

PEARSON, SIMON & WARSHAW, LLP
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10 Attorneys for Plaintiff James Eashoo,
11 individually and on behalf of all others
12 similarly situated

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

16 JAMES EASHOO, individually and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 vs.

21 IOVATE HEALTH SCIENCES U.S.A.,
22 INC.,

23 Defendant.

CASE NO. 2:15-cv-01726-BRO-PJW

CLASS ACTION

**DECLARATION OF DANIEL L.
WARSHAW IN SUPPORT OF
MOTION FOR ATTORNEYS'
FEES, LITIGATION COSTS, AND
INCENTIVE AWARD**

Date: April 4, 2016

Time: 1:30 p.m.

Crtrm: 14 – Spring Street

Judge: Hon. Beverly Reid O’Connell

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867467.1

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1 I, Daniel L. Warshaw, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California
3 and before this Court. I am a partner in the law firm Pearson, Simon & Warshaw,
4 LLP (“PSW”), attorneys of record for Plaintiff James Eashoo (“Plaintiff”) and the
5 Class in this case.

6 2. I make this declaration in support of the Motion for Attorneys’ Fees,
7 Litigation Costs, and Incentive Award. I have personal knowledge of the following
8 matters and, if called to testify concerning them, I could and would do so
9 competently.

10 3. The Settlement Agreement was entered into by the parties on
11 September 24, 2015.

12 4. Prior to filing the instant action, PSW conducted a detailed independent
13 investigation and analysis into the relevant facts, legal theories, and claims in this
14 lawsuit. This independent investigation and analysis included independent testing
15 and analysis of Defendant’s protein supplements to support the allegations of the
16 complaint.

17 5. On March 10, 2015, PSW filed the instant action on behalf of Plaintiff
18 and the Class in the United States District Court, Central District of California.

19 6. During the course of this litigation, PSW vigorously adjudicated this
20 action in furtherance of the interests of the Class Members. Since the inception of
21 this lawsuit, PSW has conducted each and every aspect of this litigation.

22 7. The parties agreed to mediate the dispute before the Honorable Dickran
23 M. Tevrizian (Ret.). A full day mediation session was held on May 14, 2015.
24 Despite the parties’ best efforts, this initial mediation did not result in a successful
25 resolution of the case.

26 8. However, settlement discussions continued over the next three months
27 under the supervision of Judge Tevrizian. The parties exchanged additional
28 information throughout the mediation process. Further, numerous telephone

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1 conferences were held between the parties and Judge Tevrizian in an attempt to
2 narrow the issues. An agreement was reached in August 2015 on all major points of
3 the Settlement.

4 9. PSW entered into the Settlement Agreement only after it conducted a
5 thorough investigation and engaged in discovery concerning the nature of the action,
6 the size of the Class, Defendant’s conduct, Defendant’s sales, and the fairness of the
7 individual recovery in this case. This investigation and discovery provided a legal
8 and factual basis to support the adequacy of the Settlement.

9 10. PSW was able to obtain a common fund of \$2.5 million to compensate
10 the Class. Class Members who submit claims with proof of purchase or receipts can
11 receive a refund of up to \$300. Claims without supporting documentation are
12 capped at \$50. The Settlement will benefit thousands of Class Members, and all of
13 those who file valid claims will receive payments.

14 11. In addition to the monetary relief, the Settlement requires Iovate to
15 provide injunctive relief to the Class by modifying the testing, labeling, packaging,
16 and advertising for its Protein Products to insure that the nitrogen content attributed
17 to amino acids, creatine, and other non-protein substances therein are excluded in
18 the protein calculation.

19 12. The parties did not discuss attorneys’ fees, costs or an incentive award
20 prior to finalizing the terms of the Settlement. Pursuant to the Settlement, PSW
21 agreed to limit its fees to \$625,000 and its costs to \$16,000.

22 13. On October 9, 2015, Plaintiff filed his Motion for Preliminary
23 Approval of the Settlement.

24 14. On November 10, 2015 the Court granted preliminary approval of the
25 Settlement.

26 15. Attached hereto as Exhibit “1” is a true and correct summary of the
27 total hours billed on this case and the hourly rates for PSW through January 22,
28 2016 (“Summary Report”). The Summary Report indicates a lodestar of

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1 \$450,677.50, reflecting a total of 825.90 hours. This summary was prepared from
 2 contemporaneous time records reflecting the historic rates of PSW attorneys and
 3 timekeepers. All work reported by attorneys and timekeepers on behalf of the Class
 4 Members was performed on a wholly contingent basis. The historical rates set forth
 5 in the Summary Report are the applicable hourly rates in effect at the time the work
 6 was performed. These rates are the same rates charged to hourly clients. My firm
 7 declined additional legal work as a result of its representation of Plaintiff and the
 8 Class.

9 16. Exhibit “1” also breaks down the number of hours and the fees
 10 expended by PSW in each phase of the litigation as follows:

11 Category	Hours	Total
12 Attorney Meeting / Strategy	31.9	\$14,311.00
13 Case Management	58.5	\$37,622.00
14 Court Appearance	11.9	\$10,159.50
15 Discovery	36.3	\$21,817.50
16 Deposition Preparation	61.3	\$32,589.00
17 Deposition Take / Defend	25.1	\$16,583.00
18 Client Meeting	14.3	\$8,144.50
19 Research	66.2	\$34,648.50
20 Pleadings / Motions	417.2	\$205,627.00
21 Settlement	103.2	\$69,175.50
22 TOTAL	825.9	\$450,677.50

23 17. My firm’s multiplier is 1.39 based on our lodestar of \$450,677.50 and
 24 the requested fee award of \$625,000.

25 18. PSW billed this case at its usual and customary hourly billing rates,
 26 which have been approved by other courts presiding over similar complex class
 27 action lawsuits, including cases adjudicated in district courts in the Northern and
 28 Central Districts of California. *See In re Warner Music Group Corp. Digital
 Downloads Litigation*, No. CV 12-0559 (N.D. Cal.); *In re TFT-LCD (Flat Panel)*

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1 *Antitrust Litigation*, No. 07-md-08127 (N.D. Cal.); *Delarosa v. Boiron*, No. SACV
2 10-1569 (C.D. Cal.).

3 19. PSW will perform additional work for the benefit of the Class such as
4 preparation of the motion for final approval of the settlement, attending the hearing
5 regarding the same and continued work with the claims administrator and Class
6 Members relating to claims processing.

7 20. Attached hereto as Exhibit “2” is a true and correct summary of
8 expenses incurred by PSW during the course of this litigation. The expenses
9 pertaining to this case are reflected in the books and records of my firm. This
10 expense summary was prepared based on expense vouchers, check records and other
11 documents and are an accurate record of the expenses. Exhibit “2” indicates a total
12 of \$8,013.95 in costs and expenses by PSW to date in connection with the
13 prosecution of this litigation. The \$8,013.95 in litigation costs accounts for filing
14 fees, photocopying, travel related expenses, deposition related expenses, purchasing
15 samples of the Protein Products, and mediation fees. I believe the litigation
16 expenses incurred were reasonable and necessary given the complex nature and
17 scope of the case.

18 21. The requested incentive award of \$5,000 for Class Representative
19 James Eashoo is reasonable. Throughout the course of this litigation, Mr. Eashoo
20 expended considerable time and effort in assisting PSW in the adjudication of this
21 class action lawsuit. Mr. Eashoo reviewed many of the pleadings and also had his
22 deposition taken by defense counsel. Mr. Eashoo also participated in settlement
23 negotiations and ultimately reviewed and approved the Settlement Agreement. Mr.
24 Eashoo remained involved and dedicated to this case throughout its duration.
25 Furthermore, Mr. Eashoo has willingly associated his name with a class action
26 lawsuit against a well-known nutritional supplement company and had his name
27 publicized in connection with this lawsuit.

28 22. PSW received reports of the claims and settlement statistics from the

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1 Claims Administrator, RUST Consulting, for the duration of the notice period.
2 Although the claims period will not be completed until February 8, 2016, the
3 reaction of the Settlement Agreement has been exceedingly positive. As of January
4 9, 2016, the Claims Administrator reported that it has received 21,103 timely claims.

5 23. As of January 9, 2016 the claims administrator has not received any
6 objections.

7 24. Based on my professional experience, and taking into consideration the
8 risks of continued litigation as compared to the relief granted by the Settlement, I
9 believe that the Settlement is fair, reasonable, and adequate, and in the best interests
10 of the Class.

11 I declare under penalty of perjury under the laws of California and the United
12 States of America that the foregoing is true and correct.

13 Executed on January 25, 2015, in Sherman Oaks, California.

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15 /s/ Daniel L. Warshaw
16 Daniel L. Warshaw
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EXHIBIT 1

PEARSON, SIMON & WARSHAW, LLP
JAMES EASHOO v. IOVATE HEALTH SCIENCES INTL., INC.
Hours Reported and Lodestar

NAME	TOTAL HOURS	RATE	LODESTAR
Clifford H. Pearson - Partner	0.90	985.00	\$886.50
Daniel L. Warshaw - Partner	185.00	870.00	\$160,950.00
Matthew A. Pearson - Associate	292.50	385.00	\$112,612.50
Bobby Pouya - Associate	5.90	495.00	\$2,920.50
Bobby Pouya - Associate	175.30	635.00	\$111,315.50
Alexander R. Safyan - Associate	98.30	475.00	\$46,692.50
Ellowene Grant - Paralegal	11.70	225.00	\$2,632.50
Gregory Sonstein - Law Clerk	56.30	225.00	\$12,667.50
TOTAL	825.90		\$450,677.50

TASK CODE RECAP	HOURS	LODESTAR
Attorney Meeting / Strategy	31.90	\$14,311.00
Case Management	58.50	\$37,622.00
Court Appearance	11.90	\$10,159.50
Discovery	36.30	\$21,817.50
Deposition Preparation	61.30	\$32,589.00
Deposition Take / Defend	25.10	\$16,583.00
Client Meeting	14.30	\$8,144.50
Research	66.20	\$34,648.50
Pleadings / Motions	417.20	\$205,627.00
Settlement	103.20	\$69,175.50
TOTAL	825.90	\$450,677.50

EXHIBIT 2

PEARSON, SIMON & WARSHAW, LLP
JAMES EASHOO v. IOVATE HEALTH SCIENCES INTL., INC.

Expenses

EXPENSE CODE RECAP	AMOUNT
Photocopies (In-House)	\$120.80
Photocopies (Outside)	\$327.00
Postage	\$12.98
Local Travel (mileage)	\$46.79
Travel Expense	\$124.78
Filing Fees	\$400.00
Online Legal Research	\$731.29
Delivery Service / Messenger	\$184.08
Transcripts	\$2,046.04
Arbitrators / Mediators	\$3,775.00
Product purchase for evidence	\$245.19
TOTAL COSTS	\$8,013.95