CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
Karen Ross, Secretary

February 4, 2013

DMS NOTICE
QC - 13 - 2
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **Iovate Health Sciences International Inc., an Ontario Canada Corporation doing business as Six Star Pro Nutrition Settlement**

Enclosed is a stipulation for entry of final judgment against Iovate Health Sciences International Inc., an Ontario Canada Corporation doing business as, Six Star Pro Nutrition; Iovate Health Sciences USA, Inc., a Delaware Corporation; and doing business as Six Star Pro Nutrition. It was issued by the District Attorney's Office of Contra Costa on December 21, 2012 for deceptive packaging/non functional slack fill of Six Star Pro Nutrition supplements in violation of California Business and Professions Code Section 12606.2.

We commend both of the District Attorney's Office as well as the State and county investigators who documented and caused these violations to be prosecuted. Defendants Iovate Health Sciences International Inc., an Ontario Canada Corporation, and Iovate Health Sciences USA, Inc., a Delaware Corporation were assessed $300,000 in civil penalties, $23,370.71 for investigative costs, and $5,000 in cy pres restitution to the ITT Consumer Protection Prosecution Trust Fund for a total of $328,370.71.

Contra Costa County should be sure to report these penalties and their investigative costs in the appropriate columns in the County Monthly Report (CMR).

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Gary Leslie, Acting County/State Liaison, CDFA

MARK A. PETERSON
District Attorney Contra Costa County
GARY E. KOEPPEL, Deputy District Attorney
State Bar Number 104596
900 Ward Street, 4th Floor
Martinez, California 94553
Telephone: (925)957-8788

Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

FILED
DEC 21 2012
K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. IOVATE HEALTH SCIENCES INTERNATIONAL INC., An Ontario Canada Corporation; and doing Business as, SIX STAR PRO NUTRITION; IOVATE HEALTH SCIENCES, USA, INC., A Delaware Corporation; and doing Business as, SIX STAR PRO NUTRITION; and DOES ONE through TEN, Inclusive, Defendants.	Case No. C 12-0297 STIPULATION FOR ENTRY OF FINAL JUDGMENT

Plaintiff, the People of the State of California, appearing through its attorneys, Mark A. Peterson, District Attorney of the County of Contra Costa, by Gary E. Koeppel, Deputy District Attorney and Defendants Iovate Health Sciences, Inc. and Iovate Health Sciences USA, Inc., appearing through their attorney, Morrison and Foerster LLP, by William F. Tarantino, Esq.; hereby stipulate and agree as follows:

1. The proposed Final Judgment, a copy of which is attached hereunto as "Exhibit A" and incorporated herein by reference as though set forth in full, may be signed by any judge of the Superior Court of the State of California for the County of Contra Costa and entered by the clerk without notice provided that the Stipulation for Entry of Final Judgment has been executed by counsel and the parties listed below;

2. Defendants waive their right to appeal, and any right they may have to attempt to set aside, or vacate the final judgment entered pursuant to this Stipulation;

3. The parties consent to the entry of this final judgment prior to the taking of any proof without trial or adjudication of any issue of law or fact and without this Stipulation for Entry of Final Judgment constituting evidence or admission of liability or wrongdoing by Defendants;

4. The parties agree that the Complaint on file in the above-captioned action states facts sufficient to constitute a cause of action upon which relief may be granted.

5. The Defendants Iovate Health Sciences International, Inc. and Iovate Health Sciences USA, Inc. agree to be bound as of the date of entry of the Final Judgment in the form attached hereto as "Exhibit A," and that the signatures of this Stipulation on behalf of Defendants constitute notice to Defendants of the Final Judgment and all of its terms and Defendants waive any further notice or service of Final Judgment;

6. This Stipulation may be executed in counterparts and facsimile, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document.

MARK A. PETERSON
DISTRICT ATTORNEY
COUNTY OF CONTRA COSTA

Dated: Dec. 20, 2012 By: Gary E Koeppel

GARY E. KOEPPEL
Deputy District Attorney
Attorney for Plaintiff

IOVATE HEALTH SCIENCES INT'L, INC.
IOVATE HEALTH SCIENCES USA, INC.

Dated: 20 December 2012 By: [illegible]

ROCH VAILLANCOURT
General Counsel

Dated: Dec. 20, 2012 By: [illegible]

William F. Tarantino, Esq.
Attorney for Defendants

EXHIBIT A

MARK A. PETERSON
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GARY E. KOEPPEL, Deputy District Attorney
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Telephone: (925)957-8788

Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. IOVATE HEALTH SCIENCES INTERNATIONAL INC., An Ontario Canada Corporation; and doing Business as, SIX STAR PRO NUTRITION; IOVATE HEALTH SCIENCES USA, INC., A Delaware Corporation; and doing Business as, SIX STAR PRO NUTRITION; and DOES ONE through TEN, Inclusive, Defendants.	Case No. **FINAL JUDGMENT AND PERMANENT INJUNCTION PURSUANT TO STIPULATION**

Plaintiff, the People of the State of California, appearing through its attorneys, Mark A. Peterson, District Attorney of the County of Contra Costa, by Gary E. Koeppel, Deputy District Attorney; and Defendants Iovate Health Sciences International, Inc. and Iovate Health Sciences USA, Inc. ("Defendants" or "Iovate"), appearing through their attorney, Morrison and Foerster LLP, by William F. Tarantino, Esq.; and Plaintiffs and Defendants having stipulated to the entry of this Final Judgment prior to the taking of any proof and without trial or adjudication of any fact or law; and the Court having considered the pleadings;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

JURISDICTION

1. This action is brought under California law and this Court has jurisdiction of the subject matter hereof and the parties hereunto.

APPLICABILITY

2. The provisions of this Final Judgment are applicable to Defendants Iovate Health Sciences International Inc., an Ontario Canada Corporation, and Iovate Health Sciences USA, Inc., a Delaware Corporation, and to their officers, directors, representatives, successors, assigns, affiliates, subsidiaries, and divisions, and to any and all persons, corporations, or other entities who are acting in concert or participating with Defendants, or any of them, with actual or constructive notice of this judgment.

3. This Final Judgment is a full, final, and binding resolution between the People and Defendants of any and all violations preceding the "Designated Manufacturing Date" defined below, of each of the statutes and regulations concerning Nutritional Supplements as alleged in the People's Complaint against Iovate.

4. Nothing in this Final Judgment shall be deemed to authorize any violation of any law or regulation of the State of California or otherwise be construed to relieve Iovate of any ongoing duty to comply with applicable laws, rules and regulations; nor shall anything herein be deemed to constitute permission to engage in any acts or practices prohibited by such laws, rule or regulations.

DEFINITIONS

5. "Nutritional Supplements" shall include, without limitation, any and all products marketed by Defendants in the State of California under the following brand names: "Six Star Pro Nutrition Whey Protein Plus", "Six Star Pro Nutrition Casein Protein", "Six Star Pro Nutrition Mass Gainer", "Six Star Pro Nutrition Whey Isolate", "Six Star Pro Nutrition N.O. Fury", "Six Star Pro Nutrition Muscle Building Milk Shake", "Six Star Pro Nutrition Creatine X3", and "Six Star Pro Nutrition AminoMax".

6. The "Designated Manufacturing Date" shall be May 31, 2013.

INJUNCTION

7. Pursuant to Business and Professions Code Sections 17203 and 17535, Defendants, and each of them, are permanently enjoined and restrained from directly or indirectly engaging in any of the following acts or practices in or from California involving the manufacture, sale, offering for sale, or distribution of Nutritional Supplements:

(a) Pursuant to Business and Professions Code Section 12606.2 (b) and (c), Defendants shall not make form or fill any container as to be misleading. A container that does not allow the consumer to fully view its contents shall be considered misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space inside a container which cannot be justified pursuant to at least one of the exceptions delineated in Business and Professions Code Section 12606.2 (c) (1) through (6).

(b) Specifically, commencing on the Designated Manufacturing Date, Iovate shall modify the following products as set forth below to reduce the potential for non-functional slack fill. The following modifications will be deemed to comply with the requirements of the terms of this injunction.

(i) Six Star Pro Nutrition Casein Protein and Six Star Pro Nutrition Whey Isolate will no longer be manufactured for and distributed by, Iovate, in the current 3300 cc bottles and will be transitioned to 2500 cc bottles by the Designated Manufacturing Date. Each will be filled with 1.5 lbs. of product.

(ii) Six Star Pro Nutrition Muscle Building Milkshake and Six Star Pro Nutrition Protein Plus will no longer be manufactured for and distributed by, IOVATE, in the current 3300 cc bottles and will be transitioned to 2500 cc bottles by the Designated Manufacturing Date. Each will be filled with 2.0 lbs. of product.

(iii) Six Star Pro Nutrition Creatine X3 and Six Star Pro Nutrition Mass Gainer, will no longer be manufactured for and distributed by, IOVATE, in the current 3300 cc bottles and will be transitioned to 2500 cc bottles by the Designated Manufacturing Date. Each will be filled with 2.5 lbs. of product.

(iv) Six Star Pro Nutrition N.O. Fury will no longer be manufactured for and distributed by, IOVATE, in the current 2000 cc bottles and will be transitioned to 1000 cc bottles by the Designated Manufacturing Date. It will be filled with 1.2 lbs. of product.

(v) Six Star Pro Nutrition AminoMax, will no longer be manufactured for IOVATE by the Designated Manufacturing Date.

(c) Pursuant to Business and Profession Code Section 12603, Defendants shall not inaccurately state the net quantity of the contents of their Nutritional Supplements.

(d) Pursuant to Business and Professions Code Section 12606.2(f), Defendants shall remove from every retail shelf in California, all Nutritional Supplements which can readily be identified as a product containing nonfunctional slack fill. Additionally, Defendant shall not ship into California any such products purchased by consumers over the internet and instruct their online authorized retailers not to do so.

(e) In the alternative to subdivision "d" above, Defendants may offer a THREE DOLLAR ($3.00) online coupon for the purchase of all Nutritional Supplements which are currently on the store shelves, in stock rooms, in transit to California, pending transport to stores in California or offered for sale online by Defendants or their authorized retailers to consumers in California. This shall be accomplished by geotargeting California Facebook users through the Six Star Pro Nutrition's Facebook page, as well as pushing the offering to California Six Star Pro Nutrition's Facebook fans. The postings shall instruct the purchasers on how to redeem the THREE DOLLAR ($3.00) coupon. Defendant agrees to make coupons available until

the Designated Manufacturing Date, or redeem up to $30,000.00 in coupons, whichever occurs sooner. Assuming Defendants opt for this alternative; subdivision "d" above shall not apply.

CIVIL PENALTIES

8. Pursuant to California Business and Professions Code Sections 17206 and 17536, Defendants shall, jointly and severally, pay civil penalties in the amount of THREE HUNDRED THOUSAND DOLLARS ($300,000.00). Said civil penalties shall be paid by check made payable to the Contra Costa County District Attorney's Office and delivered to Gary E. Koeppel, Contra Costa County District Attorney's Office, 900 Ward Street, Martinez, California, 94553, at the time of the filing of this document.

9. Pursuant to California Government Code Section 26506, said civil penalties shall be paid to the prosecuting attorney bringing this action.

RESTITUTION

10. The parties having recognized the impracticality of identifying aggrieved consumers who suffered actual loss and the impracticality of providing direct restitution to said consumers, and the disproportionate cost of making restitution to individual consumers would far exceed the benefit consumers would gain, the court orders, pursuant to California Business and Professions Code Sections 17203 and 17535, that Defendants shall pay restitution in the form of cy pres, in the amount of FIVE THOUSAND DOLLARS ($5,000.00), to the Consumer Protection Prosecution Trust Fund previously created by the Stipulated Final Judgment and Permanent Injunction in the case of People v. ITT Consumer Financial Corporation, et.al. (Alameda County Superior Court No. 656038-0 filed on September 21, 1989) for the purpose of enhancing the investigation, prosecution, and enforcement of consumer protection actions brought pursuant to the unfair competition statutes of the State of California (California Business and Professions Code Section 17200, et seq.) by the California Attorney General, district attorneys, and city attorneys authorized to bring such actions pursuant to California Business and Professions Code Sections 17206. Said cy pres restitution payment shall be made out to the ITT Consumer Protection Prosecution Trust Fund, and delivered to Gary E. Koeppel, Contra Costa

County District Attorney's Office, 900 Ward Street, Martinez, California, 94553, at the time of the filing of this document.

COSTS

11. Defendants shall pay the amount of THREE THOUSAND TWO HUNDRED AND SIXTY SIX DOLLARS AND NINETY FOUR CENTS ($3,266.94) to the State of California Department of Food and Agriculture, Division of Measurement Standards, as reimbursement for its costs of investigation.

12. Defendants shall pay the amount of FIVE THOUSAND ONE HUNDRED AND THREE DOLLARS AND SEVENTY SEVEN CENTS ($5,103.77) to the Contra Costa County Division of Weights and Measures for its costs of investigation.

13. Defendant shall pay the amount of FIFTEEN THOUSAND DOLLARS ($15,000.00) by check made payable to the Contra Costa County District Attorney's Office and delivered to Gary E. Koeppel, Contra Costa County District Attorney's Office, 900 Ward Street, Martinez, California, 94553, at the time of the filing of this document, for attorney fees and costs.

RETENTION OF JURISDICTION AND FINALITY

14. The Court retains jurisdiction for the purpose of enabling any party to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of the injunctive provisions of this Final Judgment, for the modification or termination of any of the injunctive provisions and for the enforcement of compliance with and punishment for violations of the Final Judgment.

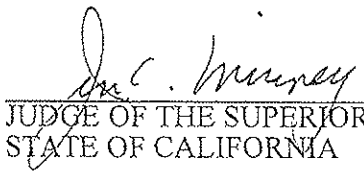
15. This Stipulated Final Judgment represents the complete and Final Judgment of all matters set forth in the Complaint filed contemporaneously with the Stipulated Final Judgment and Plaintiff and Defendants shall each bear their own attorney's fees and costs.

EFFECTIVENESS

16. This Final Judgment shall take effect immediately upon filing and without Notice of Entry of Final Judgment.

17. The clerk is ordered to immediately enter this judgment.

Dated: December 21, 2012.



JUDGE OF THE SUPERIOR COURT
STATE OF CALIFORNIA