UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 19-22864-Civ-COOKE/GOODMAN

JUAN COLLINS and JOHN FOWLER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

QUINCY BIOSCIENCE, LLC,
a Wisconsin limited liability company,

Defendant.
_____/

PLAINTIFFS' AMENDED[1] UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF THE SETTLEMENT CLASS

[1] Amended in accord with this Court's Paperless Order of June 24, 2020. ECF No. 143.

Plaintiffs Juan Collins and John Fowler ("Plaintiffs"), on behalf of themselves and on behalf of all those similarly situated, hereby move unopposed for entry of an order granting preliminary approval of the nationwide class action settlement as set forth in the parties' Settlement Agreement and Release, certifying a nationwide class for settlement purposes, and providing for issuance of notice to Class Members. The Settlement Agreement includes plaintiffs' counsel for six other pending Prevagen proposed class action cases being litigated in California, New York, Texas, and Missouri that have all joined together and support this proposed Global Settlement Agreement.

INTRODUCTION

Plaintiffs and Defendant Quincy Bioscience, LLC ("Quincy") (collectively the "Parties") have negotiated a global nationwide settlement that provides significant and substantial monetary and injunctive relief to purchasers of Prevagen®,[2] that Plaintiffs allege has been falsely advertised and marketed by Quincy throughout the United States. Quincy certainly denies all such allegations, but has agreed to globally resolve this matter, instead of continuing to litigate all of these pending putative class action matters across the country. Under the careful supervision of the Honorable (Ret.) John W. Thornton, all of the parties conducted over a month long, extensive, arm's length mediation, which has resulted in the executed Settlement Agreement and Release (attached as Exhibit 1) ("Settlement Agreement") and agreed upon the form of proposed Notice to Class Members.[3]

Under the Settlement Agreement, Quincy has agreed, among other things, to offer substantial refunds to Settlement Class Members for Prevagen in varying amounts that

[2] "Prevagen" means Prevagen Regular Strength 30 Count, Prevagen Regular Strength Chewables, Prevagen Regular Strength 60 Count, Prevagen Extra Strength 30 Count, Prevagen Extra Strength Chewables, Prevagen Extra Strength 60 Count, and Prevagen Professional Strength sold in the United States.

[3] Unless otherwise noted, all capitalized terms used herein have the same definition as that provided in the Settlement Agreement.

are based upon whether those claims are supported by proof of purchase, and to important, stipulated injunctive relief (as set forth below). Notice of this Settlement Agreement will be disseminated to Class Members via, among other things, (i) internet notice, (ii) establishment of a settlement website, and (iii) direct mail (along with a Claim Form) or email to currently available addresses that have been provided to Quincy through Quincy's websites or via email by Prevagen consumers.

Undersigned Counsel were very well positioned to evaluate and negotiate this settlement because they have been actively litigating against Quincy in this and other fora for many years.[4] Specifically, Plaintiffs' counsel investigated their claims and allegations through extensive discovery, including the review of tens of thousands of pages of documents and the depositions of key Quincy personnel as well as expert discovery. Despite that work, Plaintiffs and the Class faced significant hurdles in litigating their claims to successful adversarial resolution. Given the immediate and substantial benefits the Settlement Agreement will provide to the Class, there can be no question that the terms of the proposed Settlement Agreement are at least "fair, reasonable, and adequate" and should receive the Court's preliminary approval, so that the Class can be informed and be heard as to their opinions of the Settlement Agreement at the Final Fairness Hearing.

[4] All of the current pending Prevagen class action cases around the country are referred herein as the "Prevagen Actions." They include *Collins, et al. v. Quincy Bioscience LLC*, No. 19-22864-Civ-COOKE/GOODMAN (S.D. Fla.); *Racies v. Quincy Bioscience, LLC*, No. 15-cv-00292-HSG, (N.D. Cal.) ("*Racies*"); *Vanderwerff v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-07582-RA (S.D.N.Y.) ("*Vanderwerff*"); *Karathanos v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-08023-RA (S.D.N.Y.) ("*Karathanos*"); *Spath v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-03521-RA (S.D.N.Y.) ("*Spath*"); *Engert et al. v. Quincy Bioscience, LLC*, No. 1:19-cv-183-LY (W.D. Tex.) ("*Engert*"); and *Miloro v. Quincy Bioscience, LLC*, No. 16PH-cv01341 (Mo. Cir. Ct.) ("*Miloro*").

FACTUAL AND PROCEDURAL BACKGROUND

1. The Litigation and Mediation

Plaintiff Collins commenced this Action by filing a Class Action Complaint and Demand for Jury Trial on July 11, 2019. ECF No. 1. Plaintiff Collins and Plaintiff Fowler filed an Amended Class Action Complaint and Demand for Jury Trial on September 11, 2019. ECF No. 15. After reviewing the information and discovery produced in the *Racies* action (see below), as well as consulting with their own experts, Plaintiffs filed a comprehensive motion for class certification on September 17, 2019. ECF No. 21. The Court referred that motion to The Honorable Judge Goodman for a Report and Recommendation. ECF No. 23. After Plaintiffs filed their class certification motion, Plaintiffs and Quincy filed 20 additional submissions through the course of discovery and class proceedings to fully brief the motion. ECF No. 119 ("R&R") at 5–6 (citing submissions).

On September 25, 2019, Quincy moved to dismiss this Action. ECF Nos. 25, 27–29, 34, and 89. Quincy's motion to dismiss is currently pending. Plaintiffs and Quincy conducted extensive discovery, including the depositions of both Plaintiffs Collins and Fowler, the corporate representative deposition of Quincy, depositions of Quincy's Chief Financial Officer and Market Development Director, and the exchange of substantial document requests, in response to which Quincy produced approximately 40,077 documents consisting of over 160,000 pages, requests for admissions and interrogatories. Plaintiffs have also issued third party subpoenas to Florida retailers regarding their sales of Prevagen within Florida. ECF Nos. 54-6 (Walmart), 56 (Amazon and The Vitamin Shoppe), 72 (The Vitamin Shoppe).

Judge Goodman held an over 5-hour hearing on Plaintiffs' motion for certification. ECF No. 84. After considering additional post-hearing briefing, Judge Goodman entered a Report and Recommendation certifying a Florida class of Prevagen purchasers. *See*

R&R. Quincy filed objections to the R&R, which Plaintiffs opposed, and which are currently pending before Judge Cooke for decision. ECF Nos. 129–130. On May 29, 2020, Quincy filed a motion for summary judgment. ECF Nos. 138–141.

In addition to this matter, as of the date of this Settlement Agreement, Prevagen Actions were previously filed and/or pending throughout the country. *Racies*, filed in the Northern District of California in February 2015, was the first-filed class action brought in the country against Quincy alleging deceptive marketing and sales of Prevagen. In December 2017, the Court granted certification of a California class of Prevagen purchasers. *Racies v. Quincy Bioscience, LLC*, No. 15-cv-00292-HSG, 2017 WL 6418910, at *1 (N.D. Cal. Dec. 15, 2017). After extensive litigation of pretrial issues, including summary judgment motions and *Daubert* motions, *Racies* was tried before a jury in January 2020; however, the district court declared a mistrial after a jury deadlock, and the California class was later de-certified. *Racies v. Quincy Bioscience, LLC*, No. 15-cv-00292-HSG, 2020 WL 2113852, at *1 (N.D. Cal. May 4, 2020).

In 2016, the *Miloro* matter was filed in Missouri state court on behalf of Missouri purchasers of Prevagen Products. By agreement of the parties to that action, *Miloro* was stayed for much of the past four years but Defendant produced all of the documents that were produced in another action filed by the Federal Trade Commission and the *Racies* matter. The parties in the *Miloro*, *Vanderwerff*, *Karathanos* and *Spath* matters engaged in extensive settlement efforts including several mediation sessions before Hon. Wayne Andersen (Ret.) and multiple in-person negotiations took place between Quincy and Miloro's and Spath's Counsel. Ultimately, an agreement-in-principle was reached but was conditioned on FTC action that did not take place. At that time, in March 2020, the stay was lifted in the *Miloro* matter and Quincy filed a motion to dismiss which is still pending.

In February 2017, the *Vanderwerff* and *Karathanos* actions were filed on behalf of New Jersey and New York consumers, respectively. Although those cases were originally filed in the District of New Jersey and the Eastern District of New York, they were eventually transferred to the Southern District of New York. Meanwhile, motions to dismiss have been fully briefed in *Vanderwerff* and *Karathanos* and are still pending. In 2018, the *Spath* action was filed in the District of New Jersey on behalf of New Jersey purchasers of Prevagen Products. The *Spath* case was also subsequently transferred to the Southern District of New York. On June 3, 2020, Judge Ronnie Abrams in the Southern District of New York stayed the *Vanderwerff*, *Karathanos*, and *Spath* actions pending approval of this Settlement Agreement.

In February 2019, the *Engert* action was filed in the Western District of Texas seeking to represent Texas purchasers of Prevagen Products (and alternatively a nationwide class of purchasers of Prevagen Products). The *Engert* court denied Quincy's Motion to Dismiss on October 8, 2019.

Defendant, twice, unsuccessfully moved the Judicial Panel on Multidistrict Litigation to coordinate the then-pending Prevagen Actions to a single court.

Counsel for the Parties, along with counsel from all Prevagen Actions, participated in multiple mediation sessions with the Honorable John W. Thornton (Ret.) on April 22, May 4, May 21, and May 26, 2020. Before, during, and after the mediation, the Parties engaged in a series of discussions, with and without Judge Thornton, regarding a settlement of the Prevagen Actions, including substantial arm's-length negotiations. The result was this Settlement Agreement, which includes the settlement of the Action in its entirety as well as the settlement of the remaining Prevagen Actions.

2. The Settlement Agreement and its Terms

A. *The Proposed Class*

The Settlement Agreement provides relief to all individuals who purchased one or more Prevagen Products, from a Settling Defendant (as defined in Exhibit 1) or from a

reseller authorized by the Settling Defendants to sell Prevagen Products, for personal consumption and not resale, within the United States, from January 1, 2007 through the date of Preliminary Approval. It is estimated that there are approximately 3,000,000 (three million) potential class members.

B. ***Monetary and Other Relief***

The Settlement Agreement affords these Class Members monetary relief, and provides other injunctive relief to assist the Class Members. Specifically, the Settlement Agreement provides that:

A. The Settling Defendants shall offer partial refunds to Settlement Class Members for purchases of Prevagen Product(s) based upon a two-tier monetary relief structure to be distributed subject to the following provisions of the Claims Process:

1. The Settling Defendants agree to pay to all Settlement Class Members with Proof of Purchase who submit a valid "Claim Form," a cash refund of 30% of the Quincy MSRP for the Prevagen Products those claimants purchased within the Class Period, **up to $70 per individual claimant.** These claims will be referred to herein as "Proof of Purchase Claims," and each such claimant a "Proof of Purchase Claimant";

2. The Settling Defendants agree to pay to all Settlement Class Members without Proof of Purchase who submit a valid "Claim Form" a cash refund of 30% of the Quincy MSRP for the Prevagen Products those claimants purchased within the Class Period, **up to $12 per claimant.** These claims will be referred to herein as "No Proof Claims," and each such claimant a "No Proof Claimant";

B. The Parties also stipulated to the following injunctive relief:

The Settling Defendants agree that they will not make, or assist others in making, expressly or by implication, including through the use of a product name, endorsement, testimonial, depiction, or illustration, any representation that such Covered Product with respect to humans:

A. improves memory;
B. improves memory within 90 days or any other period of time; or

C. reduces memory problems associated with aging;

unless the representation is non-misleading. A representation is non-misleading if, at the time of making such representation, the Settling Defendants possess and rely upon competent and reliable scientific evidence substantiating that the representation is true, or if the representation is clearly and conspicuously qualified by either:

a. A disclaimer substantially similar to the following: "Based on a clinical study of subgroups of individuals who were cognitively normal or mildly impaired. This product is not intended to diagnose, treat, cure, or prevent any disease."; or

b. A disclaimer substantially similar to the following: "Based on results from two subgroups of individuals who participated in a randomized double blind placebo controlled clinical study. Participants in the two subgroups were cognitively normal or mildly impaired. This product is not intended to diagnose, treat, cure, or prevent any disease."

C. ***Release of Claims against Defendant***

In exchange for the settlement relief, members of the Settlement Class will release the Settling Defendants from all claims as outlined in the Settlement Agreement.

D. ***Class Notice***

Class Members will receive notice of the Settlement Agreement in the manner recommended by the Class Action Settlement Administrator and in the form of the notice attached to the Settlement Agreement as Exhibit D, assuming the form is approved by the Court. The manner of notice will include, but not be limited to, (i) internet notice, (ii) establishment of a settlement website (the "Settlement Website"), and (iii) direct mail (along with a Claim form) or email to currently available addresses that have been provided to Quincy through Quincy websites or via email by potential Prevagen consumers. The Settlement Website will inform the Class Members of the Settlement Agreement and allowing them to file a claim electronically. Moreover, a long form notice, in substantially the same form attached to the Settlement Agreement as Exhibit B, shall be published on the Settlement Website.

Class Members may opt out of the Settlement Agreement (for purposes of damages claims only) by sending a request for exclusion to the Claims Administrator, which will communicate requests for exclusion to Class Counsel, who will in turn report to the Court. Defendant shall bear all of the costs and expenses in administrating the Settlement Agreement, including the hiring of a Claims Administrator, providing class notice, publication of the notice, and providing the claim forms.

E. ***Claims Process***

To obtain relief from Defendant, Class Members will be required to submit a simple claim form (in the form, if approved, attached to the Settlement Agreement as Exhibit A) electronically via the Settlement Website or by mail. The claims will be reviewed by the Claims Administrator, who will work with Defendant to confirm whether those who timely file a claim are members of the Class. Defendant shall fund the total amount to be paid to eligible Settlement Class Members within thirty (30) days after the Class Action Settlement Administrator determines the total amount to be paid to eligible claimants. The Class Action Settlement Administrator shall then pay all eligible claimants within thirty (30) days after Quincy deposits the funds to be paid.

F. ***Class Counsel Fees and Expenses and Named Plaintiffs Case Contribution Award***

Defendant has agreed not to object to a motion by Class Counsel for an award of attorneys' fees and expenses in the amount of four million two hundred fourteen thousand dollars ($4,214,000.00) to Class Counsel, a very small percentage of the recovery that is being made available to the National Class. Defendant also will not oppose an application for a case contribution award not to exceed $10,000 each to Class Representatives Juan Collins and John Fowler for taking on the risks of litigation, and for Settlement of their individual claims as a Settlement Class Member in this Action. Defendant shall not oppose an award of $2,000 each to Additional Plaintiffs Philip Racies, Elaine Spath, John Karathanos, James Vanderwerff, Max Engert, Jack Purchase, Ronald

Atkinson, and Diana Miloro for their active participation as the putative class representatives in the Prevagen Actions.

LEGAL ARGUMENT

I. THE COURT SHOULD ENTER AN ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT

To conclude the Settlement Agreement, the Federal Rules of Civil Procedure require that there be notice to the Settlement Class, a fairness hearing, and this Court's final approval. Settlement "has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice[.]" *Turner v. Gen. Elec. Co.*, No. 2:05-CV-186-FTM-99DNF, 2006 WL 2620275, at *2 (M.D. Fla. Sept. 13, 2006). For these reasons, "[p]ublic policy strongly favors the pretrial settlement of class action lawsuits." *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir.1992).

"Approval of a class-action settlement is a two-step process." *Fresco v. Auto Data Direct, Inc.*, No. 03-cv-61063, 2007 WL 2330895, at *4 (S.D. Fla. May 14, 2007). Preliminary approval is the first step, requiring the Court to "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *Id.* (citation omitted). In the second step, after notice to the class and time and opportunity for absent class members to object or otherwise be heard, the court considers whether to grant final approval of the settlement as fair and reasonable. *See id.*

The standard for preliminary approval of a class action settlement is not high — a proposed settlement will be preliminarily approved if it falls "within the range of possible approval" or, otherwise stated, if there is "probable cause" to notify the class of the proposed settlement and "to hold a full-scale hearing on its fairness[.]" *In re Mid-Atl. Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983) (quoting Manual for Complex Litigation ("MCL") § 1.46 at 62, 64–65 (5th ed. 1982)). "Preliminary approval is

appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason." *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661 (S.D. Fla. 2011).

Here, the proposed Settlement Agreement is the product of arm's-length negotiations before an experienced and respected mediator, by counsel with significant experience in complex class action litigation, carries no "obvious deficiencies," and falls well within the range of reason. The Court should therefore grant preliminary approval.

A. The Settlement Agreement is the Product of Good Faith, Informed, and Arm's-Length Negotiations among Experienced Counsel.

At the preliminary approval stage, courts consider whether the proposed settlement appears to be "the result of informed, good-faith, arms'-length negotiation between the parties and their capable and experienced counsel' and not 'the result of collusion. . . ." *E.g.*, *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1340 (S.D. Fla. 2011). Courts presume good faith in the negotiating process. *See Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992) ("Absent evidence of fraud or collusion, such settlements are not to be trifled with."); MCL (Third) § 30.42 ("a presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel").

The Settlement Agreement is the product of significant give and take by the settling Parties and was negotiated at arm's length. The parties engaged in substantial settlement negotiations for months before their formal mediation sessions before Judge Thornton, and thereafter had regular communications, negotiating first the terms of an initial term sheet and then the Settlement Agreement reflecting the final terms. Judge Thornton has significant experience mediating complex commercial suits to resolution and his involvement alone weighs in favor of preliminary approval. *See, e.g.*, *In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at *6 (S.D. N.Y. 2004) (presence of

"respected and dedicated judicial officer presided over the lengthy discussions from which this settlement emerged[]" belied suggestion of collusion in negotiating process).

The Parties' extensive negotiations were also informed by considerable discovery. The Parties have been actively litigating this matter for nearly a year and the other plaintiffs' counsel for many more years. The Parties produced tens of thousands of documents and deposed corporate and class representatives, as well as other key personnel. The Parties have also engaged in significant motion practice, class certification, a motion to dismiss and a motion for summary judgment.

B. The Settlement Agreement Provides Considerable Benefits to the Class and Falls Squarely within the Range of Reasonableness.

The terms negotiated by the Parties provide considerable monetary benefits and injunctive relief to the class and fall well within the range of possible approval.

Courts routinely hold that settlements providing the class with a portion of the recovery sought in litigation are reasonable in light of the attendant risks of litigation. *See, e.g.*, *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542–43 (approving recovery of $.20 per share where desired recovery was $3.50 a share and stating "the fact that a proposed settlement amounts to only a fraction of the possible recovery does not mean the settlement is unfair or inadequate"). "Moreover, when settlement assures immediate payment of substantial amounts to class members, even if it means sacrificing speculative payment of a hypothetically larger amount years down the road, settlement is reasonable [when weighing the benefits of the settlement against the risks associated with proceeding in the litigation]." *Johnson v. Brennan*, No. 10-cv-4712, 2011 WL 4357376 (S.D. N.Y. Sept. 16, 2011) (internal quotation marks omitted).

Plaintiffs and the proposed class faced significant hurdles in litigating their claims to trial and ultimate resolution, and the possible appeals of any of the Court rulings. Each Class Member now, however, stands to recover direct monetary and injunctive relief as

a result of the Settlement Agreement. The negotiated monetary recovery and injunctive relief falls well within the range of reasonableness.

C. The Settlement Agreement Saves the Class from Considerable Litigation Hurdles.

Any evaluation of the benefits of settlement must be tempered by the recognition that any compromise involves concessions by all settling parties. Indeed, "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Officers for Civil Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982) (internal quotation marks omitted). At bottom, had litigation continued, Plaintiffs and Class Members would have faced the risk of not prevailing on their claims.

The proposed settlement saves Plaintiffs and the proposed Class from facing these substantial obstacles and eliminates the significant risk that they would recover nothing at all after several more years of litigation.

D. Counsel Believes the Settlement Agreement is Reasonable and in the Class's Best Interest.

Finally, significant weight should be attributed to the belief of experienced counsel that the negotiated settlement is in the best interest of the class. *See, e.g.*, *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 666 (D. Minn. 1974) (the recommendation of experienced counsel is entitled to great weight). Plaintiffs' counsel here have litigated numerous class actions in state and federal courts and fully support the Settlement Agreement. Copies of Class Counsel's Resumes are attached hereto as composite Exhibit 2. Based on this experience, the substantial information learned in the course of the litigation, and decades of experience litigating consumer class action lawsuits, it is Plaintiffs' counsel's informed opinion that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class.

II. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS.

The Settlement Class here meets the requirements of numerosity, commonality, typicality and adequacy of representation required by Rule 23(a) of the Federal Rules of Civil Procedure, as well as the requirements of Rule 23(b)(3) and 23(b)(2).

A. The Settlement Class Meets the Four Requirements of Rule 23(a).

Rule 23(a) sets forth four prerequisites for class certification: numerosity, commonality, typicality, and adequacy of representation. *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484,489 (S.D. Fla. 2003); *see* Fed. R. Civ. P. 23(a). The policies underlying the class action rule dictate that Rule 23(a) should be liberally construed. *See Walco Invs., Inc. v. Thenen*, 168 F.R.D. 315, 323 (S.D. Fla. 1996). Plaintiff satisfies all four requirements as set forth below.

"It is well established that [a] class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue." *In re Checking Account Overdraft Litig.*, 275 F.R.D. at 659 (internal quotations omitted; brackets in original). "In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class[,]" save manageability, "since the settlement, if approved, would obviate the need for a trial." *Id.* However, "[t]he standards of Rule 23 for class certification are more easily met in the context of settlement than in the context of contested litigation." *Horton v. Metro. Life Ins. Co.*, No. 93-1849-CIV-T-23A, 1994 U.S. Dist. LEXIS 21395, at *15 (M.D. Fla. Oct. 25, 1994).

i. The Settlement Class is Sufficiently Numerous.

Rule 23(a)(1) requires Plaintiffs to show that the proposed class is so numerous that joinder of all members would be impracticable. Here, the number of class members is in the thousands and thus well exceeds the minimum threshold. Moreover, through 10 pages of analysis, R&R 45–55, Judge Goodman explains how Plaintiffs satisfied the

'implicit Rule 23 requirement that the proposed class is "adequately defined and is ascertainable.'" R&R at 45 (citing *Reyes*, 2018 WL 3145807, at *9).

ii. There Are Questions of Law and Fact Common to All Class Members.

Rule 23(a)(2) requires class action plaintiffs to identify questions of law or fact common to the proposed class. *See* Fed. R. Civ. P. 23(a)(2). "The threshold for commonality is not high." *Cheney,* 213 F.R.D. at 490. Commonality requires a showing that the class members' claims "depend on a common contention" and that the class members have "suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). "[F]or purposes of Rule 23(a)(2), even a single [common] question will do[,]" *id.* at 2556 (brackets in original), and "where a common scheme of conduct has been alleged, the commonality requirement should be satisfied." *Checking Overdraft,* 2011 WL 3158998, at *4.

Plaintiffs' claims here depend on the common contention that Defendant deceptively labeled, packaged, and marketed Prevagen. All members of the putative class were allegedly injured in the same manner: they were deceived by Defendant's conduct, and they allegedly paid for Prevagen based on that deception.

While only one question of law *or* fact is required to establish commonality, several common questions capable of class-wide resolution—or that would "generate common answers"—arise from Plaintiffs' allegations (which Defendant and the Settling Defendants deny), including:

a. Whether Defendant's labeling, packaging, and marketing of Prevagen is deceptive;
b. Whether Defendant engaged in unfair and deceptive trade practices when labeling, packaging, and marketing Prevagen; and
c. Whether Defendant was unjustly enriched as a result of its deceptive conduct.

These common questions are capable of class-wide resolution. *See Williams*, 2012 WL 566067, at *5 (finding commonality where "all members of the proposed class were injured in the same manner").

iii. Plaintiffs' Claims are Typical of Those of the Class.

Rule 23(a)(3) requires Plaintiffs to demonstrate that their claims are typical of those held by the proposed class. *See* Fed. R. Civ. P. 23(a)(3). Typicality and commonality are related, with commonality referring to "the group characteristics of the class as a whole" and typicality focusing on the named plaintiff's claims in relation to the class. *Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. at 686 n.23. "Any atypicality or conflict between the named Plaintiff's claims and those of the class must be clear and must be such that the interests of the class are placed in significant jeopardy." *Cheney*, 213 F.R.D. at 491.

Plaintiffs' claims arise from the same alleged course of conduct and are based on the same legal theories as those brought on behalf of the proposed class. For example, the alleged deception to which each of the class representatives was exposed was no different than the alleged deception to which all of the Class Members allegedly were exposed. Because Plaintiffs' claims are based on alleged injuries caused by conduct allegedly affecting the class as a whole, their claims easily satisfy the typicality requirement. *See, e.g., Williams*, 2012 WL 566067, at *6 (holding that the named plaintiffs were typical of the class where they were charged and paid an inflated price based upon the same alleged deceptive conduct).

Moreover, Plaintiffs' claims are based on the same legal theories of the violation of state consumer protection laws and unjust enrichment. This identity of claims and legal theories between Plaintiffs and the class satisfies the typicality requirement set forth in Rule 23(a)(3).

iv. Plaintiffs will Fairly and Adequately Represent the Interests of the Class.

To satisfy Rule 23(a)(4), the representative parties must "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement is satisfied when the class representatives have (1) no interests antagonistic to the rest of the class and (2) counsel who are "qualified, experienced, and generally able to conduct the proposed litigation." *Cheney*, 213 F.R.D. at 495. "Adequate representation is presumed in the absence of contrary evidence." *Association for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 464 (S.D. Fla. 2002).

The attorneys who seek to represent the Class in this case are highly qualified to serve as class counsel, have served as lead and co-lead counsel in some of the largest class actions in the country, and are well respected in the communities that they serve. Copies of the firm resumes are attached hereto as composite Exhibit 2. "[T]he single most important factor considered by the courts in determining the quality of the representative's ability and willingness to advocate the cause of the class has been the caliber of the plaintiff's attorney." 1 Newberg on Class Actions 3d (1992) § 3.24 at 3-133 n. 353.; *see also Griffin v. Carlin*, 755 F. 2d 1516, 1533 (11th Cir. 1985) (inquiry as to adequacy of plaintiffs "involves questions of whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation, and of whether plaintiffs have interests antagonistic to those of the rest of the class."). The firms representing Plaintiffs have overseen the litigation strategy, the briefing and argument of motions, and the vigorous pursuit of discovery.

Plaintiffs in this action also do not have interests that are antagonistic to those held by the rest of the class. There has been no evidence that would in any way show that Plaintiffs do not have the same interests as the other class members or are in any way antagonistic to the class. On the contrary, Judge Goodman acknowledged that Plaintiffs made their purchases based on Quincy's representations that Prevagen could improve

memory, and "sued Quincy to expose the falsity of its AQ Memory Representations and to have the class receive refunds of the purchase price of Prevagen" R&R at 64 (citing ECF Nos. 66-13, 47:17–18, 71:12–17, 75:1–7; 66-12, 95:15–18). Judge Goodman therefore correctly found that Plaintiffs are adequate and had no conflict of interest "because Plaintiffs and class members all seek (1) a declaration that the AQ Memory Representations are false, making Prevagen worthless, and (2) full refunds for their purchases," such that "Plaintiffs and '[a]ll of the members of the class are seeking recovery on the same grounds.'" R&R at 63 (citing *Singer*, 185 F.R.D. at 690). Thus, Plaintiffs have satisfied Rule 23(a)(4)'s adequacy requirement.

B. The Settlement Class Meets the Requirements of Rules 23(b)(3) and 23(b)(2).

In addition to meeting the four requirements of Rule 23(a), a plaintiff seeking class certification must satisfy one of the subsections of Rule 23(b). Plaintiffs here seek certification under Rules 23(b)(3) and 23(b)(2).

i. Rule 23(b)(3)

Certification is appropriate under Rule 23(b)(3) if (1) common questions of law or fact predominate over those affecting only individual class members and (2) class treatment is superior to other adjudication methods. See Fed. R. Civ. P. 23(b)(3). The latter question implicates manageability concerns, which do not bear on certification of a settlement class. *See Checking Account Overdraft Litig.*, 275 F.R.D. at 659.

For common questions of law or fact to predominate over individualized questions, "the issues in the class action that are subject to generalized proof, and [are] thus applicable to the class as a whole, must predominate over those issues that are subject only to individualized proof." *Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. at 694. "Common questions need only predominate; they need not be dispositive of the litigation." *Id.* "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear

justification for handling the dispute on a representative rather than on an individual basis." *Checking Overdraft Litig.*, 2011 WL 3158998, at *7.

Here, "irrespective of the individual issues which may arise, the focus of the litigation concerns the alleged common course of unfair conduct embodied in [Defendants'] scheme to" allegedly deceptively sell and market Prevagen. *Checking Overdraft Litig.*, 2011 WL 3158998, at *7. As Judge Goodman found, the overriding common questions are (1) whether Quincy's AQ Memory Representations are false and (2) whether those misrepresentations were likely to deceive a reasonable targeted consumer. R&R, 66–67 (citing *Carriuolo*, 823 F.3d at 983–84). Proof of this alleged scheme may be substantiated by common evidence that would remain the same regardless of class size or composition. Common issues would predominate over any individual issue that might arise.

Moreover, a comprehensive resolution of the Settlement Class members' claims in this action would be far superior to litigating each of their claims separately. "Since the damage amounts allegedly owed to each individual [consumer] are relatively low—especially as compared to the costs of prosecuting [these] types of claims . . . —the economic reality is that many of the class members would never be able to prosecute their claims through individual lawsuits." *Williams*, 280 F.R.D. at 675. Even if the class members were able individually to prosecute their claims, "[s]eparate actions by each of the class members would be repetitive, wasteful, and an extraordinary burden on the courts." *Kennedy v. Tallant*, 710 F.2d 711, 718 (11th Cir. 1983). Accordingly, the Court should certify the proposed class for purposes of achieving this Settlement Agreement.

The predominant issues raised by Plaintiffs and the Class, all susceptible to common proof, include the allegedly deceptive Quincy conduct in labeling, packaging, and marketing Prevagen; and Quincy's monetary gains as a direct result of that deception. Moreover, courts have certified claims under FDUTPA, holding that

individual proof of reliance is not required in class actions under FDUTPA. *See, e.g.*, *Turner Greenberg Assocs. v. Pathman*, 885 So. 2d 1004 (Fla. 4th DCA 2004) ("[A] demonstration of reliance by an individual consumer is not necessary in the context of FDUTPA."); *Fitzpatrick v. General Mills, Inc.*, 263 F.R.D. 687, 693 (S.D. Fla. 2010) (under FDUTPA, a plaintiff "may rely on any evidence concerning that message, including advertisements to which he or she was not personally exposed."); *see also Nelson v. Mead Johnson Nutrition Co.*, 270 F.R.D. 689, 692 & n.2 (S.D. Fla. 2010) (noting that deceptive marketing may injure consumers even without individual reliance upon misrepresentations); *Roggenbuck Trust v. Dev. Res. Group, LLC*, 505 F. App'x 857, 862 (11th Cir. 2013) ("a plaintiff need not prove [actual] reliance on the allegedly false statement to recover damages under FDUPTA, but rather a plaintiff must simply prove that an objective reasonable person would have been deceived.") (alteration in original); *State, Office of the Attorney Gen., Dep't of Legal Affairs v. Commerce Commercial Leasing, LLC*, 946 So. 2d 1253, 1258 (1st DCA 2007) ("A deceptive or unfair trade practice constitutes a somewhat unique tortious act because, although it is similar to a claim of fraud, it is different in that, unlike fraud, a party asserting a deceptive trade practice claim need not show actual reliance on the representation or omission at issue."); *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 703 (Fla. 3d DCA 2000) (holding that consumers could recover for false port charges even where "the consumers paid no attention to the sales tax amount").

ii. Rule 23(b)(2)

Rule 23(b)(2) provides for class certification where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." The term "generally applicable" has been interpreted to mean that the defendant "has acted in a consistent manner towards members of the class so that his

actions may be viewed as part of a pattern of activity, or to establish a regulatory scheme, to all members." *Leszczynski v. Allianz Ins. Co.*, 176 F.R.D. 659, 673 (S.D. Fla. 1997) (internal citations omitted).

Here, due to its use of uniform labels and packaging and the overarching theme of its marketing message that Prevagen improves memory, Quincy allegedly engaged in a standard and uniform practice directed toward the Class as a whole. *See* R&R, 74. Therefore, certification under Rule 23(b)(2) for settlement purposes is appropriate.

III. THE COURT SHOULD APPOINT THE UNDERSIGNED FIRMS AS CLASS COUNSEL.

The Parties have named the undersigned firms as Class Counsel, Adam Moskowitz, Esq. of The Moskowitz Law Firm and Jack Scarola, Esq. of Searcy, Denney, Scarola, Barnhart & Shipley. Undersigned counsel have significant experience in litigating complex commercial litigation including class actions. *See* § I.D, *supra.* Because undersigned counsel are highly qualified and determined to represent the best interests of the Class, the Court should appoint them Class Counsel moving forward.

CONCLUSION

Plaintiffs respectfully request the Court enter an order certifying the proposed class for purposes of settlement, preliminarily approving the terms of Settlement Agreement, directing that Notice be given to the Class Members in the forms submitted with the Settlement Agreement, and setting a final fairness hearing at least 120 days after entry of the order, in the form attached as Exhibit 3, or in such other form as the Court deems just and proper.

Dated: June 24, 2020

Respectfully submitted,

By: /s/ *Adam Moskowitz*

Adam Moskowitz, Esq.
Florida Bar No. 984280
adam@moskowitz-law.com
Howard M. Bushman, Esq.
Florida Bar No. 0364230
howard@moskowitz-law.com
Joseph M. Kaye, Esq.
Florida Bar No. 117520
joseph@moskowitz-law.com
THE MOSKOWITZ LAW FIRM, PLLC
2 Alhambra Plaza
Suite 601
Coral Gables, FL 33134
Telephone: (305) 740-1423

Jack Scarola, Esq.
Florida Bar No. 169440
jsx@searcylaw.com
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
Telephone: (561) 686-6300
Fax: (561) 383-9451

Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Southern District of Florida, by using the CM/ECF system, which will serve a copy of same on all counsel of record.

By: /s/ *Adam M. Moskowitz*
Adam M. Moskowitz

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 19-22864-Civ-COOKE/GOODMAN

JUAN COLLINS and JOHN FOWLER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

QUINCY BIOSCIENCE, LLC,
a Wisconsin limited liability company,

Defendant.
_____/

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into by and between the following parties on June 22, 2020: Plaintiffs Juan Collins and John Fowler, individually and on behalf of the Settlement Class (hereinafter "Plaintiffs" or "Class Representatives"), on the one hand, and Quincy Bioscience, LLC ("Defendant" or "Quincy"), Quincy Bioscience Holding Company, Inc., Prevagen, Inc., Quincy Bioscience Manufacturing, LLC, Mark Underwood, and Michael Beaman (collectively, with Defendant, the "Settling Defendants"), on the other hand, in the action entitled *Collins, et al. v. Quincy Bioscience LLC*, No. 19-22864-Civ-COOKE/GOODMAN (the "Action").

I. DEFINITIONS

As used in this Agreement and all related documents, the following terms have the following meanings:

A. "Additional Plaintiffs" means Philip Racies, Elaine Spath, John Karathanos, James Vanderwerff, Max Engert, Jack Purchase, Ronald Atkinson, and Diana Miloro.

B. "Agreement" means this Settlement Agreement and Release.

C. "Second Amended Complaint" means the pleading to be filed prior to the Final Judgment defined below is entered and which will be the operative pleading for purposes of entering Final Judgment.

D. "Claim" means the claim of a Settlement Class Member submitted as provided in this Agreement.

E. "Claim Form" means a claim form in substantially the same form and substance as the claim form attached hereto as Exhibit A, however, the parties recognize and agree that the Claim Form may be revised to apply fraud-filtering measures to claimants that receive a Claim Form by mail and that the on-line Claim Form may appear in a different format.

F. "Claim Period" means the time period in which Class Members may submit a Claim Form for review to the Class Action Settlement Administrator. The Claim Period shall run for at least sixty (60) days from the date that Class Notice is initially disseminated.

G. "Claims Process" means the process for Settlement Class Members' submission of Claims as described in this Agreement.

H. "Class Action Settlement Administrator" means the third-party agent or administrator agreed to by the Parties and appointed by the Court. The Parties agree that KCC Class Action Services, LLC shall be retained to implement the claims and settlement requirements of this Agreement. Any and all agreements with the Class Action Settlement Administrator shall be in writing and be subject to the approval of the Settling Defendants and Class Counsel. The Settling Defendants shall bear sole responsibility for all payments to the Class Action Settlement Administrator without any dilution to monies due to paid herein to Settlement Class Members and Class Counsel. Further, all actions of the Class Action Settlement Administrator shall be subject to the oversight of the Parties.

I. "Class Counsel" or "Co-Lead Class Counsel" means Adam M. Moskowitz of The Moskowitz Law Firm, PLLC and John Scarola of Searcy Denney Scarola Barnhart & Shipley P.A.

J. "Class Notice" means notice of the proposed settlement to be provided to Settlement Class Members under Section VII of the Agreement substantially in the form attached as Exhibit B.

K. "Class Period" means January 1, 2007 through the date of Preliminary Approval of Class Settlement.

L. "Effective Date" means (a) if no objection is raised to the proposed settlement at the Final Approval Hearing, the date on which the final approval order and judgment is entered; or (b) if any objections are raised to the proposed settlement at the Final Approval Hearing and not withdrawn prior to the Final Judgment, the latest of (i) the expiration date of the time for filing or notice of any appeal from the final approval order and judgment, (ii) the date of final affirmance of any appeal of the final approval order and judgment, (iii) the expiration of the time for, or the denial of, a petition for writ of certiorari to review the final approval order and judgment and, if certiorari is granted, the date of final affirmance of the final approval order and judgment following review pursuant to that grant; or (iv) the date of final dismissal of any appeal from the final approval order and judgment or the final dismissal of any proceeding on certiorari to review the final approval order and judgment.

M. "Final Approval Hearing" means the hearing at or after which the Court will make a final decision whether to approve this Agreement and the settlement set forth herein as fair, reasonable, and adequate and entry by the Court of a Final Judgment and order thereon.

N. "Final Judgment" means the judgment the Court enters, finally approving the class settlement. A proposed Final Judgment is attached hereto as Exhibit C.

O. "Internet Notice" means notice of the proposed settlement to be provided to potential Settlement Class Members under Section VII of the Agreement. The Internet Notice shall be substantially in the form as the notice attached hereto as Exhibit D.

P. "Objection/Exclusion Deadline" means the date 21 days prior to the Final Approval Hearing days from the date that Class Notice is initially disseminated.

Q. "Parties" means the Class Representatives, the Additional Plaintiffs, and the Settling Defendants.

R. "Plaintiffs' Counsel" means all counsel for Plaintiffs in the Prevagen Actions, defined below, including, but not limited to 1) Adam M. Moskowitz, Howard M. Bushman, Joseph M. Kaye of the Moskowitz Law Firm, PLLC; 2) John Scarola of Searcy Denney Scarola Barnhart & Shipley P.A.; 3) Elaine A. Ryan and Patricia N. Syverson of Bonnett, Fairbourn, Friedman & Balint, P.C.; 4) Kevin Roddy of Wilentz, Goldman & Spitzer, P.A.; 5) Scott A. Kamber of Kamber Law LLC; and 6) Don Foty of Hodges & Foty LLP. Plaintiffs' Counsel also includes any partner or attorney employed by these law firms.

S. "Preliminary Approval" means the date the Court preliminarily approves the settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

T. "Prevagen Actions" means *Collins, et al. v. Quincy Bioscience LLC*, No. 19-22864-Civ-COOKE/GOODMAN (S.D. Fla.); *Racies v. Quincy Bioscience, LLC*, No. 15-cv-00292-HSG, (N.D. Cal.) ("*Racies*"); *Vanderwerff v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-07582-RA (S.D.N.Y.) ("*Vanderwerff*"); *Karathanos v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-08023-RA (S.D.N.Y.) ("*Karathanos*"); *Spath v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-03521-RA (S.D.N.Y.) ("*Spath*"); *Engert et al. v. Quincy Bioscience, LLC*, No. 1:19-cv-183-LY (W.D. Tex.) ("*Engert*"); and *Miloro v. Quincy Bioscience, LLC,* No. 16PH-cv01341 (Mo. Cir. Ct.) ("*Miloro*").

U. "Prevagen Products" means the following Prevagen® products in the United States:

i. Prevagen Regular Strength 30 Count,
ii. Prevagen Regular Strength Chewables,
iii. Prevagen Regular Strength 60 Count,
iv. Prevagen Extra Strength 30 Count,
v. Prevagen Extra Strength Chewables,
vi. Prevagen Extra Strength 60 Count, and

vii. Prevagen Professional Strength.

V. "Proof of Purchase" means acceptable documentation that provides proof of purchase of Prevagen Products. Such acceptable documentation will consist of receipts, copies of receipts, invoices, loyalty card records (such as print out from a loyalty program), direct purchase records, or other legitimate, documentary proof showing payment to an authorized retailer or a Settling Defendant for Prevagen Products that were not used as proof for any other claim.

W. "Settlement" means settlement of the Action pursuant to the terms and conditions of this Agreement.

X. "Settlement Class" means: All individuals who purchased one or more Prevagen Products, as defined in section I.U., *supra*, from a Settling Defendant or from a reseller authorized by the Settling Defendants to sell Prevagen Products, for personal consumption and not resale, within the United States, from January 1, 2007 through the date of Preliminary Approval. Excluded from the Class are: (i) individuals who are or were during the Class Period officers or directors of a Settling Defendant or any of its respective affiliates; and (ii) any justice, judge, or magistrate judge of the United States or any State, their spouses, and persons within the third degree of relationship to either of them, or the spouses of such persons.

Y. "Settlement Class Member" means any member of the Settlement Class.

II. LITIGATION BACKGROUND

A. Plaintiff Collins commenced this Action by filing a Class Action Complaint and Demand for Jury Trial on July 11, 2019. ECF No. 1. Plaintiff Collins and Plaintiff Fowler filed an Amended Class Action Complaint and Demand for Jury Trial on September 11, 2019. ECF No. 15. After reviewing the information and discovery produced in the *Racies* action, as well as consulting with their own experts, Plaintiffs filed a comprehensive motion for class certification on September 17, 2019. ECF No. 21. The Court referred that motion to Judge Goodman for a report and recommendation. ECF No. 23. After Plaintiffs filed their class certification motion, Plaintiffs and Quincy filed 20 additional submissions through the course of discovery and class proceedings to fully brief the motion. R&R at 5–6 (citing submissions).

B. On September 25, 2019, Quincy moved to dismiss this Action. ECF Nos. 25, 27–29, 34, and 89. Quincy's motion to dismiss is currently pending. On May 29, 2020, Quincy filed a motion for summary judgment on other grounds. ECF Nos. 138-141.

C. Plaintiffs and Quincy conducted extensive discovery, including the depositions of both Plaintiffs Collins and Fowler, the corporate representative deposition of Quincy, depositions of Quincy's Chief Financial Officer and Market Development Director, and the exchange of substantial document requests, in response to which Quincy produced approximately 40,077 documents consisting of over 160,000 pages, requests for admissions and interrogatories. Plaintiffs have also issued third party subpoenas to Florida retailers regarding their sales of Prevagen within Florida. ECF Nos. 54-6 (Walmart), 56 (Amazon and The Vitamin Shoppe), 72 (The Vitamin Shoppe).

D. Judge Goodman held an over 5-hour hearing on Plaintiffs' motion for certification. ECF No. 84. After considering additional post-hearing briefing, Judge Goodman entered a Report and Recommendation certifying a Florida class of Prevagen purchasers. ECF No. 119. Quincy filed objections to the R&R, which Plaintiffs opposed and which are currently pending before Judge Cooke for decision. ECF Nos. 129–130.

E. All Court-imposed deadlines have been followed.

F. In addition to this matter, as of the date of this Settlement, Prevagen Actions were previously filed and/or pending throughout the country. *Racies,* filed in the Northern District of California in February 2015, was the first-filed class action brought in the country against Quincy alleging deceptive marketing and sales of Prevagen. In December, 2017, the Court granted certification of a California class of Prevagen purchasers. *Racies v. Quincy Bioscience, LLC*, No. 15-cv-00292-HSG, 2017 WL 6418910, at *1 (N.D. Cal. Dec. 15, 2017). After extensive litigation of pretrial issues, including summary judgment motions and *Daubert* motions, *Racies* was tried before a jury in January 2020; however, the district court declared a mistrial after a jury deadlock, and the California class was later de-certified. *Racies v. Quincy Bioscience, LLC*, No. 15-cv-00292-HSG, 2020 WL 2113852, at *1 (N.D. Cal. May 4, 2020).

G. In 2016, the *Miloro* matter was filed in Missouri state court on behalf of Missouri purchasers of Prevagen Products. By agreement of the parties to that action, *Miloro* was stayed for much of the past four years but Defendant produced all of the documents that were produced in the *FTC* Action and the *Racies* matter. The parties to that action engaged in extensive settlement efforts including several mediation sessions before Hon. Wayne Andersen (Ret.) and multiple in-person negotiations took place between Quincy and Miloro's Counsel. Ultimately, an agreement-in-principle was reached but was conditioned on FTC action that did not take place. At that time, in March 2020, the stay was lifted and Quincy filed a motion to dismiss which is still pending.

H. In February 2017, the *Vanderwerff* and *Karathanos* actions were filed on behalf of New Jersey and New York consumers, respectively. Although those cases were originally filed in the District of New Jersey and the Eastern District of New York, they were eventually transferred to the Southern District of New York. Meanwhile, motions to dismiss have been fully briefed in *Vanderwerff* and *Karathanos* and are still pending. In 2018, the *Spath* action was filed in the District of New Jersey on behalf of New Jersey purchasers of Prevagen Products. The *Spath* case was also subsequently transferred to the Southern District of New York. On June 3, 2020, Judge Ronnie Abrams in the Southern District of New York stayed the *Vanderwerff*, *Karathanos*, and *Spath* actions pending approval of this Settlement.

I. In February 2019, the *Engert* action was filed in the Western District of Texas seeking to represent Texas purchasers of Prevagen Products (and alternatively a nationwide class of purchasers of Prevagen Products). The *Engert* court denied Quincy's Motion to Dismiss on October 8, 2019.

J. Defendant, twice, unsuccessfully moved the Judicial Panel on Multidistrict Litigation to coordinate the then-pending Prevagen Actions to a single court.

K. The Settling Defendants expressly deny any liability or wrongdoing of any kind associated with the claims alleged in the Prevagen Actions and maintain that the labeling, packaging, advertising and marketing of Prevagen have always been truthful and not deceptive. The Settling Defendants further contend that, for any purpose other than this Settlement, the Prevagen Actions are not appropriate for class treatment. The Settling Defendants do not admit or concede any actual or potential fault, wrongdoing, or liability concerning or relating to the allegations made in the Prevagen Actions.

L. Class Counsel has conducted a thorough investigation into the facts surrounding the Action. This investigation included but was not limited to: factual research; legal research; collecting and reviewing of documents and data through discovery and otherwise; and reviewing the trial testimony and outcome of the *Racies* trial in California.

M. Counsel for the Parties, along with counsel from all Prevagen Actions, participated in multiple mediation sessions with the Honorable John W. Thornton (Ret.) on April 22, May 4, May 21, and May 26, 2020. Before, during, and after the mediation, the Parties engaged in a series of discussions, with and without Judge Thornton, regarding a settlement of the Prevagen Actions, including substantial arm's-length negotiations. The result was this Settlement, which includes the settlement of the Action in its entirety and also all of the remaining Prevagen Actions, culminating with this Agreement.

I. Based on the above-outlined discovery and investigation, the current state of the law, the expense, burden, and time necessary to prosecute the Action through trial and possible appeals, the risks and uncertainty of further prosecution of this Action considering the defenses at issue, the sharply contested legal and factual issues involved, and the relative benefits to be conferred upon Plaintiffs and the Settlement Class Members pursuant to this Agreement, Class Counsel has concluded that this Settlement with the Settling Defendants on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of all known facts and circumstances.

J. The Settling Defendants and their counsel recognize the expense and length of continued proceedings necessary to continue the Action through trial and through possible appeals. The Settling Defendants also recognize that the expense and time spent defending the Prevagen Actions has and will further detract from resources that may be used to run their business. While the Settling Defendants deny any wrongdoing or liability arising out of any of the facts or conduct alleged in the Prevagen Actions and believe that they have valid defenses to Plaintiffs' and Additional Plaintiffs' claims, the Settling Defendants have determined that the Settlement is fair, adequate, and reasonable.

III. CERTIFICATION

A. Certification of Class: Solely for the purposes of this Settlement, and without any finding or admission of any wrongdoing or fault by any of the Settling Defendants, and pursuant to the terms of this Agreement, the Parties consent to and agree to the establishment of a conditional certification of the nationwide Settlement Class, pursuant to Federal Rule of Civil

Procedure 23(b)(3) and 23(b)(2). Juan Collins and John Fowler will serve as Class Representative plaintiffs and Adam Moskowitz of The Moskowitz Law Firm, PLLC and John Scarola of Searcy Denney Scarola Barnhart & Shipley PA will serve as Co-Lead Class Counsel.

B. Certification is Conditional: This certification is for Settlement purposes only and is conditional on the Court's approval of this Agreement. In the event that this Agreement is terminated pursuant to Section IV.B.7 of this Agreement, then certification of the Settlement Class shall be void and this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in the Action, the Prevagen Actions, or in any other case or controversy. In the event the Court does not approve of all terms of the Agreement, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to and without waiver of the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Agreement, and the Settling Defendants shall not be deemed to have waived any opposition or defenses they have to any of the claims asserted herein or to whether those claims are amenable to class-based treatment.

IV. SETTLEMENT CONSIDERATION

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties, including Additional Plaintiffs and Plaintiffs' Counsel, agree as follows:

A. **Injunctive Relief**: The Parties have agreed to the following Injunctive Relief. For the purpose of the Injunctive Relief portion of this Agreement, the following definitions apply:

1. **"Covered Product"** means all Prevagen Products as defined in this Agreement.

2. "**Competent and reliable scientific evidence**" are "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results."

3. **Prohibited Representations: Improving Memory**

   The Settling Defendants agree that they will not make, or assist others in making, expressly or by implication, including through the use of a product name, endorsement, testimonial, depiction, or illustration, any representation that such Covered Product with respect to humans:

   A. improves memory;
   B. improves memory within 90 days or any other period of time; or
   C. reduces memory problems associated with aging;

unless the representation is non-misleading. A representation is non-misleading if, at the time of making such representation, the Settling Defendants possess and rely upon competent and reliable scientific evidence substantiating that the representation is true, or if the representation is clearly and conspicuously qualified by either:

a. A disclaimer substantially similar to the following: "Based on a clinical study of subgroups of individuals who were cognitively normal or mildly impaired. This product is not intended to diagnose, treat, cure, or prevent any disease."; or

b. A disclaimer substantially similar to the following: "Based on results from two subgroups of individuals who participated in a randomized double blind placebo controlled clinical study. Participants in the two subgroups were cognitively normal or mildly impaired. This product is not intended to diagnose, treat, cure, or prevent any disease."

B. Monetary Relief: the Settling Defendants shall offer partial refunds to Settlement Class Members for purchases of Prevagen Product(s) based upon a two-tier monetary relief structure to be distributed through an uncapped claims-made settlement, where, subject to the following provisions of the Claims Process:

1. The Settling Defendants agree to pay to all Settlement Class Members with Proof of Purchase who submit a valid "Claim Form," a cash refund of 30% of the Quincy MSRP for the Prevagen Products those claimants purchased within the Class Period, **up to $70 per individual claimant.** These claims will be referred to herein as "Proof of Purchase Claims," and each such claimant a "Proof of Purchase Claimant";

2. The Settling Defendants agree to pay to all Settlement Class Members without Proof of Purchase who submit a valid "Claim Form" a cash refund of 30% of the Quincy MSRP for the Prevagen Products those claimants purchased within the Class Period, **up to $12 per claimant.** These claims will be referred to herein as "No Proof Claims," and each such claimant a "No Proof Claimant";

3. For purposes of this Section IV. B. the "Quincy MSRP" shall be defined as:

- $39.95 for Prevagen Regular Strength 30 Count or Prevagen Regular Strength Chewables;
- $74.95 for Prevagen Regular Strength 60 Count;

- $59.95 for Prevagen Extra Strength 30 Count or Prevagen Extra Strength Chewables;
- $109.95 for Prevagen Extra Strength 60 Count; and
- $89.95 for Prevagen Professional Strength.

4. Claim Forms will be provided to the Class Action Settlement Administrator by a secure and reliable form of transmission such as via online Internet submissions or via U.S. Mail by the conclusion of the Claims Period based on the date of Postmark.

5. The Settling Defendants, through the Class Action Settlement Administrator, shall honor and administer the payment of all valid and eligible Claims submitted either through U.S. mail or online via the Settlement Website within the Claim Period. Neither the Settling Defendants nor the Class Action Settlement Administrator shall be obligated to honor untimely Claims received by the Class Action Settlement Administrator after the Claim Period.

6. The Settling Defendants shall fund the total amount to be paid to eligible Settlement Class Members within thirty (30) days after the Class Action Settlement Administrator determines the total amount to be paid for valid and eligible Claims (which determination the Class Action Settlement Administrator shall make thirty (30) days after the Claims Period ends or twenty (20) days after the Effective date, whichever is later). The Settling Defendants shall place said funds in an agreed-upon institutional account. The Class Action Settlement Administrator shall then pay all valid and eligible Claims within thirty (30) days after the Settling Defendants deposits the funds to be paid.

7. Any Party shall have the right, but not the obligation, to unilaterally terminate this Agreement (and the Settlement) within fourteen (14) days of any of the following occurrences:

   a. an appellate court reverses the Final Approval Order and Judgment, and the Agreement is not reinstated without material change by the Court on remand;

   b. any court deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, the Final Approval Order and Judgment, or the Agreement in a way that Plaintiffs or the Settling Defendants reasonably consider material,

unless such modification or amendment is accepted in writing by all Parties;

c. the Effective Date set forth in the Agreement does not occur; or

d. more than ten percent (10%) of the Settlement Class opts out.

8. Notwithstanding the foregoing, neither Plaintiffs nor Class Counsel shall have any right to terminate the Agreement in the event the Court declines Plaintiffs' and/or Class Counsel's requests for Attorneys' Fees, Expenses and/or Incentive Awards, or awards less than the amounts sought. However, Plaintiffs shall have the right to appeal the denial of their requests for Attorneys' Fees, Expenses and/or Incentive Awards.

9. In order to exercise his, her, or its right to terminate this Agreement, the terminating Party must timely serve written notice of his, her, or its election to do so, which states the basis for the termination ("Termination Notice"), on counsel of record for all other Parties hereto. A Party's termination of this Agreement is effective only if and when notice of same is timely served on counsel of record for the Parties.

10. In the event this Agreement is terminated, then:

a. the certification of the Settlement Class and any other judgment or order relating in any way to this Settlement entered by the Court in the Action will be void and deemed vacated, *nunc pro tunc*, and without prejudice to the Settling Defendants' right to contest class certification and their right to exercise all other rights and defenses in any of the Prevagen Actions;

b. the Parties shall be restored to their respective positions prior to the entering into the Settlement status quo ante as if this Agreement had never been entered into, except for any provisions of this Agreement that expressly survive termination; and

c. Any Party that terminates this Agreement shall be obligated to pay all reasonable costs and fees incurred by the Class Action Settlement Administrator.

8. Confirmatory Discovery: While the Parties have already conducted extensive discovery, they will be entitled to further confirmatory discovery to the extent necessary to support the Settlement.

V. ATTORNEYS FEES AND CLASS REPRESENTATIVE AWARD

Co-Lead Class Counsel agrees that it will apply to the Court for attorneys' fees, costs, and expenses in an amount not to exceed four million two-hundred fourteen thousand dollars ($4,214,000.00 USD). This is an inclusive amount and specifically includes all costs and fees incurred by Co-Lead Class Counsel and Plaintiffs' Counsel in connection with the Prevagen Actions thus far, as well as ongoing and future costs and fees through finalization of Settlement of this Action. This amount shall be the sole responsibility of, and will solely be paid by the Settling Defendants above and beyond any relief provided to the Settlement Class. Co-Lead Class Counsel will, in their sole discretion, allocate and distribute among all Plaintiffs' Counsel and any other counsel, if applicable, the fees and reimbursed expenses that they receive pursuant to the final order awarding the attorneys' fees and expenses from this Settlement. Disagreements, if any, among Plaintiffs' Counsel and any other counsel, if applicable, relating to their respective shares of any such fee and expense award will have no impact on the effectiveness or the implementation of this Settlement Agreement, nor will such disagreements increase, modify, or otherwise affect the obligations imposed upon the Settling Defendants by this Settlement Agreement. Any such disagreements will be resolved by the Court.

Co-Lead Class Counsel agrees that it will apply to the Court for an incentive award to Class Representatives Juan Collins and John Fowler in an amount not to exceed ten thousand dollars each ($10,000.00 USD), for their participation as the Class Representatives, for taking on the risks of litigation, and for Settlement of their individual claims as a Settlement Class Member in this Action. Further, Co-Lead Class Counsel agrees that it will apply to the Court for an incentive award to the Additional Plaintiffs Philip Racies, Elaine Spath, John Karathanos, James Vanderwerff, Max Engert, Jack Purchase, Ronald Atkinson, and Diana Miloro in an amount not to exceed two thousand dollars each ($2,000.00 USD), for their participation as the putative class representatives in the Prevagen Actions, for taking on the risks of litigation, and for Settlement of their individual claims as a Settlement Class Member in this Action.

The Settling Defendants agree not to oppose Class Counsel's motion for attorneys' fees and costs and incentive awards, provided that the requested attorneys' fees and costs and incentive awards do not exceed a total of four million two hundred fifty thousand dollars ($4,250,000.00 USD) in the aggregate. Plaintiffs and Class Counsel agree not to move for attorneys' fees and costs and incentive awards exceeding four million two hundred fifty thousand dollars ($4,250,000.00 USD) in the aggregate. The full Attorneys' Fees and Costs that are approved by the District Court shall be paid to the Trust Account of the Moskowitz Law Firm, PLLC, in accordance with the Schedule of Payments attached hereto as Exhibit E. Co-Lead Class Counsel, the Class Representatives, and Additional Plaintiffs agree to provide the Settling Defendants all identification information necessary to effectuate the payment of the fees and costs including, but not limited to, Taxpayer Identification Number(s), and completed Internal Revenue Service Form W-9(s).

This Agreement will remain effective for all purposes irrespective of whether the Court grants Class Counsel's request for attorneys' fees or awards Class Counsel, the Class Representatives, or the Additional Plaintiffs a lesser amount than that requested.

VI. RELEASE

Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the Settlement benefits described in this Agreement, Plaintiffs and the Settlement Class fully release and discharge the Settling Defendants, and all of their present and former parent companies, subsidiaries, special purposes entities formed for the purpose of administering this Settlement, shareholders, owners, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, affiliates, and successors, personal representatives, heirs and assigns, retailers, suppliers, distributors, endorsers, consultants, and any and all other entities or persons upstream and downstream in the production/distribution channels (together, the "Discharged Parties") from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Co-Lead Class Counsel, Plaintiffs' Counsel, Class Representatives, Additional Plaintiffs or Settlement Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Discharged Parties in any court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, arising from, or relating to the claims alleged in the Action and the Prevagen Actions.

VII. NOTICE TO THE SETTLEMENT CLASS AND PURSUANT TO THE CLASS ACTION FAIRNESS ACT

Class Notice: The Settling Defendants, at their cost, shall cause the Class Notice to issue in accordance with the requirements of the Preliminary Approval Order, as follows:

A. Subject to the approval of the Court and to begin no later than forty-five (45) days after the order of Preliminary Approval, the Settling Defendants shall cause the Internet Notice to be implemented in substantially the form attached as Exhibit D in the manner recommended by the Class Action Settlement Administrator which will include, but not be limited to: (i) internet notice; (ii) establishment of a Settlement website; and (iii) through U.S. mail or e-mail (along with a Claim Form) to consumers (at their most recent physical address or email address in the Settling Defendants' possession) who have purchased one or more Prevagen Products directly from the Settling Defendants (as opposed to from a non-party retailer). In addition, Class Notice, in substantially the form attached hereto as Exhibit B, shall be published on the Settlement Website.

B. Tracking and reporting of Class Members who request exclusion shall be compiled by the Class Action Settlement Administrator and communicated to Class Counsel who will report to the Court.

C. Any notice required to comply with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715.

VIII. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM SETTLEMENT

A. Objections: Only Settlement Class Members may object to the Settlement. To object, a Settlement Class Member must provide the following information in writing: (i) full name, current address, and current telephone number; (ii) documentation or attestation sufficient to establish membership in the Class; (iii) a statement of all grounds for the objection accompanied by any legal support for the objection; and (iv) copies of any other documents upon which the objection is based.

1. All objections must be filed on or before the Objection/Exclusion Deadline with the Clerk of Court, Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami, FL 33128, and served at that same time upon both of the following:

Co-Lead Class Counsel:	**Settling Defendants' Counsel:**
Adam Moskowitz, Esq. The Moskowitz Law Firm, PLLC 2 Alhambra Plaza Suite 601 Coral Gables, FL 33134	Geoffrey W. Castello, Esq. Kelley Drye & Warren LLP One Jefferson Road 2nd Floor Parsippany, New Jersey 07054

2. Any objection that does not meet all of these requirements will be deemed invalid and will be overruled.

3. Subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for attorneys' fees, Class Representative Awards, Additional Plaintiff Awards, and reimbursement of reasonable litigation costs and expenses. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon Class Counsel and the Settling Defendants' Counsel (at the addresses listed above), a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") on or before the Objection/Exclusion Deadline.

4. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Class Notice, will not be allowed to speak or otherwise present any views at the Final Approval Hearing.

5. The date of the postmark on the mailing envelope or a legal proof of service accompanied by a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or notice of intention to appear has

been timely filed and served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the counsel for the Parties within two (2) calendar days of the Objection/Exclusion Deadline.

6. Response to Objections: Class Counsel shall, at least seven (7) days (or such other number of days as the Court shall specify) before the Final Approval Hearing, file any responses to any written objections submitted to the Court by Settlement Class Members in accordance with this Agreement.

B. Exclusions

1. Procedure for Requesting Exclusion: Settlement Class Members who wish to opt out of the Settlement (for purposes of damages claims only) must submit a written statement within the Objection/Exclusion Deadline. The Class Notice shall provide mandatory language for the request for exclusion. Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member's opt-out/exclusion request has been timely submitted. In the event that the postmark is illegible, the opt-out/exclusion request shall be deemed untimely unless it is received by counsel for the Parties within two (2) calendar days of the Objection/Exclusion Deadline. Any Settlement Class Member who properly opts out of the Settlement Class using this procedure will not be entitled to any portion of the refunds, will not be bound by the settlement (for purposes of damages claims only), and will not have any right to object, appeal or comment thereon. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the Settlement and any final judgment entered in this litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the Settlement.

2. No Solicitation of Settlement Objections or Exclusions: The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Member to object to the Settlement or request exclusion from participating as a Settlement Class Member, or encourage any Settlement Class Member to appeal from the final judgment.

IX. RELEASE OF UNKNOWN CLAIMS

Plaintiffs and Additional Plaintiffs expressly understand and acknowledge, and all Settlement Class Members will be deemed by the Final Judgment to acknowledge, that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that "a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by

him or her must have materially affected his or her settlement with the debtor." To the extent that anyone might argue that these principles of law are applicable--notwithstanding that the Parties have chosen Florida law to govern this Agreement--Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles, to the extent they are found to be applicable herein are hereby knowingly and voluntarily waived, relinquished, and released by Plaintiffs and all Settlement Class Members.

X. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL

The Parties shall promptly submit this Agreement to the Court in support of a Joint Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Agreement, the Parties shall apply to the Court for the entry of a Preliminary Approval order substantially in the following form:

A. Scheduling a Final Approval Hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the members of the class;

B. Approving as to form and content the Internet Notice and Class Notice;

C. Directing implementation of the Internet Notice, and the method of class notice;

D. Preliminarily approving the Settlement;

E. Preliminarily and conditionally certifying the Settlement Class for Settlement purposes;

F. Staying all proceedings in the Action and the Prevagen Actions, and enjoining the prosecution of any other individual or class claims.

G. Providing that, in the event the proposed Settlement set forth in this Agreement is not approved by the Court or is terminated by one or more Party pursuant to Section IV.B.7 of this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the nationwide Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action, the Prevagen Actions, or in any other case or controversy; and that in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to the respective positions as of the date of this Agreement. In the event the Court does not enter the Preliminary Approval order described herein, or decides to do so only with material modifications, then this entire Agreement shall become null and void, unless the parties hereto agree in writing to proceed with this Agreement as modified.

XI. COURT APPROVAL

Co-Lead Class Counsel will submit a proposed final order and judgment at the Final Approval Hearing, which shall include:

A. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

B. Approval of Co-Lead Class Counsel's application for the requested award of attorneys' fees and costs and the Class Representative and Additional Plaintiffs awards; and

C. A request for entry by the Court of a final judgment and order permanently barring the Parties and Settlement Class Members from prosecuting the other Parties and their officers, attorneys, directors, shareholders, employees, agents, retailers, suppliers, distributors, endorsers, consultants, and any and all other entities or persons upstream and downstream in the production/distribution channels in regard to those matters released as set forth in Section VI above.

XII. PARTIES' AUTHORITY

The signatories represent that they are fully authorized to enter into this Agreement and bind the Parties to its terms and conditions.

XIII. MUTUAL FULL COOPERATION

A. The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and the taking of such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement. As soon as practicable after execution of this Agreement, Class Counsel, with the assistance and cooperation of the Settling Defendants and their counsel, shall take all necessary steps to secure the Court's final approval of this Agreement.

B. The Settling Defendants agree that they will not attempt to discourage Settlement Class Members from filing claims.

XIV. NO ADMISSION

This Agreement is not to be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of any of the Settling Defendants or as an admission that class treatment in the Action and the Prevagen Actions is proper for any purpose other than Settlement. The Settling Defendants deny all liability for claims asserted in the Action and the Prevagen Actions and deny that class treatment for the Action and the Prevagen Actions is proper for any purpose other than this Settlement. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a Settlement document and shall, pursuant to Fed. R. Evid. 408 and related or corresponding state evidence laws, be inadmissible in evidence in any proceeding. This Agreement or the existence of this Settlement shall not be used or cited in any proceeding other than (i) an action or proceeding to approve or enforce this Agreement, or (ii) in a subsequent proceeding potentially barred by the Release specified herein.

XV. NOTICES

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be in writing and shall be deemed to have been given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

For The Class	For the Settling Defendants
Adam Moskowitz, Esq. The Moskowitz Law Firm, PLLC 2 Alhambra Plaza Suite 601 Coral Gables, FL 33134	Geoffrey W. Castello, Esq. Kelley Drye & Warren LLP One Jefferson Road 2nd Floor Parsippany, New Jersey 07054

XVI. CONSTRUCTION

The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Agreement.

XVII. MATERIAL TERMS; CAPTIONS

Each term of this Agreement is a material term of the Agreement, not merely a recital, and reflects not only the intent and objectives of the Parties but also the consideration to be exchanged by the Parties hereunder. Paragraph titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions.

XVIII. INTEGRATION CLAUSE

This Agreement contains the entire agreement between the Parties relating to the settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are extinguished.

XIX. NO COLLATERAL ATTACK

This Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Settlement Class after the judgment and dismissal is entered. Such prohibited collateral attacks shall include claims made before the Final Approval Hearing that a Settlement Class Member's settlement amount was improperly calculated or adjusted or that the Settlement Class Member failed to receive timely notice of the procedure for disputing the

calculation of the individual settlement amount or failed to submit a timely dispute letter for any reason.

XX. AMENDMENTS

The terms and provisions of this Agreement may be amended only by a written agreement, which is both (1) signed by the Parties who have executed this Agreement and (2) approved by the Court.

XXI. ASSIGNMENTS

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party or Settlement Class Member without the express written consent of each other Party hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and Settlement Class Members under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

XXII. GOVERNING LAW

This Agreement shall be governed by, and the rights of the Parties determined in accordance with, the laws of the State of Florida, irrespective of the State of Florida's choice of law principles.

XXIII. BINDING ASSIGNS

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

XXIV. CLASS COUNSEL SIGNATORIES

It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the class execute this Agreement. The notice plan set forth herein will advise Settlement Class Members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

XXV. COUNTERPARTS

This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties and the Settlement Class.

XXVI. NON-DISPARAGEMENT

Plaintiffs, Additional Plaintiffs, and their attorneys agree not to disparage or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of the Discharged Parties. The Settling Defendants and their attorneys agree not to disparage or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of Co-Lead Class Counsel, Plaintiffs' Counsel, the Class Representatives, and Additional Plaintiffs regarding this matter or any of the Prevagen Actions.

EXECUTED AND AGREED

BY: _____
Adam Moskowitz, Esq.
Class Counsel

BY: _____
John Scarola, Esq.
Class Counsel

BY: _____
Elaine Ryan, Esq.
Plaintiffs' Counsel

BY: _____
Kevin Roddy, Esq.
Plaintiffs' Counsel

BY: _____
Scott Kamber, Esq.
Plaintiffs' Counsel

BY: _____
Don Foty, Esq.
Plaintiffs' Counsel

BY: _____
Geoffrey W. Castello, Esq.
Counsel for Settling Defendants

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EXECUTED AND AGREED

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Class Counsel

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Scott Kamber, Esq.
Plaintiffs' Counsel

BY: _____
Don Foty, Esq.
Plaintiffs' Counsel

BY: _____
Geoffrey W. Castello, Esq.
Counsel for Settling Defendants

EXHIBIT A

CLAIM FORM AND INSTRUCTIONS

The Claims Administrator must receive this Claim Form in an envelope post-marked no later than _____, 20__ in order for it to be considered.

***Collins, et al. v. Quincy Bioscience LLC*,**
No. 19-22864-Civ-COOKE/GOODMAN
(Pending in the United States District Court for the Southern District of Florida)

Please read all of the following instructions carefully before filling out your Claim Form.

1. You have three options to make a claim:

   a. You may print out, complete, and mail your claim form and proof of purchase, if any, to the Claims Administrator at *Collins v. Quincy Bioscience* Administrator, P.O. Box _____, _____ _____-_____.

   b. You may print out, complete, and upload this form to the settlement website at _____. When using this option you may upload proof of purchase to the extent you have such proof.

   c. You may use an online claim form by going to www._____.com. When using this option you may upload proof of purchase to the extent you have such proof.

2. Complete Part A ("Claimant Information") by filling in the requested information. Only one Claim Form per household will be honored.

3. Complete Part B by providing the number of purchases of each kind of Prevagen you purchased between January 1, 2007 and [Date of Preliminary Approval]. For example, if you purchased one bottle of **Prevagen® Regular Strength 30 Count** during the class period, you would fill in the number "1" on the line that corresponds with **Prevagen® Regular Strength 30 Count**. You must then check a box to indicate if you have proof of purchase or not. Each qualifying purchase will receive a payment of 30% of the MSRP price (as defined in the Settlement Agreement), subject to the following limit: (1) Those with proof of purchase deemed valid by the Claims Administrator and the parties **must submit it with the claim form** and may obtain reimbursement up to $70.00 per Class Member; and (2) Those with no proof of purchase may obtain reimbursement up to $12.00 per Class Member.

4. Proof of purchase means acceptable documentation that provides valid proof of your purchase of Prevagen® Products. Such valid proof of purchase documentation will consist of receipts, copies of receipts, loyalty card records (such as print out from a loyalty program), direct

purchase records, or other legitimate, documentary proof showing payment to an authorized retailer or Quincy for Prevagen® Products that was not used as proof for any other claim.

5. Sign the CLAIM FORM. For those filing online, there will be an e-signature requirement.

6. Once your Claim Form is received, the Claims Administrator will review the Claim Form for compliance. Keep a copy of your completed Claim Form for your records. If your claim is rejected for any reason, the Claims Administrator will notify you by U.S. Mail or e-mail of the rejection and the reasons for such rejection.

PART A – CLAIMANT INFORMATION

Claim ID

Claimant Name

Street Address | Daytime Phone Number

City, State, Zip Code | E-Mail Address

PART B – LIMITED REIMBURSEMENT FOR QUALIFYING HOUSEHOLDS

You may make a claim for the following Prevagen® Products:

1. Prevagen® Regular Strength 30 Count
2. Prevagen® Regular Strength Chewables
3. Prevagen® Regular Strength 60 Count
4. Prevagen® Extra Strength 30 Count
5. Prevagen® Extra Strength Chewables
6. Prevagen® Extra Strength 60 Count
7. Prevagen® Professional Strength.

PLEASE FILL OUT THIS CHART STATING YOUR PURCHASES

Type of Purchase	Number of Each Type of Product Purchased	Approximate Date of Purchase	Location (Name of Store and City or Website) of Product Purchased

Prevagen® Regular Strength 30 Count			
Prevagen® Regular Strength Chewables			
Prevagen® Regular Strength 60 Count			
Prevagen® Extra Strength 30 Count			
Prevagen® Extra Strength Chewables			
Prevagen® Extra Strength 60 Count			
Prevagen® Professional Strength			

CHECK AND COMPLETE ONLY ONE OF THE FOLLOWING:

❑ **I HAVE PROOF OF PURCHASE (i.e., sales receipt(s) or invoice(s))** showing that I purchased Prevagen between January 1, 2007 and [Date of Preliminary Approval]. I understand that a qualifying Class Member who submits a valid claim form and valid proof of purchase for all qualifying purchases is entitled to receive payment in the amounts above for each purchase **up to $70.00 per Class Member**. **YOU MUST ATTACH THE PROOF OF PURCHASE WITH YOUR CLAIM FORM.**

OR

❑ **I DO NOT HAVE ANY PROOF OF PURCHASE (i.e., a sales receipt or invoice)** showing that I purchased Prevagen between January 1, 2007 and [Date of Preliminary Approval]. I understand that a qualifying Class Member who submits a valid claim form without proof of purchase is entitled to receive payment in the amounts above for each purchase **up to $12.00 per Class Member**.

I swear and affirm under the penalty of perjury that the above is true to the best of my knowledge.

Signature of Claimant	Print Name	Date

EXHIBIT B

Notice of Pendency and Proposed Settlement of Class Action

To: All individuals who purchased Prevagen® Products from January 1, 2007 to the [Date of Preliminary Approval].

Products Include: Prevagen® Regular Strength 30 Count, 60 Count, and Chewables; Prevagen® Extra Strength 30 Count, 60 Count, and Chewables; and Prevagen® Professional Strength.

Your rights may be affected by this class action lawsuit and the proposed settlement of the lawsuit discussed in this court-authorized notice ("Proposed Settlement"). This Notice is to inform you of the conditional certification of a settlement class, the nature of the claims at issue, your right to participate in, or exclude yourself from, the class, and the effect of exercising your various options.

You are not being sued.

YOUR LEGAL RIGHTS AND OPTIONS	
DO NOTHING	If you do nothing, you will be bound by the settlement and its benefits, if it is approved.
EXCLUDE YOURSELF	Write to the Claims Administrator if you do not want to benefit from, or be bound by, this settlement.
OBJECT	File an objection with the Court if you are not satisfied with the settlement.
GO TO A HEARING	If you file an objection, you may ask for permission to speak in Court about the fairness of the settlement.
MAKE A CLAIM	Make a claim for benefits under the settlement.

Your legal rights and options--**and the deadlines to exercise them**--are explained in this Notice. Your legal rights may be affected whether you act or do not act. Please read this Notice carefully. Capitalized terms in this Notice have the same meaning as provided in the Settlement Agreement on file with the Court.

1. Why did the Court issue this notice?

This Notice is given to inform you that (1) a class action lawsuit is pending in the United States District Court for the Southern District of Florida entitled *Collins, et al. v. Quincy Bioscience LLC*, No. 19-22864-Civ-COOKE/GOODMAN (S.D. Fla.) (the "Action"); (2) you may be a Settlement Class Member; (3) the parties have proposed to settle the Action; (4) the Proposed Settlement may affect your legal rights; and (5) you have a number of options.

2. What is this Action about?

Plaintiffs have brought this action against Defendants, on behalf of themselves and all other persons who, from January 1, 2007 up to and including [Date of Preliminary Approval] (the "Class Period"), purchased in the United States for consumption and not resale bottles of

Prevagen®. Prevagen® Products include Prevagen Regular Strength 30 Count, Prevagen® Regular Strength Chewables, Prevagen® Regular Strength 60 Count, Prevagen® Extra Strength 30 Count, Prevagen® Extra Strength Chewables, Prevagen® Extra Strength 60 Count and Prevagen® Professional Strength.

Plaintiffs alleged that Quincy Bioscience, LLC's ("Quincy") advertised benefits of Prevagen® relating to memory improvement were false and misleading. Plaintiffs maintain that Defendant's actions constitute violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201-501.2101, as well as other laws.

Quincy denies Plaintiffs' claims and charges, denies that it has violated any laws, and maintains that the labeling, packaging, and marketing of Prevagen® have always been truthful and not deceptive.

In addition to this Action, this settlement also resolves all Prevagen Actions (as defined in the settlement agreement), including *Racies v. Quincy Bioscience, LLC*, No. 15-cv-00292-HSG (N.D. Cal.) ("*Racies*"); *Vanderwerff v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-07582-RA (S.D.N.Y.); *Karathanos v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-08023-RA (S.D.N.Y.); *Spath v. Quincy Bioscience Holding Co., Inc., et al.*, Case No. 1:19-cv-03521-RA (S.D.N.Y.); *Engert, et al. v. Quincy Bioscience, LLC*, No. 1 :19-cv-183-LY (W.D. Tex.); and *Miloro v. Quincy Bioscience, LLC,* No. 16PH-cv01341 (Mo. Cir. Ct. filed Sept. 12, 2016).

3. How do I know if I am part of the Settlement Class?

The Court has conditionally certified a Settlement Class defined as the following:

> All individuals who purchased one or more Prevagen Products from a Settling Defendant or from a reseller authorized by the Settling Defendants to Sell Prevagen Products, for personal consumption and not resale, within the United States from January 1, 2007 through the date of Preliminary Approval.

Excluded from the Class are: (i) individuals who are or were during the Class Period officers or directors of a Settling Defendant or any of its respective affiliates; (ii) any justice, judge, or magistrate judge of the United States or any State, their spouses, and persons within the third degree of relationship to either of them, or the spouses of such persons.

4. What are the reasons for the Settlement?

The Court did not decide in favor of the Plaintiffs or Defendants. Instead, both sides agreed to a settlement that they believe is a fair, reasonable, and adequate compromise of their respective positions. The parties reached this agreement only after extensive negotiations, an exchange of information, and consideration of the risks and benefits of settlement.

Counsel for Plaintiffs and the Settlement Class Members have considered the substantial benefits from the Proposed Settlement that will be given to the Settlement Class Members and balanced

these benefits with the risk that a trial could end in a verdict for Defendants. They also considered the value of the immediate benefit to Settlement Class Members versus the costs and delay of litigation through trial and appeals and the risk that a class would not be certified. Even if Plaintiffs were successful in these efforts, Settlement Class Members may not receive any benefits for years.

5. What does the Settlement provide?

Benefits. If the Proposed Settlement is ultimately approved by the Court, it will provide cash payments and other relief to the Settlement Class. In return for the relief described below, the Settlement Class Members release their rights to pursue any claims against Defendants and related entities concerning or relating to the allegations raised in this Action. The central provisions of the Settlement are as follows:

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties, including Additional Plaintiffs and Plaintiffs' Counsel, agree as follows:

A. **Injunctive Relief**: The Parties have agreed to the following Injunctive Relief. For the purpose of this Agreement, the following definitions apply:

1. **"Covered Product"** means all Prevagen Products as defined in the Settlement Agreement.

2. "**Defendants**" or "**Settling Defendants**" means Quincy Bioscience Holding Company, Inc., Quincy Bioscience, LLC, Prevagen, Inc., d/b/a Sugar River Supplements, Quincy Bioscience Manufacturing, LLC, Mark Underwood and Michael Beaman.

3. "**Competent and reliable scientific evidence**" are "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results."

4. **Prohibited Representations: Improving Memory**

   The Settling Defendants agree that they will not make, or assist others in making, expressly or by implication, including through the use of a product name, endorsement, testimonial, depiction, or illustration, any representation that such Covered Product with respect to humans:

   A. improves memory;
   B. improves memory within 90 days or any other period of time; or
   C. reduces memory problems associated with aging;

unless the representation is non-misleading. A representation is non-misleading if, at the time of making such representation, the Settling Defendants possess and rely upon competent and reliable scientific evidence substantiating that the representation is true, or if the representation is clearly and conspicuously qualified by either:

a. A disclaimer substantially similar to the following: "Based on a clinical study of subgroups of individuals who were cognitively normal or mildly impaired. This product is not intended to diagnose, treat, cure, or prevent any disease."; or

b. A disclaimer substantially similar to the following: "Based on results from two subgroups of individuals who participated in a randomized double blind placebo controlled clinical study. Participants in the two subgroups were cognitively normal or mildly impaired. This product is not intended to diagnose, treat, cure, or prevent any disease."

B. Monetary Relief: the Settling Defendants shall offer partial refunds to Settlement Class Members for purchases of Prevagen Products based upon a two-tier monetary relief structure to be distributed through an uncapped claims-made settlement, where, subject to the following provisions of the Claims Process:

1. The Settling Defendants agree to pay to all Settlement Class Members with Proof of Purchase who submit a valid "Claim Form," a cash refund of 30% of the Quincy MSRP for the Prevagen Products those claimants purchased within the Class Period, **up to $70 per individual claimant.**

2. The Settling Defendants agree to pay all Settlement Class Members without Proof of Purchase who submit a valid "Claim Form" a cash refund of 30% of the Quincy MSRP for the Prevagen Products those claimants purchased within the Class Period, **up to $12 per claimant.**

3. The Quincy MSRP shall be defined as:

- $39.95 for Prevagen Regular Strength 30 Count or Prevagen Regular Strength Chewables;
- $74.95 for Prevagen Regular Strength 60 Count;
- $59.95 for Prevagen Extra Strength 30 Count or Prevagen Extra Strength Chewables;

- $109.95 for Prevagen Extra Strength 60 Count; and
- $89.95 for Prevagen Professional Strength;

2. Notice to the Class and Administration.

In addition to the above relief, Defendants will also pay for the costs of Notice and to administer the settlement.

3. Claim Form (May be Filed Online or By Mail):

To receive a cash payment, Settlement Class Members must complete, sign, and submit a Claim Form **ON OR BEFORE _____, 20__.** For some claims, proof of purchase is required. Please review the claim form for more information.

You may visit www._____.com to file your claim online or obtain a claim form by calling 1-(888) XXX-XXXX.

You can also obtain a Claim Form by letter request, enclosing a self-addressed, stamped envelope to *Collins v. Quincy* Administrator, P.O. Box _____.

4. RELEASE.

Unless you exclude yourself from the Settlement Class, approval of this Proposed Settlement will result in a release by you of all claims against Defendants and other related entities and individuals concerning or relating to the allegations raised in this Action.

5. MORE INFORMATION

The complete terms of the settlement are in the Settlement Agreement, which is available online at www._____.com or by calling 1-(888) XXX-XXXX.

6. Do I have a lawyer in the case?

The Court has appointed the following counsel as Class Counsel: Adam Moskowitz of The Moskowitz Law Firm, PLLC and Jack Scarola of Searcy Denney Scarola Barnhart & Shipley PA. as Class Counsel or Co-Lead Counsel. You also have a right to obtain your own attorney. But, if you hire your own attorney, you will have to pay that attorney. You can ask your attorney to appear at the Fairness hearing for you if you want someone other than Class Counsel to represent you.

7. How will the lawyers for the Settlement Class be paid?

The Parties negotiated the payment of attorneys' fees and costs, over and above the class relief, only after reaching agreement upon all other terms of this Settlement Agreement. Moreover, the Settlement Agreement is not contingent upon the award of any particular amount of attorneys' fees and costs. Like all class action settlements, the amount of attorneys' fees and costs awarded to class counsel is left to the discretion of this Court. The Parties have agreed, however, that separate and apart from the monetary relief Defendants will provide to the Settlement Class, and subject to Court approval, Defendants will not object to a collective award of attorneys' fees and costs up to $4,214,000 for Class Counsel, and other Plaintiffs' Counsel as defined in the Settlement Agreement. Further, Defendants have agreed to not oppose a request for Class Representative awards in the amount of $10,000.00 each to Juan Collins and John Fowler, and $2,000 each to Additional Plaintiffs (who brought their own actions) Philip Racies, Elaine Spath, John Karathanos, James Vanderwerff, Max Engert, Jack Purchase, Ronald Atkinson, and Diana Miloro.

Class Counsel will file any motion for an award of Class Counsel's Fees on or before _____ .

8. What happens if I do nothing after receiving this notice?

If you do nothing, and the Court approves the settlement, you will be bound by the terms of the Settlement and will be unable to pursue claims against Defendants and other related entities concerning or relating to the allegations raised in this Action.

As long as you do not request exclusion from the Settlement Class, you may be entitled to the refunds described in Section 5 if you properly submit a claim form.

You must complete and submit a Claim Form online or postmarked no later than _____, or your claim will not be considered and will be rejected.

9. What does it mean to request exclusion from the Settlement Class?

If you come within the Settlement Class definition, you will be a Settlement Class Member and will be bound by the settlement if the Court approves it unless you exclude yourself from the Settlement Class (also known as "opting out"). Being "bound by the settlement" means that you will be precluded from bringing, or participating as a claimant in, a similar lawsuit. Persons who exclude themselves from the Settlement Class will not be bound by the terms of the Proposed Settlement for purposes of damages claims and will not be eligible to receive any money from the Proposed Settlement, but they will retain the right to sue Defendants for damages, at their own cost.

You cannot exclude yourself from the Settlement Class and the Proposed Settlement if you wish to object to the settlement and/or appear before the Court during the Fairness Hearing (see Sections 11 and 12), as you need to be a Settlement Class Member affected by the settlement to object or appear.

10. How do I request exclusion?

You may exclude yourself from the Settlement Class (for purposes of damages claims only) provided that your request is made in writing and postmarked before **_____, 20__**. To exclude yourself, send a letter that includes (a) the name of the case, (b) your name, current address, telephone number, and signature, and (c) a clear statement communicating that you elect to be excluded from the settlement. Your written request to exclude yourself from the settlement must be sent to the "Collins v. Quincy Bioscience Administrator" at _____.

You will be excluded from the settlement only if your request is ***postmarked*** on or before **_____, 20__**, and includes the required information. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the date specified, shall be bound by all terms of the Proposed Settlement and the Final Order and Judgment, regardless of whether they have requested exclusion from the Proposed Settlement.

In determining whether you want to exclude yourself from the settlement, you are advised to consult your own personal attorney, as there may be issues particular to your circumstances that require consideration.

11. What if I do not like the Settlement?

If you are a Settlement Class Member, you can object to the Proposed Settlement. To object, you must provide the following information in writing: (i) your full name, current address, and current telephone number; (ii) documentation or attestation sufficient to establish membership in the Class; (iii) a statement of the position(s) you wish to assert, including the factual and legal grounds for the position(s); (iv) provide copies of any other documents that you wish to submit in support of your position; and (v) your objection must be signed by you.

You must file your objection before **_____, 20__** with the Clerk of Court, Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami, FL 33128, and served at that same time upon both of the following:

(1) Co-Lead Class Counsel

Adam Moskowitz, Esq.
The Moskowitz Law Firm, PLLC
2 Alhambra Plaza
Suite 601
Coral Gables, FL 33134

and

(2) Defendants' Counsel

Geoffrey W. Castello, Esq.
Kelley Drye & Warren LLP
One Jefferson Road
2nd Floor
Parsippany, NJ 07054

If your objections do not meet all of the requirements set forth in this section, they will be deemed invalid and will be overruled.

Finally, subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the Proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for attorneys' fees, Class Representative Awards, Additional Plaintiff Awards, and reimbursement of reasonable litigation costs and expenses. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon Class Counsel and Defendants' Counsel (at the addresses listed above in Section 11), a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") on or before **_____, 20__**.

The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Class Notice, will not be allowed to speak or otherwise present any views at the Final Approval Hearing.

12. When and where will the Court determine whether to approve the settlement?

The Court has scheduled a Final Approval Hearing for **_____, 20__** at _____ at the James Lawrence King Federal Justice Building, 99 N.E. Fourth Street, Room 1168, Miami, Florida 33132. This hearing may be continued or rescheduled by the Court without further notice. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and will consider Class Counsel's request for attorneys' fees and expenses. The Court also will consider objections. The Court may decide these issues at the Final Approval Hearing or take them under consideration. We do not know how long these decisions will take.

13. Do I have to come to the hearing?

No. You are not required to come to the hearing but you are welcome to come at your own expense.

Settlement Class Members who object to the Proposed Settlement do not need to attend the Final Approval Hearing for their objections to be considered. If you wish to appear either personally or through your own personal attorney at the Final Approval Hearing, you must send both a timely objection and a Notice of Intention to Appear to the Clerk of the Court at the address set forth in

Section 11 above, and serve copies on Class Counsel and counsel for Defendants at the addresses set forth in Section 11 above no later than **_____, 20__.**

Your Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that you or your counsel will present to the Court at the hearing or for any purpose relating to the Settlement. Any Settlement Class Member who does not file and serve a Notice of Intention to Appear in accordance with these instructions will be barred from speaking at any hearing concerning this Proposed Settlement or otherwise objecting to the Proposed Settlement.

14. What if the proposed settlement is not approved?

If the Proposed Settlement is not granted final approval, the putative Settlement Class which has been preliminarily approved will be decertified, this action will proceed without further notice, and none of the agreements set forth in this notice will be valid or enforceable.

15. How do I get more information about the settlement?

This Notice only summarizes the Proposed Settlement. The official terms of the Proposed Settlement are available by visiting the Settlement Website at www._____.com, reviewing the public files at the Clerk of Court, Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami, FL 33128 or by calling 1-(888) _____and requesting a copy of the Settlement Agreement. In the event of a conflict between the terms of this Notice and the Proposed Settlement, the terms of the Proposed Settlement will govern.

All questions you may have concerning the Settlement Agreement or this Notice should be directed to _____.

Please DO NOT Contact the Court.

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 19-22864-Civ-COOKE/GOODMAN

JUAN COLLINS and JOHN FOWLER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

QUINCY BIOSCIENCE, LLC,
a Wisconsin limited liability company,

Defendant.
_____/

FINAL ORDER AND JUDGMENT

On _____, this Court granted preliminary approval of the proposed class action settlement set forth in the Settlement Agreement and Release ("Settlement Agreement") between Plaintiffs Juan Collins and John Fowler, individually and on behalf of the Settlement Class (hereinafter "Plaintiffs" or "Class Representatives"), and Defendants Quincy Bioscience, LLC, Quincy Bioscience Holding Company, Inc.,

Prevagen, Inc., Quincy Bioscience Manufacturing, LLC, Mark Underwood, and Michael Beaman and the Quincy (collectively, "Defendants"). [1]

On _____, the Court held a duly noticed final approval hearing to consider (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate; (2) whether a judgment should be entered permanently barring the Parties and Settlement Class Members from prosecuting the other Parties and their officers, attorneys, directors, shareholders, employees, agents, retailers, suppliers, distributors, endorsers, consultants, and any and all other entities or persons upstream and downstream in the production/distribution channels in regard to those matters released as set forth in Section VI of the Settlement Agreement; and (3) whether and in what amount to approve Class Counsel's application for the requested award of attorneys' fees and costs and the Class Representative award applications.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. The Court has personal jurisdiction over the parties and the Settlement Class Members, venue is proper, the Court has subject matter jurisdiction to approve the Settlement Agreement, including all exhibits thereto, and to enter this Final Order

[1] Unless otherwise defined, capitalized terms in this Final Order and Judgment have the definitions found in the Settlement Agreement.

and Judgment. Without in any way affecting the finality of this Final Order and Judgment, this Court hereby retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and Judgment, and for any other necessary purpose.

2. The Court finds that Class Notice was given in the manner ordered by the Court; constituted the best practicable notice to apprise Settlement Class Members of the pendency of the Action, their right to object or exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing; was fair, reasonable, and adequate and constituted sufficient notice to all persons entitled to receive notice, including all Settlement Class Members; and complied fully with the requirements of Federal Rule of Civil Procedure 23.

3. The Court finds that the prerequisites for a class action under Federal Rule of Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b) have been satisfied for settlement purposes for each Settlement Class Member in that (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) Class Representatives have and will

continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (f) Defendants have acted on grounds generally applicable to all Class Members, thereby making final injunctive relief concerning the class as a whole appropriate; and (g) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby finally certifies the Settlement Class, as identified in the Settlement Agreement, which shall consist of All individuals who purchased one or more Prevagen Products, as defined below, from a Settling Defendant or from a reseller authorized by the Settling Defendants to sell Prevagen Products, for personal consumption and not resale, within the United States from January 1, 2007 through the date of Preliminary Approval. Prevagen Products are defined as Prevagen® Regular Strength 30 Count, Prevagen® Regular Strength Chewables, Prevagen® Regular Strength 60 Count, Prevagen® Extra Strength 30 Count, Prevagen® Extra Strength Chewables, Prevagen® Extra Strength 60 Count, and Prevagen® Professional Strength.. Excluded from the Class are: (i) individuals who are or were during the Class Period officers or directors of Settling Defendants or any of their respective affiliates; (ii) any justice, judge, or magistrate

judge of the United States or any State, their spouses, and persons within the third degree of relationship to either of them, or the spouses of such persons.

5. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby awards Class Counsel Attorneys' Fees and Expenses in the amount of $4,214,000.00 payable pursuant to the terms of the Settlement Agreement. The Court also awards case contribution awards in the amount of $10,000.00 each to the Class Representatives Juan Collins and John Fowler, and $2,000 each to Additional Plaintiffs Philip Racies, Elaine Spath, John Karathanos, James Vanderwerff, Max Engert, Jack Purchase, Ronald Atkinson, and Diana Miloro.

6. The terms of the Settlement Agreement and of this Final Order and Judgment, including all exhibits thereto, shall be forever binding on the parties, and shall have *res judicata* and preclusive effect in all pending and future lawsuits maintained by the Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors, and assigns.

7. The Releases, which are set forth in Section VI of the Settlement Agreement and which are also set forth below, are expressly incorporated herein in all respects and are effective as of the date of this Final Order and Judgment; and the Discharged Parties (as that term is defined below in the Settlement Agreement) are

forever released, relinquished, and discharged by the releasing persons from all released claims:

> **VI. RELEASE**
>
> Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the Settlement benefits described in this Agreement, Plaintiffs and the Settlement Class fully release and discharge the Settling Defendants, and all of their present and former parent companies, subsidiaries, special purpose entities formed for the purpose of administering this Settlement, shareholders, owners, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, affiliates, and successors, personal representatives, heirs and assigns, retailers, suppliers, distributors, endorsers, consultants, and any and all other entities or persons upstream and downstream in the production/distribution channels (together, the "Discharged Parties") from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Co-Lead Class Counsel, Plaintiffs' Counsel, Class Representatives, Additional Plaintiffs or Settlement Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Discharged Parties in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, arising from, or relating to the claims alleged in the Action and the Prevagen Actions.

8. This Final Order and Judgment and the Settlement Agreement (including the exhibits thereto) may be filed in any action against or by any released

person to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

9. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

10. This Action, including all individual claims and class claims presented herein, is hereby **DISMISSED** on the merits and **WITH PREJUDICE** against the Plaintiffs and all other Settlement Class Members, without fees or costs to any party except as otherwise provided herein.

DONE AND ORDERED in Chambers at Miami, Florida this _____ day of _____, 2020.

_____
HONORABLE JONATHAN GOODMAN
United States Magistrate Judge

Copies furnished to all counsel of record

EXHIBIT D

EXHIBIT D
(Internet Notice)

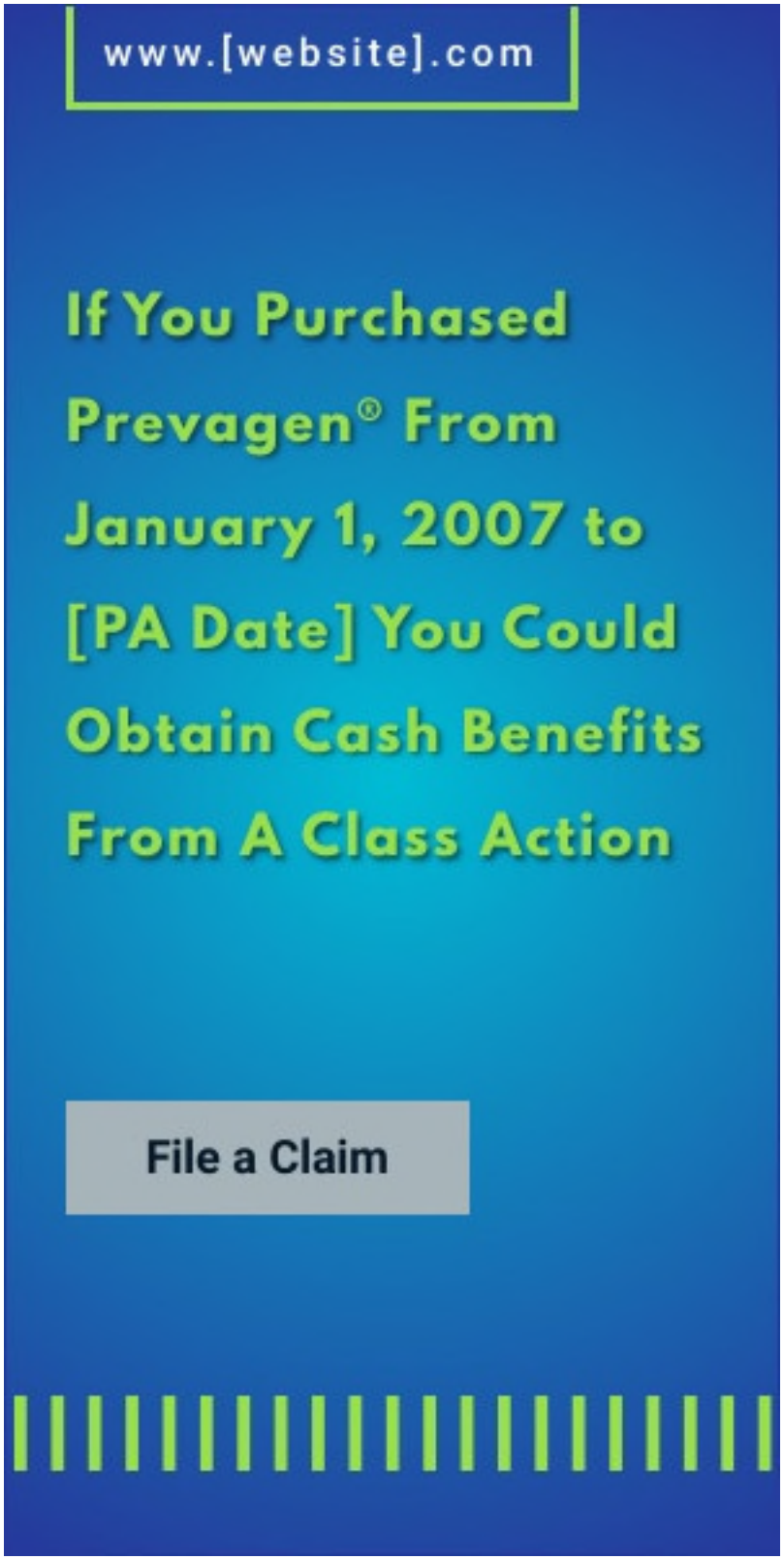

EXHIBIT E

EXHIBIT E

PREVAGEN SETTLEMENT: ATTORNEYS' FEES AND COST PAYMENT TERMS

The Following Schedule shall be in effect for the payment of all Plaintiffs' attorneys' fees and expenses, as well as the Class Representative and Additional Plaintiff service awards.

Lead Counsel will hold all funds in the Moskowitz Law Firm Trust Account until 10 days after entry of the Final Approval ("FA Order").

The Schedule is as follows:

Total Fees and Rep Awards	$4,250,000
Initial Payment (within 5 days after entry of FA Order)	$500,000
2nd Payment (30 days after entry of FA Order)	$300,000
3rd Payment (90 days after entry of FA Order)	$300,000
4th Payment (120 days after entry of FA Order)	$300,000*
5th Payment (150 days after entry of FA Order)	$300,000*
6th Payment (180 days after entry of FA Order)	$300,000*
7th Payment (210 days after entry of FA Order)	$300,000*
8th Payment (240 days after entry of FA Order)	$300,000*
9th Payment (270 days after entry of FA Order)	$300,000*
10th Payment (300 days after entry of FA Order)	$300,000*
11th Payment (330 days after entry of FA Order)	$300,000*
12th Payment (360 days after entry of FA Order)	$300,000*
13th Payment (390 days after entry of FA Order)	$450,000*
Total Payout	$4,250,000

* Commencing with the 4th Payment, Quincy will pay three percent interest (3%) per annum on the unpaid amounts for Payments 4 through 12. Quincy shall have the right to accelerate any of those payments.

Exhibit 2

THE MOSKOWITZ LAW FIRM

For more than 25 years, the lawyers at The Moskowitz Law Firm, PLLC ("The Moskowitz Law Firm") have successfully litigated significant class action and complex commercial cases involving the rights of consumers, investors, and businesses. The Firm and its attorneys consistently rank among the most highly regarded litigation attorneys locally and on the national stage — according to clients, judges, opponents, and professional journals — for effectiveness in and out of the courtroom.

Adam Moskowitz. Mr. Moskowitz is the Founder and Managing Partner of The Moskowitz Law Firm and is experienced in all forms of class action claims, including civil conspiracy claims under the Racketeering Influenced and Corrupt Organizations ("RICO") Act. Mr. Moskowitz serves and has served as Lead Counsel in some of the largest class action cases in Florida and nationwide. Mr. Moskowitz has been an Adjunct Professor at the University of Miami School of Law teaching Class Action Litigation for over 26 years. Adam has received numerous awards for his results including the "Most Effective Lawyer Award" for his work in litigating and resolving numerous nationwide force-placed insurance cases. Mr. Moskowitz filed one of the first class action lawsuits regarding these practices and has since spearheaded class action litigation in over 32 nationwide class actions brought against the largest banks or mortgage servicers and the force-placed insurers across the country, reaching 30 settlements to date totaling over $4.2 billion dollars for the proposed nationwide classes of over 5.3 million homeowners.[1]

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[1] *See for example Williams v. Wells Fargo Bank, N.A.,* No. 11-cv-21233 (S.D. Fla.) (final approval granted); *Saccoccio v. JPMorgan Chase Bank N.A.,* No. 13-cv-21107 (S.D. Fla.) (final approval granted); *Diaz v. HSBC Bank (USA), N.A.,* No. 13-cv-21104 (S.D. Fla.) (final approval granted); *Fladell v. Wells Fargo Bank, N.A.,* No. 13-cv-60721 (S.D. Fla.) (final approval granted); *Hamilton v. SunTrust Mortg., Inc.,* No. 13-cv-60749 (S.D. Fla.) (final approval granted); *Hall v. Bank of Am., N.A.,* No. 12-cv-22700 (S.D. Fla.) (final approval granted); *Lee v. Ocwen Loan Servicing, LLC,* No. 14-cv-60649 (S.D. Fla.) (final approval granted); *Braynen v. Nationstar Mortg.*, LLC, No. 14-cv-20726 (S.D. Fla.) (final approval granted); *Wilson v. Everbank,* N.A., No. 14-cv-22264 (S.D. Fla.) (final approval granted); *Montoya v. PNC Bank, N.A.,* No. 14-cv-20474 (S.D. Fla.) (final approval granted); *Almanzar v. Select Portfolio Servicing,* No. 14-cv-22586 (S.D. Fla.) (final approval granted); *Jackson v. U.S. Bank, N.A.,* No. 14-cv-21252 (S.D. Fla.) (final approval granted); *Circeo-Loudon v. Green Tree Servicing, LLC,* No. 14-cv-21384 (S.D. Fla.); *Beber v. Branch Banking & Trust Co*., No. 15-cv-23294 (S.D. Fla.) (final approval granted); *Ziwczyn v. Regions Bank, No.* 15-cv-24558 (S.D. Fla.) (final approval granted); *McNeil v. Selene Finance, LP,* No. 16-cv-22930 (S.D. Fla.); *McNeil v. Loancare, LLC,* No. 16-cv-20830 (S.D. Fla.) (final approval granted) (final approval granted); *Edwards v. Seterus, Inc.*, No. 15-cv-23107 (S.D. Fla.) (final approval granted); *Cooper v. PennyMac Loan Servicing*, LLC, No. 16-cv-20413 (S.D. Fla.) (final approval granted). *Strickland, et al. v. Carrington Mortgage Services, LLC, et al*., 16-cv-

Prior to filing the FPI class actions, Adam Moskowitz served as Co-Lead Counsel in one of the largest MDLs, *In re: Managed Care Litigation*, MDL No. 1334. The MDL was finalized about 6 years ago and was actively litigated for about 7 years. Plaintiffs brought suit against the seven largest managed care providers on behalf of approximately 600,000 physicians alleging that these defendants engaged in a civil conspiracy in violation of the RICO Act. Adam Moskowitz worked almost all of his time assisting the Co-Lead team with every aspect of the case, including taking and defending depositions, coordinating with co-counsel, working with scientists, drafting pleadings, and helping with settlement efforts. Through this litigation before Judge Moreno, plaintiffs were able to revise the manner in which managed care is conducted with physicians throughout the country, and obtained almost a billion dollars in monetary relief. To date, this is the only certified nationwide RICO class action to be upheld by the Eleventh Circuit Court of Appeal.

Mr. Moskowitz has been appointed Lead and Co-Lead counsel in numerous other state and federal class actions, including resolving one of the nation's largest consumer class actions, *LiPuma vs. American Express*, No. 04-cv-20314 (S.D. Fla.). In *Pain Clinic et al. v. Allscripts Healthcare Solutions, Inc.,* 12-49371 (Fla 11th Cir. Ct. 2012), Mr. Moskowitz reached a nationwide settlement against Allscripts Healthcare Solution on behalf of thousands of small physician practices regarding the sale and marketing of defective electronic healthcare software. Mr. Moskowitz has also served as Lead, Co-lead or as part of Plaintiffs' counsel in various nationwide class actions including *In re: Marine Hose Antitrust Litigation*, No. 08-MDL-1888-Graham/Turnoff (S.D. Fla.); *Natchitoches Parrish Hospital v. Tyco (In re Sharps Containers)*, No. 05-cv- 12024 (D. Mass.) (serving as co-lead counsel in a nationwide antitrust class action on behalf of direct purchasers of containers for the disposal of sharp medical instruments); *Texas Grain Storage Inc. v. Monsanto Co.*, No. 5:2007-cv-00673 (W.D. Texas) (serving as co-lead counsel with Bruce Gerstein in a nationwide antitrust class action on behalf of direct purchasers of genetically modified seeds); *In re: Hypodermic Products Antitrust Litigation*, MDL No. 1730, No. 05-cv-1602 (JLL/CCC) (D. N.J.) (Linares, J.) (obtaining final approval of a nationwide settlement of an antitrust class action on behalf of direct purchasers of needle products); *In re: Mushroom Direct Purchase Antitrust Litigation*, No. 06-cv-00620l (E.D. Pa.) (representing direct purchasers of fresh agaricus mushrooms sold in the United States east of the Rocky Mountains in antitrust class action); *Miller v. Dyadic International*, No. 07-cv-80948 (S.D. Fla.) (consolidated securities fraud class action against biotech company arising out of material misstatements and omissions regarding financial improprieties of its subsidiaries in violation of federal securities laws); *In re: Herbal Supplements Marketing and Sales Practices Litigation*, 1:15-cv-05070 (N.D. Ill.) (serving on Plaintiffs' Lead Counsel Committee in multidistrict litigation regarding misleading labelling of herbal supplements sold at Target, Walgreens and Walmart stores); *Louisiana Wholesale v. Becton*

25237 (S.D. Fla.) (final approval granted for three separate settlements); *Quarashi et al v. Caliber Home Loans Inc. et al.;* 16-9245 (D.N.J.) (final approval granted).

Dickinson, et al., No. 05-cv-01602 (D.N.J.); and *Bruhl v. Price Waterhouse Coopers, International, et al.*, No. 03-cv-23044 (S.D. Fla.).

Currently, in *In re Transamerica COI Litigation*, Case No. 2:16-cv-01378-CAS-AJW (C.D. Cal.), Mr. Moskowitz was appointed as Co-Lead counsel and reached a nationwide settlement for a certified class of nationwide consumers who purchased life insurance policies from Transamerica Life Insurance Company—a subsidiary of Aegon—one of the world's largest providers of life insurance, pension solutions and asset management products. That nationwide settlement was finally approved by U.S. District Judge Christina A. Snyder in February 2019 and resulted in recovering a gross Settlement Common Fund of over $100 million, as well as extremely valuable injunctive relief for the nationwide class. Mr. Moskowitz also personally resolved the sole objection to the settlement with the objector's counsel who brought separate "copycat" Transamerica COI class actions in Iowa. Further, in *In re Fieldturf Multi District Litigation*, Case No. 3:17-md-02779-MAS-TJB (D.N.J.), U.S. District Judge Michael A. Shipp recently appointed Mr. Moskowitz as Co-Lead counsel for all of the plaintiffs after numerous class actions brought against Fieldturf were consolidated in the District of New Jersey earlier last year. The claims were brought on behalf of municipalities related to the marketing and sale of allegedly defective artificial fields. Adam is currently lead and co-lead counsel in numerous other class actions currently pending in state and federal courts across the country.

Mr. Moskowitz's practice also encompasses various other complex commercial litigation matters, arbitrations before FINRA and numerous jury trials. Adam obtained one of the largest jury verdicts in Miami-Dade County (over $100 million dollars) in a jury trial against a global agricultural company on behalf of growers from the United States and Costa Rica. Adam has also served as chairperson in numerous NASD securities arbitrations, and actively participates in local and national seminars and panels, lectures across the country regarding class action litigation, and has published numerous articles on class action practices and settlements.[2] Mr. Moskowitz has actively served on numerous state and national class action organizations, including being appointed to the Duke Law Center for Judicial Studies Advisory Council and serves as the Topics Coordinator. The Council brings together all federal judges, experienced plaintiffs' and defense attorneys, and academics to develop practical solutions to legal issues by way of rule changes, best practices, guidelines, and principles. The Council conducts numerous national seminars each year, attended by hundreds of class action practitioners and federal and state judges. One such seminar was the "National Townhall Meeting Developing a Useful Framework to Address Alcohol Abuse, Drug Addiction, and Anxiety/Depression Among Bench, Bar, and Related Professionals," which included many great speakers (39 Panelists for 8 Panels), including many federal judges. Adam is married to his wife Jessica and has three children, Serafina, Michael and Samantha and is very active with his children's school Temple Beth Am in Miami, Florida. Attached are two personal

[2] *See, e.g., The Right Way to Calculate Attorneys' Fees in Class Actions*, December 4, 2015, available at http://www.law360.com/articles/733534/the-right-way-to-calculate-atty-fees-in-class-actions.

articles about Adam Moskowitz, including one regarding his family being named "Family of the Year" for their synagogue this past year, based mainly on the great dedication and pro bono service by his wife to his children's school.

Howard Bushman. Howard Bushman is a Partner at The Moskowitz Law Firm and a seasoned litigator with over 18 years of experience prosecuting nationwide class actions and mass tort litigation. Mr. Bushman is a central figure in litigating the lender placed insurance class actions listed in Footnote 1. Further, Mr. Bushman has effectively litigated the following class actions: *Kenneth F. Hackett & Associates, Inc. v. GE Capital Information Technology Solutions, Inc. et al.,* Case No.: 10-20715-CIV-ALTONAGA/BROWN (S.D. Fla.) (multi-million dollar settlement on behalf of a nationwide class of copier lessees whom were overcharged for their monthly payments); *Aarons et al. v. BMW of North America, LLC*, Case No. 2:11-cv-07667-PSG (S.D.Cal.) (multi-million dollar settlement on behalf of a nationwide class of owners of defective Mini-Cooper vehicles); *Lockwood et al. v. Certegy Check Services, Inc.*, Case No.: 8:07-CV-01657-SDM-MSS (M.D. Fla.) (nationwide data breach action resulting in a settlement valued at over $75 million dollars; *Brenda Singer v. WWF Operating Company*, Case No.: 13-CV-21232 (S.D. Fla. 2013) (nationwide litigation regarding alleged deceptive marketing of evaporated cane juice; successfully settled nationwide class action over deceptive labeling of evaporated cane juice); *In Re: Countrywide Financial Corp. Customer Data Security Breach Litigation,* Case No. 3:08-MD-01998-TBR (WDKY) (class action on behalf of over 17 million consumers, achieved a settlement valued at over $300 million dollars); *Eugene Francis v. Serono Laboratories, Inc., et al.* ("Serostim"), Case No. 06-10613 PBS (U.S. District Court of Mass.) ($24 million cash settlement in a nationwide class action litigation against multiple entities regarding the deceptive and illegal marketing, sales and promotional activities for the AIDS wasting prescription drug Serostim); *In Re: Guidant Corp. Implantable Defibrillators Products Liability Litigation*, MDL No. 1708 (U.S. District of Minnesota) ($245 million dollar settlement for patients in this nationwide mass tort class action regarding the sale of defective cardiac defibrillators and pacemakers); *In Re: Zicam Cold Remedy Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2096 (mass tort involving over $15 million settlement).

Mr. Bushman has extensive experience litigating antitrust matters throughout the state of Florida as well. *See In re: Photochromic Lens Antitrust Litigation*, MDL No. 2173, No. 8:10–md–02173–T–27EA (M.D. Fla.) (nationwide indirect purchaser antitrust class action on behalf of purchasers of photochromic lenses); *In re Florida Cement and Concrete Antitrust Litigation (Indirect Purchaser Action)*, No. 09-23493-CIV-Altonaga/Brown (S.D. Fla.) (statewide indirect purchaser antitrust class action on behalf of purchasers of cement); *Anna Vichreva v. Cabot Corporation, et al.*, No. 03-27724-CA-27 (Fla. 11th Jud. Cir. Ct.) (litigated and obtained the largest per-consumer Carbon Black state court antitrust class action settlement in the country).

As passionate for the law as he is for giving back to the local community, Howard recently received the Eleventh Judicial Circuit and Miami-Dade County Bar Associations' Put Something Back Pro Bono Service Award.

Adam Schwartzbaum. Adam Schwartzbaum is a Senior Associate at The Moskowitz Law Firm, where he plays an important role in managing all aspects of the Firm's class action litigation practice. Adam's responsibilities include case analysis and development, trial court litigation, and appellate work.

Adam successfully litigated and settled *Rollo v. Universal Property & Casualty Insurance Co.*, No. 2017-027720-CA-01 (Fla. 11th Jud. Cir. Complex Bus. Div.), a class action which held the largest private insurance company in Florida accountable for its systemic failure to pay statutory interest on late-paid settlement payments. Adam also represented several certified classes of investors in litigation concerning the $300+ million bankruptcy, *In re 1 Global Capital LLC*, No. 18-19121 (Bankr. S.D. Fla.). Working in concert with the Debtors' Special Counsel, Adam helped to litigate and settle claims with many of the Debtors' professionals and sales agents in both state and federal court. Adam has also played an important role in many successful class actions litigated by The Moskowitz Law Firm, including *In re Transamerica COI Litigation*, Case No. 2:16-cv-01378-CAS-AJW (C.D. Cal.) (cash settlement valued over $100 million, including significant prospective relief for life insurance policyholders).

Prior to joining The Moskowitz Law Firm, Mr. Schwartzbaum was an associate at Weiss Serota Helfman Cole & Bierman, a large regional law firm well known for representing local governments. As an associate in the litigation department, Mr. Schwartzbaum represented an array of private and municipal clients, at the trial and appellate levels, in state and federal court. In several instances, Mr. Schwartzbaum won significant trial victories and then succeeded in upholding them on appeal. For example, in *SDE Media, LLC v. City of Doral*, Case No. 3D16-2008 (Fla. 11th Jud. Cir.), Mr. Schwartzbaum second-chaired a trial that resulted in the trial court issuing a nineteen-page order finding in the City's favor. On appeal, Mr. Schwartzbaum authored the answer brief, and the Third District Court of Appeal issued a per curiam affirmance. *SDE Media, LLC v. City of Doral*, 228 So. 3d 567 (Fla. 2017). Similarly, in *Brock v. Ochs*, Case No. 2D16-705 (Fla. 20th Jud. Cir.), Mr. Schwartzbaum helped obtain summary judgment for the Collier County Manager in a major dispute with the County Clerk regarding the scope of the County Manager's purchasing power under the Florida Constitution. On appeal, Mr. Schwartzbaum authored the answer brief, and the Second District Court of Appeal affirmed per curiam. *Brock v. Ochs*, 203 So. 3d 164 (Fla. 2d DCA 2016). Mr. Schwartzbaum achieved similar success in federal court. For example, in *Edwards CDS, LLC v. City of Delray Beach*, No. 16-15693 (S.D. Fla.), Mr. Schwartzbaum authored a motion to dismiss that resulted in an order dismissing $25 million in federal constitutional claims with prejudice. On appeal, Mr. Schwartzbaum authored the answer brief, and the Eleventh Circuit Court of Appeals issued a written opinion affirming

the dismissal. *Edwards CDS, LLC v. City of Delray Beach*, 699 Fed. App'x 885 (11th Cir. 2017). As a result, Mr. Schwartzbaum helped the City achieve a very favorable settlement. Other significant appellate victories include *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017) (upholding constitutionality of City of Miami's Civilian Investigative Panel); *City of Homestead v. Foust*, 2018 WL 575620 (Fla. 1st DCA 2018) (reversing order of Judge of Compensation Claims after determining, in issue of first impression, that JCC incorrectly interpreted a statute); *City of Cooper City v. Joliff*, 227 So. 3d 633 (Fla. 4th DCA 2017) (reversing a multi-million dollar summary judgment for plaintiffs in a class action alleging a special assessment was unconstitutional and instructing trial court to enter judgment for the City).

Mr. Schwartzbaum's career began in the litigation department of a large international law firm, White & Case, where he provided research and writing support on complex commercial disputes and in significant appellate matters in both state and federal court. Adam served on the trial team in *Dacra Development v Corp. v. Colombo*, Consolidated Case Nos. 11-17338 & 10-47846, successfully defending a prominent real estate developer from a multimillion dollar lawsuit and helping secure a $2 million verdict on the defendant's counterclaim. Adam also represented the City of Dania Beach in a dispute over the expansion of the Fort Lauderdale-Hollywood International Airport, ultimately helping to secure a landmark settlement on behalf of over 850 homeowners impacted by the development. Adam also made vital contributions to several notable appellate victories, including *North Carillon, LLC v. CRC 603, LLC*, 135 So. 3d 274 (Fla. 2014) (obtaining a reversal of an opinion that incorrectly interpreted provision of Florida's condominium law concerning statute governing placing of deposits into escrow), *Sargeant v. Al-Saleh*, 137 So. 3d 432 (Fla. 4th DCA 2014) (establishing new Florida law concerning trial court's jurisdiction to compel turn over of foreign assets), and *200 Leslie Condominium Association, Inc. v. QBE Insurance Corp.*, 616 Fed. App'x 936 (11th Cir. 2015) (affirming judgment in favor of insurer following a bench trial).

Mr. Schwartzbaum is an active contributor to the South Florida community and a leader in several prominent organizations. He is a Member of the Board of Directors of Nu Deco Ensemble, Miami's 21st Century genre-bending orchestra. Mr. Schwartzbaum sits on the Board of Directors of Temple Menorah in Miami Beach, the Board of the South Florida Israel Bonds Young Investor Society, and on the Board of the South Florida Lawyer's Chapter of the American Constitution Society. Adam previously served on American Jewish Committee's Global ACCESS Board and as a Member of the Democratic Executive Committee, the governing body of the Miami-Dade County Democratic Party. Mr. Schwartzbaum also serves as J-Street's District Coordinator for Congresswoman Federica Wilson. In addition, Mr. Schwartzbaum is the Founder and Team Captain for Jewish Community Service's Miami Marathon and Half Marathon Team which raises funds for The Blue Card, an organization benefiting indigent Holocaust Survivors.

Joseph Kaye. Joseph is an Associate Attorney at The Moskowitz Law Firm, whose practice focuses on multi-state consumer class action litigation, complex commercial litigation and multidistrict litigation. His experience involving a broad range of disputes, including force-placed insurance class action litigation, health insurance, products liability, and federal antitrust litigation matters, allows him to serve as a valuable asset in representing a number of the Firm's clients.

In a putative Florida statewide class action representing skilled nursing facilities seeking to recover statutory interest owed by insurers on late paid Medicaid Long Term Care Program claims, Joseph was instrumental in effectively briefing and arguing against a motion by one defendant insurer to compel individual arbitration of one of the plaintiff's claims. Joseph then co-authored the answer brief on appeal to the Third District Court of Appeal, which resulted in a written opinion upholding the trial court's order and favorably expanding the law on arbitration in Florida for parties seeking to litigate their claims in a court of law. *See Coventry Health Care of Florida, Inc. v. Crosswinds Rehab, Inc., LLC*, 259 So. 3d 306 (Fla. 3d DCA 2018).

Prior to joining The Moskowitz Law Firm, Joseph was an Associate Attorney at Stok Folk + Kon, a full-service law firm serving South Florida, where he represented businesses and individuals in a range of disputes involving breach of contract, commercial transactions, fraud, business torts, deceptive and unfair trade practices, intellectual property, probate, guardianship and trust litigation, at both the trial and appellate court levels, as well as in arbitration. For example, Joseph successfully represented the plaintiffs in *Oded Meltzer, et al. v. NMS Capital Group LLC, et al.*, Case No. 1:17-cv-23068-UU (S.D. Fla.), where plaintiffs sought a declaratory judgment that plaintiffs were not bound to an arbitration agreement they entered into as representatives of their business entities, as well as an injunction enjoining defendants from joining the plaintiffs as parties to arbitration of a multi-million-dollar dispute with those business entities. Joseph obtained a preliminary injunction on the papers without a hearing, which caused the defendants to stipulate to entry of a final judgment and permanent injunction. Further, Joseph authored the answer brief and litigated an appeal in *Yehezkel Nissenbaum, et al. v. AIM Recovery Services, Inc.*, Case No. 3D15-1000 (Fla. 3d DCA 2015), which resulted in the Third District Court of Appeal issuing a *per curiam* affirmance upholding a final judgment exceeding $125,000.000. Similarly, in *Dantro LLP, et al. v. In rem Dantro Fund, et al.*, Case No. 12-ca-001643 (Fla. 20th Jud. Cir.), after obtaining a final summary judgment entitling plaintiff limited liability partnerships to recover $90,000.00 from the Court Registry after it was stolen by their former managing partner, Joseph successfully sought an order entitling plaintiffs to recover their attorneys' fees and costs in maintaining the action against the former managing partner in his individual capacity as the real party in interest because he entered an appearance and sought to obtain the stolen funds for himself, purportedly on behalf of the dissolved partnerships. Joseph argued and won the motion before the trial court, then

successfully defended the order on appeal to the Second District Court of Appeal. *See Edward Adkins v. Dantro LLP, et al.*, Case No. 2D16-4751 (Fla. 2d DCA 2017).

A life-long Florida native, Joseph attained a Bachelor's degree in Creative Writing from Florida State University (B.A., 2012) and a Juris Doctorate degree from the University of Miami School of Law (J.D., *magna cum laude*, 2015). While at the University of Miami, Joseph was a member of the Race and Social Justice Law Review, served as Dean's Fellow for the Contracts and Elements courses, earned the Dean's Certificate of Achievement in Evidence and Elements courses, received honors in litigation skills, and was on the Dean's List multiple times.

Joseph also gained invaluable experience as a judicial intern for the Honorable Magistrate Judge Jonathan Goodman in the United States District Court for the Southern District of Florida, where he researched and drafted bench memoranda and reports and recommendations, and learned a great deal about the inner workings of the federal court system through observing mediations and courtroom proceedings, and discussing litigation strategies with Judge Goodman and his clerks. While in law school, Joseph was also a certified legal intern for the Miami-Dade State Attorney's Office, Misdemeanor Domestic Violence Division, where he successfully argued motions and took live testimony on the record in open court, including Williams Rule motions, motions to revoke bond, motions to modify stay away orders and excited utterance motions, conducted victim and witness interviews, participated in arraignment, sounding and trial calendars, and assisted in *voir dire*.

Barbara Lewis. Barbara is an Associate Attorney at The Moskowitz Law Firm. Most of her practice has focused on representing consumers in multi-state class action litigation, complex commercial litigation and multidistrict litigation. She handles a broad range of disputes, including force-placed insurance litigation and complex nationwide litigation relating to health insurance, products liability, false advertising, fraudulent business practices, and other consumer issues. Her fluency in Spanish makes her a valued source to the firm's Hispanic and multicultural clients in South Florida. She has authored various publications including *Amending Rule 23: Modernizing Class Notice and Debunking Bad-Faith Objectors*, published by the Federal Litigation Section of the Federal Bar Association (SideBAR) in Spring 2017, and *Lawsuits Target Hiden Fees, Pass-Through Charges*, published by the Daily Business Review in July 2016.

Barbara also briefly worked at Clarke Silverglate, P.A. where her practice consisted of litigating employment law and general commercial matters. She defended employers against a variety of discrimination and wrongful termination lawsuits in federal and state court. She was instrumental in authoring and arguing various discovery motions against the plaintiff in a contentious sexual harassment dispute which led to a successful mediation. Barbara also represented insurance companies nationwide in a variety of breach of contract actions. In this capacity, she briefed and successfully obtained summary judgment in *Dwyer v. Globe Life and Accident Insurance Company*, Case No. 2:19-cv-14071 (S.D. Fla.), where the plaintiff demanded accidental death insurance benefits on behalf of an insured who had overdosed on illegal drugs.

The court's opinion not only clarified existing Florida insurance law, but also created new Florida law on accidental death coverage.

Barbara was born in Cuba but has been a long time Miami resident. She obtained her Bachelor's degree with honors in Government from the University of Virginia in 2012, and her Juris Doctorate degree *cum laude* from the University of Miami School of Law in 2015. While at the University of Miami, Barbara earned the CALI Excellence for the Future Award and Dean's Certificate of Achievement, awarded to the highest scoring student in the class, in her Legal Communication and Research courses. She interned at the Investor Rights Clinic, where she represented under-served investors in securities arbitration claims against their brokers before the Financial Industry Regulatory Authority (FINRA). She was also a member of the school's International Moot Court Program and earned Second Place in the Moot Madrid competition, an international commercial arbitration competition that is conducted entirely in Spanish.

The Moskowitz Law Firm, PLLC

The Moskowitz Law Firm focuses only on large-scale class actions and complex commercial litigation, typically against parties represented by larger, premier law firms. Its attorneys have played a leading role in significant class actions and complex litigation across the country that have made a real difference in the world and on behalf of consumers across the country. With deep roots in the local Miami community, the attorneys at The Moskowitz Law Firm have been avid supporters of several non-profit and education related organizations for over two decades, earning the good will of colleagues, clients and neighbors. After teaching Class Action Litigation at the University of Miami for over 26 years, in 2016, Adam Moskowitz, along with his other co-counsel in the force placed cases, organized the University of Miami Class Action Conference, and annual event which included Class Action Panels with various federal judges, state attorney generals and numerous plaintiff and defense counsel and awards scholarships to students interested in class action litigation.

2019 'Family of the Year'

We Salute the Moskowitz Family, honored as the Committee of 100's 2019 'Family of the Year'

Each year, Temple Beth Am is proud to recognize an outstanding family of volunteers. Congratulations to the ***Moskowitz Family*** — **Jessica**, **Adam, Serafina, Michael** and **Samantha** — who were honored on March 10, 2019 as recipients of the ***Committee of 100's 2019 "Family of the Year" Award***, for their continued participation in our Temple community and their ongoing commitment to congregational leadership.

Jessica's TBAM journey began almost a decade ago in the Tot Shabbat and Mommy and Me programs, with the oldest of her three Temple Beth Am Day School students **Serafina**. She has been involved as a lay leader in the Temple Beth Am Day School for several years, including being a room parent, and for two years was Co-Chair of the Day School Annual Auction (2017 and 2018). Jessica is a member of the Day School Board, and is now Co-President of **PATIO** (Parent and Teacher Involvement Organization). She previously chaired the Grandparents & Special Friends Day Committee, served as Vice

President of the Elementary School on the PATIO Board and is currently enrolled in Temple Beth Am's *Atideynu* leadership training program.

Adam, founding partner of **The Moskowitz Law Firm**, is in his 26th year on the faculty at the University of Miami School of Law teaching Class Action Litigation, and donates his salary back to the school for student scholarships. He helped establish the annual Class Action Forum at the UM School of Law. Last year, Adam helped organize a new group of parent volunteers to launch the inaugural Day School Chanukah Games on December 21, 2018 — ***watch video***. All 230 elementary school students participated in 12 physical and mental activities, and Opening and Closing Ceremonies. Adam is active in the Alexander Muss High School in Israel program, having been a student and then a *Madrich* (counselor). He is passionate about Israel and works tirelessly in behalf of AIPAC in Washington, DC. A member of the "Beyond the Curve" Capital Campaign Committee, he proudly coaches his daughter's 3rd grade Beth Am Basketball League team and is a frequent guest reader in his childrens' classrooms.

Serafina *(pictured at right)* is a third grader at Temple Beth Am Day School where she began her studies in Early Childhood in Junior Pre-Nursery. She enjoys art, tennis, Beth Am Basketball League, spending time with her friends and setting out on her own path in life.

Michael, a first grader at Temple Beth Am Day School who also began here in the Early Childhood, also loves playing tennis at Coral Oaks, basketball and spending time with friends and family in Miami and North Carolina.

In Fall 2019, **Samantha**, a Pre-K student, will find her way across the quad to Kindergarten. Eager to learn to read and write, her spunky personality comes shining through, especially during After School U's Hip Hop.

(Family Photo by Anastasia Murphy — ***Stasia Shoots)***

DAILY BUSINESS REVIEW

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National Class Action Litigator Opens Up About Stress, Quitting Drinking

by Celia Ampel

Adam Moskowitz realized a few years ago that he needed to make a change.

One of the top federal class action lawyers in the country, Moskowitz has led enormous cases including force-placed insurance litigation that recovered more than $5 billion for homeowners who alleged their mortgage servicers took kickbacks from insurers.

But with huge victories came a lot of stress — and he wasn't handling it well.

"As the cases became more stressful and they became larger and I was traveling a lot more, I found myself getting more unhealthy," said Moskowitz, who was leading the class action practice at Kozyak Tropin & Throckmorton in Coral Gables. "A lot of the lifestyles of lawyers involve drinking and involve celebration. When you win a big case, you open champagne."

Drinking became his go-to method for relieving stress, and while it wasn't affecting his work, he felt he was on a "path to destruction." Moskowitz realized something had to give.

"Having a beautiful wife and having three kids made me really analyze my situation," he said. "I looked around and there were terrible things happening to people. People were committing suicide that I knew."

A lot of lawyers deal with mental health issues but don't feel they can talk about them, he said. The issue has become a focus of the Florida Bar, particularly after the suicide of powerhouse litigator Ervin Gonzalez last year.

"You're fighting people so often that they're looking for any weakness in you, and you don't want to admit, maybe, that you have a problem," Moskowitz said. "Or you don't want to seek help from those people that you're probably around the most because of this competition and how vicious our industry can be."

Moskowitz quit drinking and got back to old habits of running races and practicing yoga. The resulting mental clarity gave the 50-year-old the resolve to strike out on his own, leaving the firm he'd joined as a second-year associate in 1993. He still has working and personal relationships with his old partners at Kozyak Tropin, but that firm wasn't his dream.

"I want my own future," he said. "I want to create my own legacy and have my own traditions and really focus in on class actions."

Two months after founding the Moskowitz Law Firm with partner Howard Bushman, Moskowitz leads a firm with four attorneys, several support staff and an office in downtown Coral Gables. He admits he's scared, but mentors such as legendary Miami attorney Aaron Podhurst told him they were scared, too — and it all worked out.

J. ALBERT DIAZ

Coral Gables litigator Adam Moskowitz said he wants to help stoke honest conversations about stress and mental health in the legal profession.

ADAM MOSKOWITZ

Born: 1967, New York City

Spouse: Jessica Moskowitz

Children: Serafina, Michael, Samantha

Education: University of Miami, J.D., 1993; Syracuse University, B.A., 1989

Experience: Founding and managing partner, The Moskowitz Law Firm, 2018-present; Partner, associate and class action chairman, Kozyak Tropin & Throckmorton, 1993-2018; Associate, Friedman, Rodriguez, Ferraro & St. Louis, 1993

Moskowitz knows about perseverance, starting with his upbringing after his father left.

"My mom was amazing," he said. "With nothing, she moved to Miami with my sister and I, and she worked five jobs. Five jobs. She was a nurse. She was a receptionist. She was a hostess. She did summer jobs — she worked at my summer camp as the nurse so we could go for free."

Moskowitz said his mother also begged a private school to let him attend on a scholarship. From there he went to college, studied abroad in London and worked in Israel, all thanks to her.

BENLATE CASES

When he graduated from the University of Miami School of Law, he joined a five-attorney firm that sent him during his second week to speak with a grower whose claimed his plants were dying because of the DuPont Co. fungicide Benlate. The firm took about 70 similar cases.

"They said, 'Adam, you go handle them,' " Moskowitz said. " 'You go travel around the state of Florida to Apopka, to Dade City, to Plant City, to Tallahassee.' I was a first-year associate. I knew nothing. I was getting killed. … I was learning trial by fire."

But he broke the cases open during a trip to Costa Rica when he learned about Benlate studies done there that produced "horrible" results. In sworn interrogatories, DuPont said it had not done any testing in Costa Rica. Moskowitz's firm made a long-shot move and asked the judge to strike the pleadings and find against DuPont on liability — and she did.

The resulting settlements led to infighting over money and ethical issues among the partners, and the firm broke up. Moskowitz decided to take his cases with him to Kozyak Tropin. As a second-year associate, he negotiated a contract that would give him a percentage of the fees. Soon afterward, he did the openings and closings for a trial that led to a $130 million jury verdict against DuPont.

Forced-place insurance has been much of Moskowitz's focus for the past decade. He's also known for representing victims of Scott Rothstein's $1.2 billion Ponzi scheme and serving as lead counsel in a currency-conversion class action against American Express and securities litigation against Lancer Partners, among other cases.

At his new firm, he's leading class action litigation alleging life insurance companies are charging illegal rates to people near the end of their lives.

TAKE CARE

His career isn't not slowing down. But Moskowitz now understands the importance of taking care of himself. He's thrilled about organizing the kids' field day at his synagogue, quipping that these days, he'd rather make the Temple Beth Am Commentator than the front page of the Wall Street Journal.

Moskowitz hopes he can inspire even one attorney struggling with drinking or stress to do something about it.

"The tragedies are these people who commit suicide and they leave their children orphans," he said, beginning to choke up. "We had somebody in our school who died — her son is in our son's class. I can only imagine if my son grew up without a father. Maybe if that lawyer or that person says, 'Yeah, things are rough, but you know, Adam went through it, and he's a tougher person as a result of dealing with it. Maybe I'll go see somebody. Maybe I'll go talk to somebody.' "

Celia Ampel covers South Florida litigation. Contact her at campel@alm.com or on Twitter at @CeliaAmpel.

JOHN (JACK) SCAROLA

PROFESSIONAL EXPERIENCE

May, 1978 to present:

Searcy Denney Scarola Barnhart & Shipley, P.A., General Litigation
Member, Board of Directors
Corporate Officer, Secretary/Treasurer
Board Certified Civil Trial Attorney
Board Certified Commercial and Business Litigation
Four appointments as Special Counsel to the Florida Judicial
Qualifications Commission (investigation and prosecution of ethical violations by members of the judiciary)

May, 1973 to May, 1978:

Assistant State Attorney, Fifteenth Judicial Circuit, Palm Beach County, Florida; Chief Felony Prosecutor

BAR ADMISSIONS

Florida Bar 1973
11th Circuit Court of Appeals on 10/1/81
U.S. District Court for the Southern District of Florida; 9/23/74 General Bar;
12/8/82 Trial Bar
U. S. District Court for the Middle District of Florida 2002
U.S. District Court for the Northern District of Florida 2018

MARTINDALE-HUBBELL RATING:

AV

SIGNIFICANT CASES:

State v. Herman: (first degree murder conviction in State's first gavel-to-gavel televised trial)
Farish v. MacArthur: (verdict $2.5 million)
Scheller v. American Medical International: (verdict: $7.25 million)
Giersbrook v. Mathis: (verdict: $2.3 million)
Cohen v. National Ben Franklin Life: (verdict: $1.3 million)
Wilmington Trust v. Manufacturers Life: (verdict: $1 million)
Tuccicaselli v. Stowers: (verdict: $1.8 million)
Singleton v. Al Packer, Inc.: (settlement: $2.5 million
Farish v. Bankers Multiple Line Insurance Company: (verdict: $15.9 million)

Wallace & Falcon v. Gooding: (settlement: $1 million)
Pretscher v. Siegel: (settlement: $2.5 million)
Ruff v. Steak & Ale, etc.: (settlement: $10 million)
Intermark v. CIGNA/Dental Health (settlement: $1 million)
Scheller v. American Medical International: (verdict: $19.2 million)
Scheer v. Entel: (verdict: $1.9 million)
Ferguson v. North American Van Lines: (verdict: $15 million)
Jane Doe v. XYZ, Inc.: (confidential settlement of wrongful death claims in excess of $20 million)
Talbot v. Williams: ($62 million judgment)
Eastern Cement v. Halliburton: (verdict: $4.1 million)
Robinson v. Caulkins: (settlement after Plaintiff's verdict $13.5 million)
Leardi v. Manatee Memorial Hospital: ($6 million settlement)
Hungerford v. Palm Beach County: (settlement: $4 million)
Walks v. Gulf & Warrier: (settlement: $1.5 million)
Jane Doe v. XYZ, Inc.; (confidential settlement in excess of $3 million)
Jones v. XYZ, Inc.; (confidential settlement in excess of $17 million)
Moss vs. Mayer: (confidential settlement in excess of $1 million)
Menendez v. Palm Beach County Sheriff's Office: settlement after trial ($2.5 million)
Calves vs. Lennar: (in excess of $3 million)
Coleman (Parent) Holdings, Inc. v. Arthur Andersen: ($70 million settlement)
Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.: (Verdict: $1.454 Billion)
ABC, Inc. v. XYZ, Inc., (confidential settlement in excess of $10 mil. Following plaintiff's verdict on liability)
Beers v. Hulick and Reynolds & Reynolds, (Verdict: $21,600,000)
Doctor v. Lawyer, ($4million settlement)
Vasa v. Applied Digital Solutions, Inc. ($3 million settlement)
White Water v. Ethicon (Verdict in excess of $1.9 million)
Waterbury v. State Farm (Verdict $1.8 million)
Keil v. Keller (Verdict $3.2 million)
W v. ABC Medical Center (Confidential settlement in excess of $1 million)
Schein v. Ernst & Young, LLP (Judgment after trial and appeal in excess of $33 million)
Uddin v. Patel, et al (Settlement in excess of $900,000)
Mignogna (Pre-suit settlement $8,400,000)
Piendle v. R.J. Reynolds Tobacco Co. and Philip Morris USA, Inc. (Verdict: $2,470,000 plus attorneys' fees)
Commercial Consultants, LLC v. BBA U.S. Holdings, Inc., et al. (Verdict: $2.175 million plus interest and fees)
Murphy v. Morton (Verdict: $1,365,632.07 plus interest)
"Jones v. LLCs" (Confidential settlement $2.5 million)
Weir v. Barot (Verdict: $2,000,000 plus fees)
AB, Inc. v. Lawyers (Settlement after trial of approximately $20 mil.)
Insureds v. Insurer (Settlement after trial in excess of $25 mil.)

Simms v. Kraft (Verdict: $7 mil. plus)
Jane Doe v. XYZ Healthcare Providers (Confidential Settlement approx. $1 mil.)
Sammarco v. R.J. Reynolds Tobacco Co. and Philip Morris USA, Inc. (Verdict: $1,125,000)
Crossley v. Bethesda (Verdict: $16,000,000)
Stephens v. PBSO (Verdict: $23,000,000)
Gould/Goldman v. Check Cashing USA, Inc. (combined total judgments $1,799,115.17)
ABC, LTD v. Bank (Confidential Settlement in excess of $2.3 million)
Passenger v. Boat Owner (Confidential Settlement in excess of $15 million)
Passenger v. Owner's Agent (Confidential Arbitration Award in Excess of $60 million)

PROFESSIONAL ASSOCIATIONS

The American Trial Lawyers Association 2007 Top 100 Trial Lawyers for the State of Florida
International Academy of Trial Lawyers
Florida Justice Association, f/k/a Academy of Florida Trial Lawyers
American Association for Justice, f/k/a American Trial Lawyers Association
American Bar Association
Florida Bar Association (Standing Committee on Individual Rights & Responsibilities)
Vice Chairman 1986-1987
Chairman 1987-1988
Florida Bar Civil Rules of Procedure Committee (Vice Chairman)
Florida Rural Legal Services, Inc. Board of Directors (appointed by the Board of Governors, Florida Bar)
Florida Equal Justice Center (Board of Directors)
Palm Beach County Bar Association (various committee memberships and chairmanships)
Palm Beach County Justice Association (founding member and past President)
Bioethics Law Project Advisory Committee
Palm Beach County Homeless Advisory Board
Craig S. Barnard American Inns of Court
The National Trial Lawyers (Membership by invitation and limited to 100 Florida lawyers)
The American Society of Legal Advocates
Fellow of the American Bar Foundation
Best Lawyers 2019 Lawyer of the Year in the practice area of Medical Practice Law-Plaintiffs in West Palm Beach, FL
Fourth DCA Historical Society
Lawdragon 500 Leading Plaintiff Consumer Lawyer

PROFESSIONAL HONORS

Florida Bar President's Pro Bono Service Award
Guild of Catholic Lawyers Attorney of the Year
Florida House of Representatives Commendation for Public Service

Palm Beach County Bar Association Community Service Award
2006 Daily Business Review Top Civil Litigator of the Year
2018 Recipient of the Florida Justice Association's Lifetime Achievement Award

SELECTED FOR INCLUSION IN:

International Who's Who of Professionals
The Best Lawyers in America in the specialties of commercial, mass tort, medical malpractice, personal injury, and 'bet-the-company' litigation
Florida Consumer Guidebook Law and Leading Attorneys
Marquis Who's Who in American Law, Who's Who in America, Who's Who in the World
Top 250 South Florida Attorneys
Top 500 Lawyers in the U.S.
Florida Super Lawyers
Litigation Counsel of America
Super Lawyers-Corporate Counsel Edition
National Trial Lawyers Top 100

PROFESSIONAL MEMBERSHIPS

State of Florida Police Standards Council, Certified Lecturer, 1974-1978
Part-time Instructor, Palm Beach Junior College, 1974-1978
Assistant Special Prosecutor to Second Statewide Grand Jury by appointment of Governor Askew, 1977-1978
Fifteenth Judicial Circuit Grievance Committee, Florida Bar, 1981-1984
Palm Beach County Task Force on Sex Crimes, 1975-1978

COMMUNITY ACTIVITIES

The Lord's Place, Inc., Board of Directors/Chairman
Advocate Marriage Tribunal, Archdiocese of Miami and Palm Beach
Candidate for the Democratic Nomination for the Office of Florida State Senate, 1978
Growing Together, Inc. (substance abuse treatment program) Board of Directors
Guild of Catholic Lawyers (Board of Directors)
Snug Harbor Foundation - Board of Directors

EDUCATION

B.A. 1969 Georgetown University
J.D. 1973 Georgetown University Law Center

PERSONAL

Marital Status:	Married
Children:	5
Grandchildren:	17

(rev. 11.28.18)

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 19-22864-Civ-COOKE/GOODMAN

JUAN COLLINS and JOHN FOWLER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

QUINCY BIOSCIENCE, LLC,
a Wisconsin limited liability company,

Defendant.
_____/

ORDER GRANTING PLAINTIFFS' AMENDED UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF THE SETTLEMENT CLASS

This cause is before the Court upon Plaintiffs' Amended Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of the Settlement Class ("Motion for Preliminary Approval") [ECF No. ___]. In accordance with Rule 23 of the Federal Rules of Civil Procedure, the Court has considered the Settlement Agreement executed on behalf of the Plaintiffs and Defendant. Upon review of the Settlement Agreement and Plaintiffs' Motion for Preliminary Approval, the Motion for Preliminary Approval is hereby **GRANTED.**

1. The terms of the settlement are within the range of reasonableness and accordingly are preliminarily approved. In addition, this Court finds that certification of the Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23, and Plaintiffs fairly and adequately represent the interests of the Settlement Class. The Motion for Preliminary Approval of Settlement is therefore **GRANTED**.

2. For the reasons set forth below, subject to final approval, this Court hereby preliminarily certifies the following nationwide Settlement Class:

> All individuals who purchased one or more Prevagen Products, as defined in section I.U. of the Settlement Agreement, from a Settling Defendant or from a reseller authorized by the Settling Defendants to Sell Prevagen Products, for personal consumption and not resale, within the United States, from January 1, 2007 through the date of Preliminary Approval. Excluded from the Class are: (i) individuals who are or were during the Class Period officers or directors of a Settling Defendant or any of its respective affiliates; (ii) any justice, judge, or magistrate judge of the United States or any State, their spouses, and persons within the third degree of relationship to either of them, or the spouses of such persons.

3. The Court hereby appoints Adam Moskowitz of The Moskowitz Law Firm, PLLC and John Scarola of Searcy Denney Scarola Barnhart & Shipley PA. as Settlement Class Counsel or Co-Lead Counsel.

4. The Court finds that, for purposes of this settlement class, the class certification prerequisites set forth in Federal Rule of Civil Procedure 23(b)(3) and 23(b)(2) — numerosity, commonality, typicality, and adequacy of representation — have been met, that common issues predominate over any possible individual issues

that could be raised, that Defendant has acted on grounds generally applicable to all Class Members, thereby making final injunctive relief concerning the class as a whole appropriate, and that the class action is superior to other available methods for the fair and efficient adjudication of this controversy.

5. At the Final Approval Hearing, the Court will consider whether the terms of the Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class, and whether final orders and judgments in accordance with the terms of the Settlement Agreement should be entered. The definitions set forth in the Settlement Agreement are adopted by and used in this Order.

6. The Court preliminarily finds that the Settlement Agreement (1) was reached after arm's-length negotiations before a distinguished mediator, and after substantial factual and legal analyses by the parties; and (2) provides substantial benefits to all class members, especially in light of the risks associated with this litigation.

7. As provided in the Settlement Agreement, partial refunds shall be paid to Settlement Class Members.

8. The Court approves, as to form and content, the Notice submitted by the parties (Exhibits B and D to the Settlement Agreement) and finds that the procedures

described therein meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and provide the best notice practicable under the circumstances. The proposed Class Notice — (i) internet notice, (ii) establishment of a settlement website, and (iii) direct mailing (along with a Claim Form) or emailing to currently available addresses that have been provided to Quincy through the Quincy's websites or via email or telephone by potential Prevagen consumers — is reasonably calculated to reach a substantial percentage, if not all, of the Class Members. Defendant shall commence to disseminate the Class Notice within forty-five days of the date this Order is entered.

9. The Claims Administrator shall take all necessary actions to implement the terms of the Settlement Agreement and facilitate the claims process described therein for the benefit of the Settlement Class Members.

10. To the extent it has not already occurred, Defendant shall also cause notice to be served in accordance with the Class Action Fairness Act.. *See* 28 USC § 1715(b).

11. Defendant shall bear all costs related to the Notices and internet notice. Prior to the Final Approval Hearing, Defendant shall file proof, by affidavit, of the Notice and internet notice. Defendant shall also bear all costs to comply with the notice

requirements of the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715. Defendant shall bear all fees and costs of the Claims Administrator.

12. Class Members will have up to _____, _____ to opt out of the Settlement for purposes of damages claims only. To opt out, a Class Member must request to do so in writing and mail such request to the Claims Administrator at *Collins v. Quincy Bioscience* Administrator, _____ _____. Any request to opt out ***must*** include the following information: (1) the name of the case; (2) the complete legal name of the Class Member who wishes to be excluded; (3) the mailing address of the Class Member; (4) a statement that the Class Member wishes to be excluded from the Settlement; and (5) the Class Member's (or authorized representative's) signature or, if the person (or authorized representative) is unable to sign, his/her/its legal representative or guardian's name and signature.

13. A Class Member who does not properly and timely exclude himself, herself, or itself from the Settlement Class will be bound by the Settlement Agreement and the Releases, as provided for therein, and by any judgments in this action.

14. To object to the Settlement, a Class Member must do so in writing no later than _____, _____. The objection ***must*** contain (1) the full name, mailing address, e-mail address, if any, and telephone number of the objecting Class Member; (2) documentation and/or attestation by sworn statement sufficient to

establish the objector's membership in the Class; (3) a statement specifying all grounds for the objection, accompanied by any legal support for the objection; (4) copies of any other documents upon which the objection is based; and (5) the signature of the objecting Class Member.

15. Subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for attorneys' fees, Class Representative Award, and reimbursement of reasonable litigation costs and expenses. The objecting Class Member must file with the Clerk of the Court and serve upon Co-Lead Class Counsel and Defendant's Counsel (at the addresses listed below in paragraph 16), a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") no later than _____, ____.

16. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or their counsel) will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not provide a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Class Notice will not be allowed to speak or otherwise present any views at the Final Approval Hearing.

17. Any objection must be mailed to Co-Lead Class Counsel Adam Moskowitz, Esq., at The Moskowitz Law Firm, PLLC, 2 Alhambra Plaza, Suite 601, Coral Gables, FL 33134 and Defendant's Counsel Geoffrey W. Castello, Esq. at Kelley Drye & Warren LLP, One Jefferson Road, 2nd Floor, Parsippany, New Jersey 07054.

18. The objection must be postmarked by no later than _____, ____. Settlement Class Counsel shall be obliged to file all responses to objections with the Court on or before _____, ____.

19. Subject to the terms for objections set forth above and in the Settlement Agreement and Notice, a Settlement Class Member may appear at the Final Approval Hearing to show cause on the issue of whether any of the terms of the settlement should not be approved as fair, reasonable and adequate, or whether judgment should be entered upon them.

20. Any Settlement Class Member who does not make an objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the settlement.

21. Class Counsel shall file their Motion for Attorneys' Fees and Expenses no later than _____, **2020**.

22. The Final Approval Hearing will be held before this Court on **_____, _____, at [TIME],** at the James Lawrence King Federal Justice Building, 99 N.E. Fourth Street, Room 1168, Miami, Florida 33132 to consider the fairness, reasonableness and adequacy of the proposed settlement and to determine whether the settlement should be finally approved.

23. To preserve the *status quo* pending the Court's determination of whether to grant final approval of the settlement, it is hereby ordered under 28 U.S.C. § 1651 and Rule 23 of the Federal Rules of Civil Procedure that except as expressly provided in the Settlement Agreement, all Settlement Class Members are temporarily enjoined from commencing, continuing, or taking any action in any judicial proceeding in any state or federal court or any other judicial or arbitral forum against the Settling Defendants with respect to any claims that are subject to the Settlement Agreement, except that any individuals may move this Court at any time for an Order that they have opted out pursuant to the Settlement Agreement so that they can proceed on an individual basis with their own individual litigation. This injunction will terminate at the time the Court determines whether to grant final approval of the Settlement and, prior to that time, any request for relief from this injunction shall be made to this Court. The Court finds that issuance of this temporary injunction is necessary and appropriate in aid of its jurisdiction over the Action.

24. The Court retains jurisdiction of this action for all purposes.

DONE AND ORDERED this _____ day of _____, 2020, in Miami, Florida.

_____
HONORABLE JONATHAN GOODMAN
United States Magistrate Judge