

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

_____	)
Mario Aliano, individually, and	)
on behalf of all others similarly situated,	)
	)
	)
Plaintiff,	)
	)
Jeff Worth and Robert Burns,	)
	)
Intervenor-Plaintiffs,	)
	)
v.	)
	)
CVS Pharmacy, Inc., a Rhode Island Corporation,	)
	)
Defendant.	)
_____	)

Case No. 1:16-cv-02624-FB-MDG

**AMENDED STIPULATION OF SETTLEMENT**

This Stipulation of Settlement (the “Settlement Agreement”), originally dated April 22, 2016, and amended June 24, 2016, 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 Eastern District of New York (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 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 On May 2, 2016, Plaintiff filed a motion for preliminary approval of the Stipulation of Settlement executed April 22, 2016, in the U.S. District Court for the Northern District of Illinois, Eastern Division. On May 4, 2016, the named plaintiffs in a related and similar putative class action, *Worth, et al. v. CVS Pharmacy, Inc.*, Case No. 2:16-cv-00498-FB-MDG,<sup>1</sup> filed objections to the *Aliano* settlement and moved to intervene for the purpose of transferring the *Aliano* action to the U.S. District Court for the Eastern District of New York. On May 11, 2016, the U.S. District Court for the Northern District of Illinois granted the *Worth* plaintiffs' motion to intervene and transfer.

1.16 On May 24, 2016, *Aliano* was officially transferred in to the U.S. District Court for the Eastern District of New York and is currently pending before Judge Frederic Block and Magistrate Judge Marilyn D. Go.

1.17 By this Amended Stipulation of Settlement, the parties to *Aliano* have decided to clarify certain aspects of the previously agreed-to compensation and injunctive relief, in order to eliminate any unintentionally ambiguous language contained in the Stipulation of Settlement executed April 22, 2016.

1.18 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.

1.19 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:

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<sup>1</sup> The class action styled as *Worth, et al. v. CVS Pharmacy, Inc.*, Case No. 2:16-cv-00498-FB-MDG, was filed by plaintiffs Jeffrey Worth and Robert Burns on February 1, 2016, in the U.S. District Court for the Eastern District of New York.

## 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 Eastern District of New York, *Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-2624.

2.3 “**Agreement**,” “**Settlement Agreement**,” or “**Stipulation**” means this settlement agreement—the “Amended Stipulation of Settlement”—including all Exhibits hereto, which updates and clarifies certain aspects of the Stipulation of Settlement dated April 22, 2016.

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 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, 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.<sup>2</sup>

### 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;

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<sup>2</sup> 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 approves this Settlement and the notices, the Parties will seek approval in this Court for this combined Summary Notice as the approved summary notice in the *Jovel* settlement.

or (c) if the Product was purchased (i) using an ExtraCare Card or (ii) online through cvs.com, a refund of the amount indicated in CVS's records payable to the Class Member in either the form of a credit to the purchaser's ExtraCare account associated with the purchase, or a voucher toward the purchase of any product sold at CVS in the event there is no ExtraCare account associated with their purchase. 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, if the Claim Form is not accompanied by a valid Proof of Purchase and CVS's records do not indicate that the Claimant has purchased the Product, at the Claimant's option, either (i) \$4.00 in cash value or (ii) \$6.50 in voucher value toward the purchase of any product sold at CVS. 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 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 claiming that the Product was "clinically shown to improve memory" or offered "clinically shown memory improvement" (the "Challenged Claims"). CVS agrees not to make

the Challenged Claims or any other representations regarding the health benefits, performance, safety, or efficacy of the Algal-900 DHA Product or any other dietary supplement, food or drug containing docosahexanoic acid (“DHA”)—excluding (1) infant formula or ingredients when sold specifically for use in infant formula, and (2) prenatal dietary supplements or prenatal vitamins—on any product label, packaging, advertising or marketing material of any kind, unless such representations 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. For the avoidance of doubt, the statement on the new Algal-900 DHA Product label that the Product provides “pure DHA memory support” does not violate this Agreement.

#### **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-02624, 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. 16-02624; (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-02624, 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 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:

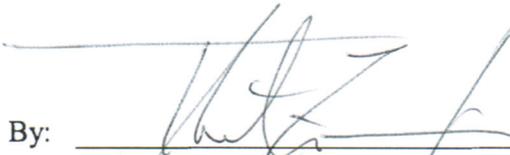
Thomas A. Zimmerman, Jr.  
Zimmerman Law Offices, P.C.  
77 W. Washington Street, Suite 1220  
Chicago, Illinois 60602  
Telephone: (312) 440-0020  
tom@attomeyzim.com

- 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: 6-25-16

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: 6/23/16

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.*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Mario Aliano, individually, and )  
on behalf of all others similarly situated, )  
) )  
) )  
Plaintiff, )  
) )  
and )  
) )  
Jeff Worth and Robert Burns, )  
) )  
Intervenor Plaintiffs, )  
) )  
v. )  
) )  
CVS Pharmacy, Inc., a Rhode Island Corporation, )  
) )  
Defendant. )

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Case No. 1:16-cv-02624-FB-MDG

**CLAIM FORM AND INSTRUCTIONS**

In order for you to qualify to receive benefits related to *Aliano v. CVS Pharmacy, Inc.*, Case No. 1:16-cv-02624-FB-MDG, 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 Class Notice and have the Class Notice with you when you complete your Claim Form. A copy of the Class Notice is available at [www.brainhealthdhasettlement.com](http://www.brainhealthdhasettlement.com).
2. You must accurately complete all required portions of this Claim Form.
3. You must sign this Claim Form.
4. By signing and submitting this Claim Form, you are certifying under penalty of perjury that you purchased one or more CVS Algal-900 DHA Products between November 15, 2008 and [Date of Preliminary Approval].
5. In order for you to receive a cash refund of the price you paid to purchase CVS Algal-900 DHA, you must submit with this Claim Form and a Proof of Purchase in the form of a cash register receipt, cancelled check, product package, or other similar type of documentation that shows the actual price paid for the CVS Algal-900 DHA Product. In order to receive a cash refund of the average retail price of CVS Algal-900 DHA Products, you must submit with this Claim Form a Proof of Purchase in the form of a product package or other similar documentation reflecting the purchase of CVS Algal-900 DHA Products.
6. If you submit this Claim Form without any Proof of Purchase, and CVS’s records indicate you purchased a CVS Algal-900 DHA Product using an ExtraCare Card, you will receive a credit to your ExtraCare account in the amount of your purchase(s) indicated in CVS’s records. If you submit this Claim Form without any Proof of Purchase, but CVS’s records indicate you purchased CVS Algal-900 DHA Product(s) online through [cvs.com](http://cvs.com) and there is no ExtraCare account associated with your purchase, you will receive a voucher toward the purchase of any product sold at CVS, in the amount of your purchase(s) as indicated in CVS’s records.

7. If you submit this Claim Form without any Proof of Purchase, and CVS does not have any records that you purchased a CVS Algal-900 DHA Product, you have the option of receiving a maximum of \$4.00 in cash or a \$6.50 voucher toward the purchase of any product sold at CVS.
8. In order for you to receive any Settlement benefits, you must submit a completed Claim Form. You may submit a completed Claim Form online at [www.brainhealthdhasettlement.com](http://www.brainhealthdhasettlement.com) on or before \_\_\_\_, 2016. Alternatively, you may mail the completed and signed Claim Form and Certification by First Class U.S. Mail, postmarked no later than \_\_\_\_ to:

Brain Health DHA Settlements Claims Administrator  
P.O. Box 40007  
College Station, TX 77842-4007

9. Your failure to complete and submit a Claim Form online on or before \_\_\_\_, 2016, or by regular mail postmarked by \_\_\_\_, 2016 will preclude you from receiving any benefits from 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 guarantee that you will share in the payments related to *Aliano v. CVS Pharmacy, Inc.* Visit the website at [www.brainhealthdhasettlement.com](http://www.brainhealthdhasettlement.com) 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 CVS Algal-900 DHA Product(s), 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 CVS 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 check the type of compensation you are claiming:**

- Cash Refund or Cash Payment of average retail price (Proof of Purchase necessary)
- Credit to ExtraCare account in the amount of purchase indicated in CVS's records<sup>†</sup>
- Voucher for the purchase of any product sold at CVS in the amount of purchase indicated in CVS's records for the online purchase of the product<sup>†</sup>
- \$4.00 Cash (No Proof of Purchase or CVS record of purchase necessary)<sup>††</sup> or
- \$6.50 voucher (No Proof of Purchase or CVS record of purchase necessary)<sup>††</sup>

<sup>†</sup> If you select this option and CVS's records do not indicate that you purchased CVS Algal-900 DHA, then you will receive one \$6.50 voucher toward the purchase of any product sold at CVS.

<sup>††</sup> If you select either the \$4.00 cash or \$6.50 voucher option and CVS records indicate that you purchased CVS Algal-900 DHA using an ExtraCare Card or online through cvs.com, then you will receive a refund in the amount of your purchase(s) of CVS Algal-900 DHA indicated in CVS's records in the form of either a credit to your ExtraCare account or a voucher towards the purchase of any product sold at CVS, as detailed above in Paragraph 6.

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. Sign the above Claim Form.
2. Enclose a copy of your Proof(s) of Purchase, if you have them.
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 benefits 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 “clinically shown memory improvement” on the label or packaging (“CVS Algal-900 DHA Products”).
- Those included may submit a Claim Form to receive:
  - a refund of the price paid to purchase CVS Algal-900 DHA Products—if the Claim Form is accompanied by a Proof of Purchase in the form of a cash register receipt, cancelled check, product package, or other similar type of documentation that shows the actual price paid for the Product;
  - a cash payment equal to the average retail price of CVS Algal-900 DHA Products—if the Claim Form is accompanied by a Proof of Purchase in the form of a product package or other similar documentation reflecting the purchase of Algal-900 DHA;
  - an ExtraCare Card credit in the amount of your CVS Algal-900 DHA Product purchase(s)—if the Claim Form is submitted without Proof of Purchase, but CVS’s records indicate you purchased the Product using an ExtraCare Card;
  - a voucher in the amount of your CVS Algal-900 DHA Product purchase(s) that is good toward the purchase of any product sold at CVS—if the Claim Form is submitted without Proof of Purchase, but CVS’s records indicate you purchased Algal-900 DHA online through cvs.com and there is no ExtraCare Card associated with your purchase;
  - maximum of \$4.00 in cash or a \$6.50 voucher toward the purchase of any product sold at CVS—if the Claim Form is submitted without Proof of Purchase and CVS does not have record of your CVS Algal-900 DHA Product purchase(s).
- Your rights are affected whether you act or do not act. Please read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b> [DATE]	This is the only way to receive a refund, cash payment, ExtraCare Card credit, 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.
<b>ASK TO BE EXCLUDED</b> [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 refund, cash payment, ExtraCare Card credit, or voucher from this Settlement.
<b>OBJECT TO THE SETTLEMENT</b> [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.
<b>ATTEND A HEARING ON</b> [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.
<b>DO NOTHING</b>	If you do nothing, you will not receive a refund, cash payment, ExtraCare Card credit, or voucher and you will give up your right to sue CVS on your own regarding any claims that are resolved by this 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.

QUESTIONS? CALL [1-888-283-6979](tel:1-888-283-6979) OR GO TO [WWW.BRAINHEALTHDHASETTLEMENT.COM](http://WWW.BRAINHEALTHDHASETTLEMENT.COM)

**EXHIBIT B**

- If you have any questions, please read on and visit [www.brainhealthdhasettlement.com](http://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 Frederic Block of the United States District Court for Eastern District of New York 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-2624 (E.D.N.Y.). The person who sued is called the Plaintiff, and the company they sued, CVS Pharmacy, Inc., is called the Defendant.

There is a companion case filed against CVS in the United States District Court for the Eastern District of New York captioned *Worth v. CVS Pharmacy, Inc.*, 16-cv-498, which asserts similar claims against CVS and those claims will be settled and released by this Settlement.

### 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 refunds, cash payments, ExtraCare Card credits, 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.

**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, ExtraCare Card credits, 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; 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; and/or whether CVS records indicate that the Class Member purchased the Product. Vouchers and ExtraCare Card credits may be used toward the purchase of any product sold at CVS.

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 Settlement benefit be?**

Refunds, cash payments, ExtraCare Card credits and voucher amounts will vary based on the purchase price paid for CVS Algal-900 DHA Products, whether and what type of Proof of Purchase you provide with your Claim Form, and/or whether CVS records indicate you purchased the Product.

- If you include Proof of Purchase in the form of a cash register receipt, cancelled check, product package, or other similar type of documentation that shows the actual price paid for the CVS Algal-900 DHA Product with your Claim Form, you will receive a full refund of the price you paid to purchase CVS Algal-900 DHA Products.
- If you include Proof of Purchase in the form of a product package or other similar documentation reflecting the purchase of CVS Algal-900 DHA Products with your Claim Form, you will receive a cash payment of the average retail price of CVS Algal-900 DHA Products.
- If you submit a Claim Form without any Proof of Purchase, but CVS’s records indicate you purchased CVS Algal-900 DHA Products using an ExtraCare Card, you will receive a credit to your ExtraCare Card account in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS’s records.
- If you submit a Claim Form without any Proof of Purchase, but CVS’s records indicate you purchased CVS Algal-900 DHA Products online through cvs.com and there is no ExtraCare Card associated with your purchase, you will receive a voucher toward the purchase of any product sold at CVS, in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS’s records.
- If you Submit a Claim Form without any Proof of Purchase and CVS does not have any record that you purchased CVS Algal-900 DHA Products , you have the option of receiving a maximum of \$4.00 in cash or a \$6.50 in voucher toward the purchase of any product sold at CVS. One claim per person and two claims per household will be accepted without Proof of Purchase.

**9. What rights am I giving up to receive a refund, cash payment, ExtraCare Card credit, 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, cash payment, ExtraCare Card credit, 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 2.33–2.35 and 12 of the Amended Stipulation of Settlement, available at [www.brainhealthdhasettlement.com](http://www.brainhealthdhasettlement.com).

### HOW YOU GET SETTLEMENT BENEFITS—SUBMITTING A CLAIM FORM

#### 11. How do I get a refund, cash payment, ExtraCare Card credit, or voucher from the proposed Settlement?

You must complete and submit a Claim Form by [\_\_\_\_\_, \_\_\_\_] 2016. If you did not receive a Claim Form in the mail or by email, you may get one from [www.brainhealthdhasettlement.com](http://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 [\_\_\_\_\_, \_\_\_\_] 2016, or by mail postmarked no later than [\_\_\_\_\_, \_\_\_\_] 2016.

#### 12. When will I receive my refund, cash payment, ExtraCare Card credit, 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. Settlement benefits will be issued 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-2624; (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](http://www.brainhealthdhasettlement.com) no later than \_\_\_\_\_, 2016.

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

**14. If I exclude myself, can I still get a refund, cash payment, ExtraCare Card credit 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, cash payment, ExtraCare Card credit, 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 the United States District Court for the Eastern District of New York captioned *Worth v. CVS Pharmacy, Inc.*, 16-cv-498, which asserts similar claims against CVS 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-2624; (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  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Counsel for the Class:**  
Thomas A. Zimmerman, Jr., Esq.

**Counsel for Defendant CVS:**  
Frank Spano, Esq.

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

Hogan Lovells US LLP  
875 Third Avenue  
New York, NY 10022

**17. What's the difference between objecting and asking to be excluded?**

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-2624); (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 refund, cash payment, ExtraCare Card credit, 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, cash payments, ExtraCare Card credit 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 proposed 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 Eastern District of New York will hold a Fairness Hearing at the Federal Courthouse located at 225 Cadman Plaza East, Brooklyn, NY, 11201, on [\_\_\_\_\_, 2016] to decide whether the proposed 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](http://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 Amended 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 Eastern District of New York, at the Federal Courthouse located at 225 Cadman Plaza East, Brooklyn, NY, under the Civil Action Number 16-cv-2624, 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](mailto:tom@attorneyzim.com).

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

## LEGAL NOTICE

### **If you purchased certain BrainStrong or CVS Algal-900 DHA products, you could get benefits 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 separate class action lawsuits with i-Health Inc. (“i-Health”) and CVS Pharmacy, Inc. (“CVS”) concerning 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 Court has not decided who is right in the lawsuits. Instead, the parties have agreed to settle these cases in two separate settlements (the “i-Health BrainStrong Settlement” and the “CVS Algal-900 DHA Settlement”).

#### **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 (“BrainStrong” or “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 Product”). You are not included in either Settlement if you purchased these products for resale purposes.

#### **What Do The Settlements Provide?**

If approved, the BrainStrong Settlement will provide refunds, cash payments, or vouchers toward the purchase of any i-Health product. If you submit a Claim Form: (i) with Proof of Purchase in the form of a cash register receipt, cancelled check, product package, or other similar type of documentation that shows the actual price paid for the Product you will receive a refund of the price you paid to purchase BrainStrong Product(s); (ii) with Proof of Purchase in the form of a product package or other similar documentation reflecting the purchase of BrainStrong Product(s) , you will receive a cash refund of the average retail price of BrainStrong Products; and (iii) without any Proof of Purchase, you have the option of receiving a maximum of \$4.00 in cash or a \$6.50 voucher good toward the purchase of any i-Health Product. One claim per person and two claims per household will be accepted without Proof of Purchase.

If approved, the CVS Algal-900 DHA Settlement will provide refunds, cash payments, ExtraCare Card credits and vouchers toward the purchase of any product sold at CVS. If you submit a Claim Form: (i) with Proof of Purchase in the form of a cash register receipt, cancelled check, product package, or other similar type of documentation that shows the actual price paid for the CVS Algal-900 DHA Product, you will receive a full refund of the price you paid to purchase CVS Algal-900 DHA Product(s); (ii) with Proof of Purchase in the form of a product package or other similar documentation reflecting the purchase of CVS Algal-900 DHA Products, you will receive a cash payment of the average retail price of CVS Algal-900 DHA Products; (iii) without any Proof of Purchase, but CVS’s records indicate you purchased CVS Algal-900 DHA Products using an ExtraCare Card, you will receive a credit to your ExtraCare card account in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS’s records; (iv) without any Proof of Purchase, but CVS’s records indicate you purchased CVS Algal-900 DHA Products online through cvs.com and there is no ExtraCare Card associated with your purchase, you will receive a voucher toward the purchase of any product sold at CVS, in the amount of your purchase(s)

of CVS Algal-900 DHA Products as indicated in CVS's records; and (v) without any Proof of Purchase and CVS does not have any record that you purchased CVS Algal-900 DHA Products, you have the option of receiving a maximum of \$4.00 in cash or a \$6.50 in voucher toward the purchase of any product sold at CVS. One claim per person and two claims per household will be accepted without Proof of Purchase.

#### **How Do You Ask For Benefits from the Settlements?**

You must complete and submit a Claim Form by [REDACTED], 2016. Claim Forms may be submitted online at [www.brainhealthdhasettlement.com](http://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 any benefits from these Settlements. 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 or Amended 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 one 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. There is a companion case, *Worth v. CVS Pharmacy, Inc.*, 16-cv-498 (E.D.N.Y.), which asserts similar claims against CVS; those claims will be settled and released by this CVS Algal-900 DHA Settlement.

#### **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 v. i-Health, Inc.*, Case No. 1:12-cv-05614) on [REDACTED], 2016, at [REDACTED] a.m., and in the CVS Algal-900 DHA Settlement (*Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-2624) on [REDACTED], 2016, at [REDACTED] a.m.

At the Fairness Hearings, the 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 benefits 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.

#### **Want More Information?**

Visit [www.brainhealthdhasettlement.com](http://www.brainhealthdhasettlement.com) (detailed Notices and other relevant documents), 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 Eastern District of New York. 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, ExtraCare Card credits or vouchers toward the purchase of any product sold at CVS.

- If you submit a Claim Form with Proof of Purchase:
  - in the form of a cash register receipt, cancelled check, product package, or other similar type of documentation that shows the actual price paid for the CVS Algal-900 DHA Product, you will receive a full refund of the price you paid to purchase CVS Algal-900 DHA Products.
  - in the form of a product package or other similar documentation reflecting the purchase of CVS Algal-900 DHA Products, you will receive a cash payment of the average retail price of CVS Algal-900 DHA Products.
- If you submit a Claim Form without any Proof of Purchase:
  - but CVS’s records indicate you purchased CVS Algal-900 DHA Products using an ExtraCare Card, you will receive a credit to your ExtraCare Card account in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS’s records.
  - but CVS’s records indicate you purchased CVS Algal-900 DHA Products online through cvs.com and there is no ExtraCare Card associated with your purchase, you will receive a voucher toward the purchase of any product sold at CVS, in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS’s records.
  - and CVS does not have any record that you purchased CVS Algal-900 DHA Products, you have the option of receiving a maximum of \$4.00 in cash or a \$6.50 in voucher toward the purchase of any product sold at CVS. One claim per person and two claims per household will be accepted without Proof of Purchase.

### **How Do You Ask For A Refund, Cash Payment, ExtraCare Card credit or Voucher?**

You must complete and submit a Claim Form by [\_\_\_\_\_, 2016]. Claim Forms may be submitted online at [www.brainhealthdhasettlement.com](http://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 any Settlement benefits. 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 similar claims against CVS 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 Amended Stipulation of Settlement. If you exclude yourself, you cannot get any Settlement benefits 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 Amended Stipulation of Settlement, which are available at [www.brainhealthdhasettlement.com](http://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-2624) in the United States District Court for the Eastern District of New York. 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](http://www.brainhealthdhasettlement.com) or click on the links below. You may also contact Class Counsel by emailing [tom@attorneyzim.com](mailto: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.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

_____	)
Mario Aliano, individually, and	)
on behalf of all others similarly situated,	)
	)
	)
Plaintiff,	)
	)
Jeff Worth and Robert Burns,	)
	)
Intervenor-Plaintiffs,	)
	)
v.	)
	)
CVS Pharmacy, Inc., a Rhode Island Corporation,	)
	)
Defendant.	)
_____	)

Case No. 1:16-cv-02624-FB-MDG

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

This matter having been submitted to the Court by plaintiff Mario Aliano (“Plaintiff”) and the firm Zimmerman Law Offices, P.C. (“Class Counsel”) on behalf of the Plaintiff and by CVS Pharmacy, Inc. (“CVS”) by its counsel, by way of Plaintiff’s motion for preliminary approval of the proposed settlement in the above captioned action;

WHEREAS, the Court having reviewed and considered Plaintiff’s motion for preliminary approval and supporting materials filed by Class Counsel and CVS’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. § 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 consumers 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 \_\_\_\_\_2017, 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 \_\_\_\_\_, 2016:

**Settlement Class Counsel:**

Thomas A. Zimmerman, Jr.  
Zimmerman Law Offices, P.C.  
77 W. Washington Street, Suite 1220  
Chicago, Illinois 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-02624; (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 \_\_\_\_\_, 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. 16-02624; (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 \_\_\_\_\_, 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-02624; (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 \_\_\_\_\_, 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	_____, 2016
Deadline for (1) commencement of 30 days of Internet banner notifications and (2) dissemination of direct E-mail Notice	_____, 2016
Filing of papers in support of Final Approval and Class Counsel’s Application for Attorneys’ Fee and Expenses	_____, 2016
Deadline for submitting exclusion requests or objections	_____, 2016
Filing of response to objections	_____, 2016
Deadline for submitting claims forms	_____, 2016
Final Approval Hearing	_____, 2017

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.

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U.S.D.J.

Dated:

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

<b>ALGAL-900 DHA – 30 COUNT BOTTLE</b>	\$9.39
<b>ALGAL-900 DHA – 90 COUNT BOTTLE</b>	\$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 benefits from a proposed class action settlement.**

**1-888-283-6979**

[www.brainhealthdhasettlement.com](http://www.brainhealthdhasettlement.com)

CVY

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 offers "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, ExtraCard Card credits, or vouchers. Class Members who submit a Claim Form: (i) with Proof of Purchase in the form of a cash register receipt, cancelled check, product package, or other similar type of documentation that shows the actual price paid for the CVS Algal-900 DHA Product will receive a full refund of the price paid to purchase CVS Algal-900 DHA Product(s); (ii) with Proof of Purchase in the form of a product package or other similar documentation reflecting the purchase of CVS Algal-900 DHA Products will receive a cash payment of the average retail price of CVS Algal-900 DHA Products; (iii) without any Proof of Purchase, but CVS's records indicate they purchased CVS Algal-900 DHA Products using an ExtraCare Card will receive a credit to their ExtraCare Card account in the amount of their purchase(s) as indicated in CVS's records; (iv) without any Proof of Purchase, but CVS's records indicate they purchased CVS Algal-900 DHA Products online through cvs.com and there is no ExtraCare Card associated with their purchase will receive a voucher toward the purchase of any product sold at CVS, in the amount of your purchase(s) as indicated in CVS's records; and (v) without any Proof of Purchase and CVS does not have any record of CVS Algal-900 DHA Product purchases have the option of receiving a maximum of \$4 in cash or a \$6.50 voucher toward the purchase of any product sold at CVS. One claim per person and two claims per household will be accepted without Proof of Purchase.

**How do I get the Settlement benefits?** You must complete and submit a Claim Form by [\_\_\_\_\_, 2016]. Claim Forms may be submitted online at [www.brainhealthdhasettlement.com](http://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 any Settlement benefits. 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 Amended Stipulation of Settlement. If you exclude yourself, you cannot get any Settlement benefits, 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. There is a companion case, *Worth v. CVS Pharmacy, Inc.*, 16-cv-498 (E.D.N.Y.), which asserts similar claims against CVS; those claims will be settled and released by this Settlement. More information can be found in the detailed Notice and Amended Stipulation of Settlement, which are available at [www.brainhealthdhasettlement.com](http://www.brainhealthdhasettlement.com).

**The Court's Fairness Hearing.** The U.S. District Court for the Eastern District of New York, located 225 Cadman Plaza East, Brooklyn, NY, 11201, will hold a hearing in this case (*Aliano v. CVS Pharmacy, Inc.*, Case No. 16-cv-2624) 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.