

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement is entered into this 20th day of January 2023, between the Plaintiff and Defendant, as defined herein.

I. RECITALS

1.1. On July 28, 2020, Plaintiff Daniel Metague (hereinafter referred to as “Metague” and/or “Plaintiff”), through his counsel Migliaccio & Rathod LLP; Robert Peirce & Associates, P.C.; and the Law Offices of Robert Mackey (hereinafter collectively referred to as “Class Counsel”) filed a Class Action Complaint in the United States District Court for the District of Maryland against Woodbolt Distribution, LLC, d/b/a Nutrabort (hereinafter referred to as “Defendant,” “Woodbolt” and/or “Defendant Woodbolt”) alleging claims for fraudulent concealment and omission, breach of implied warranties, equitable injunctive and declaratory relief, violations of Maryland Consumer Protection Act (“MCPA”), violations of the unfair and unlawful prongs of unfair and deceptive trade practices statutes for thirty-two other states and the District of Columbia, and unjust enrichment. Plaintiff sought to pursue these claims on behalf of himself and all purchasers of Defendant’s nutritional supplements containing branched-chain amino acids (hereinafter referred to as “BCAAs”) called “XTEND®” (hereinafter “XTEND” and/or “the Product”).

1.2. Plaintiff alleges that, in its advertising, Defendant made a series of material representations about the caloric content of XTEND.¹ Specifically, Plaintiff alleges that the XTEND products (a) were labeled as “0 calories” per serving that Plaintiff alleges are not “0 calories,” and (b) Woodbolt continued to sell its products with misleading labels despite knowing

¹ All capitalized terms in these Recitals have the meaning set forth in the Definitions section below.

the inaccuracy of such statements. Plaintiff alleged that these representations were propagated through various media, including Woodbolt's website, advertisements, packages, and labels. Plaintiff alleges that this advertising was false and misleading. Defendant denies all of Plaintiff's Allegations and maintains that its marketing, advertising, and labelling has been accurate at all times and compliant with the regulations that govern the labelling of dietary supplements under the Food, Drug, and Cosmetic Act (hereinafter referred to as "FDCA").

1.3. Plaintiff's Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation, which included extensive informal discovery, including independent laboratory testing. Defendant denies all Allegations in the Litigation.

1.4. On December 14, 2020, Woodbolt moved to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and Rule 9(b). Specifically, Defendant argued that (a) the Court should dismiss the Complaint because the Food and Drug Administration (hereinafter referred to as "FDA") has primary jurisdiction over Plaintiff's claims, (b) the Plaintiff's claims were preempted by the FDCA, and (c) the Court should stay the case pending the FDA's decision on the Complaint's core contention. Plaintiff opposed Defendant's Motion to Dismiss.

1.5. On July 8, 2021, Defendant filed a motion for reconsideration of the Court's June 16, 2021 Order. That motion is still pending.

1.6. In response to Defendant's Motion to Dismiss, on January 28, 2021, Plaintiff filed an Amended Complaint to supplement the facts and add a common law breach of express warranty claim. Subsequently, on February 26, 2021, Woodbolt moved to dismiss the Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b). On June 16, 2021, the Court entered an Order granting in part and denying in part Defendant's Motion to Dismiss.

1.7. Defendant denies all charges and claims of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Defendant also denies that Plaintiff, the Settlement Class, or any member of the Settlement Class have suffered damage or harm by reason of any alleged conduct, statement, act, or omission of Defendant. Defendant further denies that the Litigation meets the requisites for certification as a class action under Rule 23 of the Federal Rules of Civil Procedure, except for purposes of settlement, or that the evidence is sufficient to support a finding of liability on any of Plaintiff's claims in the Litigation. The Parties enter into this Agreement solely to eliminate the uncertainties, burden, expense, and delay of further protracted litigation.

1.8. On September 28, 2021, the Parties participated in an all-day mediation conducted by mediator Honorable Jose L. Linares, U.S.D.J. (Ret.) of McCarter & English LLP. That mediation and subsequent negotiations between the parties resulted in the settlement memorialized in this Agreement.

1.9. Counsel has analyzed and evaluated the merits of the Parties' contentions and this Settlement as it impacts all the Parties and the Settlement Class Members. Among the risks of continued litigation for Plaintiff are the risks of failing to prove liability or restitution and damages on a class-wide or individual basis. In particular, there may be difficulties establishing (a) Defendant's marketing materials were likely to deceive reasonable consumers, (b) that misrepresentations and omissions in the marketing materials were material to reasonable consumers, (c) the amount of damages or restitution due to the class or to any class member, and (d) that common questions predominate over individual issues such that a class may be certified. Plaintiff and Plaintiff's Counsel, after taking into account the foregoing along with other risks and the costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair,

reasonable, adequate, and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Settlement Class are in the best interest of the Settlement Class Members.

1.10. Defendant agrees that the settlement is fair and reasonable in light of the merits and risks of the case. While continuing to deny all Allegations of wrongdoing and disclaiming any liability with respect to any and all claims, Defendant considers it desirable to resolve the Litigation on the terms stated herein, in order to avoid further burden, expense, inconvenience, and interference with its ongoing business operations. Therefore, Defendant and Defendant's Counsel have determined that settlement of this Litigation on the terms set forth herein is in Defendant's best interest.

1.11. This Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any Allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Litigation, or of any fault on the part of Defendant, and all such Allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

1.12. The undersigned Parties agree, subject to approval by the Court, that the Litigation between Plaintiff, on the one hand, and Defendant, on the other hand, shall be fully and finally compromised, settled, and released on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims described below, the Parties agree to this Settlement, subject to Court approval, under the following terms and conditions.

II. DEFINITIONS

Capitalized terms in this Agreement shall be defined as follows:

2.1. “Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of the definition, “control” means (a) with respect to any corporation or other entity having voting shares or the equivalent and elected directors, managers, or Persons performing similar functions (i) the ownership or power, directly or indirectly, to vote more than fifty percent (50%) of shares or the equivalent having the power to vote in the election of such directors, managers, or Persons performing similar functions, or (ii) the ability, directly or indirectly, to direct its business and affairs, and (b) with respect to any other Person, the ability, directly or indirectly, to direct its business and affairs.

2.2. “Agreement” means this Class Action Settlement Agreement, including all exhibits thereto.

2.3. “Allegations” means the Allegations described in Section 1.2 above, as well as the Allegations made in the Class Action Complaint filed in the Litigation, as well as any claims that could be pursued under the laws of the United States or any state on the basis of one or more of those Allegations and any Allegation or claim that could have been brought in the Litigation.

2.4. “Allocation Date” means thirty (30) calendar days after the later of (a) the Claim Filing Deadline or (b) the Effective Date.

2.5. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Plaintiff’s Counsel as determined by the Court and described more particularly in Section VI of this Settlement Agreement. This award also will include a reimbursement of costs and expenses incurred by Plaintiff’s Counsel, arising from

their representation of Plaintiff in the Litigation, as determined and awarded by the Court. Attorneys' Fees and Expenses shall be drawn from the Class Cash Fund.

2.6. "Cash Payment" means a check, payable to the Claimant, which shall be drawn from the Class Cash Fund and delivered as required by this Agreement. Checks must be negotiated within 365 calendar days or they shall become void and not subject to reissue.

2.7. "Claim" means a request for payment of a Claim pursuant to this Settlement submitted by a Settlement Class Member on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Settlement.

2.8. "Claim Filing Deadline" means sixty (60) calendar days after the Notice Date.

2.9. "Claim Period" means the sixty (60) day period beginning on the Notice Date and continuing until the Claim Filing Deadline.

2.10. "Claim Form" means a claim form in substantially the same form as Exhibit A.

2.11. "Claimant" means a Settlement Class Member who files a Claim seeking a Settlement Benefit under this Agreement or who is deemed to have filed a Claim.

2.12. "Class Cash Fund" means the qualified settlement fund set forth in Section 3.2 of this Agreement.

2.13. "Class Period" means the period from July 28, 2014 through Preliminary Approval.

2.14. "Class Representative" means Plaintiff or Named Plaintiff, who the Parties agree is also a Settlement Class Member.

2.15. "Defendant" means Woodbolt Distribution, LLC d/b/a Nutrabolt.

2.16. "Defendant's Counsel" means the law firm of Kelley Drye & Warren LLP.

2.17. "Distribution Date" means sixty (60) calendar days after the Effective Date.

2.18. “Effective Date” means the later of (a) the expiration date of the time for filing a notice of appeal from the Final Approval of this Agreement, or (b) if a notice of appeal is filed, the date on which the Final Approval and judgment is no longer subject to review by any court and has been finally resolved in such a manner that affirms the Final Approval order and judgment in their entirety.

2.19. “Email Notice” means a notice by Email in substantially the same form as Exhibit B1.

2.20. “Excluded Persons” means (a) the Honorable Paula Xinis and any member of her immediate family, (b) any government entity, (c) the Mediator and any member of his immediate family, (d) Defendant, (e) any entity in which Defendant has a controlling interest, (f) any of Defendant’s parents, affiliates, officers, directors, employees, legal representatives, heirs, successors, or assigns, (g) third-party sellers, such as Amazon, and (h) any persons who timely opt-out of the Settlement Class.

2.21. “Exclusion Deadline” means sixty (60) calendar days after the Notice Date.

2.22. “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to the Settlement Class in accordance with this Settlement and the Preliminary Approval Order, and where the Court will (a) determine whether to grant Final Approval to the Settlement and enter the Final Approval order, (b) determine whether to approve a Service Award and in what amount, and (c) rule on Plaintiff’s Counsels’ application for Attorneys’ Fees and Expenses. The Parties will seek a hearing date that is no later than 130 days after Preliminary Approval.

2.23. “Final Approval” means entry of a judgment granting final approval of this Agreement as binding upon the Parties, which shall constitute a judgment respecting the Litigation, fully and finally approving the Settlement and dismissing the claims with prejudice.

2.24. “Litigation” means *Metague v. Woodbolt Distribution, LLC*, Civil Action No. 8:20-cv-02186-PX (D. Md.).

2.25. “Long Form Notice” means a notice in substantially the same form as Exhibit B2 that will be made available on the Settlement Website.

2.26. “Mediator” means the Hon. Jose L. Linares, U.S.D.J. (Ret.).

2.27. “Motion for Final Approval Deadline” means thirty-five (35) days before Final Approval Hearing date.

2.28. “Net Class Cash Fund” means the amount in the “Class Cash Fund” after all costs are deducted from the Class Cash Fund, including Attorneys’ Fees and Expenses, and Settlement Administrator costs.

2.29. “Notice Date” means the day on which the Settlement Administrator initiates the Notice Plan, which shall occur thirty (30) calendar days after entry of the Preliminary Approval Order.

2.30. “Notice Plan” means the procedure for providing notice to the Settlement Class, as set forth in Section 4.2.

2.31. “Objection Deadline” means sixty (60) calendar days after the Notice Date.

2.32. “Parties” means Plaintiff and Defendant, collectively.

2.33. “Party” means either Plaintiff or Defendant.

2.34. “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

2.35. “Plaintiff” or “Named Plaintiff” means Daniel Metague.

2.36. “Plaintiff’s Counsel,” “Class Counsel,” or “Settlement Class Counsel” means the law firms of Migliaccio & Rathod LLP, Robert Peirce and Associates, P.C., and the Law Offices of Robert Mackey.

2.37. “Postcard Notice” means a notice substantially in the form of Exhibit B3.

2.38. “Preliminary Approval Order” means the order, substantially in the form of Exhibit C, granting preliminary approval of the Settlement described in this Agreement, authorizing the Notice Plan and appointing the Settlement Administrator.

2.39. “Products” means XTEND line of Products that were sold during the Class Period. A complete list of the Products is provided as Exhibit D hereto.

2.40. “Publication Notice” means a notice, substantially in the form of Exhibit B4, to be published.

2.41. “Released Claims” means the claims released as set forth in Section VIII of this Agreement.

2.42. “Released Parties” means Defendant and any and all of its present and former subsidiaries, parents, affiliates, divisions, officers, directors, members, managers, shareholders, insurers, suppliers, manufacturers, resellers, distributors, brokers, service providers, employees, agents, legal representatives, heirs, predecessors, successors, or assigns as set forth in Section 8.1 of this Agreement.

2.43. “Settlement” means the terms of this Agreement.

2.44. “Settlement Administrator” means Kroll Settlement Administration, LLC, subject to Court approval.

2.45. “Settlement Benefit” means a Cash Payment, as further described in Section III of this Agreement.

2.46. “Settlement Class” or “Settlement Class Members” means all persons, other than Excluded Persons, who, during the Class Period purchased in the United States at least one of the Products including, but not limited to, the XTEND Products set forth in Paragraph 2.39, from within six (6) years prior to the filing of the action to the [date of Preliminary Approval]. In no case shall the Products include any XTEND Products that are meant for sale outside of the United States.

2.47. “Settlement Website” means an internet website created and maintained by the Settlement Administrator. The URL of the Settlement Website shall be approved by Defendant.

2.48. “Service Award” means any award sought through application to and approval by the Court that is payable to Plaintiff to compensate him for his efforts in bringing this Litigation and/or achieving the benefits of this Settlement on behalf of the Settlement Class, as further discussed in Section VI.

2.49. “Third Party Retailer” means a third party that is authorized by Defendant to act as a reseller of the Products and offer the Products to sale to consumers.

2.50. “Timeline of Events” means the timeline of dates set forth in the Settlement and reflected in Exhibit E.

2.51. “Valid Claim” means a claim submitted in compliance with Section III of this Agreement.

2.52. “XTEND®” means the XTEND line of nutritional supplements manufactured and distributed by Woodbolt in a variety of flavors on its website and through other third-party retailers.

2.53. “XTEND Proof of Purchase” means a receipt or similar documentation from the Defendant directly or an approved Third Party Retailer that reasonably establishes the fact of purchase of an XTEND product from the Defendant or an approved Third Party Retailer.

III. SETTLEMENT CONSIDERATION AND RELIEF

3.1. In consideration of a full, complete, and final settlement of the Litigation, dismissal of the Litigation with prejudice, and the Releases set forth in Section VIII below, and subject to the Court’s approval, the Parties agree to the following relief set forth in this Section.

3.2. Woodbolt agrees to pay \$3,000,000.00 to establish a common fund (the Class Cash Fund) in monetary consideration for the benefit of Settlement Class Members pursuant to the terms of this Settlement. Such payment shall be in the form of a non-reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1). In no event shall Woodbolt have to pay more than \$3,000,000.00.

3.3. The Class Cash Fund shall be applied to pay in full and in order (a) any necessary taxes and tax expenses, (b) all costs associated with the Settlement Administrator, including costs of providing notice to the Settlement Class Members and processing claims, all administration functions, and all costs relating to providing the necessary notices in accordance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, (c) to pay Attorneys’ Fees and Expenses in accordance with Section VI, (d) to pay the Service Award to Plaintiff in accordance with Section VI, and (e) to distribute to Settlement Class Members who submit Approved Claims to the Settlement Administrator.

3.4. The Settlement Administrator is authorized to establish the Class Cash Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Class Cash Fund pursuant to 26 C.F.R. § 1.468B2(k)(3), and to undertake all duties as administrator in accordance with the

Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Settlement Administrator operating as administrator of the Class Cash Fund shall be construed as costs of Claim administration and shall be borne solely by the Class Cash Fund. Interest on the Class Cash Fund shall inure to the benefit of the Class.

3.5. If the total amount of eligible claims exceeds the Net Class Cash Fund, then each claim's award shall be proportionately reduced on a pro rata basis.

3.6. If after all Valid Claims (plus other authorized fees, costs, and expenses) are paid and money remains in the Class Cash Fund, the remaining amount shall be used to proportionately increase the recovery of each eligible claim.

3.7. Within fourteen (14) calendar days after Preliminary Approval, Woodbolt shall pay \$250,000.00 into the qualified settlement fund (the Class Cash Fund) established by the Settlement Administrator pursuant to paragraph 3.2 for the Settlement Administrator to execute the Notice Plan.

3.8. Within thirty (30) days after the Effective Date, Woodbolt shall pay the remainder of the \$3,000,000.00 into the qualified settlement fund (the Class Cash Fund) established by the Settlement Administrator pursuant to paragraph 3.2.

3.9. Settlement Class Members shall have the opportunity to submit a Claim to the Settlement Administrator prior to the Claim Filing Deadline. Settlement Class Members must fill out a Claim Form substantially in the form of Exhibit A and submit it as described in long and short notices. Claimants may seek reimbursement by submitting a Claim Form either by mail or electronically. Each Claim Form will be signed (either electronically or manually) under penalty of perjury. The actual amount paid to individual Claimants will depend upon the number of Valid Claims made. Adequate and customary procedures and standards will be used by the Settlement

Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims. A maximum of one claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member or his or her household. Proof of claim for cash must be submitted as detailed in paragraphs 3.10 and 3.11.

3.10. **With Proof of Purchase:** Settlement Class Members may seek reimbursement of fifty cents (\$0.50) per package for every Product purchased during the Class Period, for which they can present written proof of purchase in the form of a receipt or similar documentation showing purchase of an XTEND product with an anticipated maximum recovery of fifty dollars (\$50.00) per household.

3.11. **Without Proof of Purchase:** Settlement Class Members may make a claim for every Product for which they submit a Valid Claim Form. Settlement Class Members may seek reimbursement at fifty cents (\$0.50) per package for every Product purchased during the Class Period, with an anticipated maximum recovery of twenty-five dollars (\$25.00) per household.

3.12. Settlement Class Members may obtain cash relief under both Paragraphs 3.10 and 3.11 with a Valid Claim Form and subject to the maximum recovery amounts permitted for each type of claim. To be eligible for a cash payment, the Settlement Class Member must timely submit a signed and completed Valid Claim Form containing his or her name and mailing address. The Claim Form also will request an e-mail address for the Settlement Class Member, but an e-mail address will not be required to be eligible for a cash payment. The Settlement Administrator may pay claims that are otherwise valid but untimely filed if there is sufficient money to pay all valid and timely claims in full plus untimely but otherwise Valid Claims from the Settlement Fund, and payment of any such untimely but Valid Claims is administratively feasible and otherwise reasonable, considering the need to timely pay claims. The determination of the Settlement

Administrator, after consultation with Class Counsel and Defendant's Counsel, concerning the eligibility and amount of payment shall be final. In the event a Settlement Class Member disagrees with such a determination, the Settlement Administrator agrees to reconsider such determination, which includes consultation with Class Counsel and Defendant's Counsel.

3.13. A Claim shall be deemed to be a "Valid Claim" only if submitted on the Claim Form pursuant to the procedures set forth herein. At the election of the Settlement Class Member, Claim Forms may be submitted via first class mail or electronically via the Settlement Website or via email to the Settlement Administrator. Claim Forms must be postmarked or submitted electronically (online or by email) no later than the Claim Filing Deadline, and Claim Forms submitted after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload the XTEND Proof of Purchase, to review prior to submitting the claim, a page that redisplay all information entered in the Claim Form and the names of image files uploaded, and to print, immediately after the Claim Form has been submitted, a page showing the information entered, the names of image files uploaded, and the date and time the Claim Form was received. For Claim Forms that are submitted via email, the Settlement Class Member shall have the ability to send large image files to an account set up by the Settlement Administrator.

3.14. On the Claim Form, the Settlement Class Member must certify the truth and accuracy of each of the following under the penalty of perjury, including by signing the Claim Form, physically or by e-signature, or the claim will not be considered a Valid Claim by the Settlement Administrator:

- A. The Settlement Class Member's name, mailing address, and email address;

- B. The number of XTEND Products purchased;
- C. The type and flavor of each XTEND Products purchased;
- D. The approximate month and year of each purchase;
- E. The name of the third-party seller from whom each purchase was made;
- F. That any additional information, if any, provided by the Claimant to demonstrate membership in the Settlement Class is true and correct; and,
- G. That any proof of purchase provided by the Claimant is a true and correct copy or photograph of the original.

3.15. The Claim Form shall state that the amount the Settlement Class Member may receive could be appreciably higher or lower than this amount, depending on a number of factors such as the number of XTEND Products they purchased, the type of XTEND Products they purchased, whether they have proof of purchase, and the number of class members who submit a Valid Claim Form.

3.16. The Settlement Administrator shall be responsible for processing Claim Forms and administering the Settlement Website, opt-out process, and Settlement Benefit claims process described herein. The Settlement Administrator will follow its ordinary course of practice regarding approval of claims, subject to all Parties' right to audit claim determinations and challenge the Settlement Administrator's decision(s). If the Parties and the Settlement Administrator cannot collectively agree how to resolve disputed claims, then such disputes shall be resolved by the Court. Within thirty-five (35) calendar days after the close of the Claim Period, the Settlement Administrator shall email the Settlement Class Member whose claim is denied at

the email address (if any) provided by the Settlement Class Member on the Claim Form. If no email address is provided by the Settlement Class Member on the Claim Form, the Settlement Administrator shall not have an obligation to provide the Settlement Class Member with such notification. If the Settlement Administrator determines that a claim or set of claims is fraudulent, it may consolidate email notifications to a claimant submitting multiple claims. The Settlement Class Members shall have fourteen (14) calendar days to cure the deficiency or deficiencies that resulted in the denial of the Claim. The Settlement Administrator's determination of whether a claim is a Valid Claim, if not disputed by the Parties, shall be final and not subject to further review. No person shall have any claim against Plaintiff, Defendant, Plaintiff's Counsel, Defendant's Counsel, or the Settlement Administrator based on any determination about the validity of a claim, distributions, or awards made in accordance with this Agreement and the Exhibits hereto.

3.17. On the first business day of every month after the Notice Date, or as otherwise agreed by the Parties, the Settlement Administrator shall provide the Parties with a report about claims made, which shall include information about the number of claims that have been accepted and denied. Fourteen (14) calendar days prior to the date of the Motion for Final Approval deadline, the Settlement Administrator shall provide information to the Parties about the number of claims filed to date.

3.18. Within sixty (60) calendar days of the close of the Claim Period, the Settlement Administrator shall approve or deny all Claims, and its decision shall be final and binding, except that Plaintiff's Counsel and Defendant shall have the right to audit claims and to challenge the Settlement Administrator's decision by motion to the Court, for good cause, at any time after the Notice Date.

3.19. All costs of the administration of this Settlement shall be paid from the Class Cash Fund.

3.20. For those Settlement Class Members who submit Valid Claims, Cash Payments shall be paid by check sent via first-class mail to the mailing address provided on the Claim Form or at the election of the Settlement Class Member on the Claim Form, by direct deposit into the Settlement Class Member's bank account, or another form of electronic transfer (such as PayPal, Venmo, ACH). All Valid Claims shall be paid by the Settlement Administrator by the Distribution Date.

3.21. Failure to provide all information requested in the Claim Form may not result in nonpayment of a claim. Instead, the Settlement Administrator will take all adequate and customary steps to determine the Settlement Class Member's eligibility for payment and the amount of payment based on the information contained on the Claim Form or otherwise submitted, the amount of money available to pay all Valid Claims, and such other reasonably available information from which eligibility for payment can be determined. The Settlement Administrator shall take reasonable and customary steps to investigate any Claim Form that it believes may have been fraudulently submitted. If the Settlement Administrator determines a claim is definitively fraudulent, it may deny the claim without a cure process.

IV. NOTICE AND SETTLEMENT ADMINISTRATION

4.1. Subject to Court approval, the Parties have agreed that providing Email Notice, Postcard Notice, and Publication Notice to the Class Members in the manner described herein is the best and most fair and reasonable notice practicable under the circumstances. Class Counsel will not of their own initiative advocate for content or methods of Class Notice beyond that to which the Parties have agreed in Section VII of this Agreement.

4.2. The Parties agree to the following procedures for giving notice of this Settlement to the Class Members:

- A. Within thirty (30) calendar days of entry of the Preliminary Approval Order or on such date otherwise ordered by the Court, the Parties shall provide the Settlement Administrator with an electronic list that includes the following information with respect to each Settlement Class Member for which the Parties have information (i) first and last name, (ii) email address, (iii) last known mailing address (if available), (iv) phone number (if available), (v) the number of XTEND Products purchased by the Settlement Class Member (if available), (vi) the type of XTEND Products purchased by the Settlement Class Member (if available), and (vii) the third party seller from whom the Settlement Class Member purchased each XTEND Product (if available). The Defendant will endeavor to conduct a probing and reasonable search of their records for this information and agree to make best efforts to obtain this information.
- B. No later than the Notice Date, the Settlement Administrator shall send Direct Notice to Settlement Class Members as follows. For Settlement Class Members for whom the Settlement Administrator has email addresses, the Settlement Administrator shall send (i) a copy of the Email Notice in the form approved by the Court to those Settlement Class Members for whom an email address is available,

and (ii) a copy of the Postcard Notice in the form approved by the Court to those Settlement Class Members for whom a physical mailing address is available. For Settlement Class Members for whom the Settlement Administrator does not have email addresses but for whom a physical mailing address is available, the Settlement Administrator shall send a copy of the Postcard Notice in the form approved by the Court.

- C. The Settlement Administrator shall utilize the national change of address database to update the mailing list of the Settlement Class Members for whom a mailing address is available prior to sending the Postcard Notice via First Class U.S. Mail.
- D. If no physical address is available in the list provided to the Settlement Administrator, the Settlement Administrator shall perform a single skip trace using information identifying the Settlement Class Member, as necessary, to identify the Settlement Class Member's mailing address to allow Postcard Notice to be sent using an industry-accepted source such as Accurint, and shall send the Postcard Notice to the mailing address identified by the skip tracing.
- E. Any mailed Postcard Notices returned to the Settlement Administrator as undelivered and bearing a forwarding address shall be re-mailed by the Settlement Administrator within seven (7) calendar days following receipt of the returned mail. Further, if no

forwarding address is available, the Settlement Administrator shall perform a single skip trace using an industry-accepted source such as Accurant, to conduct an address update and send the Postcard Notices to the mailing addresses identified by the skip-tracing.

- F. No later than the Notice Date, the Settlement Administrator also shall launch the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents, answers to frequently asked questions, a contact information page that includes the address for the Settlement Administrator and addresses and telephone numbers for Plaintiff's Counsel, the Agreement, the signed Preliminary Approval Order and the publicly filed motion papers and declarations in support thereof, a downloadable and online version of the Claim Form, a downloadable and online version of the form by which Settlement Class Members may exclude themselves from the Settlement Class, and (when they become available) the publicly filed motion for Final Approval of the Settlement, Plaintiff's request for Attorneys' Fees and Expenses and Service Award, and supporting declarations. The Settlement Administrator shall provide Plaintiff's Counsel and Defendant's Counsel with the opportunity to review the Settlement Website at least ten (10) calendar days prior to the scheduled launch date, and the Settlement Administrator will make any revisions requested by counsel. The Settlement Website

shall remain accessible until sixty (60) calendar days after the Effective Date.

- G. On the Notice Date, the Settlement Administrator shall cause the Publication Notice to be published in the manner ordered by the Court.
- H. CAFA Notice. The Settlement Administrator shall serve notice of this Settlement to appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. The Settlement Administrator shall be responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715 and for identifying the appropriate state and federal officials to be notified.
- I. The Settlement Administrator shall provide any information or declaration requested by the Parties to assist with seeking Preliminary Approval and Final Approval.
- J. The Parties each represent that they do not and will not have any financial interest in the Settlement Administrator ultimately appointed and otherwise will not have a relationship with the Settlement Administrator ultimately appointed that could create a conflict of interest.
- K. The Parties acknowledge and agree that the Settlement Administrator is not an agent of the Class Representative, Class Counsel, Defendant, or Defendant's Counsel and that the Settlement Administrator is not authorized by this Agreement, or otherwise, to

act on behalf of the Class Representative, Class Counsel, Defendant, or Defendant's Counsel.

L. If a Settlement Class Member requests that the Settlement Administrator and/or its agent or employees refer him/her to Class Counsel, or if a Class Member requests advice beyond merely ministerial information regarding applicable deadlines or procedures for submitting a Claim Form or other Settlement-related forms for which the Settlement Administrator does not have an approved response, then the Settlement Administrator and/or its agents or employees shall promptly refer the inquiry to Class Counsel and Defendant's Counsel.

M. The Settlement Administrator is responsible for:

- i. Sending the Email Notice approved by the Court;
- ii. Printing and distributing the Postcard Notice approved by the Court;
- iii. Causing the Publication Notice to the Class Members approved by the Court to be published;
- iv. Performing physical mailing address and email address updates and verifications prior to the distribution of the Postcard Notice;
- v. Performing a single skip trace to identify Settlement Class Members' addresses and to follow up on any returned Postcard Notices;

- vi. Creating and maintaining the Settlement Website and a toll-free number that Settlement Class Members can contact to request a copy of this Agreement, view and/or obtain the Long Form Notice, and/or a Claim Form, and/or to obtain any other information concerning this Settlement or this Agreement;
 - vii. Consulting with Defendant's Counsel and/or Class Counsel concerning any relevant issues, including (without limitation) distribution of the Class Notice and processing of Claim Forms;
 - viii. Processing and recording timely and proper requests for exclusion from or objections to the Settlement;
 - ix. Processing and recording Claim Forms;
 - x. Preparing, drafting, and serving the CAFA Notice;
 - xi. Calculating *pro rata* amounts of the Class Cash Fund;
 - xii. Transmitting Cash Payments to Class members who qualify; and,
 - xiii. Such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform in connection with this Agreement.
- N. The Parties shall supervise the Settlement Administrator in the performance of the notice functions set forth in this Section.

- O. At least fourteen (14) calendar days prior to the Final Approval Hearing, the Settlement Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.
- P. All costs of the administration of this settlement, including notice and administration costs, shall be paid out of the Class Cash Fund.
- Q. Upon completion of the implementation and administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to Class Counsel and Defendant's Counsel.

V. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS

5.1. Solely for the purpose of effectuating the Settlement set forth in this Agreement and subject to Court approval, the Parties stipulate that a Settlement Class shall be certified in accordance with the Settlement Class definition set forth in this Agreement, that the Class Representative shall represent the Settlement Class for settlement purposes, and that Plaintiff's Counsel shall be appointed as counsel for the Settlement Class.

VI. ATTORNEYS' FEES, COSTS AND EXPENSES, AND SERVICE AWARD

6.1. This Settlement Agreement was arrived at after extensive arm's length negotiations with the aid of the Mediator and conducted in good faith by counsel for the parties and is supported by the Plaintiff. The parties did not discuss or negotiate attorneys' fees until after relief had been fashioned for the Class. Plaintiff's Counsel may make an application to the Court for an award of Attorneys' Fees and Expenses not to exceed \$1,000,000.00 in cash, plus a Service Award to the Named Plaintiff in the amount of \$7,500.00, as compensation for the time and effort undertaken in and risks of pursuing this Litigation. If awarded, in whole or in part, the Attorneys' Fees and

Expenses awarded by the Court shall be paid from the Class Cash Fund. Any modification of Plaintiff's Counsels' application for Attorneys' Fees or Expenses by the Court shall not (a) affect the enforceability of the Settlement Agreement, (b) provide any of the Parties with the right to terminate the Settlement Agreement, or (c) impose any obligation on Defendant to increase the consideration paid in connection with the Settlement.

6.2. The Settlement Administrator shall pay to Class Counsel from the Class Cash Fund the amount of attorneys' fees and costs awarded by the Court within forty (40) calendar days following the Effective Date, subject to Plaintiff's Counsel providing its payment routing information and tax ID number. Payment of the Fee Award will be made from the Class Cash Fund by wire transfer or check to Plaintiff's Counsel.

6.3. Any Service Award approved by the Court for the Class Representative shall be paid from the Class Cash Fund in the form of a check to the Class Representative that is sent in care of Class Counsel within the earlier of forty (40) days after the Effective Date or the date the Settlement Administrator begins making distributions to claimants.

6.4. Defendant takes no position with respect to Plaintiff's application for Attorneys' Fees and Expenses and Service Award. Plaintiff's Counsel and Plaintiff agree that the denial of, reduction or downward modification of, or failure to grant any application for Attorneys' Fees and Expenses or Service Award shall not constitute grounds for modification or termination of this Agreement, including the Settlement and releases provided for herein.

6.5. Except as set forth in this Agreement, each Party shall bear his or its own fees, costs, and expenses.

VII. CLASS SETTLEMENT PROCEDURES

7.1. Settlement Approval. Within thirty (30) days after the signing of this Agreement, Plaintiff shall move, with the support of Defendant, for a Preliminary Approval Order, substantially in the form of Exhibit C, conditionally certifying the Settlement Class solely for the purposes of this Settlement and without any finding or admission of any wrongdoing or fault by Defendant; preliminarily approving this Agreement and this Settlement as fair, just, reasonable, and adequate, approving Class Notice to the Settlement Class Members as described in Section IV above, and setting the Final Approval Hearing. The Parties shall seek a Final Approval Hearing to occur no later than 130 days after Preliminary Approval.

7.2. Exclusions and Objections. The Long Form Notice and the Publication Notice and Postcard Notice shall advise prospective Settlement Class Members of their rights to forgo the benefits of this Settlement and pursue an individual claim, to object to this settlement individually or through counsel, and to appear at the Final Approval Hearing.

7.3. If any Settlement Class Member wishes to object to the Settlement and/or to be heard at the Final Approval Hearing, the Settlement Class Member may submit a written objection in compliance with the requirements set forth in the Long Form Notice and the Preliminary Approval Order.

7.4. If any Settlement Class Member wishes to be excluded from this Settlement and the Settlement Class, the Settlement Class Member may do so by completing and submitting the online form at the Settlement Website or by mailing a valid request to opt-out, as described in the Long Form Notice, to the Settlement Administrator. Requests for exclusion must be submitted online by the Exclusion Deadline, or if mailed, must be *received* by the Settlement Administrator (not just postmarked) by the Exclusion Deadline, or they shall not be valid. For exclusion requests

that are submitted online, the Class Member shall have the opportunity to print a page immediately after submission showing the information entered and the date and time the request for exclusion was received. A Settlement Class Member who elects to opt-out of this Settlement and the Settlement Class shall not be permitted to object to this Settlement or receive any of the benefits of the Settlement. Settlement Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

7.5. At least fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator shall prepare a list of the names of the persons who have excluded themselves from the Settlement Class in a valid and timely manner, and Plaintiff's Counsel shall file that list with the Court, with service on Defendant's Counsel.

7.6. Effect if Settlement Not Approved or Agreement is Terminated. If this Agreement is not given preliminary or final approval by the Court, or if an appellate court reverses Final Approval of the Agreement, the Parties will be restored to their respective places in the litigation. In such event, the terms and provisions of this Agreement shall become null and void, will have no further force or effect with respect to the Parties and will not be used in this or any other proceeding for any purposes, and any Judgment or Order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

7.7. The proposed Preliminary Approval order and Long Form Notice will provide that any Settlement Class Members wishing to object or exclude themselves who fail to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

7.8. If any objection is received by the Settlement Administrator, the Settlement Administrator shall forward the objection and all supporting documentation to counsel for the

Parties. At least twenty-one (21) days prior to the Final Approval Hearing, Plaintiff's Counsel shall file all such objections and supporting documentation with the Court. The failure of the Settlement Class Member to comply with the filing requirements of Section VII shall be grounds for striking and/or overruling the objection, even if the objection is submitted to the Settlement Administrator. At least seven (7) days prior to the Final Approval Hearing, Plaintiff's Counsel and defense counsel shall have the opportunity to submit a supplemental memorandum responding to any objections and requests for exclusion.

7.9. Upon Court Order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Class Member on topics relevant to the Objection.

7.10. If a Settlement Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent in error and rejected.

7.11. A Settlement Class Member who objects to the Settlement also may submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same manner as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member also has submitted an objection.

7.12. If more than ten percent (10%) of Settlement Class members opt-out of the Class Action Settlement, Defendant shall have the sole and absolute discretion to terminate the Settlement by giving notice of its intent to do so within ten (10) calendar days after the Settlement Administrator reports the final number of opt-outs.

VIII. RELEASES

8.1. Releases Regarding Settlement Class Members and Released Parties. Upon the Effective Date, Plaintiff and the Settlement Class Members shall have unconditionally,

completely, and irrevocably released and discharged with prejudice, the Released Parties from any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages, or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, whether arising under any international, federal, state, or local statute, ordinance, common law, regulation, principle of equity or otherwise, that were, or could have been, asserted in the Litigation and that arise out of or relate to the Allegations, or could have been asserted in the Litigation regarding the marketing, advertising, labeling, or sale of XTEND Products (the “Released Claims”). Upon Final Approval, Settlement Class Members shall be forever barred from initiating, maintaining, or prosecuting any Released Claims against Released Parties.

8.2. Waiver of Provisions of California Civil Code § 1542. Plaintiff shall, by operation of Final Approval and on the Effective Date, be deemed to have waived and hereby expressly waive the provisions, rights, and benefits of California Civil Code § 1542, and any similar law of any state or territory of the United States or principle of common law. In addition, Settlement Class Members shall, by operation of Final Approval, be deemed to have waived the provisions, rights, and benefits of California Civil Code § 1542, and any similar law of any state or territory of the United States or principle of common law, but only with respect to the matters released as set forth in section 8.2. California Civil Code § 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

8.3. Effectuation of Settlement. None of the above releases includes releases of claims to enforce the terms of the Settlement provided for in this Agreement.

8.4. No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefore, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or an acknowledgment of the validity of any claim, or defense, or of any point of fact or law (including, but not limited to, matters respecting class certification and/or arbitrability) on the part of any Party. Defendant expressly denies the Allegations. Neither this Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Defendant or the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Defendant or the Released Parties in any proceeding, except that this Agreement may be offered or received in evidence in such proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

IX. ADDITIONAL PROVISIONS.

9.1. Label Disclosure. By the later of (a) 120 days following the Effective Date or (b) June 30, 2023 (“the Label Disclosure Date”), Woodbolt agrees that it will provide information on the labels of any Product that is manufactured after the Label Disclosure Date, that indicates the method it uses to calculate calories (i.e. the Atwater method) and that use of a different method may provide a different result and will direct consumers to a website that further explains its view on how calories are determined pursuant to Title 21 Chapter 1 Subchapter B §101.9. For the avoidance of doubt, prior to providing such information on its labels, Woodbolt shall have the right to use all existing stock of labels without this additional information, even after the Label

Disclosure Date, provided that such labels have been manufactured prior to the Label Disclosure Date.

9.2. Cooperation. All of the Parties, their successors and assigns, and their attorneys agree to work reasonably and cooperatively in order to obtain Court approval of this Agreement and to effectuate the Settlement, and to provide declarations to facilitate the Court's Preliminary Approval and Final Approval of the Settlement. The Parties further agree to cooperate in the Settlement administration process and implementation of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the Settlement.

9.3. Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiff's Counsel and Defendant's Counsel without notice to Settlement Class Members.

9.4. Time for Compliance. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

9.5. Governing Law. This Agreement shall be governed by the laws of the State of Maryland without regard to conflicts of law principles.

9.6. Enforcement of this Agreement and Continuing Jurisdiction. The Court possesses exclusive and continuing jurisdiction over this Settlement Agreement and over all Parties and Settlement Class Members to interpret, effectuate, enforce, and implement this Settlement

Agreement. The Court shall have exclusive jurisdiction to resolve any disputes involving this Settlement Agreement.

9.7. Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the Agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous Agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving the interpretation of this Agreement. Any amendment or modification of the Agreement must be in writing signed by Plaintiff's Counsel and Defendant's Counsel.

9.8. Modifications. Any amendment or modification of the Agreement must be in writing signed by all of the Parties to this Agreement or their counsel. The Parties agree that nonmaterial amendments or modifications to this Agreement may be made in writing after Preliminary Approval without the need to seek the Court's approval.

9.9. Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. The presumption that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

9.10. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

9.11. No Tax Advice. Neither Plaintiff's Counsel, nor Defendant's Counsel, intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder nor shall it be relied upon as such.

9.12. No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

9.13. Requirement of Execution. This Agreement shall be valid and binding as to Plaintiff, the Settlement Class and Defendant upon (a) signature by Plaintiff, (b) signature by an authorized representative of Defendant, and (c) signature as to form by an authorized representative of each of the law firms defined as Plaintiff's Counsel and Defendant's Counsel.

9.14. Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

9.15. Extensions of Time. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

9.16. Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail, fax, or email to the following addresses:

If to Plaintiff or Plaintiff's Counsel:

Nicholas A. Migliaccio, Esquire
Migliaccio & Rathod LLP
412 H Street NE
Washington, D.C. 20002
Telephone: (202) 470-3520
Fax: (202) 800-2730
Email: nmigliaccio@classlawdc.com

If to Defendant or Defendant's Counsel:

Geoffrey W. Castello, Esquire
KELLEY DRYE & WARREN LLP
One Jefferson Road, 2nd Floor
Parsippany, NJ 07054
Telephone: (973) 503-5900
Fax: (973) 503-5950
Email: gcastello@kelleydrye.com

9.17. Confidentiality. The Parties, Plaintiff's Counsel, and Defendant's Counsel agree to keep the existence and contents of the Term Sheet, Agreement, and all related settlement communications confidential until the filing of the Motion for Preliminary Approval. All privileged settlement communications will remain confidential at all times, including following the filing of the Motion for Preliminary Approval. This provision will not prevent the disclosure of such information prior to the filing of the Motion for Preliminary Approval with the Court to (a) regulators, rating agencies, independent accountants, advisors, financial analysts, counsel, agents, any existing or potential insurers or reinsurers, experts, courts, co-counsel, the Released Parties, any existing or potential investor of or any existing or potential lender to any of the Released Parties, the Settlement Administrator as may reasonably be required to effectuate the Settlement, and/or as otherwise required to comply with any applicable law or regulation, (b) any Person or entity to whom the Parties agree in writing disclosure must be made to effectuate the Settlement, and/or (c) Defendant or any of the Released Parties as necessary for any reasonable commercial purpose. The Parties agree that, on or after the filing of the Motion for Preliminary Approval, Plaintiff's Counsel and/or Plaintiff may disclose the terms of the Settlement to the public so long as the disclosure is consistent with the other terms of this Agreement, including the non-disparagement provision. Nothing herein is intended to, nor shall be construed to, violate counsels' obligations under applicable ethics rules.

9.18. Exhibits. The Exhibits to the Agreement are an integral part of the Settlement and are hereby incorporated and made part of the Agreement.

9.19. Complete Resolution. The Parties intend for this Agreement to be a complete and final resolution of all disputes between them with respect to the Litigation.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the first date it has been executed by all of the undersigned.

APPROVED AS TO FORM:

DATED: January 20, 2023

MIGLIACCIO & RATHOD LLP



Nicholas A. Migliaccio, Esquire
Jason S. Rathod, Esquire

DATED: January 20, 2023

ROBERT PEIRCE & ASSOCIATES, P.C.



D. Aaron Rihn, Esquire
Sara J. Watkins, Esquire

DATED: January , 2023

LAW OFFICES OF ROBERT MACKEY

Robert Mackey, Esquire

Attorneys for the Plaintiff

DATED: January , 2023

KELLEY DRYE & WARREN LLP

Geoffrey Castello, Esquire

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APPROVED AS TO FORM:

DATED: January ___, 2023

MIGLIACCIO & RATHOD LLP

Nicholas A. Migliaccio, Esquire
Jason S. Rathod, Esquire

DATED: January ²⁰ ___, 2023

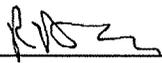
ROBERT PEIRCE & ASSOCIATES, P.C.



D. Aaron Rihn, Esquire
Sara J. Watkins, Esquire

DATED: January ^{1/19/2023} ___, 2023

LAW OFFICES OF ROBERT MACKEY



Robert Mackey, Esquire

Attorneys for the Plaintiff

DATED: January ³⁰ ___, 2023

KELLEY DRYE & WARREN LLP



Geoffrey Castello, Esquire

Attorney for Defendant

APPROVED AND AGREED:

DATED: January ²⁰____, 2023

PLAINTIFF DANIEL METAGUE



Daniel Metague

DATED: January ____, 2023

DEFENDANT WOODBOLT DISTRIBUTION LLC

By: _____

Name: _____

Its: _____

Attorney for Defendant

APPROVED AND AGREED:

DATED: January ____, 2023

PLAINTIFF DANIEL METAGUE

Daniel Metague

DATED: January 20th, 2023

DEFENDANT WOODBOLT DISTRIBUTION LLC

By: _____



Name: Michael J. DiMaggio

Its: Chief Legal Officer

Exhibit A

Metague v. Woodbolt Distribution, LLC

in the United States District Court for the District of Maryland

Civil Action No. 8:20-cv-02186-PX

SETTLEMENT CLAIM FORM

You can also submit a claim online as set forth in the Product list on the settlement website
[www.XTENDCalorieSettlement.com]

Use this Claim Form to claim refunds of a portion of the purchase price of one or more of the XTEND Products (“Challenged Products”). This Claim Form is only for claims concerning the purchase(s) of Challenged Products set forth in the Product list on the settlement website [www.XTENDCalorieSettlement.com] and only for those purchases made between the time period of **July 28, 2014 until [preliminary approval date]**. You cannot use this form to make a claim concerning the purchase(s) of any other products manufactured by Woodbolt Distribution, LLC d/b/a Nutrabolt or any other company. Claim Form submission is limited to one per household. **All Claim Forms must be postmarked or submitted online by [60 days after the Notice Date]**. If mailing, please return this form to:

Metague v. Woodbolt
c/o Kroll Settlement Administration LLC
P.O. Box 5324
New York, NY 10150-5324

You may also email this form to the Settlement Administrator, Kroll Settlement Administration LLC at info@ .com.

NOTE: If you wish to receive payment electronically, you must complete the Claim Form online at www. www.XTENDCalorieSettlement.com.

SECTION 1: CLAIMANT INFORMATION

FIRST NAME: _____ LAST NAME: _____

TELEPHONE NUMBER: _____ EMAIL ADDRESS:

ADDRESS 1: _____ ADDRESS 2: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SECTION 2: CLAIM AND POTENTIAL CASH BENEFIT:

Option A: I purchased, but I **do not** have Proof of Purchase.

For Settlement Class Members who purchased Challenged Products in the Product list during the Class Period and do not have a valid Proof of Purchase, please complete the following information. You will receive up to \$0.50 per product, up to a \$25.00 *maximum* per household. The amount you actually will receive could be appreciably more or less than this amount, depending on several factors including the number of Settlement Class Members who submit a Valid Claim, and the number of XTEND Products you purchased, and whether you provide Proof of Purchase.

| Number of Units Purchased | Approximate Purchase Date | 3 rd Party Seller Purchased From | Itemized Number for Challenged Product on the Attached List |
|---------------------------|---------------------------|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

Option B: I purchased, and I *do* have Proof of Purchase.

For Settlement Class Members who purchased XTEND Products in the Product list available on the settlement website [www.XTENDCalorieSettlement.com] during the Class Period and have a valid Proof of Purchase, please complete the following information. You will receive up to \$0.50 per product, up to a \$50.00 *maximum* per household. The amount you actually will receive could be appreciably more or less than this amount, depending on several factors including the number of Settlement Class Members who submit a Valid Claim, the number of XTEND Products you purchased, and whether you provide Proof of Purchase.

“Proof of Purchase” means a receipt or similar documentation from the Defendant directly or an approved Third Party Retailer that reasonably establishes the facts of purchase of an XTEND Product from the Defendant or an approved Third Party Retailer.

How many Products did you purchase? _____

Please attach Proof(s) of Purchase, reflecting proof for each product you purchased.

SECTION 3: SIGN AND DATE THE AFFIRMATION BELOW

I UNDERSTAND THAT THE DECISION OF THE SETTLEMENT ADMINISTRATOR IS FINAL AND BINDING ON ME AND WOODBOLT DISTRIBUTION, LLC D/B/A NUTRABOLT. I SWEAR UNDER THE PENALTY OF PERJURY THAT THE INFORMATION ON THIS CLAIM FORM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Signature: _____ Date: _____

Exhibit B2

EXHIBIT – LONG FORM NOTICE

Attention purchasers of Nutrabolt XTEND® Branch-Chain Amino Acid Powders in the United States from Third Party Sellers such as Amazon on or Before [Preliminary Approval Date]

This notice may affect your rights. Please read it carefully.

A federal court has authorized this notice. This is not a solicitation from a lawyer.

- The notice concerns a Lawsuit called *Metague v. Woodbolt Distribution, LLC*, Civil Action No. 8:20-cv-02186-PX, pending in the United States District Court for the District of Maryland (the “Lawsuit”). The subject of the Lawsuit relates to the labeling and advertising of “XTEND®” (“XTEND” or) as “0 calories.”
- A class action Settlement will resolve the Lawsuit by Plaintiff against Woodbolt Distribution, LLC (“Woodbolt”). The Settlement affects all persons, other than Excluded Persons, who, during the Class Period, purchased in the United States, at least one of the Products (the “Products”), including, but not limited to, the XTEND Products set forth in Exhibit A – List of Products and the settlement website [www.XTENDCalorieSettlement.com] from within six (6) years prior to the filing of the action to the date of Preliminary Approval.
- The Lawsuit alleges that, in its marketing, labeling and advertising, Woodbolt made a series of material representations about the caloric content of XTEND. These include that the XTEND products (1) were labeled as “0 calories” per serving when they are not “0 calories,” and (2) Woodbolt continued to sell its Products with misleading labels despite knowing the inaccuracy of such statements. Plaintiff alleged that these representations were propagated through various media, including Woodbolt’s website, advertisements, packages, and labels. Plaintiff alleges that this advertising was false and misleading. Woodbolt denies all of Plaintiff’s allegations and maintains that its marketing, advertising, and labelling has been accurate at all times and complies with the regulations governing the labelling of dietary supplements under the Food, Drug and Cosmetic Act.
- To settle the case, Woodbolt agrees to pay \$3,000,000.00 into a Settlement Fund. Each member of the class who submits a Valid Claim Form will receive \$0.50 for each purchase of an XTEND product. Your total recovery will be limited to \$50.00 per household with Proof of Purchase. Without Proof of Purchase, the maximum recovery is \$25.00 per household. If there are not enough settlement funds to pay all Valid Claims and expenses, the amounts will be proportionately reduced on a pro rata basis. Any leftover funds after payment of attorneys’ fees, payments to the class representative, class notice and administration expenses, and payment of Valid Claims, will be used to proportionately increase the recovery on a pro rata basis of each eligible claim. **To obtain benefits from the Settlement, you must complete and return the Claim Form included in this mailing.**
- The Settlement Class lawyers will ask the Court for an attorneys’ fee and expense award of up to one-third of \$3,000,000.00 in cash. The attorneys’ fees and expenses award is compensation for investigating the facts, litigating the case, and negotiating the Settlement. They also will ask for

Questions? Visit [www.XTENDCalorieSettlement.com] or call [phone number]

EXHIBIT – LONG FORM NOTICE

\$7,500.00 in cash to be awarded to Plaintiff Daniel Metague for prosecuting this Lawsuit. This payment is called a “Service Award.”

- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

This notice contains a summary of the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [www.XTENDCalorieSettlement.com] or contact the Settlement Administrator at [address] and [phone number].

Please do not contact the Court or the Clerk’s Office to inquire about this Settlement or the Claims process.

SETTLEMENT CLASS MEMBERS HAVE RIGHTS AND OPTIONS TO EXERCISE:

| YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT | | DEADLINE |
|---|---|----------------------------------|
| Submit a Claim Form | You can receive a cash payment. You must submit a Claim Form to receive these benefits. | [60 days after the Notice Date] |
| Opt-out | Get out of the Lawsuit and the Settlement. This is the only option that allows you to ever bring or join another lawsuit raising the same legal claims against Woodbolt. You will receive no cash payment under this Settlement. | [60 days after the Notice Date]] |
| File Objection | Write to the Court about any aspect of the Settlement you do not like, or you do not think is fair, adequate, or reasonable. (If you object to any aspect of the Settlement, you must submit a written Objection and that Objection must be received by the deadline. Your objection must follow all the procedures stated in the body of this notice under “How Do I Object to the Settlement?”) | [60 Days after the Notice Date] |
| Go to a Hearing | Speak in Court about the Settlement. (If you object to any aspect of the Settlement, you must submit a written Objection by the Objection deadline. If you opt-out of the Settlement, you cannot object.) | [Final Approval Hearing Date] |
| Do Nothing | You will receive no payment and have no right to sue later. Any leftover money will be used for other people who make Valid Claims. | |

- These rights and options—and the deadlines to exercise them—are further explained in this notice.
- The Court in charge of this case still must decide whether to approve the Settlement. Cash payments will be sent to Settlement Class Members only if the Court approves the Settlement. If there are appeals, cash payments will not be sent until the appeals are resolved and the Settlement becomes effective. Please be patient.

Questions? Visit [www.XTENDCalorieSettlement.com] or call [phone number]

EXHIBIT – LONG FORM NOTICE

- **Final Approval Hearing**

On [DATE], the Court will hold a hearing to determine: (1) whether the proposed Settlement should be approved as fair, reasonable, and adequate and should receive final approval, (2) whether Class Counsel’s application for an award of Attorneys’ Fees and Expenses should be granted, and (3) whether Plaintiff’s application for a Service Award payment should be granted. The hearing will be held in the United States District Court for the District of Maryland before Judge Paula Xinis at 6500 Cherrywood Lane, Greenbelt, MD 20770, and/or virtually. This hearing date and location may change without further notice to you. Consult the Settlement Website at [www.XTENDCalorieSettlement.com] for updated information on the hearing date, location, and time.

Important Dates

| | |
|------------------------------------|------------------------------|
| [60 Days after the Notice Date] | Objection Deadline |
| [60 Days after the Notice Date] | Opt-out Deadline |
| [DATE] | Final Approval Hearing |
| [60 Days after the Notice Date] | Claim Submission Deadline |

Table of Contents

| | | |
|-----|---|----------|
| 1. | HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT? | 4 |
| 2. | WHAT IS THE LAWSUIT ABOUT? | 4 |
| 3. | WHY IS THERE A LAWSUIT? | 4 |
| 4. | WHY IS THIS CASE BEING SETTLED? | 4 |
| 5. | WHAT CAN I GET FROM THIS SETTLEMENT? | 5 |
| 6. | HOW DO I MAKE A CLAIM? | 6 |
| 7. | WHEN DO I GET MY BENEFITS? | 6 |
| 8. | WHAT DO PLAINTIFF AND HIS LAWYERS GET? | 6 |
| 9. | WHAT HAPPENS IF I DO NOT OPT-OUT OF THE SETTLEMENT? | 7 |
| 10. | HOW DO I OPT-OUT OF THE SETTLEMENT? | 8 |
| 11. | CAN I OBJECT TO THE SETTLEMENT?..... | 8 |
| 12. | WHEN WILL THE COURT DECIDE IF THE SETTLEMENT IS APPROVED? .. | 9 |
| 13. | HOW DO I GET MORE INFORMATION? | 9 |

Questions? Visit [www.XTENDCalorieSettlement.com] or call [phone number]

EXHIBIT – LONG FORM NOTICE

1. How Do I Know If I Am Affected by the Settlement?

This case involves XTEND line of Products purchased directly from the Woodbolt or from third-party sellers, including but not limited to, Amazon, before [Preliminary Approval Date].

The Parties will ask the Court to certify a Settlement Class defined as all Persons, other than Excluded Persons, who, during the Class Period, (1) purchased in the United States, at least one of the Products, including, but not limited to, the XTEND Products set forth in Exhibit A – List of Products from within six (6) years prior to the filing of the action to the date of [Preliminary Approval].

If you are a member of the Settlement Class, you will be bound by the Settlement and judgment in this case, unless you request to be excluded.

If the Settlement does not become effective (for example, because it is not finally approved or the approval is reversed on appeal), then this litigation will continue.

2. What Is the Lawsuit About?

The Lawsuit alleges that, in its marketing, labeling and advertising, Woodbolt made a series of material representations about the caloric content of XTEND. These include that the XTEND Products (1) were labeled as “0 calories” per serving when they are not “0 calories,” and (2) Woodbolt continued to sell its Products with misleading labels despite knowing the inaccuracy of such statements. Plaintiff alleged that these representations were propagated through various media, including Woodbolt’s website, advertisements, packages, and labels. Plaintiff alleges that this advertising was false and misleading. Woodbolt denies all of Plaintiff’s allegations and maintains that its marketing, advertising, and labelling has been accurate at all times and complies with the regulations governing the labelling of dietary supplements under the Food, Drug and Cosmetic Act. The Court has not determined whether Plaintiff or Woodbolt is correct.

3. Why Is There a Lawsuit?

Plaintiff contends that if Woodbolt had not falsely advertised that its Products contained “0 calories” then Woodbolt would have sold fewer Products, and the price for each Product would have been lower. The Lawsuit seeks to recover, on behalf of all Settlement Class Members, monetary damages as a result of the alleged false marketing, labeling and advertising and a change in practices moving forward. Woodbolt denies all the allegations in the Lawsuit and contends that its marketing, labeling and advertising have always been accurate.

4. Why Is this Case Being Settled?

Plaintiff filed his operative Amended Complaint, on behalf of himself and others similarly situated, on January 28, 2021, in the United States District Court for the District of Maryland.

On September 28, 2021, the Parties participated in an all-day mediation conducted by an experienced class action mediator, the Honorable Jose L. Linares (Ret.) of McCarter & English. The Parties continued to mediate a potential resolution to their dispute after the all-day mediation.

EXHIBIT – LONG FORM NOTICE

Counsel for both Plaintiff and Woodbolt have determined that there is significant risk in continuing the litigation. Among the risks of continued litigation for Plaintiff is the risk of failing to prove liability or restitution and damages on a class-wide or individual basis. There may be difficulties establishing: (1) Woodbolt's marketing materials were likely to deceive reasonable consumers, (2) that misrepresentations and omissions in the marketing materials were material to reasonable consumers, (3) the amount of damages or restitution due to the class or to any class member, and (4) that common questions predominate over individual issues such that a class may be certified. After considering the risks and costs of further litigation, the Parties have concluded that it is desirable that Plaintiff's claims be settled and dismissed on the terms of the Settlement Agreement.

Plaintiff and his counsel believe that the terms of the Settlement are fair, reasonable, adequate, and equitable, and that the Settlement is in the best interest of the Settlement Class Members.

5. What Can I Get from this Settlement?

As part of the Settlement, Woodbolt agrees to modify its current labeling and its website to provide information that indicates the method it uses to calculate calories (i.e. the Atwater method) and that use of a different method may provide different results and will direct consumers to a website that further explains its views are determined pursuant to Title 21 Chapter 1 Subchapter B § 101.9. Sales of Products manufactured prior to the Injunctive Relief Effective Date shall not constitute a violation of this Agreement.

In addition, as part of the Settlement, Woodbolt will pay \$3,000,000.00 which will be used to pay Claims of Settlement Class Members and the costs of administering the settlement, plus amounts awarded by the Court to Plaintiff and his attorneys. The settlement fund will pay, in the following order: (1) all costs and payments associated with sending notice to the settlement class and administering the settlement, including payments to the Settlement Administrator; (2) any necessary taxes and tax expenses; (3) any award of Attorneys' Fees and Expenses made by the Court to counsel for Plaintiff; (4) any Service Award made by the Court to Plaintiff for his service as Class Representative; and (5) the Valid Claims submitted by Settlement Class Members.

If after payment of items (1) through (5), the total amount remaining in the Settlement Fund is insufficient to pay the Valid Claims under item (5), then each such Valid Claim shall be proportionately reduced. If after paying all the amounts in items (1) through (5), there remains any balance in the Settlement Fund, Plaintiff's counsel will ask the Court to distribute the remainder thereby proportionately increasing the recovery of each eligible Claim.

All Settlement Class Members are eligible to receive a Cash Payment. To obtain these benefits from the Settlement, **you must complete and return the Claim Form** included in this mailing and available at www.settlementwebsite.com. Based on the estimated class size and value of the Settlement, Settlement Class Members may seek reimbursement at \$0.50 per package and where there is Proof of Purchase, a maximum recovery of \$50.00 per household. Without Proof of Purchase, the maximum recovery is \$25.00 per household. The amount you actually will receive could be appreciably more or less than this amount, depending on several factors including the

EXHIBIT – LONG FORM NOTICE

number of Settlement Class Members who submit a Valid Claim, the number of XTEND Products you purchased, and whether you provide Proof of Purchase.

“Proof of Purchase” means a receipt or similar documentation from Woodbolt directly or an approved Third-Party Retailer that reasonably established the facts of purchase of an XTEND Product from Woodbolt or an approved Third Party Retailer.

Cash Payments will be paid by check sent via first-class mail to the mailing address you provide on the Claim Form, by direct deposit into your bank account, or another form of electronic transfer. Instructions are provided on the Claim Form enclosed in this mailing and available at www.settlementwebsite.com.

As described on the Claim Form, to participate in the Settlement, you can submit a Claim with or without Proof of Purchase. Those who submit with Proof of Purchase are eligible for a greater amount of cash from the Settlement but are required to submit, in addition to the Claim Form, a valid receipt or similar documentation showing evidence of the purchase of an XTEND Product. Those who submit without Proof of Purchase are not required to provide this information but must still fill out and submit a signed, Valid Claim Form.

Claims will be paid only if deemed valid. The earliest that Claims can be paid is [insert date that is 60 calendar days after the Effective Date].

6. How do I make a claim?

To make a Claim, you fill out the Claim Form. Claim Forms are available on the Settlement Website at www.XTENDCalorieSettlement.com. You can submit the Claim Form online, or you can mail it to the Settlement Administrator at: [address]. Claim Forms must be submitted online or delivered to, and received by, the Settlement Administrator by 11:59 p.m. Pacific Time on [DATE].

7. When Do I Get My Benefits?

The Court will decide whether to approve the settlement at a Final Approval Hearing. That hearing is currently scheduled for [DATE].

If the Court approves the Settlement and there are no appeals, then Cash Payments will be distributed by approximately [insert date that is 60 calendar days after the Effective Date].

8. What do Plaintiff and his Lawyers Get?

To date, Class Counsel has not been compensated for any of their work on this case. As part of the Settlement, Class Counsel may apply to the Court for an award of up to one-third of \$3,000,000.00 to pay their Attorneys’ Fees and Expenses, which, if approved, will come out of the \$3,000,000.00 million in cash that Woodbolt has agreed to pay for this Settlement.

In addition, the Plaintiff in this case may apply to the Court for a Service Award up to \$7,500.00. This payment is designed to compensate Plaintiff for the time, effort, and risk he undertook in pursuing this Litigation. If approved, these amounts will come out of the \$3,000,000.00 million in cash that Woodbolt has agreed to pay for this Settlement.

EXHIBIT – LONG FORM NOTICE

Plaintiff and his lawyers will file a Motion with the Court on or before final approval hearing, i.e., 14 days before objection deadline] in support of their applications for attorneys' fees, costs, expenses, and incentive awards.

The award of Attorneys' Fees and Expenses will be paid to Plaintiff's lawyers within forty (40) days following the Effective Date.

The Court will determine the amount of Attorneys' Fees and Expenses as well as the amount of the Service Award.

9. What Happens if I Do Not Opt-out of the Settlement?

If you are a Settlement Class Member and you do not opt-out of the Settlement, you will be legally bound by all orders and judgments of the Court, and you also will be legally bound to the releases of the Claims in the Settlement. This means that in exchange for being a Settlement Class Member and being eligible for the benefits of the Settlement, you will not be able to sue, continue to sue, or be part of any other lawsuit against Woodbolt and/or any of the Released Parties that involves the same legal allegations as those resolved through this Settlement.

You will not be responsible for directly paying any out-of-pocket costs or attorneys' fees concerning this case if you stay in the Settlement Class. Rather, Attorneys' Fees and Expenses, if approved by the Court, will come out of the \$3,000,000.00 in cash that Woodbolt has already agreed to pay to settle this case.

Staying in the Settlement Class means that you give up the following legal claims:

- a) Upon the Effective Date, Plaintiff and the Settlement Class Members shall have unconditionally, completely, and irrevocably released and discharged with prejudice, the Released Parties from any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, whether arising under any international, federal, state, or local statute, ordinance, common law, regulation, principle of equity or otherwise, that were, or could have been, asserted in the Litigation and that arise out of or relate to the Allegations, or could have been asserted in the Litigation regarding the marketing, advertising, labelling, or sale of the XTEND Products (the "Released Claims. Upon Final Approval, Settlement Class Members shall be forever barred from initiating, maintaining, or prosecuting any Released Claims against Released Parties.
- b) With respect to the Released Claims set forth in the preceding paragraph, each Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

A general release does not extend to Claims that the creditor or releasing party does not know or suspect to exist in his or her favor

EXHIBIT – LONG FORM NOTICE

at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or Released Party.

The Settlement Class Members understand and acknowledge the significance of these waivers of California Civil Code section 1542 and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

- c) The Parties shall be deemed to have agreed that the release set forth herein will be, and may be raised as a complete defense to, and will preclude any action or proceeding based on the Released Claims.
- d) Nothing in this release shall operate to bar or release any claim for personal injury arising out of the use of the Product, nor shall anything in this release operate to bar any defense, cross-claim, or counterclaim in any action initiated by any of the Released Parties against any Settlement Class Member.

10. How Do I Opt-out of the Settlement?

You can opt-out of the Settlement Class if you wish to retain the right to sue Woodbolt separately for the Released Claims. If you opt-out, you cannot file a Claim or Objection to the Settlement.

To opt-out, you must complete the online form at the Settlement Website at www.XTENDCalorieSettlement.com or mail an opt-out request to the Settlement Administrator at [info], copies of which will be mailed to Class Counsel and counsel for Woodbolt by the Settlement Administrator. If mailed, the opt-out request must be signed by you, contain your full name, address, and phone number(s), and the following statement: “I/We request to opt-out from the Settlement in the Woodbolt Action.” The opt-out request must be submitted online or delivered to, and received by, the Settlement Administrator by the opt-out Deadline set forth above.

11. Can I Object to the Settlement?

You can ask the Court to deny approval of the Settlement by timely filing an Objection with the Court. You cannot ask the Court to change the terms of the Settlement or order a larger settlement benefit; the Court can only approve or disallow the Settlement as it is written. If the Court does not approve the Settlement, then no cash payments will be distributed, and the Lawsuit will continue.

EXHIBIT – LONG FORM NOTICE

You also can ask the Court to deny Class Counsel's request for Attorneys' Fees and Expenses and the Service Award. If the Court does not approve those payments, then Plaintiff and/or his counsel will not get paid.

You may appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. If you want to raise an Objection to the Settlement at the Final Approval Hearing, you must first submit that Objection in writing to the Clerk of the Court as set forth below. **Your Objection must be received on or before the Objection Deadline.**

Your Objection must be mailed to: Clerk, United States District Court for the District of Maryland, 6500 Cherrywood Lane, Greenbelt, MD 20770 by the Objection Deadline set forth above. A copy of the Objection must be sent to: Nicholas Migliaccio, Esquire, Migliaccio & Rathod LLP, 412 H Street NE, Washington, D.C. 20002. Your Objection must include the following information: (1) a reference at the beginning to this case, *Metague v. Woodbolt Distribution, LLC*, Civil Action No. 8:20-cv-02186-PX, and the name of the presiding judge, Judge Paula Xinis, United States District Court for the District of Maryland; (2) the name, address, telephone number, and, if available, the email address of the person objecting, and if represented by counsel, his/her counsel; (3) a written statement of all grounds for the Objection, accompanied by any legal support for such Objection; (4) whether he/she intends to appear at the Final Approval Hearing, either with or without counsel; (5) a statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and (6) a detailed list of any other Objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any federal or state court in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. If you fail to include this information, then your Objection may be rejected and/or overruled.

You can file a Claim even if you object to the Settlement. If you want to receive benefits in the event that the Court approves the Settlement, then you must submit a Claim Form according to the instructions described above.

12. When Will the Court Decide if the Settlement is Approved?

The Court will hold a hearing on [DATE], to consider whether to approve the Settlement. The hearing will be held in the United States District Court for the District of Maryland before Judge Paula Xinis at 6500 Cherrywood Lane, Greenbelt, MD 20770, and may be held virtually.

The hearing is open to the public. This hearing date and location may change without further notice to you. Consult the Settlement Website at www.XTENDCalorieSettlement.com or the Court docket in this case available through Public Access to Court Electronic Records PACER (<http://www.pacer.gov>), for updated information on the hearing date and time.

13. How Do I Get More Information?

EXHIBIT – LONG FORM NOTICE

You can inspect many of the court documents connected with this case on the Settlement Website at www.XTENDCalorieSettlement.com. Other papers filed in this Lawsuit are available by accessing the Court docket in this case available through PACER (<http://www.pacer.gov>).

You can contact the Settlement Administrator at [info] or by telephone at [info].

You also can obtain additional information by contacting Class Counsel:

Nicholas Migliaccio, Esquire
MIGLIACCIO & RATHOD LLP
412 H Street NE
Washington, D.C. 20002
Tel: 202-470-3520
Email: info@classlawdc.com

D. Aaron Rihn, Esquire
ROBERT PIERCE & ASSOCIATES, P.C.
500 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
Tel. (412) 281-7229
Email: arihn@peircelaw.com

PLEASE DO NOT CONTACT THE ATTORNEYS FOR WOODBOLT.

EXHIBIT – LONG FORM NOTICE

EXHIBIT XX
(Covered Products)

XTEND® (includes all flavors, forms, sizes and servings)
XTEND® Original (includes all flavors, forms, sizes and servings)
XTEND® Ripped (includes all flavors, forms, sizes and servings)
XTEND® Ready To Drink (includes all flavors, forms, sizes and servings)
XTEND® Carbonated (includes all flavors, forms, sizes and servings)
XTEND® On The Go (includes all flavors, forms, sizes and servings)
XTEND® Sport (includes all flavors, forms, sizes and servings)
XTEND® Raw (includes all flavors, forms, sizes and servings)
XTEND® Pro (includes all flavors, forms, sizes and servings)
XTEND® PM (includes all flavors, forms, sizes and servings)
XTEND® Perform (includes all flavors, forms, sizes and servings)
XTEND® Perfect Ten Amino (includes all flavors, forms, sizes and servings)
XTEND® Free (includes all flavors, forms, sizes and servings)
XTEND® Natural Zero (includes all flavors, forms, sizes and servings)
XTEND® Keto Dual Energy (includes all flavors, forms, sizes and servings)
XTEND® Keto (includes all flavors, forms, sizes and servings)
XTEND® HydraSport (includes all flavors, forms, sizes and servings)
XTEND® Gummies (includes all flavors, forms, sizes and servings)
XTEND® GO (includes all flavors, forms, sizes and servings)
XTEND® Energy (includes all flavors, forms, sizes and servings)
XTEND® Energy CRB (includes all flavors, forms, sizes and servings)
XTEND® Energy Knockout (includes all flavors, forms, sizes and servings)
XTEND® Elite Pre (includes all flavors, forms, sizes and servings)
XTEND® Elite Pre (includes all flavors, forms, sizes and servings)
XTEND® Elite Gummy (includes all flavors, forms, sizes and servings)
XTEND® Capsules (includes all flavors, forms, sizes and servings)

Exhibit B3

Metague v. Woodbolt
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

Civil Action No. 8:20-cv-02186-PX

Court-Approved Legal Notice

**Attention purchasers of Nutrabolt XTEND®
Energy Branch-Chain Amino Acid Powders
in the United States from Third Party
Sellers such as Amazon on or Before
[Preliminary Approval Date]**

*A federal court has authorized this notice.
This is not a solicitation from a lawyer.*

For more information, visit [
XTENDCalorieSettlement.com] or call
toll- free **1- 833-709-0897**.

Forwarding Service Requested

Postal Service: Please do not mark barcode

<<RefNum Barcode>>

Class Member ID: <<RefNum>>

<<First Name>><<Last Name>>

<<Address 1>><<Address 2>>

<<City>>, <<State>> <<Zip>><<Zip 4>>

What Is The Lawsuit About? The Lawsuit alleges that, in its marketing, labeling and advertising, Woodbolt made a series of material representations about the caloric content of XTEND. These include that the XTEND products (1) were labeled as “0 calories” per serving when they are not “0 calories,” and (2) Woodbolt continued to sell its Products with misleading labels despite knowing the inaccuracy of such statements. Plaintiff alleged that these representations were propagated through various media, including Woodbolt’s website, advertisements, packages, and labels. Plaintiff alleges that this advertising was false and misleading. Woodbolt denies all of Plaintiff’s allegations and maintains that its marketing, advertising, and labelling has been accurate at all times and complies with the regulations governing the labelling of dietary supplements under the Food, Drug and Cosmetic Act the Court has not determined whether Plaintiff or Woodbolt is correct.

What Can I Get From This Settlement? To settle the case, Wodbolt agrees to pay \$3,000,000 into a Settlement Fund. All Settlement Class Members are eligible to receive a Cash Payment. To obtain these benefits you must submit the Claim Form available at XTENDCalorieSettlement.com. Based on the estimated class size and value of the Settlement, Settlement Class Members may seek reimbursement at \$0.50 per package and where there is Proof of Purchase, a maximum recovery of \$50.00 per household. Without Proof of Purchase, the maximum recovery is \$25.00 per household. The amount you actually will receive could be appreciably more or less than this amount, depending on several factors including the number of Settlement Class Members who submit a Valid Claim, the number of XTEND products you purchased, and whether you provide Proof of Purchase.

How Do I Make A Claim? To make a Claim, you must submit the Claim Form. Claim Forms are available on the Settlement Website at XTENDCalorieSettlement.com. You can submit the Claim Form online, or you can mail it to the Settlement Administrator at: Metague v. Woodbolt, c/o Kroll Settlement Administration, PO Box 5324 New York, NY 10150-5324. Claim Forms must be submitted online or postmarked by [60 Days after the Notice Date].

Your Other Options. If you wish to retain the right to sue the Woodbolt separately for the Released Claims, you can opt-out of the Settlement by [60 Days after the Notice Date]. If you opt-out, you cannot file a Claim or Objection to the Settlement. You can ask the Court to deny approval of the Settlement by timely filing an Objection with the Court by [60 Days after the Notice Date]. You cannot ask the Court to change the terms of the Settlement or order a larger settlement benefit; the Court can only approve or disallow the Settlement as it is written. If the Court does not approve the Settlement, then no cash payments will be distributed, and the Lawsuit will continue. More information, including details on how to Opt-Out or object, is in the detailed notice and materials available on the Settlement Website at XTENDCalorieSettlement.com. The Court will hold a Final Approval Hearing on [DATE] to consider whether to approve the Settlement and to award Attorneys’ Fees and Expenses up to one-third of \$3,000,000 plus a Service Award to the Named Plaintiff up to \$7,500.

This is only a summary. For complete information, visit the Settlement Website at XTENDCalorieSettlement.com or call toll-free 1- 833-709-0897.

[INSERT CHANGE OF ADDRESS FORM]

Exhibit B4

XTEND SETTLEMENT CREATIVE

BANNER ADS

XTEND SETTLEMENT

Did you buy any XTEND Product labeled as Zero Calorie?



Full list of products available on website

You could get money from a Settlement

LEARN MORE

XTEND SETTLEMENT

Did you buy any XTEND Product labeled as Zero Calorie?



Full list of products available on website

You could get money from a Settlement

LEARN MORE

Did you buy any XTEND Product labeled as Zero Calorie?



Full list of products available on website

You could get money from a Settlement

LEARN MORE

Did you buy any XTEND Product labeled as Zero Calorie?

You could get money from a Settlement



Full list of products available on website

LEARN MORE

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION**

DANIEL METAGUE, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

WOODBOLT DISTRIBUTION, LLC, d/b/a
NUTRABOLT,

Defendant.

Case No: 8:20-cv-02186-PX

[PROPOSED] ORDER FOR PRELIMINARY APPROVAL OF SETTLEMENT

WHEREAS, Plaintiff Daniel Metague (hereinafter “Metague” and/or “Plaintiff”) and Defendant Woodbolt Distribution, LLC, d/b/a Nutrabolt (hereinafter referred to as “Defendant,” “Woodbolt,.” and/or “Defendant Woodbolt”) entered into a settlement agreement (the “Settlement Agreement”) on [date], to settle this class action lawsuit (the “Class Action”); and,

WHEREAS, the Settlement Agreement, together with the attached exhibits, set forth the terms and conditions for a proposed settlement and dismissal with prejudice of this action against Defendant;

WHEREAS, the Court has before it, Plaintiff’s Unopposed Motion for Preliminary Approval of Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement, together with the Settlement Agreement and supporting materials;

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm’s-length settlement negotiations between competent and experienced counsel for both Plaintiff and Defendant.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

Preliminary Approval of Settlement and Conditional Certification of the Settlement Class

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. The Court finds that said Settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

3. Pursuant to Fed. R. Civ. P. 23, the Court hereby conditionally certifies the following Settlement Class:

All persons, other than Excluded Persons, who, during the Class Period purchased in the United States, at least one of the Products, including, but not limited to, the XTEND Products set forth in Paragraph 2.39 of the Settlement Agreement, Ex. D, from within six (6) years prior to the filing of the action to the [Preliminary Approval Date].

4. The Court further finds that the Plaintiff is an adequate Class Representative for the Settlement Class.

5. The Court further finds that Plaintiff's Counsel are adequate Class Counsel.

6. The Court approves the Notice Plan set forth in the Settlement Agreement, including the Email Notice of Settlement, the Postcard Notice, and the Long Form Notice and the Publication Notice.

7. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the conditional certification for the Settlement Class shall be void. Defendant reserves all of its arguments, defenses, and issues that it would have been able to raise absent the Settlement

of this action. Additionally, Plaintiff has reserved all rights, including his right to continue with any appeals pending at the time of the settlement.

Notice to Settlement Class Members and Appointment of Settlement Administrator

8. Counsel for the Class (“Plaintiff’s Counsel” and/or “Class Counsel”) are as follows:

Nicholas A. Migliaccio, Esquire
Jason S. Rathod, Esquire
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, DC 2002

D. Aaron Rihn, Esquire
Sara J. Watkins, Esquire
Robert Peirce & Associates, P.C.
707 Grant Street, Suite 125
Pittsburgh, PA 15219

Robert Mackey, Esquire
Law Offices of Robert Mackey
P.O. Box 279
Sewickley, PA 15143

9. Beginning 30 days after preliminary approval, Class Counsel shall cause to be disseminated the Notices, substantially in the form attached as Exhibits B2, B3 and B4 to the Settlement Agreement and in the manner set forth in the Settlement Agreement. Notice will be disseminated expeditiously pursuant to the terms of the Settlement Agreement. Class Members will have sixty (60) days from the Notice Date to opt-out or object to the Settlement. Prior to the Fairness Hearing, Plaintiff and/or the Settlement Administrator shall serve and file a sworn statement attesting to the compliance with the provisions of this paragraph.

10. The Notice to be provided as set forth in the Settlement Agreement is hereby found to be the best means practicable of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full

compliance with the notice requirements of Fed. R. Civ. P. 23, due process, the Constitution of the United States, the laws of Maryland and all other states and applicable laws. The Notices are accurate, objective, informative, and provide Class Members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

11. Class Counsel are authorized to retain Kroll Settlement Administration LLC as a Settlement Administrator in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

12. Any Member of the Settlement Class that wishes to be excluded (“opt-out”) from the Settlement Class may do so by completing and submitting the online form on the Settlement Website or by mailing a valid request to opt-out, as described in the Long Form Notice and Postcard Notice, to the Settlement Administrator. Requests for exclusion must be submitted online by the Exclusion Deadline, or if mailed, must be *received* by the Settlement Administrator (not just postmarked) by the Exclusion Deadline, or they shall not be valid. For exclusion requests that are submitted online, the Class Member shall have the opportunity to print a page immediately after submission showing the information entered and the date and time the request for exclusion was received. A Settlement Class Member who elects to opt-out of this Settlement and the Settlement Class shall not be permitted to object to this Settlement or receive any of the benefits of the Settlement. Settlement Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

13. Any Member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all of the terms and provisions of the Settlement Agreement including, but not limited to, the releases, waivers, and covenants described

in the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund created pursuant to the Settlement Agreement.

The Fairness Hearing

14. A hearing on final settlement approval (the “Fairness Hearing” or “Final Approval Hearing”) is hereby scheduled to be held before this Court on _____ [100 days from entry of this Order] at __:___ _M by telephone to consider the fairness, reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this Class Action with respect to the Released Party that is the Defendant therein, and the entry of final judgment in the Class Action. Class Counsel’s applications for award of attorneys’ fees and costs shall be heard at the time of the fairness hearing.

15. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court within further notice to the Members of the Settlement Class other than that which may be posted by the Court.

16. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class Members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

17. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any Class Member may object to the proposed Settlement, entry of the Final Order and Judgment approving the settlement, and Class Counsel’s application for fees and expenses by filing and serving a written objection.

18. Any Class Member making the objection (an “objector”) must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and

provide the basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

19. Objections, along with any notices of intent to appear, must be filed no later than _____, 202___. If Counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of Court at the following address:

Office of the Clerk
United States District Court for the
District of Maryland
Greenbelt Division
6500 Cherrywood Lane
Greenbelt, MD 20770

20. Objections, along with any notices of intent to appear, also must be mailed to Class Counsel and counsel for Defendant at the addresses listed below:

Nicholas A. Migliaccio, Esquire
Jason S. Rathod, Esquire
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, DC 20002

Counsel for Plaintiff

Geoffrey W. Castello, Esquire
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Counsel for Defendant

21. Only Class Members who have filed and served valid and timely notices of objections shall be entitled to be heard at the Fairness Hearing. Any Class Member who does not

timely file and serve an objection in writing regarding the Settlement, entry of Final Order and Judgment, or to Class Counsel's application for fees, cost, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

22. Persons wishing to be heard at the Fairness Hearing are required to file with the Court and serve on counsel for Plaintiff and Defendant written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

23. All Members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendant.

Other Provisions

24. Upon approval of the Settlement provided for in the Settlement Agreement, each and every time and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

25. All reasonable costs incurred in notifying Members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

26. Counsel for the Parties are authorized to jointly use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Court or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice, and other exhibits that they jointly agree are reasonable and necessary.

IT IS SO ORDERED.

DATE

THE HONORABLE PAULA XINIS
UNITED STATES DISTRICT JUDGE

Exhibit D

Covered Products

XTEND® (includes all flavors, forms, sizes and servings)

XTEND® Original (includes all flavors, forms, sizes and servings)

XTEND® Ripped (includes all flavors, forms, sizes and servings)

XTEND® Ready To Drink (includes all flavors, forms, sizes and servings)

XTEND® Carbonated (includes all flavors, forms, sizes and servings)

XTEND® On The Go (includes all flavors, forms, sizes and servings)

XTEND® Sport (includes all flavors, forms, sizes and servings)

XTEND® Raw (includes all flavors, forms, sizes and servings)

XTEND® Pro (includes all flavors, forms, sizes and servings)

XTEND® PM (includes all flavors, forms, sizes and servings)

XTEND® Perform (includes all flavors, forms, sizes and servings)

XTEND® Perfect Ten Amino (includes all flavors, forms, sizes and servings)

XTEND® Free (includes all flavors, forms, sizes and servings)

XTEND® Natural Zero (includes all flavors, forms, sizes and servings)

XTEND® Keto Dual Energy (includes all flavors, forms, sizes and servings)

XTEND® Keto (includes all flavors, forms, sizes and servings)

XTEND® HydraSport (includes all flavors, forms, sizes and servings)

XTEND® Gummies (includes all flavors, forms, sizes and servings)

XTEND® GO (includes all flavors, forms, sizes and servings)

XTEND® Energy (includes all flavors, forms, sizes and servings)

XTEND® Energy CRB (includes all flavors, forms, sizes and servings)

XTEND® Energy Knockout (includes all flavors, forms, sizes and servings)

XTEND® Elite Pre (includes all flavors, forms, sizes and servings)

XTEND® Elite Pre (includes all flavors, forms, sizes and servings)

XTEND® Elite Gummy (includes all flavors, forms, sizes and servings)

XTEND® Capsules (includes all flavors, forms, sizes and servings)

Exhibit E

TIMELINE OF EVENTS

| EVENT | ANTICIPATED DATE |
|---|---|
| Entry of Preliminary Approval Order (“Preliminary Approval”). | TBD by the Court. |
| Deadline for notice data to Settlement Administrator. | 5 days after Preliminary Approval. |
| The Settlement Administrator establishes the Settlement Fund and Defendant funds the Settlement Fund with \$____,_____ for the Settlement Administrator to execute the Notice Plan. | 15 days after Preliminary Approval. |
| The Notice Date, which is the day on which the Settlement Administrator initiates the Notice Plan, including disseminating notice to Settlement Class Members. | 30 days after Preliminary Approval. |
| Deadline for Settlement Administrator to receive Exclusion Forms, and Objections. | 60 days after Notice Date. |
| Deadline for Plaintiff to move for Final Approval, Attorneys’ Fees and Expenses, and for Service Awards. | 35 days prior to the scheduled Final Approval Hearing date. |
| Deadline for Plaintiffs’ Counsel to file exclusions and objections and supporting documentation with the Court. | 14 days prior to the scheduled Final Approval Hearing date. |
| Deadline for the Parties to file responses to objections and requests for exclusion. | 7 days prior to the scheduled Final Approval Hearing date. |
| Final Approval Hearing | TBD by the Court (the Parties will request no later than 120 days after entry of Preliminary Approval). |

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| Effective Date | The later of: (i) the expiration date of the time for filing a notice of appeal from the Final Approval of this Agreement or (ii) if a notice of appeal is filed, the date on which the Final Approval and judgment is no longer subject to review by any court and has been finally resolved. |
| Deadline for Defendant to Fund the Remainder of the Settlement Fund. | 30 days after the Effective Date. |
| Deadline for the Settlement Administrator to pay Plaintiff's Attorneys' Fees | 40 days after the Effective Date. |
| Deadline for the Settlement Administrator to pay the Service Award to Class to Class Representative. | 40 days after the Effective Date. |
| Distribution Date. | 60 days after the later of the Effective Date. |