

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

SECOND AMENDED STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Settlement Agreement”), originally dated April 22, 2016, amended June 24, 2016, and further amended on January ___, 2018, 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. On August 3, 2017, Judge Go entered an Order and Judgement granting final approval to the Jovel class action settlement.

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,¹ 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:

¹ 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 CONDITIONS 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 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” (the **“Challenged Claims”**).

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 Polsinelli PC.

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.

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

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

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

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

2.29 **“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.

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

2.31 **“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.

2.32 **“Released Claim”** means any claim, cross-claim, liability, right, demand, suit, matter, obligation, damage, restitution, disgorgement, loss or cost, attorneys’ fee or expense, action or cause of action, of every kind and description that a Releasing Party had or has, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been or in the future might reasonably be asserted by the Releasing Party in the Action against any of the Released Parties arising out of or relating to the Challenged Claims on the Product.

A. **Unknown Claims.** The Releasing Parties expressly waive the provisions of Section 1542 of the California Civil Code (and all other like provisions of law) to the full extent that these provisions may be applicable to the release of liability in this Section. California Civil Code, Section 1542, provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the

release, which if known by him or her must have materially affected his or her settlement with the debtor.

One or more of the Releasing Parties may hereafter discover facts other than or different from those which he or she knows or believes to be true with respect to the Released Claims. Nevertheless, upon this Settlement becoming final, each of the Releasing Parties hereby expressly waive and fully, finally and forever settle and release all known or unknown, contingent or non-contingent claims in any way relating to the subject matter of the Released Claims, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts. **For the avoidance of doubt, the Released Claims do not encompass any other dietary supplement or other product other than the CVS-supplied Product containing the Challenged Claims defined in Section 2.4 above.**

2.33 **“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.

2.34 **“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.

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

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

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

2.38 **“Settlement Class Members”** or **“Settlement Class”** means: All consumers in the United States who purchased 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.

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

2.40 **“Settlement Order and Judgment”** means an order and judgment issued and entered by the Court approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members and dismissing the Action with prejudice, and setting the amount for an award of attorneys’ fees, costs and expenses, not to exceed 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.

2.41 **“Settlement Website”** means a website to be established operated and maintained by the Claims Administrator solely for purposes of making available to the Settlement Class Members the documents, information and online claims submission process referenced in this Agreement.

The Settlement Website shall be activated no later than forty five (45) days after the Court enters the Preliminary Approval Order.

2.42 “**Summary Notice**” or “**Short-form Notice**” means the Class Settlement Notice substantially in the form attached hereto as Exhibit C.²

3. SETTLEMENT RELIEF AND CONSIDERATION

Damages/Compensation

3.1 Damages/Compensation. Defendant shall offer to any Class Member who submits a valid Claim Form to the Class Action Administrator, on or before the Claim Period Close Date (a) a full refund of the price paid by the Claimant for Algal-900 DHA, if the Claim Form is accompanied by a valid Proof of Purchase indicating the actual price paid; (b) a refund based on the average retail price for the Algal-900 DHA Product set out in Exhibit F, if the Claim Form is accompanied by a valid Proof of Purchase that does not indicate the actual purchase price paid; or (c) if the 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 containing 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” (the “New Label”) does not violate this Agreement.

Plaintiff’s agreement that the New Label does not violate this Agreement is limited to an agreement that no member of the Settlement Class will seek to hold CVS in contempt of Court or in breach of this Agreement based on the New Label, but in no way estops or

limits a Settlement Class Member, or anyone else, from bringing any common law or statutory claim related to the New Label. Nothing in this paragraph, however, shall diminish or limit the *res judicata* effect of this Agreement with respect to the Challenged Claims.

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 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, 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 reasons 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
Polsinelli PC
600 Third Avenue, 42nd Floor
New York, NY 10016
Telephone: (212) 413-2848
fspano@polsinelli.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.

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*

By:

Frank Spano
Polsinelli PC
600 Third Avenue
New York, NY 10016
Telephone: (212) 413-2848
fspano@polsinelli.com

*Counsel for Defendant CVS
Pharmacy, Inc.*