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13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 VEDA WOODARD TERESSA RIZZO-)
 16 MARINO, and DIANE MORRISON, on)
 17 behalf of themselves, all others similarly)
 situated, and the general public,)

18 Plaintiffs,)

19 vs.)

20 LEE LABRADA; LABRADA)
 21 BODYBUILDING NUTRITION, INC.;)
 22 LABRADA NUTRITIONAL SYSTEMS,)
 INC.; DR. MEHMET C. OZ, M.D.;)
 23 ENTERTAINMENT MEDIA VENTURES,)
 INC., d/b/a OZ MEDIA; ZOCO)
 24 PRODUCTIONS, LLC; HARPO)
 25 PRODUCTIONS, INC; SONY PICTURES)
 26 TELEVISION INC.; NATUREX, INC.; and)
 27 INTERHEALTH NUTRACEUTICALS,)
 INC.,)

28 Defendants.)

No. 5:16-cv-00189-JGB-SP
 NOTICE OF MOTION AND
 MOTION FOR
 DETERMINATION OF GOOD
 FAITH SETTLEMENT
 PURSUANT TO STIPULATION
 OF THE PARTIES;
 MEMORANDUM OF POINTS
 AND AUTHORITIES;
 DECLARATION OF JOHN K.
 EDWARDS; AND [PROPOSED]
 ORDER

Date: July 16, 2018
 Time: 9:00 a.m.
 Ctrm: 1
 Judge: Hon. Jesus G. Bernal

1
2 **TO THE HONORABLE COURT, PLAINTIFFS AND THEIR ATTORNEYS OF**
3 **RECORD:**

4 **PLEASE TAKE NOTICE THAT** July 16, 2018 at 9:00 a.m., or as soon
5 thereafter as counsel may be heard in Department 1 of the above-captioned Court
6 located at 3470 Twelfth Street, Riverside, California 92501, Defendants Dr. Mehmet
7 C. Oz, M.D., ZoCo Productions, LLC, Harpo Productions, Inc., and Entertainment
8 Media Ventures, Inc., (collectively, the “Media Defendants”) will move the court for
9 order pursuant to stipulation of the parties (1) determining the settlement reached
10 between the Media Defendants and Class Plaintiffs and Proposed Class
11 Representatives Veda Woodard, Teresa Rizzo-Marino, and Diane Morrison
12 (“collectively, Plaintiffs”) is in good faith pursuant to *Code of Civil Procedure*
13 (“*CCP*”) § 877 and 877.6 and (2) barring any current or future cross-complaints or
14 complaints against Media Defendants for equitable contribution or partial or
15 comparative indemnity, based on comparative negligence or comparative fault arising
16 out of the subject matter of the lawsuit.
17

18 Media Defendants bring this motion pursuant to *CCP* §§ 877 and 877.6
19 on the grounds that the settlement entered into between Plaintiffs and Media
20 Defendants is fair and reasonable compensation for the compromise of all claims
21 related to this action.

22 Plaintiffs filed their Complaint [Doc. 01] against the multiple defendants
23 and Media Defendants on February 2, 2016. Thereafter, Plaintiffs filed a First
24 Amended Complaint [Doc. 88] (“FAC”) on June 2, 2016. The FAC is the operative
25 pleading and Media Defendants request that the Court dismiss with prejudice the FAC
26 against Media Defendants upon granting this Motion and retain jurisdiction pursuant to
27 *CCP* § 664.6 to enforce the settlement.
28

1 The parties to this case that are affected by this motion are:

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6 This Motion is based on this Notice, the attached Memorandum of Points and
7 Authorities, the Declaration of John K. Edwards and exhibits attached thereto, upon all
8 the pleadings, papers and files in this matter, and upon such oral or documentary
9 evidence as may be produced or heard at the hearing on this motion.

10 DATED: June 15, 2018 Respectfully submitted,
11

12
13 /s/ Ronald A. Marron
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF RELEVANT FACTS

Media Defendants seek an order determining that the settlement reached with Plaintiffs, in the monetary amount of \$5,250,000 and other good and valuable consideration, is in good faith, given that Media Defendants contest liability for any of Plaintiffs' claimed injuries. Media Defendants bring this Motion pursuant to stipulation of the parties. This motion is unopposed by all the parties except for LEE LABRADA, LABRADA BODYBUILDING NUTRITION, INC., and LABRADA NUTRITIONAL SYSTEMS, INC. ("Labrada Defendants") (*See* Edwards Dec., ¶ 5 and Exhibit A.) The Labrada Defendants were unable to inform Media Defendants of their position to this Motion by the Court's June 15, 2018 deadline. (*See* Edwards Dec., ¶ 5). Media Defendants will update the Court once Labrada informs Media Defendants of their position to this Motion.

Plaintiffs' Motion for Preliminary Approval is being filed concurrently with this Motion. The settling parties request a single hearing to rule on Plaintiffs' Motion for Preliminary Approval and this Motion as soon as the Court's schedule permits.

A. The Action and Damages

Plaintiffs and putative class members allegedly purchased Labrada Garcinia Cambogia DUAL ACTION FAT BUSTER ("GC") and Labrada Green Coffee Bean Extract FAT LOSS OPTIMIZER ("GCBE") (together, the "Products") on multiple occasions. [Doc. 88 at 5-6]. Plaintiffs claim to have purchased the products after watching episodes¹ of *The Dr. Oz Show* ("TDOS") that referenced GC and GCBE ("Complained of Broadcasts") and/or reading a fact sheet posted on Doctoroz.com on April 26, 2012 regarding GCBE ("GCBE Post"). *Id.* at 16-18, 40-49.

¹ Episode 3-143 aired on April 26, 2012 (Green Coffee Bean I); Episode 4-018 aired on September 10, 2012 (Green Coffee Bean II); and Episode 4-052 aired on October 29, 2012 (Garcinia Cambogia I).

1 The FAC asserts that the Media Defendants made misrepresentations regarding
2 the quality, effectiveness, and sponsorship of these weight-loss supplements
3 manufactured by Labrada. *Id.* at 12-15. Specifically, Plaintiffs allege that the
4 Complained of Broadcasts and GCBE Post fraudulently promoted the weight loss
5 benefits of the Products, misrepresented Dr. Oz’s affiliation with products he endorses,
6 and failed to disclose those affiliations to viewers of TDOS. *Id.* at 12-13. Plaintiffs
7 further allege Dr. Oz was paid by co-defendants Labrada, Interhealth, and/or Naturex
8 in exchange for promoting GCBE and GC on TDOS. *Id.*

9 **B. Pleadings and Parties**

10 Plaintiff Veda Woodard filed her Complaint against multiple defendants and the
11 Media Defendants on or about February 2, 2016. (Edwards Dec., ¶ 7.) Plaintiffs filed
12 a First Amended Complaint (“FAC”) on or about June 2, 2012. (Exhibit B.)

13 **C. Settlement**

14 **Settling Parties:** After extensive discovery and lengthy formal and informal,
15 arm’s length settlement negotiations, as detailed further in the accompanying Motion
16 for Preliminary Approval, Media Defendants reached a settlement with Plaintiffs, by
17 and through their counsel of record. (Edwards Dec., ¶ 8.)

18 **Settlement Basis and Amount:** Although Media Defendants deny liability for
19 Plaintiffs’ alleged injuries and damages, a settlement payment in the monetary amount
20 of five million, two hundred and fifty thousand dollars (\$5,250,000) (“Settlement
21 Sum”), along with other consideration set forth below, to Plaintiffs to buy their peace
22 and to avoid the expense of preparing for and defending this case at trial. Given
23 Plaintiffs’ alleged damages exceed ten (10) million dollars and that Media Defendants
24 strongly contest liability to Plaintiffs for their injuries, the Settlement Sum is
25 reasonable and well within the “ballpark”. (Edwards Dec., ¶ 8.)

26 **Additional Terms:** In consideration for payment of the Settlement Sum to
27 Plaintiffs, Plaintiffs have agreed to the following:
28

- 1 • To dismiss their First Amended Complaint with prejudice against the
- 2 Media Defendants;
- 3 • To fully and completely release Media Defendants, their agents,
- 4 insurers and representatives from any and all claims, known or
- 5 unknown, arising out of or in any way related to this action;
- 6 • Each settling party is to bear their own costs and fees and neither will
- 7 be deemed a prevailing party; and
- 8 • The settlement is subject to determination of good faith.

9 (Edwards Dec., ¶ 8; Exhibit C.)

10 **Pleadings Affected By Settlement:** The FAC is the pleading affected by this
11 Motion and Defendants request that the Court dismiss with prejudice the FAC against
12 Media Defendants upon granting this Motion and retain jurisdiction to enforce the
13 settlement. There was no collusion, fraud or tortious conduct between the settling
14 parties. (Edwards Dec., ¶ 9.)

15 **Stipulation of the Parties**

16 The parties have stipulated to the following: (1) the settlement between
17 Plaintiffs and the Media Defendants is in good faith, is fair, is within the “ballpark” or
18 “reasonable range” of their share of liability, if any, for Plaintiffs’ injuries and
19 damages, as provided in *Tech-Bilt v. Woodward-Clyde*, (1985) 38 Cal.3d 488 and per
20 *Code of Civil Procedure* §§ 877 and 877.6, and the settlement is not collusive; (2) to
21 accept service of this Motion; (3) entry of an order by the Court that settlement was
22 made in good faith, which bars and extinguishes any pending and future claims for
23 indemnity, contribution and comparative fault against Media Defendants arising out of
24 this action. (See Exhibit A.)

25 Based on the foregoing, Media Defendants respectfully request that the Court
26 rule promptly on this Motion and issue an Order finding that the settlement between
27 Plaintiff and Media Defendants is in good faith, thereby barring all claims against
28

1 Media Defendants for indemnity or contribution, based on comparative negligence or
2 comparative fault.

3 **II. LEGAL AUTHORITY FOR DETERMINATION OF GOOD FAITH**
4 **SETTLEMENT**

5 California *Code of Civil Procedure* Section 877.6 provides in relevant part as
6 follows:

7 (a)(2) ...a settling party may give notice of settlement to all
8 parties and to the court, together with an application for
9 determination of good faith settlement and a proposed order.
10 The application shall indicate the settling parties, and the
11 basis, terms and amount of the settlement. The notice,
12 application, and proposed order shall be given by certified
13 mail, return receipt requested. Proof of service shall be filed
14 with the court. Within 25 days of the mailing of the notice,
15 application, and proposed order, or within 20 days of
16 personal service, a nonsettling party may file a notice of
17 motion to content the good faith of the settlement. If none
18 of the nonsettling parties files a motion within 25 days of
19 mailing of the notice, application, and proposed order, or
20 within 20 days of personal service, the court may approve
21 the settlement...

22 (b) The issue of good faith of a settlement may be
23 determined by the court on the basis of affidavits served
24 with the notice of hearing, and any counter affidavits filed in
25 response, or the court may, in its discretion, receive other
26 evidence at the hearing.

27 (c) A determination by the court that the settlement was
28 made in good faith shall bar any other joint tortfeasor or co-
obligor from any further claims against the settling
tortfeasor or co-obligor for equitable comparative
contribution, or partial or comparative indemnity, based on
comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the
burden of proof on that issue.

In *Tech-Bilt*, above, the California Supreme Court set forth the “reasonable
range” test to determine whether a settlement has been made in good faith pursuant to
CCP section 877.6. The factors considered include:

... a rough approximation of plaintiffs’ total recovery and
the settlor’s proportionate liability, the amount paid in
settlement, the allocation of settlement proceeds among

1 plaintiffs, and a recognition that a settlor shall pay less in
2 settlement than he would if he were found liable after trial.
3 Other relevant considerations include the financial
4 conditions and insurance policy limits of the settling
5 defendants, as well as the existence of collusion, fraud or
6 torturous conduct aimed to injure the interest of non-settling
7 defendants. Finally, practical considerations obviously
8 require that the evaluation be made on the basis of
9 information available at the time of the settlement. (*Ibid.* at
10 499).

11 In addition, the law fundamentally supports the settlement of disputes. As the
12 Court of Appeal has stated:

13 The law wisely favors settlements . . . [Citations] It is the policy
14 of the law to discourage litigation and to favor compromises of
15 doubtful rights and controversies, made either in or out of court.
16 [Citations.] Settlement agreements are highly favored as
17 productive of peace and good will in the community, and
18 reducing the expense and persistency of litigation. (Citations.)
19 Indeed, it has been said that a major goal of section 877 is the
20 encouragement of settlement. [Citations.] (*Stambaugh v.*
21 *Superior Court* (1976) 62 Cal.App.3d 231, 236.)

22 **III. MEDIA DEFENDANTS' SETTLEMENT IS IN "GOOD FAITH"**

23 A "good faith" settlement under *CCP* § 877.6 bars all liability for contribution to
24 non-settling parties who, in turn, obtain a reduction of the claims against them in the
25 amount stipulated or the amount of consideration paid for the discharge. (*Standard*
26 *Pacific v. AA Baxter Corp.*, (1989) 216 Cal.App.3d 324.) Thus, *CCP* §§ 877 and 877.6
27 foster settlement while simultaneously protecting the interests of non-settling parties.

28 Pursuant to *Tech-Bilt*, in determining whether a settlement has been made in
"good faith," courts should inquire into whether the amount of the settlement is within
a reasonable range of the settling tort-feasor's proportionate share of comparative
liability and consider the following additional factors:

- (1) A rough approximation of plaintiff's total recovery and the settlor's proportionate liability;
- (2) The amount paid in settlement;
- (3) The allocation of settlement proceeds among plaintiffs;

- 1 (4) Recognition that a settlor should pay less in settlement than it would if it
2 were found liable at trial;
- 3 (5) The financial conditions and insurance policy limits of settling
4 defendants;
- 5 (6) The existence of collusion, fraud, or tortious conduct aimed to injure the
6 interests of non-settling defendants; and
- 7 (7) Whether the settlement figure is grossly disproportionate to what a
8 reasonable person at the time of a settlement would estimate the settling
9 defendant's liability to be.

10 (*Tech-Bilt, Inc., supra*, 38 Cal.App.3d at 499.) Additionally, the court may also apply
11 its own experience in determining whether a settlement was reached in good faith.
12 (*Ibid.* at 500.)

13 Following the *Tech-Bilt* decision, courts have made it clear that a good faith
14 settlement does not call for a perfect or even nearly perfect apportionment of liability.
15 (*Abbott Ford, Inc. v. Superior Court*, (1987) 43 Cal.3d 858, 874.) All that is necessary
16 is that there be a rough approximation between a settling tort-feasor's offer of
17 settlement and its proportionate liability. (*Bay Development Ltd. v. Superior Court*,
18 (1990) 50 Cal.3d 1012, 1027-28.) Moreover, when evaluating the plaintiff's total
19 recovery, the amount is not based on what plaintiff claims to be entitled to, but instead
20 is based on what the plaintiff could actually recover. (*Horton v. Superior Court*,
21 (1987) 194 Cal.App.3d 727, 735-36.)

22 A settling party's burden in moving for good faith is to prove there has been a
23 settlement. (*Fisher v. Superior Court*, (1980) 103 Cal.App.3d 434, 447; *see also*
24 *Mattco Forge Inc. v. Arthur Young & Co.*, (1995) 38 Cal.App.4th 1337, 1350 fn. 6.)
25 Though all parties have agreed not to oppose this Motion, it should be noted that any
26 party contesting the good faith of the settlement party's settlement has the burden of
27 proof to establish that the settlement was not in good faith. (*CCP* § 877.6(b).)

28

1 As detailed below, the settlement in this case meets the *Tech-Bilt* factors and
2 supports a determination by the court that this settlement is in good faith.

3 **A. A Rough Approximation of Plaintiff’s Total Recovery and the**
4 **Settling Party’s Proportionate Liability.**

5 While Media Defendants strongly dispute liability, in the interest of buying
6 peace, they negotiated a settlement with Plaintiffs for the total sum of \$5,250,000 and
7 an agreement not to re-air the subject Dr. Oz episodes. Given that Media Defendants
8 believe there is no evidence to support liability, the amount paid is more than fair and
9 reasonable. In particular, Media Defendants contend that the issue of reliance varies
10 from putative class member to class member. Thus, the alleged injury (absence of
11 weight loss) is an individualized question, which is not appropriate for class
12 certification. Furthermore, Media Defendants contend there is no evidence to support
13 Plaintiffs’ theory that Dr. Oz (or anyone else affiliated with the show) received
14 payment from the other defendants in exchange for referencing GC and/or GCBE. In
15 addition, the Media Defendants assert that any statements by Dr. Oz about the
16 Products were not material. Thus, there is no basis for liability against Media
17 Defendants and the settlement reached by Media Defendants, therefore, is fair and
18 exceeds their proportionate share of liability.

19 **B. Amount Paid in Settlement.**

20 The total amount of the settlement is \$5,250,000. (Exhibit C.)

21 **C. The Existence Of Collusion, Fraud, Or Tortious Conduct Aimed To**
22 **Injure The Interests Of Non-Settling Defendants.**

23 No collusion, fraud, or tortious conduct has occurred between the settling
24 parties. (Edwards Dec., ¶ 9.) This settlement is the result of a series of arms’ length
25 negotiations between the parties. (Edwards Dec., ¶ 8.) All parties have stipulated that
26 the settlement is in good faith and there is no aim to injure the interests of any non-
27 settling party. (Exhibit A.)

1 **IV. A GOOD FAITH DETERMINATION IS PROPER GIVEN THERE IS NO**
2 **EVIDENCE OF MOVING PARTY’S LIABILITY**

3 The factors set forth in *Tech-Bilt*, however, are non-exclusive and may not apply
4 in all cases. (*Dole Food Company, Inc. v. Superior Court* (2015) 242 Cal.App.4th 894,
5 909.) “A judge charting the boundaries of good faith of necessity must avoid a rigid
6 application of the factors set forth in *Tech-Bilt*.” (*North County Contractor’s Assn. v.*
7 *Touchstone Ins. Services* (994) 27 Cal.App.4th 1085, 1090.) An agreement by a
8 defendant to pay little to no amount may be properly deemed a good faith settlement
9 under the *Tech-Bilt* factors. (*Armstrong World Industries, Inc. v. Superior Court*
10 (1989) 215 Cal.App.3d 951, 957-958.)

11 Although the *Tech-Bilt* factors have been all addressed in this motion, this is a
12 case in which Media Defendants have no liability. Specifically, Plaintiffs cannot
13 establish the requisite elements of their claims because Dr. Oz’s statements were not
14 material.

15 In sum, given that the evidence indicates that, in their view, Media Defendants
16 are unlikely to be found liable for Plaintiffs’ claimed injuries, it is not necessary to
17 consider the rough approximation of Plaintiffs’ recovery. Of importance is the absence
18 of collusion, fraud or tortious conduct between Plaintiffs and Media Defendants and
19 that settlement is reasonably based on the belief that there was no negligence or fraud
20 by Media Defendants.

21 **V. MOVING PARTY IS ENTITLED TO AN ORDER BARRING FUTURE**
22 **INDEMNITY AND CONTRIBUTION ACTIONS**

23 Pursuant to *Code of Civil Procedure* § 877.6(c), “[a] determination by the court
24 that the settlement was made in good faith shall bar any other joint tortfeasor or co-
25 obligor from any further claims against the settling tortfeasor or co-obligor for
26 equitable comparative contribution, or partial or comparative indemnity, based on
27 comparative negligence or comparative fault.” Because moving party’s settlement
28

1 with Plaintiffs was made in good faith, all claims for indemnity and/or contribution
2 arising out of Plaintiffs' claims are barred.

3 **VI. CONCLUSION**

4 Based on the foregoing, Media Defendants respectfully request that the Court
5 grant this Motion and issue an Order determining that the settlement between Plaintiffs
6 and Media Defendants is in good faith, thereby barring and extinguishing any and all
7 existing and future claims by joint tortfeasors or co-obligors for equitable comparative
8 fault, indemnity, contribution, partial and/or comparative indemnity, based upon
9 comparative negligence or comparative fault.

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11
12 DATED: June 15, 2018 Respectfully submitted,

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14
15 /s/ Ronald A. Marron
16 RONALD A. MARRON

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Dated: June 15, 2018

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Productions, Inc.***

**JEFFER MANGELS BUTLER &
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Dated: June 15, 2018

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ELECTRONIC SIGNATURE CERTIFICATION

I, Ronald A. Marron, hereby attest that that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

/s/ Ronald A. Marron
Ronald A. Marron

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