

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MITCHELL FLUKER, JR., individually and on
behalf of all others similarly situated,

Plaintiff,

v.

GLANBIA PERFORMANCE NUTRITION,
INC., a Florida corporation,

Defendant.

Case No.: 2017-CH-12993

Hon. Raymond W. Mitchell

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement is entered into by and among Plaintiff Mitchell Fluker Jr. (“Fluker” or “Plaintiff”), for himself individually and on behalf of the Settlement Class, and Defendant Glanbia Performance Nutrition (NA), Inc., formerly known as Glanbia Performance Nutrition, Inc., and Glanbia Performance Nutrition (Manufacturing), Inc. (together, “Glanbia”) (Plaintiff and Glanbia are referred to individually as a “Party” and collectively referred to as the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and is subject to the approval of the Court.

RECITALS

A. On September 26, 2017, Fluker filed the above-captioned putative class action against Defendant Glanbia Performance Nutrition, Inc. (“Defendant”), alleging claims for damages and an injunction under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq. (“BIPA”) and for negligence. The claims related to the alleged unauthorized collection,

storage, use, and dissemination of Plaintiff's fingerprint data through the use of fingertip scanning devices used by Glanbia for timekeeping purposes.

B. On February 13, 2018 Plaintiff filed an unopposed motion to stay this Action pending the First District Court of Appeal's decision in *Sekura v. Krishna Schaumburg Tan, Inc.*, No. 1-18-0175 (Ill. App. 1st Dist.), which the Parties agreed could materially impact the outcome of this Action.

C. Thereafter on October 18, 2018 following the First District Court of Appeal's decision in *Sekura*, the Court continued the stay pending the Illinois Supreme Court's ruling in *Rosenbach v. Six Flags Entertainment Corporation*, No. 123186.

D. The Illinois Supreme Court issued a decision in *Rosenbach* on January 25, 2019.

E. Shortly thereafter on February 1, 2019, the Court lifted the stay and the parties agreed on case schedule, which included, *inter alia*, Defendant's submission of an amended motion to dismiss and Plaintiff's response.

F. In May 2019, following briefing on the motion to dismiss, the Parties began discussing the potential for class-wide settlement and exchanged information on the underlying facts of the case and size of the class.

G. On July 11, 2019, the Court denied Defendant's amended motion to dismiss and Defendant was ordered to answer.

H. Defendant answered the complaint on August 2, 2019, and Plaintiff replied to the affirmative defenses on August 21, 2019.

I. The parties exchanged written discovery requests on August 30, 2019. Defendant responded to the written discovery requests on October 11, 2019, and Plaintiff responded on October 16, 2019.

J. Meanwhile, Plaintiff issued a demand to settle this Action, which Defendant rejected but countered. The Parties then agreed that a mediation would be productive in reaching resolution of this Action.

K. On October 17, 2019, the Parties participated in a full-day, formal mediation session with the Honorable James F. Holderman (Ret.) of JAMS in Chicago. The Parties settlement negotiations lasted throughout the day and left the mediation with a pending offer from Plaintiff to be accepted or expire at the end of the following day. Defendant accepted.

L. After additional negotiation on the material terms of the settlement, the Parties executed a binding memorandum of understanding on November 18, 2019.

M. Plaintiff and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the complaint and Defendant's potential defenses. Plaintiff believes that the claims asserted in the Action have merit, that he would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that he would have prevailed on the merits at summary judgment or at trial. But Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses in the Action that presented a risk that Plaintiff may not prevail and/or that a Class might not be certified for trial. Class Counsel have also taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as difficulty and delay inherent in such litigation. Plaintiff and Class Counsel believe that this Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and barred pursuant to the terms and conditions set forth in the Settlement Agreement.

N. Defendant denies the material allegations in the complaint, as well as all allegations of wrongdoing and liability, including that it is subject to or violated BIPA, but Glanbia has similarly concluded that this Settlement Agreement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class's claims for liquidated damages under BIPA. Glanbia thus desires to resolve finally and completely the pending and potential claims of Plaintiff and the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and Glanbia that, subject to the Court after a hearing as provided for in this Settlement, and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Settlement Agreement.

AGREEMENT

1. DEFINITIONS

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1 “**Action**” means the case captioned *Mitchell Fluker, Jr. v. Glanbia Performance Nutrition, Inc.*, Case No. 2017-CH-12993 (Cir. Ct. Cook Cty.).

1.2 “**Agreement**” or “**Settlement Agreement**” or “**Settlement**” means this Stipulation of Class Action Settlement and Exhibits referenced herein.

1.3 “**Class Counsel**” means attorneys Jay Edelson, Ari Scharg, and J. Eli Wade-Scott of Edelson PC and David Fish of the Fish Law Firm PC.

1.4 “**Class Representative**” means the named Plaintiff in the Action, Mitchell Fluker, Jr.

1.5 “**Court**” means the Circuit Court of Cook County, Illinois, the Honorable Raymond W. Mitchell presiding, or any judge who shall succeed him as the Judge assigned to the Action.

1.6 “**Glanbia**” means Glanbia Performance Nutrition (NA), Inc., formerly known as Glanbia Performance Nutrition, Inc., a Florida corporation, and Glanbia Performance Nutrition (Manufacturing), Inc., a Delaware corporation.

1.7 “**Defendant’s Counsel**” or “**Glanbia’s Counsel**” means attorney Joseph A. Strubbe, Frederic T. Knape, and Zachary J. Watters of Vedder Price P.C.

1.8 “**Effective Date**” means one business day following the later of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Judgment; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Final Judgment.

1.9 “**Escrow Account**” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Glanbia at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Account shall be invested in the following types of accounts and/or

instruments and no other: (a) demand deposit accounts and/or (b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. Any interest earned on the Escrow Account shall inure to the benefit of the Settlement Class as part of the Settlement Payment, if practicable. The Settlement Administrator shall be responsible for all tax filings with respect to the Escrow Account.

1.10 “**Fee Award**” means the amount of attorneys’ fees and reimbursement of costs to Class Counsel by the Court to be paid out of the Settlement Fund.

1.11 “**Final Approval Hearing**” means the hearing before the Court where Plaintiff will request that the Final Judgment be entered by the Court finally approving the Settlement as fair, reasonable and adequate, and approving the Fee Award and the incentive award to the Class Representative.

1.12 “**Final Judgment**” means the final judgment to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing.

1.13 “**Notice**” means the notice of this proposed Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process and 735 ILCS 5/2-801 *et seq.*, and is substantially in the form of Exhibits A and B attached hereto.

1.14 “**Notice Date**” means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than twenty-eight (28) days after entry of Preliminary Approval.

1.15 “**Objection/Exclusion Deadline**” means the date by which a written objection to the Settlement Agreement or a request for exclusion submitted by a person within the Settlement

Class must be filed with the Court and/or postmarked, which shall be designated as a date forty-two (42) days after the Notice Date, as approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice and on the Settlement Website.

1.16 “**Plaintiff**” means Mitchell Fluker, Jr.

1.17 “**Preliminary Approval**” means the Court’s Order preliminarily approving the Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice.

1.18 “**Released Claims**” means any and all actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and/or obligations (including “Unknown Claims” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on BIPA or other federal, state, local, statutory or common law or any other law, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of or relating to the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act as alleged in the Action or regarding the alleged collection, storage, use, and dissemination of biometric data, including, without limitation, all claims that were brought or could have been brought in the Action relating to such collection, storage, use, and dissemination of biometric and/or fingerprint data, or any other violation of BIPA, belonging to any and/or all Releasing Parties.

1.19 **“Released Parties”** means Glanbia Performance Nutrition (NA), Inc., Glanbia Performance Nutrition (Manufacturing), Inc., and all of their past, present or future heirs, executors, estates and administrators; predecessors, successors and assigns; direct and indirect corporate parents, subsidiaries, affiliates, holding companies, employers, sister and affiliated companies, divisions and other affiliated or related entities, including each of their respective successors and assigns; employees, investors, associates, agents, representatives, consultants, independent contractors, directors, managing directors, officers, partners, principals, board members, owners, trustees, members, attorneys, vendors, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors and investment advisors; and any and all past, present and future companies, firms, trusts, corporations, officers, directors and other individuals or entities in which they have a controlling interest or which is affiliated with any of them, or any other representatives of any of these persons and entities, as well as all persons acting by, through, under or in concert with any of these persons or entities. The exception to the above shall be that ADP LLC, and its parents and subsidiaries, will not be Released Parties.

1.20 **“Releasing Parties”** means Plaintiff and other Settlement Class Members and their respective past, present and future heirs, children, spouses, beneficiaries, conservators, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

1.21 **“Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in or relating to administering the Settlement, providing Notice,

mailing checks for Settlement Payments, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.22 “**Settlement Administrator**” means Heffler Claims Group, subject to approval of the Court, which will provide the Notice, Settlement Website, sending of Settlement Payments to Settlement Class Members, tax reporting, and performing such other settlement administration matters set forth herein or contemplated by the Settlement.

1.23 “**Settlement Class**” means all current and former employees of Glanbia Performance Nutrition (NA), Inc. and/or Glanbia Performance Nutrition (Manufacturing), Inc. who used a finger scanner for timekeeping purposes at a facility operated by Glanbia in the State of Illinois between September 26, 2012 and the date of Preliminary Approval. Excluded from the Settlement Class are (a) any Judge presiding over this action and members of their families; (b) Glanbia, Glanbia’s subsidiaries, parent companies, successors, predecessors, and any entity in which Glanbia or its parents have a controlling interest; (c) persons who properly execute and file a timely request for exclusion from the Settlement Class; (d) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (e) counsel for all Parties and members of their families and (f) the legal representatives, successors or assigns of any such excluded persons or entities.

1.24 “**Settlement Class Member**” or “**Class Member**” means a person who falls within the definition of the Settlement Class and who does not submit a valid request for exclusion from the Settlement Class.

1.25 “**Settlement Fund**” means the amount paid by Glanbia into the Escrow Account. Within fourteen (14) days of the entry of Preliminary Approval and receipt of Settlement Administrator instructions, Glanbia, its insurer(s), or any other party on behalf of Glanbia, shall

pay into the Escrow Account the amount of One Thousand Three Hundred Dollars (\$1,300.00) per person in the Settlement Class. Glanbia has represented that there are 921 estimated persons in the Settlement Class, and the Settlement Fund is therefore presently calculated at \$1,197,300.00. The Settlement Fund shall satisfy all monetary obligations of Glanbia (or any other Released Party) under this Settlement Agreement, including all attorneys' fees, litigation costs, settlement administration expenses, payments to the Settlement Class, the incentive award, and any other payments or other monetary obligations contemplated by this Agreement or the Settlement. Pursuant to Section 7.3, Glanbia shall provide certain reasonable confirmatory discovery to establish the size of the Settlement Class and the Class List as set forth herein. In no event shall any amount paid by Glanbia into the Escrow Account revert to Glanbia.

1.26 “**Settlement Payment**” means a *pro rata* portion of the Settlement Fund less any Fee Award, incentive award to the Class Representative, and Settlement Administration Expenses.

1.27 “**Settlement Website**” means the website to be created, launched, and maintained by the Settlement Administrator, which will provide access to relevant settlement administration documents, including the Notice and other related material.

1.28 “**Unknown Claims**” means claims that could have been raised in the Action and that Plaintiff, any other members of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, to object or not to object to the Settlement. Upon the Effective Date, and by operation of the Final Judgment, Plaintiff, other Settlement Class Members, and the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent

permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, and by operation of the Final Judgment, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiff, other Settlement Class Members, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Section.

2. SETTLEMENT RELIEF

2.1 Settlement Payments to Settlement Class Members.

- a. The Settlement Administrator shall send each Settlement Class Member a Settlement Payment by check within twenty-eight (28) days of the Effective Date via First Class U.S. Mail to their last known mailing address, as updated through the National Change of Address database if necessary by the Settlement Administrator.
- b. All Settlement Payments will state on the face of the check that the check

will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

c. To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds shall be distributed to the Illinois Bar Foundation, the Cook County Bar Association, and/or Chicago Legal Aid pursuant to 735 ILCS 5/2-807(b), subject to approval of the Court.

d. In no event shall any amount paid by Glanbia into the Escrow Account revert to Glanbia.

2.2 **Prospective Relief.** Glanbia represents that it stopped using the fingertip scanning devices shortly after being served with the complaint out of an abundance of caution. Accordingly, without admitting that it is required by law to do so, for a period of four years from the date of Preliminary Approval, Glanbia shall not collect, store, use, or disseminate fingerprints, any data derived from fingerprints, or other biometric information or data (“fingerprint data”) at any facility located in the State of Illinois without first obtaining written consent and posting a publicly-available retention policy and otherwise complying with BIPA. Glanbia will destroy all fingerprint data in their possession, if any, and shall request ADP LLC to destroy all fingerprint data in its possession, if any, which has resulted from the fingertip scans of the Settlement Class. Compliance with BIPA, as currently enacted or as hereinafter amended, shall constitute compliance with this injunction.

3. RELEASE

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties, and each of them, shall be

deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever released, acquitted, relinquished and completely discharged the Released Parties from any and all Released Claims. For the avoidance of doubt, claims against ADP LLC, its parents and subsidiaries, will not be released. Upon the Effective Date, and by operation of the Final Judgment, all Releasing Parties hereby fully, finally, and forever waive, discharge, surrender, forego, give up, and abandon any and all Released Claims against the Released Parties, and shall be forever barred and enjoined from prosecuting any action against the Released Parties asserting any Released Claims.

3.2 **No Limitation.** In addition to the provisions in Section 1.29, upon the Effective Date, and by operation of the Final Judgment, each Releasing Party waives any and all provisions, rights and benefits that may be conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, that, absent such waiver, may limit the extent or effect of the Release contained in this Agreement to the extent allowable by law.

4. NOTICE TO THE CLASS

4.1 The Notice shall include:

a. *Class List.* Glanbia shall provide the Settlement Administrator a list of all names and last known U.S. mail addresses of all persons in the Settlement Class (the “Class List”) as soon as practicable, but by no later than twenty-one days after the execution of this Agreement.. The Class List will be subdivided based on whether the Class Member is a current employee or former employee. The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity and mailing addresses of all persons strictly confidential. The Class List may not

be used by the Settlement Administrator for any purpose other than advising persons in the Settlement Class of their rights under the Settlement, mailing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

b. *Update Addresses.* Prior to mailing Notice, the Settlement Administrator will update the addresses of former employees on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Class Members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings as described below.

c. *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall send notice via First-Class U.S. Mail substantially in the form attached as Exhibit A to each physical address in the Class List.

c. *Internet Notice.* Within ten (10) days after the entry of Preliminary Approval, the Settlement Administrator will develop, host, administer and maintain the Settlement Website, containing the notice substantially in the form of Exhibit B attached hereto.

4.2 The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the person making an objection shall file notice of his or her intention to do so and at the

same time (a) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, (b) file copies of such papers through the Court's eFileIL system, and (c) send copies of such papers via e-mail, U.S. mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

4.3 **Right to Object or Comment.** Any person in the Settlement Class who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member's full name and current address, (b) a statement that he or she believes himself or herself to be a member of the Settlement Class, (c) the specific grounds for the objection, (d) all documents or writings that the Settlement Class Member desires the Court to consider, (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (f) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and postmarked, e-mailed or delivered to Class Counsel and Defendant's Counsel no later than the Objection/Exclusion Deadline. Any person in the Settlement Class who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement or Final Judgment by appeal or other means and shall

be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.4 **Right to Request Exclusion.** Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) identify the case name *Mitchell Fluker, Jr. v. Glanbia Performance Nutrition, Inc.*, Case No. 2017-CH-12993 (Cir. Ct. Cook Cty.), (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be physically signed by the person(s) seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. Each request for exclusion must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Mitchell Fluker, Jr. v. Glanbia Performance Nutrition, Inc.*, Case No. 2017-CH-12993 (Cir. Ct. Cook Cty).” A request for exclusion that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked or delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or Final Judgment entered in the Action, (b) receive a Settlement Payment under this Settlement Agreement, (c) gain any rights by virtue of this Settlement Agreement, or (d) be entitled to object to any aspect of this Settlement Agreement or Final Judgment. No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator's Duties.

a. *Dissemination of Notices.* The Settlement Administrator shall disseminate Notice as provided in Section 4 of this Settlement Agreement.

b. *Undeliverable Notice.* If any Notice is returned as undeliverable, the Settlement Administrator shall forward it to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator shall perform skip traces to attempt to obtain the most recent addresses for such Settlement Class Members. For any Notice sent to Settlement Class Members that are returned undeliverable, Settlement Class Members will have the longer of the remaining duration for the Objection/Exclusion Deadline or fourteen (14) days from the date of any re-mailing to object to or opt out of the Settlement as otherwise provided herein.

c. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, requests for exclusion, administration and implementation of the Settlement.

d. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class Counsel and Defendant's Counsel a copy thereof within five (5) days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the deadline for the submission of requests for exclusion, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel.

d. *Creation of Settlement Website.* The Settlement Administrator shall create the Settlement Website. The Settlement Website shall include a toll-free telephone number and mailing address through which persons in the Settlement Class may contact the Settlement Administrator or Class Counsel directly.

e. *Timing of Settlement Payments.* The Settlement Administrator shall make the Settlement Payments contemplated in Section 2 of this Settlement Agreement by check and mail them to Settlement Class Members within twenty-eight (28) days after the Effective Date.

f. *Tax reporting.* The Settlement Administrator shall be responsible for all tax filings related to the Escrow Account, including requesting Form W-9s from Settlement Class Members, performing back-up withholding as necessary, and making any required "information returns" as that term is used in 26 U.S.C. § 1 *et seq.*

6. PRELIMINARY APPROVAL AND FINAL APPROVAL

6.1 **Preliminary Approval.** Promptly after execution of this Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and shall move the Court to

enter an order granting Preliminary Approval, which shall include, among other provisions, a request that the Court:

- a. Appoint Plaintiff as Class Representative of the Settlement Class;
- b. Appoint Class Counsel to represent the Settlement Class;
- c. Certify the Settlement Class under 735 ILCS 5/2-801 *et seq.* for settlement purposes only;
- d. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class;
- e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class; and
- f. Schedule a Final Approval Hearing to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness and adequacy, to consider the application for a Fee Award and incentive awards to the Class Representative, and to consider whether the Court shall issue a Final Judgment approving this Settlement Agreement, to consider Class Counsel's application for the Fee Award and the incentive award to the Class Representative, and dismissing the Action with prejudice.

6.2 **Final Approval.** After Notice to the Settlement Class is given, Class Counsel shall move the Court for entry of a Final Judgment, which shall include, among other provisions, a request that the Court:

- a. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;

b. approve the Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions; and declare the Settlement to have released all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members and Releasing Parties as provided herein;

c. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of Due Process and 735 ILCS 5/2-801 *et seq.*;

d. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

e. dismiss the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

f. incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

g. permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting,

intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

h. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement and its implementing documents (including all Exhibits to this Settlement Agreement) that (i) shall be consistent in all material respects with the Final Judgment, and (ii) do not limit the rights of Settlement Class Members;

i. without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

j. incorporate any other provisions, consistent with the material terms of this Settlement Agreement, as the Court deems necessary and just.

6.3 Cooperation. The Parties shall, in good faith, cooperate, assist and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

7. TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 Subject to Section 9 below, the Class Representative, on behalf of the Settlement Class, or Glanbia, shall have the right to terminate this Agreement by providing written notice of the election to do so to all other Parties within ten (10) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant Final Approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date

upon which the Final Judgment is modified or reversed in any material respect by the appellate court or the Supreme Court; or (v) the date upon which an Alternative Judgment, as defined in Paragraph 9.1 of this Agreement, is modified or reversed in any material respect by the appellate court or the Supreme Court.

7.2 Subject to Section 9 below, Glanbia shall have the right to terminate this Agreement by providing written notice of the election to do so to all other Parties within ten days of receiving notice from the Settlement Administrator that 10% or more of the Settlement Class has opted out of the Settlement.

7.3 **Confirmatory Discovery.** Glanbia has represented that there are approximately 921 persons in the Settlement Class. Glanbia shall provide certain reasonable confirmatory discovery to determine the size of the Settlement Class within fourteen (14) days of the execution of this Agreement, consisting of a declaration from a person with direct knowledge of the size of the Settlement Class. Failure to provide such confirmatory discovery or in the event the size of the Settlement Class is less than 829 persons, Class Counsel shall have the right to terminate this Agreement in accordance with the provisions in Section 9.

8. INCENTIVE AWARD AND CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

8.1 Glanbia agrees that Class Counsel is entitled to reasonable attorneys' fees and unreimbursed expenses incurred in the Action as the Fee Award. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from Glanbia, to limit their request for attorneys' fees and unreimbursed costs to thirty-five percent (35%) of the Settlement Fund. Glanbia may challenge the amount requested. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the

amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund and be distributed to Settlement Class Members as Settlement Payments.

8.2 The Fee Award shall be payable within five (5) business days after entry of the Final Judgment, if there are no objections to the Settlement Agreement, and if there have been such objections, within five (5) business days after the Effective Date. Payment of the Fee Award shall be made via wire transfer to an account designated by Class Counsel after providing necessary information for electronic transfer.

8.3 Glanbia agrees that the Class Representative shall be paid an incentive award in the amount of Five Thousand Dollars (\$5,000.00) from the Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement and in recognition of his efforts on behalf of the Settlement Class, subject to Court approval. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund and be distributed to Settlement Class Members as Settlement Payments. Any award shall be paid from the Escrow Account (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement and, if there have been such objections, within five (5) business days after the Effective Date.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs subject to the provisions in Section 1.8:

- a. This Agreement has been signed by the Parties, Class Counsel and Defendant's Counsel;

b. The Court has entered an order granting Preliminary Approval of the Agreement;

c. The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class and a Final Approval Hearing, and has entered the Final Judgment, or a judgment substantially consistent with this Settlement Agreement that has become final and unappealable; and

d. In the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) to which the Parties have consented, that Alternative Judgment has become final and unappealable.

9.2 If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Section 9.3, unless Class Counsel and Defendant’s Counsel mutually agree in writing to proceed with this Settlement Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the Court’s decision as to the amount of the Fee Award to Class Counsel set forth above or the incentive award to the Class Representative, regardless of the amounts awarded, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as

of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement, including, but not limited to, class certification, shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into.

10. MISCELLANEOUS PROVISIONS.

10.1 **Protective Order.** The Parties have agreed to, and the Court has made, a Confidentiality Order in this case entered October 9, 2019. The Parties agree that this Confidentiality Order shall be modified such that (1) materials produced that were designated as “Confidential Information” shall remain confidential according to the category with which they were marked (Confidential or Confidential-Attorneys’ Eyes Only), however, that all such materials may be used by Class Counsel in any future action involving BIPA claims against ADP, including producing them to ADP and, if needed, filing the documents in connection with a submission to the Court provided the party moves to file such documents under seal consistent with Paragraph 7 of the Confidentiality Order, and (2) that these materials need not be destroyed or returned. Such materials shall be destroyed or returned no later than twelve (12) months from the Effective Date if no such future action is filed against ADP or within two (2) months of a final resolution of any such action against ADP.

10.2 Class Counsel, Plaintiff and each other Settlement Class Member will be solely responsible for all taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to the Settlement.

10.3 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent

reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking entry of an order granting Preliminary Approval and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

10.4 Each signatory to this Agreement represents and warrants (a) that he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein, (b) that the execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory, and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

10.5 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the other Settlement Class Members, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

10.6 The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

10.7 Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant risks, inconveniences, expenses and contingencies. There has been no determination by the Court as to the merits of the claims or defenses asserted by the Plaintiff or Defendant or with respect to class certification, other than for settlement purposes only. Accordingly, whether the Effective Date occurs or this Settlement is terminated, neither this Settlement Agreement nor the Settlement contained herein, nor any court order, communication, act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the appropriateness of class certification, the truth of any fact alleged by Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the Settlement Fund, Settlement Payment or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

b. is, may be deemed, or shall be used, offered or received against Glanbia as, an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

c. is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any

fact alleged by Glanbia, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

d. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such parties in order to support a defense or counterclaim;

e. is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

f. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.8 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.9 The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement Agreement.

10.10 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

10.11 This Settlement Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.12 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

10.13 Plaintiff represents and warrants that he has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that he is fully entitled to release the same.

10.14 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this

Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.15 If any deadlines related to the Settlement cannot be met, Class Counsel and Glanbia's Counsel shall meet and confer to reach agreement on any necessary revisions of the deadlines and timetables set forth in this Agreement and notice an appropriate motion for modification with the Court. In the event that the Parties fail to reach such agreement, either Party may apply to the Court via a noticed motion for modification of the dates and deadlines in this Agreement.

10.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement. The Parties agree that specific performance shall be an acceptable remedy for any material breach of this agreement.

10.17 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of laws provisions thereof.

10.18 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

10.19 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: J. Eli Wade-Scott, EDELSON PC, 350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654; Joseph A. Strubbe, VEDDER PRICE P.C., 222 North LaSalle Street, Chicago, Illinois 60601.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

FILED DATE: 3/13/2020 12:22 PM 2017CH12993

Dated: 02/11/2020

MITCHELL FLUKER, JR.

Mitchell Fluker

By (signature): _____

Mitchell Fluker

Name (printed): _____

Dated: 02/11/2020

EDELSON PC

J. Eli Wade-Scott

By (signature): _____

Name (printed): J. Eli Wade-Scott

Its (title): Associate

GLANBIA PERFORMANCE NUTRITION (NA), INC.

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

GLANBIA PERFORMANCE NUTRITION (MANUFACTURING), INC.

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

VEDDER PRICE P.C.

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

MITCHELL FLUKER, JR.

Dated: _____

By (signature): _____

Name (printed): _____

EDELSON PC

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

GLANBIA PERFORMANCE NUTRITION (NA), INC.

Dated: 2-24-20

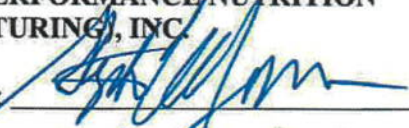
By (signature): 

Name (printed): Michael Purcell

Its (title): CFO

GLANBIA PERFORMANCE NUTRITION (MANUFACTURING), INC.

Dated: 2-18-20

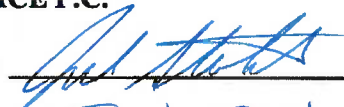
By (signature): 

Name (printed): Stephen Kuckant

Its (title): COO

VEDDER PRICE P.C.

Dated: 2/25/2020

By (signature): 

Name (printed): Joseph Schibbe

Its (title): Attorney for Defendants