

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
MARIO ALIANO, individually, and)	
on behalf of all others similarly situated,)	
)	Civil Action No. 16-cv-03372
)	
Plaintiff,)	Judge Sharon Johnson Coleman
)	
v.)	Magistrate Judge Jeffrey Cole
)	
CVS PHARMACY, INC., a Rhode Island)	
Corporation,)	
)	
Defendant.)	
_____)	

**REPRESENTATIVE PLAINTIFF'S MOTION AND MEMORANDUM OF LAW
IN SUPPORT OF PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AGREEMENT WITH CVS PHARMACY, INC.**

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I. INTRODUCTION

This action challenges Defendant CVS Pharmacy, Inc.'s ("Defendant" or "CVS") sales and marketing practices with respect to its Algal-900 DHA product, a dietary supplement containing docosahexaenoic acid (DHA), an Omega-3 fatty acid, and which contained, on the label and/or on the packaging, the claim that it is "clinically shown to improve memory" or offers "clinically shown memory improvement" (the "Algal-900 DHA Product"). The Complaint in this Action is similar to the complaint filed in a related action captioned *Jovel, et al. v. i-Health, Inc.*, No. 12-cv-05614 (the "Jovel Action"), which is pending in the United States District Court for the Eastern District of New York, and involves congruent parties and similar products, labeling claims, factual allegations, and legal claims. The Jovel Action settlement was reached by the parties in that case after years of litigation, involving extensive discovery, motion practice, and multiple court-supervised settlement conferences. On March 4, 2016, the Honorable Marilyn D. Go preliminarily approved the settlement in the Jovel Action. *See* Preliminary Approval Order in the Jovel Action, attached hereto as Exhibit 1.

Similar to the Jovel Action, the Complaint in this Action alleges causes of action against CVS for violations of the Illinois Consumer Fraud and Deceptive Trade Practices Act, violations of the consumer fraud and deceptive trade practices acts of the various states and the District of Columbia, and for common law claims of fraud, fraudulent misrepresentation, and unjust enrichment, seeking injunctive relief and damages. *See generally* Amended Class Action Complaint ("Am. Comp.") (Dkt #7).

Specifically, Plaintiff alleges that CVS engages in unlawful, unfair, and deceptive business practices by ignoring scientific evidence and misrepresenting to consumers that Algal-900 DHA can improve brain and memory function, and that DHA has been clinically proven to

do so, in order to induce consumers to reasonably rely on those misrepresentations and purchase Defendant's product. *Id.* at ¶ 5. Plaintiff alleges that the sole study on which Defendant bases its claim that Algal-900 DHA is "clinically shown" to improve memory has been discredited by the Federal Trade Commission ("FTC"), who concluded that the study does "not reveal any improvement in working memory[.]" *Id.* at ¶ 3. The FTC declared that "clinical-proof claims [based on the study] are false and misleading." *Id.* The BrainStrong product that is the subject of the Jovel Action also contains DHA and makes similar "memory-enhancing" representations in reliance on this study.

CVS and the Plaintiff, individually and on behalf of the other members of the Settlement Class¹, engaged in arm's length, good-faith negotiations in an effort to reach an amicable resolution of the instant Action. Based on the years of litigation and settlement negotiations in the Jovel Action, and the similar representations and science underlying the memory-enhancing products in this Action and the Jovel Action, the proposed settlement is fair, reasonable and adequate. As further explained below, and set forth more fully in the Settlement Agreement (attached hereto as Exhibit 2), the proposed settlement provides a full monetary refund to Class Members who purchased Algal-900 DHA, and prospective relief for future consumers to remove the representations off the product.

II. PROCEDURAL HISTORY

On or about February 11, 2016, Plaintiff Mario Aliano filed a Class Action Complaint in the Circuit Court of the State of Illinois for Cook County, entitled *Mario Aliano, individually, and on behalf of all others similarly situated v. CVS Pharmacy, Inc.*, Case No. 2016 CH 2021. The Complaint includes claims on behalf of plaintiff individually, as well as putative classes of

¹ The definitions in the Settlement Agreement are incorporated herein by reference.

both Illinois and “nationwide” consumers who purchased CVS’s Algal-900 DHA Product, a dietary supplement containing DHA. On February 17, 2016, CVS received service of Plaintiff’s Summons, Complaint, and Motion for Class Certification in the Action. On March 16, 2016, CVS removed this Action to the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 16-cv-03372. On April 15, 2016, Plaintiff filed an Amended Class Action Complaint, alleging the same causes of action as in the original Complaint.

Shortly after the original complaint was filed, the Parties engaged in arm’s length, good-faith negotiations in an effort to resolve the Action. During negotiations, counsel for Defendant explained that it had reached a class-wide settlement agreement in the Jovel Action. Plaintiff and Class Counsel reviewed the terms of the Jovel Action settlement, the settlement agreement and preliminary approval papers from the Jovel Action settlement, and the sales and financial data relative to the BrainStrong products at issue in the Jovel Action, and Plaintiff and Class Counsel analyzed that information *vis-a-vis* the facts, circumstances, and scientific and financial data involving CVS and the Algal-900 DHA Product.

Class Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in this Action, including, but not limited to, engaging in informal discovery, review and analysis of CVS’s documents and data, review of the underlying facts, review of the Algal-900 DHA Product sales and financial data, analysis of the medical and scientific studies relative to the claims at issue, and an assessment of DHA. Class Counsel also evaluated the merits of all Parties’ contentions and evaluated this Settlement Agreement, as it affects all Parties, including the Settlement Class Members.

Based upon the informal discovery and investigation to date, an evaluation of the facts and law relating to the matters alleged in the pleadings, and their knowledge of the pending

settlement in the related Jovel Action, Plaintiff and Class Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of the Settlement Agreement.² In so doing, Plaintiff and Class Counsel have considered the terms of the Settlement, the numerous risks of continued litigation and other factors, including but not limited to the following: (1) The expense and length of time necessary to prosecute the Action through trial; (2) The uncertainty of outcome at trial and the possibility of an appeal by either side following the trial; (3) The possibility that a contested class might not be certified, and if certified, the possibility that such certification would be reversed on appeal; (4) The fact that CVS would file a motion for summary judgment that, if granted, would dispose of all or many of the claims in this Action; and (5) The benefits being made available to Plaintiff and the Settlement Class Members under the terms of this Agreement.

Weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiff and Class Counsel are satisfied that the terms and conditions of this settlement are fair, reasonable, adequate, and in the best interests of the Plaintiff and the Settlement Class Members.

III. SUMMARY OF THE SETTLEMENT

A. The Settlement Class

Under the terms of the Settlement, the Settling Parties agreed to certification of the following Settlement Class for settlement purposes only:

² Proposed Class Counsel also repeatedly reached out to plaintiffs' counsel in a companion case filed against CVS in New York captioned *Worth v. CVS Pharmacy, Inc.*, 16-cv-498, which asserts claims against CVS similar to the claims in this Action relative to the Algal-900 DHA Product. However, plaintiffs' counsel in *Worth* had no interest in coordinating the two cases or participating in joint settlement discussions with Proposed Class Counsel, and their claims will be settled and released by this Settlement.

All consumers in the United States who purchased Algal-900 DHA during the Settlement Class Period [November 15, 2008 through the Preliminary Approval Date].³

SA ¶¶ 2.38-2.39. Excluded from this definition are the Released Persons (as defined in the Settlement Agreement), government entities, and persons who made such purchase for the purpose of resale. *Id.* Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in paragraphs 9.6 – 9.7 in the Settlement Agreement, shall no longer thereafter be Settlement Class Members and shall not be bound by the Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of the Settlement Agreement. *Id.*

B. Settlement Benefits

Under the Settlement, CVS shall offer to any Class Member who submits a valid Claim Form to the Class Action Administrator, on or before the Claim Period Close Date (a) a full refund of the price paid by the Claimant for Algal-900 DHA, if the Claim Form is accompanied by a valid Proof of Purchase indicating the actual price paid; (b) a refund based on the average retail price for the Algal-900 DHA Product, if the Claim Form is accompanied by a valid Proof of Purchase that does not indicate the actual purchase price paid; or (c) if the Claim Form is not accompanied by a valid Proof of Purchase, at the Claimant's option, either (i) \$4.00 in cash value or (ii) \$6.50 in voucher value toward the purchase of any CVS-branded dietary supplement product, with a maximum of one per claimant, two per household. SA ¶ 3.1.

This is the same relief provided in the Jovel Action settlement. Specifically, in *Jovel*, the defendant i-Health shall offer to any Class Member who submits a valid Claim Form to the Class Action Administrator, on or before the Claim Period Close Date (a) a full refund of the price paid

³ References to particular paragraphs of the Settlement Agreement are prefixed by “SA ¶.”

by the Claimant for a BrainStrong product, if the Claim Form is accompanied by a valid Proof of Purchase indicating the actual price paid; (b) a refund based on the average retail price for the BrainStrong Product, if the Claim Form is accompanied by a valid Proof of Purchase that does not indicate the actual purchase price paid; or (c) if the Claim Form is not accompanied by a valid Proof of Purchase, at the Claimant's option, either (i) \$4.00 in cash value or (ii) \$6.50 in voucher value toward the purchase of any i-Health product, with a maximum of one per claimant, two per household. *See* Settlement Agreement in the Jovel Action ("Jovel SA"), ¶ 3.1, attached hereto as Exhibit 3. This Claim Form is similar to that which was approved in the Jovel Action settlement. *Compare* Exhibit A to the settlement agreements in this Action and the Jovel Action.

On a relative basis, the monetary relief provided in this Settlement is actually more advantageous for Class Members without any Proof of Purchase. For example, the average retail price of the Algal-900 DHA 90 count bottle is \$19.58, and the average retail price of the BrainStrong Adult product is \$25.37. *Compare* Exhibit F to the settlement agreements in this Action and the Jovel Action. These claimants can receive up to 33% of the Algal-900 DHA purchase price, compared to receiving up to 25% of the BrainStrong Adult purchase price.

Furthermore, CVS created new labels for the Algal-900 DHA Product and ceased receiving product with the old labels. SA ¶ 3.3. The new labels do not use the statements "clinically shown to improve memory" or "clinically shown memory improvement." *Id.* In addition, CVS has agreed, for prospective relief, that any new Algal-900 DHA Product it orders shall use the new labels, and that it shall refrain from using the labeling claims at issue in this Action, unless any representations regarding the health benefits, performance, safety or efficacy of the products are supported by Competent and Reliable Scientific Evidence. *Id.*

This is substantially the same relief provided in the *Jovel* settlement. Specifically, in *Jovel*, the defendant agreed to refrain from selling BrainStrong products unless any representations regarding the health benefits, performance, safety, or efficacy of the BrainStrong Products are supported by Competent and Reliable Scientific Evidence. *Jovel* SA ¶ 3.3.

Finally, Settlement Class Counsel intends to seek an award of reasonable attorney's fees in an amount not to exceed a cumulative total of \$100,000 in attorney's fees and expenses, and an incentive award in an amount of \$1,000 for the Representative Plaintiff. SA ¶¶ 4.1-5.1. These payments are separate from and will not diminish the relief to the Settlement Class.

This is *less than* the attorney's fees in the *Jovel* Action settlement, and it is the same incentive award as the *Jovel* Action settlement. Class counsel in *Jovel* will seek an award of reasonable attorney's fees in an amount not to exceed a cumulative total of \$250,000 in attorney's fees and expenses (*Jovel* SA ¶ 4.1), and an incentive award in an amount of \$1,000 to each of the Representative Plaintiffs in that case. *Jovel* SA ¶ 5.1.

The Seventh Circuit is in universal accord with courts throughout the country in recognizing the importance of incentive awards for class representatives. Specifically, the Seventh Circuit has held: "Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (approving incentive award of \$25,000); *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399, 410 (7th Cir. 2000).

This Settlement is fair, reasonable, and adequate, and is in the best interests of Plaintiff and the Settlement Class Members. It is virtually identical to the terms of, and relief provided in, the settlement that was preliminarily approved by the Court in New York in the *Jovel* Action.

As shown herein, the Settlement readily satisfies the standard for preliminary approval—that is, it is well within the required range of possible approval. As such, Representative Plaintiff respectfully requests that this Honorable Court enter an Order:

- (1) Preliminarily approving the Settlement;
- (2) Certifying the Settlement Class for settlement purposes only;
- (3) Appointing Kurtzman Carson Consultants LLC (“KCC”) as Notice Specialist and Claims Administrator;
- (4) Approving the Notice Program as set forth in the Settlement;
- (5) Appointing Mario Aliano as the Representative Plaintiff;
- (6) Appointing Thomas A. Zimmerman, Jr., Zimmerman Law Offices, P.C., as Settlement Class Counsel; and
- (7) Scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlement and the request for attorneys’ fees, costs, expenses, and Representative Plaintiff service awards.

Plaintiff seeks the entry of the Preliminary Approval Order that is attached as Exhibit E to the Settlement Agreement.

IV. ARGUMENT

A. Preliminary Approval of the Settlement is Appropriate

“Federal courts naturally favor the settlement of class action litigation.” *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). Indeed, “[i]t is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement.” *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 312–13 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) (internal quotations omitted). Evaluations of

fairness, reasonableness, and adequacy require that the facts be viewed in a light most favorable to the settlement. *Isby*, 75 F.3d at 1199.

Courts employ the following two-step process to review proposed class action settlements:

The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval.” This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. If the district court finds a settlement proposal “within the range of possible approval,” it then proceeds to the second step in the review process, the fairness hearing. Class members are notified of the proposed settlement and of the fairness hearing at which they and all interested parties have an opportunity to be heard.

Armstrong, 616 F.2d at 314 (citations omitted). When determining whether a settlement is within the range of possible approval, courts look to (1) the strength of plaintiff’s case compared to the amount of the defendants’ settlement offer; (2) the likely complexity, length, and expense of the litigation; (3) the amount of opposition to the settlement; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed at the time of the settlement. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

Analysis of these factors supports that the Settlement is well within the required range of possible approval.

1. The Strength of Settlement Class Members’ Claims Compared to the Amount Offered by the Settlement

The “most important factor relevant to the fairness of a class action settlement” is the “strength of plaintiff’s case on the merits balanced with the amount offered in the settlement.” *Synfuel Techs., Inc.*, 463 F.3d at 653. “Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs.”

In re AT & T Mobility Wireless Data Servs. Sales Litig., 270 F.R.D. 330, 347 (N.D. Ill. 2010) (citation omitted).

Plaintiff believes his claims have merit. This is especially true given the outcome in the Jovel Action after three years of litigation and 19 months of settlement negotiations. Plaintiff also recognizes the risks involved in continuing the litigation against Defendant. In the Jovel Action, the settling defendant maintained its positions regarding class certification, liability, and damages throughout the litigation. It denied all three. Proposed Settlement Class Counsel here disagrees with these arguments. But Class Counsel and the Plaintiff are also mindful of the inherent risks of litigating Plaintiff's claims against Defendant through class certification, summary judgment, trial, and potential appeals, and of achieving a result better than that offered by the Settlement here. The Settlement, in contrast, provides certainty of recovery, as described above.

In this Settlement, all Class Members can obtain a full refund of the price they paid for the product – there is no cap on recovery. Plus, Defendant has removed the complained-of representations from Algal-900 DHA, and has agreed that it will not use the complained-of claims again unless they are supported. The Settlement Class received everything it sought in the Action.

A comparison of, *inter alia*, the strength of Plaintiff's claims with the amount offered by the Settlement supports preliminary approval of the Settlement.

2. The Complexity, Time, and Expense of Continued Litigation Against Settling Defendant

Prosecuting Plaintiff's claims against Defendant through trial and appeal would be lengthy and complex, and impose significant costs on the parties. *See, e.g., In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000) (recognizing that

“[m]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them”). Based on the Jovel Action, continued proceedings would likely include substantial motion practice (including summary judgment), determination of class certification, trial, and appeal. Additionally, both sides would have retained medical and scientific experts to evaluate the medical studies, opine on the memory benefits of DHA, and render competing opinions on the efficacy of the product.

The Settlement, in contrast, delivers a real and substantial remedy to the Settlement Class without the risk or delay inherent in prosecuting Plaintiff’s claims against Defendant through summary judgment, trial, and appeal. Thus, this factor favors preliminary approval of the Settlement. *See Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) (“There are weighty justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation.”); *In re Sunrise Sec. Litig.*, 131 F.R.D. 450, 455 (E.D. Pa. 1990) (approving a class action settlement because, in part, the settlement “will alleviate . . . the extraordinary complexity, expense and likely duration of this litigation”).

B. The Views of Experienced Counsel

Courts consider the opinions of experienced counsel when determining whether a settlement is fair, reasonable, and adequate. *Isby*, 75 F.3d at 1200. Settlement Class Counsel has extensive experience litigating complex class actions and the settlements he has achieved have been approved by many courts across the country. *See Firm Bio of Proposed Settlement Class Counsel*, attached hereto as Exhibit 4. *See infra* at § G. Thomas A. Zimmerman, Jr. has successfully litigated hundreds of class action lawsuits and recovered substantial monetary benefits for Class Members. *See Exhibit 4*. The Settlement Class Members were well-represented at the bargaining table.

Counsel believes the Settlement to be excellent, readily satisfying the standard of being within the range of possible approval. This factor weighs in favor of preliminary approval of the Settlement.

C. The Stage of Proceedings and the Amount of Discovery Completed

This Action is in its very early stages. However, absent a settlement, the Parties faced long, hard-fought litigation with an uncertain outcome. As stated above, the parties in the Jovel Action engaged in extensive discovery prior to entering into the settlement in that case. That discovery process involved, among other things, issuing written discovery on Defendant; responding to Defendants' written discovery, and reviewing documents produced by Defendant. Plaintiff's counsel in the Jovel Action personally reviewed and analyzed a rolling production of 270,000 pages of documents and class data produced by Defendant, consulted with experts and industry personnel, and assessed the efficacy of DHA on brain health. The parties in the Jovel Action engaged in protracted, hard-fought negotiations to reach a final agreement on the terms of the settlement. This is just some of what the Parties faced in this Action.

The pertinent question is whether Class Counsel has sufficient information to ensure "effective representation." *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 966 (N.D. Ill. 2011). Courts have repeatedly explained that it does not matter whether the discovery is labelled "formal" or "informal;" instead "the pertinent inquiry is what facts and information have been provided." *See id.*; *see also McBean v. City of New York*, 233 F.R.D. 377, 384-85 (S.D.N.Y. 2006); *In re Elan Secs. Litig.*, 385 F. Supp. 2d 363, 370 (S.D.N.Y. 2005).

Settlement Class Counsel in this Action reviewed medical and scientific studies, sales and financial information for the product, had discussions with both of the class counsel in the

Jovel Action, and was well-informed of the important facts and relevant legal issues when negotiating this Settlement. This factor favors preliminary approval of the Settlement.

D. Certification of the Settlement Class

Courts favor the use of settlement classes “to foster negotiated conclusions to class actions.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). A settlement class in complex litigation “actually enhances absent class members’ opt-out rights because the right to exclusion is provided simultaneously with the opportunity to accept or reject the terms of a proposed settlement.” *In re Prudential Sec. Ltd. P’ship Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995).

When granting preliminary approval of a class action settlement, it is appropriate for a court to certify a class for settlement purposes. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The Settling Parties agreed to certification of the following Settlement Class for settlement purposes only:

All consumers in the United States who purchased Algal-900 DHA during the Settlement Class Period [November 15, 2008 through the Preliminary Approval Date].

SA ¶¶ 2.38-2.39. Excluded from this definition are the Released Persons (as defined in the Settlement Agreement), government entities, and persons who made such purchase for the purpose of resale. Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in paragraphs 9.6 – 9.7 in the Settlement Agreement, shall no longer thereafter be Settlement Class Members and shall not be bound by the Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of the Settlement Agreement. SA ¶ 2.38.

E. The Requirements of Fed. R. Civ. P. 23(a) Are Satisfied

Rule 23(a) sets forth the following prerequisites for certifying a class: “(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). These requirements are satisfied here.

1. The Settlement Class Is So Numerous that Joinder of Individual Members Is Impracticable

Fed. R. Civ. P. 23(a)(1) requires a showing that “the class is so numerous that individual joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). No “magic number” is necessary. *See Swanson v. Am. Consumer Indus.*, 415 F.2d 1326, 1333 n.9 (7th Cir. 1969). Courts in this circuit have certified classes with less than 50 members. *Patrykus v. Gomilla*, 121 F.R.D. 357, 361 (N.D. Ill. 1988). The Court is entitled to make a good faith estimate of the number of Settlement Class Members, using common sense assumptions. *In re VMS Secs. Litig.*, 136 F.R.D. 466, 473 (N.D. Ill. 1991). Based on the financial and sales data provided by CVS to Class Counsel, the Settlement Class includes thousands of consumers nationwide who purchased Algal-900 DHA. Given the number and geographic dispersion of potential Class Members, joinder would be impracticable. Accordingly, the numerosity requirement is met.

2. There Are Questions of Law and Fact Common to the Settlement Class

Rule 23(a)(2) requires the existence of a question of law or fact that is common to all Settlement Class Members and capable of class-wide resolution, the determination of which is central to the validity of all Class Members’ claims. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). “Where the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a common question.” *Suchanek v. Sturm*

Foods, Inc., 764 F.3d 750, 756 (7th Cir. 2014) (collecting authorities); *see also Mejdrech v. Met-Coil Sys. Corp.*, 319 F.3d 910, 911 (7th Cir. 2003) (common questions whether defendant unlawfully leaked dangerous chemicals and whether the chemicals contaminated the contiguous area underlying Class Members' homes).

Several questions of law and fact common to all Settlement Class Members exist, including: (i) whether Defendant's representations regarding its products are false; (ii) whether consumers have been misled and deceived by the advertisements and labels; (iii) whether Defendant's conduct violates various state consumer protection laws; (iv) whether Plaintiffs and other Class Members have been injured and the proper measure of their losses as a result of those injuries; and (v) whether Plaintiffs and Class Members are entitled to injunctive, declaratory or other equitable relief in connection with Defendant's alleged unlawful conduct. Accordingly, this requirement is met.

3. Plaintiff's Claims Are Typical of the Claims of the Settlement Class

Typicality is satisfied when "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Whether a plaintiff's claims are typical of those of the other class members is closely related to the commonality inquiry. *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998). A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Id.* Typicality does not require claims to be "identical," and is generally "liberally construed." *Gasper v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D. Ill. 1996).

Here, Plaintiff alleges that Defendant made false and misleading representations regarding the ability of Defendant's product to support brain health—specifically, that the

product is “clinically shown to improve memory” or offers “clinically shown memory improvement.” Compl. ¶ 5. Plaintiff alleges that these material misrepresentations caused Plaintiff and the Class injury because they would not have purchased the products had they known that the products could not deliver the promised benefits. *Id.* at ¶¶ 36-39; 68. Plaintiff alleges that he suffered damages in the amount of the purchase price paid for the products because he did not receive any of the represented benefits. *Id.* at ¶ 81. Defendant’s conduct caused similar injury to members of the Settlement Class. All of Defendant’s Algal-900 DHA Products were advertised as supporting brain health and function and had labels stating that the products provided these benefits. *Id.* at ¶¶ 72-77. Moreover, Defendant’s alleged misrepresentations regarding the products would be material to any reasonable consumer. *See Bildstein v. MasterCard Int’l Inc.*, 329 F. Supp. 2d 410, 414 (S.D.N.Y. 2004 (“[A] material claim is one that involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.”) (internal quotation marks omitted)). Indeed, the predominant reason for why a consumer would purchase and/or consume this product is to obtain cognitive benefits represented by Defendant to be present in its products. Because Plaintiff would seek to prove that he was harmed by the same overall course of conduct and in the same way as the Class, his claims are typical of the class.

4. The Interests of Representative Plaintiff and Proposed Settlement Class Counsel Are Aligned With the Interests of the Settlement Class

Representative parties must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Adequacy requires that class representatives retain adequate counsel and have no conflicting interests with other class members. *In re Ready-Mixed Concrete Antitrust Litig.*, 261 F.R.D. 154, 168 (S.D. Ind. 2009); *Eggleston v. Chic. Journeymen Plumbers’ Local Union No. 130*, 657 F.2d 890, 896 (7th Cir. 1981) (requiring “competent and experienced

counsel able to conduct the litigation”). When class representatives and members seek the common goal of the largest possible recovery for the class, their interests do not conflict. *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 208 (5th Cir. 1981); *see also Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 453 (S.D.N.Y. 2004) (“There is no conflict between the class representatives and the other class members. All share the common goal of maximizing recovery.”). Under the terms of this Settlement, every Class Member can receive a full refund of the price they paid for the products, and Defendant will no longer make the complained-of representations.

Plaintiff has demonstrated that he is well-suited to represent the Settlement Class. He came forward prior to the filing of the initial complaint and has been involved in this matter since that time. His interests are aligned with those of the other Settlement Class Members. Additionally, Proposed Settlement Class Counsel is well-qualified to represent the Settlement Class, as he possesses significant experience leading the prosecution of complex class action matters. *See Exhibit 4*. The adequacy requirement is satisfied.

F. The Requirements of Rule 23(b)(3) Are Satisfied

Rule 23(b)(3) requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members of the class, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). These requirements were added “to cover cases ‘in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.’” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (quoting Fed. R. Civ. P. 23(b)(3) Adv. Comm. Notes to 1966 Amendment).

Both of these requirements are satisfied here.

1. Questions Common to All Settlement Class Members Predominate Over Any Potential Individual Questions

Rule 23(b)(3)'s predominance element requires that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). The requirement "is satisfied when 'common questions represent a significant aspect of [a] case and . . . can be resolved for all members of [a] class in a single adjudication.'" *Messner v. Northshore University Healthsystem*, 669 F.3d 802, 815 (7th Cir. 2012) (quoting 7AA Wright & Miller, Federal Practice & Procedure § 1778 (3d ed. 2011)). Common questions predominate when adjudicating questions of liability common to the class will achieve economies of time and expense. *Chi. Teachers Union v. Bd. of Educ. of Chi.*, No. 14-2843, 2015 WL 4667904, at *14 (7th Cir. Aug. 7, 2015). Predominance is not determined by "counting noses"—determining whether more common issues or individual issues exist regardless of importance. *Butler v. Sears Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013). "An issue 'central to the validity to each one of the claims' in a class action, if it can be resolved 'in one stroke,' can justify class treatment." *Id.* (quoting *Dukes*, 131 S. Ct. at 2551). "Where 'defendants' liability predominates over any individual issues involving plaintiffs, and the Settlement Agreement will insure that funds are available' to compensate plaintiffs, predominance is satisfied." *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, 910 F. Supp. 2d 891, 921 (E.D. La. 2012) *aff'd sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014) (quoting *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, 2012 WL 92498, at *11 (E.D. La. Jan. 10, 2012)).

Plaintiff's interests are consistent with, and not antagonistic to, the interests of other Settlement Class Members. Here, Plaintiff's claims are co-extensive with those of the

Settlement Class. Plaintiff and each Class Member were injured in the same manner—*i.e.*, they all purchased the same product containing the same alleged misrepresentations—and Plaintiff asserts the same legal claims as those of the Class. Thus, they share a common interest in establishing liability and securing maximum possible recovery.

These important questions predominate over any potential questions affecting only individuals. Moreover, as noted above and as discussed more fully below, Plaintiff's counsel has extensive experience in handling class actions and the types of claims asserted in this action. Plaintiff's counsel has considerable experience in consumer class actions and his extensive experience demonstrates that the Settlement Class Members were well-represented. The predominance requirement is satisfied.

2. A Class Action Is the Superior Method to Fairly and Efficiently Adjudicate the Matter

Rule 23(b)(3) requires a class action to be “superior to other available methods for the fair and efficient adjudication of the controversy,” and sets forth the following factors:

The matters pertinent to the findings include: (A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). Where, as here, a court is deciding on the certification question in the context of a proposed settlement class, questions regarding the manageability of the case for trial purposes do not have to be considered. *See Amchem*, 521 U.S. at 619. “[A] class action has to be unwieldy indeed before it can be pronounced an inferior alternative—no matter how massive the fraud or other wrongdoing that will go unpunished if class treatment is denied—to no litigation at all.” *Carnegie v. Household Int’l Inc.*, 376 F.3d 656, 661 (7th Cir. 2004).

Similar to the sale of the “memory-enhancing” retail product in the Jovel Action, a class action is the only reasonable method to fairly and efficiently adjudicate Settlement Class Members’ claims against Defendant. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797, 809 (1985) (“[c]lass actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available”). Individual Settlement Class Members likely would be unable or unwilling to shoulder the great expense of litigating the claims at issue against the well-funded Defendant, given the comparatively small size of each individual Settlement Class Member’s claims. *See Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997) (stating that the “policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action”). On the facts here, the superiority requirement is satisfied.

G. Settlement Class Counsel Is Well-Qualified to Represent the Interests of the Settlement Class

“An order certifying a class action . . . must also appoint class counsel under Rule 23(g).” Fed. R. Civ. P. 23(c)(1)(B). In appointing class counsel, courts should consider (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action, (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Here, proposed Class Counsel has worked diligently in identifying and investigating potential claims in this Action, which is reflected in his investigation of the facts of this Action and the Jovel Action, as well as the medical and scientific issues and studies relative to the product. Further, as noted, counsel has extensive experience in handling class actions and other

complex litigation, including the types of claims asserted in this action, and therefore has extensive knowledge of the applicable law. *See generally* Exhibit 4. Finally, it is beyond question that counsel has committed and will commit whatever resources are necessary to representing the Class, just as he has done in the numerous class actions he has led and financed in the past. *Id.*

The work of Thomas A. Zimmerman, Jr., Zimmerman Law Offices, P.C., in this litigation and his experience prosecuting complex litigation matters, evidence that he is well-qualified to represent the Settlement Class and possesses the necessary resources to do so. *See* Exhibit 4.

H. The Notice Program Satisfies All Applicable Requirements

Notice serves to “afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment.” *Peters v. Nat’l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–74 (1974)). The Court must “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). And, notice must fairly describe the litigation and the proposed settlement and its legal significance. *See, e.g., Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998)) (“[The notice] must also contain an adequate description of the proceedings written in objective, neutral terms, that, insofar as possible, may be understood by the average absentee class member[.]”).

The Parties agreed upon KCC to be the Claims Administrator for the Settlement and request the Court’s approval and appointment of KCC as Claims Administrator. KCC has significant experience as a class action notice provider and administrator. *See* Declaration of

Gina M. Intrepido-Bowden, dated April 29, 2016 (“KCC Decl.”) ¶¶ 7-14, and Attachment A to Exhibit 1 attached thereto. This is the same Claims Administrator that was approved to administer the Jovel Action settlement. Jovel SA ¶ 2.6

The Notice program includes: (1) publication of summary notice once in *People Magazine* and twice in *USA Today*, as well as 30 days of Internet banner notifications which contain links to the Settlement Website (an informational website dedicated to the Settlement with an easy to remember domain name); (2) e-mail notice to be sent to each person reasonably identified as a potential Class Member because that person (i) purchased the subject product during the Class Period, and (ii) provided an e-mail address that CVS has on file, as entered by the potential Class Member. The e-mail notice will contain a hypertext link to the Settlement Website; (3) to the extent CVS has a postal address for the potential Class Member on file but has no corresponding e-mail address for that potential Class Member, the Claims Administrator shall mail notice to that postal address; and (4) a settlement website which will contain the notice, claim form and other documents and information. SA ¶¶ 6.1-6.6; KCC Decl. ¶¶ 19-31, and Attachment B to Exhibit 1 attached thereto.

This is the same Notice program that was approved in the Jovel Action settlement. Jovel SA ¶¶ 6.4-6.6; *see also* Preliminary Approval Order in the Jovel Action, ¶ 11. The Notice program in this Action is even more robust than the Notice in the Jovel Action. Based on the estimated class size of 197,000 total purchasers of Algal-900 DHA, the individual notice effort alone is expected to reach at least 73.1% of the Class, and the overall Notice Program is expected to reach approximately 79.1% of likely Class Members. KCC Decl. ¶ 4, and Exhibit 1 at pp. 9, 14 attached thereto. Indeed, e-mail and/or postal addresses exist for approximately 152,000 of the known Class Members, with approximately 126,466 e-mail addresses available for known

Class Members. KCC Decl. ¶ 19, and Exhibit 1 at pp. 9, 14 attached thereto. Notice will reach a high percentage of the Class. KCC Decl. ¶ 33.

Thus, there will be substantially more *direct notice* via email and U.S. mail in this Action than in the Jovel Action.

As a cost-saving measure, the parties propose to use a combined summary notice to be published in *People Magazine* and *USA Today* that incorporates the settlements in this Action and the Jovel Action. *See, e.g.*, Summary Notice attached as Exhibit C to the Settlement Agreement in this Action. The plaintiffs and defendant in the Jovel Action have reviewed and approved this combined summary notice. After this Court rules on the instant motion for preliminary approval, the parties in the Jovel Action intend to seek to have the court in New York “re-approve” this combined Summary Notice as the approved summary notice in the Jovel Action settlement.

1. Contents of the Notice Program

The Notice documents are designed to provide information about the Settlement, along with clear, concise, easily understood information about Settlement Class Members’ legal rights. The Notice documents collectively include a fair summary of the Parties’ respective litigation positions; the general terms of the Settlement; instructions for how to opt-out of or object to the Settlement; the Settlement website address; the process and instructions for making a claim; and, as to be set by the Court, the date, time and place of the Final Fairness Hearing.

The Notice documents contain information that a reasonable person would consider material in making an informed, intelligent decision of whether to opt out or remain a member of the Settlement Class and be bound by a final judgment, and they direct individuals to a convenient location to obtain more detailed information. Altogether, the Notice documents fairly

apprise the Settlement Class Members of the terms of the Settlement and the options that are open to them in connection with this litigation.

The proposed notices are clear and straightforward, and the parties worked with KCC to ensure the notices would be noticeable, concise and well-understood. Further, the notice plan, designed by a respected expert on the means of providing effective class notice, is calibrated to provide broad and effective dissemination of the notice to the consumers of the subject CVS products. KCC Decl. ¶¶ 15-31. Therefore, the content of the notices and comprehensive notice plan satisfies the requirement under Rule 23.

(a) Opting Out

Any member of the Settlement Class wishing to opt out of the Settlement Class must individually sign and timely submit an opt-out form online, through the Settlement Website, or send to the designated mailing address established by the Claims Administrator written notice clearly manifesting their intent to be excluded from the Settlement Class. SA ¶ 9.6. This is essentially the same opt-out procedure that was approved in the Jovel Action settlement. Jovel SA ¶ 9.6; *see also* Preliminary Approval Order in the Jovel Action, ¶¶ 16-17.

(b) Objecting

A Settlement Class Member desiring to object to the Settlement will be required to submit a timely written notice of his or her objection. SA ¶ 9.2. This is the same objection procedure that was approved in the Jovel Action settlement. Jovel SA ¶ 9.2; *see also* Preliminary Approval Order in the Jovel Action, ¶ 15.

I. Scope of Notice

Notice of the Settlement will be effectuated as prescribed by KCC. KCC shall establish a dedicated settlement website and maintain and update the website throughout the relevant time

period, with forms of Summary Notice, Detailed Notice, and the Claim Form approved by the Court, as well as the Settlement Agreement and responses to frequently asked questions. KCC Decl. ¶ 28; SA ¶ 6.6. KCC will setup a toll-free help line for Settlement Class Members to call with questions regarding the Settlement and provide copies of the Detailed Notice, Claim Form, and Settlement Agreement, upon request. KCC Decl. ¶ 29. The toll-free number will be prominently displayed in the Summary Notice, Long-Form Notice, Post-card Notice, and E-Mail Notice.

The Notice documents and the Notice Program are the best notice practicable under the circumstances, constitute due and sufficient notice to the Settlement Class, and comply with Fed. R. Civ. P. 23 and due process requirements. KCC Decl. ¶¶ 31-33.

V. CONCLUSION

The foregoing demonstrates that the Settlement readily meets the standard for preliminary approval. Representative Plaintiff requests that this Court enter an Order:

- (1) Preliminarily approving the Settlement;
- (2) Certifying the Settlement Class for settlement purposes only;
- (3) Appointing Kurtzman Carson Consultants LLC (“KCC”) as Notice Specialist and Claims Administrator;
- (4) Approving the Notice Program as set forth in the Declaration of Gina M. Intrepido-Bowden;
- (5) Approving as to form and content the Summary Notice, Long-Form Notice, E-Mail Notice, Post-card Notice, and Claim Form attached as Exhibits A, B, C, D and G to the Settlement Agreement;
- (6) Appointing Mario Aliano as the Representative Plaintiff;
- (7) Appointing Thomas A. Zimmerman, Jr., Zimmerman Law Offices, P.C., as Settlement Class Counsel;

- (8) Scheduling a Final Fairness Hearing to consider entry of a final order approving the Settlement and the request for attorneys' fees, costs, expenses, and Representative Plaintiff service awards; and
- (9) In light of Plaintiff's Motion for Preliminary Approval of the Settlement, denying as moot, without prejudice to renew, Plaintiff's (1) Amended Motion for Class Certification, filed April 15, 2016 (Dkt # 8); and (2) Motion for a Preservation Order, filed April 15, 2016 (Dkt #9).

Plaintiff MARIO ALIANO, individually, and on behalf of all others similarly situated,

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Counsel for the Plaintiff and Class

LIST OF EXHIBITS

Exhibit 1 – Preliminary Approval Order in the Jovel Action

Exhibit 2 – Settlement Agreement in the Aliano Action

Exhibit A – Claim Form

Exhibit B – Long-Form Notice

Exhibit C – Summary Notice

Exhibit D – E-Mail Notice

Exhibit E – Proposed Preliminary Approval Order

Exhibit F – Average retail price for the Algal-900 DHA Product

Exhibit G – Post-card Notice

Exhibit 3 – Settlement Agreement in Jovel Action

Exhibit A – Claim Form

Exhibit B – Long-Form Notice

Exhibit C – Summary Notice

Exhibit D – E-Mail Notice

Exhibit E – Proposed Preliminary Approval Order

Exhibit F – Average retail price for the BrainStrong Product

Exhibit 4 – Firm Bio of Zimmerman Law Offices, P.C.

CERTIFICATE OF SERVICE

I, Thomas A. Zimmerman, Jr., hereby certify that I caused a copy of the foregoing document to be served on May 2, 2016, to all counsel of record via the Court's CM/ECF notification system.

s/ Thomas A. Zimmerman, Jr.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMY JOVEL and MICHAEL YEE, On
Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

I-HEALTH, INC., a Delaware Corporation

Defendant.

Case No.: 1:12-cv-05614-JG-MDG

**ORDER PRELIMINARILY CERTIFYING SETTLEMENT CLASS,
GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, AND
APPROVING CLASS NOTICE**

This matter having been submitted to the Court by plaintiffs Amy Jovel and Michael Yee (together, “Plaintiffs”) and Bonnett Fairbourn Friedman & Balint, P.C., and Faruqi & Faruqi LLP (together, “Class Counsel”) on behalf of the Plaintiffs and by i-Health, Inc. (“i-Health”) by its Counsel, by way of Plaintiffs’ motion for preliminary approval of the proposed settlement in the above captioned action;

WHEREAS, the Court having reviewed and considered Plaintiffs’ motion for preliminary approval and supporting materials filed by Class Counsel and i-Health’s Counsel; and

WHEREAS, this Court having held a hearing on the motion on February 29, 2016 and fully considered the record and the requirements of law; and good cause appearing;

IT IS THIS 4th DAY OF March, 2016

ORDERED that the Settlement (including all terms of the Settlement Agreement and exhibits thereto) is hereby PRELIMINARILY APPROVED. The Court further finds and orders as follows:

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 and venue is proper in this district.

2. The Court has personal jurisdiction over the Class Representatives, Settlement Class Members and i-Health.

3. The Settlement is the product of arm's length bargaining conducted by experienced legal counsel after extensive discovery. The Settlement Agreement is not the result of collusion.

4. The proceedings that occurred before the parties reached the Settlement Agreement gave counsel opportunity to adequately assess this case's strengths and weaknesses, and thus to structure the Settlement in a way that adequately accounts for those strengths and weaknesses.

5. The Settlement falls well within the range of reason. The Settlement has no obvious deficiencies.

6. Because the Settlement meets the standards for preliminary approval, the Court preliminarily approves all terms of the Settlement, including the Settlement Agreement and all of its exhibits.

7. The Court finds, for settlement purposes only, that all requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied. The Court provisionally certifies pursuant to Fed. R. Civ. P. 23(e) a Settlement Class of all persons in the United States who purchased one or more BrainStrong Products on or after January 1, 2011 through the date this Court issues an order preliminarily approving the settlement pursuant to the Stipulation of Settlement. Excluded from the membership are Defendant and its past and present parents, subsidiaries, divisions, affiliates, assignors, predecessors, successors and assigns; the past and present partners, shareholders,

managers, members, directors, officers, employees, agents, attorneys, insurers, accountants and representatives of any and all of the foregoing entities; any government entities; and persons who purchased BrainStrong Products for the purpose of resale.

8. The Court conditionally certifies the proposed Settlement Class, and finds that the requirements of Rule 23(a) are satisfied, for settlement purposes only, as follows:

(a) Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class are so numerous that joinder of all members is impracticable.

(b) Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines that there are common issues of law and fact for the Settlement Class.

(c) Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Class Representatives are typical of the claims of the Settlement Class that they represent.

i. The Court hereby appoints Plaintiffs Amy Jovel and Michael Yee as Class Representatives for the Settlement Class.

(d) Pursuant to Fed. R. Civ. P. 23(a)(4), the Class Representatives will fairly and adequately protect and represent the interests of all members of the Settlement Class. The interests of the Class Representatives are not antagonistic to those of the Settlement Class. The Class Representatives are represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

9. The Court further finds that the requirements of Rule 23(b)(3) are satisfied, as follows:

(a) Questions of law and fact common to the members of the Settlement Class predominate over questions that may affect only individual members; and

(b) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

10. The Court finds that the content of the Notices and the Claim Form satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process and accordingly approves the Notices and Claim Form.

11. This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Stipulation of Settlement and Plaintiffs' motion for preliminary approval. The Court has reviewed the notices, and the notice procedures, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. This Court also approves the parties' proposal to: 1) publish the notice once in *People Magazine* and two publications in *USA Today*, as well as 30 days of Internet banner notifications which contain links to the Settlement Website during the Claims Period; and 2) send direct notice through a combination of electronic and postal mail. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process.

12. The Court preliminarily finds that the following counsel fairly and adequately represent the interests of the Settlement Class and hereby appoints Bonnett Fairbourn Friedman & Balint, P.C., and Faruqi & Faruqi LLP as Settlement Class Counsel pursuant to Rule 23(g).

13. The Court further approves the appointment of KCC LLC, or equivalent class action administrator identified by the Parties to administer and oversee, among other things, the

processing, handling, reviewing, and approving of claims made by Claimants; communicating with Claimants; and distributing payments to qualified Claimants.

14. The Court directs that pursuant to Fed. R. Civ. P. 23(e)(2) a hearing will be held on July 21, 2016 at 11:00 a.m. in Courtroom 11-C South at the United States District Court, 225 Cadman Plaza East, Brooklyn, New York, to consider final approval of the Settlement (the “Final Approval Hearing” or “Fairness Hearing”), including, but not limited to, the following issues: (a) whether the Class should be finally certified, for settlement purposes only; (b) the fairness, reasonableness, and adequacy of the Settlement; (c) Class Counsel’s application for an award of attorneys’ fees and costs; and (d) approval of an award of service payments to the Class Representative. The Final Approval Hearing may be adjourned by the Court and the Court may address the matters set out above including final approval of the Settlement, without further notice to the Settlement Class other than notice that may be posted at the Court and on the Settlement Website.

15. Persons wishing to object to the proposed Settlement and/or be heard at the Fairness Hearing shall follow the following procedures:

(a) To object, a member of the Settlement Class, individually or through counsel, must file a written objection with the Court, with a copy delivered to Class Counsel and i-Health’s Counsel at the addresses set forth below, by June 29, 2016:

Settlement Class Counsel:

Patricia N. Syverson, Esq.
Bonnett Fairbourn Friedman & Balint, P.C.
2325 E. Camelback Rd., Suite 300
Phoenix, AZ 86016
Tel: (602) 776-5925

Counsel for i-Health:

Frank Spano, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Tel: (212) 918-3000

(b) Any objection regarding or related to the Stipulation of Settlement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Jovel v. i-Health, Inc.*, Case Number 1:12-cv-05614-JG-MDG” and shall also contain information sufficient to identify and contact the objecting Settlement Class member, as well as a clear and concise statement of the Settlement Class member’s objection, documents sufficient to establish the basis for their standing as a Settlement Class member, *i.e.*, verification under oath as to the date and location of their purchase of a BrainStrong Product and/or a Proof of Purchase reflecting such purchase, the facts supporting the objection, and the legal grounds on which the objection is based.

(c) Any member of the Settlement Class who files and serves a timely written objection in accordance with this Order may also appear at the Fairness Hearing, to the extent permitted by the Court, either in person or through an attorney hired at the Settlement Class member’s expense, to object to the fairness, reasonableness or adequacy of the proposed Settlement. Any attorney representing a member of the Settlement Class for the purpose of making objections must also file a Notice of Appearance with the Clerk, and must also serve copies by mail to the counsel listed above.

(d) Members of the Settlement Class or their attorneys intending to appear at the Fairness Hearing must, by June 29, 2016, serve on Settlement Class Counsel and counsel for i-Health, and file with the Court, a notice of Intent to Appear, which includes: (i) the name, address and telephone number of the Settlement Class member and, if applicable, the name,

address and telephone number of the Settlement Class member's attorney (who must file a Notice of Appearance); (ii) the objection, including any papers in support thereof; and (iii) the name and address of any witnesses to be presented at the Fairness Hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony.

(e) Any member of the Settlement Class who does not timely file and serve a Notice of Intent to Appear, and any witness not identified in the Notice of Intent to Appear, shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

16. Members of the Settlement Class who elect not to participate in the Settlement (i.e., "opt-out") must submit an online or written request for exclusion that is postmarked or submitted electronically online through the Settlement Website no later than June 29, 2016. i-Health shall compile a list of all Opt-Outs to be filed with the Court no later than the Fairness Hearing.

17. Any member of the Settlement Class failing to properly and timely mail and/or submit online through the Settlement Website such a written notice of exclusion shall be automatically included in the Settlement Class and shall be bound by all the terms and provisions of the Stipulation of Settlement and the Settlement, including the Release, and Order of Final Judgment. The Court shall resolve any disputes concerning the Opt-Out provisions of the Stipulation of Settlement.

18. In order to participate in the Settlement and receive a refund or reimbursement from i-Health, members of the Settlement Class must mail to the Claims Administrator or submit electronically online through the Settlement Website, a properly executed Claim Form. To be effective, any such Claim Form must be postmarked or submitted electronically online through

the Settlement Website no later than August 20, 2016, and must otherwise comply with the procedures and instructions set forth in the Claim Form.

19. The following are the deadlines for the following events:

<u>EVENT</u>	<u>DATE</u>
Deadline for publishing print Notice	April 22, 2016
Deadline for (1) commencement of 30 days of Internet banner notifications and (2) dissemination of direct E-mail Notice	April 29, 2016
Filing of papers in support of Final Approval and Class Counsel's Application for Attorneys' Fee and Expenses	June 22, 2016
Deadline for submitting exclusion requests or objections	June 29, 2016
Filing of response to objections	July 8, 2016
Final Approval Hearing	July 21, 2016 at 11:00 a.m.
Deadline for submitting claims forms	August 20, 2016

20. To the extent not otherwise defined herein, all defined terms in this order shall have the meaning assigned in the Stipulation of Settlement.

21. In the event that the Settlement does not become effective for any reason, this Preliminary Approval Order shall be rendered null and shall be vacated, and all orders entered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement. If the Settlement does not become effective, i-Health and any other released persons shall have retained any and all of their current defenses and arguments thereto (including but not limited to arguments that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are not satisfied for purposes of continued litigation). This action shall thereupon revert immediately to its respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and any related order had not been executed.

22. Nothing in this Preliminary Approval Order, the Settlement Agreement, or any documents or statements related thereto, is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by i-Health, or an admission of the propriety of class certification for any purposes other than for purposes of the current proposed Settlement.

23. All other proceedings in the Action are hereby stayed until such time as the Court renders a final decision regarding approval of the proposed Settlement. No discovery with regards to this Action, or with respect to this Settlement, shall be permitted other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with this Court's Local Rules. In addition, pending a determination on final approval of the Settlement, all Settlement Class Members are hereby barred and enjoined from commencing or prosecuting any action involving any Released Claims.

24. The Court shall retain continuing jurisdiction over the Action, the Parties and the Settlement Class, and the administration, enforcement, and interpretation of the Settlement. Any disputes or controversies arising with respect to the Settlement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the parties to exercise their rights under Paragraphs 21 and 23 above.

_____/s/_____
Magistrate Judge Marilyn D. Go

Dated: March 4, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIO ALIANO, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

CVS Pharmacy, Inc.,

Defendant.

Case No. 16-cv-03372

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Settlement Agreement”) is made by Mario Aliano (the “Class Plaintiff” or “Representative Plaintiff”), individually, and on behalf of all others similarly situated and the Settlement Class (as defined below), on the one hand, and CVS Pharmacy, Inc. (“CVS”), on the other hand, in this action pending in the United States District Court for the Northern District of Illinois, Eastern Division (the “Action” or “Class Action”), subject to and conditioned upon the approval of this Court or a transferee Court of the terms and conditions thereof.

1. RECITALS

1.1 On or about February 11, 2016, plaintiff Mario Aliano filed a Class Action Complaint in the Circuit Court of the State of Illinois for Cook County, entitled *Mario Aliano, individually, and on behalf of all others similarly situated v. CVS Pharmacy, Inc.*, Case No. 2016CH2021. The Complaint includes claims on behalf of plaintiff individually, as well as putative classes of both Illinois and “nationwide” consumers who purchased CVS’s Algal-900 DHA product, a

dietary supplement containing docosahexaenoic acid (DHA) (the “Algal-900 DHA Product,” as further defined below). The Complaint alleges causes of action against CVS for violations of the Illinois Consumer Fraud and Deceptive Trade Practices Act, violations of the consumer fraud and deceptive trade practices acts of the various states and the District of Columbia, and for common law claims of fraud, fraudulent misrepresentation, and unjust enrichment, seeking injunctive relief and damages.

1.2 On February 17, 2016, CVS received service of Plaintiff’s Summons, Complaint, and Motion for Class Certification in the Action. On March 16, 2016, CVS removed this Action to the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 16-cv-03372. On April 15, 2016, plaintiff Mario Aliano filed an Amended Class Action Complaint in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 16-cv-03372, alleging the same causes of action as in the original Complaint.

1.3 In the ensuing weeks, CVS and the Representative Plaintiff, individually and on behalf of the other members of the Settlement Class, engaged in arm’s length, good-faith negotiations in an effort to reach an amicable resolution to the Action.

1.4 During these negotiations, Counsel for Defendant explained that it had reached a Settlement Agreement with representative plaintiffs, on behalf of themselves and the other members of the settlement class, in a similar action pending the United States District Court for the Eastern District of New York. This related action — *Jovel et al. v. i-Health, Inc.*, No. 12-cv-05614-MDG (the “Jovel Action”) — involves congruent parties, similar products, labeling claims, factual allegations, and legal claims. The Jovel Action settlement was reached by the parties after years of litigation, involving extensive discovery, motion practice, and multiple

court-supervised settlement conferences. On March 4, 2016, the Honorable Marilyn D. Go preliminarily approved the settlement in the Jovel Action.

1.5 Plaintiff Mario Aliano and Class Counsel reviewed the terms of the Jovel Action settlement, the settlement agreement and preliminary approval papers from the Jovel Action settlement, and the sales and financial data relative to the BrainStrong products at issue in the Jovel Action, and Plaintiff Mario Aliano and Class Counsel analyzed that information *vis-a vis* the facts, circumstances, and scientific and financial data involving CVS and the Algal-900 DHA Product.

1.6 As a result of the Parties' (defined below) negotiations, the Parties agreed to settle the Action pursuant to the terms set forth in this Stipulation of Settlement, which Representative Plaintiff and Class Counsel believe provides benefits to the Settlement Class, is fair, reasonable, and adequate, and is in the best interests of Representative Plaintiff and the Settlement Class Members.

1.7 Representative Plaintiff in the Class Action alleges, among other things, that CVS's labeling claims regarding its Algal-900 DHA Product are misleading.

1.8 Class Counsel states that they conducted a thorough examination and investigation of the facts and law relating to the matters in this Action, including, but not limited to, engaging in informal discovery, review and analysis of CVS's documents and data, review of the underlying facts, review of the Algal-900 DHA Product sales and financial data, analysis of the medical and scientific studies relative to the claims at issue, and an assessment of DHA. Class Counsel also evaluated the merits of all Parties' contentions and evaluated this Settlement Agreement, as it affects all Parties, including the Settlement Class Members.

1.9 Based upon the informal discovery and investigation to date, an evaluation of the facts and law relating to the matters alleged in the pleadings, and their knowledge of the pending settlement in the related Jovel Action, Representative Plaintiff and Class Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of this Agreement. In so doing, Representative Plaintiff and Class Counsel have considered the terms of this Stipulation, the numerous risks of continued litigation and other factors, including but not limited to the following:

- a. The expense and length of time necessary to prosecute the Action through trial;
- b. The uncertainty of outcome at trial and the possibility of an appeal by either side following the trial;
- c. The possibility that a contested class might not be certified, and if certified, the possibility that such certification would be reversed on appeal;
- d. The fact that CVS would file a motion for summary judgment that, if granted, would dispose of all or many of the claims in this Action; and
- e. The benefits being made available to Representative Plaintiff and the Settlement Class Members under the terms of this Agreement.

1.10 Weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Representative Plaintiff and Class Counsel are satisfied that the terms and conditions of this settlement are fair, reasonable, adequate, and in the best interests of the Representative Plaintiff and the Settlement Class Members.

1.11 CVS denies the material allegations made in the Class Action, and denies any and all liability with respect to all facts and claims alleged therein, and further denies that any of the Settlement Class Members, or anyone, has suffered any harm or damage or is entitled to any monetary or equitable relief whatsoever in connection with the Action.

1.12 CVS, while continuing to expressly deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, and while standing by its products and advertising, considers it desirable to resolve the Action on the terms stated herein in order to avoid further expense, risk, uncertainty, inconvenience and burden and, therefore, has determined that this Settlement on the terms set forth herein is in CVS's best interests.

1.13 CVS and Representative Plaintiff, on behalf of themselves and the other members of the Settlement Class, negotiated and reached this Stipulation after review of the underlying facts, review of the Algal-900 DHA Product sales and financial data, analysis of the medical and scientific studies relative to the claims at issue, exchanges of information, and arm's length, good faith negotiations. As a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein.

1.14 This Settlement Agreement reflects a compromise between the Parties. Without any admission or concession whatsoever on the part of Representative Plaintiff of the lack of merit of this Action, or any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by CVS, it is hereby stipulated and agreed by the undersigned, on behalf of Representative Plaintiff, the Settlement Class, and CVS that the Action and all claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice, subject to Court approval as required by Federal Rules of Civil Procedure 23, on the terms and conditions set forth herein and upon the Final Settlement Approval Date (as defined below).

1.15 Each party affirms that the recitals above as to such party are true and accurate as to such party and are hereby made a part of this Settlement Agreement.

1.16 In consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims as described below, and other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged by each of the Parties, the Representative Plaintiff, on behalf of himself and the Settlement Class Members, and CVS agree to the Settlement described herein, subject to Court approval, under the following terms and conditions:

TERMS AND CONDICTIONS OF SETTLEMENT

2. DEFINITIONS

2.1 As used in this Stipulation and the annexed exhibits (which are an integral part of this Stipulation, and are incorporated in their entirety by reference), the following terms and phrases have the following meaning, unless a section or subsection of this Stipulation or its exhibits provides otherwise. Unless otherwise indicated, defined terms include the plural as well as the singular. Other capitalized terms used in this Stipulation but not defined above shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

2.2 **“Action”** or **“Class Action”** means the civil action pending in the United States District Court for the Northern District of Illinois, Eastern Division, *Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-03372.

2.3 **“Agreement,” “Settlement Agreement,”** or **“Stipulation”** means this settlement agreement, including all Exhibits hereto.

2.4 **“Algal-900 DHA”** or **“Algal-900 DHA Product”** or **“Product”** means the CVS-branded dietary supplement product at issue in this Action, containing DHA, and the label complained of in the Complaint. For the avoidance of doubt, the Product at issue is limited to

Algal-900 DHA Products containing, on the label and/or on the packaging, the claim that it is “clinically shown to improve memory” or offers “clinically shown memory improvement.”

2.5 **“Claimant”** or **“Class Claimant”** means a Settlement Class Member that submits a Claim Form.

2.6 **“Claims Administrator”** means KCC LLC, or equivalent class action administration firm identified by the Parties and approved by the Court to administer and oversee, among other things, the processing, handling, reviewing, and approving of claims made by Claimants; communicating with Claimants; and distributing payments to qualified Claimants.

2.7 **“Claim Form”** means the document that Settlement Class Members seeking cash or vouchers must complete in satisfaction of the document’s terms and sign under penalty of perjury and submit to the Claims Administrator in order to obtain the relief provided in this Agreement. The Claim Form will be available online at the Settlement Website and will be substantially the same as Exhibit A.

2.8 **“Claim Period Close Date”** means the date 120 days (not including the day of the event) following the later of: (i) the last published notice in the print publications identified in the Notice Plan; or (ii) establishment of the Settlement Website.

2.9 **“Class Settlement Notice,” “Class Notice,”** or **“Notice”** means the Court-approved notices entitled “Notice of Proposed Class Action Settlement,” and substantially in the forms attached hereto as Exhibits B (Long-form Notice), C (Short-form Notice), D (E-mail Notice), and G (Post-card Notice), but which may be modified as necessary to comply with the provisions of any order of Preliminary Approval entered by the Court, and which are to be provided to the Settlement Class Members pursuant to this Agreement.

2.10 **“Court”** means the United States District Court for the Northern District of Illinois, Eastern Division, or any transferee Court.

2.11 **“Competent and Reliable Scientific Evidence”** means tests, analyses, research, or studies that have been conducted by a qualified person in an objective manner and are generally accepted in the profession to yield accurate and reliable results. When that evidence consists of a human clinical trial, CVS must maintain all underlying or supporting data and documents that experts in the field generally would accept as relevant to an assessment of such testing.

2.12 **“Defendant’s Counsel”** means the law firm Hogan Lovells US LLP.

2.13 **“E-mail Notice”** means the Class Settlement Notice substantially in the form attached hereto as Exhibit D.

2.14 **“Fairness Hearing”** means the hearing that is to take place after the entry of a Preliminary Approval order and after the Notice Date for purposes of: (a) determining whether the Settlement should be approved as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (b) entering the Settlement Order and Judgment and dismissing the Action with prejudice; and (c) ruling upon an application by Representative Plaintiff’s Counsel for an award of attorneys’ fees.

2.15 **“Fee and Expense Award”** means the amount awarded to Representative Plaintiff’s Counsel by the Court for reasonable attorneys’ fees, costs and expenses, up to one-hundred-thousand dollars (\$100,000.00).

2.16 **“Final Approval”** means the Court’s entry of the Settlement Order and Judgment following the Fairness Hearing.

2.17 **“Final Settlement Approval Date”** means the date thirty-five (35) days after the Court enters the Settlement Order and Judgment on the Parties and all objectors to the Settlement

Agreement, if any, without any appeal being taken, or if an appeal or request for review has been taken, the date on which the Settlement Order and Judgment has been affirmed or modified by the court of last resort to which an appeal or request for review has been taken and such affirmance or modification is no longer subject to further appeal or review, or the date of denial of review after exhaustion of all appellate remedies, or the date on which all appellate rights with respect to the Settlement Order and Judgment have expired.

2.18 **“Long-form Notice”** means the Class Settlement Notice substantially in the form attached hereto as Exhibit B.

2.19 **“Incentive Award”** means any award sought by application to and approved by the Court that is payable to the Representative Plaintiff, up to one thousand dollars (\$1,000).

2.20 **“Notice Plan”** means the Parties and Claims Administrator’s plan to disseminate Class Notice to Settlement Class Members, as described in Section 6 below.

2.21 **“Notice and Other Administrative Costs”** means all necessary fees of, and costs and expenses actually incurred by, the Claims Administrator including: the publication of Class Notice and the notification duties imposed by 28 U.S.C. § 1715, establishment of the Settlement Website and the processing, handling, reviewing, and paying of all cash and voucher claims made by Claimants.

2.22 **“Notice Date”** means the date(s) that the Notice is published in accord with the plan of notice set forth below in Section 6, as authorized by the Court.

2.23 **“Notice of Missing Information”** means the notice sent by the Claims Administrator to a Claimant who has submitted a Claim Form with inaccurate, disqualifying, incomplete or missing information that is required for the Claimant to be considered eligible for the relief provided by this Settlement.

2.24 **“Objection”** is the written communication that a Settlement Class Member may file with the Court in order to object to this Agreement as provided for in paragraphs 9.2-9.5 below.

2.25 **“Objection/Exclusion Deadline”** means the date to be set by the Court as the deadline for Settlement Class Members to submit Objections and Requests for Exclusion.

2.26 **“Parties”** means Plaintiff Mario Aliano and Defendant CVS.

2.27 **“Person”** means any individual, corporation, trust, partnership, limited liability company, or other legal entity and their respective successors or assigns.

2.28 **“Post-Card Notice”** means the Class Settlement Notice substantially in the form attached hereto as Exhibit G.

2.29 **“Class Counsel”** means the law firm Zimmerman Law Offices, P.C.

2.30 **“Preliminary Approval Order”** means the order the Court has entered, substantially in the form as Exhibit E, which, among other things, preliminarily approves the Stipulation, certifying a Settlement Class, providing for notification to Settlement Class Members, authorizing the distribution of Settlement Notice and seeking the scheduling of the Settlement Hearing.

2.31 **“Preliminary Approval Date”** means the date on which the Court enters an order granting Preliminary Approval.

2.32 **“Proof of Purchase”** means the cash register receipt, cancelled check, product package or other similar type of documentation reflecting the purchase of Algal-900 DHA or the purchase price paid for Algal-900 DHA.

2.33 **“Released Claim”** means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or cost, attorneys’ fee or expense, action or cause of action, of every kind and description that a Releasing Party had or has, including

assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party in the Action against any of the Released Parties arising out of or relating to the allegations in the complaints filed in the Action.

2.34 **“Released Persons” or “Released Parties”** means CVS, Lang Pharma Nutrition, Inc., and DSM Nutritional Products, LLC, and all of their past and present respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or their control in the past or in the present, their respective assignors, predecessors, successors and assigns; and the past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers, accountants and representatives of any and all of the foregoing.

2.35 **“Releasing Party”** means the Representative Plaintiff, each Settlement Class Member, and any Person claiming by or through him/her/it as his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate.

2.36 **“Representative Plaintiff” or “Class Plaintiff”** means the named Plaintiff in the Action: Mario Aliano.

2.37 **“Request for Exclusion”** means the written communication that a Settlement Class Member must submit to the Claims Administrator by the Objection/Exclusion Deadline in order to be excluded from the Settlement as provided for in paragraphs 9.6 – 9.7 below.

2.38 **“Settlement”** means the settlement embodied in this Agreement.

2.39 **“Settlement Class Members”** or **“Settlement Class”** means: All consumers in the United States who purchased Algal-900 DHA during the Settlement Class Period. Excluded from this definition are the Released Persons, any government entities, and persons who made such purchase for the purpose of resale. Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in paragraphs 9.6 – 9.7 below, shall no longer thereafter be Settlement Class Members and shall not be bound by this Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of this Settlement Agreement.

2.40 **“Settlement Class Period”** means the period of time from and including November 15, 2008, up to and including the Preliminary Approval Date

2.41 **“Settlement Order and Judgment”** means an order and judgment issued and entered by the Court approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members and dismissing the Action with prejudice, and setting the amount for an award of attorneys’ fees, costs and expenses, not to exceed one-hundred-thousand dollars (\$100,000), to Class Counsel by the Court. The Settlement Order and Judgment shall constitute a judgment within the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure.

2.42 **“Settlement Website”** means a website to be established, operated and maintained by the Claims Administrator solely for purposes of making available to the Settlement Class Members the documents, information and online claims submission process referenced in this Agreement. The Settlement Website shall be activated no later than forty five (45) days after the Court enters the Preliminary Approval Order.

2.43 “Summary Notice” or “Short-form Notice” means the Class Settlement Notice substantially in the form attached hereto as Exhibit C.¹

3. SETTLEMENT RELIEF AND CONSIDERATION

Damages/Compensation

3.1 Damages/Compensation. Defendant shall offer to any Class Member who submits a valid Claim Form to the Class Action Administrator, on or before the Claim Period Close Date (a) a full refund of the price paid by the Claimant for Algal-900 DHA, if the Claim Form is accompanied by a valid Proof of Purchase indicating the actual price paid; (b) a refund based on the average retail price for the Algal-900 DHA Product set out in Exhibit F, if the Claim Form is accompanied by a valid Proof of Purchase that does not indicate the actual purchase price paid; or (c) if the Claim Form is not accompanied by a valid Proof of Purchase, at the Claimant’s option, either (i) \$4.00 in cash value or (ii) \$6.50 in voucher value toward the purchase of any CVS-branded dietary supplement product. Each Claimant who submits a valid Claim Form without valid Proof of Purchase shall receive a maximum value of \$4.00 in cash value or \$6.50 in voucher value. In addition, no more than two Claimants per household shall receive \$4.00 in cash value and/or \$6.50 in voucher value if they submit their Claim Forms without a valid Proof of Purchase. The eligibility requirements for Claimants are described in further detail in Section 8 below.

3.2 Such cash and voucher compensation shall be disbursed after the Final Settlement Approval Date by the Claims Administrator and mailed to Claimants following the Final Settlement Approval Date, no later than 30 days after the later of: (i) the Final Settlement

¹ As shown in Exhibit C in the form currently attached, the parties propose to use a combined summary notice that incorporates class settlement notice for both this Action and the related Jovel Action. If the Court or a transferee court approves this Settlement and the notices, the Parties will seek approval in the United States District Court for the Eastern District of New York for this combined Summary Notice as the approved summary notice in the *Jovel* settlement.

Approval Date; or (ii) the date the Claims Administrator approves a claim. No payment shall be made with respect to any claims that are denied in accordance with this Agreement.

Injunctive Relief

3.3 In a process that culminated in December 2015, before the filing of this Action, CVS created new labels for the Algal-900 DHA Product and ceased receiving product with the old labels. The new labels do not use the statements “clinically shown to improve memory” or “clinically shown memory improvement.” CVS agrees that any new Algal-900 DHA Product it orders shall use the new labels and shall not contain the claims at issue in this Action, unless any representations regarding the health benefits, performance, safety, or efficacy of the Algal-900 DHA products are supported by Competent and Reliable Scientific Evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence.

4. CLASS COUNSEL ATTORNEYS’ FEES AND EXPENSES

4.1 Attorneys’ Fees and Expenses. Class Counsel will petition the Court for an award of reasonable attorneys’ fees and expenses. Class Counsel agree that they will not seek more than a cumulative total of \$100,000 in attorneys’ fees and expenses. To the extent approved and ordered by the Court, and affirmed or modified on appeal, if any, CVS will pay a Fee and Expense Award in an amount not to exceed one-hundred-thousand dollars (\$100,000).

4.2 The payment by CVS of attorneys’ fees and expenses is separate from and in addition to the relief afforded the Settlement Class Members in this Agreement.

4.3 The Fee and Expense Award shall be the total obligation of CVS to pay Class Counsel for attorneys’ fees and/or expenses of any kind (including, but not limited to, travel, filing fees, court reporter expenses, expert fees and costs, and document review and production costs).

4.4 The payment of Class Counsel's fees shall be made to Zimmerman Law Offices, P.C. as agent for Class Counsel, in accordance with and delivery of wire instructions/routing information and tax I.D. numbers provided by Zimmerman Law Offices, P.C. CVS shall pay the Fee and Expense Award by wire transfer to Class Counsel within sixty (60) days after the later of the Final Settlement Approval Date and the delivery to CVS of all payment routing information and tax I.D. numbers for Class Counsel. The Court's award of any fees and expenses shall be separate from its determination of whether to approve this Agreement. In the event the Court approves the Settlement set forth in this Agreement, but declines to award fees and expenses in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement in this Agreement, the Fee and Expense Award shall not be paid, and no attorneys' fees and expenses shall be paid.

4.5 If any subsequent court order or judgment renders the Fee and Expense Award unenforceable for any reason, or reduces the Fee and Expense Award for any reason, to the extent the Fee and Expense Award or a portion thereof has been paid by CVS already, Class Counsel shall reimburse CVS for such amounts already paid.

4.6 The Parties negotiated and reached agreement on the Class Counsel fees and expenses only after reaching agreement on all other material terms of this Agreement.

5. CLASS REPRESENTATIVE AWARD

5.1 Incentive Award. Class Counsel shall petition the Court for, and CVS shall not oppose, an incentive award in an amount of \$1,000 to the Representative Plaintiff, in recognition of his efforts on behalf of the Settlement Class. The Court's award of any Class Representative Incentive Award shall be separate from its determination of whether to approve the Settlement as set forth in this Agreement. In the event the Court approves the Settlement, but declines to

award a Class Representative Incentive Award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement, no Class Representative Incentive Award shall be paid. CVS shall pay such awards by wire transfer to Class Counsel within forty (40) days after the later of the Final Settlement Approval Date and the delivery to CVS of all payment routing information and tax I.D. number for Representative Plaintiff. Payment by CVS of the Class Representative Incentive Award is separate from, and in addition to, the other relief afforded to the Settlement Class Members in this Agreement.

6. NOTICE OF SETTLEMENT

6.1 Cost of Notice. The Notice and Other Administrative Costs shall be paid by CVS.

6.2 Notice to State and Federal Officials. In compliance with the Attorney General notification provision of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1715, within ten (10) days after the motion for Preliminary Approval is filed, CVS shall cause notice of this proposed Settlement to be served on the Attorney General of the United States, and the attorneys general of each state or territory in which a Settlement Class Member resides. CVS shall file with the Court a certification stating the date(s) on which the CAFA notices were sent. CVS will provide Class Counsel with any substantive responses received in response to any CAFA notice served by it.

6.3 Class Settlement Notice. The Class Settlement Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

6.4 Content of Class Settlement Notice. The Class Notice shall:

- a. Inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
- b. Inform Settlement Class Members of their rights to exclude themselves from the Settlement Class or object to the proposed settlement, as described in Section 9 below;
- c. Contain a short, plain statement of the background of the Action, the Class certification and the proposed settlement;
- d. Describe the proposed settlement relief outlined in this Stipulation;
- e. Explain the impact of the proposed settlement on any existing litigation, arbitration or other proceeding;
- f. Advise Settlement Class Members that Objections to the Agreement, and papers submitted in support of said Objections, shall only be considered at the Fairness Hearing if they are submitted pursuant to the procedures set forth pursuant to this Agreement;
- g. Advise Settlement Class Members that the time and place of the Fairness Hearing may change and shall be posted on the Settlement Website;
- h. State that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement;
- i. Direct Settlement Class Members to the Settlement Website where an electronic or printable version of the Claim Form shall be located;
- j. Provide instructions for contacting Class Counsel and the Claims Administrator in order to obtain a paper Claim Form or otherwise; and
- k. Contain other information as agreed to by the Parties.

6.5 Subject to the Court's approval, copies of (i) the Short-form Notice will be disseminated through publication and posted to the Settlement Website, and will be substantially in the form attached hereto as Exhibit C; and (ii) the Long-form Notice will be posted to the Settlement Website. Class Counsel shall also have the option of posting Class Notice on its website. The Class Notice shall also be sent via electronic mail or regular mail to those Class Members who so request.

6.6 Notice Plan/Time and Manner of Notice. Upon Preliminary Approval of this Agreement, CVS or its designee shall cause the Class Settlement Notice to be made as follows:

- a. Publication Notice. CVS or its designee will cause the Short-form Notice, in the form approved by the Court, to be published to the Settlement Class Members on or before the date specified in the Preliminary Approval Order, including once in *People Magazine*; twice in *USA Today*; as well as 30 days of Internet banner notifications which contain links to the Settlement Website.
- b. Direct Notice. CVS or its designee, through the Claims Administrator, will cause the E-mail Notice, in the form approved by the Court, to be sent on or before the date specified in the Preliminary Approval Order, to each person reasonably identified as a potential class member because that person (i) purchased the Algal-900 DHA Products during the Class Period, and (ii) provided an e-mail address to CVS. The E-mail Notice will be sent to the e-mail address that CVS has on file, as entered by the potential class member. The E-mail Notice shall include a hypertext link to the Settlement Website. If any E-mail Notices are returned as undeliverable, the Post-card Notice shall be mailed by the Claims Administrator, if a physical address is available, to the last known physical/postal address that

CVS has on file. To the extent that CVS has a physical/postal address for the potential class member on file but has no corresponding e-mail address for that potential class member, the Post-card Notice shall be mailed by the Claims Administrator to the last known physical/postal address that CVS has on file in the first instance.

- c. Website Notice. The Claims Administrator will establish a Settlement Website for the purposes of disseminating to Settlement Class Members the Class Settlement Notice, this Agreement, information relating to filing a claim, opting out of the Settlement, objecting to the Settlement, deadlines relating to the Settlement, pleadings and other information relevant to the Settlement. The Claims Administrator shall establish the Settlement Website within 45 days of Preliminary Approval in this Action using a website name to be mutually agreed upon by the Parties.

7. ADMINISTRATION OF SETTLEMENT

7.1 Responsibilities of Claims Administrator. The Parties will retain one or more Claims Administrators (including subcontractors) to help implement the terms of the proposed Settlement Agreement. The Claims Administrator(s) shall be responsible for administrative tasks, including, without limitation, (a) arranging, as set forth in the Notice Plan, for publication of the Short-form Notice, sending the E-mail Notice and Post-card Notice by mail as necessary, and posting of the Settlement Class Notice (in the forms set forth in Exhibits C and D) and distribution of the Claim Forms (in the form set forth in Exhibit A) to Settlement Class Members, (b) handling returned mail not delivered to Settlement Class Members, (c) attempting to obtain updated address information for Settlement Class Members and for any Class Notices returned without a forwarding address or an expired forwarding address, (d) making any

mailings to State and federal officials, and Settlement Class Members, as required under the terms of this Stipulation, (e) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee, (f) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion to the settlement, (g) establishing and maintaining the Settlement Website that posts notices, Claim Forms and other related documents, (h) receiving and processing claims and distributing payments to Claimants, and (i) otherwise assisting with implementation and administration of the Settlement Agreement terms. All costs and expenses associated with the Claims Administrator, including among others, costs of providing notice to the Class Members and processing claims, shall be paid by CVS.

7.2 General Claims Administration and Review of Claims. The Claims Administrator shall be responsible for reviewing and administering all claims to determine their validity. The Claims Administrator shall reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of this Agreement, or is submitted after the Claim Period Close Date.

7.3 Claims Process. The Claims Administrator shall retain copies of all claims submitted and all documentation of claims approved or denied and all payments made. The Claims Administrator agrees to be subject to the direction and authority of the Court with respect to the administration of the Settlement and the payment of refunds for Accepted Claims pursuant to the terms of this Agreement. Upon determining that a claim submitted pursuant to this Agreement is valid and determining the cash or voucher amount payable, the Claims Administrator shall notify CVS and Class Counsel of that determination. CVS shall have 30 days following this notice to challenge the claim. CVS shall be permitted to submit to the Claims Administrator, with a copy

to Class Counsel, any information demonstrating that the submitted claim is not valid. The Claims Administrator may then contact the Settlement Class Member who submitted the claim to request any further information. The Claims Administrator shall then make a final determination that is not challengeable by any Party.

7.4 Cash Benefit—Uncleared Checks. Those Settlement Class Members whose cash benefit checks are not cleared within one hundred eighty (180) days after issuance shall be ineligible to receive a cash settlement benefit and CVS shall have no further obligation to make any payment pursuant to this Settlement Agreement or otherwise to such Settlement Class Members.

7.5 Performance Standards of Claims Administrator. The contract with the Claims Administrator shall obligate the Claims Administrator to abide by the following performance standards:

- a. The Claims Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Stipulation in communications with Settlement Class Members;
- b. The Claims Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Defendant and/or Defendant's Counsel, and shall periodically report on claims, objectors, etc.

8. ELIGIBILITY OF CLASS CLAIMANT FOR RELIEF

8.1 Eligibility. To be eligible to receive relief under this Agreement, Settlement Class Members must submit a claim to the Claims Administrator by completing and certifying the online Claim Form on the Settlement Website or completing, certifying and mailing the Claim Form to the Claims Administrator. The Claim Form must be submitted online or postmarked no later than the Claim Period Close Date. Claim Forms submitted or postmarked after the Claim

Period Close Date shall be denied by the Claims Administrator and CVS will not be obligated to make any payment on such claims.

8.2 Validity of Claim Forms. No Claim Form will be deemed valid unless it is completed in satisfaction of the terms of the Claim Form, is signed in hard copy or in online form by the Settlement Class Member under penalty of perjury, and is postmarked or submitted on or before the Claim Period Close Date.

8.3 Proof of Claim. Proof of claim for cash compensation or for a CVS product-voucher must be submitted as follows:

- a. For a Claimant making a claim for the full refund of the purchase of an Algal-900 DHA Product, Claimant must provide a Proof of Purchase indicating the actual price paid for the Algal-900 DHA Product, along with a valid and completed Claim Form indicating the product purchase on which the claim is based.
- b. For a Claimant making a claim for a refund of the purchase of an Algal-900 DHA Product in accordance with Exhibit F (average retail price), Claimant must provide a Proof of Purchase along with a valid and completed Claim Form indicating the Product purchase on which the claim is based.
- c. For a Claimant making a claim for either (i) \$4.00 in cash for the purchase of an Algal-900 DHA Product, or (ii) a \$6.50 voucher for the purchase of a CVS-branded dietary supplement, Claimant must submit: (a) a completed Claim Form, either electronically online on the Settlement Website or in hard copy and mailed to the Claims Administrator, confirming under penalty of perjury (i) the specific product purchased, (ii) the location/retailer where the product was purchased; and (iii) that the purchase was made within the Class Period. A maximum number of

one (1) claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member under this subsection. A maximum number of two (2) claims may be submitted per each Settlement Class Member's household under this subsection.

8.4 Review by Claims Administrator. The Claims Administrator shall review all submitted Claim Forms within a reasonable time to determine each Settlement Class Member's eligibility for relief, and the amount of such relief, if any. Copies of submitted Claim Forms shall be provided to CVS's Counsel and to Class Counsel upon request. Settlement Class Members submitting valid Claim Forms shall be entitled to relief as set forth in this Agreement. Settlement Class Members that submit Claim Forms which are not eligible for relief based on the criteria set forth in this Agreement shall not be entitled to relief hereunder.

8.5 Incomplete Claims Form. Submitted Claim Forms containing inaccurate or disqualifying information, and/or submitted Claims Forms omitting required information shall be returned by the Claims Administrator via first class mail to the Settlement Class Member's address indicated on the Claim Form as part of a Notice of Missing Information. Settlement Class Members whose Claim Forms are returned shall have until the Claim Period Close Date, or 30 calendar days from when the Notice of Missing Information was mailed, whichever is later, to reply to the Notice of Missing Information and provide a revised Claim Form that includes all required information. If a Settlement Class Member fails to respond by the Claim Period Close Date or within 30 calendar days from when the Notice of Missing Information was mailed, whichever is later, or the Claims Administrator is unable to return the Submitted Claim Form as a result of the omitted information, the Claims Administrator will reject such Settlement Class Member's claim, and CVS will not be obligated to make any payment on such claim.

9. EXCLUSIONS AND OBJECTIONS

9.1 Exclusions and Objections. Settlement Class Members shall have the right to appear and present Objections as to any reason why the terms of this Agreement should not be given Final Approval. Any Objection must be in writing and filed with the Court, with a copy delivered to Class Counsel and Defense Counsel at the addresses set forth in the Class Settlement Notice, no later than the Objection/Exclusion Deadline.

9.2 Objections. Any Objection regarding or related to the Agreement shall identify the name of the lawsuit, *Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-03372, and also shall contain information sufficient to identify and contact the objecting Settlement Class Member – including the Class Member’s name, current address, and telephone number, and the name, address, and telephone number of the Class Member’s lawyer, if the Class Member is objecting through counsel. The Objection shall also contain a clear and concise statement of the Settlement Class Member’s objections, and the reasons for each. The Objection must be accompanied by documents sufficient to establish the basis for the Settlement Class Member’s standing (i.e., verification under oath as to the date and location of their purchase of an Algal-900 DHA Product or a Proof of Purchase reflecting such purchase). The Objection shall also include a list of any documents the Class Member plans to submit to the Court for consideration; a list of legal authorities for the Court’s consideration; and the names and addresses of any witness the Class Member wants to call to testify. The Objection shall also include a statement indicating whether the Class Member, or the Class Member’s lawyer, will appear and speak at the Fairness Hearing. Finally, the Objection must include the Class Member’s signature, or his/her attorney’s signature. The Objection shall be filed with the Court and served upon CVS’s Counsel and Class Counsel so that such papers are actually received by said counsel by the date specified in the Class Settlement Notice.

9.3 No Settlement Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) or to object to the Agreement, and no written objections or briefs submitted by any Settlement Class Member shall be received or considered by the Court at the Fairness Hearing, unless written notice of the Settlement Class Member's intention to appear at the Fairness Hearing, and copies of any written Objections or briefs, shall have been filed with the Court and served on counsel for the Parties on or before the Objection/Exclusion Deadline. The Class Member's Notice of Appearance must contain: (1) the title of the lawsuit, *Aliano v. CVS Pharmacy, Inc.*, Case No. 16-03372; (2) a statement that the Class Member wishes to appear at the Fairness Hearing; (3) a statement that the Class Member or his/her lawyer would like to speak at the Court's Fairness Hearing; and (4) the Class Member's signature or the Class Member's lawyer's signature.

9.4 Settlement Class Members who fail to file and timely serve written Objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement and shall be bound, to the extent allowed by law, by the terms of the Settlement Agreement.

9.5 Right to Respond to Objections. Class Counsel and CVS shall have the right to respond to any objection prior to the Fairness Hearing.

9.6 Requesting Exclusion/"Opt Out." Any Settlement Class Member who does not wish to participate in this Settlement must submit a Request for Exclusion to the Claims Administrator stating an intention to be "excluded" from this Settlement. The Request for Exclusion must contain the name of the Action, *Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-03372, and must also contain the Settlement Class Member's name, current address, and telephone number. The Request for Exclusion must also contain a clear statement of the Class Member's intent to

exclude him or herself, such as “I wish to be excluded from the Class.” The Request for Exclusion must be either (i) personally signed by the Settlement Class Member, dated and mailed to the Claims Administrator and postmarked on or before the Objection/Exclusion Deadline, or (ii) electronically signed by the Settlement Class Member, and submitted to the Claims Administrator through the Settlement Website on or before the Objection/Exclusion Deadline. So-called “mass” or “class” opt-outs shall not be allowed. The date of the postmark on the return mailing envelope and/or the date of online submission through the Settlement Website shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member whose request to be excluded from the Settlement Class is approved by the Court will not be bound by this Settlement Agreement or have any right to object, appeal or comment thereon.

9.7 Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound, to the extent allowed by law, by all terms of the Settlement Agreement and any Judgment entered in the Action if the Settlement Agreement is approved by the Court, regardless of whether they have requested exclusion from the Class.

9.8 No Solicitation of Objections or Exclusions. The Parties and their counsel agree to use their best efforts to carry out this Agreement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage any Party or Settlement Class Member to submit written objections to this Agreement or appeal from the Court’s judgment/Final Approval.

10. CLASS SETTLEMENT PROCEDURES

10.1 Preliminary Approval of Settlement. As soon as reasonably practicable after the signing of this Settlement Agreement, Representative Plaintiff shall file with this Court a Motion for a Conditional Class Certification and Preliminary Approval of Class Settlement Order (an Order

substantially in the form as that attached hereto as Exhibit E), which, in accordance with the terms of this Settlement Agreement, for settlement purposes only, would:

- a. Conditionally certify the Settlement Class;
- b. Preliminarily approve the terms and conditions of this Settlement Agreement as fair, reasonable and adequate and in the best interests of the Settlement Class Members;
- c. Approve and authorize the Notice Plan and the Class Settlement Notice to the Settlement Class Members;
- d. Approve the Claims Administrator;
- e. Appoint Representative Plaintiff and Class Counsel; and
- f. Set a Fairness Hearing.

10.2 Stay of the Action. The Parties shall request that the Court, in connection with Preliminary Approval, issue an immediate stay of the Action. Following Preliminary Approval, all activity in the Action shall be stayed except to the extent necessary to effectuate this Agreement, and except for a possible transfer of this action to the United States District Court for the Eastern District of New York for coordination with the Jovel Action, unless and until this Agreement is terminated pursuant to its terms and conditions.

10.3 Provision of Preliminary Approval Motion Papers. Representative Plaintiff shall provide a draft of all papers supporting said Conditional Class Certification and Preliminary Approval of Class Settlement Motion to CVS's Counsel for review at least seven (7) calendar days before the Motion is filed or due to be filed.

10.4 Final Approval of Settlement. At or before the Fairness Hearing, Representative Plaintiff shall move for entry of a Settlement Order and Judgment. Class Counsel shall petition the Court

for a Settlement Order and Judgment that: (1) confirms the certification of the Settlement Class as defined above; (2) dismisses this Action, with prejudice, upon the Final Settlement Approval Date; (3) decrees that neither the Final Approval nor this Agreement constitutes an admission of liability, fault or wrongdoing; (4) releases the Released Parties from the Released Claims of the Releasing Parties; (5) finds that this Agreement is entered into in good faith, is reasonable, fair and adequate, and is in the best interest of the Settlement Class Members who have not excluded themselves; (6) orders that the Settlement relief be provided as set forth in this Settlement Agreement, and (7) makes such other orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

10.5 Fairness Hearing. The Court shall conduct a Fairness Hearing so that the Court may review any Objections to this Agreement, consider the fairness, reasonableness and adequacy of this Agreement and consider the petition for Final Approval and Class Counsel's Application for a Fee and Expense Award. The date of the Fairness Hearing shall be posted on the Settlement Website in advance of the hearing. If the date of the Fairness Hearing is subsequently modified by the Court, no further notice is required to be published to Settlement Class Members, except that the Parties will notify any Settlement Class Member who has filed a timely Objection in writing of any change to the date of the Fairness Hearing.

10.6 Dismissal of this Action. The Final Approval shall provide that this Action shall be dismissed, with prejudice, upon the Final Settlement Approval Date.

11. TERMINATION

11.1 Withdrawal of Settlement. Any Party may by written notice to the other Parties withdraw from and decline to proceed with the Settlement for any reason at any time, and the Settlement shall have no effect, unless and until this Settlement Agreement is fully executed by all Parties.

11.2 Effect if Settlement Not Approved. This Settlement Agreement was entered into only for purposes of settlement, subject to and without waiver of the Parties' respective rights. In the event that the Court fails to enter the order granting Preliminary Approval or fails to grant final approval, or in the event the Final Settlement Approval Date does not occur, Class Counsel and Defendant's Counsel shall endeavor, consistent with the Settlement Agreement, to cure any defect identified by the Court. In the event that the Settlement Agreement is terminated for any reason, final approval does not occur for any reason, or the Final Settlement Approval Date does not occur, then no term or condition of the Settlement Agreement, or any draft thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding, the Parties' shall be restored to their respective positions immediately preceding execution of this Settlement Agreement, including with regard to any agreements concerning tolling and similar agreements. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to the Settlement Agreement and the Parties' settlement discussions shall be treated as strictly confidential and may not be disclosed to any person other than the Parties' counsel, and only for purposes of the Action, absent a court order. CVS's rights with respect to class certification expressly are reserved and preserved.

11.3 Party Status upon Termination. In the event the Agreement is terminated in accordance herewith, vacated, or fails to become effective for any reason, then the Parties to this Agreement shall be deemed to have reverted to their respective status in the Action as of the date of this Agreement and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

12. RELEASES

12.1 Release by Settlement Class Members. Effective as of the Final Settlement Approval Date, each and all of the Releasing Parties shall release and forever discharge, and shall be forever be barred from asserting, instituting or maintaining against any or all of the Released Persons or Released Parties, any and all of the Released Claims.

12.2 Additional Releases. Except as to the rights and obligations provided for under this Agreement, CVS releases and forever discharges as of the Effective Date the Representative Plaintiff, Settlement Class, and Settlement Class Counsel from any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, which the Released Parties may now have, own or hold or which the Released Parties at any time may have, own, or hold, against the Representative Plaintiff, Settlement Class, or Settlement Class Counsel arising out of the Action and/or the Settlement.

12.3 Effectuation of Settlement. None of the above releases includes releases of claims or otherwise affects rights to enforce the terms of the Settlement Agreement.

12.4 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement Agreement, are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, defense, or of any point of fact or law on the part of any Party. CVS denies the material allegations of the complaint filed in this Action. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an

admission of any fault or omission by any or all of the Released Persons, or be offered or received in evidence as an admission, concession, presumption or inference of any wrongdoing by any or all of the Released Persons in any proceeding, other than such proceedings as may be necessary to consummate, interpret or enforce this Settlement Agreement.

13. CERTIFICATION OF THE SETTLEMENT CLASS

13.1 Certification of Settlement Class For Settlement Purposes. The Parties agree, for settlement purposes only, that this Action shall be certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(3), with a class consisting of all Settlement Class Members, and with the named Plaintiff as Representative Plaintiff and Plaintiff's Counsel as counsel for the Settlement Class Members. Any certification of a conditional, preliminary or final settlement class pursuant to the terms of this Settlement shall not constitute, and shall not be construed as, an admission on the part of CVS that this Action, or any other proposed or certified class action, is appropriate for class treatment for any other purpose pursuant to Federal Rule of Civil Procedure 23 or any similar state or federal class action statute or rule. This Settlement Agreement shall be without prejudice to the rights of CVS to: (a) move to dismiss or stay this Action on any applicable basis; (b) oppose final certification in this Action should this Settlement Agreement not be approved or implemented for any reason; or (c) oppose certification in any other proposed or certified class action. Neither the fact of this settlement nor this Settlement Agreement shall be used in connection with efforts in any proceeding to seek certification of any claims asserted against CVS.

13.2 This Agreement, whether or not consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Agreement are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits, nor any communications exchanged nor actions taken pursuant to or during the negotiation of this

Agreement, shall constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim asserted or fact alleged in this Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of CVS.

13.3 This Agreement and all negotiations, correspondence and communications leading up to its execution shall be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles. Neither this Agreement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Agreement, shall constitute a precedent or be admissible for any purpose in any proceeding; provided, however, that this Agreement shall be admissible in any proceeding related to the approval of this Agreement, to enforce any of its terms and conditions, to support or defend this Agreement in an appeal from an order granting or denying Final Approval, or to enforce or assert a claim or defense of res judicata, collateral estoppel, claim preclusion, issue preclusion, settlement, release, merger and bar, or any similar claim or defense against the Representative Plaintiff, any Settlement Class Member, or any third party.

14. MISCELLANEOUS PROVISIONS

14.1 Reasonable Efforts. Subject to the other terms and conditions of this Settlement Agreement, the Parties and their respective counsel shall use reasonable efforts to cause the Court to give Preliminary Approval to this Settlement Agreement as promptly as practicable, to take all steps contemplated by this Settlement Agreement that are necessary (by order of the Court or otherwise) to effectuate the Settlement on the stated terms and conditions, and to obtain Final Approval of this Settlement Agreement and achieve a Final Settlement Approval Date.

14.2 Time for Compliance. If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday or court holiday, that act may be performed

on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

14.3 Governing Law. This Settlement Agreement is intended to and shall be governed by the laws of the State of New York without giving effect to principles of conflicts of laws.

14.4 Entire Agreement. The terms and conditions set forth in this Settlement Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement constitutes the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Settlement Agreement.

14.5 Amendment or Modification. This Agreement may not be changed, modified, or amended except in writing signed by all Parties (or their successors-in-interest) and approved by the Court. Notwithstanding the foregoing, amendments and modifications may be made without additional notice to the Class Members unless such notice is required by the Court. Moreover, the claims process set forth above may be modified by mutual agreement of the Parties without Court approval and the Parties may agree to reasonable extensions of time in which to accomplish the tasks required by the terms and conditions of this Agreement, which shall not be unreasonably withheld.

14.6 Advice of Counsel. The determination of the terms and the drafting of this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel.

14.7 Binding Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Parties, the Settlement Class Members and the other Released Persons.

14.8 No Waiver. The waiver by any Party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or breach of this Settlement Agreement.

14.9 Assignment of Claims. The Parties warrant and represent that no claim or any portion of any claim referenced or released in this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other entity or Person.

14.10 Execution in Counterparts. This Settlement Agreement shall become effective upon the last day of execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. The Parties further agree that signatures provided by .pdf or other electronic transmission shall have the same force and effect as original signatures.

14.11 Authority. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients.

14.12 Publicity. The parties shall limit public comment on the Settlement to the fact that there has been an amicable settlement, and in doing so may refer to the Settlement Agreement, Settlement Website, Notices, or may otherwise refer to and make representations in accordance with the Notice Plan.

14.13 Time Periods. The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to approval and change by the

Court or by the written agreement of Class Counsel and Defendant's Counsel, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

14.14 Enforcement of this Settlement Agreement. The Court approving this Settlement shall retain jurisdiction, and shall have exclusive jurisdiction, to enforce, interpret and implement this Settlement Agreement, including any alleged violation of paragraph above, and the terms of any order entered pursuant to this Settlement Agreement.

14.15 Notices. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by email and mail to the following addresses:

- a. If to Representative Plaintiff, Settlement Class Members or Class Counsel:

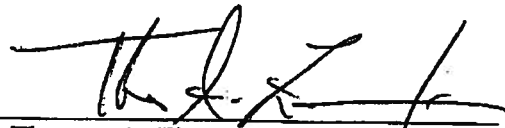
Thomas A. Zimmerman, Jr.
Zimmerman Law Offices, P.C.
77 W. Washington Street, Suite 1220
Chicago, Illinois 60602
Telephone: (312) 440-0020
tom@attomeyzim.com

- b. If to CVS or Defendant's Counsel:

Frank Spano
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000
frank.spano@hoganlovells.com


IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, or other duly authorized person, all as of the day set forth below.

Dated: 4-22-16

By: 
Thomas A. Zimmerman, Jr.
Zimmerman Law Offices, P.C.
77 W. Washington Street, Suite 1220
Chicago, Illinois 60602
Telephone: (312) 440-0020
tom@attomeyzim.com

*Class Counsel for Plaintiff and the
Settlement Class*

Dated: 4/22/16


By: _____
Frank Spano
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000
frank.spano@hoganlovells.com

Counsel for Defendant CVS Pharmacy, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIO ALIANO, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

CVS Pharmacy, Inc.,

Defendant.

Case No. 16-cv-03372

CLAIM FORM AND INSTRUCTIONS

In order for you to qualify to receive a payment related to *Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-03372, as described in the Notice of this Settlement (the “Class Notice”), you must file a Claim Form, as described below, to substantiate your claim.

REQUIREMENTS FOR FILING A CLAIM FORM

Your claim will only be considered upon compliance with all of the following conditions:

1. Please review the Notice of Proposed Class Action Settlement (the “Notice”) and have the Notice with you when you complete your Claim Form. A copy of the Notice is available at www._____.com.
2. You must accurately complete all required portions of this Claim Form.
3. You must sign this Claim Form, which includes the Certification.
4. By signing and submitting this Claim Form, you are certifying under penalty of perjury that you purchased one or more Algal-900 DHA Products between November 15, 2008 and [Date of Preliminary Approval].
5. In order for you to receive a full monetary refund of the actual purchase price paid, you must submit a Proof of Purchase that documents the actual price paid with this Claim Form. For Settlement Class Members who submit Proof of Purchase that does not document the actual price paid, CVS will offer a monetary refund of the average retail price for every Algal-900 DHA Product purchased by the claimant. Proof of Purchase includes: (1) cash register receipt, (2) cancelled check, or (3) product package, or (4) other similar type of documentation reflecting the purchase of an Algal-900 DHA Product and/or the purchase price paid for an Algal-900 DHA Product. For Settlement Class Members without Proof of Purchase, CVS will offer the maximum value of \$4.00 in cash or \$6.50 in voucher value.
6. In order for you to receive a cash or voucher award as part of this Settlement, you must submit a completed Claim Form. You may submit a completed Claim Form online at www._____.com on or before ____, 2016. Alternatively, you may mail the completed and signed Claim Form and Certification by First Class U.S. Mail, postage prepaid, postmarked no later than ____ to:

____ Settlement Administrator
P.O. Box ____

7. Your failure to complete and submit the Claim Form online on or before ____, 2016, or by regular mail postmarked by ____, 2016 will preclude you from receiving any payment in this Settlement. So that you will have a record of the date of your mailing of the Claim Form and its receipt by the Claims Administrator, you are advised (but are not required) to use certified mail, return receipt requested.

Submission of this Claim Form does not assure that you will share in the payments related to *Aliano v. CVS Pharmacy, Inc.* Visit the website at www._____, where you will find more information concerning your legal rights.

*Aliano v. CVS Pharmacy, Inc.***CLAIM FORM**

Please Print or type

I, _____, state as follows:

LAST NAME/ENTITY (Claimant)*_____
FIRST NAME (Claimant)*_____
Current Address*_____
Current City*_____
State*_____
Zip Code*_____
Telephone Number (Day)_____
Telephone Number (Night)_____
Email Address*

IDENTITY OF CLAIMANT (Check Appropriate box)

☐ Individual ☐ Legal Representative (attach information showing authority to submit claim) ☐ Other (specify on separate sheet)**CERTIFICATIONS***

I have read and am familiar with the contents of the Instructions accompanying this Claim Form and I certify under penalty of perjury that the information I have set forth in the foregoing Claim Form and in documents attached by me are true, correct and complete to the best of my knowledge.

I certify that the Claimant purchased Algal-900 DHA Products, containing, on the label and/or on the packaging, the claim that it is "clinically shown to improve memory" or offers "clinically shown memory improvement," during the period from November 15, 2008 to [Date of Preliminary Approval], inclusive, at the following location(s):

Name of Retailer(s) and State(s) of purchase

The number of Algal-900 DHA Products, which include: Algal-900 (90 Ct) and Algal-900 (30 Ct), the Claimant purchased between November 15, 2008 and [Date of Preliminary Approval] is _____. [Insert Quantity]

- Please note that if you are seeking a full refund of actual purchase price or refund of the average retail price, you must submit a Proof of Purchase, such as receipts or invoices or other documentation.
- For Settlement Class Members without Proof of Purchase, CVS will refund a maximum value of \$4.00 in cash or \$6.50 voucher value. Please indicate which option you prefer: ☐ \$4.00 cash ☐ \$6.50 voucher

The Claimant is not an officer, director, agent, servant or employee of the CVS or any related entity thereof; a judge in this lawsuit; or an immediate family member of such persons; the Claimant did not purchase Algal-900 DHA Products for resale or distribution to others; the Claimant has not received a refund for the Algal-900 DHA Product(s) indicated on this Claim Form; and the Claimant has not requested exclusion from the Settlement.

I certify under penalty of perjury under the laws of the United States that all of the information provided on this Claim Form is true and correct to the best of my knowledge this ____ day of _____, 2016.

Signature_____
Print name here:

If the Claimant is other than an individual, or if the Claimant is not the person completing this form, the following must also be provided:

Name of person signing:_____
Capacity of person signing:
(Executor, President, Trustee, etc.)

ACCURATE CLAIMS PROCESSING TAKES TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above Claim Form.
2. Enclose a copy of your proof(s) of purchase, if you have them, along with the Claim Form.
3. Keep a copy of your Claim Form and supporting documentation for your records.
4. If you move or your name changes, please send your new address, new name or contact information to the Claim Administrator via the Settlement Website, mail or by calling the Claims Administrator's toll-free telephone number, each listed in the Notice.

*Fields or Sections are Required to be Completed.

If you purchased a CVS brand Algal-900 DHA dietary supplement, your rights may be affected and you could get a payment from a proposed class action settlement.

A federal court authorized this Notice. This is not solicitation from a lawyer.

- A proposed settlement has been reached with CVS Pharmacy, Inc. (“CVS”) in a class action lawsuit about the statements made on the labels and packaging of certain CVS-branded dietary supplements containing docosahexaenoic acid (DHA).
- You are included in the Settlement if you purchased a CVS-branded Algal-900 DHA dietary supplement in the United States between November 15, 2008 and [Date of Preliminary Approval] that contained claims of “clinically shown to improve memory” or offered “clinically shown memory improvement” on the label or packaging.
- Those included may submit a Claim Form to receive a full refund (proof of purchase required) or \$4 in cash or a \$6.50 voucher for each qualifying CVS-branded Algal-900 DHA dietary supplement purchased. Vouchers may be used toward the purchase of any CVS-branded dietary supplement product.
- Your rights are affected whether you act or do not act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

SUBMIT A CLAIM FORM [DATE]	This is the only way to receive a refund, cash payment, or voucher. If you submit a Claim Form, you will give up the right to sue CVS in a separate lawsuit about the claims this Settlement resolves.
ASK TO BE EXCLUDED [DATE]	This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against CVS related to the legal claims that this Settlement resolves. If you ask to be excluded, you will no longer be eligible to receive a payment or voucher from this Settlement.
OBJECT TO THE SETTLEMENT [DATE]	If you do not exclude yourself from the Settlement, you may object to it by writing to the Court with the reasons why you do not like the Settlement. You may also file a Claim Form.
ATTEND A HEARING ON [DATE]	You may ask to speak in Court about the fairness of the Settlement. You may also enter an appearance in Court through an attorney, at your own expense.
DO NOTHING	If you do nothing, you will not receive a refund, payment, or voucher and you will give up your right to sue CVS on your own regarding any claims that are part of the Settlement.

- These rights and options, **and the deadlines to exercise them**, are further explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. The settlement benefits will be made available if the Court approves the Settlement and after any appeals are resolved.
- If you have any questions, please read on and visit www.brainhealthdhasettlement.com.

QUESTIONS? CALL 1-888-283-6979 OR GO TO WWW.BRAINHEALTHDHASETTLEMENT.COM

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BASIC INFORMATION

1. Why did I get this Notice?

The Court ordered that you be given this Notice because you have a right to know about a proposed settlement of this class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. If the Court approves it, and after objections and appeals are resolved, an administrator approved by the Court will oversee the distribution of the benefits that the Settlement allows.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Sharon Johnson Coleman of the United States District Court for the Northern District of Illinois, Eastern Division is overseeing this class action. The case is known as *Mario Aliano, individually, and on behalf of all others similarly situated v. CVS Pharmacy, Inc.*, Case Number 16-cv-03372. The person who sued is called the Plaintiff, and the company they sued, CVS Pharmacy, Inc., is called the Defendant.

2. What is this lawsuit about?

The lawsuit alleges that CVS misrepresented the effectiveness of its Algal-900 DHA dietary supplements, which contained docosahexaenoic acid (DHA) algal oil, by claiming it was “clinically shown to improve memory” or “clinically shown memory improvement” on the label or packaging. The lawsuit also alleges that CVS violated consumer protection laws, committed fraud, and unfairly profited from the sale of these products.

CVS denies it did anything wrong, denies all allegations of wrongdoing or liability against it, and contends that its conduct was lawful.

3. What is a class action?

In a class action, one or more people called Class Representatives (in this case, Mario Aliano) sue on behalf other people with similar claims and represent them in the lawsuit. All of these people are called a Class or Class Members. One court resolves the issues for all Class Members – except for those who choose to exclude themselves from the Class.

4. Why is there a proposed settlement?

The Court in charge of this case has not decided in favor of either side. Instead, CVS has chosen to provide its customers with cash payments and vouchers to avoid the expense, inconvenience, and inherent risk of litigation, as well as the related disruption of its business operations. The Class Representative and his attorneys believe the proposed Settlement is in the best interests of the Class.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT

5. How do I know if I am part of the proposed Settlement?

You are a Class Member if, between November 15, 2008 and [Date of Preliminary Approval], you purchased any CVS-branded Algal-900 DHA dietary supplements containing “clinically shown to improve memory” or “clinically shown memory improvement”, on the label and/or packaging (“CVS Algal-900 DHA Products”).

6. Are there exceptions to being included in the proposed Settlement?

Yes. The Class does not include: CVS and its parents, past and present, subsidiaries, divisions, affiliates, assignors, predecessors, successors and assigns; the past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers, accountants and representatives of any and all of the foregoing entities; any government entities; and persons who purchased CVS Algal-900 DHA Products for the purpose of resale.

THE PROPOSED SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY

7. What does the proposed Settlement provide?

The proposed Settlement provides refunds, cash payments, and vouchers to eligible Class Members who submit a valid Claim Form. Refund and payment amounts will depend on the purchase price paid for CVS Algal-900 DHA Products and whether and what type of proof of purchase (such as a register receipt, cancelled check, product package or other document illustrating the purchase of, or price paid for, CVS Algal-900 DHA Products (“Proof of Purchase”)) is submitted with the Claim Form. Vouchers will be valued at \$6.50 and may be used toward the purchase of any CVS-branded dietary supplement.

In addition, CVS will pay for Notice to the Class and administration costs of the Settlement, as well as a \$1,000 incentive award to the Class Representative.

8. How much will my payment be?

Refund and payment amounts will vary based on the purchase price paid for CVS Algal-900 DHA Products and whether and what type of Proof of Purchase you provide with your Claim Form.

- If you submit a valid Claim Form with a Proof of Purchase stating the actual price paid for CVS Algal-900 DHA Products, you will receive a full refund for each purchase.
- If you submit a valid Claim Form with a Proof of Purchase that does not state the actual price paid, you will receive a refund for each purchase shown in the amount of the average retail price of CVS Algal-900 DHA Products.
- If you submit a valid Claim Form without Proof of Purchase, you may choose to receive a \$4 cash payment or a \$6.50 voucher that may be used toward the purchase of any CVS-branded dietary supplement. You may submit one claim without Proof of Purchase, with a maximum of two claims per household.

9. What rights am I giving up to receive a refund, payment, or voucher and stay in the Class?

Unless you exclude yourself, you are staying in the Class. If the proposed Settlement is approved and becomes final, all of the Court’s orders will apply to you and legally bind you. You won’t be able to sue, continue to sue, or be part of any other lawsuit against CVS about the legal issues in this case, but you will be able to submit a Claim Form to receive a refund, payment, or voucher from this Settlement. The rights you are giving up are called Released Claims.

10. What are the Released Claims?

Generally, if and when the proposed Settlement becomes final, Class Members will permanently release CVS,

Lang Pharma Nutrition, Inc., and DSM Nutritional Products, LLC, and all of their past and present respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or their control in the past or in the present, their respective assignors, predecessors, successors and assigns; and the past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers, accountants and representatives (the “Released Parties”) of any and all claims, cross-claims, liability, rights, demands, suits, matters, obligation, damage, restitution, disgorgement, loss or cost, attorneys’ fee or expense, action or cause of action, of every kind that you or your spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate had or has, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent that is, has been, could reasonably have been or in the future might reasonably be asserted in this class action arising out of or relating to the allegations in the complaints filed in this class action.

The specific claims you will be releasing are described in sections 2.32–2.34 and 12 of the Stipulation of Settlement, available at www.brainhealthdhasettlement.com.

HOW YOU GET A PAYMENT — SUBMITTING A CLAIM FORM

11. How do I get a refund, payment, or voucher from the proposed Settlement?

You must complete and submit a Claim Form by [REDACTED], 2016. If you did not receive a Claim Form in the mail or by email, you may get one from www.brainhealthdhasettlement.com, by calling 1-888-283-6979, or by writing to Brain Health DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007.

Read the instructions carefully, and submit your Claim Form online on or before [REDACTED], 2016, or by mail postmarked no later than [REDACTED], 2016.

12. When will I receive my refund, payment, or voucher?

The Court will hold a Fairness Hearing on _____, 2016 to decide whether to grant final approval to the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. Payments will be made to Class Members who submit valid Claim Forms within 30 days after the Settlement Order and Judgment becomes final (“Final Settlement Approval Date”); or the date a claim is approved, whichever comes later.

EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

If you do not want to receive benefits from the proposed Settlement, but you want to keep the right to sue CVS, on your own, about the legal claims made in this lawsuit and released by the proposed Settlement, then you must take steps to get out of the Settlement. This is called excluding yourself or is sometimes referred to as “opting out” of the Class.

13. How do I get out of the proposed Settlement?

To exclude yourself from the proposed Settlement, you must send a letter by mail or submit a form through the Settlement Website. Your request for exclusion must contain: (1) the name of this lawsuit, *Aliano v. CVS Pharmacy, Inc.*, Case Number 16-cv-03372; (2) your full name, current address and telephone number; (3) a

clear statement of your intention to exclude yourself such as “I wish to be excluded from the Class”; and (4) your signature.

Your written request for exclusion must be mailed so that is postmarked no later than [REDACTED], [REDACTED] 2016, to: Brain Health DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007, or submitted online at www.brainhealthdhasettlement.com no later than [REDACTED], 2016.

You cannot exclude yourself on the phone or by e-mail.

14. If I exclude myself, can I still get a refund, payment, or voucher from the proposed Settlement?

No. If you exclude yourself, you are telling the Court that you do not want to be part of this proposed Settlement. You can only get a refund, payment or voucher if you stay in the Class and submit a valid Claim Form.

15. If I do not exclude myself, can I sue CVS for the same things later?

No. Unless you exclude yourself, you are giving up the right to sue CVS and the Released Parties for the claims that this proposed Settlement resolves. There is a companion case filed against CVS in New York captioned *Worth v. CVS Pharmacy, Inc.*, 16-cv-498, which asserts claims against CVS similar to the claims in this lawsuit relative to the Algal-900 DHA Product, and those claims will be settled and released by this Settlement. If you have a pending lawsuit against CVS or the Released Parties for the same claims made in this lawsuit or released by this proposed Settlement, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class to continue with your own lawsuit.

OBJECTING TO THE PROPOSED SETTLEMENT

You can tell the Court that you do not agree with the proposed Settlement or some part of it.

16. How do I tell the Court that I don't like the proposed Settlement?

If you are a Class Member, you can object to the proposed Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter containing: (1) your name, current address and telephone number; (2) the name, address and telephone number of your lawyer if you are objecting through counsel; (3) the name of the lawsuit, *Aliano v. CVS Pharmacy, Inc.*, Case Number 16-cv-03372; (4) proof of your membership in the Settlement Class (such as verification under oath as to the date and location of purchase of a CVS Algal-900 DHA Product, or Proof of Purchase); (5) a statement of your objections and the reasons for each; (6) a list of any documents you plan to give to the Court to support your objection, if any; (7) a list of legal authorities you want the Court to consider; (8) the names and addresses of any witness you want to call to testify; (9) a statement indicating whether you (or your lawyer) want to appear and speak at the Fairness Hearing; and (10) your signature (or your lawyer's signature).

Your signed objection must be mailed with any supporting documents, and filed with the Court and received by Counsel for the Class and Counsel for Defendant CVS by [REDACTED], [REDACTED] 2016 at the following addresses:

Clerk of Court
U.S. District Court
Northern District of Illinois, Eastern Division

219 South Dearborn Street
Chicago, IL 60604

Counsel for the Class:

Thomas A. Zimmerman, Jr., Esq.
Zimmerman Law Offices, P.C.
77 W. Washington Street, Suite 1220
Chicago, Illinois 60602

Counsel for Defendant CVS:

Frank Spano, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

17. What's the difference between objecting and excluding?

Objecting is simply telling the Court you do not like something about the proposed Settlement. You can object only if you stay in the Class (that is, do not exclude yourself). Excluding yourself is telling the Court you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

APPEARING AT THE FAIRNESS HEARING ABOUT THE PROPOSED SETTLEMENT

18. May I appear or speak at the Fairness Hearing in this lawsuit and proposed Settlement?

Yes, as long as you remain a Class Member (do not exclude yourself), you or your lawyer may appear and speak in this lawsuit and proposed Settlement. To do so, you must file a written "Notice of Appearance" with the Court. Your Notice of Appearance must contain: (1) the title of the lawsuit (*Aliano v. CVS Pharmacy, Inc.*, Case Number 16-cv-03372); (2) a statement that you wish to appear at the Fairness Hearing; (3) a statement that you or your lawyer would like to speak at the Court's Fairness Hearing; and (4) your signature or your lawyer's signature.

Your Notice of Appearance must be signed, mailed, and filed with the Court and received by Counsel for the Class and Counsel for Defendant CVS by [REDACTED], [REDACTED] 2016 at the addresses listed in Question 16.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will not get a payment or voucher from the proposed Settlement, and you will be bound by all of the Court's orders and judgments in this case. In addition, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against CVS and the Released Parties about the legal claims made in this lawsuit and resolved by this proposed Settlement, ever again.

THE LAWYERS REPRESENTING YOU

20. Do I have a lawyer in this Case?

Yes, the Court has appointed Zimmerman Law Offices, P.C. to act as legal counsel for the Class. This law firm is called Class Counsel. You will not be personally charged for these lawyers. You may hire your own lawyer at your own expense to represent you in this case, but you do not have to.

21. How will the lawyers be paid?

When Class Counsel asks the Court to approve the proposed Settlement, they will also ask the Court for an award of attorneys' fees, costs and reimbursement of expenses of up to \$100,000. If the Court grants Class Counsel's request, CVS will separately pay those fees, costs and expenses. This amount will not reduce the amount of refunds, payments, or vouchers that will be made available to Class Members who submit valid Claim Forms.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to attend or speak.

22. When and where will the Court decide whether to approve the proposed Settlement?

The United States District Court for the Northern District of Illinois, Eastern Division will hold a Fairness Hearing at the Federal Courthouse located at 219 South Dearborn Street, Chicago, Illinois 60604, on [_____, 2016] to decide whether the Settlement is fair, reasonable, and adequate and to determine the amount of attorneys' fees and costs and Class Representative incentive award. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the proposed Settlement and whether to grant Class Counsel's request for attorneys' fees and expenses and Class Representative incentive award. We do not know how long these decisions will take.

23. Do I have to come to the hearing?

No. Class Counsel is working on your behalf and will answer any questions the Court may have, but, you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

24. What happens if the proposed Settlement receives final approval?

If the Court grants final approval of the proposed Settlement, all Class Members who did not ask to be excluded from the Class will release all of the claims listed in Question 10 above.

GETTING MORE INFORMATION

25. Are there more details about the Settlement?

Yes. This Notice is only intended to provide a summary of the proposed Settlement. More information is available at www.brainhealthdhasettlement.com, by calling 1-888-283-6979 or by writing to Brain Health DHA Settlements Class Administrator, P.O. Box 40007, College Station, TX 77842-4007. You may also obtain the Stipulation of Settlement and other documents in the case from the Court file, which is available for your inspection during regular business hours at the Office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, at the Federal Courthouse located at 219 South Dearborn Street, Chicago, IL 60604, under the Civil Action Number 16-cv-03372, or from the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.ilnd.uscourts.gov/>.

You may also contact Class Counsel by email at tom@attorneyzim.com.

PLEASE DO NOT CALL OR DIRECT ANY INQUIRIES ABOUT THIS SETTLEMENT TO THE COURT. IT CANNOT ANSWER YOUR QUESTIONS.

QUESTIONS? CALL **1-888-283-6979** OR GO TO **WWW.BRAINHEALTHDHASETTLEMENT.COM**

LEGAL NOTICE

If you purchased certain BrainStrong or CVS Algal-900 DHA products, you could get a payment from class action settlements.

Includes: BrainStrong Toddler, BrainStrong Kids, BrainStrong Adult, and CVS-branded Algal-900 DHA dietary supplements

Proposed settlements have been reached in class action lawsuits with i-Health Inc. (“i-Health”) and CVS Pharmacy, Inc. (“CVS”) about the whether the marketing of certain dietary supplements containing docosahexaenoic acid (DHA) were untrue and misleading. i-Health and CVS stand by their marketing and deny that they did anything wrong. The Courts have not decided who is right in the lawsuits. Instead, the parties have agreed to settle these cases.

Who Is Included?

The i-Health BrainStrong Settlement includes everyone in the United States who purchased a BrainStrong Product with DHA, including: BrainStrong Toddler, BrainStrong Kids, and BrainStrong Adult (the “BrainStrong Products”), between January 1, 2011 and March 4, 2016. The CVS Algal-900 DHA Settlement includes everyone in the United States who purchased a CVS-branded Algal-900 DHA dietary supplement between November 15, 2008 and [date of prelim approval] that contained “clinically shown to improve memory” or “clinically shown memory improvement” claims on the label and/or on the packaging (“CVS Algal-900 DHA Products”).

You are not included in either Settlement if you purchased these products for resale purposes.

What Do The Settlements Provide?

If approved, the settlements will provide refunds, cash payments, or optional voucher awards to those who submit valid Claim Forms. If you submit with your Claim Form a valid Proof of Purchase (such as a register receipt, cancelled check, product package or other document illustrating the purchase or price paid) that states the actual price paid, you will receive a full refund of the actual price paid for each BrainStrong Product and/or CVS Algal-900 DHA Product purchased. If you submit a Claim Form with a valid Proof of Purchase that does not state the actual price paid, you will receive a refund in the amount of the average retail price for each BrainStrong Product and/or CVS Algal-900 DHA Product purchased. If you submit a Claim Form without a valid Proof of Purchase, you will receive your choice of either a \$4 cash payment or a \$6.50 voucher for use toward the purchase of any i-Health product and/or CVS-branded dietary supplement. You may submit one claim per settlement without valid Proof of Purchase, with a maximum of two claims per household.

How Do You Ask For A Payment or Voucher?

You must complete and submit a Claim Form by [redacted], 2016. Claim Forms may be submitted online at www.brainhealthdhasettlement.com, or printed from the website and submitted by mail. Claim Forms are also available by calling 1-888-283-6979 or by writing to the Claims Administrator at the address below.

What Are Your Other Options?

If you do nothing, your rights will be affected but you will not get settlement refunds, payments, or vouchers. If you do not want to be legally bound by the i-Health BrainStrong and/or CVS Algal-900 DHA Settlements, you must exclude yourself from one or both by [redacted], 2016. Unless you exclude yourself, you will not be able to sue or continue to sue i-Health and/or CVS or other released parties for any claim resolved by that Settlement or released by that Stipulation of Settlement. If you exclude yourself, you cannot get benefits from that Settlement, but you are free to pursue any claims that

you may have against that Defendant (i-Health or CVS) in a different lawsuit. If you are included in both Settlements, but only exclude yourself from one, your rights will only be affected by the Settlement you do not exclude yourself from. If you stay in either or both of the Settlements (that is, don't exclude yourself or exclude yourself from the Settlement), you may object and notify the Court in that Settlement that you or your lawyer intends to appear at the Court's Fairness Hearing. Objections are due by [REDACTED], 2016. For more information, including the detailed Notices and other relevant documents, call or go to the website below.

The Fairness Hearings.

The United States District Court for the Eastern District of New York will hold a Fairness Hearing in the BrainStrong Settlement (*Jovel et al. v. i-Health, Inc.*, Case No. 1:12-cv-05614) on [REDACTED], 2016, at [REDACTED] a.m.

The United States District Court for the Northern District of Illinois, Eastern Division, will hold a Fairness Hearing in the CVS Algal-900 DHA Settlement (*Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-00372) on [REDACTED], 2016, at [REDACTED] a.m.

At the Fairness Hearings, each Court will decide whether to approve: the Settlement as fair, reasonable and adequate; Class Counsel's request for attorneys' fees, costs and expenses (up to \$250,000 in the BrainStrong Settlement and up to \$100,000 in the CVS Algal-900 DHA Settlement); and a service award to the Class Representative (\$1,000 for each in each Settlement). If approved, these fees, costs, expenses and awards will be paid separately by i-Health and CVS and will not reduce the amount of Settlement refunds, payments, or vouchers available to you. You may appear at one or both hearings, but you do not have to. You may also hire your own attorney, at your own expense, to appear or speak for you at one or both hearings.

How Can I Get More Information?

Visit www.brainhealthdhasettlement.com, call 1-888-283-6979, or write to Brain Health DHA Settlements Claims Administrator, PO Box 40007, College Station, TX 77842-4007.

To: XXXXXXXXXXXX

From: XXXXXXXXXXXX

Re: CVS Algal-900 DHA PRODUCTS CLASS ACTION SETTLEMENT

You are receiving this e-mail because you may have purchased a CVS-branded Algal-900 DHA dietary supplement between November 15, 2008 and [Date of Preliminary Approval]. This Notice is to inform you of a proposed class action settlement that could affect your legal rights.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

Why Am I Receiving This Notice?

A proposed settlement has been reached in a class action lawsuit pending in the United States District Court for the Northern District of Illinois, Eastern Division. The lawsuit alleges violations of consumer protection laws and claims that CVS Pharmacy, Inc. ("CVS") misrepresented certain benefits of a supplement sold as Algal-900 DHA in the United States. CVS denies all of these allegations. The Court did not rule in favor of Plaintiff or CVS. Instead the parties agreed to a proposed settlement in order to avoid the expense and risks of continuing the lawsuit. You are receiving this Notice because you may have purchased a qualifying Algal-900 DHA product between November 15, 2008 and [Date of Preliminary Approval].

Am I Included In The Proposed Settlement?

You are included in the proposed Settlement as a "Class Member" if you purchased a CVS-branded Algal-900 DHA dietary supplement which contained docosahexaenoic acid, an Omega-3 fatty acid, and claimed "clinically shown to improve memory" or "clinically shown memory improvement" on the label and/or packaging, in the United States between November 15, 2008 and [Date of Preliminary Approval] ("CVS Algal-900 DHA Product"). You are not included in the proposed Settlement if you purchased CVS Algal-900 DHA Products for the purpose of resale.

What Does The Settlement Provide?

If the proposed Settlement is approved by the Court, CVS will provide Class Members with refunds, cash payments, or optional voucher awards. Class Members who submit with their Claim Form a valid Proof of Purchase (such as a register receipt, cancelled check, product package or other document illustrating the purchase of, or price paid for, CVS Algal-900 DHA Products) that states the actual price paid will receive a full refund of the actual price paid for each CVS Algal-900 DHA Product purchased. Class Members who submit a Claim Form with a valid Proof of Purchase that does not state the actual price paid will receive a refund for each purchase shown in the amount of the average retail price of CVS Algal-900 DHA Products. Class Members who submit a Claim Form without a valid Proof of Purchase will receive their choice of either a \$4 cash payment or a \$6.50 voucher that may be used toward the purchase of any CVS-branded dietary supplement.

How Do You Ask For A Refund, Payment, or Voucher?

You must complete and submit a Claim Form by [_____, 2016]. Claim Forms may be submitted online at www.brainhealthdhasettlement.com, or printed from the website and submitted by mail. Claim Forms are also available by calling 1-888-283-6979 or by writing to Brain Health DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007.

What Are My Other Rights?

If you do nothing, your rights will be affected but you will not get a Settlement refund, payment, or voucher. If you do not want to be legally bound by the proposed Settlement, you must exclude yourself from it by _____, 2016. There is a companion case filed against CVS in New York captioned

Worth v. CVS Pharmacy, Inc., 16-cv-498, which asserts claims against CVS similar to the claims in this lawsuit relative to the Algal-900 DHA Product, and those claims will be settled and released by this Settlement. Unless you exclude yourself, you will not be able to sue or continue to sue CVS for any claim resolved by this proposed Settlement or released by the Stipulation of Settlement. If you exclude yourself, you cannot get a refund, payment, or voucher from the proposed Settlement, but you are free to pursue any claims that you may have against CVS in a different lawsuit. If you stay in the proposed Settlement (that is, don't exclude yourself), you may object to it by _____, 2016. More information can be found in the detailed Notice and Stipulation of Settlement, which are available at www.brainhealthdhasettlement.com.

The Fairness Hearing.

On _____, 2016, at _____ a.m., the Court will hold a hearing in this case (*Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-03372) in the United States District Court for the Northern District of Illinois, Eastern Division. At the hearing, the Court will determine whether: (1) the proposed Settlement is fair, reasonable and adequate and should receive final approval; (2) to grant Class Counsel's request for attorneys' fees, costs and expenses of up to \$100,000; and (3) to award a \$1,000 incentive award to the Class Representative. If approved, these fees, costs, expenses and awards will be paid separately by CVS and will not reduce the amount of benefits available to Class Members who submit valid Claim Forms. You may appear at the hearing, but you do not have to. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

How Can I Get More Information?

If you have questions or want a detailed notice or other documents regarding this lawsuit and your rights, visit www.brainhealthdhasettlement.com or click on the links below. You may also contact Class Counsel by emailing tom@attorneyzim.com, or by writing to: Brain Health DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007, or by calling 1-888-283-6979.

[Long-Form Notice](#)
[Claim Form](#)

Please do not contact the Court or Clerk for information.

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1332 and venue is proper in this district.

2. The Court has personal jurisdiction over the Class Representative, Settlement Class Members and CVS.

3. The Settlement is the product of arm's length bargaining conducted by experienced legal counsel. The Settlement Agreement is not the result of collusion.

4. The proceedings that occurred before the parties reached the Settlement Agreement, including the proceedings and case filings in the related case *Jovel v. i-Health, Inc.*, No. 12-05614 (E.D.N.Y.), gave counsel opportunity to adequately assess this case's strengths and weaknesses, and thus to structure the Settlement in a way that adequately accounts for those strengths and weaknesses.

5. The Settlement falls well within the range of reason. The Settlement has no obvious deficiencies.

6. Because the Settlement meets the standards for preliminary approval, the Court preliminarily approves all terms of the Settlement, including the Settlement Agreement and all of its exhibits.

7. The Court finds, for settlement purposes only, that all requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied. The Court certifies a Settlement Class of all persons in the United States who purchased one or more Algal-900 DHA Products, containing, on the label, and/or on the packaging, the claim that it is "clinically shown to improve memory" or offers "clinically shown memory improvement," on or after November 15, 2008, through the date this Court issues an order preliminarily approving the settlement pursuant to the Stipulation of Settlement. Excluded from the membership are Defendant and its past and present parents,

subsidiaries, divisions, affiliates, assignors, predecessors, successors and assigns; the past and present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers, accountants and representatives of any and all of the foregoing entities; any government entities; and persons who purchased the Algal-900 DHA Product for the purpose of resale.

8. The Court conditionally certifies the proposed Settlement Class, and finds that the requirements of Rule 23(a) are satisfied, for settlement purposes only, as follows:

(a) Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class are so numerous that joinder of all members is impracticable.

(b) Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines that there are common issues of law and fact for the Settlement Class.

(c) Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Class Representative are typical of the claims of the Settlement Class that he represents.

i. The Court hereby appoints Plaintiff Mario Aliano as Class Representative for the Settlement Class.

(d) Pursuant to Fed. R. Civ. P. 23(a)(4), the Class Representative will fairly and adequately protect and represent the interests of all members of the Settlement Class. The interests of the Class Representative are not antagonistic to those of the Settlement Class. The Class Representative is represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

9. The Court further finds that the requirements of Rule 23(b)(3) are satisfied, as follows:

(a) Questions of law and fact common to the members of the Settlement Class predominate over questions that may affect only individual members; and

(b) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

10. The Court finds that the content of the Notice and the Claim Form satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process and accordingly approves the Notice and Claim Form.

11. This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Stipulation of Settlement and Plaintiff's motion for preliminary approval. The Court has reviewed the notice, and the notice procedures, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. This Court also approves the parties' proposal to: 1) publish the notice once in *People Magazine* and two publications in *USA Today*, as well as 30 days of Internet banner notifications which contain links to the Settlement Website during the Claims Period; and 2) send direct notice through a combination of electronic and postal mail. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy the requirements of Fed. R. Civ. P. 23(c)(2), Fed. R. Civ. P. 23(e)(1), and due process.

12. The Court preliminarily finds that the following counsel fairly and adequately represent the interests of the Settlement Class and hereby appoints Zimmerman Law Offices, P.C. as Settlement Class Counsel pursuant to Rule 23(g).

13. The Court further approves the appointment of KCC LLC, or equivalent class action administrator identified by the Parties, to administer and oversee, among other things, the processing, handling, reviewing, and approving of claims made by Claimants; communicating with Claimants; and distributing payments to qualified Claimants.

14. The Court directs that pursuant to Fed. R. Civ. P. 23(e)(2) a hearing will be held on November 29, 2016, at _____ a.m./p.m. to consider final approval of the Settlement (the “Final Approval Hearing” or “Fairness Hearing”), including, but not limited to, the following issues: (a) whether the Class should be finally certified, for settlement purposes only; (b) the fairness, reasonableness, and adequacy of the Settlement; (c) Class Counsel’s application for an award of attorneys’ fees and costs; and (d) approval of an award of a service payment to the Class Representative. The Final Approval Hearing may be adjourned by the Court and the Court may address the matters set out above including final approval of the Settlement, without further notice to the Settlement Class other than notice that may be posted at the Court and on the Settlement Website.

15. Persons wishing to object to the proposed Settlement and/or be heard at the Fairness Hearing shall follow the following procedures:

(a) To object, a member of the Settlement Class, individually or through counsel, must file a written objection with the Court, with a copy delivered to and received by Class Counsel and CVS’s Counsel at the addresses set forth below, by August 18, 2016:

Settlement Class Counsel:

Thomas A. Zimmerman, Jr.
Zimmerman Law Offices, P.C.
77 W. Washington Street, Suite 1220
Chicago, IL 60602
Tel: (312) 440-0020

Counsel for CVS:

Frank Spano, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Tel: (212) 918-3000

(b) Any objection regarding or related to the Stipulation of Settlement shall be in letter form, and shall contain: (1) the Class Member's name, current address and telephone number; (2) the name, address and telephone number of the Class Member's lawyer if the Class Member is objecting through counsel; (3) the name of the lawsuit, *Aliano v. CVS Pharmacy, Inc.*, Case Number 16-cv-03372; (4) proof of the Class Member's membership in the Settlement Class (such as verification under oath as to the date and location of purchase of a CVS Algal-900 DHA Product, or Proof of Purchase); (5) a statement of the Class Member's objections and the reasons for each; (6) a list of any documents the Class Member plans to give to the Court to support the Class Member's objection, if any; (7) a list of legal authorities the Class Member wants the Court to consider; (8) the names and addresses of any witness the Class Member wants to call to testify; (9) a statement indicating whether the Class Member (or the Class Member's lawyer) wants to appear and speak at the Fairness Hearing; and (10) the Class Member's signature (or Class Member's lawyer's signature).

(c) Any member of the Settlement Class who files and serves a timely written objection in accordance with this Order may also appear at the Fairness Hearing, to the extent permitted by the Court, either in person or through an attorney hired at the Settlement Class member's expense, to object to the fairness, reasonableness or adequacy of the proposed Settlement. Any attorney representing a member of the Settlement Class for the purpose of

making objections must also file a “Notice of Appearance” with the Clerk, and must also serve copies by mail to the counsel listed above.

(d) Members of the Settlement Class or their attorneys intending to appear at the Fairness Hearing must, by August 18, 2016, serve on Settlement Class Counsel and counsel for CVS, and file with the Court, a Notice of Appearance, which includes: (1) the title of the lawsuit, *Aliano v. CVS Pharmacy, Inc.*, Case No. 16-03372; (2) a statement that the Class Member wishes to appear at the Fairness Hearing; (3) a statement that the Class Member would like to speak at the Court’s Fairness Hearing; and (4) the Class Member’s signature or the Class Member’s lawyer’s signature. Any member of the Settlement Class who does not timely file and serve a Notice of Appearance, and any witness not identified in the Objection that the Class Member wishes to call to testify, shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

16. Members of the Settlement Class who elect not to participate in the Settlement (i.e., “opt-out”) must submit an online or written Request for Exclusion that is postmarked or submitted electronically online through the Settlement Website no later than August 18, 2016. To opt-out, a Class Member’s Request for Exclusion must contain: (1) the name of this lawsuit, *Aliano v. CVS Pharmacy, Inc.*, Case Number 16-cv-03372; (2) the Class Member’s full name, current address and telephone number; (3) a clear statement of the Class Member’s intention to exclude his or herself such as “I wish to be excluded from the Class”; and (4) the Class Member’s signature. CVS shall compile a list of all Opt-Outs to be filed with the Court no later than the Fairness Hearing.

17. Any member of the Settlement Class failing to properly and timely mail and/or submit online through the Settlement Website such a written notice of exclusion shall be

automatically included in the Settlement Class and shall be bound by all the terms and provisions of the Stipulation of Settlement and the Settlement, including the Release, and Order of Final Judgment. The Court shall resolve any disputes concerning the Opt-Out provisions of the Stipulation of Settlement.

18. In order to participate in the Settlement and receive a refund or reimbursement from CVS, members of the Settlement Class must mail to the Claims Administrator or submit electronically online through the Settlement Website, a properly executed Claim Form. To be effective, any such Claim Form must be postmarked or submitted electronically online through the Settlement Website no later than October 8, 2016, and must otherwise comply with the procedures and instructions set forth in the Claim Form.

19. The following are the deadlines for the following events:

<u>EVENT</u>	<u>DATE</u>
Deadline for publishing print Notice	June 10, 2016
Deadline for (1) commencement of 30 days of Internet banner notifications and (2) dissemination of direct E-mail Notice	June 17, 2016
Filing of papers in support of Attorney's Fee Petition	August 4, 2016
Deadline for submitting exclusion requests or objections, and for filing a Notice of Appearance	August 18, 2016
Deadline for submitting claims forms	October 8, 2016
Deadline for CVS to Challenge Claims	November 7, 2016
Filing of papers in support of Final Approval and Class Counsel's Supplemental Fee Petition	November 14, 2016
Filing of Responses to Objections	November 14, 2016
Final Approval Hearing	November 29, 2016, at _____ a.m./p.m.

20. To the extent not otherwise defined herein, all defined terms in this order shall have the meaning assigned in the Stipulation of Settlement.

21. In the event that the Settlement does not become effective for any reason, this Preliminary Approval Order shall be rendered null and shall be vacated, and all orders entered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement. If the Settlement does not become effective, CVS and any other released persons shall have retained any and all of their current defenses and arguments thereto (including but not limited to arguments that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are not satisfied for purposes of continued litigation). This action shall thereupon revert immediately to its respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and any related order had not been executed.

22. Nothing in this Preliminary Approval Order, the Settlement Agreement, or any documents or statements related thereto, is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by CVS, or an admission of the propriety of class certification for any purposes other than for purposes of the current proposed Settlement.

23. All other proceedings in the Action are hereby stayed until such time as the Court renders a final decision regarding approval of the proposed Settlement. No discovery with regards to this Action, or with respect to this Settlement, shall be permitted other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with this Court's Local Rules. In addition, pending a determination on final approval of the Settlement, all Settlement Class Members are hereby barred and enjoined from commencing or prosecuting any action involving any Released Claims.

24. The Court shall retain continuing jurisdiction over the Action, the Parties and the Settlement Class, and the administration, enforcement, and interpretation of the Settlement. Any disputes or controversies arising with respect to the Settlement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the parties to exercise their rights under Paragraphs 21 and 23 above.

Honorable Sharon Johnson Coleman
U.S. District Judge

Dated:

Average Retail Pricing of the Algal-900 DHA Products
Pursuant to Sections 3.1 & 8.3(b) of the Stipulation of Settlement

ALGAL-900 DHA – 30 COUNT BOTTLE	\$9.39
ALGAL-900 DHA – 90 COUNT BOTTLE	\$19.58

LEGAL NOTICE

**If you purchased a CVS
brand Algal-900 DHA
dietary supplement
between November 15,
2008 and [Date of
Preliminary Approval],
you could get a payment
from a proposed class
action settlement.**

1-888-283-6979

www.brainhealthdhasettlement.com

XXX

A proposed Settlement has been reached in a class action lawsuit alleging that CVS Pharmacy Inc. ("CVS") misrepresented the effectiveness of its Algal-900 DHA dietary supplements, which contained docosahexaenoic acid (DHA) algal oil, by claiming it was "clinically shown to improve memory" or "clinically shown memory improvement" on the label or packaging ("CVS Algal-900 DHA Products"). CVS denies it did anything wrong. The Court has not decided who is right.

Who is included? CVS's records show that you are likely included in the Settlement as a "Class Member". Class Members include everyone in the U.S. who, between November 15, 2008 and [Date of Preliminary Approval], purchased CVS Algal-900 DHA Products.

What does the Settlement provide? The Settlement will provide refunds, cash payments, or optional voucher awards. Class Members who submit with their Claim Form a valid Proof of Purchase (such as a register receipt, cancelled check, product package or other document illustrating the purchase of, or price paid for, CVS Algal-900 DHA Products) that states the actual price paid will receive a full refund of the actual price paid for each CVS Algal-900 DHA Product purchased. Class Members who submit a Claim Form with a valid Proof of Purchase that does not state the actual price paid will receive a refund for each purchase shown in the amount of the average retail price of CVS Algal-900 DHA Products. Class Members who submit a Claim Form without a valid Proof of Purchase will receive their choice of either a \$4 cash payment or a \$6.50 voucher that may be used toward the purchase of any CVS-branded dietary supplement.

How do I get a refund, payment, or voucher? You must complete and submit a Claim Form by [_____, 2016]. Claim Forms may be submitted online at www.brainhealthdhasettlement.com, or printed from the website and submitted by mail. Claim Forms are also available by calling 1-888-283-6979 or by writing to Brain Health DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007.

What Are My Other Rights? If you do nothing, your rights will be affected and you will not get a Settlement refund, payment, or voucher. If you do not want to be legally bound by the proposed Settlement, you must exclude yourself from it by _____, 2016. Unless you exclude yourself, you will not be able to sue or continue to sue CVS for any claim resolved by this proposed Settlement or released by the Stipulation of Settlement. If you exclude yourself, you cannot get a refund, payment, or voucher from the proposed Settlement, but you are free to pursue any claims that you may have against CVS in a different lawsuit. If you stay in the proposed Settlement (that is, don't exclude yourself), you may object to it by _____, 2016. More information can be found in the detailed Notice and Stipulation of Settlement, which are available at www.brainhealthdhasettlement.com.

The Court's Fairness Hearing. The U.S. District Court for the Northern District of Illinois, located at 219 South Dearborn Street, Chicago, Illinois 60604, will hold a hearing in this case (*Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-03372) on **Month 00, 2016**, at _____.m. At the fairness hearing the Court will decide whether to approve: the Settlement; Class Counsel's request for \$100,000 in attorneys' fees, costs and expenses; and a \$1,000 incentive award to the Class Representative. You may appear at the hearing, but you do not have to. You also may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMY JOVEL and MICHAEL YEE, on behalf of)	
themselves and all others similarly situated,)	
)	
)	
Plaintiffs,)	
)	Case No. 1:12-cv-05614-JG-MDG
v.)	
)	
I-HEALTH, INC., a Delaware Corporation,)	
)	
Defendant.)	
)	

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Settlement Agreement”) is made by Amy Jovel (“Jovel”) and Michael Yee (“Yee”) (together, the “Class Plaintiffs” or “Representative Plaintiffs”) on behalf of themselves, individually, and the Settlement Class (as defined below), on the one hand, and i-Health, Inc. (“i-Health”), on the other hand, in this action pending in the United States District Court for the Eastern District of New York, Civil Action No. 1:12-cv-05614-JG-MDG (the “Action” or “Class Action”), subject to and conditioned upon the approval of this Court of the terms and conditions thereof.

1. RECITALS

1.1 On March 16, 2012, Plaintiff Jovel commenced an action against i-Health titled *Jovel v. i-Health, Inc.*, in California Superior Court, Los Angeles County, Case No. BC481048, as a proposed class action of California consumers who purchased BrainStrong Products (defined below). Plaintiff asserted claims for violations of: (1) California Business and Professions Code §§ 17200, *et seq.* (Unfair Competition Law); (2) California Civil Code § 1750 *et seq.* (Consumer Legal Remedies Act); and (3) breach of express warranty. On March 27, 2012, Plaintiff Michael Yee commenced an action against i-Health titled *Yee v. i-Health, Inc.*, in the United States

District Court for the Eastern District of New York, Case No. 12-cv-1504-FB-JO, as a proposed class action of nationwide consumers, and a subclass of New York consumers, who purchased BrainStrong Products. Plaintiff asserted claims for violations of the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, unjust enrichment, breach of express warranty, intentional misrepresentation, fraudulent concealment, violations of the New York General Business Law §349, *et seq.*, and violations of the New York General Business Law §350, *et seq.* Plaintiff Yee voluntarily dismissed his action on July 31, 2012.

1.2 Plaintiff Jovel filed a First Amended Complaint on April 16, 2012, and on May 30, 2012, Jovel filed a Second Amended Complaint to allege claims on behalf of a second multi-state putative class.

1.3 On June 25, 2012, i-Health removed the *Jovel* action to the United States District Court for the Central District of California, Case No. CV12-5526.

1.4 On August 23, 2012, i-Health moved in the United States District Court for the Central District of California, (1) pursuant to 28 U.S.C. §1404(a), to transfer *Jovel* to the United States District Court for the Eastern District of New York or (2) dismiss the action. Over Plaintiff Jovel's objection, and after a hearing, the court granted i-Health's motion to transfer on November 8, 2012, and deemed the motion to dismiss moot.

1.5 On January 31, 2013, i-Health moved this Court to dismiss Plaintiff Jovel's Second Amended Complaint. After oral argument, the Court denied i-Health's motion to dismiss on September 27, 2013.

1.6 On October 21, 2013, i-Health answered the Second Amended Complaint, denying liability.

1.7 The parties jointly filed a case management plan, which this Court so ordered on November 1, 2013, after an in-person conference.

1.8 On November 12, 2013, pursuant to the Federal Rules of Civil Procedure, the parties exchanged initial disclosures and discovery requests, including requests for admissions, requests for the production of documents, and interrogatories.

1.9 In the ensuing months, the parties served responses and objections to each other's discovery requests, including verified answers to interrogatories, in accordance with the schedule set by this Court, as amended by the parties.

1.10 Over the course of its rolling production of documents, i-Health ultimately produced approximately 270,000 pages of documents for Plaintiff's review. Plaintiff Jovel produced 54 pages of documents for i-Health's review.

1.11 On April 1, 2014, Plaintiff Jovel filed her Third Amended Complaint, joining Plaintiff Yee as an additional Representative Plaintiff. The Third Amended Complaint alleged violations of (1) California Business and Professions Code §§ 17200, *et seq.* (Unfair Competition Law) and 17500, *et seq.* (False Advertising Law); (2) California Civil Code § 1750 *et seq.* (Consumer Legal Remedies Act); (3) New York General Business Law §§ 349-350; (4) various consumer protection laws of the several states; and (5) breach of express warranty.

1.12 On May 14, 2014, i-Health answered the Third Amended Complaint, denying liability.

1.13 On May 16, 2014, as the parties had entered into good-faith settlement negotiations, counsel for i-Health filed a letter motion with this Court on behalf of the parties to jointly request a temporary stay in this Action, so the parties could focus their efforts on settlement. This Court granted the motion on May 19, 2014.

1.14 i-Health and Representative Plaintiffs, on behalf of themselves and the other members of the Settlement Class, thereafter engaged in months of arm's length, good-faith negotiations.

1.15 These good-faith negotiations also included, at the request of both parties, in-person and telephonic court-monitored settlement conferences before the Honorable Joan. M. Azrack,¹ on November 20, 2014 and December 11, 2014; and before the Honorable Marilyn D. Go, on January 23, 2015, February 6, 2015 and March 13, 2015. Magistrate Judge Go's and then-Magistrate Judge Azrack's guidance, and the negotiations between Plaintiffs' Counsel (defined below) and i-Health, resulted in a tentative settlement. Subsequent to (and in between) those conferences, the Parties engaged in protracted, extensive, and hard-fought settlement negotiations. As a result of those negotiations, the Parties agreed to settle the Action pursuant to the terms set forth in this Stipulation of Settlement, which Representative Plaintiffs and Plaintiffs' Counsel believe provides benefits to the Settlement Class, is fair, reasonable, and adequate, and is in the best interests of Representative Plaintiffs and the Settlement Class Members.

1.16 Representative Plaintiffs in the Class Action allege, among other things, that i-Health's labeling claims regarding certain of its BrainStrong dietary supplements that contain docosahexaenoic acid ("DHA")—BrainStrong Toddler, BrainStrong Kids, and BrainStrong Adult—are misleading.

1.17 Plaintiffs' Counsel states that they conducted a thorough examination and investigation of the facts and law relating to the matters in this Action, including, but not limited to, engaging in discovery, review and analysis of i-Health's documents and data, review of the underlying

¹ This Action had been referred to the Honorable Joan M. Azrack when she sat as a magistrate judge. On December 19, 2014, Judge Azrack was appointed as a district court judge, and this Action was thereafter referred to Magistrate Judge Marilyn D. Go.

facts, consultation with multiple experts and industry personnel, and an assessment of DHA. Plaintiffs' Counsel also evaluated the merits of all Parties' (defined below) contentions and evaluated this Settlement Agreement, as it affects all Parties, including the Settlement Class Members.

1.18 Based upon the discovery and investigation to date and evaluation of the facts and law relating to the matters alleged in the pleadings, Representative Plaintiffs and Class Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of this Agreement. In so doing, Representative Plaintiffs and Class Counsel have considered the terms of this Stipulation, the numerous risks of continued litigation and other factors, including but not limited to the following:

- a. The expense and length of time necessary to prosecute the Action through trial;
- b. The uncertainty of outcome at trial and the possibility of an appeal by either side following the trial;
- c. The possibility that a contested class might not be certified, and if certified, the possibility that such certification would be reversed on appeal;
- d. The fact that i-Health would file a motion for summary judgment that, if granted, would dispose of all or many of the claims in this Action; and
- e. The benefits being made available to Representative Plaintiffs and the Settlement Class Members under the terms of this Agreement.

1.19 Weighing the above factors, as well as all other risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Representative Plaintiffs and Plaintiffs' Counsel are satisfied that the terms and conditions of this settlement are fair,

reasonable, adequate, and in the best interests of the Representative Plaintiffs and the Settlement Class Members.

1.20 i-Health denies the material allegations made in the Class Action, and denies any and all liability with respect to all facts and claims alleged therein, and further denies that any of the Settlement Class Members, or anyone, has suffered any harm or damage or is entitled to any monetary or equitable relief whatsoever in connection with the Action.

1.21 i-Health, while continuing to expressly deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, and while standing by its products and advertising, considers it desirable to resolve the Action on the terms stated herein in order to avoid further expense, risk, uncertainty, inconvenience and burden and, therefore, has determined that this Settlement on the terms set forth herein is in i-Health's best interests.

1.22 i-Health and Representative Plaintiffs, on behalf of themselves and the other members of the Settlement Class, negotiated and reached this Stipulation after extensive review of the underlying facts, extensive consultation with experts and industry personnel, exchanges of information, and months of arm's length, good faith negotiations, including multiple settlement conferences conducted with the assistance of Magistrate Judge Go and then-Magistrate Judge Azrack. As a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein.

1.23 This Settlement Agreement reflects a compromise between the Parties. Without any admission or concession whatsoever on the part of Representative Plaintiffs of the lack of merit of this Action, or any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by i-Health, it is hereby stipulated and agreed by the undersigned, on behalf of Representative Plaintiffs, the Settlement Class, and i-Health that the Action and all

claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice, subject to Court approval as required by Federal Rules of Civil Procedure 23, on the terms and conditions set forth herein and upon the Final Settlement Approval Date (as defined below).

1.24 Each party affirms that the recitals above as to such party are true and accurate as to such party and are hereby made a part of this Settlement Agreement.

1.25 In consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims as described below, and other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged by each of the Parties, each of the Representative Plaintiffs, on behalf of themselves and the Settlement Class Members, and i-Health agree to the Settlement described herein, subject to Court approval, under the following terms and conditions:

TERMS AND CONDICTIONS OF SETTLEMENT

2. DEFINITIONS

2.1 As used in this Stipulation and the annexed exhibits (which are an integral part of this Stipulation, and are incorporated in their entirety by reference), the following terms and phrases have the following meaning, unless a section or subsection of this Stipulation or its exhibits provides otherwise. Unless otherwise indicated, defined terms include the plural as well as the singular. Other capitalized terms used in this Stipulation but not defined above shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

2.2 **“Action”** means the civil action pending in the United States District Court for the Eastern District of New York, *Jovel v. i-Health, Inc.*, 1:12-cv-05614-JG-MDG.

2.3 **“Agreement,” “Settlement Agreement,” or “Stipulation”** means this settlement agreement, including all Exhibits hereto.

2.4 **“BrainStrong Products”** means the i-Health-branded dietary supplement products at issue in the Action, containing DHA, including: BrainStrong Toddler, BrainStrong Kids, and BrainStrong Adult.

2.5 **“Claimant”** or **“Class Claimant”** means a Settlement Class Member that submits a Claim Form.

2.6 **“Claims Administrator”** means KCC LLC, or equivalent class action administration firm identified by the Parties and approved by the Court to administer and oversee, among other things, the processing, handling, reviewing, and approving of claims made by Claimants; communicating with Claimants; and distributing payments to qualified Claimants.

2.7 **“Claim Form”** means the document that Settlement Class Members seeking cash or vouchers must complete in satisfaction of the document’s terms and sign under penalty of perjury and submit to the Claims Administrator in order to obtain the relief provided in this Agreement. The Claim Form will be available online at the Settlement Website and will be substantially the same as Exhibit A.

2.8 **“Claim Period Close Date”** means the date 120 days (not including the day of the event) following the later of: (i) the last published notice in the publications identified in the Notice Plan; or (ii) establishment of the Settlement Website.

2.9 **“Class Settlement Notice,” “Class Notice,”** or **“Notice”** means the Court-approved notices entitled “Notice of Proposed Class Action Settlement,” and substantially in the forms attached hereto as Exhibits B (Long-form Notice), C (Short-form Notice), and D (E-mail Notice), but which may be modified as necessary to comply with the provisions of any order of Preliminary Approval entered by the Court, and which are to be provided to the Settlement Class Members pursuant to this Agreement.

2.10 **“Court”** means the United States District Court for the Eastern District of New York.

2.11 **“Competent and Reliable Scientific Evidence”** means tests, analyses, research, or studies that have been conducted by a qualified person in an objective manner and are generally accepted in the profession to yield accurate and reliable results. When that evidence consists of a human clinical trial, i-Health must maintain all underlying or supporting data and documents that experts in the field generally would accept as relevant to an assessment of such testing.

2.12 **“Defendant’s Counsel”** means the law firm Hogan Lovells US LLP.

2.13 **“E-mail Notice”** means the Class Settlement Notice substantially in the form attached hereto as Exhibit D.

2.14 **“Fairness Hearing”** means the hearing that is to take place after the entry of a Preliminary Approval order and after the Notice Date for purposes of: (a) determining whether the Settlement should be approved as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (b) entering the Settlement Order and Judgment and dismissing the Action with prejudice; and (c) ruling upon an application by Representative Plaintiffs’ Counsel for an award of attorneys’ fees.

2.15 **“Fee and Expense Award”** means the amount awarded to Representative Plaintiffs’ Counsel by the Court for reasonable attorneys’ fees, costs and expenses, up to two-hundred fifty thousand dollars (\$250,000).

2.16 **“Final Approval”** means the Court’s entry of the Settlement Order and Judgment following the Fairness Hearing.

2.17 **“Final Settlement Approval Date”** means the date thirty-five (35) days after the Court enters the Settlement Order and Judgment on the Parties and all objectors to the Settlement Agreement, if any, without any appeal being taken, or if an appeal or request for review has been

taken, the date on which the Settlement Order and Judgment has been affirmed or modified by the court of last resort to which an appeal or request for review has been taken and such affirmance or modification is no longer subject to further appeal or review, or the date of denial of review after exhaustion of all appellate remedies, or the date on which all appellate rights with respect to the Settlement Order and Judgment have expired.

2.18 **“Long-form Notice”** means the Class Settlement Notice substantially in the form attached hereto as Exhibit B.

2.19 **“Incentive Awards”** means any award sought by application to and approved by the Court that is payable to the Representative Plaintiffs, up to one thousand dollars each (\$1,000 for each Representative Plaintiff).

2.20 **“Notice Plan”** means the Parties and Claims Administrator’s plan to disseminate Class Notice to Settlement Class Members, as described in Section 6 below.

2.21 **“Notice and Other Administrative Costs”** means all necessary fees of, and costs and expenses actually incurred by, the Claims Administrator including: the publication of Class Notice and the notification duties imposed by 28 U.S.C. § 1715, establishment of the Settlement Website and the processing, handling, reviewing, and paying of all cash and voucher claims made by Claimants.

2.22 **“Notice Date”** means the date(s) that the Notice is published in accord with the plan of notice set forth below in Section 6, as authorized by the Court.

2.23 **“Notice of Missing Information”** means the notice sent by the Claims Administrator to a Claimant who has submitted a Claim Form with inaccurate, disqualifying, incomplete or missing information that is required for the Claimant to be considered eligible for the relief provided by this Settlement.

2.26 **“Parties”** means Plaintiffs Amy Jovel, Michael Yee, and Defendant i-Health.

2.28 **“Plaintiffs’ Counsel”** or **“Class Counsel”** means the law firms Faruqi & Faruqi, LLP, and Bonnett Fairbourn Friedman & Balint, P.C.

2.30 **“Preliminary Approval Date”** means the date on which the Court enters an order granting Preliminary Approval.

2.32 **“Released Claim”** means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or cost, attorneys’ fee or expense, action or cause of action, of every kind and description that a Releasing Party had or has, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as

individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party in the Action against any of the Released Parties arising out of or relating to the allegations in the complaints filed in the Action.

2.33 **“Released Persons” or “Released Parties”** means i-Health, all of i-Health’s past and present respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or their control in the past or in the present, including but not limited to Royal DSM N.V. and DSM Nutritional Products LLC; i-Health’s respective assignors, predecessors, successors and assigns; and the past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers, accountants and representatives of any and all of the foregoing.

2.34 **“Releasing Party”** means the Representative Plaintiffs, each Settlement Class Member, and any Person claiming by or through him/her/it as his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate.

2.35 **“Representative Plaintiffs” or “Class Plaintiffs”** means the named Plaintiffs in the Action: Amy Jovel and Michael Yee.

2.36 **“Request for Exclusion”** means the written communication that a Settlement Class Member must submit to the Claims Administrator by the Objection/Exclusion Deadline in order to be excluded from the Settlement as provided for in paragraphs 9.6 – 9.7 below.

2.37 **“Settlement”** means the settlement embodied in this Agreement.

2.38 **“Settlement Class Members”** or **“Settlement Class”** means: All consumers in the United States who purchased the BrainStrong Products during the Settlement Class Period. Excluded from this definition are the Released Persons, any government entities, and persons who made such purchase for the purpose of resale. Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in paragraphs 9.6 – 9.7 below, shall no longer thereafter be Settlement Class Members and shall not be bound by this Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of this Settlement Agreement.

2.39 **“Settlement Class Period”** means the period of time from and including January 1, 2011, up to and including the Preliminary Approval Date

2.40 **“Settlement Order and Judgment”** means an order and judgment issued and entered by the Court approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members and dismissing the Action with prejudice, and setting the amount for an award of attorneys’ fees, costs and expenses, not to exceed two-hundred fifty thousand dollars (\$250,000), to Plaintiffs’ Counsel by the Court. The Settlement Order and Judgment shall constitute a judgment within the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure.

2.41 **“Settlement Website”** means a website to be established, operated and maintained by the Claims Administrator solely for purposes of making available to the Settlement Class Members the documents, information and online claims submission process referenced in this Agreement. The Settlement Website shall be activated no later than forty five (45) days after the Court enters the Preliminary Approval Order.

2.42 “**Summary Notice**” or “**Short-form Notice**” means the Class Settlement Notice substantially in the form attached hereto as Exhibit C.

3. SETTLEMENT RELIEF AND CONSIDERATION

Damages/Compensation

3.1 Damages/Compensation. Defendant shall offer to any Class Member who submits a valid Claim Form to the Class Action Administrator, on or before the Claim Period Close Date (a) a full refund of the price paid by the Claimant for a BrainStrong Product, if the Claim Form is accompanied by a valid Proof of Purchase indicating the actual price paid; (b) a refund based on the average retail price for the BrainStrong Product set out in Exhibit F, if the Claim Form is accompanied by a valid Proof of Purchase that does not indicate the actual purchase price paid; or (c) if the Claim Form is not accompanied by a valid Proof of Purchase, at the Claimant’s option, either (i) \$4.00 in cash value or (ii) \$6.50 in voucher value toward the purchase of any i-Health product. Each Claimant who submits a valid Claim Form without valid Proof of Purchase shall receive a maximum value of \$4.00 in cash value or \$6.50 in voucher value. In addition, no more than two Claimants per household shall receive \$4.00 in cash value and/or \$6.50 in voucher value if they submit their Claim Forms without a valid Proof of Purchase. The eligibility requirements for Claimants are described in further detail in Section 8 below.

3.2 Such cash and voucher compensation shall be disbursed after the Final Settlement Approval Date by the Claims Administrator and mailed to Claimants following the Final Settlement Approval Date, no later than 30 days after the later of: (i) the Final Settlement Approval Date; or (ii) the date the Claims Administrator approves a claim. No payment shall be made with respect to any claims that are denied in accordance with this Agreement.

Injunctive Relief

3.3 Subsequent to the filing of the Action, i-Health discontinued marketing and selling the BrainStrong Products. For prospective relief, i-Health agrees that it shall refrain from selling BrainStrong Products unless any representations regarding the health benefits, performance, safety, or efficacy of the BrainStrong Products are supported by Competent and Reliable Scientific Evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence.

4. PLAINTIFFS' COUNSEL ATTORNEYS' FEES AND EXPENSES

4.1 Attorneys' Fees and Expenses. Plaintiffs' Counsel will petition the Court for an award of reasonable attorneys' fees and expenses. Plaintiffs' Counsel agree that they will not seek more than a cumulative total of \$250,000 in attorneys' fees and expenses. To the extent approved and ordered by the Court, and affirmed or modified on appeal, if any, i-Health will pay a Fee and Expense Award in an amount not to exceed two-hundred-fifty thousand dollars (\$250,000).

4.2 The payment by i-Health of attorneys' fees and expenses is separate from and in addition to the relief afforded the Settlement Class Members in this Agreement.

4.3 The Fee and Expense Award shall be the total obligation of i-Health to pay Plaintiffs' Counsel for attorneys' fees and/or expenses of any kind (including, but not limited to, travel, filing fees, court reporter expenses, expert fees and costs, and document review and production costs).

4.4 The payment of Class Counsels' fees shall be made to Faruqi & Faruqi, LLP as agent for Class Counsel for distribution to and among Plaintiffs' Counsel, in accordance with and delivery of wire instructions/routing information and tax I.D. numbers by Faruqi & Faruqi, LLP. i-Health shall pay the Fee and Expense Award by wire transfer to Plaintiffs' Counsel within sixty (60)

days after the later of the Final Settlement Approval Date and the delivery to i-Health of all payment routing information and tax I.D. numbers for Plaintiffs' Counsel. Plaintiffs' Counsel shall be responsible for allocating and shall allocate all attorneys' fees and expenses that are awarded by the Court and paid by i-Health amongst and between Plaintiffs' Counsel, and i-Health shall have no responsibility, role or liability in connection with such allocation. The Court's award of any fees and expenses shall be separate from its determination of whether to approve this Agreement. In the event the Court approves the Settlement set forth in this Agreement, but declines to award fees and expenses in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement in this Agreement, the Fee and Expense Award shall not be paid, and no attorneys' fees and expenses shall be paid.

4.5 If any subsequent court order or judgment renders the Fee and Expense Award unenforceable for any reason, or reduces the Fee and Expense Award for any reason, to the extent the Fee and Expense Award or a portion thereof has been paid by i-Health already, Plaintiffs' Counsel shall reimburse i-Health for such amounts already paid.

4.6 The Parties negotiated and reached agreement on the Class Counsel fees and expenses only after reaching agreement on all other material terms of this Agreement.

5. CLASS REPRESENTATIVE AWARDS

5.1 Incentive Awards. Class Counsel shall petition the Court for, and i-Health shall not oppose, an incentive award in an amount of \$1,000 to each of the Representative Plaintiffs, in recognition of their efforts on behalf of the Settlement Class. The Court's award of any Class Representative Incentive Award shall be separate from its determination of whether to approve the Settlement as set forth in this Agreement. In the event the Court approves the Settlement, but

declines to award a Class Representative Incentive Award in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement, no Class Representative Incentive Award shall be paid. i-Health shall pay such awards by wire transfer to Plaintiffs' Counsel within forty (40) days after the later of the Final Settlement Approval Date and the delivery to i-Health of all payment routing information and tax I.D. numbers for Representative Plaintiffs. Payment by i-Health of the Class Representative Incentive Awards is separate from, and in addition to, the other relief afforded to the Settlement Class Members in this Agreement.

6. NOTICE OF SETTLEMENT

6.1 Cost of Notice. The Notice and Other Administrative Costs shall be paid by i-Health.

6.2 Notice to State and Federal Officials. In compliance with the Attorney General notification provision of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1715, within ten (10) days after the motion for Preliminary Approval is filed, i-Health shall cause notice of this proposed Settlement to be served on the Attorney General of the United States, and the attorneys general of each state or territory in which a Settlement Class Member resides. i-Health shall file with the Court a certification stating the date(s) on which the CAFA notices were sent. i-Health will provide Class Counsel with any substantive responses received in response to any CAFA notice served by it.

6.3 Class Settlement Notice. The Class Settlement Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

6.4 Content of Class Settlement Notice. The Class Notice shall:

- a. Inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
- b. Inform Settlement Class Members of their rights to exclude themselves from the Settlement Class or object to the proposed settlement, as described in Section 9 below;
- c. Contain a short, plain statement of the background of the Action, the Class certification and the proposed settlement;
- d. Describe the proposed settlement relief outlined in this Stipulation;
- e. Explain the impact of the proposed settlement on any existing litigation, arbitration or other proceeding;
- f. Advise Settlement Class Members that Objections to the Agreement, and papers submitted in support of said Objections, shall only be considered at the Fairness Hearing if they are submitted pursuant to the procedures set forth pursuant to this Agreement;
- g. Advise Settlement Class Members that the time and place of the Fairness Hearing may change and shall be posted on the Settlement Website;
- h. State that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement;
- i. Direct Settlement Class Members to the Settlement Website where an electronic or printable version of the Claim Form shall be located;
- j. Provide instructions for contacting Class Counsel and the Claims Administrator in order to obtain a paper Claim Form or otherwise; and
- k. Contain other information as agreed to by the Parties.

6.5 Subject to the Court's approval, copies of (i) the Short-form Notice will be disseminated through publication and posted to the Settlement Website, and will be substantially in the form attached hereto as Exhibit C; and (ii) the Long-form Notice will be posted to the Settlement Website. Class Counsel shall also have the option of posting Class Notice on their respective websites. The Class Notice shall also be sent via electronic mail or regular mail to those Class Members who so request.

6.6 Notice Plan/Time and Manner of Notice. Upon Preliminary Approval of this Agreement, i-Health or its designee shall cause the Class Settlement Notice to be made as follows:

- a. Publication Notice. i-Health or its designee will cause the Short-form Notice, in the form approved by the Court, to be published to the Settlement Class Members on or before the date specified in the Preliminary Approval Order, including once in *People Magazine*; twice in *USA Today*; as well as 30 days of Internet banner notifications which contain links to the Settlement Website.
- b. Direct Notice. i-Health or its designee, through the Claims Administrator, will cause the E-mail Notice, in the form approved by the Court, to be sent on or before the date specified in the Preliminary Approval Order, to each person reasonably identified as a potential class member because that person (i) expressed an interest in one or more of the BrainStrong Products during the Class Period, and (ii) provided an e-mail address through the Products' website during the Class Period. The E-mail Notice will be sent to the e-mail address that i-Health has on file, as entered by the potential class member on the Products' website. The E-mail Notice shall include a hypertext link to the Settlement Website. If any E-mail Notices are returned as undeliverable, Summary Notice

shall be mailed by the Claims Administrator, if a physical address is available, to the last known physical address that i-Health has on file.

- c. Website Notice. The Claims Administrator will establish a Settlement Website for the purposes of disseminating to Settlement Class Members the Class Settlement Notice, this Agreement, information relating to filing a claim, opting out of the Settlement, objecting to the Settlement, deadlines relating to the Settlement, pleadings and other information relevant to the Settlement. The Claims Administrator shall establish the Settlement website within 45 days of Preliminary Approval in this Action using a website name to be mutually agreed upon by the Parties.

7. ADMINISTRATION OF SETTLEMENT

7.1 Responsibilities of Claims Administrator. The Parties will retain one or more Claims Administrators (including subcontractors) to help implement the terms of the proposed Settlement Agreement. The Claims Administrator(s) shall be responsible for administrative tasks, including, without limitation, (a) arranging, as set forth in the Notice Plan, for publication of the Short-form Notice, sending the E-mail Notice, and posting of the Settlement Class Notice (in the forms set forth in Exhibits C, D, B) and distribution of the Claim Forms (in the form set forth in Exhibit A) to Settlement Class Members, (b) handling returned mail not delivered to Settlement Class Members, (c) attempting to obtain updated address information for Settlement Class Members and for any Class Notices returned without a forwarding address or an expired forwarding address, (d) making any mailings to State and federal officials, and Settlement Class Members, as required under the terms of this Stipulation, (e) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Plaintiffs' Counsel or their designee, (f) receiving and maintaining on behalf of the Court and the Parties any Settlement

Class Member correspondence regarding requests for exclusion to the settlement, (g) establishing and maintaining the Settlement Website that posts notices, Claim Forms and other related documents, (h) receiving and processing claims and distributing payments to Claimants, and (i) otherwise assisting with implementation and administration of the Settlement Agreement terms. All costs and expenses associated with the Claims Administrator, including among others, costs of providing notice to the Class Members and processing claims, shall be paid by i-Health.

7.2 General Claims Administration and Review of Claims. The Claims Administrator shall be responsible for reviewing and administering all claims to determine their validity. The Claims Administrator shall reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of this Agreement, or is submitted after the Claim Period Close Date.

7.3 Claims Process. The Claims Administrator shall retain copies of all claims submitted and all documentation of claims approved or denied and all payments made. The Claims Administrator agrees to be subject to the direction and authority of the Court with respect to the administration of the Settlement and the payment of refunds for Accepted Claims pursuant to the terms of this Agreement. Upon determining that a claim submitted pursuant to this Agreement is valid and determining the cash or voucher amount payable, the Claims Administrator shall notify i-Health and Class Counsel of that determination. i-Health shall have 30 days following this notice to challenge the claim. i-Health shall be permitted to submit to the Claims Administrator, with a copy to Class Counsel, any information demonstrating that the submitted claim is not valid. The Claims Administrator may then contact the Settlement Class Member who submitted the claim to request any further information. The Claims Administrator shall then make a final determination that is not challengeable by any Party.

7.4 Cash Benefit—Uncleared Checks. Those Settlement Class Members whose cash benefit checks are not cleared within one hundred eighty (180) days after issuance shall be ineligible to receive a cash settlement benefit and i-Health shall have no further obligation to make any payment pursuant to this Settlement Agreement or otherwise to such Settlement Class Members.

7.5 Performance Standards of Claims Administrator. The contract with the Claims Administrator shall obligate the Claims Administrator to abide by the following performance standards:

- a. The Claims Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Stipulation in communications with Settlement Class Members;
- b. The Claims Administrator shall provide prompt, accurate and objective responses to inquiries from Plaintiffs' Counsel or their designee, Defendant and/or Defendant's Counsel, and shall periodically report on claims, objectors, etc.

8. ELIGIBILITY OF CLASS CLAIMANT FOR RELIEF

8.1 Eligibility. To be eligible to receive relief under this Agreement, Settlement Class Members must submit a claim to the Claims Administrator by completing and certifying the online Claim Form on the Settlement Website or completing, certifying and mailing the Claim Form to the Claims Administrator. The Claim Form must be submitted online or postmarked no later than the Claim Period Close Date. Claim Forms submitted or postmarked after the Claim Period Close Date shall be denied by the Claims Administrator and i-Health will not be obligated to make any payment on such claims.

8.2 Validity of Claim Forms. No Claim Form will be deemed valid unless it is completed in satisfaction of the terms of the Claim Form, is signed in hard copy or in online form by the

Settlement Class Member under penalty of perjury, and is postmarked on or before the Claim Period Close Date.

8.3 Proof of Claim. Proof of claim for cash compensation or for i-Health product-voucher compensation must be submitted as follows:

- a. For a Claimant making a claim for the full refund of the purchase of a BrainStrong Product, Claimant must provide a Proof of Purchase indicating the actual price paid for the BrainStrong Product, along with a valid and completed Claim Form indicating the BrainStrong Product purchase on which the claim is based.
- b. For a Claimant making a claim for a refund of the purchase of a BrainStrong Product in accordance with Exhibit F (average retail price), Claimant must provide a Proof of Purchase along with a valid and completed Claim Form indicating the BrainStrong Product purchase on which the claim is based.
- c. For a Claimant making a claim for either (i) \$4.00 in cash for the purchase of a BrainStrong Product, or (ii) a \$6.50 voucher for the purchase of a BrainStrong Product, Claimant must submit: (a) a completed Claim Form, either electronically online on the Settlement Website or in hard copy and mailed to the Claims Administrator, confirming under penalty of perjury (i) the specific BrainStrong Product purchased, (ii) the location/retailer where the BrainStrong Product was purchased; and (iii) that the purchase was made within the Class Period. A maximum number of one (1) claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member under this subsection. A maximum

number of two (2) claims may be submitted per each Settlement Class Member's household under this subsection.

8.4 Review by Claims Administrator. The Claims Administrator shall review all submitted Claim Forms within a reasonable time to determine each Settlement Class Member's eligibility for relief, and the amount of such relief, if any. Copies of submitted Claim Forms shall be provided to i-Health's Counsel and to Class Counsel upon request. Settlement Class Members submitting valid Claim Forms shall be entitled to relief as set forth in this Agreement. Settlement Class Members that submit Claim Forms which are not eligible for relief based on the criteria set forth in this Agreement shall not be entitled to relief hereunder.

8.5 Incomplete Claims Form. Submitted Claim Forms containing inaccurate or disqualifying information, and/or submitted Claims Forms omitting required information shall be returned by the Claims Administrator via first class mail to the Settlement Class Member's address indicated on the Claim Form as part of a Notice of Missing Information. Settlement Class Members whose Claim Forms are returned shall have until the Claim Period Close Date, or 30 calendar days from when the Notice of Missing Information was mailed, whichever is later, to reply to the Notice of Missing Information and provide a revised Claim Form that includes all required information. If a Settlement Class Member fails to respond by the Claim Period Close Date or within 30 calendar days from when the Notice of Missing Information was mailed, whichever is later, or the Claims Administrator is unable to return the Submitted Claim Form as a result of the omitted information, the Claims Administrator will reject such Settlement Class Member's claim, and i-Health will not be obligated to make any payment on such claim.

9. EXCLUSIONS AND OBJECTIONS

9.1 Exclusions and Objections. Settlement Class Members shall have the right to appear and present Objections as to any reason why the terms of this Agreement should not be given Final

Approval. Any Objection must be in writing and filed with the Court, with a copy delivered to Class Counsel and Defense Counsel at the addresses set forth in the Class Settlement Notice, no later than the Objection/Exclusion Deadline.

9.2 Objections. Any Objection regarding or related to the Agreement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Jovel v. i-Health, Inc.*” and also shall contain information sufficient to identify and contact the objecting Settlement Class Member, as well as a clear and concise statement of the Settlement Class Member’s objection, documents sufficient to establish the basis for the Settlement Class Member’s standing (i.e., verification under oath as to the date and location of their purchase of a BrainStrong Product or a Proof of Purchase reflecting such purchase), the facts supporting the objection, and the legal grounds on which the objection is based, and shall be served upon i-Health’s Counsel and Class Counsel so that such papers are actually received by said counsel by the date specified in the Class Settlement Notice.

9.3 No Settlement Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) or to object to the Agreement, and no written objections or briefs submitted by any Settlement Class Member shall be received or considered by the Court at the Fairness Hearing, unless written notice of the Settlement Class Member’s intention to appear at the Fairness Hearing, and copies of any written Objections or briefs, shall have been filed with the Court and served on counsel for the Parties on or before the Objection/Exclusion Deadline.

9.4 Settlement Class Members who fail to file and timely serve written Objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed

from making any objection (whether by appeal or otherwise) to the Settlement Agreement and shall be bound, to the extent allowed by law, by the terms of the Settlement Agreement.

9.5 Right to Respond to Objections. Class Counsel and i-Health shall have the right to respond to any objection prior to the Fairness Hearing.

9.6 Requesting Exclusion/“Opt Out.” Any Settlement Class Member who does not wish to participate in this Settlement must submit a Request for Exclusion to the Claims Administrator stating an intention to be “excluded” from this Settlement. The request for exclusion must contain the Settlement Class Member's name, current address, and telephone number. The Request for Exclusion must be either (i) personally signed by the Settlement Class Member, dated and mailed to the Claims Administrator and postmarked on or before the Objection/Exclusion Deadline, or (ii) electronically signed by the Settlement Class Member, and submitted to the Claims Administrator through the Settlement Website on or before the Objection/Exclusion Deadline. So-called “mass” or “class” opt-outs shall not be allowed. The date of the postmark on the return mailing envelope and/or the date of online submission through the Settlement Website shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member whose request to be excluded from the Settlement Class is approved by the Court will not be bound by this Settlement Agreement or have any right to object, appeal or comment thereon.

9.7 Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound, to the extent allowed by law, by all terms of the Settlement Agreement and any Judgment entered in the Action if the Settlement Agreement is approved by the Court, regardless of whether they have requested exclusion from the Class.

9.8 No Solicitation of Objections or Exclusions. The Parties and their counsel agree to use their best efforts to carry out this Agreement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage any Party or Settlement Class Member to submit written objections to this Agreement or appeal from the Court's judgment/Final Approval.

10. CLASS SETTLEMENT PROCEDURES

10.1 Preliminary Approval of Settlement. As soon as reasonably practicable after the signing of this Settlement Agreement, Representative Plaintiffs shall file with this Court a Motion for a Conditional Class Certification and Preliminary Approval of Class Settlement Order (an Order substantially in the form as that attached hereto as Exhibit E), which, in accordance with the terms of this Settlement Agreement, for settlement purposes only, would:

- a. Conditionally certify the Settlement Class;
- b. Preliminarily approve the terms and conditions of this Settlement Agreement as fair, reasonable and adequate and in the best interests of the Settlement Class Members;
- c. Approve and authorize the Notice Plan and the Class Settlement Notice to the Settlement Class Members;
- d. Approve the Claims Administrator;
- e. Appoint Representative Plaintiffs and Class Counsel; and
- f. Set a Fairness Hearing.

10.2 Stay of the Action. The Parties shall request that the Court, in connection with Preliminary Approval, issue an immediate stay of the Action. Following Preliminary Approval, all activity in the Action shall be stayed except to the extent necessary to effectuate this Agreement unless and until this Agreement is terminated pursuant to its terms and conditions.

10.3 Provision of Preliminary Approval Motion Papers. Representative Plaintiffs shall provide a draft of all papers supporting said Conditional Class Certification and Preliminary Approval of Class Settlement Motion to i-Health's Counsel for review at least seven (7) calendar days before the Motion is filed or due to be filed.

10.4 Final Approval of Settlement. At or before the Fairness Hearing, Representative Plaintiffs shall move for entry of a Settlement Order and Judgment. Class Counsel shall petition the Court for a Settlement Order and Judgment that: (1) confirms the certification of the Settlement Class as defined above; (2) dismisses this Action, with prejudice, upon the Final Settlement Approval Date; (3) decrees that neither the Final Approval nor this Agreement constitutes an admission of liability, fault or wrongdoing; (4) releases the Released Parties from the Released Claims of the Releasing Parties; (5) finds that this Agreement is entered into in good faith, is reasonable, fair and adequate, and is in the best interest of the Settlement Class Members who have not excluded themselves; (6) orders that the Settlement relief be provided as set forth in this Settlement Agreement, and (7) makes such other orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

10.5 Fairness Hearing. The Court shall conduct a Fairness Hearing so that the Court may review any Objections to this Agreement, consider the fairness, reasonableness and adequacy of this Agreement and consider the petition for Final Approval and Class Counsel's Application for a Fee and Expense Award. The date of the Fairness Hearing shall be posted on the Settlement Website in advance of the hearing. If the date of the Fairness Hearing is subsequently modified by the Court, no further notice is required to be published to Settlement Class Members, except that the Parties will notify any Settlement Class Member who has filed a timely Objection in writing of any change to the date of the Fairness Hearing.

10.6 Dismissal of this Action. The Final Approval shall provide that this Action shall be dismissed, with prejudice, upon the Final Settlement Approval Date.

11. TERMINATION

11.1 Withdrawal of Settlement. Any Party may by written notice to the other Parties withdraw from and decline to proceed with the Settlement for any reason at any time, and the Settlement shall have no effect, unless and until this Settlement Agreement is fully executed by all Parties.

11.2 Effect if Settlement Not Approved. This Settlement Agreement was entered into only for purposes of settlement, subject to and without waiver of the Parties' respective rights. In the event that the Court fails to enter the order granting Preliminary Approval or fails to grant final approval, or in the event the Final Settlement Approval Date does not occur, Plaintiffs' Counsel and Defendant's Counsel shall endeavor, consistent with the Settlement Agreement, to cure any defect identified by the Court. In the event that the Settlement Agreement is terminated for any reason, final approval does not occur for any reason, or the Final Settlement Approval Date does not occur, then no term or condition of the Settlement Agreement, or any draft thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding, the Parties' shall be restored to their respective positions immediately preceding execution of this Settlement Agreement, including with regard to any agreements concerning tolling and similar agreements. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to the Settlement Agreement and the Parties' settlement discussions shall be treated as strictly confidential and may not be disclosed to any person other than the Parties' counsel, and only for purposes of the Action, absent a court order. i-Health's rights with respect to class certification expressly are reserved and preserved.

11.3 Party Status upon Termination. In the event the Agreement is terminated in accordance herewith, vacated, or fails to become effective for any reason, then the Parties to this Agreement shall be deemed to have reverted to their respective status in the Action as of the date of this Agreement and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered.

12. RELEASES

12.1 Release by Settlement Class Members. Effective as of the Final Settlement Approval Date, each and all of the Releasing Parties shall release and forever discharge, and shall be forever be barred from asserting, instituting or maintaining against any or all of the Released Persons or Released Parties, any and all of the Released Claims.

12.2 Additional Releases. Except as to the rights and obligations provided for under this Agreement, i-Health releases and forever discharges as of the Effective Date the Representative Plaintiffs, Settlement Class, and Settlement Class Counsel from any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, which the Released Parties may now have, own or hold or which the Released Parties at any time may have, own, or hold, against the Representative Plaintiffs, Settlement Class, or Settlement Class Counsel arising out of the Action and/or the Settlement.

12.3 Effectuation of Settlement. None of the above releases includes releases of claims or otherwise affects rights to enforce the terms of the Settlement Agreement.

12.4 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to

carry out this Settlement Agreement, are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, defense, or of any point of fact or law on the part of any Party. i-Health denies the material allegations of each of the complaints filed in this Action. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by any or all of the Released Persons, or be offered or received in evidence as an admission, concession, presumption or inference of any wrongdoing by any or all of the Released Persons in any proceeding, other than such proceedings as may be necessary to consummate, interpret or enforce this Settlement Agreement.

13. CERTIFICATION OF THE SETTLEMENT CLASS

13.1 Certification of Settlement Class For Settlement Purposes. The Parties agree, for settlement purposes only, that this Action shall be certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(3), with a class consisting of all Settlement Class Members, and with the named Plaintiffs as Representative Plaintiffs and Plaintiffs' Counsel as counsel for the Settlement Class Members. Any certification of a conditional, preliminary or final settlement class pursuant to the terms of this Settlement shall not constitute, and shall not be construed as, an admission on the part of i-Health that this Action, or any other proposed or certified class action, is appropriate for class treatment for any other purpose pursuant to Federal Rule of Civil Procedure 23 or any similar state or federal class action statute or rule. This Settlement Agreement shall be without prejudice to the rights of i-Health to: (a) move to dismiss or stay this Action on any applicable basis; (b) oppose final certification in this Action should this Settlement Agreement not be approved or implemented for any reason; or (c) oppose certification in any other proposed or certified class action. Neither the fact of this settlement

nor this Settlement Agreement shall be used in connection with efforts in any proceeding to seek certification of any claims asserted against i-Health.

13.2 This Agreement, whether or not consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Agreement are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits, nor any communications exchanged nor actions taken pursuant to or during the negotiation of this Agreement, shall constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim asserted or fact alleged in this Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of i-Health.

13.3 This Agreement and all negotiations, correspondence and communications leading up to its execution shall be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles. Neither this Agreement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Agreement, shall constitute a precedent or be admissible for any purpose in any proceeding; provided, however, that this Agreement shall be admissible in any proceeding related to the approval of this Agreement, to enforce any of its terms and conditions, to support or defend this Agreement in an appeal from an order granting or denying Final Approval, or to enforce or assert a claim or defense of res judicata, collateral estoppel, claim preclusion, issue preclusion, settlement, release, merger and bar, or any similar claim or defense against the Representative Plaintiffs, any Settlement Class Member, or any third party.

14. MISCELLANEOUS PROVISIONS

14.1 Reasonable Efforts. Subject to the other terms and conditions of this Settlement Agreement, the Parties and their respective counsel shall use reasonable efforts to cause the

Court to give Preliminary Approval to this Settlement Agreement as promptly as practicable, to take all steps contemplated by this Settlement Agreement that are necessary (by order of the Court or otherwise) to effectuate the Settlement on the stated terms and conditions, and to obtain Final Approval of this Settlement Agreement and achieve a Final Settlement Approval Date.

14.2 Time for Compliance. If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

14.3 Governing Law. This Settlement Agreement is intended to and shall be governed by the laws of the State of New York without giving effect to principles of conflicts of laws.

14.4 Entire Agreement. The terms and conditions set forth in this Settlement Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement constitutes the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Settlement Agreement.

14.5 Amendment or Modification. This Agreement may not be changed, modified, or amended except in writing signed by all Parties (or their successors-in-interest) and approved by the Court. Notwithstanding the foregoing, amendments and modifications may be made without additional notice to the Class Members unless such notice is required by the Court. Moreover, the claims process set forth above may be modified by mutual agreement of the Parties without

Court approval and the Parties may agree to reasonable extensions of time in which to accomplish the tasks required by the terms and conditions of this Agreement, which shall not be unreasonably withheld.

14.6 Advice of Counsel. The determination of the terms and the drafting of this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel.

14.7 Binding Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Parties, the Settlement Class Members and the other Released Persons.

14.8 No Waiver. The waiver by any Party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or breach of this Settlement Agreement.

14.9 Assignment of Claims. The Parties warrant and represent that no claim or any portion of any claim referenced or released in this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other entity or Person.

14.10 Execution in Counterparts. This Settlement Agreement shall become effective upon the last day of execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. The Parties further agree that signatures provided by .pdf or other electronic transmission shall have the same force and effect as original signatures.

14.11 Authority. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients.

14.12 Publicity. The parties shall limit public comment on the Settlement to the fact that there has been an amicable settlement, and in doing so may refer to the Settlement Agreement, Settlement Website, Notices, or may otherwise refer to and make representations in accordance with the Notice Plan.

14.13 Time Periods. The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendant's Counsel, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

14.14 Enforcement of this Settlement Agreement. The Court shall retain jurisdiction, and shall have exclusive jurisdiction, to enforce, interpret and implement this Settlement Agreement, including any alleged violation of paragraph above, and the terms of any order entered pursuant to this Settlement Agreement.

14.15 Notices. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by email and mail to the following addresses:

- a. If to Representative Plaintiffs, Settlement Class Members or Plaintiffs' Counsel:

Patricia N. Syverson
Bonnett Fairbourn Friedman & Balint, P.C.
2325 E. Camelback Road, #300
Phoenix, AZ 85016
Telephone: (602) 274-1100
psyverson@bffb.com

- b. If to i-Health or Defendant's Counsel:

Frank Spano
Hogan Lovells US LLP
875 Third Avenue

New York, NY 10022
Telephone: (212) 918-3000
frank.spano@hoganlovells.com

IN WITNESS WEHREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorities counsel of record or other duly authorities person all as of the day set forth below.

Dated: January 29, 2016

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

By: 

Patricia N. Syverson
Bonnet Fairbourn Friedman & Balint, P.C.
2325 E. Camelback Rd., Suite 300
Phoenix, AZ 86016
Telephone: (602) 776-5925
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Los Angeles, CA 90024
Tel: (424) 256-2884
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Email: dbower@faruqilaw.com

VOZZOLO LLC
Antonio Vozzolo
345 Route 17 South
Upper Saddle River, NJ 074578
Tel: 201-630-8820 Fax: 201-604-8400
Email: avozzolo@vozzolo.com

Co-Class Counsel for Plaintiffs

Dated: January 29, 2016

HOGAN LOVELLS US LLP

By: 

Frank Spano
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000

frank.spano@hoganlovells.com

Counsel for Defendant i-Health, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMY JOVEL and MICHAEL YEE, On
Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

I-HEALTH, INC., a Delaware Corporation

Defendant.

Case No.: 1:12-cv-05614-JG-MDG

CLAIM FORM AND INSTRUCTIONS

In order for you to qualify to receive a payment related to *Jovel v. i-Health, Inc.*, as described in the Notice of this Settlement (the "Class Notice"), you must file a Claim Form, as described below, to substantiate your claim.

REQUIREMENTS FOR FILING A CLAIM FORM

Your claim will only be considered upon compliance with all of the following conditions:

1. Please review the Notice of Proposed Class Action Settlement (the "Notice") and have the Notice with you when you complete your Claim Form. A copy of the Notice is available at www._____.com.
2. You must accurately complete all required portions of this Claim Form.
3. You must sign this Claim Form, which includes the Certification.
4. By signing and submitting this Claim Form, you are certifying under penalty of perjury that you purchased one or more BrainStrong Products during the period January 1, 2011 to [Date of Preliminary Approval].
5. In order for you to receive a full monetary refund of the actual purchase price paid, you must submit a Proof of Purchase that documents the actual price paid with this Claim Form. For Settlement Class Members who submit Proof of Purchase that does not document actual price paid, i-Health will offer a monetary refund of average retail price for every BrainStrong Product purchased by the claimant. Proof of Purchase includes: (1) cash register receipt, (2) cancelled check, or (3) product package, or (4) other similar type of documentation reflecting the purchase of a BrainStrong Product or the purchase price paid for a BrainStrong Product. For Settlement Class Members without Proof of Purchase, i-Health will offer the maximum value of \$4.00 in cash or \$6.50 in voucher value.
6. In order for you to receive a cash or voucher award as part of this Settlement, you must submit a completed Claim Form. You may submit a completed Claim Form online at www._____.com on or before ____, 2016. Alternatively, you may also mail the completed and signed Claim Form and Certification by First Class U.S. Mail, postage prepaid, postmarked no later than ____ to:

____ Settlement Administrator
P.O. Box ____

7. Your failure to complete and submit the Claim Form online on or before ____, 2016, or by regular mail postmarked by ____, 2016 will preclude you from receiving any payment in this Settlement. So that you will have a record of the date of your mailing of the Claim Form and its receipt by the Claims Administrator, you are advised (but are not required) to use certified mail, return receipt requested.

Submission of this Claim Form does not assure that you will share in the payments related to *Jovel v. i-Health, Inc.* Visit the website at www._____, where you will find more information concerning your legal rights.

Jovel v. i-Health, Inc.

CLAIM FORM

Please Print or type

I, _____, state as follows:

LAST NAME/ENTITY (Claimant)*

FIRST NAME (Claimant)*

Current Address*

Current City*

State*

Zip Code*

Telephone Number (Day)

Telephone Number (Night)

Email Address*

IDENTITY OF CLAIMANT (Check Appropriate box)

☐ Individual ☐ Legal Representative (attach information showing authority to submit claim) ☐ Other (specify on separate sheet)

CERTIFICATIONS*

I have read and am familiar with the contents of the Instructions accompanying this Claim Form and I certify under penalty of perjury that the information I have set forth in the foregoing Claim Form and in documents attached by me are true, correct and complete to the best of my knowledge.

I certify that the Claimant purchased BrainStrong Products during the period January 1, 2011 to [Date of Preliminary Approval], inclusive at the following location(s): _____

Name of Retailer(s) and State(s) of purchase

The number of BrainStrong Products, which include: BrainStrong Toddler, BrainStrong Kids, and BrainStrong Adult, the Claimant purchased between January 1, 2011 and [Date of Preliminary Approval] is _____. [Insert Quantity]

- Please note that if you are seeking a full refund or actual purchase price or refund of average retail price, you must submit a proof of purchase, such as receipts or invoices or other documentation.
- For Settlement Class Members without Proof of Purchase, i-Health will refund a maximum value of \$4.00 in cash or \$6.50 voucher value. Please indicate which option you prefer: ☐ \$4.00 cash ☐ \$6.50 voucher

The Claimant is not an officer, director, agent, servant or employee of the i-Health or any related entity thereof; a judge in this lawsuit; or an immediate family member of such persons; the Claimant did not purchase BrainStrong Products for resale or distribution to others; the Claimant has not received a refund for the BrainStrong Product(s) indicated on this Claim Form; and the Claimant has not requested exclusion from the Settlement.

I certify under penalty of perjury under the laws of the United States that all of the information provided on this Claim Form is true and correct to the best of my knowledge this ____ day of _____, 2016.

Signature

Print name here: _____

If the Claimant is other than an individual, or if the Claimant is not the person completing this form, the following must also be provided:

Name of person signing: _____

Capacity of person signing: _____
(Executor, President, Trustee, etc.)

ACCURATE CLAIMS PROCESSING TAKES TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above Claim Form.
2. Enclose a copy of your proof(s) of purchase, if you have them, along with the Claim Form.
3. Keep a copy of your Claim Form and supporting documentation for your records.
4. If you move or your name changes, please send your new address, new name or contact information to the Claim Administrator via the Settlement Website, mail or by calling the Claims Administrator's toll-free telephone number, each listed in the Notice.

*Fields or Sections are Required to be Completed.

EXHIBIT B

THIS IS AN IMPORTANT LEGAL NOTICE

**THE MATTERS DISCUSSED HEREIN MAY AFFECT
SUBSTANTIAL LEGAL RIGHTS THAT YOU MAY HAVE**

READ THIS NOTICE CAREFULLY

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

AMY JOVEL and MICHAEL YEE, On
Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

I-HEALTH, INC., a Delaware Corporation,

Defendant.

Case No.: 1:12-cv-05614-JG-MDG

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**If You Purchased a BrainStrong Product,
You May Benefit From A Proposed Class Action Settlement**

BrainStrong Products sold in the United States on or after January 1, 2011 are affected

The Federal Court authorized this Notice. This is not solicitation from a lawyer.

YOU ARE NOT BEING SUED. THIS IS NOT A LAWSUIT AGAINST YOU.

- Please read this notice carefully. A proposed settlement has been reached in a class action lawsuit. The lawsuit alleges violations of consumer protection and warranty laws, and claims that i-Health, Inc. (“i-Health”) misrepresented certain benefits of a group of supplements sold as “BrainStrong” brand products in the United States. i-Health denies all of these allegations. The Court did not rule in favor of Plaintiffs or i-Health. Instead the parties agreed to a proposed settlement in order to avoid the expense and risks of continuing the lawsuit.
- You are a Class Member if you purchased a BrainStrong brand product, including: BrainStrong Toddler, BrainStrong Kids, and BrainStrong Adult (collectively, the “BrainStrong Products”) in the United States between January 1, 2011 and [Date of Preliminary Approval].
- If you are eligible to participate in this settlement and submit valid Proof of Purchase of the actual price paid for the BrainStrong product, the proposed settlement will provide for a

full refund. If you submit a valid Proof of Purchase that does not demonstrate the actual purchase price that you paid, you will be eligible for a refund based on the average retail price of the BrainStrong Product that you purchased. If you submit a valid Claim Form without Proof of Purchase, you will be eligible for either (i) \$4.00 in cash, or (ii) a \$6.50 voucher toward the purchase of any i-Health Product.

Please read this Notice carefully and in its entirety.

**Your rights may be affected by the Settlement of this Lawsuit,
and you have a choice to make now about how to act:**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM POSTMARKED BY [DATE]	This is the only way to receive a cash payment or voucher.
EXCLUDE YOURSELF FROM THE CLASS BY [DATE]	If you opt out of the settlement, you will not be eligible to receive the Settlement Benefits, but you will keep your right to sue on your own regarding any claims that are part of the settlement.
OBJECT OR COMMENT BY [DATE]	You may write to the Court about why you do, or do not, like the Settlement. You must remain in the class to comment in support of or in opposition to the settlement.
APPEAR IN THE LAWSUIT OR ATTEND A HEARING ON [DATE]	You may ask to speak in Court about the fairness of the settlement. You may enter your appearance in Court through an attorney at your own expense if you so desire.
DO NOTHING	If you do nothing, you will receive no reimbursement. You also give up your right to sue i-Health on your own regarding any claims that are part of the settlement.

- These rights and options, **and the deadlines to exercise them**, are further explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. The settlement benefits will be made available if the Court approves the settlement and after any appeals are resolved.
- If you have any questions, then please read on and visit www._____.com.

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BASIC INFORMATION

1. Why Did I Get This Notice?

You or someone in your family may have purchased a BrainStrong Product on or after January 1, 2011 as described on page 1 of this notice. You also may have received this Notice because you requested more information after reading the Summary Notice.

The Court ordered that you be given this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the settlement. If the Court approves it, and after objections and appeals are resolved, an administrator approved by the Court will oversee the settlement benefits that the settlement allows. You will be informed of the progress of the settlement.

This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the case is the United States District Court for the Eastern District of New York, and the case is known as *AMY JOVEL AND MICHAEL YEE, on behalf of themselves and all others similarly situated v. I-HEALTH, INC.*, Case Number 1:12-cv-05614-JG-MDG. The people who sued are called Plaintiffs, and the company they sued, i-Health, Inc. (“i-Health”), is called the Defendant.

2. What Is This Lawsuit About?

The lawsuit alleges violations of consumer protection and warranty laws, and claims that i-Health misrepresented the efficacy of BrainStrong Products, which contained Docosahexaenoic acid (DHA) algal oil.

i-Health denies it did anything wrong, and the Court has not made any ruling on the merits of the allegations of the lawsuit. i-Health, however, has chosen to provide its customers with a cash payment and/or vouchers for BrainStrong Products rather than spending additional money on litigation.

3. What Is A Class Action and Who Is Involved?

In a class action, one or more people, called Class Representatives (in this case Amy Jovel and Michael Yee) represent the interests of people who have common claims that are more important than the issues that affect only individuals. All of these people are a Class or Class members. The named plaintiffs who sued are called the Plaintiffs. The company they sued (in this case, i-Health) is called the Defendant. One court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class.

4. Why Is There a Proposed Settlement?

The Court has not decided in favor of either side in the case. i-Health denies all allegations of wrongdoing or liability against it, and contends that its conduct was lawful. i-Health is settling to avoid the expense, inconvenience, and inherent risk of litigation, as well as the related disruption of its business operations. The Class Representatives and their attorneys assert that

the settlement is in the best interests of the Class, because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

WHO IS IN THE PROPOSED SETTLEMENT

To see if you will be entitled to the Settlement Benefits from this settlement, you first have to decide if you are a Class member.

5. How Do I Know If I Am Part of the Proposed Settlement?

You are a Class Member if you purchased any BrainStrong Products, including: BrainStrong Toddler, BrainStrong Kids, and BrainStrong Adult in the United States between January 1, 2011 and [Date of Preliminary Approval]. Excluded from this definition are the following: (a) i-Health or its affiliates; (b) retailers, wholesalers, and other middlemen who purchased BrainStrong Products for commercial use or resale; (c) persons who timely and validly exclude themselves from the Class; (d) state and federal governmental entities; and (e) the judge to whom this case is assigned and any member of the judge's immediate family.

THE PROPOSED SETTLEMENT BENEFITS

6. What Does the Proposed Settlement Provide?

The Proposed Settlement provides for benefits to be sent to eligible Class Members who complete and send in a valid Claim Form.

- For Settlement Class Members who submit a valid Claim Form with a Proof of Purchase that states the actual price paid for the BrainStrong Product, i-Health will issue a monetary refund of the actual receipt value for every BrainStrong Product purchased.
- For Settlement Class Members who submit a valid Claim Form with a Proof of Purchase that does not state the actual price paid, i-Health will issue a monetary refund of the average retail price for every BrainStrong Product purchased.
- For Settlement Class Members who submit a valid Claim Form without Proof of Purchase, i-Health will issue either a monetary refund of \$4.00 in cash or a \$6.50 voucher toward the purchase of any i-Health product. Settlement Class Members without Proof of Purchase can submit a maximum of one (1) claim, with a maximum of two (2) claims per household.
- All payments to Settlement Class Members who submit Valid Claims will be made within thirty (30) days after the later of (i) Settlement Order and Judgment becomes final ("Final Settlement Approval Date"); or (ii) the date a claim is approved. All Settlement Class Members who do not opt out of the Class Settlement and who submit a Valid Claim shall receive either a cash award or voucher, as set forth above.

In addition, i-Health will pay for Notice to the Class and administration costs of the settlement. Subject to Court approval, i-Health will also pay an incentive award not to exceed \$1,000 to each of the two Class Representatives in this lawsuit.

HOW YOU GET A PAYMENT — SUBMITTING A CLAIM FORM

7. How Can I Get a Payment From This Settlement?

Class members who wish to receive a payment must submit claims.

To submit a claim, you must complete a Claim Form. You can get a Claim Form on the Internet at http://www._____.com. Read the instructions carefully, and submit it online on or before [_____, ____] 2016. Alternatively, you may also submit your Claim Form by mailing it to the following address: _____. It must be postmarked no later than [_____, ____] 2016.

If you received this Notice in the mail or by e-mail, a Claim Form is enclosed.

TO BE VALID, ALL CLAIMS MUST BE POSTMARKED OR SUBMITTED NO LATER THAN [_____, ____] 2016.

8. What Do I Do If I Didn't Get a Claim Form in the Mail or By E-mail?

If you did not receive a Claim Form in the mail or by e-mail, you can obtain the Claim Form in one of three ways:

- (1) **Online:** You can download the Claim Form at www._____.com. You can also submit a Claim Form online through the same website.
- (2) **By Phone:** Call toll-free, 1-800 - _____.
- (3) **By Mail:** Write to _____. Be sure to include your name and mailing address.

YOUR RIGHTS AND CHOICES - EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

If you do not want to receive the settlement benefits from this settlement, but you want to keep the right to sue i-Health, on your own, about the subject matter of this lawsuit, then you must take steps to get out of the settlement. This is called excluding yourself – or is sometimes referred to as opting out of the Class.

9. How Do I Get Out or Exclude Myself From the Settlement?

To exclude yourself from the settlement, which is sometimes call “opting-out” of the Class, you must send a letter by mail or submit a form through the Settlement Website saying that you want to be excluded from this lawsuit. To exclude yourself from the Class, you must either (i) send a written request for exclusion that is **received** no later than [_____, ____] 2016, to: _____ Settlement Administrator, [address], or (ii) submit a form online through the Settlement Website no later than _____, 2016.

Your request for exclusion must contain: (1) the name of this lawsuit, “*JOVEL v. I-HEALTH, INC.*”, Case Number 1:12-cv-05614-JG-MDG; (2) your full name and current address; (3) a clear statement of intention to exclude yourself such as “I wish to be excluded from the Class”; and (4) your signature. You may also get an Exclusion Request Form at http://www._____.com.

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not get any settlement benefits, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) i-Health in the future.

10. If I Don’t Exclude Myself, Can I Sue i-Health for the Same Things Later?

No. If you do not properly and timely submit a request for exclusion, you waive your right to opt out and will be deemed to be a member of the Class. Unless you exclude yourself, you give up the right to sue i-Health for the claims that this settlement resolves, and you will be bound by the terms of this settlement. If you have a pending lawsuit against i-Health, other than this class action, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, any exclusion request must be signed, mailed, and postmarked by [_____, ____] 2016.

11. If I exclude myself, can I get the Settlement Benefits from this settlement?

No. If you exclude yourself, do not send in a claim form to ask for any money. But, you may sue, continue to sue, or be part of a different lawsuit against i-Health.

YOUR RIGHTS AND CHOICES - OBJECTING TO THE PROPOSED SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

12. How Do I Tell the Court That I Don’t Like the Proposed Settlement?

If you are a Class member, you can object to the settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views.

To object, you must send a letter that contains the following:

- Your name, current address and telephone number, and your lawyer's name, address and telephone number if you are objecting through counsel;
- The name of the lawsuit, *JOVEL v. I-HEALTH, INC.*, Case Number 1:12-cv-05614-JG-MDG;
- A statement of your objections and the reasons for each objection you make;
- A list of any documents you may give the Court to support your objection, if any;
- A list of legal authorities you want the Court to consider;
- The names and addresses of any witness you want to call to testify;
- If you (or your lawyer) want to appear and speak at the Fairness Hearing, a statement that you wish to appear and speak; ***and***
- Your signature (or your lawyer's signature).

Your objection must be signed, mailed along with any supporting documents, and **postmarked by** [_____, ____] 2016 to the Court at:

Clerk of Court
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Copies of your objection **must also** be signed, mailed along with any supporting documents, and **postmarked by** [_____, ____] 2016 to the following two addresses:

Counsel for the Class:
Patricia N. Syverson, Esq.
Bonnett Fairbourn Friedman & Balint, P.C.
2325 E. Camelback Rd., Suite 300
Phoenix, AZ 86016
Tel: (602) 776-5925
psyverson@bffb.com

Counsel for Defendant i-Health:
Frank Spano, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Tel: (212) 918-3000
frank.spano@hoganlovells.com

If you object through a lawyer, you will have to pay for the lawyer yourself.

13. What's the difference between objecting and excluding?

Objecting is simply telling the Court you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court you do not want to

be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

YOUR RIGHTS AND CHOICES – APPEARING IN THE LAWSUIT

14. Can I Appear or Speak In This Lawsuit and Proposed Settlement?

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit and Proposed Settlement. This is called making an appearance. You can also have your own lawyer appear in court and speak for you, but you will have to pay for the lawyer yourself.

15. How Can I Appear in This Lawsuit?

If you want yourself or your own lawyer (instead of Class Counsel) to participate or speak for you in this lawsuit, you must give the Court a paper that is titled a “Notice of Appearance.” The Notice of Appearance must contain the title of the lawsuit, a statement that you wish to appear at the Fairness Hearing, and the signature of you or your lawyer.

Your Notice of Appearance can also state that you or your lawyer would like to speak at the Court’s Fairness Hearing on the Proposed Settlement. If you submit an objection (see question 12 above) and would like to speak about the objection at the Court’s Fairness Hearing, both your Notice of Appearance and your objection should include that information.

Your Notice of Appearance must be signed, mailed and ***postmarked by*** [_____, ____] 2016, to the Court at:

Clerk of Court
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Copies of your Notice of Appearance must also be mailed to the same three addresses appearing on page 8 of this Notice, in question 12.

IF YOU DO NOTHING

16. What Happens If I Do Nothing At All?

If you do nothing, you will get no settlement benefits from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against i-Health about the subject matter of this lawsuit, ever again.

THE LAWYERS REPRESENTING YOU

17. Do I Have a Lawyer In This Case?

The Court has appointed Faruqi & Faruqi, LLP and Bonnett Fairbourn Friedman & Balint, P.C.

as legal counsel for the Class. Together, the law firms are called Class Counsel. You will not be charged for these lawyers.

18. How will the lawyers be paid?

From the inception of the litigation in March 2012 to the present, Class Counsel has not received any payment for their services in prosecuting the case or obtaining settlement, nor have they been reimbursed for any out-of-pocket expenses they have incurred. When they ask the Court to approve the settlement, Class Counsel will also make a motion to the Court for an award of attorneys' fees and reimbursement of expenses, in a total amount not to exceed \$250,000. If the Court grants Class Counsel's request for attorneys' fees and expenses, i-Health will pay those fees and expenses in addition to (and not out of) the settlement relief that is available to Class members. No matter what the Court decides with regard to the requested attorneys' fees, Class members will never have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the settlement on behalf of all Class members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to attend or speak.

19. When and where will the Court decide whether to approve the settlement?

The United States District Court for the Eastern District of New York (the "Court") will hold a hearing (the "Fairness hearing") at the Federal Courthouse located at the U.S. District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201 on [_____, 2016] to decide whether the settlement is fair, reasonable, and adequate and to determine the amount of attorneys' fees and costs and incentive fee awards. If there are objections, the Court will consider them. The Court may also discuss Class Counsel's request for an award of attorneys' fees and reimbursement of costs. After the hearing, the Court will decide whether to approve the settlement and whether to grant Class Counsel's request for attorneys' fees and expenses. We do not know how long these decisions will take.

20. Do I have to come to the hearing?

No. Class Counsel is working on your behalf and will answer any questions the Court may have, but, you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

FINAL SETTLEMENT APPROVAL

21. What is the effect of final settlement approval?

If the Court grants final approval of the settlement, all members of the Class will release and forever discharge any and all claims or causes of action that have been, might have been, are now, or could have been brought relating to the transactions, actions, conduct and events that are the subject of this action or settlement, arising from or related to the allegations in the complaint filed in the Action or i-Health's marketing, advertising, promoting or distributing of BrainStrong Products.

If the settlement is not approved, the case will proceed as if no settlement had been attempted. There can be no assurance that if the settlement is not approved and litigation resumes, the Class will recover more than is provided for under the settlement, or will recover anything.

GETTING MORE INFORMATION

22. Are there more details about the settlement?

This Notice is only intended to provide a summary of the proposed settlement. You may obtain the complete text of the settlement at www._____.com, by writing to the Claims Administrator (at the address listed above), or from the court file, which is available for your inspection during regular business hours at the Office of the Clerk of the United States District Court for the Eastern District of New York, U.S. District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, under the Civil Action Number 1:12-cv-05614-JG-MDG.

Visit the website, at http://www._____.com, where you will find the Plaintiff's Complaint, i-Health's Answer, a Claim Form and an Exclusion Request Form. You may also contact Class Counsel by email at psyverson@bffb.com, or by writing to _____ Settlement Administrator, _____.

PLEASE DO NOT CALL OR DIRECT ANY INQUIRIES TO THE COURT.

EXHIBIT C

LEGAL NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**If You Purchased BrainStrong Products, You May Benefit From A
Proposed Class Action Settlement**

If you purchased BrainStrong Products on or after January 1, 2011 and [Date of Preliminary Approval] this Notice is to inform you of a proposed class action settlement that could affect your legal rights.

Amy Jovel and Michael Yee v. i-Health, Inc., Case No. 1:12-cv-05614-JG-MDG

What Is This Notice About?

A proposed settlement has been reached in a class action lawsuit pending in the United States District Court for the Eastern District of New York. The lawsuit alleges violations of consumer protection and warranty laws, and claims that i-Health, Inc. (“i-Health”) misrepresented certain benefits of a group of supplements sold as “BrainStrong” brand products in the United States. i-Health denies all of these allegations. The Court did not rule in favor of Plaintiffs or i-Health. Instead the parties agreed to a proposed settlement in order to avoid the expense and risks of continuing the lawsuit.

Am I A Member Of The Class?

You are a Class Member if you purchased a BrainStrong Product with Docosahexaenoic acid, including: BrainStrong Toddler, BrainStrong Kids, and BrainStrong Adult, in the United States between January 1, 2011 and [Date Of Preliminary Approval]. Excluded from the membership are i-Health and its parents, past and present, subsidiaries, divisions, affiliates, assignors, predecessors, successors and assigns; the past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers, accountants and representatives of any and all of the foregoing entities; any government entities; and persons who purchased BrainStrong Products for the purpose of resale.

What Does The Settlement Provide?

Subject to Court approval, the parties have agreed to a settlement (“Settlement”) under which you may be entitled to receive a cash payment as set forth below.

If the Settlement is approved by the Court, i-

Health will provide members of the Class with cash or optional voucher awards for the BrainStrong Products s/he purchased.

For Settlement Class Members who submit Proof of Purchase with their Claim Form, i-Health will issue a full monetary refund of the actual price paid for the BrainStrong Products purchased. For Settlement Class Members who submit a Claim Form with Proof of Purchase that does not state the actual price paid, i-Health will issue a monetary refund of the average retail price for the BrainStrong Product purchased. For Settlement Class Members who submit a claim form without Proof of Purchase, you may submit a claim for either a monetary refund of \$4.00 in cash or a \$6.50 voucher toward the purchase of any i-Health product, whichever you prefer.

What Are My Rights?

You have a choice of whether to stay in the Class or not, and you must decide this now. If you stay in the Class, you will be legally bound by all orders and judgments of the Court, and you will not be able to sue, or continue to sue, i-Health as part of any other lawsuit involving the same claims that are in this lawsuit. This is true even if you do nothing by not submitting a claim.

1. You can accept the Settlement. If you wish to receive the benefits under the Settlement, you MUST submit a Claim Form by [ADD DATE]. You can obtain a Claim Form: (1) on the Internet at www._____.com; or (2) by calling the Claims Administrator at 1-800-[____], or (3) mailing a written request for a Claim Form including your name and mailing address by regular mail to: _____. If you fail to timely submit a Claim Form and do not exclude yourself from the Settlement, then you

will be bound by the Settlement but will not receive any benefits of the Settlement.

2. You can object to the Settlement. If you believe the Settlement is unsatisfactory, you may file a written objection with the Clerk of the Court for the United States District Court for the Eastern District of New York and send copies to the following Counsel representing the Class and i-Health:

Plaintiffs' Counsel:

Patricia N. Syverson, Esq.
Bonnett Fairbourn Friedman & Balint, P.C.
2325 E. Camelback Rd., Suite 300
Phoenix, AZ 86016

i-Health's Counsel:

Frank Spano, Esq.
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Your written objection must be postmarked no later than ____, 2016.

3. You can "opt out" of the Settlement. If you do not wish to participate in this Settlement, you must provide written notice so indicating. Such notice must include your name, address, and telephone number. You must deliver the request for exclusion from settlement to the Settlement Administrator at ____, or submit a valid exclusion form online through the Settlement Website. The request must be postmarked or submitted online no later than _[Date]_. Please be advised that if you request exclusion from or "opt out" from the Settlement, you will not receive any benefits under the Settlement, and will be responsible for any attorneys' fees and costs you incur if you choose to pursue your own lawsuit.

The Fairness Hearing

On [____], 2016, at [____] a.m., the Court will hold a hearing in the United States District Court for the Eastern District of New York to determine: (1) whether the proposed Settlement is fair, reasonable and adequate and should

receive final approval; and (2) whether the application for Plaintiffs' attorneys' fees and expenses should be granted. Objections to the proposed Settlement by Class Members will be considered by the Court, but only if such objections are filed in writing with the Court and sent to Plaintiffs' and i-Health's counsel by ____, 2016, as explained above. Class Members who support the proposed Settlement do not need to appear at the hearing or take any other action to indicate their approval.

How Can I Get More Information?

If you have questions or want a detailed notice of other documents about this lawsuit and your rights, visit www.____.com. You may also contact Class Counsel by emailing psyverson@bffb.com, or by writing to: [____] Claims Administrator c/o/ ADDRESS], or by calling [1-800-____]. Please do not contact the Court or Clerk for information.

By order of the United States District Court for the Eastern District of New York

EXHIBIT D

To: XXXXXXXXXX

From: XXXXXXXXXX

Re: NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Amy Jovel and Michael Yee v. i-Health, Inc., Case No. 1:12-cv-05614-JG-MDG

This Notice is to inform you of a proposed class action settlement that could affect your legal rights. You are receiving this e-mail because you may have purchased a BrainStrong Product on or after January 1, 2011 and [Date of Preliminary Approval], and you may therefore benefit from a proposed class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

Why Am I Receiving This Notice?

A proposed settlement has been reached in a class action lawsuit pending in the United States District Court for the Eastern District of New York. The lawsuit alleges violations of consumer protection and warranty laws, and claims that i-Health, Inc. (“i-Health”) misrepresented certain benefits of a group of supplements sold as “BrainStrong” brand products in the United States. i-Health denies all of these allegations. The Court did not rule in favor of Plaintiffs or i-Health. Instead the parties agreed to a proposed settlement in order to avoid the expense and risks of continuing the lawsuit. You are receiving this notice because you (i) expressed an interest in one or more of the BrainStrong Products during the Class Period and (ii) provided an e-mail address through the Products’ website during the Class Period.

Am I A Member Of The Class?

You are a Class Member if you purchased a BrainStrong Product with Docosahexaenoic acid, including: BrainStrong Toddler, BrainStrong Kids, and BrainStrong Adult, in the United States between January 1, 2011 and [Date Of Preliminary Approval]. Excluded from the membership are i-Health and its parents, past and present, subsidiaries, divisions, affiliates, assignors, predecessors, successors and assigns; the past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys,

insurers, accountants and representatives of any and all of the foregoing entities; any government entities; and persons who purchased BrainStrong Products for the purpose of resale.

What Does The Settlement Provide?

Subject to Court approval, the parties have agreed to a settlement (“Settlement”) under which you may be entitled to receive a cash payment as set forth below.

If the Settlement is approved by the Court, i-Health will provide members of the Class with cash or optional voucher awards for the BrainStrong Products s/he purchased.

For Settlement Class Members who submit Proof of Purchase with their Claim Form, i-Health will issue a full monetary refund of the actual price paid for the BrainStrong Products purchased. For Settlement Class Members who submit a Claim Form with Proof of Purchase that does not state the actual price paid, i-Health will issue a monetary refund of the average retail price for the BrainStrong Product purchased. For Settlement Class Members who submit a claim form without Proof of Purchase, you may submit a claim for either a monetary refund of \$4.00 in cash or a \$6.50 voucher toward the purchase of any i-Health product, whichever you prefer.

You may also learn more by clicking on the

following links:

[Settlement Agreement](#)
[Class Action Complaint](#)
[Order on Motion to Dismiss](#)
[Long-Form Notice](#)

What Are My Rights?

You have a choice of whether to stay in the Class or not, and you must decide this now. If you stay in the Class, you will be legally bound by all orders and judgments of the Court, and you will not be able to sue, or continue to sue, i-Health as part of any other lawsuit involving the same claims that are in this lawsuit. This is true even if you do nothing by not submitting a claim.

1. You can accept the Settlement. If you wish to receive the benefits under the Settlement, you MUST submit a Claim Form by [ADD DATE]. You can obtain a Claim Form: (1) on the Internet at www._____.com; or (2) by calling the Claims Administrator at 1-800-[____], or (3) mailing a written request for a Claim Form including your name and mailing address by regular mail to: _____. If you fail to timely submit a Claim Form and do not exclude yourself from the Settlement, then you will be bound by the Settlement but will not receive any benefits of the Settlement.

2. You can object to the Settlement. If you believe the Settlement is unsatisfactory, you may file a written objection with the Clerk of the Court for the United States District Court for the Eastern District of New York and send copies to the following Counsel representing the Class and i-Health:

Plaintiffs' Counsel:

Patricia N. Syverson, Esq.
Bonnett Fairbourn Friedman & Balint, P.C.
2325 E. Camelback Rd., Suite 300
Phoenix, AZ 86016

i-Health's Counsel:

Frank Spano, Esq.
Hogan Lovells US LLP
875 Third Avenue

New York, NY 10022

Your written objection must be postmarked no later than ____, 2016.

3. You can "opt out" of the Settlement. If you do not wish to participate in this Settlement, you must provide written notice so indicating. Such notice must include your name, address, and telephone number. You must deliver the request for exclusion from settlement to the Settlement Administrator at _____, or submit a valid exclusion form online through the Settlement Website. The request must be postmarked or submitted online no later than _[Date]_. Please be advised that if you request exclusion from or "opt out" from the Settlement, you will not receive any benefits under the Settlement, and will be responsible for any attorneys' fees and costs you incur if you choose to pursue your own lawsuit.

The Fairness Hearing

On ____, 2016, at ____ a.m., the Court will hold a hearing in the United States District Court for the Eastern District of New York to determine: (1) whether the proposed Settlement is fair, reasonable and adequate and should receive final approval; and (2) whether the application for Plaintiffs' attorneys' fees and expenses should be granted. Objections to the proposed Settlement by Class Members will be considered by the Court, but only if such objections are filed in writing with the Court and sent to Plaintiffs' and i-Health's counsel by ____, 2016, as explained above. Class Members who support the proposed Settlement do not need to appear at the hearing or take any other action to indicate their approval.

How Can I Get More Information?

If you have questions or want a detailed notice of other documents about this lawsuit and your rights, visit www._____.com. You may also contact Class Counsel by emailing psyverson@bffb.com, or by writing to: [_____] Claims Administrator c/o/ ADDRESS], or by calling [1-800-_____]. Please do not contact the Court or Clerk for information.

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMY JOVEL and MICHAEL YEE, On
Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

I-HEALTH, INC., a Delaware Corporation

Defendant.

Case No.: 1:12-cv-05614-JG-MDG

**ORDER PRELIMINARILY CERTIFYING SETTLEMENT CLASS,
GRANTING PRELIMINARY APPROVAL OF SETTLEMENT, AND
APPROVING CLASS NOTICE**

This matter having been submitted to the Court by plaintiffs Amy Jovel and Michael Yee (together, “Plaintiffs”) and Bonnett Fairbourn Friedman & Balint, P.C., and Faruqi & Faruqi LLP (together, “Class Counsel”) on behalf of the Plaintiffs and by i-Health, Inc. (“i-Health”) by its Counsel, by way of Plaintiffs’ motion for preliminary approval of the proposed settlement in the above captioned action;

WHEREAS, the Court having reviewed and considered Plaintiffs’ motion for preliminary approval and supporting materials filed by Class Counsel and i-Health’s Counsel; and

WHEREAS, this Court has fully considered the record and the requirements of law; and good cause appearing;

IT IS THIS __ DAY OF _____, 2016

ORDERED that the Settlement (including all terms of the Settlement Agreement and exhibits thereto) is hereby PRELIMINARILY APPROVED. The Court further finds and orders as follows:

1. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 and venue is proper in this district.

2. The Court has personal jurisdiction over the Class Representatives, Settlement Class Members and i-Health.

3. The Settlement is the product of arm's length bargaining conducted by experienced legal counsel after extensive discovery. The Settlement Agreement is not the result of collusion.

4. The proceedings that occurred before the parties reached the Settlement Agreement gave counsel opportunity to adequately assess this case's strengths and weaknesses, and thus to structure the Settlement in a way that adequately accounts for those strengths and weaknesses.

5. The Settlement falls well within the range of reason. The Settlement has no obvious deficiencies.

6. Because the Settlement meets the standards for preliminary approval, the Court preliminarily approves all terms of the Settlement, including the Settlement Agreement and all of its exhibits.

7. The Court finds, for settlement purposes only, that all requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied. The Court certifies a Settlement Class of all persons in the United States who purchased one or more BrainStrong Products on or after January 1, 2011 through the date this Court issues an order preliminarily approving the settlement pursuant to the Stipulation of Settlement. Excluded from the membership are Defendant and its past and present parents, subsidiaries, divisions, affiliates, assignors, predecessors, successors and assigns; the past and present partners, shareholders, managers, members, directors, officers,

employees, agents, attorneys, insurers, accountants and representatives of any and all of the foregoing entities; any government entities; and persons who purchased BrainStrong Products for the purpose of resale.

8. The Court conditionally certifies the proposed Settlement Class, and finds that the requirements of Rule 23(a) are satisfied, for settlement purposes only, as follows:

(a) Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class are so numerous that joinder of all members is impracticable.

(b) Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines that there are common issues of law and fact for the Settlement Class.

(c) Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Class Representatives are typical of the claims of the Settlement Class that they represent.

i. The Court hereby appoints Plaintiffs Amy Jovel and Michael Yee as Class Representatives for the Settlement Class.

(d) Pursuant to Fed. R. Civ. P. 23(a)(4), the Class Representatives will fairly and adequately protect and represent the interests of all members of the Settlement Class. The interests of the Class Representatives are not antagonistic to those of the Settlement Class. The Class Representatives are represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

9. The Court further finds that the requirements of Rule 23(b)(3) are satisfied, as follows:

(a) Questions of law and fact common to the members of the Settlement Class predominate over questions that may affect only individual members; and

processing, handling, reviewing, and approving of claims made by Claimants; communicating with Claimants; and distributing payments to qualified Claimants.

14. The Court directs that pursuant to Fed. R. Civ. P. 23(e)(2) a hearing will be held on [_____, ____] 2016, to consider final approval of the Settlement (the “Final Approval Hearing” or “Fairness Hearing”), including, but not limited to, the following issues: (a) whether the Class should be finally certified, for settlement purposes only; (b) the fairness, reasonableness, and adequacy of the Settlement; (c) Class Counsel’s application for an award of attorneys’ fees and costs; and (d) approval of an award of service payments to the Class Representative. The Final Approval Hearing may be adjourned by the Court and the Court may address the matters set out above including final approval of the Settlement, without further notice to the Settlement Class other than notice that may be posted at the Court and on the Settlement Website.

15. Persons wishing to object to the proposed Settlement and/or be heard at the Fairness Hearing shall follow the following procedures:

(a) To object, a member of the Settlement Class, individually or through counsel, must file a written objection with the Court, with a copy delivered to Class Counsel and i-Health’s Counsel at the addresses set forth below, by:

Settlement Class Counsel:

Patricia N. Syverson, Esq.
Bonnett Fairbourn Friedman & Balint, P.C.
2325 E. Camelback Rd., Suite 300
Phoenix, AZ 86016
Tel: (602) 776-5925

Counsel for i-Health:

Frank Spano, Esq.
Hogan Lovells US LLP

875 Third Avenue
New York, NY 10022
Tel: (212) 918-3000

(b) Any objection regarding or related to the Stipulation of Settlement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Jovel v. i-Health, Inc.*, Case Number 1:12-cv-05614-JG-MDG” and shall also contain information sufficient to identify and contact the objecting Settlement Class member, as well as a clear and concise statement of the Settlement Class member’s objection, documents sufficient to establish the basis for their standing as a Settlement Class member, *i.e.*, verification under oath as to the date and location of their purchase of a BrainStrong Product and/or a Proof of Purchase reflecting such purchase, the facts supporting the objection, and the legal grounds on which the objection is based.

(c) Any member of the Settlement Class who files and serves a timely written objection in accordance with this Order may also appear at the Fairness Hearing, to the extent permitted by the Court, either in person or through an attorney hired at the Settlement Class member’s expense, to object to the fairness, reasonableness or adequacy of the proposed Settlement. Any attorney representing a member of the Settlement Class for the purpose of making objections must also file a Notice of Appearance with the Clerk, and must also serve copies by mail to the counsel listed above.

(d) Members of the Settlement Class or their attorneys intending to appear at the Fairness Hearing must, by [_____, ____] 2016, serve on Settlement Class Counsel and counsel for i-Health, and file with the Court, a notice of Intent to Appear, which includes: (i) the name, address and telephone number of the Settlement Class member and, if applicable, the name, address and telephone number of the Settlement Class member’s attorney (who must file a Notice of Appearance); (ii) the objection, including any papers in support thereof; and (iii) the

name and address of any witnesses to be presented at the Fairness Hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony.

(e) Any member of the Settlement Class who does not timely file and serve a Notice of Intent to Appear, and any witness not identified in the Notice of Intent to Appear, shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

16. Members of the Settlement Class who elect not to participate in the Settlement (i.e., “opt-out”) must submit a written request for exclusion that is postmarked no later than [_____, ____] 2016. i-Health shall compile a list of all Opt-Outs to be filed with the Court no later than the Fairness Hearing.

17. Any member of the Settlement Class failing to properly and timely mail such a written notice of exclusion shall be automatically included in the Settlement Class and shall be bound by all the terms and provisions of the Stipulation of Settlement and the Settlement, including the Release, and Order of Final Judgment. The Court shall resolve any disputes concerning the Opt-Out provisions of the Stipulation of Settlement.

18. In order to participate in the Settlement and receive a refund or reimbursement from i-Health, members of the Settlement Class must mail to the Claims Administrator, a properly executed Claim Form. To be effective, any such Claim Form must be postmarked no later than [_____, ____] 2016, and must otherwise comply with the procedures and instructions set forth in the Claim Form.

19. The following are the deadlines for the following events:

<u>EVENT</u>	<u>DATE</u>
Deadline for publishing Notice	
Filing of papers in support of Final	

Approval and Class Counsel's Application for Attorneys' Fee and Expenses	
Deadline for submitting exclusion requests or objections	
Filing of response to objections	
Final Approval Hearing	
Deadline for submitting claims forms	

20. To the extent not otherwise defined herein, all defined terms in this order shall have the meaning assigned in the Stipulation of Settlement.

21. In the event that the Settlement does not become effective for any reason, this Preliminary Approval Order shall be rendered null and shall be vacated, and all orders entered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement. If the Settlement does not become effective, i-Health and any other released persons shall have retained any and all of their current defenses and arguments thereto (including but not limited to arguments that the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are not satisfied for purposes of continued litigation). This action shall thereupon revert immediately to its respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and any related order had not been executed.

22. Nothing in this Preliminary Approval Order, the Settlement Agreement, or any documents or statements related thereto, is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by i-Health, or an admission of the propriety of class certification for any purposes other than for purposes of the current proposed Settlement.

23. All other proceedings in the Action are hereby stayed until such time as the Court renders a final decision regarding approval of the proposed Settlement. No discovery with regards to this Action, or with respect to this Settlement, shall be permitted other than as

may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with this Court's Local Rules. In addition, pending a determination on final approval of the Settlement, all Settlement Class Members are hereby barred and enjoined from commencing or prosecuting any action involving any Released Claims.

24. The Court shall retain continuing jurisdiction over the Action, the Parties and the Settlement Class, and the administration, enforcement, and interpretation of the Settlement. Any disputes or controversies arising with respect to the Settlement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the parties to exercise their rights under Paragraphs 21 and 23 above.

Magistrate Judge Marilyn D. Go

Dated:

EXHIBIT F

Average Retail Pricing of the BrainStrong Products*Pursuant to Sections 3.1 & 8.3(b) of the Stipulation of Settlement*

BRAINSTRONG ADULT	\$25.37
BRAINSTRONG KIDS	\$9.20
BRAINSTRONG TODDLER	\$9.15

ZIMMERMAN LAW OFFICES, P.C.

Since 1996, Zimmerman Law Offices has represented individuals and businesses in a wide array of legal matters. Its attorneys are established and respected trial lawyers who represent clients in complex litigation and class action lawsuits nationwide. The firm has an extensive and varied litigation-based practice, with a focus on class action litigation. Zimmerman Law Offices has recovered over \$200 million on behalf of millions of individuals and businesses nationwide.

The attorneys at Zimmerman Law Offices are experienced in Multidistrict Litigation (MDL), having served as lead counsel in MDL cases throughout the country. These MDL cases included claims for fraud, improper pricing, misleading product claims, and privacy violations including data breaches.

ATTORNEYS

Thomas A. Zimmerman, Jr.

A seasoned litigator for almost 20 years, Mr. Zimmerman practices extensively and has obtained multi-million dollar jury verdicts in class action, corporate, commercial, medical malpractice, consumer fraud, general civil, product liability, toxic tort, and other complex litigation. He represents both plaintiffs and defendants nationwide in state and federal trial and appellate courts. He also represents individuals and corporations in transactional matters, and before state and federal administrative and regulatory agencies.

Mr. Zimmerman has been lead counsel in national and state-wide class action litigation, and has handled other multi-party litigation involving such companies as MCI/Worldcom, United Airlines, Peoples Gas, AT&T, Warner-Lambert, Pfizer, Liberty Mutual Insurance Co., DaimlerChrysler, Commonwealth Edison, Ameritech, and Bridgestone/Firestone. He is well respected for his representation of physicians, dentists, nurses, psychologists, veterinarians, and many other licensed professionals before state and federal agencies including the Illinois Department of Financial and Professional Regulation, and the U.S. Department of Health and Human Services.

In 2000, he was voted one of the Top 40 Illinois Attorneys Under the Age of 40. This is especially notable, as he was chosen out of 60,000 attorneys in Illinois under the age of forty.

In 2003, the Illinois Supreme Court appointed Mr. Zimmerman to the Review Board of the Attorney Registration and Disciplinary Commission ("ARDC"). He served in that capacity until 2011, wherein he presided over appeals by attorneys who have been found to have committed misconduct, and recommended discipline for their ethical violations. In 2013, the ARDC appointed Mr. Zimmerman as Special Counsel, wherein he conducts independent investigations in matters involving allegations of misconduct against attorneys associated with the ARDC.

Additionally, the Illinois Governor appointed Mr. Zimmerman to the Illinois Courts Commission. A Commission member presides over proceedings wherein judges are charged with committing ethical violations, and imposes discipline on judges who are found to have engaged in misconduct.

Prior to becoming an attorney, Mr. Zimmerman worked for AT&T where he negotiated partnerships with companies for domestic and international joint-venture and new product development activities. During this time, he was the featured speaker at 400 conferences, seminars, and presentations. Thereafter, he presented oral testimony at various Federal Senate and Congressional hearings. After obtaining his law license, Mr. Zimmerman has lectured at law schools and seminars, and is frequently interviewed by the news media concerning legal issues.

Mr. Zimmerman earned a B.S. in Computer Science-Mathematics from the University of Illinois, and an M.B.A. in Finance from DePaul University in the evenings while working for AT&T. After leaving AT&T, Mr. Zimmerman earned his law degree from the Chicago-Kent College of Law, where he was a Ramsey-Burke Scholarship recipient and earned the Academic Achievement Award.

He is admitted to practice law in Illinois, and other states on a case-by-case basis, and he is admitted to practice before the U.S. Supreme Court, and various federal courts of appeal and federal district courts. Based on his demonstrated experience and ability, he was appointed to the federal court trial bar.

Mr. Zimmerman is currently the chair of the Clerk of the Circuit Court of Cook County Attorney Advisory Committee, and was formerly co-chair of the Clerk of the Circuit Court Transition and Strategic Planning Public Policy Subcommittee.

Mr. Zimmerman is a member of the American, Illinois State, and Chicago Bar Associations, and the Illinois Trial Lawyers Association, where he serves on various committees. He is also a member of the American Association for Justice. In 2000, he was appointed to the Illinois Trial Lawyers Association Board of Advocates.

Involved in numerous community service activities, Mr. Zimmerman has been an Illinois State Board of Education surrogate parent of disabled children since 1988. In addition, he was a speaker on the rights of disabled people for the Illinois Planning Council on Developmental Disabilities, and a Family Shelter Service counselor to battered children for many years. He has been recognized by the federal court for his pro bono representation of indigent clients.

Amelia S. Newton

Ms. Newton represents plaintiffs and defendants nationwide in class action, corporate commercial, consumer fraud, general civil, and other complex litigation in state and federal courts. She also represents professionals, such as physicians, dentists, nurses, insurance producers, and real estate brokers before state and federal agencies, including the Illinois Department of Financial and Professional Regulation and Department of Insurance.

Ms. Newton's nearly 30 years of experience as an attorney also includes representing plaintiffs and defendants in nationwide securities fraud class actions in courts throughout the country. She has litigated matters involving real estate, contracts, professional malpractice and UCC violations on behalf individuals, receivers, banks, mortgage companies and corporations in state and federal courts. She has represented investors before the Financial Industry Regulatory Authority and has considerable experience litigating property matters including title defects, insurance coverage, mechanics liens, building code violations, contested foreclosures, drug forfeiture actions, hazard insurance claims, and HUD regulatory issues. Ms. Newton has been involved in all phases of litigation, including extensive discovery, substantive motion practice, bench trials and appeals.

As a Circuit Court of Cook County Arbitrator, Ms. Newton adjudicated personal injury, property damage and other cases assigned to mandatory arbitration.

She was awarded a B.A. from Michigan State University's James Madison College and received her law degree from DePaul University where she was selected to be a legal writing tutor in the Legal Writing Program.

Ms. Newton has also been involved in valuable community service. Through the Center for Disability and Elder Law, she was a volunteer at the Cook County Probate Division *Pro Se* Adult Guardianship Help Desk assisting families with filing petitions in court to obtain guardianship orders for disabled adults.

She is admitted to practice in the State of Illinois, the United States District Court for the Northern District of Illinois and the United States Court of Appeals for the Seventh Circuit. She is also a member of the Chicago Bar Association.

Jordan M. Rudnick

Mr. Rudnick represents individuals and large national and international companies in providing business advice, counsel and dispute resolution in a wide variety of contexts for almost 20 years. In particular, Mr. Rudnick represents plaintiffs and defendants nationwide in class action, corporate, commercial, consumer fraud, general civil, and other complex litigation in state and federal courts, arbitrations, and mediations. Mr. Rudnick has been involved in all phases of litigation, including extensive discovery, substantive motion practice, trials and appeals.

His experience as an attorney also includes representing parties in nationwide securities fraud class actions. Notably, Mr. Rudnick represented Canadian Imperial Bank of Commerce in the Enron class action securities litigation and related proceedings. He also has extensive experience representing commercial policyholders in recovering insurance proceeds from their insurers.

Mr. Rudnick serves as an arbitrator for FINRA (Financial Industry Regulatory Authority, formerly known as the NASD or National Association of Securities Dealers) where he and panels of two other arbitrators decide the outcome of disputes between investors and securities brokers and dealers.

He has provided extensive pro bono representation of improperly-expelled school children in conjunction with the Legal Assistance Foundation of Metropolitan Chicago, and with the Chicago Coalition for the Homeless. In addition, in his spare time, he is a volunteer at the Lincoln Park Community Homeless Shelter.

Mr. Rudnick served as a judicial law clerk to the Honorable Justice Joseph Gordon, Illinois Appellate Court, 1st District, where he drafted opinions in appeals arising from complex civil and criminal trial court decisions.

Mr. Rudnick earned his B.A. in Political Science from the University of Chicago, and he graduated *cum laude* from the John Marshall Law School with honors and on a full scholarship. In law school, he appeared on the Dean's List, and he was a member of the school's Moot Court Team. He also was a Staff Editor on the *John Marshall Law Review* for two years.

He is admitted to practice law in Illinois, New York, and Washington, D.C., and is a member of the Chicago Bar Association, NAACP, and ACLU.

Sharon A. Harris

Ms. Harris has extensive experience litigating complex class action matters in state and federal trial and appellate courts nationwide. For almost 17 years, she has focused her practice on consumer protection, product liability, privacy, and antitrust matters. Ms. Harris has developed a particular expertise in state unfair and deceptive practice statutes, privacy laws, federal antitrust laws, the Fair Credit Reporting Act, the Racketeer Influenced and Corrupt Organizations Act (RICO), the Telephone Consumer Protection Act, and various other federal and state laws. For example, she was appointed class counsel in *In re Pilot Flying J Fuel Rebate Contract Litigation*, which involved allegations that the defendants violated RICO and various state laws by withholding portions of fuel discounts and rebates to which class members were contractually entitled.

Ms. Harris received her Bachelor of Science degree from Michigan State University with a dual major in Political Science and Social Science. She received her law degree from DePaul University College of Law.

She is admitted to practice in the State of Illinois, the United States District Court for the Northern District of Illinois, and the United States Courts of Appeals for the Seventh and Ninth Circuits, and she is a member of the American, Illinois State, and Chicago Bar Associations.

Matthew C. De Re

Mr. De Re advocates for both plaintiffs and defendants nationwide in state and federal trial and appellate courts. His practice areas include class action, corporate, commercial, consumer fraud, general civil, product liability, personal injury, and other complex litigation. He also represents professionals, such as physicians, dentists, nurses, insurance producers, and real estate brokers,

before state and federal agencies, including the Illinois Department of Financial and Professional Regulation and the Department of Insurance. In addition to his extensive litigation practice, Mr. De Re assists individuals and corporations in transactional matters.

He has experience in all phases of litigation, including extensive discovery and substantive motion practice. He has assisted in the defense of individuals and companies in cases involving personal injury, employment, and civil rights. Mr. De Re has also vigorously pursued recovery for plaintiffs in numerous civil matters. Prior to joining Zimmerman Law Offices, he served as a Law Clerk for the Circuit Court of Cook County.

Mr. De Re graduated from the University of Wisconsin-Madison with a B.S. in both Political Science and History. He earned his law degree from Washington University in St. Louis. While in law school, he received academic awards and appeared on the Dean's List multiple times. He also served two years on the Executive Board of the Student Bar Association and was the Associate Managing Editor for the Washington University Journal of Law & Policy.

He is admitted to practice law in the State of Illinois and is a member of the Illinois State and Chicago Bar Associations.

Nickolas J. Hagman

Mr. Hagman is licensed to practice law in both the State of Illinois and the State of Wisconsin where he represents clients in state and federal courts. Mr. Hagman represents plaintiffs and defendants in cases involving class action, general civil, commercial, consumer fraud, corporate, product liability, personal injury, and other complex litigation issues. Additionally, Mr. Hagman represents licensed professionals, including physicians, dentists, nurses, insurance producers, and real estate brokers, before state and federal agencies, including the Illinois Department of Financial and Professional Regulation and the Department of Insurance.

Mr. Hagman graduated *magna cum laude* from the University of Minnesota-Twin Cities with a bachelor's degree in both Political Science and Spanish. He earned his law degree from Marquette University Law School in Milwaukee, Wisconsin. While in law school, he received academic awards and appeared on the Dean's List multiple times. He participated in several moot court competitions and also served for two years as Associate Editor of the Marquette Law Review.

Prior to joining Zimmerman Law Offices, he served as a Judicial Law Clerk for several judges in the Milwaukee County Circuit Court in Wisconsin. He is a member of the Illinois, Wisconsin, Chicago, and Milwaukee Bar Associations.

Maebetty Kirby

Ms. Kirby represents plaintiffs and defendants in class actions, consumer fraud, general civil, commercial, product liability, personal injury, and complex litigation. In addition, she represents

licensed professionals, including physicians, dentists, nurses, insurance producers, and real estate brokers, before state and federal agencies, including the Illinois Department of Financial and Professional Regulation and the Illinois Department of Insurance.

Ms. Kirby graduated *cum laude* from Washington University School of Law. In law school, she received several academic honors and consistently appeared on the Dean's List. She was awarded the Judge John W. Calhoun Trial Practice Award after serving as Captain of the National Trial Team, where she was named National Champion of the ABA Labor and Employment Trial Advocacy Championship, National Finalist of the TYLA National Trial Competition, and Regional Champion of several local trial competitions. Ms. Kirby was also a member of the Student Bar Association and on the board of the *Washington University Journal of Law & Policy*.

Ms. Kirby earned her B.A. from Tulane University where she graduated *summa cum laude* with Departmental Honors. In undergraduate school, she was inducted into *Phi Beta Kappa* and the Wallace Peery Society, an honor reserved for the top 20 undergraduates in Tulane University's graduating class.

Prior to joining Zimmerman Law Offices, Ms. Kirby worked for the Illinois Attorney General's Office, the Cook County State's Attorney's Office, and the St. Louis Circuit Attorney's Office. She is admitted to practice law in the State of Illinois and is a member of the Illinois State and Chicago Bar Associations.

REPRESENTATIVE CLASS ACTION CASES

Completed Cases

Misleading Product Claims — \$62 million recovery for a nationwide class of customers who purchased products that were advertised to reduce cellulite in the human body, plus equitable relief to correct the misleading claims. *Joseph v. Beiersdorf North America, Inc.*, No. 11 CH 20147 (Cook Cnty, Ill.).

Improper Cellular Phone Fee — \$48 million recovery for a statewide class of businesses and individuals who paid an improper municipal infrastructure maintenance fee on their cellular phone bills. *PrimeCo Personal Communications, et al. v. Illinois Commerce Commission, et al.*, 98 CH 5500 (Cook Cnty, Ill.).

Fraud — \$31 million recovery for a nationwide class of businesses and individuals who placed advertisements in a newspaper based on fraudulent circulation figures. *In re Chicago Sun-Times Circulation Litigation*, No. 04 CH 9757 (Cook Cnty, Ill.).

Power Outages — \$7.75 million recovery for a statewide class of businesses and individuals who sustained financial damages due to widespread and prolonged power outages. *In re Commonwealth Edison 1999 Summer Power Outages*, No. 99 CH 11626 (Cook Cnty, Ill.).

Privacy Violation — \$7.3 million recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Aliano v. Airgas USA, LLC*, No. 14 CH 20024 (Cook Cnty, Ill.).

Unsolicited Faxes — \$4 million recovery for a nationwide class of businesses and individuals who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Derosé Corp. v. Goyke Health Center*, 06 CH 6681 (Cook Cnty, Ill.).

Fraud — \$3.5 million recovery for a nationwide class of Spanish speaking purchasers of baby formula, arising out of misleading product labeling. *Cardenas v. Mead Johnson & Company*, No. 01 CH 11151 (Cook Cnty, Ill.).

Misleading Product Labeling — \$2.5 million recovery for a nationwide class of businesses and individuals who purchased whiskey whose labeling misstated the characteristics of the product. *Due Fratelli, Inc. v. Templeton Rye Spirits, LLC*, No. 2014 CH 15667 (Cook Cnty, Ill.).

Misrepresentations in Book — \$2.35 million recovery for a nationwide class of customers who purchased a fictional book while under the impression that the book was a non-fiction memoir. *In re A Million Little Pieces Litigation*, No. 06-md-1771 (S.D. NY).

Improper Debiting of Bank Accounts — \$1.5 million recovery for a statewide class of individuals who were members of a health club that debited its members' bank accounts without adequate notice or authority. *Wendorf, et al. v. Landers, et al.*, No. 10 cv 1658 (N.D. Ill.).

School Misrepresenting Accreditation — \$1.2 million recovery, representing nearly the full value of each class member's loss, for a statewide class of individuals who enrolled in a school based on the school's misrepresentations that it was accredited. *Allen v. Illinois School of Health Careers, Inc.*, No. 10 CH 25098 (Cook Cnty, Ill.).

Privacy Violation — \$1 million recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Radaviciute v. Christian Audigier, Inc.*, No. 10 cv 8090 (N.D. Ill.).

Privacy Violation — \$500,000 recovery for a statewide class of consumers whose personal information was improperly disclosed. *Aliano v. Joe Caputo and Sons – Algonquin, Inc.*, et al., No. 09 cv 0910 (N.D. Ill.).

Contaminated Drinking Water — \$500,000 recovery for a statewide class of individuals who suffered damages as a result of a contaminated water well, plus equitable relief to close the well. *Joseph Marzano v. Village of Crestwood*, No. 09 CH 16096 (Cook Cnty, Ill.).

Fraud — \$425,000 recovery for a nationwide class of businesses and individuals who purchased spirits whose labeling misstated the characteristics of the product. *Due Fratelli, Inc. v. Proximo Spirits, Inc.*, No. 2014 CH 17429 (Cook Cnty, Ill.).

Privacy Violation — \$295,000 recovery for a nationwide class of consumers whose personal information was improperly disclosed. *Joseph v. Marbles, LLC*, No. 13 cv 4798 (N.D. Ill.).

Privacy Violation — \$250,000 recovery for a nationwide class of consumers whose personal information was improperly disclosed. *DiParvine v. A.P.S., Inc. d/b/a Car Quest Auto Parts*, No. 11 cv 6116 (N.D. Ill.).

Unsolicited Faxes — \$237,600 recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Phillips Randolph Enterprises, LLC v. Key Art Publishing Co.*, No. 07 CH 14018 (Cook Cnty, Ill.).

Improper Health Club Memberships — \$138,000 recovery for a statewide class of individuals whose health club membership agreements provided for improper membership terms. *Izak-Damiecki v. World Gym International, LLC*, No. 10 CH 18845 (Cook Cnty, Ill.).

Illegal Lending Practices — \$127,500 recovery, representing the maximum amount of statutory damages, for a nationwide class of customers who obtained loans whose terms violated the Truth in Lending Act, plus equitable relief to modify the loan contract to conform with the law. *Papeck, et al. v. T.N. Donnelly & Co.*, No. 09 CH 31997 (Cook Cnty, Ill.).

Privacy Violation — Recovery for a nationwide class of over 36 million consumers whose personal information was improperly disclosed. *Dudzienski v. GMRI, Inc.*, No. 07 cv 3911 (N.D. Ill.).

Unsolicited Faxes — Recovery for a statewide class of individuals and businesses who sustained damages resulting from the receipt of unsolicited facsimile advertisements. *Phillips Randolph Enterprises, LLC v. Home Run Inn, Inc.*, No. 08 CH 43273 (Cook Cnty, Ill.).

Privacy Violation — Recovery for a statewide class of over 60,000 consumers whose personal information was improperly disclosed. *O'Brien v. Paninos, Inc.*, No. 10 cv 2991 (N.D. Ill.).

Breach of Warranty — Recovery on behalf of a nationwide class of customers who had their warranty retroactively changed from a lifetime guarantee to a 90-day guarantee, plus equitable relief to reinstate the lifetime guarantee on the products. *Brady, et al. v. Learning Curve Int'l, Inc., et al.*, No. 06 CH 03056 (Cook Cnty, Ill.).

Privacy Violation — Recovery for a nationwide class of tens of thousands of consumers whose personal information was improperly disclosed. *In re Kathy Aliano v. Hancock Fabrics, Inc.*, No. 07-10353 (Del. Bkpt).

Misleading Product Claims — Recovery for a nationwide class of individuals who were sold submarine sandwiches materially shorter than advertised. *In re: Subway Footlong Sandwich Marketing and Sales Practices Litigation*, No. 2:13-md-02439 (E.D. Wis.).

Pending Cases – Appointed Co-Lead Counsel

Environmental Contamination — Class action for a statewide class of individuals and businesses who are suffering from an infiltration of coal and petroleum coke dust in the air and on their property. *Martin, et al. v. KCBX Terminals Company, et al.*, No. 13 cv 08376 (N.D. Ill.). Preliminary approval of the settlement was granted.

Pending Cases – Appointed to Executive Committee

Fraud / Data Breach — Class action for a nationwide class of individuals who had their personal and financial data stolen due to insufficient protection of that information by an internet service provider, and who also paid money to that provider based on misrepresentations. *In Re: Ashley Madison Customer Data Security Breach Litigation*, MDL No. 2669 (E.D. Mo.).

Pending Cases

Defective Product — Class action for a nationwide class of individuals who sustained financial and personal injuries resulting from their purchase and use of baby wipes that were tainted with a dangerous bacteria.

Data Breach — Class action for a nationwide class of individuals who had their personal, financial, and medical data stolen due to insufficient protection of that information by a retailer.

Constitutional Violation — Class action for a statewide class of individuals who were deprived their real estate tax rebates from a municipality.

Misleading Product Claims — Class action for a nationwide class of individuals who purchased a product that advertised it had a larger quantity than was actually provided to the purchaser.

Antitrust — Class action for a nationwide class of individuals who purchased seafood products from companies that conspired to fix prices in violation of the Sherman Act.

Improper Court Fee — Class action for a nationwide class of individuals and businesses who were charged an improper fee by the Clerk of the Court.

Unpaid Overtime — Class action for a nationwide class of individuals who were not paid all wages and premium overtime for hours worked in excess of forty hours per week.

Misleading Product Claims — Class action for a nationwide class of individuals and businesses who purchased a product that advertised it was made of higher quality ingredients than were actually contained in the product.

Fraud — Class action for a nationwide class of individuals who made purchases based on fraudulent misrepresentations concerning a sporting event.

Defective Product — Class action for a nationwide class of individuals who purchased a defective home security system that could be easily hacked and disabled.

Misleading Product Labeling — Class action for a nationwide class of individuals who purchased a product whose packaging misstated the characteristics of the product.

Antitrust — Class action for a nationwide class of individuals who subscribed to television services from companies that conspired to fix prices in violation of the Sherman Act.

Data Breach — Class action for a statewide class of individuals who had their personal, financial, and medical data stolen due to insufficient protection of that information by a hospital.

Negligence — Class action for a statewide class of individuals who were secretly video recorded while they were in private tanning rooms at a health club.

Privacy Violation — Class action for a nationwide class of consumers whose personal information was improperly disclosed by a retailer.

Defective Vehicle — Class action for a nationwide class of individuals and businesses who purchased a vehicle manufactured with a defective transmission.

Improper Debt Collection — Class action for a nationwide class of individuals and businesses against whom attempts were made to collect a time-barred debt, in violation of the Fair Debt Collection Practices Act.

NOTE: This list of cases is a representative sample of some of the class action lawsuits. It is not an exhaustive list.