

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

WILLIAM JACKSON, EDWARD
BUCHANNAN, and THAMAR
SANTISTEBAN CORTINA individuals and on
behalf of all others similarly situated,

Plaintiff,

vs.

LANG PHARMA NUTRITION, INC.; WAL-
MART STORES, INC.; CVS PHARMACY,
INC.; WALGREEN CO.; MEIJER
DISTRIBUTION, INC.; and DOES 1-20,
inclusive,

Defendants.

CASE NO. 37-2017-00028196-CU-BC-
CTL

CLASS ACTION

AGREEMENT OF SETTLEMENT

Dept.: C-73
Judge: Hon. Joel R. Wohlfeil

Subject to Court approval, this Agreement of Settlement ("Settlement Agreement"), is made as of the 4th day of October 2017, by and between Plaintiffs William Jackson, Edward Buchannan and Thamar Santisteban Cortina (collectively "Plaintiffs"), as individuals and on behalf of all Class Members (as defined below), and Defendants Lang Pharma Nutrition, Inc. ("Lang"), Wal-Mart Stores, Inc. ("Wal-Mart"), CVS Pharmacy, Inc. ("CVS"), Walgreen Co. ("Walgreens"), Meijer Distribution, Inc. ("Meijer") (collectively "Defendants").

1 I. RECITALS

2
3 A. Since September 3, 2013 the parties and counsel have been involved in class
4 action litigation over sales of CoQ-10 Softgels that were manufactured by Lang (“Lang CoQ-10
5 Softgels”). Identical Lang CoQ-10 Softgels were sold under several different store-brand names
6 by Wal-Mart, CVS, Walgreens and Meijer (collectively, “the Retailers”).
7

8 B. The store brand names are: (1) Wal-Mart's Equate Clinical Strength High
9 Absorption CoQ-10 100 mg ("Wal-Mart Equate CoQ-10"), (2) CVS/Pharmacy Ultra CoQ-10
10 100 mg and CVS/Health Ultra CoQ-10 100 mg (collectively referred to as "CVS Ultra CoQ-
11 10"), (3) CVS/Pharmacy Enhanced Absorption Formula CoQ-10 100 mg and CVS/Health
12 Enhanced Absorption Formula CoQ-10 100 mg (collectively referred to as “CVS Enhanced Co-
13 Q-10”), (3) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 100 mg and
14 200 mg (collectively "Walgreens Enhanced CoQ-10"), and (4) Meijer's Ultra CoQ-10 100 mg
15 ("Meijer Ultra CoQ-10").
16

16 C. Cortina v. Wal-Mart, Inc. et al.

- 17 1. On or about September 3, 2013, Plaintiff Cortina filed a putative class action
18 complaint in United States District Court for the Southern District of California,
19 styled as *Thamar Santisteban Cortina v. Wal-Mart, Inc. et al.*, Case No. 3:13-CV-
20 02054-BAS-DHB (“Cortina Case”). Defendant Lang was subsequently added as
21 defendant.
22 2. Plaintiff Cortina alleged in that action that defendants violated various laws,
23 including the Magnuson-Moss Warranty Act, Arkansas Deceptive Trade Practices
24 Act, Business & Professions Code § 17200 *et seq.*, Business & Professions Code
25 § 17500 *et seq.*, and the California Consumers Legal Remedies Act, amongst
26 others. Plaintiff alleged that Wal-Mart, Inc. marketed and sold Lang CoQ-10
27 Softgels under its store-brand “Wal-Mart Equate CoQ-10.” Plaintiff alleged that
28 the defendants mislabeled Wal-Mart Equate CoQ-10 product, which gave rise to

1 various state and federal causes of action. These claims were alleged on behalf of
2 Plaintiff and a class of all similarly situated purchasers of Wal-Mart Equate CoQ-
3 10.

4 3. Plaintiff and defendants engaged in extensive discovery, settlement discussions
5 with Magistrate Judge David H. Bartick and motion practice. The case was
6 voluntarily dismissed, without prejudice, on September 20, 2016.

7 4. As part of the dismissal of the *Cortina* Case, the district court ordered that all
8 discovery undertaken by the parties in the Prior Class Actions (defined blow)
9 could be used in a subsequent action.

10 D. Leo Harris v. CVS Pharmacy, Inc.

11 1. On or about December 18, 2013, Plaintiff Leo Harris filed a putative class action
12 complaint in United States District Court for the Central District of California,
13 styled as *Harris v. CVS Pharmacy, Inc.*, Case No. 5:13-cv-02329 (“*Harris Case*”).

14 2. Plaintiff Harris alleged that defendant CVS violated various laws, including the
15 Magnuson-Moss Warranty Act, Business & Professions Code § 17200 *et seq.*,
16 Business & Professions Code § 17500 *et seq.*, and the California Consumers
17 Legal Remedies Act, amongst others. Plaintiff alleged that CVS marketed and
18 sold Lang CoQ-10 Softgels under its store-brand “CVS Ultra CoQ-10”. Plaintiff
19 alleged that CVS Ultra CoQ-10 was mislabeled, giving rise to various state and
20 federal causes of action. These claims were alleged on behalf of plaintiff and a
21 class of all similarly situated purchasers of CVS Ultra CoQ-10.

22 3. Plaintiff and defendant engaged in extensive discovery, motion practice and
23 settlement negotiations. The case was dismissed, without prejudice, on August 6,
24 2016.

25
26 E. Gary Reynolds, et al. v. Walgreen Co.

27 1. On or about January 23, 2015, plaintiffs Gary Reynolds and Robert Mason also
28 filed a putative class action complaint in United States District Court for the

Northern District of California, styled as *Reynolds et al. v. Walgreen Co.*, Case No. 4:15-cv-00324 (“*Reynolds Case*”).

2. Plaintiffs alleged that Walgreens violated various laws, including Business & Professions Code § 17500 *et seq.*, the California Consumers Legal Remedies Act, Business & Professions Code § 17200 *et seq.*, amongst others. Plaintiffs alleged that Walgreens marketed and sold Lang CoQ-10 Softgels under its store-brand “Walgreens Enhanced CoQ-10”. Plaintiffs alleged that Walgreens Enhanced CoQ-10 was mislabeled, giving rise to various state and federal causes of action. These claims were allegedly on behalf of plaintiffs and a class of all similarly situated purchasers.
3. The parties stipulated that depositions and written discovery undertaken in the *Cortina* and *Harris* cases could be used in the *Reynolds* case. Plaintiffs Reynolds and Mason voluntarily dismissed their case, without prejudice, after the dismissal of the *Alvandi* case (discussed below) for lack of subject matter jurisdiction on April 9, 2015. .

F. *Alvandi v. CVS Pharmacy, Inc. et al.*

1. On or about March 2, 2015, Plaintiff Alvandi filed a putative class action complaint against CVS in United States District Court for the Central District of California, styled as *Alvandi v. CVS Pharmacy, Inc. et al.*, Case No. 2:15-CV-01503 (“*Alvandi Case*”).
2. Plaintiff alleged that CVS violated various laws, including the Magnuson-Moss Warranty Act, Business & Professions Code § 17200 *et seq.*, Business & Professions Code § 17500 *et seq.*, and California Consumers Legal Remedies Act, amongst others. Plaintiff alleged that CVS marketed and sold Lang CoQ-10 Softgels under its store-brand “CVS Enhanced CoQ-10.” Plaintiff alleged that CVS Enhanced CoQ-10 was mislabeled, which gave rise to various state and federal causes of action. These claims were alleged on behalf of plaintiff and a class of similarly situated purchasers.

- 1 3. The parties stipulated that depositions and written discovery undertaken in the
2 *Cortina* and *Harris* cases could be used in the *Alvandi* case. *Alvandi* was
3 dismissed, without prejudice, for lack of subject matter jurisdiction on May 27,
4 2015.
- 5 4. The *Cortina*, *Harris*, *Reynolds* and *Alvandi* cases are collectively referred to as
6 “the Prior Class Actions”. After the dismissal of the Prior Class Actions, Plaintiff
7 Cortina and her counsel stated they would revive their dismissed class action by
8 filing in state court a similar action against Lang and the Retailers.

9 G. *Jackson et al. v. Lang Pharma Nutrition, Inc. et al.*

- 10 1. Subsequent to the dismissal of the Prior Class Actions, on or about August 1,
11 2017, Plaintiffs Jackson and Buchanan filed this putative class action.
- 12 2. On October 27, 2017, Plaintiffs filed a First Amended Complaint adding Plaintiff
13 Cortina to this action.
- 14 3. As in the Prior Class Actions, Plaintiffs here allege that Defendants violated
15 various laws, including Business & Professions Code § 17200 *et seq.*, Business &
16 Professions Code § 17500 *et seq.*, and California Consumers Legal Remedies Act,
17 amongst others. Plaintiffs allege that the Retailers marketed and sold Lang CoQ-
18 10 Softgels under their respective store-brands. Plaintiffs allege that Defendants
19 misabeled the store-brand products, which gave rise to various state causes of
20 action. As in the Prior Class Actions, these claims are alleged on behalf of
21 Plaintiffs and a class of similarly situated purchasers of the store-brand versions
22 of Lang CoQ-10 Softgels.
- 23 4. This case is an amalgamation of the allegations and claims set forth in the Prior
24 Class Actions.

25 H. In the Prior Class Actions, the parties engaged in extensive discovery, including
26 extensive written discovery, the production of thousands of pages of documents by Defendants
27 and third-parties, as well as numerous depositions.

28 I. Prior to the dismissal of the *Cortina* Case, the parties attended two mediation

1 sessions and engaged in arm's-length negotiations before The Honorable David H. Bartick,
2 Magistrate Judge for the U.S. District Court for the Southern District of California. The Parties
3 sought a nationwide class settlement of all four Prior Class Actions.

4 J. Since the dismissal of the Prior Class Actions and continuing after the filing of
5 this action, the parties have continued settlement discussions. Plaintiffs concluded that it is in
6 the best interests of the class to enter into this Settlement Agreement. While Class Counsel and
7 Plaintiffs believe the aforementioned allegations and that they have meritorious claims, based on
8 the evidence produced in discovery and the mediation sessions, Plaintiffs recognize that success
9 on the merits is uncertain. Class counsel and Plaintiffs recognize that the settlement provides
10 significant benefits to all members of the class, eliminates the burden, expense, and uncertainty
11 inherent in complex litigation, and minimizes significant uncertainties and substantial additional
12 expenditures of time and expenses associated with further litigation.

13 K. Defendants believe that Lang CoQ-10 Softgels are efficacious, perform as
14 labelled and advertised, and are properly labeled. Nevertheless, Defendants recognize that
15 success on the merits is uncertain, and they enter into this Settlement Agreement to avoid that
16 uncertainty and the further expense, inconvenience, and burden of litigation, as well as the
17 distraction and diversion of their personnel and resources.

18 L. Plaintiffs and Defendants agreed to settle, compromise, and dismiss with
19 prejudice the operative complaint and all claims thereunder of the Class Members (as defined
20 below) without costs to any party (except as provided herein) on the terms and conditions set
21 forth in this Settlement Agreement, subject to the approval of the Court.

22 M. This Settlement Agreement, including its exhibits, embodies all of the terms and
23 conditions of the settlement between Plaintiffs and Defendants, both individually, and on behalf
24 of the Settlement Class, subject to the approval of the Court.

25 **II. TERMS AND CONDITIONS OF SETTLEMENT**

26 **NOW THEREFORE**, it is agreed by the undersigned, on behalf of Plaintiffs and
27 Defendants, that all claims of Plaintiffs and all other Class Members shall be settled and
28 compromised and *Jackson et al v. Lang Pharma Nutrition, Inc. et al.*, Case No. 37-2017-

00028196-CU-BC-CTL case will be dismissed on the merits, with prejudice, once final approval of the settlement has been obtained from the Court.

The following terms and conditions apply to this settlement:

A. DEFINITIONS

The following words and terms, as used in this Settlement Agreement and attached exhibits, have the meanings set forth below:

1. “Action” shall mean the *Jackson et al v. Lang Pharma Nutrition, Inc.*, Case No. 37-2017-00028196-CU-BC-CTL (Superior Court of California for the County of San Diego).

2. “Attorneys’ Fees” means any award of attorneys’ fees and costs approved by the Court for payment to the Class Counsel.

3. “Claim” means a claim made either electronically or by U.S. Mail by a person who is a member of the Settlement Class in accordance with the requirements contained in this Agreement.

4. “Claim Form” means the form attached hereto as Exhibit “C”.

5. “Claimed Product Credits” means credits for products claimed by a Qualifying Claimant as set forth in Section II (D).

6. “Claims Administrator” means Classaura Inc. whose business address is 1718 Peachtree St NW, Atlanta, GA 30309. Classaura, Inc. will be retained by Defendants to administer the Notice Program as described in Section II (E) of this Settlement Agreement and the Claim Program as described in Section II (F) of this Settlement Agreement.

7. “Class” is hereby defined to mean “all persons in the United States who purchased a Lang CoQ-10 Softgel product manufactured by Lang and sold by the Retailers under the store brand labels listed in Recital (B) from July 1, 2013 until the date the notice of settlement is disseminated to the class. Excluded from the definition of Class are: (1) the judge presiding over this action through the final Approval of this Settlement Agreement of this; (2) the defendants, (3) defendants' subsidiaries, parent companies, successors, predecessors, any entity in which the defendants or their parents have a controlling interest, suppliers and vendors; (4) Defendants’ current or former officers, directors, and employees; (5) persons who properly

1 execute and file a timely request for exclusion from the class; and (6) legal representatives,
2 successors or assigns of any such excluded person. It is the intent of the parties to include any
3 person who currently has a claim against Defendants regarding the causes of action now alleged
4 or similar causes of action. To the extent that any jurisdiction contains a statute of limitations
5 longer than four (4) years, persons who made purchases prior to four years before the start of this
6 litigation are considered part of the class, but only in those jurisdictions with longer statutes of
7 limitations and only to the extent allowed by law.

8 8. "Claims Period" means the period of time commencing the day the Notice to the
9 class is published and ending on the sixtieth (60th) day after the Notice to the class is published.

10 9. "Class Counsel" means Ronald A. Marron of the Law Offices of Ronald A.
11 Marron, APLC.

12 10. "Class Period" means July 01, 2013 through the date of the Final Approval Order.

13 11. "Class Product" means the Lang CoQ-10 Softgels, which were marketed and sold
14 by the Retailers under store-brand names listed in Recital (B).

15 12. "Class Member(s)" means any member of the Settlement Class who does not
16 timely exclude himself or herself from the Settlement pursuant to Section J of this Settlement
17 Agreement.

18 13. "Court" means the Superior Court of California for the County of San Diego.

19 14. "Effective Date" means twenty (20) days after the entry of the Court's order
20 regarding final approval of the settlement or entry of judgment, whichever is later.

21 15. "Final Approval Hearing" means the fairness hearing to consider the final
22 approval of the Settlement, as required by California Rules of Court, Rule 3.769(e).

23 16. "Final Approval Order" means the final order entered by the Court in the form
24 attached hereto as Exhibit "E", approving this Settlement Agreement as fair, adequate and
25 reasonable and dismissing, with prejudice, the Complaint and all allegations, claims, or causes of
26 action asserted therein against Defendants.

1 17. “Judgment” means the judgment entered by the Court in the form attached hereto
2 as Exhibit “E”. The Judgment (and the Final Approval Order) shall be deemed “Final” upon
3 entry of judgment.

4 18. “Notice” means the Notice of Proposed Settlement of Class Action in the form
5 attached hereto as Exhibit “A”. Exhibit “A” may also be referred to as the “Long-Form Notice.”

6 19. “Notice Program” means the mechanisms and arrangements for providing the
7 Notice described in Section E of this Settlement Agreement.

8 20. “Plaintiffs” means William Jackson, Edward Buchannan, and Tamar Santisteban
9 Cortina, both in their individual capacities and as representatives of the Settlement Class.

10 21. “Preliminary Approval Order” means the Order issued by the Court pursuant to
11 CRC Rule 3.769(c) in substantially the same form attached hereto as Exhibit “D”.

12 22. “Prior Class Actions” means the lawsuits identified in Recitals (C), (D), (E), and
13 (F).

14 23. “Qualifying Transaction” means a purchase of a Class Product in the United
15 States during the Class Period.

16 24. “Qualifying Claimant” means a Class Member who submits a timely, completed
17 Claim Form, indicating that he or she engaged in a Qualifying Transaction, and whose claim is
18 not rejected by the Claims Administrator and is not disputed by Defendants under the procedures
19 set forth in Section F below.

20 25. “Released Claims” means the claims released as described in Section K of this
21 Settlement Agreement.

22 26. “Released Parties” means all parties identified as having claims released against
23 them in the first paragraph of Section K (1) of this Agreement.

24 27. “Releasing Parties” means Plaintiffs and all Class Members who do not opt out of
25 this Settlement.

26 28. “Settlement” means the terms and conditions of the settlement agreement
27 embodied by this document.

28

29. “Settlement Class” means, for settlement purposes only, all persons who made a Qualifying Transaction.

30. “Settlement Website” means www.Q10Settlement.com, which will be created and maintained by the Class Administrator and which will, at the appropriate time, prominently post information pertaining to the nature of this action and terms of the Settlement and which will contain a copy of the Notice, the operative complaint in this Action, and other documents relevant to the Settlement.

31. “Short-Form Notice” means the abbreviated form of Notice of Proposed Settlement of Class Action in the form attached hereto as Exhibit “B”.

B. TIMING OF PRELIMINARY APPROVAL

The parties agree to file a motion for preliminary approval of this Settlement as soon as practical after the execution of this Settlement Agreement.

C. CONDITIONS OF SETTLEMENT

Counsel for the undersigned agree to recommend approval of this Settlement Agreement to the Court and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement.

Defendants hereby agree to comply with California Business & Professions Code § 17533.7 and relevant federal law, as well as the laws of the other 49 states and the District of Columbia, in conjunction with all future sales of their Lang CoQ-10 Softgels and permit the entry of the stipulated permanent injunction as fully detailed herein.

The Parties, in conjunction with their counsel, also agree to take all necessary steps to stay or dismiss any later-filed action against one or more of the Defendants based on alleged claims of mislabeling Lang CoQ-10 Softgels, including but not limited to *Villasenor v. Wal-Mart Stores, Inc.*, United States District Court, Central District of California Case No. 2:17-cv-06439.

D. SETTLEMENT CONSIDERATION AND CORRECTIVE LABELING

1. Class Members who do not exclude themselves from this settlement, hereby agree that the consideration provided by Defendants in accordance with this Settlement

1 Agreement is adequate, fair and in full, complete and final settlement of the
2 claims of Class Members in the Action and as against all Released Parties.

- 3 2. This Settlement is a full and complete settlement of all claims which have been,
4 might have been, are now or could be asserted in the Action by Plaintiffs and
5 Class Members against the Released Parties.
- 6 3. Defendants will create a non-reversionary cash fund of \$656,000 (“Cash
7 Settlement Fund”).
- 8 4. Defendant Lang will also make available \$650,000 in product credits (“Product
9 Credit Settlement Fund”) valued at \$12.50 each to be redeemed for purchases of
10 Lang branded products solely through a dedicated website (“Lang Website”) (and
11 cannot be redeemed through any retail store). The selection of products will
12 include a variety of dietary supplements for health and wellness, including but not
13 limited to the following: CoQ-10, Calcium and D3, Advanced Bone Health for
14 Seniors, Advanced Bone Health for Adults, Women’s Nighttime Multivitamin,
15 Men’s Nighttime Multivitamin, and Vegetarian Glucosamine. Lang will use
16 reasonable efforts to provide each class member with their first choice of product.
17 Redeemed products will be priced, packaged and labeled in accordance with
18 Exhibit F.
- 19 5. Qualifying Claimants who timely submit an executed Claim Form, will have a
20 choice to receive a cash payment from the Cash Settlement Fund or a product
21 credit to be paid from the Product Credit Fund
- 22 6. Qualifying Claimants opting for the cash payment will receive a cash refund of
23 \$3.50, after the following expenses are offset: (a) notice and administrative
24 expenses, (b) Plaintiffs' attorneys' fees, (c) Plaintiffs' incentive award, and (d) a
25 maximum of \$65,000 paid toward the estimated shipping and handling costs.
26 Neither Plaintiffs nor Qualifying Claimants will be responsible for any shipping
27 or handling costs. If the maximum Cash Settlement Fund is exhausted, the cash
28 refund to Qualifying Claimants will be reduced *pro rata*. If the maximum Cash

1 Settlement Fund is not exhausted, the cash refund to Qualifying Claimants will
2 increase *pro rata*. Defendants' cash payment obligations under this settlement
3 shall be limited to, and shall be no more than, the following payments: \$656,000
4 to the Cash Settlement Fund and all shipping and handling costs in excess of
5 \$65,000.

- 6 7. Product credits are limited to one (1) credit per Qualifying Claimant, unless actual
7 valid purchase receipts are provided and then up to 5 product credits per claimant
8 per household. If the maximum Product Credit Settlement Fund is exhausted, the
9 value of the Claimed Credits will be reduced *pro rata*. If the maximum Product
10 Credit Settlement Fund is not exhausted, Qualifying Claimants may receive more
11 than one (1) credit. Claimed Credits will be delivered to Qualifying Claimants
12 electronically (e.g., via email) and must be redeemed at the Lang Website within
13 60 days of delivery. Any Claimed Credits that remain unused after 60 days will
14 expire and the same number of expired credits will be reissued and donated to
15 Consumer Union as a *cy pres* recipient ("Cy Pres Credits"). Cy Pres Credits must
16 be redeemed at the Lang Website within 60 days of delivery to Consumer Union.
- 17 8. Defendants also agree to the following injunctive relief. The Releasing Parties
18 hereby agree that the label changes listed below render the packaging and labeling
19 of the Lang CoQ-10 Softgels in compliance with the law and that, as so changed,
20 the labels are not a misrepresentation, fraudulent, deceptive or otherwise a
21 violation of law.

22 **Wal-Mart Equate CoQ-10:** Wal-Mart agrees to implement the following changes on
23 the packaging and labeling of the Wal-Mart Equate CoQ-10: "3 Times Better
24 Absorption ⁽¹⁾" "(1) Based on a clinical study. Three times better absorption may not
25 be achieved by all users of this product. Individual results may vary."

26 **CVS Enhanced CoQ-10:** CVS agrees to implement the following changes on the
27 packaging and labeling of the CVS Enhanced CoQ-10: "3 Times Better Absorption
28 ⁽¹⁾" or "3X Better Absorption ⁽¹⁾" "(1) Based on a clinical study. Three times (or 3X)

1 better absorption may not be achieved by all users of this product. Individual results
2 may vary."

3 **CVS Ultra CoQ10:** CVS agrees to implement the following changes on the
4 packaging and labeling of the CVS Ultra CoQ10: Change 6X better absorption to "Up
5 to 5X better absorption ⁽¹⁾" "(1) Based on a clinical study. Up To 5x better absorption
6 may not be achieved by all users of this product. Individual results may vary."

7 **Walgreens Enhanced CoQ10:** Walgreens agrees to implement the following
8 changes on the packaging and labeling of the Walgreens Enhanced CoQ10:
9 "Enhanced absorption may not be achieved by all users of this product. Individual
10 results may vary."

11 **Meijer Ultra CoQ-10:** Meijer agrees to implement the following changes on the
12 packaging and labeling of the Meijer CoQ10: "Up To 5x better absorption may not be
13 achieved by all users of this product. Individual results may vary."

14 9. Defendants are not obligated to dispose of any inventory of the store-
15 brand CoQ-10 products or re-label any finished products in their possession.
16 Defendants will use good faith efforts to implement these label changes by 120
17 days after the Judgment becomes final and time for appeal has passed.
18 Notwithstanding the forgoing, Defendants are not obligated to dispose of any
19 inventory of the Retailers store-brand CoQ-10 or re-label any finished products in
20 their possession. The injunction shall include a reasonable meet and confer
21 requirement to the extent any Class Member seeks to enforce the terms of the
22 injunction in the future based on a future purchase of a Class Product.

23 10. Recognizing that substantial discovery has already been conducted in the Prior
24 Class Actions, the Parties agree to limited confirmatory discovery, if necessary.
25 Topics to be covered by the further confirmatory discovery, if any, include:
26 Defendants' corrective labeling of the Lang CoQ-10 Softgels consistent with this
27 Settlement Agreement; and total sales revenue for each Retailer generated by the
28 sales of the Lang CoQ-10 Softgels during the Class Period. The parties will

1 produce this information voluntarily, which shall be subject to verification under
2 oath by way of declaration(s), but Plaintiffs reserve the right to conduct
3 depositions if the above information is not voluntarily produced. In light of the
4 fact that depositions of Lang personnel and personnel of the Retailers have
5 already occurred, Defendants reserve the right to object to additional discovery by
6 deposition, except as to sales information, and absent agreement between the
7 parties, the Court shall decide as to the propriety, nature and extent of additional
8 specified discovery.

- 9 11. Upon the Court's final approval of this Agreement, pursuant to Code of Civil
10 Procedure § 664.6, the Court shall retain jurisdiction to enforce this Agreement,
11 including adequate supervision to ensure that the corrective labeling was actually
12 completed by Defendants.

13
14 **E. NOTICE PROGRAM**

15 1. The Notice will be in the form attached hereto as Exhibit "A". The Short-Form
16 Notice will be in the form attached hereto as Exhibit "B".

17 2. The Parties agree to select the Class Administrator as the notice provider and
18 settlement administrator to deliver the best notice of the settlement practicable and consistent
19 with due process. The Parties anticipate that notice to the class will be effectuated by publication
20 of the Short-Form Notice and creation and maintenance of the Settlement Website and a toll-free
21 IVR. The Short-Form Notice will direct consumers directly to the Settlement Website. The
22 Long Form Notice will be posted on the Settlement Website. The cost of the notice to the class
23 and administration of the settlement will be paid from the Cash Settlement Fund.

24 3. The parties and the Class Administrator shall ensure that the Settlement Website
25 is active and able to accept online claims within ten (10) days of the entry of the Preliminary
26 Approval Order, or as soon thereafter as reasonably practicable. The Settlement Website address
27 will be published in the Short-Form Notice and the Notice.

1 4. At least thirty (30) days prior to the Fairness Hearing, Defendants, through their
2 counsel of record, shall either provide to Class Counsel or cause to be filed with the Court, a
3 declaration or declarations that they complied with provisions of Section E herein.

4 **F. CLAIM PROGRAM**

5 1. Class Members must file a Claim Form within 60 days after publication of the
6 Short-Form Notice. The Claim Form shall require class members to provide the following
7 information: name, address, email address, phone numbers, date of purchase(s), and the name of
8 the retailer from which the Lang CoQ-10 Softgel that was purchased. Failure to submit
9 information pertaining to the approximate date of purchase is not reason (in and of itself) to
10 reject a Claim Form. The Claim Form must be mailed or submitted electronically to the Claims
11 Administrator and postmarked no later than the last day of the Claims Period.

12 2. The Class Administrator will review each Claim Form submitted by a Class
13 Member to determine whether the Claim Form is valid and will reject any invalid claims, if any,
14 within thirty (30) days after the expiration of the Claims Period. The Class Administrator shall
15 promptly report all such determinations of invalidity to both Class Counsel and Defendants'
16 counsel via weekly updates.

17 3. The Notice and Settlement Website shall stay online for the entirety of the Claims
18 Period. The Claims Period may be extended by agreement of the Parties.

19 4. If Defendants dispute a Claim, the Claims Administrator shall notify the claimant
20 in writing by electronic mail no later than forty-five (45) days after the expiration of the Claims
21 Period, stating the reasons for the rejection. The claimant will have fifteen (15) days after the
22 notice of rejection is mailed to present in writing by mail or electronic mail additional
23 information or evidence in support of his or her Claim. If a claimant timely provides such
24 additional information or evidence, Defendants will either (i) approve the Claim; or (ii) advise
25 Class Counsel that Defendants continue to dispute the Claim. The Court will retain jurisdiction
26 regarding disputed Claims. If Class Counsel and Defendants cannot agree on the resolution of
27 any disputed Claim, final determination of disputed Claims will be made by the Court. For
28

1 efficiency, Class Counsel and Defendants will exercise best efforts to submit any such disputed
2 Claims to the Court in batches. Any claimant, who is rejected by Defendants pursuant to this
3 Paragraph, shall not be bound by any judgment entered in connection with this settlement. A list
4 of persons who constitute rejected claimants shall be filed with the Court by Defendants' counsel
5 before the date for the hearing on final approval.

6 5. Class Members who do not return a Claim Form postmarked on or before the final
7 day of the Claims Period, Class Members who return a Claim Form that is timely but is not
8 signed, and Class Members whose Claims are rejected by the Claims Administrator will not
9 qualify to receive their selected consideration from Defendants as set out in Sections II (D) (3-7)
10 above, but will remain Class Members, will receive the consideration set out in Section II (D)
11 (8), and will be bound by this Settlement, unless they opt-out of this settlement pursuant to
12 Section J.

13 6. All costs associated with the Claim Program, the Short-Form Notice and the
14 Notice will be deducted from the Cash Settlement Fund.

15
16 **G. FEES AND EXPENSES OF CLASS COUNSEL; CLASS REPRESENTATIVE
INCENTIVE AWARD**

17 Class Counsel shall file a motion with the Court for an award of Attorneys' Fees and
18 reimbursement of actual expenses. Such a motion shall be heard at the Fairness Hearing (or at
19 any other time deemed appropriate by the Court). The Claims Administrator shall pay to Class
20 Counsel the amount of Attorneys' Fees and costs awarded by the Court as soon as possible but
21 no later than (30) calendar days after entry of Judgment, notwithstanding the filing of any
22 appeals or any other proceedings which may delay the Effective Date of the Settlement or a Final
23 Judgment in the case; provided, however, that in the event any fee award, either individually or
24 in connection with the entire Settlement is overturned, reduced, vacated, or otherwise modified,
25 Class Counsel shall be obligated to return to the Common Fund any difference between the
26 amount of the original award and any reduced award.

27 The incentive awards shall be: \$1,000 each for Plaintiffs Jackson and Buchannan; and
28 \$4,000 for Tamar Santisteban Cortina. The incentive awards shall be paid within ten (10)

1 business days from the date Judgment is entered. If not so paid, then interest on such awards,
2 fees and expenses shall accrue from the date of the Order until paid at the maximum rate allowed
3 by law.

4 **H. FINAL APPROVAL HEARING**

5 1. Hearing Date: Pursuant to the Preliminary Approval Order, the Court will hold a
6 Fairness Hearing on a date to be set by the Court.

7 2. Briefing Schedule: Any briefs in support of final approval by Plaintiffs or
8 Defendants shall be submitted not less than fourteen (14) days prior to the Fairness Hearing,
9 unless otherwise agreed by the parties or ordered by the Court. Class Counsel will file a
10 Memorandum of Points and Authorities requesting final approval of the Settlement by the Court,
11 including a determination by the Court: (i) that the Settlement be approved as fair, reasonable
12 and adequate; (ii) that Class Counsel adequately represented the interests of the Settlement Class;
13 (iii) that the Settlement Class, excluding those persons who exercise their right to opt out of
14 participation in the Settlement, will be certified; and (iv) that the Final Approval Order and
15 Judgment approving the Settlement substantially in the form of Exhibit “E”, should be entered.
16 The Fairness Hearing may be continued from time to time as necessary without further notice to
17 the Settlement Class.

18 3. Consequences of Non-Approval: If the Court does not grant final approval of the
19 settlement reflected in this Agreement, any certification of any Settlement Class will be vacated
20 and the Parties will be returned to their positions with respect to the Action as if the Agreement
21 had not been entered into. If the Court does not grant Final Approval of the Settlement or if
22 Final Approval of the Settlement is reversed on appeal: (a) any Court orders preliminarily or
23 finally approving the certification of any class contemplated by this Agreement shall be null,
24 void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the
25 fact of the settlement reflected in this Agreement, shall not be used or cited thereafter by any
26 person or entity, including any manner whatsoever, including without limitation any contested
27 proceeding relating to the certification of any class. If the Final Approval of the Settlement is
28

reversed on appeal, to the parties agree to use their best efforts to cure the appellate court's reason for reversal and seek Final Approval of the Settlement anew.

I. OBJECTIONS

1. Any Class Member who has not timely requested exclusion from the Settlement Class may appear at the Final Approval Hearing to show cause why the Court should not approve this Settlement and dismiss the Action with prejudice, and may appear at the hearing to support or oppose Class Counsel's request or application for Attorneys' Fees.

2. For a Class Member to have objections considered, the Class Member must file any objections and all papers in support of such objections with the Court in the time set forth in the Notice, which will be no later than sixty (60) days after entry of the Preliminary Approval Order. All such written objections shall be served on Class Counsel and counsel for Defendants. The filing of any objection will not extend the time within which a Class Member may file a request for exclusion from the settlement.

3. Any Objection must include: (1) the Class Member's complete name and residence or business address (the address of any lawyer who represents the Class Member is not sufficient); (2) a statement that the Class Member falls within the definition of the Settlement Class, including the approximate date the Class Member purchased Defendants' CoQ-10 product(s) and the name of the product; and (3) each ground for comment or objection and any supporting papers the Class Member desires the Court to consider (i.e., a mere statement that "I object" will not be deemed sufficient).

J. OPT-OUT RIGHTS OF MEMBERS OF THE SETTLEMENT CLASS

1. Any Class Member of the Settlement Class may request exclusion ("opt out") from the settlement in this Action. The request to opt out of the Settlement must be made in writing, shall state unequivocally that he/she wishes to be excluded from this class action settlement, and must be signed by the Class Member. A sample Opt-Out Form is attached hereto as Exhibit G. Any request for exclusion must: (a) Be delivered via first class U.S. mail to Class Counsel and counsel for Defendants; (b) postmarked on or before sixty (60) days after Preliminary Approval Order; (c) in the request for exclusion, include the name and number of

1 this litigation, “*Jackson et al v. Lang Pharma Nutrition, Inc.*, Case No. 37-2017-00028196-CU-
2 BC-CTL (Superior Court of California, County of San Diego)””; (d) state the name, address and
3 phone number of the person requesting exclusion, (e) identify the name of the product
4 purchased; (f) state the name of the Retailer that sold the product; (g) identify the date and
5 location of the purchase; (h) provide a copy of the sale receipt for the product, if available, and
6 (i) state that such person elects to be excluded from this litigation. The person requesting
7 exclusion must sign the request for exclusion personally. No member of the Settlement Class
8 who chooses to be excluded may submit a Claim Form. Any member of the Settlement Class
9 who chooses to be excluded and who provides the requested information will not be bound by
10 any judgment entered in connection with this Settlement. A list of persons who requested
11 exclusion shall be filed with the Court by Defendant’s counsel before the date of the Final
12 Approval Hearing.

13 2. If more than four hundred (400) Class Members who provide a copy of their sales
14 receipt with their opt-out request or more than one thousand (1,000) Class Members who do not
15 have a sales receipt request exclusion from the Settlement, then the Parties agree that the
16 Defendants have an option to terminate this Settlement. If under this provision, the Defendants
17 elect not to move forward with the Settlement, the parties will notify the Court, *in camera*.

18 **K. RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

19
20 1. In addition to the effect of any final judgment entered in accordance with
21 this Settlement Agreement, upon this Settlement becoming final, the Class and Defendants (the
22 “Parties”), hereby release each other and each of the Parties’ predecessors, successors, assigns,
23 parents, affiliates, subsidiaries, divisions, departments and vendors, including but not limited to
24 ingredient suppliers, co-packers and packaging companies, as well as the Parties’ present, and
25 future officers, directors, employees, stockholders, successors, attorneys, insurers, reinsurers,
26 claim service managers, and subrogees of and from (hereinafter, “the Released Parties”) from
27 any and all liability for damages, restitution, declaratory relief and all other legal and equitable
28 relief associated with or arising out of (a) the Action, (b) any claim of alleged misleading,

1 fraudulent and/or deceptive statements, omissions or misrepresentations on product labels and
2 advertising used by the Retailers on Lang CoQ-10 Softgels, including but not limited to claims
3 for violation of unfair competition laws, deceptive trade practices laws, false advertising laws
4 and other consumer legal remedies laws, and the Magnuson-Moss Warranty Act, as well as
5 claims for negligence, breach of common law and statutory express warranties, and breach of
6 common law and statutory implied warranties of merchantability and fitness for a particular
7 purpose, and (c) any claim of inadequacy, mislabeling or fairness of the awards and benefits
8 claimed under this settlement. (hereinafter “the Released Claims”)

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

13 A general release does not extend to claims which the creditor does not
14 know or suspect to exist in his or her favor at the time of executing the
15 release, which if known by him or her must have materially affected his or
16 her settlement with the debtor.

17 3. One or more of the Releasing Parties may hereafter discover facts other than or
18 different from those which he or she knows or believes to be true with respect to the Released
19 Claims. Nevertheless, upon this Settlement becoming final, each of the Releasing Parties
20 hereby expressly waive and fully, finally and forever settle and release all known or unknown,
21 contingent or non-contingent claims in any way relating to the subject matter of the Released
22 Claims, whether or not concealed or hidden, without regard to subsequent discovery or
23 existence of such different or additional facts.

24 4. Covenant Not to Sue. Each of the Releasing Parties hereby covenants not to sue
25 each of the Released Parties for any claim or cause of action related to the Released Claims.

26 **L. FORCE AND EFFECT OF SETTLEMENT**

27 1. In the event that this Settlement does not become final in accordance with the
28 terms hereof, then this Settlement Agreement will be of no force or effect, except that the parties

1 hereto agree that this Settlement Agreement, including its exhibits, and any and all negotiations,
2 drafts of settlement documents and discussions associated with it, will be without prejudice to
3 the rights of any party, will be inadmissible in evidence against any party, and further will not be
4 deemed or construed to be an admission or evidence of any violation of any statute or law or of
5 any liability or wrongdoing by Defendants, or of the truth of any of the claims or allegations
6 contained in any complaint or any other pleading filed in the Action or any other action, and
7 evidence thereof will not be discoverable or used directly or indirectly in any way, whether in the
8 Action or in any other action or proceeding. Plaintiffs and Defendants expressly reserve all of
9 their rights and preserve all applicable defenses if this Settlement does not become final in
10 accordance with the terms of this Settlement Agreement. In the event this Settlement is
11 terminated, the Settlement Agreement and all matters leading up to or related to the Settlement
12 are confidential settlement communications inadmissible under California Evidence Code and
13 any and all other applicable federal and/or state laws. The provisions of this Section will survive
14 and continue to apply to Defendants and each member of the Settlement Class, even if the Court
15 does not approve the Settlement, or the Court's approval of this Settlement is set aside on appeal,
16 or Defendants withdraw from the Settlement Agreement. Notwithstanding the foregoing, this
17 Settlement Agreement may be used or admitted into evidence against any party as to whom this
18 Settlement Agreement is being enforced.

19 **M. MISCELLANEOUS PROVISIONS**

20 1. This Settlement Agreement will be binding upon and inure to the benefit of the
21 successors of the parties hereto. Without limiting the generality of the foregoing, each and every
22 covenant and agreement herein by Plaintiffs and Class Counsel will be binding upon all Class
23 Members.

24 2. This Settlement Agreement contains the entire, complete and integrated statement
25 of each and every term and provision agreed to by and among the parties, and is not subject to
26 any condition not provided for herein. This Settlement Agreement will not be modified in any
27 respect except by a subsequent writing signed by all the signatories hereto.

1 3. Any inconsistency between this Settlement Agreement and the exhibits attached
2 hereto will be resolved in favor of the Settlement Agreement.

3 4. None of the parties hereto will be considered to be the drafter of this Settlement
4 Agreement or any provision hereof for the purpose of any statute, case law or rule of
5 interpretation or construction that would or might cause any provision to be construed against the
6 drafter thereof.

7 5. All terms of this Settlement Agreement and the exhibits hereto will be governed
8 by and interpreted according to the substantive laws of the State of California without regard to
9 its choice of law or conflict of laws principles.

10 6. Defendants and each Class Member hereby irrevocably submit to and agree not to
11 contest the exclusive jurisdiction of the Court and agree that the Court is a proper venue and
12 convenient forum, for purposes of any suit, action, claim, proceeding or dispute arising out of or
13 relating to this Settlement Agreement, the exhibits hereto and the consideration set forth in
14 Section II (D). In the event the provisions of this Settlement Agreement are asserted by
15 Defendants as a defense, in whole or in part, to any claim or cause of action or otherwise raised
16 as an objection in any suit, action or proceeding by a Class Member, it is hereby agreed that
17 Defendants will be entitled to a stay of that suit, action or proceeding until this Court has entered
18 a final judgment no longer subject to any appeal or review determining any issues relating to the
19 defense or objection based on such provisions.

20 7. This Settlement Agreement may be executed in counterparts. Facsimile and/or
21 email with PDF signatures will be considered as valid signatures as of the date hereof, although
22 the original signature pages will thereafter be appended to this Settlement Agreement.

23
24 IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have
25 caused this Settlement Agreement to be executed by their officers or representatives hereunto
26 duly authorized, effective as of the date first above mentioned.

1 Dated: February 28, 2018

LAW OFFICES OF RONALD A. MARRON, APLC

2
3 By: 

Ronald A. Marron

Michael Houchin

LAW OFFICES OF RONALD A. MARRON,
APLC

Attorneys for William Jackson, Edward Buchannan,
and Thalmar Santisteban Cortina, as individuals,
and on behalf of all others similarly situated

9 Dated: February ____, 2018

Lang Pharma Nutrition, Inc.

11

By: (Print Name)

13 Title: _____

14 Dated: February ____, 2018

Wal-Mart Stores, Inc.

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By: (Print Name)

18 Title: _____

19 Dated: February ____, 2018

CVS Pharmacy, Inc.

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By: (Print Name)

23 Title: _____

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Dated: February ____, 2018

LAW OFFICES OF RONALD A. MARRON, APLC

By: _____
Ronald A. Marron
Michael Houchin
LAW OFFICES OF RONALD A. MARRON,
APLC
Attorneys for William Jackson, Edward Buchannan,
and Thalmar Santisteban Cortina, as individuals,
and on behalf of all others similarly situated

Dated: March ____, 2018

Lang Pharma Nutrition, Inc.

By: (Print Name)

Title: _____

Dated: March ____, 2018

Wal-Mart Stores, Inc.

By: (Print Name)

Title: _____

Dated: March ____, 2018

CVS Pharmacy, Inc.

By: (Print Name)

Title: _____

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Dated: March ____, 2018

Walgreen Co.

By: (Print Name)

Title: _____

Dated March ____, 2018

Meijer Distribution, Inc.

By: (Print Name)

Title: _____

APPROVED AS TO FORM:

Dated: March ____, 2018

BARNES & THORNBURG, LLP

By:_____

David C. Allen

Joseph M. Wahl

BARNES & THORNBURG, LLP

Attorneys for Lang Pharma Nutrition, Inc., Wal-
Mart Stores, Inc., CVS Pharmacy, Inc., Walgreen
Company, and Meijer Distribution, Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

WILLIAM JACKSON ET AL. v. LANG PHARMA NUTRITION, INC. ET AL.

Superior Court of California for the County of San Diego

Case No. 37-2017-00028196-CU-BC-CTL

The Superior Court of California has authorized this notice.

This is not a solicitation from a lawyer.

IF YOU PURCHASED CERTAIN **CoQ-10 SUPPLEMENTS FROM WAL-MART STORES, INC., CVS PHARMACY, INC., WALGREEN COMPANY, OR MEIJER DISTRIBUTION, INC. THAT WERE MANUFACTURED BY LANG PHARMA NUTRITION, INC., YOU MAY BE ENTITLED TO A CASH PAYMENT**

THIS NOTICE CONCERNS YOUR LEGAL RIGHTS
PLEASE READ IT CAREFULLY

WHY ARE YOU RECEIVING THIS NOTICE?

This settlement resolves a class action lawsuit (the “Action”) against Lang Pharma Nutrition, Inc. (“Lang Pharma”), Wal-Mart Stores, Inc. (“Wal-Mart”), CVS Pharmacy, Inc. (“CVS”), Walgreen Company (“Walgreens”), and Meijer Distribution, Inc. (“Meijer”) (collectively, the “Defendants”). Lang Pharma manufactures a CoQ-10 supplement product which is sold by Wal-Mart, CVS, Walgreens, and Meijer (the “Retailer Defendants”) under their own store brand names. Immediately below is a list of the CoQ-10 supplements:

- (1) Wal-Mart's Equate Clinical Strength High Absorption CoQ-10 100 mg;
- (2) CVS/Pharmacy Ultra CoQ-10 100 mg;
- (3) CVS/Health Ultra CoQ-10 100 mg;
- (4) CVS/Pharmacy Enhanced Absorption Formula CoQ-10 100 mg;
- (5) CVS/Health Enhanced Absorption Formula CoQ-10 100 mg;
- (6) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 100 mg
- (7) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 200 mg;

(8) Meijer's Ultra CoQ-10 100 mg ("Meijer Ultra CoQ-10").

It is alleged in the lawsuit that Defendants violated certain California laws by misleadingly labeling their CoQ-10 supplement as being more effective than they are and has having greater absorption rates than they do. Defendants deny the allegations and any wrongdoing and maintain that the products are effective and achieve the stated absorption rates. The parties have reached a class action settlement.

If you purchased any of the CoQ-10 supplements listed above between July 1, 2013 and , 2017, for your own personal use, and not for resale, you may be a member of the settling Class. The Court requires this Notice because you have the right to know about the proposed Settlement and about all of your options before the Court decides whether to approve the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available to you as a member of the settling, and how to get them.

All Class Members who do not exclude themselves from the Settlement will receive the relief provided for in the Settlement and will be bound by the orders issued by the Court regarding the Settlement.

WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

The two sides disagree on what relief, and how much, could have been won, if any, if the Action went to trial. The settlement avoids costs and risks to you from continuing the lawsuit, provides benefits and relief to purchasers like you, and releases the Defendants from liability for the alleged claims.

The proposed class settlement will provide the Class with \$1,306,000 in monetary relief. This relief will be comprised of two parts: (1) \$656,000 cash fund and (2) \$650,000 in credits to redeem product(s) directly from Lang Pharma's web site. The cash fund will offset by notice and administrative costs, attorneys' fees, class representative incentive fees, and a portion of the shipping and handling costs. If claims exceed the cash amount available, the amounts claimed will be reduced pro rata; if funds remain the cash refund to claimants will be increased pro rata. Likewise, if the fund for product credits is exhausted, the value of each credit claimed will be reduced pro rata; if the fund for product credits is not exhausted, the value of each voucher will be increased. Any claimed credits that remain unused after 60 days of delivery will be reissued and donated to Consumers Union, a charitable organization.

Class Members who file a valid claim form must choose between a cash refund of \$3.50 pro rata or a product credit valued at \$12.50 that may be used to redeem a variety of Lang Pharma products from a designated Lang Pharma website. Class Members must use the credit within 60 days. A valid claim form will require class members to provide their name, address, phone number, date of purchase, the name of the CoQ-10 supplement that was purchased and other information necessary to process the claim.

In addition to the cash and product credit funds, the Retailer Defendants have agreed to the following changes to their product labels and advertising of their CoQ-10 supplements:

- **Wal-Mart's Equate Clinical Strength High Absorption CoQ-10 100 mg:** “3 Times Better Absorption ⁽¹⁾” “(1) Based on a clinical study. Three times better absorption may not be achieved by all users of this product. Individual results may vary.”
- **CVS Enhanced Absorption Formula CoQ-10 100 mg:** “3 Times Better Absorption ⁽¹⁾” or “3X Better Absorption ⁽¹⁾” “(1) Based on a clinical study. Three times (or 3X) better absorption may not be achieved by all users of this product. Individual results may vary.”
- **CVS Ultra CoQ10 100 mg:** Change 6X better absorption to “Up to 5X better absorption ⁽¹⁾” “(1) Based on a clinical study. Up To 5x better absorption may not be achieved by all users of this product. Individual results may vary.”
- **Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 100 mg and 200 mg:** “Enhanced absorption may not be achieved by all users of this product. Individual results may vary.”
- **Meijer's Ultra CoQ-10 100 mg:** “Up To 5x better absorption may not be achieved by all users of this product. Individual results may vary.”

Class Counsel will apply for and award of attorneys’ fees and expenses, which must be approved by the Court. In addition, Class representatives will apply for the following incentive awards: \$1,000.00 each to William Jackson and Edward Buchannan; \$4,000.00 to Thamar Cortina. These awards must also be approved by the Court.

BACKGROUND ON THE LAWSUIT AND SETTLEMENT

This matter is a continuation of four other CoQ-10 cases involving the retailer defendants (except Meijer). Those cases are: (1) *Thamar Santisteban Cortina v. Wal-Mart, Inc. et al.*, Case No. 13-

cv-020540, United States District Court for the Southern District of California; (2) *Leo Harris v. CVS Pharmacy, Inc.*, Case No. 5:13-cv-02329, United States District Court for the Central District of California; (3) *Raymond Alvandi v. CVS Pharmacy, Inc.*, Case No. 2:15-cv-01503, United States District Court for the Central District of California; and (4) *Gary Reynolds, et al. v. Walgreens, Inc.*, Case No. 4:15-cv-00324, United States District Court for the Northern District of California (collectively the “Prior CoQ-10 Cases”).

While litigating the Prior CoQ-10 Cases, the parties engaged in substantial investigations, extensive discovery, heavy motion practice, and intense settlement discussions. The Prior CoQ-10 Cases were dismissed; however, the *Cortina* court ordered that all discovery conducted in that case could be used by the parties in future CoQ-10 litigation. Subsequent to dismissal, the Prior CoQ-10 Cases were refiled as *Jackson et al. v. Lang Pharma Nutrition, Inc. et al.*

The proposed settlement class covers the time period of July 1, 2013 to .

This lawsuit seeks to obtain compensation for violation of California consumer protection statutes including the Unfair Competition Law (UCL), False Advertising Law (FAL), and Consumer Legal Remedies Act (CLRA), and for breach of express and implied warranties.

After the parties engaged in substantial investigation, discovery, and settlement negotiations, Plaintiffs and Defendants have reached an agreement providing for the settlement of the lawsuit. The terms of the proposed Settlement are set forth in the Settlement Agreement filed with the Court, which is also available online, at www.Q10Settlement.com.

Plaintiffs and Class Counsel have evaluated the information made available in the course of the lawsuit and have taken into account the risks and uncertainties of proceeding with this litigation, including the risks and uncertainties of class certification, prevailing on the merits, proving damages at trial, and prevailing on post-trial motions and appeal. Based upon their consideration of these factors, Plaintiffs and Class Counsel believe it is in the best interests of the Class to settle the lawsuit on the terms described herein.

Defendants deny Plaintiffs’ allegations and any wrongdoing, and the Class’s right to recover anything. Nevertheless, it has agreed to settle the lawsuit for the purpose of avoiding time and expense of further litigation and the uncertainty of trial.

THE CLASS

The Class is defined to mean “all persons in the United States who purchased a Lang CoQ-10 Softgel product manufactured by Lang Pharma Nutrition, Inc. (hereafter, “Lang CoQ-10 Softgel”) and sold under store brand labels by CVS, Wal-Mart, Walgreens and Meijer (“the

Retailers”), from July 1, 2013 until the date the notice of settlement is disseminated to the class. Excluded from the Settlement Class are (1) the judge presiding over this action through the final Approval of this Settlement Agreement of this; (2) the Defendants, (3) Defendants' subsidiaries, parent companies, successors, predecessors, any entity in which the defendants or their parents have a controlling interest, suppliers and vendors; (4) Defendants’ current or former officers, directors, and employees; (5) persons who properly execute and file a timely request for exclusion from the class; and (6) legal representatives, successors or assigns of any such excluded person. It is the intent of the parties to include any person who currently has a claim against Defendants regarding the causes of action now alleged or similar causes of action. To the extent that any jurisdiction contains a statute of limitations longer than four (4) years, persons who made purchases prior to four years before the start of this litigation are considered part of the class, but only in those jurisdictions with longer statutes of limitations and only to the extent allowed by law.”

DO I HAVE A LAWYER IN THE CASE?

The Court has appointed Ronald A. Marron of the Law Offices of Ronald Marron, as Class Counsel in this case. The Court has determined that Class Counsel is qualified to represent you and other Class Members. You will not be charged by this law firm. This law firm handling the case is experienced in handling similar class action cases.

Nevertheless, you have the right to consult or retain an attorney of your choice at your own expense to advise you regarding the Settlement and your rights in connection with the Settlement and Final Approval Hearing described below.

YOUR RIGHTS TO PARTICIPATE IN, EXCLUDE YOURSELF FROM, OR OBJECT TO THE SETTLEMENT

The purpose of this Notice is to inform you of this lawsuit so you can make an informed decision as to whether you should remain in or opt out of this Class Action Settlement. Your legal rights are affected and you have a choice to make now. In response to this Notice, you may (1) submit a Claims Form and participate in the Settlement, (2) ask to be excluded from the lawsuit, (3) object to the proposed Settlement, or (4) do nothing. Those options are summarized in the following table, and then discussed in greater detail below.

Your Legal Rights and Options in This Lawsuit

Submit a Claims Form	Participate in settlement. Receive compensation. Give up certain rights. Postmark or submit your Claim Form online by visiting www.Q10Settlement.com .
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Ask to be Excluded	<p>Get out of this lawsuit. Get no benefits from it. Keep rights.</p> <p>If you ask to be excluded, you will not be bound by what the Court does in this case, and you will keep any right you might have to sue Defendants separately about the same legal claims in this lawsuit. If there is a recovery in this case, including under the proposed settlement, you will not share in that recovery.</p>
Object	<p>Tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate.</p> <p>You may file a written objection no later than [REDACTED] and/or appear at the Final Approval Hearing to tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate.</p>
Do Nothing	<p>Stay in this lawsuit. Await the outcome. Give up certain rights.</p> <p>By doing nothing, you will get no cash payment and give up any right you may have to sue Defendants separately about the same legal claims in this lawsuit.</p>

1. Submit a Claim Form

You must submit a Claim Form to get a settlement benefit. Claim Forms may be printed or filed online at the Settlement Website, www.Q10Settlement.com. Claim Forms are simple and easy to complete, requiring (a) personal information, (b) the name of Lang CoQ-10 Softgel that was purchased, (c) the date of purchase, and (d) affirmation that the information provided is true and correct. In exchange for receiving a monetary or product credit under the Settlement Agreement, you will give up your rights to sue Defendants about the same claims in this lawsuit.

Claim forms must be mailed or submitted online no later than [REDACTED].

2. Exclude Yourself from the Settlement and Do Not Receive Compensation

If you do not want to be bound by this Settlement, you must request to be excluded from the Class. If you request to be excluded from the Class, you will retain any individual rights you have against Defendants and will not have “released” Defendants from any claims. However, you will *not* receive the compensation described above. If you exclude yourself from this class action settlement, you may not object to the Settlement under this option. If you wish to be excluded from the Class (sometimes referred to as “opting out”), you must download and print an Opt-Out Form from the Settlement Website, fill out and sign the form, and mail it to the class action administrator postmarked on or before [REDACTED], at the following address:

www.Q10Settlement.com

3. Object to the Settlement

If you want to express an objection to part or all of the Settlement, you may appear at the Final Approval Hearing and/or object to the proposed Settlement. If the Settlement is approved, you will still receive the Settlement compensation and be bound by the Settlement Release.

If you wish to object or to appear at the Final Approval Hearing, you must, no later than [REDACTED], file with the Court and serve on Class Counsel and Defense Counsel at the addresses set forth below, a written objection that provides contact information and a statement of the facts and law supporting your objection. In addition, if you intend to appear at the Final Approval Hearing, you must also, no later than [REDACTED], file with the Court and serve on Class Counsel and Defense Counsel a Notice of Intent to Appear, whether in person or through an attorney. More detailed instructions and requirements for objecting are set forth in the Court's Preliminary Approval Order, which is available on the Class Settlement Website, at www.Q10Settlement.com.

Class Counsel

Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103

Defense Counsel

David C. Allen
Barnes & Thornburg LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067

4. Do Nothing

If you do nothing, you will get no money or product credit from the settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue a lawsuit or be part of any other lawsuit against Defendants about the claims in this case.

RELEASE OF CLAIMS

If the Court approves the Settlement and you have not excluded yourself as described above, you will be bound by the Settlement and will be forever barred from suing Defendants and related entities for the claims released in the Settlement. This applies whether you currently know about the existence of such claims or not.

The claims you will give up are:

Any and all claims, demands, rights, suits, liabilities, and cause of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that any Class Member has or may have against the Released Persons¹ arising out of or related in any way to the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in the Action, that have been brought, could have been brought, or are currently pending in any forum in the United States.

FINAL APPROVAL HEARING

The Court has scheduled a Final Approval Hearing to determine whether the Court should approve the Settlement as fair, reasonable, and adequate to the Class, and whether Judgment should be entered in accordance with the Settlement Agreement. The Court will also consider at the Final Approval Hearing the request of Class Counsel for an award of attorneys' fees and reimbursement of expenses, as well as the request of the Class Representatives for incentive awards for services rendered on behalf of the Class.

The Final Approval Hearing will occur at [REDACTED] on [REDACTED], in Department C-73 of the San Diego Superior court, the Honorable Joel R. Wohlfeil presiding, 330 West Broadway, San Diego, California 92101.

Your attendance at the Final Approval Hearing is not required. However, you may be heard orally at the hearing in opposition to the proposed Settlement if you wish. You may also enter an appearance through an attorney retained at your own expense. If you do not enter an appearance through an attorney, and do not object, Class Counsel will represent you at the hearing.

WHERE CAN I GET MORE INFORMATION?

The Notice's description of the case and Settlement is general. For more details of the matters involved in this lawsuit and the Settlement, you may review the Settlement Agreement and related pleadings as set forth below.

¹ "Released Persons" means Defendants, their parent companies, subsidiary companies, affiliated companies, past, present and future officers (as of the Effective Date), directors, members, employees, predecessors, affiliates, parents, subsidiaries, suppliers, trustees, vendors, subcontractors, co-conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all the foregoing persons and entities.

If you want more detailed information about the lawsuit and proposed Settlement, including reviewing the Settlement documents, you may visit the Settlement Website at www.Q10Settlement.com, contact Classaura, LLC, 1718 Peachtree St. #1080, Atlanta, Georgia 30309 (1-866-532-6710), or contact Class Counsel at 619-696-9006.

If you wish to review the Court's docket in this case, you may do so by visiting www.sdcourt.ca.gov, the Court's public access website. Direct your browser to the register of actions link and then enter case number 37-2017-00028196. You may view the Court's docket from here, including but not limited to documents filed with the Court (on the "Register of Actions"), ruling and orders, and other information.

DO NOT TELEPHONE OR ADDRESS ANY QUESTIONS ABOUT THE CASE OR SETTLEMENT TO THE CLERK OF THE COURT OR TO THE JUDGE. THEY ARE NOT PERMITTED TO ANSWER YOUR QUESTIONS. THE COURT EXPRESSES NO VIEW AS TO THE MERITS OF ANY CLAIMS OR DEFENSES ASSERTED BY ANY PARTY TO THE ACTION.

EXHIBIT B

IMPORTANT LEGAL NOTICE FROM THE SUPERIOR COURT OF CALIFORNIA

NOTICE OF CLASS ACTION SETTLEMENT OF CoQ-10 PRODUCT LITIGATION

WILLIAM JACKSON ET AL. v. LANG PHARMA NUTRITION, INC. ET AL.

VISIT WWW.Q10SETTLEMENT.COM FOR MORE INFORMATION

If you purchased any of the CoQ-10 supplements listed below between July 1, 2013 and _____, 2018, you may be entitled to receive benefits from a proposed class action settlement.

- (1) Wal-Mart's Equate Clinical Strength High Absorption CoQ-10 100 mg*
- (2) CVS/Pharmacy Ultra CoQ-10 100 mg*
- (3) CVS/Health Ultra CoQ-10 100 mg*
- (4) CVS/Pharmacy Enhanced Absorption Formula CoQ-10 100 mg*
- (5) CVS/Health Enhanced Absorption Formula CoQ-10 100 mg*
- (6) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 100 mg*
- (7) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 200 mg*
- (8) Meijer's Ultra CoQ-10 100 mg*

Description of the Class Action Settlement: Plaintiffs allege in the lawsuit that Defendants violated certain California laws by misleadingly labeling their CoQ-10 supplement as being more effective than they are and has having greater absorption rates then they do. Defendants deny all liability of any kind associated with the claims alleged. Defendants maintain that the products are appropriately labeled, effective and achieve the stated absorption rates. The parties have reached a class action settlement.

The Court has not decided who is right in this case. Instead, the parties have reached a settlement that provides cash refund or credits for the purchase of supplements and vitamins to Class Members who submit a valid Claim Form.

Purpose of this Notice: The purpose of this notice is to inform you of the lawsuit and settlement so that you may decide to (1); Support the settlement and submit a Claim Form to receive your settlement benefits; (2) Object to the settlement; or (3) Exclude yourself from the settlement (“opt-out”) and reserve all of the claims you may have.

Are you in the Class?: You are included in this class if you reside (or otherwise live) in the United States and purchased one or more of the CoQ-10 supplements listed above at any point from July 1, 20013 to _____, 2018 (“Class Period”). If you are a Class Member, your rights may be affected, even if you take no action.

Settlement Benefits: Class Members who file a valid Claim Form must choose between a cash refund of \$3.50 pro rata or a product credit valued at \$12.50 that may be used to redeem a variety

IMPORTANT LEGAL NOTICE FROM THE SUPERIOR COURT OF CALIFORNIA

NOTICE OF CLASS ACTION SETTLEMENT OF CoQ-10 PRODUCT LITIGATION

WILLIAM JACKSON ET AL. v. LANG PHARMA NUTRITION, INC. ET AL.

VISIT WWW.Q10SETTLEMENT.COM FOR MORE INFORMATION

of dietary supplements and vitamins from a designated website. Class Members must use the credit within 60 days.

Where to Get Additional Information: A website, www.Q10Settlement.com, has been established where you can review additional information about the settlement and the lawsuit. You can also obtain more information, including how to make a claim for settlement benefits, how to exclude yourself from the settlement and how to object to the settlement. You can also get more information by calling the Claims Administrator, Classaura, Inc., at the toll-free number below. The DEADLINE to object or exclude yourself from the Settlement is _____, 2018. The DEADLINE to file a Claim Form to receive settlement benefits is _____, 2018.

Questions: Call 1--866-532-6710 or visit www.Q10Settlement.com.

EXHIBIT C

CLASS ACTION SETTLEMENT CLAIM FORM

Your Name:

Your Mailing Address (with zip code):

Your Phone Number:

Your Email Address:

Identify the Product You Purchased. Circle the Name(s) of the CoQ-10 Product you purchased during the period from July 1, 2013 to _____, 2018 **[DATE OF NOTICE TO THE CLASS]**.

- (1) Wal-Mart's Equate Clinical Strength High Absorption CoQ-10 100 mg*
- (2) CVS/Pharmacy Ultra CoQ-10 100 mg*
- (3) CVS/Health Ultra CoQ-10 100 mg*
- (4) CVS/Pharmacy Enhanced Absorption Formula CoQ-10 100 mg*
- (5) CVS/Health Enhanced Absorption Formula CoQ-10 100 mg*
- (6) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 100 mg*
- (7) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 200 mg*
- (8) Meijer's Ultra CoQ-10 100 mg*

Date of Purchase. For each CoQ-10 product you claim you purchased, give the date of the purchase. If you do not have a receipt for your purchase, give the approximate date:

Date(s)

Copy of Your Receipt. If you have a receipt for your purchases, enclose a copy of all receipts with this form.

Location of Purchase. For each CoQ-10 product you purchased, identify the address of the store where the purchase was made. (Example: CVS Pharmacy, 225 Main Street, Cedar Rapids, Iowa).

Claim Your Settlement Award¹. Circle the award that you would like to receive (Choose One).

Cash Refund

Product Credit

¹ The settlement awards are described in detail in Section D of the Settlement Agreement.

William Jackson, et al. v. Lang Pharma Nutrition, Inc., et al.

Superior Court of California for the County of San Diego, Case No. 37-2017-00028196-CU-BC-CTL

**CLASS ACTION SETTLEMENT
CLAIM FORM**

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Signature: _____

Date: _____

EXHIBIT D

1 DAVID C. ALLEN (SBN 190479)
david.allen@btlaw.com

2 JOSEPH M. WAHL (SBN 281920)
joseph.wahl@btlaw.com

3 **BARNES & THORNBURG LLP**

2029 Century Park East, Suite 300

4 Los Angeles, California 90067

Telephone: 310-284-3880

5 Facsimile: 310-284-3894

6 Attorneys for Defendants LANG PHARMA
NUTRITION, INC.; WAL-MART STORES, INC.; CVS
7 PHARMACY, INC.; WALGREEN COMPANY; MEIJER
DISTRIBUTION, INC.
8

9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN DIEGO

12 WILLIAM JACKSON and EDWARD
13 BUCHANNAN, on behalf of themselves, all
14 others similarly situated and the general
public,

15 Plaintiffs,

16 v.

17 LANG PHARMA NUTRITION, INC.;
18 WAL-MART STORES, INC.; CVS
19 PHARMACY, INC.; WALGREEN
COMPANY; MEIJER DISTRIBUTION,
INC.; and DOES 1-20, inclusive,

20 Defendants.
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Case No. 37-2017-00028196-CU-BC-CTL

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND NOTICE
PLAN**

Date:

Time:

Dept.: 73

Judge: Hon. Joel R. Wohlfeil

1 1. The Parties' joint motion for preliminary approval of a proposed class action settlement
2 came on for hearing on _____, 2018. Having read and considered the parties' Settlement
3 Agreement and exhibits thereto, the motion and all papers submitted in connection therewith, **IT IS**
4 **HEREBY ORDERED:** This Order incorporates by reference the definitions in the Settlement
5 Agreement, and all terms used herein shall have the same meaning as that set forth in the Settlement
6 Agreement, provided however, that in the event of any inconsistency, the terms of this Order shall
7 control.

8 2. For purposes of settlement only, and in accordance with the standards set forth in *Dunk*
9 *v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, the Court preliminarily certifies this litigation as a
10 class action and preliminarily certifies the settlement Class as follows:

11 All persons who, between July 1, 2013 and the date of this Order, purchased, for
12 personal or household use, and not for resale or distribution purposes, the CoQ-10
13 supplements listed below:

- 14 (a) Wal-Mart's Equate Clinical Strength High Absorption CoQ-10 100 mg
15 (b) CVS/Pharmacy Ultra CoQ-10 100 mg
16 (c) CVS/Health Ultra CoQ-10 100 mg
17 (d) CVS/Pharmacy Enhanced Absorption Formula CoQ-10 100 mg
18 (e) CVS/Health Enhanced Absorption Formula CoQ-10 100 mg
19 (f) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 100 mg
20 (g) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 200 mg
21 (h) Meijer's Ultra CoQ-10 100 mg
22

23
24 3. The Court finds that the requirements of Cal. Code Civ. P. § 382 have been satisfied and
25 the Court has made a preliminary determination that plaintiffs William Jackson, Edward Buchannan
26 and Thamar Santisteban Cortina are adequate Class Representatives for the Class.
27
28

1 4. The Court finds that plaintiff's counsel, Ronald A. Marron of The Law Office of Ronald
2 A. Marron, APLC, and each of their attorneys, can adequately represent the Class, and hereby appoints
3 them Class Counsel.
4

5 5. The Court finds that the proposed Settlement, as set forth in the Settlement Agreement,
6 falls within the range of a settlement that may be granted final approval, and accordingly GRANTS the
7 Parties' joint motion for preliminary approval.
8

9 6. The Court appoints Classaura, LLC. as the Claims Administrator.
10

11 7. A Fairness Hearing for Final Approval of this settlement shall be held on
12 _____, before the Honorable Joel R. Wohlfeil in Department 73 of the San Diego
13 County Superior Court , located at 330 West Broadway , San Diego , California. The purpose of the
14 Fairness Hearing will be to determine whether: (a) the proposed Settlement should be finally approved
15 by the Court as fair, reasonable, and adequate for the Class; (b) any objections to the Settlement should
16 be sustained or overruled; (c) the fee and expense payment sought by Class Counsel should be
17 approved in the amount requested; (d) the incentive awards sought by the Class Representatives
18 should be approved in the amount requested; and (e) the Final Approval Order and Judgment pursuant
19 to California Rules of Court Rule 3.769(h), wherein the Court retains jurisdiction over the parties to
20 enforce the terms of the judgment, should be entered.
21

22 8. The Court hereby approves the form and content of the Class Notice in the form
23 attached to the Settlement Agreement as Exhibits A and B (short form notice). The Court finds that
24 dissemination of the Class Notice as proposed in the Settlement Agreement meets the requirements of
25 Cal. Code Civ. P. § 382, Cal. Rule Ct. 3. 7 69 (f), and due process, and further constitutes the best
26 notice practicable under the circumstances. Accordingly, the Court hereby approves the Notice plan as
27 set forth in Section E of the Settlement Agreement. Classaura, LLC shall forthwith make public the
28

1 Class Settlement Website at the url www.Q10Settlement.com. Classaura, Inc. shall commence Class
2 Notice consistent with the Notice plan, which shall constitute due and sufficient notice to all persons
3 entitled thereto.
4

5 9. During the Notice period, and extending to 60 days after commencement of Notice,
6 Class Members who wish to participate in the Settlement may make claims in the manner provided in
7 Section F of the Settlement Agreement.
8

9 10. All papers in support of a motion for final approval of the settlement, any request by
10 Class Counsel for approval of attorneys' fees and expenses, and any request by the Class
11 Representatives for approval of incentive awards, shall be filed not later than _____, 2018, and
12 posted to the Settlement Website reasonably soon thereafter.
13

14 11. Any Class Member may request exclusion from the Settlement Class by mailing a
15 completed Opt-Out Form, available on the Settlement Website, www.Q10Settlement.com, to
16 Classaura, LLC, postmarked no later than _____, 2018. Any Class Member who submits
17 a timely and valid request for exclusion shall have no rights under the Settlement, will not be entitled
18 to any benefits of the Settlement, and will not be bound by the Settlement Agreement, its Release of
19 Liability, this Order, or the Final Approval Order and Judgment. Absent relief from the Court, Class
20 Members who do not request exclusion by timely completing and mailing to Classaura, LLC an Opt-
21 Out Form, shall be deemed to be members of the Class, and will be bound by the terms and conditions
22 of the Settlement Agreement, its Release of Liability, and the Final Approval Order and Judgment.
23

24 12. Any Class Member who wishes to object to all or any part of the proposed Settlement
25 may do so by appearing at the Final Approval Hearing either in person or through an attorney at his or
26 her own expense. Objecting Class Members must also file and serve a written objection no later than
27 _____, 2018, as set forth in Section I of the Settlement Agreement.
28

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3 13. The Court reserves the right to adjourn the date of the Fairness Hearing without further
4 notice to the Class, and the Court retains jurisdiction to consider all further applications arising out of
5 or connected with the proposed Settlement.

6 14. Pending the Court's ruling at the Fairness hearing, neither the Class Representatives, the
7 Class Members, nor any other person or entity shall institute or prosecute any of the matters referenced
8 as Released Claims in the Settlement Agreement.

9 **IT IS SO ORDERED.**

10
11 Dated: _____, 2018

12 Hon. Joel R. Wohlfeil

13 Judge of the Superior Court
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 300, Los Angeles, California 90067. On [March 4, 2018](#), I served the foregoing document(s) described as: **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND NOTICE PLAN** on the interested party(ies) below, using the following means:

Ronald A. Marron, Esq.
Michael T. Houchin, Esq.
LAW OFFICES OF RONALD A. MARRON, APLC
651 Arroyo Drive
San Diego, CA 92103

☐ BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☐ BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed to the respective address(es) of the party(ies) stated above and providing them to a professional messenger service for service.

☐ BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on [March 4, 2018](#) at Los Angeles, California.

Laurie A. Rossi

[Name]

[Signature]

EXHIBIT E

1 DAVID C. ALLEN (SBN 190479)
david.allen@btlaw.com

2 JOSEPH M. WAHL (SBN 281920)
joseph.wahl@btlaw.com

3 **BARNES & THORNBURG LLP**

2029 Century Park East, Suite 300

4 Los Angeles, California 90067

Telephone: 310-284-3880

5 Facsimile: 310-284-3894

6 Attorneys for Defendants LANG PHARMA
NUTRITION, INC.; WAL-MART STORES, INC.; CVS
7 PHARMACY, INC.; WALGREEN COMPANY; MEIJER
DISTRIBUTION, INC.
8

9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN DIEGO

12 WILLIAM JACKSON and EDWARD
13 BUCHANNAN, on behalf of themselves, all
14 others similarly situated and the general
public,

15 Plaintiffs,

16 v.

17 LANG PHARMA NUTRITION, INC.;
18 WAL-MART STORES, INC.; CVS
19 PHARMACY, INC.; WALGREEN
COMPANY; MEIJER DISTRIBUTION,
INC.; and DOES 1-20, inclusive,

20 Defendants.
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Case No. 37-2017-00028196-CU-BC-CTL

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; AWARDING CLASS
RESPRESENTATIVES INCENTIVE
AWARDS; AWARDING ATTORNEYS'
FEES AND COSTS; AND ENTERING
JUDGMENT**

Date:

Time:

Dept.: 73

Judge: Hon. Joel R. Wohlfeil

1 Plaintiffs' motion for final approval of a proposed class action settlement and motion for
2 attorneys' fees and costs and incentive awards for the Class Representatives came on for hearing on
3 _____, 2018 in Department 73. Having read and considered the parties' Settlement Agreement,
4 Plaintiffs' motions and all papers submitted in connection therewith, and having heard oral argument
5 during the Fairness Hearing, and for good cause found,
6

7 **IT IS HEREBY ORDERED:**
8

9 1. This is a nationwide consumer class action in which plaintiff contends defendants
10 misleadingly labeled and advertised a dietary supplement named CoQ-10, which is manufactured by
11 Lang Pharma Nutrition, Inc. and sold by the following retailers under their respective store brands:
12 Wal-Mart Stores, Inc., CVS Pharmacy, Inc. (a.k.a. CVS Health), Walgreens Co., and Meijer
13 Distribution, Inc. "Collectively referred to as "Lang CoQ-10").
14

15 2. The class includes approximately _____ individuals who purchased Lang CoQ-10
16 between July 1, 2013 and _____, 2018, the date of publication of Notice to the Class.
17

18 3. The Court granted preliminary approval of the class settlement on _____, 2018. In
19 addition to injunctive relief requiring changes to the product labels of defendants' products, the
20 settlement creates a \$656,000 cash fund and a product credit fund valued at \$650,000.
21

22 **Notice and the Class's Response**
23

24 4. Notice was provided on websites, social media, and responses to key word searches on
25 the internet. The Claims Administrator, Classaura, LLC, estimates that ___ % of the class received
26 notice of the settlement. Classaura has preliminarily validated _____, claims, valued at \$_____.
27 _____ members opted out of the class. The Court received ___ objections to the settlement.
28

1
2 **The Fairness, Reasonableness and Adequacy of the Settlement**
3

4 5. The initial settlement provided for a \$656,000 cash fund and a product credit fund of
5 \$650,000. Given the strong response to the settlement and pursuant to Section D of the Settlement
6 Agreement, the cash payments and product credits have to be reduced pro rata to accommodate all
7 claims. [TO BE REVISED BASED ON THE NO. OF CLAIMS RECEIVED BY THE CLAIMS
8 ADMINSTRATOR].
9

10 6. For the reasons stated in the order granting preliminary approval of the settlement, the
11 Court finds the settlement to be fair, adequate and reasonable. *See, e.g., Dunk v. Ford Motor Co.*
12 (1996) 48 Cal. App.4th 1794, 1800-01; Cal. Rules of Court, Rule 3.769 (g). The reasonableness of the
13 settlement is further demonstrated by the fact that there were ___ objections and ___ requests for
14 exclusion.
15

16 **Attorneys' Fees and Costs**
17

18 7. Plaintiffs are requesting \$_____ in fees and costs of \$_____.
19

20 8. [TO BE REVISED UPON THE FILING OF PLAINTIFFS' MOTION FOR
21 ATTORNEYS' FEES AND COSTS].
22

23 **Incentive Payments to the Class Representatives**
24

25 9. Incentive payments to class representatives "must not be disproportionate to the
26 amount of time and energy expended in pursuit of the lawsuit". *Cellphone Termination Fee Cases*
27 (2010) 186 Cal.App.4th 1380,1395. Messrs. Jackson and Buchannan spent ___ hours meeting with
28

1 counsel, assisting with the complaint, reviewing the settlement terms and other tasks. Ms. Cortina, has
2 being involved in this litigation for more than four years, as she was the first plaintiff to file a class
3 action complaint in July 2013. That case, which was pending in federal court, was eventually
4 dismissed without prejudice due to lack of subject matter jurisdiction. The Court concludes that an
5 incentive payment of \$1,000 to Messrs. Jackson and Buchannan and an incentive payment of \$4,000 to
6 Ms. Cortina are appropriate to compensate them for their respective efforts.
7

8 **Compliance with the Settlement Agreement; Continuing Jurisdiction; and Judgement**
9

10 10. To the extent not specifically ordered herein, the Court orders the parties to comply with
11 all obligations arising under the Settlement Agreement.
12

13 11. Nothing in this Order shall preclude any action to enforce or interpret the terms of the
14 Settlement Agreement. Any action to enforce or interpret the terms of the Settlement shall be brought
15 solely in this Court.
16

17 12. The Court expressly retains jurisdiction as to all matters relating to the Settlement and
18 this Order, and for any other necessary and appropriate purpose.
19

20 13. Having approved the Settlement, the Court hereby enters judgment pursuant to
21 California Rules of Court Rule 3.769 (h) consistent with all provisions of this Order, including the
22 retention of jurisdiction to enforce the terms of the judgment.
23
24
25
26

27 **IT IS SO ORDERED**
28

Dated: _____, 2018

Hon. Joel R. Wohlfeil
Judge of the Superior Court

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 300, Los Angeles, California 90067. On [March 4, 2018](#), I served the foregoing document(s) described as: **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AWARDING CLASS REPRESENTATIVES INCENTIVE AWARDS; AWARDING ATTORNEYS' FEES AND COSTS; AND ENTERING JUDGMENT** on the interested party(ies) below, using the following means:

Ronald A. Marron, Esq.
Michael T. Houchin, Esq.
LAW OFFICES OF RONALD A. MARRON, APLC
651 Arroyo Drive
San Diego, CA 92103

☐ BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☐ BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed to the respective address(es) of the party(ies) stated above and providing them to a professional messenger service for service.

☐ BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on [March 4, 2018](#) at Los Angeles, California.

Laurie A. Rossi

[Name]

[Signature]

EXHIBIT F

William Jackson, et al. v. Lang Pharma Nutrition, Inc., et al.

Superior Court of California for the County of San Diego, Case No. 37-2017-00028196-CU-BC-CTL

**PRICE LIST, PACKAGING AND LABELING
OF LANG BRANDED PRODUCTS**

Product Credits can be redeemed for the following dietary supplements at Lang Pharma Nutrition, Inc.'s website, _____.

PRICE LIST

CoQ-10	\$12.50
Advanced Bone Health for Seniors	\$12.50
Advanced Bone Health for Adults	\$12.50
Vegetarian Glucosamine	\$12.50
Women's Nighttime Multivitamin	\$6.25
Men's Nighttime Multivitamin	\$6.25
Calcium and D3	\$6.25

LABELING AND PACKAGING

Shown on the following pages are samples of the packaging and labeling (Shown are CoQ-10, multivitamin and Advanced Bone Health for Adults).

PRICE LIST, PACKAGING AND LABELING OF LANG BRANDED PRODUCTS



PRICE LIST, PACKAGING AND LABELING OF LANG BRANDED PRODUCTS



Foil Blister Pack

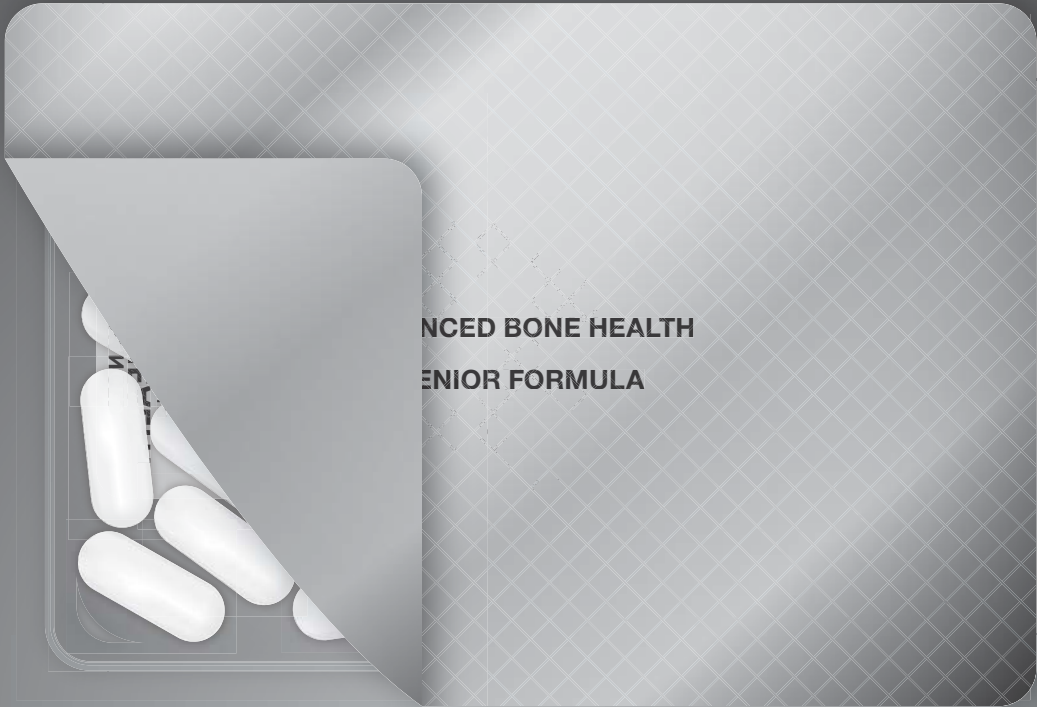


EXHIBIT G

CLASS ACTION SETTLEMENT OPT-OUT FORM

If you wish to be excluded from the settlement of this class action and receive no settlement benefits¹, provide the information requested below, sign and date this form and mail to the addresses listed below by _____, 2018. Additional details of the requirements to be excluded from this class action settlement are contained in Section J of the Settlement Agreement.

Your Name:

Your Mailing Address (with zip code):

Your Phone Number:

Your Email Address:

Identify the Product(s) You Purchased. Circle the Name(s) of the CoQ-10 Product(s) you purchased during the period from July 1, 2013 to _____, 2018 **[DATE OF NOTICE TO THE CLASS]**.

- (1) *Wal-Mart's Equate Clinical Strength High Absorption CoQ-10 100 mg*
- (2) *CVS/Pharmacy Ultra CoQ-10 100 mg*
- (3) *CVS/Health Ultra CoQ-10 100 mg*
- (4) *CVS/Pharmacy Enhanced Absorption Formula CoQ-10 100 mg*
- (5) *CVS/Health Enhanced Absorption Formula CoQ-10 100 mg*
- (6) *Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 100 mg*
- (7) *Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 200 mg*
- (8) *Meijer's Ultra CoQ-10 100 mg*

Date of Purchase. For each CoQ-10 product you claim you purchased, give the date of the purchase. If you do not have a receipt for your purchase, give the approximate date:

Date(s)

Copy of Your Receipt. If you have a receipt for your purchases, enclose a copy of all receipts with this form.

Location of Purchase. For each CoQ-10 product you purchased, identify the address of the store where the purchase was made. (Example: CVS Pharmacy, 225 Main Street, Cedar Rapids, Iowa).

¹ The settlement awards are described in detail in Section D of the Settlement Agreement.

**CLASS ACTION SETTLEMENT
OPT-OUT FORM**

I hereby elect to be excluded from this class action settlement.

Signature: _____ Date: _____

Mail this completed form via U.S. Mail, First Class to the following addresses.

Original mailed to:

Classaura, LLC
1718 Peachtree St #1080
Atlanta, GA 30309

Copies mailed to:

Ronald A. Marron
Law Offices of Ronald A. Marron, APLC
651 Arroyo Drive
San Diego, CA, 92103

David C. Allen
Barnes & Thornburg LLC
2029 Century Park East, Suite 300
Los Angeles, CA 90067