

BLOOD HURST & O' REARDON, LLP

1 BLOOD HURST & O'REARDON, LLP
2 TIMOTHY G. BLOOD (149343)
3 THOMAS J. O'REARDON II (247952)
4 PAULA R. BROWN (254142)
5 501 West Broadway, Suite 1490
6 San Diego, CA 92101
7 Tel: 619/338-1100
8 619/338-1101 (fax)
9 tblood@bholaw.com
10 toreardon@bholaw.com
11 pbrown@bholaw.com

12 Attorneys for Plaintiff

13 [Additional Counsel Appear on Signature Page]

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

16 ERIC FISHON, individually and on behalf of
17 all others similarly situated,

18 Plaintiff,

19 v.

20 PREMIER NUTRITION CORPORATION
21 f/k/a JOINT JUICE, INC.,

22 Defendant.

Case No. 3:16-CV-06980 RS

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR APPROVAL OF CLASS
NOTICE; MEMORANDUM IN SUPPORT
THEREOF**

CLASS ACTION

Judge: Honorable Richard Seeborg
Courtroom: Courtroom 3, 17th Floor

Complaint Filed: December 5, 2016
Trial Date: May 23, 2022

23
24
25
26
27
28

BLOOD HURST & O' REARDON, LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

In accordance with Federal Rules of Civil Procedure, Rule 23, Plaintiff hereby moves for an order directing and approving the form, content, and manner of notice to the certified Class informing Class Members of the certification of this case and moves this Court for an order:

1. Approving the form and content of the long-form class notice to be available at www.JointJuiceNYLawsuit.com in the form attached as **Exhibit A**.
2. Approving the form and content of the short-form class notice to be made available on Class Counsel's website and at www.JointJuiceNYLawsuit.com in the form attached as **Exhibit B**.
3. Approving the form and content of the class notice to be published digitally in the form attached as **Exhibit C**.
4. Approving the form and content of the direct email notice in the form attached as **Exhibit D**.
5. Ordering the appointment of JND Legal Administration to implement and administrate the dissemination of class notice and administer opt-out requests pursuant to the proposed notice dissemination plan attached at **Exhibit E**.

This motion is based on the accompanying memorandum and the exhibits thereto, and all the pleadings, orders, and other documents on file in this action.

Respectfully Submitted,

Dated: December 14, 2021

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
PAULA R. BROWN (254142)

By: *s/ Timothy G. Blood*

TIMOTHY G. BLOOD

501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com
toreardon@bholaw.com
pbrown@bholaw.com

Class Counsel

1 **MEMORANDUM**

2 Plaintiff respectfully submits the following unopposed motion seeking approval of the
3 proposed class notice plan. This plan resulted from the parties' meet-and-confer efforts.

4 **I. INTRODUCTION**

5 With agreement from Defendant, Plaintiff proposes a notice plan that consists of notice by
6 publication via progressive digital media, direct email notice which will be emailed to the last known
7 email address of those Class Members whose email address is available from the records of
8 Defendant, and a "long form" notice that provides more detailed information and is available on two
9 different websites. As described below, the forms of notice follow the Federal Judicial Center's
10 recommended notices. The manner of disseminating notice was developed by the JND Legal
11 Administration ("JND"), a recognized specialist in formulating class notice plans. This notice plan
12 should be approved because it meets all of the requirements of Rule 23 and due process.

13 **II. THE NOTICE PLAN**

14 The notice plan is robust and will potentially reach 19,000,000 people through targeted
15 online dissemination. In accordance with the Northern District of California's Procedural Guidance
16 for Class Action Settlements and to increase notice to Class Members, the notice plan also includes
17 direct email notice to Class Members that are identified by Defendant's records. *See* N.D. Cal.
18 Procedural Guidance for Class Action Settlements, § 3 ("The notice distribution plan should rely on
19 U.S. mail, email, and/or social media as appropriate to achieve the best notice that is practicable
20 under the circumstances ...").

21 No less than two weeks from the date of the order granting approval of the notice plan,
22 dissemination of notice will start and will continue over the course of 45-days through a digital
23 media campaign using a programmatic partner, which allows for multiple targeting layers and
24 provides the greatest reach. The multiple targeting layers, which include both geographic targeting
25 and category contextual targeting, will help ensure delivery to the most appropriate digital users.
26 The digital notice messaging will utilize standard Internet Advisory Board (IAB) sizes (160x600,
27 300x250, 728x90, 300x600, 320x50, and 300x50), and approximately 19 million impressions will
28 be served. To target demographics of the Class, the online banner advertisements will focus on New

1 York joint health sufferers aged 35 and older, with a supplemental behavioral target of Internet
 2 websites specifically aimed at New York adults who have shown an interest in health and fitness.
 3 Further, a notice email will be directly sent to those Class Members that are identified by
 4 Defendant's records.

5 Complimenting these methods, the short-form class notice will be available at
 6 www.bholaw.com, which is the website for Blood Hurst & O'Reardon, LLP, counsel for the Class,
 7 and the short-form and long-form notices will be available to view and download at
 8 www.JointJuiceNYLawsuit.com, the case website created and maintained by the notice
 9 administrator. The website will also be available in Spanish, and will provide a telephone number
 10 to contact Class Counsel for additional case information.

11 **A. The Form of the Proposed Notice Meets the Requirements of Rule 23(c)(2) and**
 12 **Due Process**

13 Rule 23(c)(2)(B) and due process provides that for any class that has been certified under
 14 Rule 23(b)(3), that notice to absent class members be the "best practicable, reasonably calculated,
 15 under all the circumstances, to apprise interested parties of the pendency of the action and afford
 16 them an opportunity to present their objections." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797,
 17 811-12 (1985) (internal quotation marks and citation omitted). Rule 23(c)(2) goes on to describe the
 18 general parameters for such notice; namely, that the notice:

19 [C]learly and concisely state in plain, easily understood language: (i) the
 20 nature of the action; (ii) the definition of the class certified; (iii) the class
 21 claims, issues, or defenses; (iv) that a class member may enter an
 22 appearance through an attorney if the member so desires; (v) that the
 23 court will exclude from the class any member who requests exclusion;
 24 (vi) the time and manner for requesting exclusion; and (vii) the binding
 25 effect of a class judgment on members under Rule 23(c)(3).

26 Plaintiff's class notice proposal consists of a short-form notice (*see* Exhibit B), a direct email
 27 notice (*see* Exhibit D), and a long-form notice (*see* Exhibit A), modeled after and consistent with
 28 "The Federal Judicial Center's 'Illustrative' Forms of Class Action Notices." *See*
<http://www.fjc.gov/> (last visited November 23, 2022). In addition, the Internet banner notices (*see*
 Exhibit C), link the reader to a website maintained by the notice administrator where the long-form

1 and short-form notices will be posted and available for download. The Federal Judicial Center
2 explains the rationale upon which Plaintiff's class notice proposal is based:

3 **Overview of methodology**

4 We began this project by studying empirical research and commentary on
5 the plain language drafting of legal documents. We then tested several
6 notices from recently closed class actions by presenting them to
7 nonlawyers, asking them to point out any unclear terms, and testing their
8 comprehension of various subjects. Through this process, we identified
9 areas where reader comprehension was low. We found, for example, that
10 nonlawyers were often confused at the outset by use of the terms "class"
11 and "class action." Combining information from the pilot test with
12 principles gleaned from psycholinguistic research, we drafted
13 preliminary illustrative class action notices and forms. We then asked a
14 lawyer-linguist to evaluate them for readability and redrafted the notices
15 in light of his suggestions.

16 We then tested the redrafted securities and products liability notices
17 before focus groups composed of ordinary citizens from diverse
18 backgrounds. This testing explored recipients' willingness to open and
19 read a notice as well as their ability to comprehend and apply the
20 information contained in a notice.

21 We tested the effectiveness of the redrafted securities notice by
22 conducting a survey comparing the Center's redrafted illustrative plain
23 language notice with the best comparable notice we could find from
24 closed securities class action cases. Using objective comprehension
25 measures, we found that participants who received the Center's plain
26 language notice exhibited significantly higher comprehension than
27 participants who received the comparison notice.

28 In August 2001, we posted to the FJC Website the yet-again redrafted
securities and products liability notices and requested public comments.
We subsequently revised the notices' design and wording, incorporating
comments and suggestions received and using the assistance of additional
experts. In November 2003 we added the employment notices.

* * *

Notes for use by attorneys and judges

We designed the illustrative notice forms posted here to demonstrate
ways that clear, simple, "plain" language and design can be used when
drafting class action notices. In an actual case, attorneys and judges can
adapt an illustrative notice to the unique factual, legal, and procedural
circumstances of their case.

Id.

1 The form of Plaintiff’s class notice proposal is based on the Federal Judicial Center’s notices
 2 and satisfies the requirements of Rule 23 and due process. The proposal is also highly similar to the
 3 class notice plan approved by this Court in *Mullins v. Premier Nutrition Corporation*, Case No.
 4 3:13-cv-01271-RS, Dkt. No. 167.

5 The proposed class notices clearly and concisely state, among other things, the nature of the
 6 action, the Class certified, the options available to Class Members, and when to exercise their rights.
 7 *See, e.g.*, Fed. R. Civ. P. 23 Advisory Committee Notes (2003) (“The Federal Judicial Center has
 8 created illustrative clear-notice forms that provide a helpful starting point for actions similar to those
 9 described in the forms.”); *McDonald v. Ricardo’s on the Beach*, No. CV 11-9366 PSG (MRWx),
 10 2013 U.S. Dist. LEXIS 20241, at *1 (C.D. Cal. Feb. 13, 2013) (recognizing that a superior notice
 11 plan “closely models the exemplar offered by the Federal Judicial Center”); *Underwood v.*
 12 *Carpenters Pension Trust Fund*, No. 13-cv-14464, 2014 U.S. Dist. LEXIS 128543, at *28-29 (E.D.
 13 Mich. Sept. 15, 2014) (ordering that class counsel’s notice plan “shall set forth proposed language
 14 for the notice and shall address the relevant checkpoints in the Federal Judicial Center’s Class Action
 15 Notice and Claims Process Checklist”); *In re Skechers Toning Shoe Prods. Liab. Litig.*, No. 3:11-
 16 MD-2308-TBR, 2012 U.S. Dist. LEXIS 113641, at *47 (W.D. Ky. Aug. 13, 2012) (“The Court
 17 further finds that all of the notices are written in simple terminology, are readily understandable by
 18 Class Members, and comply with the Federal Judicial Center’s illustrative class action notices.”);
 19 *Flanagan v. Allstate Ins. Co.*, No. 01 C 1541, 2007 U.S. Dist. LEXIS 78619, at *3-4 (N.D. Ill. Oct.
 20 18, 2007) (“We begin by adopting, generally, defendant’s template, since it is taken directly from
 21 the Federal Justice Center’s archive of sample Notice forms.... The remainder of our
 22 modifications ... draw[] from the structure of the FJC sample.”); *In re Wal-Mart Stores, Inc. Wage*
 23 *and Hour Litig.*, No. 06-cv-02069 SBA, 2008 U.S. Dist. LEXIS 109446, at *20-21 (N.D. Cal. May
 24 2, 2008) (“The inclusion of plaintiffs’ concise yet informative statement concerning Class Counsel’s
 25 experience is consistent with Rule 23’s notice requirements. Indeed, Plaintiffs’ proposed language
 26 on Class Counsel’s experience is identical to the language employed in the Federal Judicial Center’s
 27 ‘Illustrative’ Form of Class Action Notice for Employment Discrimination cases. Accordingly, Wal-

1 Mart's motion to include a statement in the notice, which asserts that Class Counsel have been
 2 determined by the Court to be adequate, is denied.”) (footnote omitted).

3 **B. The Proposed Dissemination of the Notice Meets Requirements of Rule 23(c)(2)**
 4 **and Due Process**

5 The notice program includes sending emails directly to all Class Members identified by
 6 Defendant's records. For unidentifiable Class Members, publication notice is sufficient to satisfy
 7 the requirements of the due process clause and Rule 23. *See Mullane v. Cent. Hanover Bank & Trust*
 8 *Co.*, 339 U.S. 306, 317-18 (1950); *Carlough v. Amchem Prods.*, 158 F.R.D. 314, 325 (E.D. Pa.
 9 1993) (“For those whose names and addresses cannot be determined by reasonable efforts, notice
 10 by publication will suffice under Rule 23(c)(2) and under the due process clause.”). Due process
 11 does not require that all class members receive actual notice, so long as class counsel acted
 12 reasonably in selecting means likely to inform the persons affected. *See, e.g., Weigner v. The City*
 13 *of New York*, 852 F.2d 646, 649 (2d Cir. 1988). Whether a notice dissemination plan is reasonable
 14 is a function of the notice plan's anticipated results and whether the plan is reasonable under the
 15 circumstances of the case:

16 Receipt of actual notice by all class members is required neither by Rule
 17 23 nor the Constitution. . . . What efforts are reasonable under the
 18 circumstances of the case rests initially in the sound discretion of the
 19 judge before whom the case is pending. . . . In all cases the Court should
 strike an appropriate balance between protecting class members and
 making Rule 23 workable.

20 *See Manual for Complex Litigation, Second*, §30.211, at 223; *see also Silber v. Mabon*, 18 F.3d
 21 1449, 1454 and n.3 (9th Cir. 1994) (citing *Stoller v. Baldwin-United Corp.*, 650 F. Supp. 341, 342-
 22 43 (S.D. Ohio 1986)).

23 The proposed means of dissemination will target Class Members through online publication
 24 and other outreach, which constitutes the best notice practicable under the circumstances. *See, e.g.,*
 25 *Johns v. Bayer Corp.*, No. 09cv1935 AJB (DHB), 2013 U.S. Dist. LEXIS 14933, at *4-6 (S.D. Cal.
 26 Feb. 1, 2013) (holding that online publication through banner advertisements, and a dedicated case
 27 website containing the class notices and relevant documents satisfied Rule 23 and due process); *In*
 28 *re Google Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1129 (N.D. Cal. 2015) (holding that

1 Internet-based notice using paid banner ads, online articles, a settlement website and a telephone
2 line was the best practicable notice).

3 To disseminate and administer Plaintiff's proposed notice, Plaintiff has secured JND, a firm
4 that specializes in the design and administration of class action notice programs. *See*
5 <http://www.jndla.com/> (last visited November 19, 2021). Plaintiff attaches as Exhibit E hereto a
6 summary of the notice plan proposal by JND.

7 Specifically, Internet banner notices (Exhibit C) will be disseminated over a 45-day
8 campaign that will serve approximately 19 million digital impressions to the relevant users,
9 including a target of New York adults who use glucosamine supplements or nonprescription
10 remedies for joints, and those who have an interest in health and fitness. By clicking on the
11 embedded banner notice, readers will be directly linked to the website created and administered by
12 JND for this case: www.JointJuiceNYLawsuit.com. The case website will post for reading and
13 downloading the summary notice, the long-form notice, the order granting class certification, the
14 operative complaint, answers to frequently asked questions, and the applicable deadlines. The short-
15 form notice will also be available on Class Counsel's website: www.bholaw.com.

16 **III. CONCLUSION**

17 Plaintiff submits that the proposed form, method, and scope of publishing the class notice as
18 described above will provide adequate legal notice to Class Members under Rule 23(c)(2) and due
19 process. Plaintiff respectfully requests that the Court grant this motion and approve Plaintiff's class
20 notice proposal, which is unopposed by Defendant.

21 Respectfully Submitted,

22 Dated: December 14, 2021

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
PAULA R. BROWN (254142)

23 By: s/ Timothy G. Blood

24 TIMOTHY G. BLOOD

25 501 West Broadway, Suite 1490
26 San Diego, CA 92101
27 Tel: 619/338-1100
28 619/338-1101 (fax)

BLOOD HURST & O' REARDON, LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

tblood@bholaw.com
toreardon@bholaw.com
pbrown@bholaw.com

Class Counsel

ALTAIR LAW
CRAIG M. PETERS (184018)
465 California Street, 5th Floor
San Francisco, CA 94104-3313
Tel: 415/988-9828
cpeters@altairlaw.us

LYNCH CARPENTER, LLP
TODD D. CARPENTER (234464)
1350 Columbia Street, Suite 603
San Diego, CA 92101
Tel: 619/762-1910
619/756-6991 (fax)
todd@lcllp.com

Additional Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 14, 2021.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

BLOOD HURST & O'REARDON, LLP
501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com

BLOOD HURST & O' REARDON, LLP

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**IF YOU PURCHASED JOINT JUICE® GLUCOSAMINE AND
CHONDROITIN SUPPLEMENT IN NEW YORK, A CLASS ACTION
MAY AFFECT YOUR RIGHTS.**

A California Federal Court authorized this Notice. This is not a solicitation from a lawyer.

- A customer sued Premier Nutrition Corporation n/k/a Premier Nutrition Company, LLC (“Premier Nutrition”), makers of Joint Juice glucosamine and chondroitin supplements, alleging it falsely advertises its Joint Juice supplements by claiming Joint Juice provides joint health benefits that it does not actually provide.
- The “Class” includes all consumers who purchased Joint Juice in New York from December 5, 2013 to [DATE NOTICE BEGINS], inclusive of those dates.
- The Court has not decided whether Premier Nutrition did anything wrong, and Premier Nutrition believes all of its Joint Juice products provide the advertised joint health benefits. There is no money or other benefit available now, nor is there any guarantee that there will be. However, your legal rights are affected, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
DO NOTHING	<p>Stay in this lawsuit. Await the outcome. Give up certain rights for the possibility of receiving certain benefits.</p> <p>By doing nothing, you keep the possibility of getting money or benefits that may come from the lawsuit. But, you give up any rights to sue Premier Nutrition separately about the same legal claims in this lawsuit, and will instead be bound by the result of this lawsuit.</p>
ASK TO BE EXCLUDED	<p>Get out of this lawsuit. Get no benefits from it. Keep rights.</p> <p>If you ask to be excluded and money or benefits are later awarded, you will not share in those monies or benefits. But, you keep any rights to sue Premier Nutrition separately about the same legal claims in this lawsuit.</p>

- Your options are explained in this Notice. To ask to be excluded, you must act before _____, ___, 2022 [45 days from date notice is completed].
- Lawyers must prove the claims against Premier Nutrition at a trial set for May 23, 2022. If money or benefits become available from Premier Nutrition, you will be notified about how to seek it.

NOTICE

BASIC INFORMATION.....	PAGE 3
1. Why should I read this Notice?	
2. What is this lawsuit about?	
3. What is a class action and who is involved?	
4. Why is this lawsuit a class action?	
THE CLAIMS IN THE LAWSUIT.....	PAGE 4
5. What does the lawsuit complain about?	
6. How does Premier Nutrition answer the allegations?	
7. Has the Court decided who is right?	
8. What is the Plaintiff asking for?	
9. Is there any money available now?	
WHO IS IN THE CLASS?.....	PAGE 4
10. Am I part of the Class?	
11. Are any purchasers of Joint Juice not included in the Class?	PAGE 5
12. I'm still unsure if I am included.	PAGE 5
YOUR RIGHTS AND OPTIONS.....	PAGE 5
13. What happens if I do nothing at all?	
14. Why would I ask to be excluded?	
15. How do I ask the Court to exclude me from the Class?	PAGE 6
THE LAWYERS REPRESENTING YOU.....	PAGE 6
16. Do I have a lawyer in this case?	
17. Should I get my own lawyer?	
18. How will the lawyers be paid?	
THE TRIAL.....	PAGE 6
19. How and when will the Court decide who is right?	
20. Do I have to come to the trial?	PAGE 7
21. Will I get money after the trial?	PAGE 7
GETTING MORE INFORMATION.....	PAGE 7
22. Are more details available?	

BASIC INFORMATION

1. Why should I read this Notice?

If you purchased Joint Juice in New York between December 5, 2013 and [DATE NOTICE BEGINS], you are part of the Class. This notice explains that the Court has allowed, or “certified,” a class action lawsuit that may affect you. You have legal rights and options you may exercise before the Court holds a trial. The Court has scheduled the trial to begin on May 23, 2022. The trial is to decide whether the allegations being made against Premier Nutrition, on your behalf, are correct. Trial will be held in the United States District Court for the Northern District of California. The lawsuit is known as *Fishon v. Premier Nutrition Corporation*, Case No. 3:16-cv-06980-RS.

2. What is this lawsuit about?

This lawsuit is about whether Premier Nutrition engaged in deceptive or unfair conduct in violation of New York consumer protection laws by advertising that its glucosamine and chondroitin supplement Joint Juice provides joint health benefits that it does not actually provide. Premier Nutrition denies these claims and asserts that its Joint Juice products provide the advertised joint health benefits.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The people who sue – and all the Class Members like them – are called the “Plaintiffs.” The company the Plaintiff sued (in this case Premier Nutrition) is called the “Defendant.” One court resolves the issues for everyone in the Class.

4. Why is this lawsuit a class action?

The Court decided that this lawsuit can be a class action and move towards a trial because it meets the standards for class certification. Specifically, the Court found that:

- The Class is ascertainable;
- There are factual and legal questions that are common to each of the members of the Class;
- The Class Representative’s claims are typical of the claims of the rest of the Class;
- The Class Representative and the lawyers representing the Class will fairly and adequately represent the Class’ interests;
- The common legal questions and facts predominate over questions that affect only individuals; and
- This class action will be more efficient than having many individual lawsuits.

THE CLAIMS IN THE LAWSUIT

5. What is the lawsuit about?

In the lawsuit, the Plaintiff say that Premier Nutrition's joint health advertising claim for Joint Juice is false and deceptive and, for that reason, Premier Nutrition has violated New York's consumer protection laws prohibiting deceptive acts or practices and false advertising. Plaintiff claims that because of the false advertising Premier Nutrition was able to charge for a product that did not provide the advertised health benefits. You can read the Plaintiff's Class Action Complaint and the Order Granting Plaintiff's Motion for Class Certification at www.JointJuiceNYLawsuit.com.

6. How does Premier Nutrition answer the allegations?

Premier Nutrition responds that its joint health claims about Joint Juice are all true and supported by scientific evidence.

7. Has the Court decided who is right?

The Court has not decided whether the Plaintiff or Premier Nutrition is correct. By establishing the Class and issuing this Notice, the Court is not suggesting that the Plaintiff will win or lose this case. The Plaintiff must prove his claims at trial.

8. What is the Plaintiff asking for?

Plaintiff is asking that Premier Nutrition provide monetary compensation to each Class Member, that Premier Nutrition change its advertising to make it truthful and that Premier Nutrition undertake a corrective advertising campaign. Plaintiff will also seek attorneys' fees and costs incurred in connection with the prosecution of this action.

9. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether Premier Nutrition did anything wrong or whether consumers are entitled to money or other benefits. There is no guarantee that money or benefits ever will be obtained. If they are, you will be notified about how to seek money or other benefits from the lawsuit.

WHO IS IN THE CLASS?

You need to decide whether you are affected by this lawsuit.

10. Am I part of the Class?

All consumers who purchased Joint Juice for personal use in New York from December 5, 2013 to [DATE NOTICE BEGINS], are Class Members.

11. Are any purchasers of Joint Juice not included in the Class?

If you did not purchase Joint Juice in New York within the listed time period then you are **NOT** a Class Member. You are also not a Class Member if you purchased Joint Juice for the purpose of reselling it.

12. I am still not sure if I am included.

If you are still not sure whether you are included, you can get free help at www.bholaw.com or www.JointJuiceNYLawsuit.com, or by calling or writing to the lawyers in this case, at the phone number or address listed in question 22 below.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class or ask to be excluded before the trial, and you have to decide this now.

13. What happens if I do nothing at all?

You don't have to do anything now if you want to keep the possibility of getting money or benefits from this lawsuit. By doing nothing, you are staying in the Class. If you stay in and the Plaintiff wins, you will be notified about how to seek money or other benefits from the lawsuit. Keep in mind that if you do nothing now, regardless of whether the Plaintiff wins or loses the trial, you will not be able to sue, or continue to sue, Premier Nutrition as part of any other lawsuit about the same legal claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in this class action.

14. Why would I ask to be excluded?

If you already have your own lawsuit against Premier Nutrition regarding Joint Juice and want to continue with it, you need to ask to be excluded from the Class. Or, you may not agree with the allegations raised by the Plaintiff and do not wish to be part of this lawsuit. If you exclude yourself from the Class – which also means to remove yourself from the Class, and is sometimes called “opting-out” of the Class – you will not get any money or benefits from this lawsuit even if the Plaintiff obtains them as a result of the trial. However, you may then be able to sue or continue to sue Premier Nutrition regarding Joint Juice. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

If you start your own lawsuit against Premier Nutrition regarding Joint Juice after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit, and you will have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Premier Nutrition regarding Joint Juice, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

15. How do I ask the Court to exclude me from the Class?

To ask to be excluded, you must send an “Exclusion Request” in the form of a letter sent by mail, stating that you want to be excluded from *Fishon v. Premier Nutrition Corporation, Case No. 3:16-cv-06980-RS*. **Be sure to include your name and address, and sign the letter. You must mail your Exclusion Request postmarked by _____, 2022, [45 days from date notice is completed] to: *Fishon v. Premier Nutrition Corporation*, P.O. Box _____, [City], [State] [Zip Code].**

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court decided that Timothy G. Blood and Thomas J. O’Reardon II of the law firm of Blood Hurst & O’Reardon, LLP are qualified to represent all Class Members as Class Counsel. Timothy Blood, Thomas O’Reardon and Blood Hurst & O’Reardon, LLP are experienced in handling similar class action cases. More information about Blood Hurst & O’Reardon, LLP, Timothy Blood and Thomas O’Reardon is available at www.bholaw.com.

17. Should I get my own lawyer?

If you decide not to exclude yourself from the Class, you do not need to hire your own lawyer because Class Counsel is working on your behalf. If you want to hire your own lawyer you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

18. How will the lawyers be paid?

If Class Counsel gets money or benefits for the Class, they may ask the Court for fees and expenses. You will not have to pay these fees and expenses. If the Court grants Class Counsels’ request, the fees and expenses would be either deducted from any money obtained for the Class or paid separately by Premier Nutrition.

THE TRIAL

19. How and when will the Court decide who is right?

Class Counsel will have to prove the Plaintiff’s allegations at a trial. The date for trial is May 23, 2022. The date may change without further notice to the Class. You should check www.JointJuiceNYLawsuit.com or the Court’s PACER site to confirm that the date has not been changed. Trial will go forward in the United States District Court, Northern District of California, in the Philip Burton Federal Building, 450 Golden Gate Ave., San Francisco, CA 94102, Courtroom 3 – 17th Floor. During the trial, a Jury and the Judge will hear all of the evidence to help them reach a decision about whether Plaintiff or Premier Nutrition is right about the allegations in the lawsuit.

There is no guarantee that Plaintiff will win, or that he will get any money for all or some members of the Class.

20. Do I have to come to the trial?

You do not need to attend the trial. Class Counsel will present the case for the Plaintiff, and lawyers for Premier Nutrition will present on the company's behalf. You or your own lawyer is welcome to attend at your own expense.

21. Will I get money after the trial?

If Plaintiff obtains money or benefits as a result of the lawsuit, you will be notified about how to participate. We do not know how long this will take.

GETTING MORE INFORMATION

22. Are more details available?

Visit the website, www.JointJuiceNYLawsuit.com, where you will find the Court's Order on the Plaintiff's Motion for Class Certification, and the Complaint. You may also speak to someone about the case by calling **619-338-1100**, or by writing to: *Fishon v. Premier Nutrition Corporation*, P.O. Box _____, [City], [State] [Zip Code].

The pleadings and other records in this litigation may be examined online through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102, between 9:00 a.m. and 1:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION OR
ADVICE.**

DATED: _____, 2021

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

EXHIBIT B

If you purchased Joint Juice® glucosamine + chondroitin supplement in New York, a class action lawsuit may affect your rights.

You may be part of a class action lawsuit about whether Premier Nutrition Corporation n/k/a Premier Nutrition Company LLC (“Premier Nutrition”) allegedly falsely advertised the health benefits of its glucosamine and chondroitin supplement, Joint Juice®.

The lawsuit is called *Fishon v. Premier Nutrition Corporation*, Case No. 3:16-cv-06980-RS, and is in the United States District Court for the Northern District of California. The Court decided this lawsuit should be a class action on behalf of a “Class,” or group of people, that could include you. This notice summarizes your rights and options before an upcoming trial scheduled for May 23, 2022. More information is in a detailed notice available at www.bholaw.com or www.JointJuiceNYLawsuit.com. If you purchased Joint Juice in New York between December 5, 2013 and [date notice begins], you have to decide whether to stay in the Class (and be bound by whatever results), or exclude yourself (and keep your right to sue Premier Nutrition). There is no money available now and no guarantee that there will be.

WHAT IS THIS CASE ABOUT? The lawsuit claims Premier Nutrition falsely advertises its Joint Juice glucosamine and chondroitin supplement by claiming Joint Juice provides joint health benefits that it does not actually provide. The lawsuit seeks monetary compensation, and a court order requiring that Premier Nutrition initiate a corrective advertising campaign. Premier Nutrition denies that its advertising for Joint Juice is in any way false or misleading or that Joint Juice does not provide the advertised joint health benefits.

The Court has not decided whether the claims made in the lawsuit have any merit. The attorneys for the Class will have to prove their claims at a trial. The trial date is not yet scheduled.

WHAT ARE MY RIGHTS? The Class includes all consumers who purchased Joint Juice in New York, from December 5, 2013 to [date notice begins]. You are a Class Member if you purchased Joint Juice in New York during that time for personal use and not resale. If you did, you now have a choice of whether to stay in the Class or not.

If you stay in the Class, you will be bound by all orders and judgments of the Court, and you won’t be able to sue, or continue to sue, Premier Nutrition in any lawsuit relating to the Joint Juice advertising campaign. If money or other benefits are obtained, you will be notified about how to get a share. To stay in the Class, you do not have to do anything now. If you wish, you may enter an appearance through your own attorney, but you do not have to. The Court appointed Timothy G. Blood and Thomas J. O’Reardon II of Blood Hurst & O’Reardon, LLP to represent Class Members as “Class Counsel.”

HOW DO I EXCLUDE MYSELF FROM THE CLASS? To ask to be excluded, send a letter to *Fishon v. Premier Nutrition Corporation*, P.O. Box ____, [City], [ST] [Zip Code], **postmarked by _____, 2022 [45 days from date notice ends]**, that says you want to be excluded from the *Fishon v. Premier Nutrition Corporation* class action. Include your name, address, and telephone number. If you are excluded, you cannot get any money or benefits from this lawsuit if any are awarded, but you will keep any rights to sue Premier Nutrition for these claims, now or in the future, and will not be bound by any orders or judgments of the Court.

HOW CAN I GET MORE INFORMATION? Visit www.bholaw.com, www.JointJuiceNYLawsuit.com, or write to the address above if you have questions, want a detailed notice, or want other documents about this lawsuit.

EXHIBIT C

RS **Class Action Lawsuit**
Document 101-3 Filed 11/11/20

Purchasers of Joint Juice® Glucosamine + Chondroitin supplement may be affected by a lawsuit



WWW.SAMPLE.COM

Joint Juice® NY Lawsuit



Like



Comment



Share

**Purchasers of
Joint Juice[®]
Glucosamine
+ Chondroitin
supplement in
New York may
be affected by
a class action
lawsuit >>>**



LEGAL NOTICE

16-cv-06980-RS Document 101-3 Filed 12/14/21 Page

Purchasers of **Joint Juice**[®] Glucosamine +
Chondroitin supplement in New York may
be affected by a class action lawsuit >>>



Purchasers of **Joint Juice**® Glucosamine • Chondroitin supplement in New York may be affected by a class action lawsuit >>>



LEGAL NOTICE

Case 3:16-cv-06980-RS Document 101-3 Filed 12/14/21 Page 6 of 6

Purchasers of **Joint Juice**[®] Glucosamine + Chondroitin supplement

in New York may be affected by a class action lawsuit >>>

JNO

EXHIBIT D

From: info@xxx.com
To:
Subject: Joint Juice® Class Action Litigation

Dear Recipient,

If you purchased Joint Juice® glucosamine + chondroitin supplement in New York, a class action lawsuit may affect your rights

Para una notificación en español, visite www.JointJuiceNYLawsuit.com

You received this notice because you may be part of a class action lawsuit called *Fishon v. Premier Nutrition Corporation*, Case No. 3:16-cv-06980-RS (N.D. Cal.). The Court decided this lawsuit should be a class action on behalf of a "Class," or group of people, that could include you. This notice summarizes your rights and options before an upcoming trial. More information is available at www.bholaw.com or www.JointJuiceNYLawsuit.com.

What is this case about? The lawsuit claims defendant Premier Nutrition falsely advertises its "Joint Juice" glucosamine and chondroitin supplement by claiming Joint Juice provides joint health benefits that it does not actually provide. The lawsuit seeks monetary compensation, and a court order requiring that Premier Nutrition initiate a corrective advertising campaign. Premier Nutrition denies that its advertising for Joint Juice is in any way false or misleading or that Joint Juice does not provide the advertised joint health benefits.

The Court has not decided whether the claims made in the lawsuit have any merit. The Court appointed Timothy G. Blood and Thomas J. O'Reardon II of Blood Hurst & O'Reardon, LLP to represent the Class as "Class Counsel." Class Counsel will have to prove their claims at a trial set for May 23, 2022. You may hire your own attorney, but you do not have to.

Who is affected? The Class includes all consumers who purchased Joint Juice, for personal use and not resale, in New York, between December 5, 2013 and [date notice first disseminated].

What are my rights? You can do nothing or exclude yourself from the Class.

Do Nothing: If you do nothing, you will stay in the Class and be bound by all orders and judgments of the Court, and you won't be able to sue, or continue to sue, Premier Nutrition in any lawsuit relating to the Joint Juice advertising

campaign. If money or other benefits are obtained, you will be notified about how to get a share.

Exclude Yourself: If you ask to be excluded from the Class, you cannot get any money or benefits from this lawsuit if any are awarded, but you will keep any rights to sue Premier Nutrition for the claims in this lawsuit, now or in the future, and will not be bound by any orders or judgments of the Court.

How do I exclude myself from the Class? To exclude yourself, send a letter to:

Fishon v. Premier Nutrition Corporation
c/o JND Legal Administration
P.O. Box xxxxx
Seattle, WA 98111

Your letter must be **postmarked by Month x, 2022**. The letter must state that you want to be excluded from the *Fishon v. Premier Nutrition Corporation* class action and include your name, address, telephone number, email address (if any), and signature.

Questions? Visit www.bholaw.com or www.JointJuiceNYLawsuit.com; or write to the address above if you have questions about this lawsuit.

To unsubscribe, please click on the following link: unsubscribe

EXHIBIT E

NOVEMBER 5, 2021

PROPOSAL

Premier Nutrition Corp.
(Joint Juice) New York
Litigation





Premier Nutrition Corp. (Joint Juice) New York Litigation

NOTICE PLAN

NOTICE PLAN OBJECTIVE

The objective of the proposed Notice Plan is to provide the best notice practicable, consistent with the methods and tools employed in other court-approved notice programs. The Federal Judicial Center's (FJC) *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers a Notice Plan with a high reach (70% or more) effective.¹

CLASS DEFINITION

The Class consists of all individuals who purchased Joint Juice in the state of New York beginning on December 5, 2013, up to and including the date class notice is disseminated.

Direct notice by mail or email will be sent to Class members for whom Defendant has contact information; however, the majority of Class members are unknown and must be reached through a consumer media campaign.

MEDIA RESOURCES

JND utilizes the most reputable advertising media research tools to ensure that the best media is selected and that our reach calculations can withstand the most critical review and challenge. The media research tools we utilized in our analysis and in implementation include:

- **MRI | Simmons (MRI):** JND uses MRI data to analyze the demographics and media usage of potential Class members. MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. MRI is the leading producer of media and consumer research in the United States.
- **Comscore, Inc. (Comscore):** JND uses Comscore data to not only analyze where potential Class members are on the internet, but more importantly, for calculating the reach of our proposed digital effort. It is critical that a reputable source like Comscore be used when estimating the reach of a digital effort; otherwise, the estimated reach could be grossly inflated. Comscore's multi-reach platform allows us to analyze unduplicated audiences across desktop, smartphone, and tablet devices. We can assess the efficiency and effectiveness of our proposed media plans by reducing waste and improving campaign performance across all devices.

¹ Reach is the percentage of a specific population group exposed to a media vehicle or a combination of media vehicles containing a notice at least once over the course of a campaign. Reach factors out duplication, representing total different/net persons.



- **Google Active View:** At the time of implementation, our digital media placement experts will take the necessary steps to ensure that all notice placements appear exactly as planned, meeting our high standards of quality and positioning. Verification and monitoring will be used to enhance the digital buy — For instance, Google Active View, which is accredited by the Media Rating Council (MRC), will be used to measure viewable impressions across the web and in apps. Google Active View supports the Interactive Advertising Bureau (IAB) and MRC definition of viewability — a minimum of 50% of the ad is in view for a minimum of one second for display ads or two consecutive seconds for video ads. In addition, Google takes invalid activity very seriously. They use over a hundred complex algorithms to spot bad traffic as it happens, and their global team of PhDs, data scientists, engineers, and researchers works around the clock to prevent advertisers from paying for — and publishers benefitting from — invalid clicks, impressions, views, or interactions.
- **Trust Metrics:** In addition to Google Active View, Trust Metrics third-party brand safety partner will be used during implementation to ensure that our banner impressions are not served to poor quality sites. This is done by creating a “blacklist” or a list of sites that have been deemed unsafe. These sites will be blocked during implementation based on brand safety parameters such as site content, keywords, etc. “Blacklisting” ensures that our campaign will be served on brand safe websites.

TARGET ANALYSIS

The Joint Juice brand itself is not specifically measured by MRI; however, data among adults who used glucosamine supplements (“Joint Remedy Consumers”) is measurable and we expect similar demographics and media usage among Class members. MRI data for Joint Remedy Consumers in the New York is unreliable due to a small sample size; as a result, we analyzed data among Joint Remedy Consumers throughout the U.S.

MRI data indicates that the majority of Joint Remedy Consumers are:

- 35 years of age or older (89%); and given the class period, an even larger percentage of Class members would be 35 years of age or older (“Adults 35+”) today
- White (79%)
- From middle to higher income households (72% have a household income of \$50K+)
- Educated (68% attended college or beyond)
- Women (56.0%)

Compared to the general Adult 18+ population, Joint Remedy Consumers are:

- Nearly twice as likely to be 65 years of age or older
- 27% more likely to not be employed
- 17% more likely to have a household income of \$150K or more
- 15% more likely to be married
- 6% more likely to be White and 35% *less likely* to be African American and 3% *less likely* to be Spanish, Hispanic, or Latino descent or origin



MEDIA USAGE

In terms of media usage, MRI data indicates that Joint Remedy Consumers are internet users:

- 89% used the internet in a 30-day period
- 78% have used their cellphone or smartphone to access the internet
- 62% visit Facebook in a 30-day period

NOTICE PLAN STRATEGIES

Direct notice will be sent to Class members for whom Defendant has contact information. In addition, JND designed a 45-day digital media campaign that is estimated to reach 70% of potential Class members.

Based on our target analysis, the media campaign includes activity on the leading digital network (Google Display Network – “GDN”) and the top social media site (Facebook). A total of 19 million digital impressions² will be delivered to Adults 35+ in New York. The GDN effort will place an emphasis on health and fitness enthusiasts and a portion of the Facebook impressions will be allocated to accounts with interests in health, health fitness and physical fitness.

Activity will be delivered across all devices (desktop, laptop, tablet and mobile), with an emphasis on mobile. The digital ads will directly link Class members to the case website where they can access more information about the litigation.

PLAN DELIVERY

To calculate the reach of the digital effort, JND used a Comscore reach and frequency platform. According to this reputable reach source, the proposed digital effort **will reach approximately 70% of likely Class members**. Any direct notice efforts will extend reach further. The provided reach is similar to that of other court approved programs and meets the standard set forth by the FJC.

² Impressions or Exposures are the total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. Impressions are a gross or cumulative number that may include the same person more than once. As a result, impressions can and often do exceed the population size.



DIRECT NOTICE EFFORT	DETAILS
	<ul style="list-style-type: none"> Send direct notice through email and mail notice to Class members for whom Defendant has contact information

DIGITAL EFFORT	DETAILS
	<ul style="list-style-type: none"> Target Adults 35+ in the New York Emphasis placed on health and fitness enthusiasts on GDN and those interested in health, health and fitness, and physical fitness on Facebook GDN activity will be served on leading sites such as: 
<p>TOTAL</p>	<p>19 million impressions over 45 days</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

ERIC FISHON, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

PREMIER NUTRITION CORPORATION
f/k/a JOINT JUICE, INC.,

Defendant.

Case No. 3:16-CV-06980 RS

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S UNOPPOSED MOTION
FOR APPROVAL OF CLASS NOTICE**

CLASS ACTION

Judge: Honorable Richard Seeborg
Courtroom: Courtroom 3, 17th Floor

Complaint Filed: December 5, 2016
Trial Date: May 23, 2022

1 After consideration of Plaintiff's Unopposed Motion for Approval of Class Notice, and
2 finding good cause appearing therefor, the Court GRANTS the motion. Plaintiff's proposed notices
3 and methods of disseminating such notices are reasonably calculated to apprise the class members
4 of the pendency of the action and satisfy constitutional due process requirements and Fed. R. Civ.
5 P. Rule 23(c)(2)(B).

6 **IT IS FURTHER ORDERED:**

7 1. The form and content of the long-form class notice to be made available at
8 www.JointJuiceNYLawsuit.com shall be substantially in the form attached as Exhibit A to
9 Plaintiff's motion.

10 2. The form and content of the short-form class notice to be published and available at
11 Class Counsel's website, www.bholaw.com, and www.JointJuiceNYLawsuit.com shall be
12 substantially in the form attached as Exhibit B to Plaintiff's motion.

13 3. The form and content of the class notice to be published digitally shall be
14 substantially in the form attached as Exhibit C to Plaintiff's motion.

15 4. The form and content of the direct email notice shall be substantially in the form
16 attached as Exhibit D to Plaintiff's motion.

17 5. Plaintiff may engage JND Legal Administration to implement and administrate
18 dissemination of the class notice and opt-out requests as the Court-appointed notice administrator.
19 Class members will have 45 days from the date notice is first published to opt-out of the Class.

20 6. Notice to the Class shall be made in accordance with the notice plan detailed in
21 Plaintiff's motion which includes:

22 a. Within two weeks from the date of this order, the digital publication notice
23 (Exhibit C to Plaintiff's motion) will be published for a period of forty-five days in a digital media
24 campaign.

25 b. Within two weeks from the date of this order, a website shall be established
26 (www.JointJuiceNYLawsuit.com) on which the short-form and long-form notices (Exhibits A and
27 B to Plaintiff's motion) shall be posted and available for download.

28

1 c. Within two weeks from the date of this order, the short-form notice (Exhibit
2 B to Plaintiff's motion) shall be available at Class Counsel's website, www.bholaw.com.

3 d. Within two weeks from the date of this order, direct email notice (Exhibit D
4 to Plaintiff's motion) shall be disseminated to Class Members that are identified by Defendant's
5 records.

6 **IT IS SO ORDERED.**

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated:

HON. RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 14, 2021.

s/ Timothy G. Blood

TIMOTHY G. BLOOD

BLOOD HURST & O'REARDON, LLP
501 West Broadway, Suite 1490
San Diego, CA 92101
Tel: 619/338-1100
619/338-1101 (fax)
tblood@bholaw.com