party  
5 in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel,  
6 release, good faith settlement, judgment bar, reduction, or any other theory of claim preclusion or  
7 issue preclusion or similar defense or counterclaim.

8 3. No Public Statements Without Agreement of the Parties

9 The Parties and their counsel agree that no Party or counsel who is a signatory to this  
10 Settlement Agreement will comment publicly in any form regarding this Settlement or litigation  
11 without prior approval of all Parties and counsel. Any disputes among the Parties regarding  
12 publicity associated with this Settlement shall be submitted to this Court for expedited review and  
13 determination.

14 **SECTION 9 – MISCELLANEOUS PROVISIONS**

15 1. Confirmatory Discovery

16 This Settlement Agreement is conditioned upon Defendant providing sufficient confirmatory  
17 discovery to accurately establish its sales revenue in California during the Class Period. This  
18 confirmatory discovery shall be in the form of a deposition of Defendant's Person Most  
19 Knowledgeable, which has already taken place in New York, New York.

20 2. No Assignment

21 Each Party represents, covenants, and warrants that she or it has not directly or indirectly  
22 assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any  
23 liability, claim, demand, cause of action, or rights that she or it herein releases.

24 3. Binding On Assigns

25 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and  
26 their respective heirs, trustees, executors, successors, and assigns.

1           4.     Captions

2           Titles or captions contained herein are inserted as a matter of convenience and for reference,  
3 and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any  
4 provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

5           5.     Settlement Class Member Signatures

6           It is agreed that, because the Settlement Class Members are so numerous, it is impractical to  
7 have each Settlement Class Member execute this Settlement Agreement. The Notice will advise all  
8 Settlement Class Members of the binding nature of the Releases and of the remainder of this  
9 Settlement Agreement, and in the absence of a valid and timely Request for Exclusion, such Notice  
10 shall have the same force and effect as if each Settlement Class Member executed this Settlement  
11 Agreement.

12          6.     Construction

13          The Parties agree that the terms and conditions of this Settlement Agreement are the result  
14 of arms-length negotiations between the Parties and that this Settlement Agreement shall not be  
15 construed in favor of or against any Party by reason of the extent to which any Party, or his or its  
16 counsel, participated in the drafting of this Settlement Agreement.

17          7.     Counterparts

18          This Settlement Agreement and any amendments hereto may be executed in one or more  
19 counterparts, and either Party may execute any such counterpart, each of which when executed and  
20 delivered shall be deemed to be an original and both of which counterparts taken together shall  
21 constitute but one and the same instrument. A facsimile or portable data file (PDF) signature shall  
22 be deemed an original for all purposes.

23          8.     Governing Law

24          Construction and interpretation of the Settlement Agreement shall be determined in  
25 accordance with the laws of the State of California, without regard to the choice-of-law principles  
26 thereof.

1           9.     Integration Clause

2           This Settlement Agreement, including the exhibits referred to herein, which form an integral  
3 part hereof, contains the entire understanding of the Parties with respect to the subject matter  
4 contained herein. There are no promises, representations, warranties, covenants, or undertakings  
5 governing the subject matter of this Settlement Agreement other than those expressly set forth in  
6 this Settlement Agreement. This Settlement Agreement supersedes all prior agreements and  
7 understandings among the Parties with respect to the settlement of the Action. This Settlement  
8 Agreement may not be changed, altered or modified, except in a writing signed by the Parties and  
9 approved by the Court. This Settlement Agreement may not be discharged except by performance  
10 in accordance with its terms or by a writing signed by the Parties.

11           10.    Jurisdiction

12           The Parties shall propose that the Court retain jurisdiction, after entry of the Final Approval  
13 Order and Judgment, with respect to enforcement of the terms of this Settlement, and all Parties and  
14 Settlement Class Members submit to the exclusive jurisdiction of the Court with respect to the  
15 enforcement of this Settlement and any dispute with respect thereto.

16           11.    No Collateral Attack

17           This Settlement Agreement shall not be subject to collateral attack by any Settlement Class  
18 Member at any time on or after the Effective Date. Such prohibited collateral attacks shall include,  
19 but shall not be limited to, claims that a Settlement Class Member's claim was improperly denied,  
20 that the payment to a Settlement Class Member was improperly calculated, and/or that a Settlement  
21 Class Member failed to receive timely notice of the Settlement Agreement.

22           12.    Parties' Authority

23           The signatories hereto represent that they are fully authorized to enter into this Settlement  
24 Agreement and bind the Parties to the terms and conditions hereof.

25           13.    Receipt Of Advice Of Counsel

26           The Parties acknowledge, agree, and specifically warrant to each other that they have read  
27 this Settlement Agreement, have received legal advice with respect to the advisability of entering  
28 into this Settlement, and fully understand its legal effect.

1           14.    Waiver Of Compliance

2           Any failure of any Party to comply with any obligation, covenant, agreement, or condition  
3 herein may be expressly waived in writing, to the extent permitted under applicable law, by the  
4 Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A  
5 waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement,  
6 or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other  
7 failure.

8           15.    Settlement Conditioned on Certain Matters

9           This entire Settlement Agreement is contingent upon the Parties reaching agreement on the  
10 contents of the exhibits and ancillary agreements hereto.

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12 [SIGNATURES ON THE FOLLOWING PAGE]  
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Dated: August 11, 2016

By:   
MARCUS GIFFIN, on behalf of himself and  
the proposed class

Dated: August \_\_, 2016


By: \_\_\_\_\_  
NAME, TITLE, on behalf of Defendant  
Universal Protein Supplements Corporation

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Dated: August \_\_, 2016

By: \_\_\_\_\_  
MARCUS GIFFIN, on behalf of himself and  
the proposed class

Dated: August 12 2016

  
By: Michael Rockoff, President  
NAME, TITLE, on behalf of Defendant  
Universal Protein Supplements Corporation

1 APPROVED AS TO FORM:

2 Dated: August 11, 2016

KAZEROUNI LAW GROUP, APC

3  
4 By:   
5 \_\_\_\_\_  
6 ABBAS KAZEROUNIAN

7 Attorneys for Plaintiff Giffin, and the  
8 proposed class

9 Dated: August \_\_, 2016

10 HYDE & SWIGART

11  
12 By: \_\_\_\_\_  
13 JOSHUA B. SWIGART

14 Attorneys for Plaintiff Giffin, and the  
15 proposed class

16 Dated: August \_\_, 2016

17 CARLSON & MESSER, LLP

18  
19 By: \_\_\_\_\_  
20 DAVID J. KAMINSKI

21 Attorneys for Defendant Universal Protein  
22 Supplements Corporation  
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1 APPROVED AS TO FORM:

2 Dated: August \_\_, 2016

KAZEROUNI LAW GROUP, APC

3  
4 By: \_\_\_\_\_  
5 ABBAS KAZEROUNIAN

6 Attorneys for Plaintiff Giffin, and the  
7 proposed class

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9 Dated: August 11, 2016

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12 By: \_\_\_\_\_  
13 JOSHUA B. SWIGART

14 Attorneys for Plaintiff Giffin, and the  
15 proposed class

16 Dated: August \_\_, 2016

CARLSON & MESSER, LLP

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19 By: \_\_\_\_\_  
20 DAVID J. KAMINSKI

21 Attorneys for Defendant Universal Protein  
22 Supplements Corporation  
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APPROVED AS TO FORM:

Dated: August \_\_, 2016

KAZEROUNI LAW GROUP, APC

By: \_\_\_\_\_  
ABBAS KAZEROUNIAN

Attorneys for Plaintiff Giffin, and the  
proposed class

Dated: August \_\_, 2016

HYDE & SWIGART

By: \_\_\_\_\_  
JOSHUA B. SWIGART

Attorneys for Plaintiff Giffin, and the  
proposed class

Dated: August 12, 2016

CARLSON & MESSER, LLP

By:   
DAVID J. KAMINSKI

Attorneys for Defendant Universal Protein  
Supplements Corporation