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

11

12 LUIS LERMA, an Individual, and NICK  
PEARSON, an Individual, On Behalf of  
13 Themselves and All Others Similarly  
Situated,

Plaintiffs,

14

v.

15 SCHIFF NUTRITION  
INTERNATIONAL, INC., a Delaware  
16 Corporation, and SCHIFF NUTRITION  
GROUP, INC., a Utah Corporation,

Defendants.

17

CASE NO. 3:11-CV-01056-MDD

CLASS ACTION

**PLAINTIFFS' *EX PARTE* MOTION  
FOR LEAVE TO WITHDRAW  
FROM SETTLEMENT**

Magistrate Judge: Mitchell D. Dembin

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19 Plaintiffs Louis Lerma, Nick Pearson and Muriel Jayson, will and do hereby  
20 move this Court for leave to withdraw from the settlement currently pending  
before this Court, and in support thereof state as follows:

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22 On March 25, 2014 Plaintiffs requested the Court preliminarily approve a  
23 settlement that they had entered into with Defendant. The terms of that settlement  
24 were patterned after an earlier settlement involving another  
25 glucosamine/chondroitin product in *Pearson v. NBTY, Inc.*, No. 11 CV 7972, 2014  
26 WL 30676 (N.D. Ill. 2014). At the time that Plaintiffs entered into this settlement,  
27 the settlement in *Pearson* had been finally approved by the district court presiding  
over that settlement, overruling objections raised by several objectors. And, when

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1 Plaintiffs sought preliminary approval of the settlement with Schiff in this case, the  
2 law in the Circuit Courts of Appeal appeared to be favorable for final approval of  
3 the proposed settlement here.

4 As this Court is aware, neither of these is true now. Instead, in a strongly  
5 worded opinion that changed both, the Seventh Circuit reversed final approval of  
6 the settlement in *Pearson* and sustained the objections to that settlement on  
7 multiple grounds. After careful consideration of the *Pearson* opinion, Plaintiffs  
8 and their counsel in this case believe that the criticisms leveled by the Seventh  
9 Circuit towards the *Pearson* settlement are likely to be raised by objectors here as  
10 the *Pearson* settlement and the settlement in this case are similarly structured with  
11 several identical terms.

12 As a result, Plaintiffs and their counsel can no longer recommend this  
13 settlement on behalf of the class and will not move to seek final approval of this  
14 settlement.<sup>1</sup>

15 Based on the foregoing, Plaintiffs respectfully request that the Court grant  
16 them leave to withdraw from the settlement here, terminate the settlement approval  
17 process and return this matter to the litigation docket.<sup>2</sup>

18 Counsel for Plaintiffs have discussed this motion with counsel for Defendant  
19 and Defendant opposes this motion and has indicated it wishes to file a written  
20 response to the motion.

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22  
23 <sup>1</sup> Defendant, apparently in reliance upon its belief that the Court would grant the  
24 parties' requested stay has not caused notice to issue. This delay in turn would, at  
25 a minimum, require the continuance of the final approval date since the notice  
could not be effectuated in time for the currently scheduled final approval hearing  
date of April 8, 2015.

26 <sup>2</sup> Plaintiffs still intend to mediate with Defendants, if they still desire to do so, in an  
27 effort to arrive at a settlement that addresses the issues with the current settlement  
and will attempt to accelerate this process.

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1 Dated: February 6, 2015

**BONNETT, FAIRBOURN, FRIEDMAN &  
BALINT, P.C.**

2  
3 By: /s/ Patricia N. Syverson  
Patricia N. Syverson, Attorney for  
4 Plaintiffs LUIS LERMA and NICK  
PEARSON

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19 Attorneys for Plaintiffs  
20 LUIS LERMA and NICK PEARSON

21 Dated: February 6, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 6, 2015.

/s/Patricia N. Syverson  
Patricia N. Syverson