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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 IN RE HYDROXYCUT MARKETING
12 AND SALES PRACTICES LITIGATION

CASE NO. 09MD2087-BTM (AJB)
NO. 10 CV673-BTM

13
14 DEBRA RUTHERFORD, DANA
15 CRAWFORD, MICHAEL MAGGARD,
16 TRAVIS D. HORTON,

Plaintiffs,

17 vs.

18 MUSCLETECH RESEARCH AND
19 DEVELOPMENT, INC., et al.,

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

21 On April 30, 2010, defendants Muscletech Research and Development, Inc., Iovate
22 Health Sciences U.S.A., Inc., Iovate Health Sciences Research, Inc., Iovate Health Sciences
23 International, Inc. Iovate HC 2005 Formulations Ltd., and Wal-Mart Stores East, L.P.
24 ("Defendants") filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), or in the
25 alternative Fed. R. Civ. P. 9(b).¹ On that same date, defendant GNC Corporation filed a Motion
26 to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6).² The hearing on both motions was set for July
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28 ¹ [09md2087 - Docket Entry 189]

² [09md2087 - Docket Entry 190]

1 2, 2010. On June 18, 2010 (in 10cv673) and June 21, 2010 (in 09md2087), attorneys for
2 plaintiffs Deborah Rutherford, Dana Crawford, Michael Maggard, and Travis D. Horton
3 (“Plaintiffs”) filed a Motion for Leave to Amend Complaint.³ On June 22, 2010, the Court
4 ordered Defendants to file a response, if any, to Plaintiff’s Motion for Leave to Amend.⁴
5 Pursuant to that order, Defendants filed a Response stating, “Defendants do not in principle
6 oppose Plaintiffs’ Motion for Leave to Amend and therefore do not have any objection to
7 Plaintiffs filing an amended complaint at this time,” but that Plaintiff’s proposed amendments
8 only cured some and not all of the pleading defects.⁵

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

10 1. Plaintiffs’ Motion for Leave to Amend is **GRANTED**.

11 2. The scope of the leave granted is not limited to the amendments proposed by
12 Plaintiffs, but shall be broad enough to permit Plaintiffs to make any and all amendments they
13 deem appropriate or necessary to cure any defects alleged by Defendants.

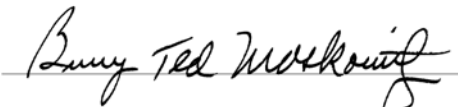
14 3. The two pending Motions to Dismiss [09md2087 - Docket Entries 189 and 190]
15 are **DENIED** as moot since the original complaint will no longer be the operative complaint once
16 Plaintiffs file an amended complaint in this case.

17 4. Defendants’ request for a stay of the briefing schedule relating to their motions to
18 dismiss is **GRANTED**.

19 5. Plaintiffs shall file their amended complaint on or before **July 23, 2010**.

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21 IT IS SO ORDERED.

22 DATED: July 1, 2010

23 
24 Honorable Barry Ted Moskowitz
25 United States District Judge

26 ³ [09md2087 - Docket Entry 261]; [10cv673 - Docket Entry 24]

27 ⁴ [09md2087 - Docket Entry 266]

28 ⁵ [09md2087 - Docket Entry 274]