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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE HYDROXYCUT MARKETING
AND SALES PRACTICES LITIGATION

CASE NO. 09MD2087-BTM (AJB)
NO. 10 CV671-BTM

ANDREW NOLLEY,

Plaintiff,

vs.

MUSCLETECH RESEARCH AND
DEVELOPMENT, INC., IOVATE
HEALTH SCIENCES USA, INC., and
GNC CORPORATION,

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
COMPLAINT AND DENYING AS
MOOT DEFENDANTS' MOTIONS
TO DISMISS**

On April 2, 2010, defendants Iovate Health Sciences U.S.A., Inc. and Muscletech Research and Development, Inc. filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 9(b), 12(b)(1), and 12(b)(6).¹ On that same date, defendant GNC Corporation filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6).² The hearing on both motions was set for June

¹ [09md2087 - Docket Entry 147]
² [09md2087 - Docket Entry 146]

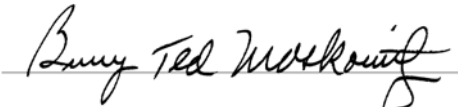
1 25, 2010. On June 4, 2010, attorneys for plaintiff Andrew Nolley filed a Motion for Leave to
2 Amend Complaint.³ On June 7, 2010, the Court ordered Defendants to file a response, if any,
3 to Plaintiff's Motion for Leave to Amend.⁴ Pursuant to that order, Defendants filed a Response
4 stating, "Defendants do not have any objection to Plaintiff filing an amended complaint as a
5 general matter," but that Plaintiff's proposed amendments only cured some and not all of the
6 pleading defects.⁵

7 Upon review of the papers submitted by the parties, the Court hereby orders as follows:

- 8 1. Plaintiff's Motion for Leave to Amend is **GRANTED**.
- 9 2. The scope of the leave granted is not limited to the amendments proposed by
10 Plaintiff, but shall be broad enough to permit Plaintiff to make any and all amendments he
11 deems appropriate or necessary to cure any defects alleged by Defendants.
- 12 3. The two pending Motions to Dismiss [09md2087 - Docket Entries 146 and 147]
13 are **DENIED** as moot since the original complaint will no longer be the operative complaint once
14 Plaintiff files his First Amended Complaint in this case.

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16 IT IS SO ORDERED.

17 DATED: June 18, 2010

18 
19 Honorable Barry Ted Moskowitz
20 United States District Judge

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26 _____
27 ³ [09md2087 - Docket Entry 236]
28 ⁴ [09md2087 - Docket Entry 238]
⁵ [09md2087 - Docket Entry 244]