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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

WILLIAM HILL, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

VIRTUS NUTRITION LLC, a Delaware
limited liability company; NUTRIUS LLC, a
Delaware limited liability company; and DOES
1 through 100, inclusive;

Defendants.

Case No.: CV-23-000667

Assigned for All Purposes to:
Honorable Stacy P. Speiller
Department 22

CLASS ACTION

**~~PROPOSED~~ AMENDED ORDER OF
FINAL APPROVAL AND JUDGMENT**

Hearing Date: September 13, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 22

Complaint Filed: February 7, 2023
FAC Filed: April 24, 2023
SAC Filed: December 13, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs William Hill, Klint Miller,
2 and Martin Villanueva’s (“Plaintiffs”) Motion for Final Approval of Class Action Settlement,
3 and considering the papers submitted in support of the motion, including the Class Action and
4 PAGA Settlement Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), hereby

5 **FINDS AND ORDERS:**

6 Plaintiffs and Defendants Virtus Nutrition LLC and Nutrius LLC (“Defendant”) entered
7 the Settlement Agreement on or about January 19, 2024 to settle this lawsuit.

8 The Court entered an order dated April 26, 2024 preliminarily approving the settlement
9 of this lawsuit (“Preliminary Approval Order”), consistent with the Code of Civil Procedure
10 section 382 and California Rule of Court 3.769, ordering notice to be sent to the Class Members,
11 providing the Class Members with an opportunity to object to the Settlement or exclude
12 themselves from the Class, and scheduling a Final Approval Hearing.

13 The Court held a Final Approval Hearing on September 13, 2024 to determine whether to
14 give final approval to the Settlement of this lawsuit.

15 1. Incorporation of Other Documents. This Amended Order of Final Approval and
16 Judgment (“Order and Judgment”) incorporates the Settlement Agreement. Unless otherwise
17 provided herein, all capitalized terms in this Order and Judgment shall have the same meaning as
18 set forth in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
20 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
21 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement and grants final certification of the Class.

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of all individuals who are or were employed in
26 California as hourly, non-exempt employees by Defendant at any time during the period from
27 February 7, 2019, through January 31, 2024 (“Class,” “Class Members,” and “Class Period”).
28 There are one hundred twenty-eight (128) Class Members who did not submit valid and timely

1 Requests for Exclusion from the Settlement (“Participating Class Members”).

2 4. Adequacy of Representation. Class Counsel fully and adequately represented the
3 Class for the purposes of entering and implementing the Settlement and satisfied the
4 requirements of Code of Civil Procedure section 382.

5 5. Class Notice. The Court finds the Court Approved Notice of Class Action
6 Settlement and Hearing Date for Final Court Approval (“Class Notice”) and its distribution to the
7 Class Members were implemented pursuant to the Settlement and this Court’s Preliminary
8 Approval Order. The Court also finds the Class Notice:

- 9 a. constitutes notice reasonably calculated to apprise the Class Members of: (i)
10 pendency of this lawsuit; (ii) material terms and provisions of the Settlement
11 Agreement and their rights; (iii) their right to object to any aspect of the
12 Settlement Agreement; (iv) their right to exclude themselves from the Settlement
13 Agreement; (v) their right to receive settlement payments; (vi) their right to
14 appear at the Final Approval Hearing; and (vii) binding effect of the orders and
15 judgment in this lawsuit on all the Participating Class Members;
- 16 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
17 section 382, California Rule of Court 3.769, and due process;
- 18 c. constitutes the best practicable notice to the Class Members under the
19 circumstances of this lawsuit; and
- 20 d. constitutes notice reasonable, adequate, and sufficient to the Class Members.

21 6. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
22 any action to enforce the terms and provisions of the Settlement Agreement.

23 7. Final Settlement Approval. The terms and provisions of the Settlement
24 Agreement have been entered into in good faith and are the product of arm’s-length negotiations
25 by experienced counsel who have carried out a meaningful investigation of the claims. The
26 Settlement Agreement and all its terms and provisions are fully and finally approved as fair,
27 reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to
28 implement the Settlement Agreement according to its terms and provisions.

1 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiffs, Participating Class Members, Aggrieved
3 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
4 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
5 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
6 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
7 that were or could have been raised in this lawsuit and are encompassed by the Released Class
8 Claims and Released Private Attorneys General Act of 2004 (“PAGA”) Claims.

9 9. Release by Participating Class Members. Effective on the date when Defendant
10 fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the
11 Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of
12 themselves and their former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, release the Released Parties from the Released Class Claims.

14 a. Release by Aggrieved Employee. Effective on the date when Defendant fully
15 funds the entire Gross Settlement Amount and funds all employer payroll taxes
16 owed on the Wage Portion of the Individual Class Payments, all Participating and
17 Non-Participating Class Members, who are Aggrieved Employees, are deemed to
18 release, on behalf of themselves and their former and present representatives,
19 agents, attorneys, heirs, administrators, successors, and assigns, the Released
20 Parties from the Released PAGA Claims.

21 b. Plaintiffs’ Release. Effective on the date when Defendant fully funds the entire
22 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
23 Portion of the Individual Class Payments, Plaintiffs and their former and present
24 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
25 assigns generally release and discharge the Released Parties from the Plaintiffs’
26 Release. Plaintiffs also expressly waive and relinquish the provisions, rights, and
27 benefits, if any, of section 1542 of the Civil Code.

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c. Released Parties. The Released Parties include Defendant and its past or present officers, directors, members, shareholders, employees, managers, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, and their respective successors and predecessors in interest, assigns, subsidiaries, affiliates, and parent companies.

10. Class Representative Service Payments. The Court finds the Class Representative Service Payments of \$10,000 to each Plaintiff (totaling \$30,000), to be paid by Defendant to Plaintiffs out of the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Service Payments are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

a. The rationale for making enhancement payments is class representatives should be compensated for the expense and risk they incurred in conferring a benefit on the Class. Criteria courts consider include: (i) risk to the class representatives in commencing suit; (ii) notoriety and personal difficulties; (iii) amount of time and effort spent by the class representatives; (iv) duration of the litigation; and (v) personal benefit (or lack thereof) enjoyed by class representatives.

b. The Court reviewed Plaintiffs' declaration outlining their involvement. Given the risks inherent in the services as the class representative, duration of the case and time involved, and benefits created for the Class, the Court approves the payment of the Class Representative Service Payments of \$10,000 to each Plaintiff.

11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. The Court finds the Class Counsel Fees Payment of \$104,500, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Additionally, the Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual litigation costs incurred of \$14,095.76, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by

1 Class Counsel or any other counsel representing Plaintiffs or Class Members. Defendant shall
2 also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
3 incurred by Plaintiffs or Class Members in connection with or related in any manner to this
4 lawsuit, Settlement Agreement, settlement administration, and/or Released Class Claims and
5 Released PAGA Claims.

6 a. The Court has an independent right and responsibility to review the Class Counsel
7 Fees Payment and only award so much as it determines reasonable. (See
8 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
9 127-128.) The Class Counsel Fees Payment of \$104,500 is thirty-eight percent
10 (38%) of the common fund created for the benefit of the Class and is supported by
11 use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.*
12 (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk
13 undertaken, difficult nature of this litigation, skills required, percentage fees
14 award in previous and other cases, and contingent fees charged in the
15 marketplace, the Court finds the Class Counsel Fees Payment is consistent with
16 the marketplace, is reasonable, and is approved.

17 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
18 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
19 seek reimbursement of up to \$15,000 in litigation costs. The Court finds Class
20 Counsel expended \$14,095.76 in litigation costs and that such costs were
21 reasonable. Thus, the Court approves the payment of the Class Counsel Litigation
22 Expenses Payment of \$14,095.76 from the common fund for the reimbursement
23 of Class Counsel's litigation costs.

24 12. Administration Expenses Payment. The Court finds Administration Expenses
25 Payment of \$7,650, to be paid by Defendant to the Administrator out of the Gross Settlement
26 Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid
27 pursuant to terms and provisions set forth in the Settlement Agreement.

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1 a. The Court reviewed the declaration of Makenna Snow from ILYM Group, Inc.,
2 the Court-approved Administrator. The Court finds notice was provided to the
3 Class pursuant to the Preliminary Approval Order, constitutes the best practicable
4 notice to the Class, and satisfied due process. Thus, the Court approves the
5 payment of the Administration Expenses Payment of \$7,650 for the
6 Administrator's services in administering the Settlement.

7 13. PAGA Penalties. The Court finds the PAGA Penalties of \$20,000, seventy-five
8 percent (75%) of which (\$15,000) will be paid to the California Labor and Workforce
9 Development Agency out of the Gross Settlement Amount and twenty-five percent (25%) of
10 which (\$5,000) shall be distributed to the Aggrieved Employees, on a pro rata basis, to be
11 reasonable and appropriate. The PAGA Penalties is to be paid pursuant to the terms and
12 provisions set forth in the Settlement Agreement.

13 14. Funding the Gross Settlement Amount. Defendant shall fund the Gross Settlement
14 Amount by transmitting the funds to the Administrator no later than the Effective Date. Within
15 fourteen (14) calendar days after Defendant fully fund the Gross Settlement Amount, the
16 Administrator will mail checks to the appropriate entities and persons.

17 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
18 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
19 Settlement was the product of arm's-length negotiations following extensive litigation,
20 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
21 Judge Howard Broadman (Ret.), an experienced and well-respected mediator.

22 a. The fairness of the Settlement is demonstrated by there being no objections to and
23 no requests for exclusion from the Settlement.

24 b. The fairness of the Settlement is further illustrated by the gross *average*
25 Individual Class Payment being approximately \$762.25, and the gross *highest*
26 Individual Class Payment being about \$2,448.26.

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1 16. Uncashed Checks. The Class Members must cash or deposit their settlement
2 checks within one hundred eighty (180) calendar days after the checks are mailed to them.
3 Uncashed settlement checks will be canceled and transmitted to the *cy pres* recipient Legal Aid
4 At Work.

5 17. Modification of Agreement. The Participating Class Members are hereby
6 authorized to agree to and adopt amendments to or modifications of the Agreement by an express
7 written instrument signed by all Parties or their representatives and approved by the Court. Such
8 amendments or modifications shall be consistent with this Order and Judgment and cannot limit
9 the rights of the Participating Class Members under the Agreement.

10 18. Final Accounting and Compliance. The Court sets a compliance hearing on May
11 9, 2025 at 8:30 a.m. in Department 22. No later than five (5) court days before this hearing,
12 Plaintiffs shall file a compliance status report and amended judgment. Pursuant to Code of Civil
13 Procedure section 384, the compliance status report and amended judgment shall specify the total
14 amount paid to the Class Members and the residual of the unclaimed settlement funds that will
15 be paid to the entity identified as the recipient of such funds in the Settlement Agreement.

16 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
17 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
18 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
19 and for any other necessary purpose, including, without limitation:

- 20 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
21 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
22 arise out of the Settlement or this Order and Judgment;
- 23 b. entering such additional orders as may be necessary or appropriate to protect or
24 effectuate this Order and Judgment approving the Settlement, and permanently
25 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure
26 the fair and orderly administration of the Settlement; and
- 27 c. entering any other necessary or appropriate orders to protect and effectuate this
28 Court's retention of continuing jurisdiction.

1 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
2 Class Counsel Litigation Expenses Payment, and Class Representative Service Payments is
3 GRANTED. The Administrator is directed to carry out the terms of the Settlement forthwith.

4 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
5 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
6 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
7 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
8 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
9 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
10 THE JUDGMENT THEREON.

11 IT IS SO ORDERED.

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13 DATED: 9/24/24


14 HONORABLE STACY P. SPEILLER
15 SUPERIOR COURT JUDGE
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is dmather@justicelawcorp.com.

On September 26, 2024, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Hill, et al. v. Virtus Nutrition LLC et al.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-934421-23**
Court Case No.: CV-23-000667
Stanislaus County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 26, 2024, at Pasadena, California.



Drew Mather