

**BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

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**IN RE: USPLABS DIETARY SUPPLEMENT  
LITIGATION**

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**MDL NO.**\_\_\_\_\_

**MOTION OF DEFENDANT USPLABS, LLC FOR TRANSFER OF ACTIONS TO  
THE EASTERN DISTRICT OF PENNSYLVANIA PURSUANT TO 28 U.S.C. § 1407  
FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

USPlabs, LLC (“USPlabs”), defendant in the action captioned *Lauren Schock Battuello, Individually, and as Administrator of The Estate of Todd S. Battuello, deceased v. USPlabs, LLC and Bodybuilding.com*, Case No. 2:13-cv-04101-NIQA, United States District Court for the Eastern District of Pennsylvania, respectfully moves this panel pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation for transfer and consolidation for pretrial purposes of nine (9) substantially similar lawsuits currently pending in seven (7) separate federal districts to the United States District Court for the Eastern District of Pennsylvania or, alternatively, to the United States District Court for the Western District of Texas.

As explained more fully in the accompanying Brief in Support of Motion For Transfer:

1. The nine (9) actions listed on the accompanying Schedule of Actions satisfy the prerequisites for transfer and consolidation as (a) the cases involve common questions of fact, (b) transfer and consolidation will serve the convenience of the parties and witnesses, and (c)

transfer and consolidation will promote efficiency of the coordinated or consolidated pretrial proceedings. *See* 28 U.S.C. § 1407.

2. USPlabs is a defendant in the above-cited action as well as in an action pending in the United States District Court for the Western District of Texas captioned *Leanne Sparling and Michael J. Sparling, on behalf of and as representatives for Michael L. Sparling, deceased v. USPlabs, LLC, Jonathan Vincent Doyle (an individual), Jacob Geissler (an individual), USPlabs Jack3d, LLC, USPlabs Holding, LLC, GNC Corporation, Natural Alternatives International, Inc., and Does 1-500, Inclusive*, Case No. 3:13-cv-00323-DCG.

3. Additionally, USPlabs is a defendant in at least seven (7) other actions pending in district courts in Hawaii, California and Florida. USPlabs also anticipates the filing of numerous additional actions in the immediate future.

4. All claimants in the currently pending nine (9) cases assert claims for damages allegedly caused by the purchase and/or consumption of dietary supplements manufactured by USPlabs from two product lines, namely OxyElite Pro and Jack3d.

5. In each and every action, plaintiffs allege that these products contain ingredient(s) that are unsafe and are “adulterated” allegedly as defined by the United States Food and Drug Administration. All of these actions assert virtually identical allegations regarding the purportedly injury-causing product(s) and their constituent ingredients. Additionally, the claims assert factual issues relating to a contested area of FDA regulatory interpretation.

6. Because common factual issues regarding the ingredients’ safety and health effects are at issue in every action listed in the Schedule of Actions, transfer would promote convenient, consistent and efficient pretrial proceedings.

7. Likewise, centralization of these actions would serve the convenience of the parties and witnesses during discovery and pretrial procedures.

For the foregoing reasons, USPlabs respectfully submits this Motion and its Brief in Support requesting that the Judicial Panel on Multidistrict Litigation (“Panel”) enter an Order transferring all pending actions against it, as listed in the Schedule of Actions, and any other related actions that may be brought to the attention of the Panel, to the United States District Court for the Eastern District of Pennsylvania before the Honorable Judge Eduardo C. Robreno or, alternatively, to the United States District Court for the Western District of Texas before the Honorable Judge Kathleen Cordone for consolidated pretrial proceedings pursuant to Section 1407.

Date: January 13, 2014

Respectfully submitted,

**BREWER & LORMAND, P.L.L.C.**

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