

ARTURO J. GONZÁLEZ (BAR NO. 121490)
ERIN M. BOSMAN (BAR NO. 204987)
WILLIAM F. TARANTINO (BAR NO. 215343)
ALEXANDRIA A. AMEZCUA (BAR NO. 247507)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: 415-268-7000
Facsimile: 415.268.7522

Attorneys for Defendant(s)
IOVATE HEALTH SCIENCES INC.; IOVATE HEALTH
SCIENCES U.S.A., INC.; MUSCLETECH RESEARCH AND
DEVELOPMENT INC.; VITAMIN SHOPPE INDUSTRIES,
INC.; and GENERAL NUTRITION CENTERS, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALEJANDRO M. JIMENEZ, an individual; and
CHRISTOPHER LOPEZ, an individual; on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

IOVATE HEALTH SCIENCES, INC., IOVATE
HEALTH SCIENCES USA, INC.,
MUSCLETECH RESEARCH AND
DEVELOPMENT, INC.; VITAMIN SHOPPE
INDUSTRIES, INC., GENERAL NUTRITION
CENTERS, INC., and DOES 1 through 50,
inclusive

Defendants.

Case No. 09-CV-01473-JAM-KJM

**STIPULATION AND ORDER TO
STAY PROCEEDINGS PENDING
MDL CONSIDERATION**

**Judge: Hon. John A. Mendez
Magistrate: Hon. Kimberly J.
Mueller**

1 Pursuant to Civil Local Rule 83-143 of this Court, Plaintiffs ALEJANDRO M. JIMENEZ,
2 an individual; and CHRISTOPHER LOPEZ, an individual; on behalf of themselves and all others
3 similarly situated, and defendants IOVATE HEALTH SCIENCES INC.; IOVATE HEALTH
4 SCIENCES U.S.A., INC.; MUSCLETECH RESEARCH AND DEVELOPMENT INC.;
5 VITAMIN SHOPPE INDUSTRIES, INC.; and GENERAL NUTRITION CENTERS, INC.
6 (collectively “Defendants”) hereby submit the following Stipulation to Stay Proceedings
7 (“Stipulation”) pending a ruling on an MDL application filed by other plaintiffs:¹

8 1. This case is one of at least 17 putative class actions (the “Actions”) pending in 12
9 different federal district courts throughout the country against Defendants regarding the
10 marketing and sale of certain of Defendants’ Hydroxycut-branded products. Four individual
11 actions are also currently pending in federal court, challenging the marketing and sale of
12 Hydroxycut-branded products.

13 2. On June 26, 2009, plaintiffs in *Coleman, et al. v. Iovate Health Sciences, U.S.A.,*
14 *Inc., et al.*, Case No. 3:09-cv-00988-BTM-AJB, pending in the Southern District of California
15 before Judge Barry T. Moskowitz, filed with the Judicial Panel on Multidistrict Litigation (“the
16 Panel”) a motion for transfer and consolidation of the Actions to the District Court for the
17 Southern District of California pursuant to 28 U.S.C. § 1407. (A true and correct copy of the
18 Panel’s Notice of Filing and Publication of Briefing Schedule is attached as Exhibit 1.)
19 Defendants’ response to plaintiffs’ motion for transfer was filed July 16, 2009. The parties have
20 requested oral argument and await a hearing date from the Panel.

21 3. All the Actions, including this one, have just commenced, and there has been little
22 or no activity in the cases. In the present action of *Jimenez, et al. v. Iovate Health Sciences, Inc.,*
23 *et al.*, no activity has commenced.

24 4. The need for a stay is immediate. Absent a stay, the Court and the parties face
25 imminent deadlines for responsive pleadings, pretrial and other case management orders,

26 ¹ Defendants appear for purposes of this Stipulation only, and expressly reserve their right
27 to contest service and this Court’s jurisdiction.
28

1 exchange of initial disclosures, and commencement of discovery in this case, as well as in each of
2 the pending cases. The first deadline in this case will be Defendants' responsive pleading, which
3 is due August 3, 2009. The parties' case management conference will likely come soon
4 thereafter. It would not be a prudent use of this Court's resources to prepare for and participate in
5 a case management conference while a ruling on an MDL application concerning this case is still
6 pending.

7 5. So as to conserve judicial resources, protect from potential prejudice to the
8 parties, and avoid the risk of conflicting rulings, and pursuant to Civil Local Rule 83-143 of
9 this Court, the parties respectfully request that the Court order a stay of the current
10 proceedings until the MDL jurisdictional issue is determined.

11 Dated: July 29, 2009

ARTURO J. GONZÁLEZ
ERIN M. BOSMAN
WILLIAM F. TARANTINO
ALEXANDRIA A. AMEZCUA
MORRISON & FOERSTER LLP

14 By: /s/ Alexandria A. Amezcua

15 ALEXANDRIA A. AMEZCUA
16 Attorneys for Defendant(s)
17 IOVATE HEALTH SCIENCES, INC.;
18 IOVATE HEALTH SCIENCES
19 U.S.A., INC.; MUSCLETECH
RESEARCH AND DEVELOPMENT,
INC.; VITAMIN SHOPPE
INDUSTRIES, INC.; and GENERAL
NUTRITION CENTERS, INC.

20 Dated: July 29, 2009

JAMES M. LINDSAY
GENE J. STONEBARGER
RICHARD D. LAMBERT
LINSDAY & STONEBARGER

22 BY: /s/ Gene J. Stonebarger

23 GENE J. STONEBARGER
24 (as authorized on July 27, 2009)
25 Attorneys for Plaintiffs
ALEJANDRO M. JIMENEZ and
CHRISTOPHER LOPEZ, and all others
similarly situated and the general public

26 **IT IS SO ORDERED.**

27 **Dated:** 7/29/2009

/s/ John A. Mendez

28 **The Honorable John A. Mendez**

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 July 29, 2009, I served the foregoing:

**STIPULATION AND ORDER TO STAY PROCEEDINGS PENDING MDL
CONSIDERATION**

with the Clerk of the court using the CM/ECF system which will send notification of such filing
to the following:

Gene J. Stonebarger
LINDSAY & STONEBARGER
620 Coolidge Drive, Suite 225
Folsom, CA 95630

/s/Alexandria A. Amezcua
Alexandria A. Amezcua
California Bar No. 247507
Attorney for Defendants
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-6557
Fax: (415) 268-7522
Email: aamezcua@mofo.com