



The Complaint contains counts against CVS for common law claims of negligent misrepresentation, fraudulent misrepresentation and unjust enrichment, and for the subclasses for violations of the New York and Florida consumer protection statutes. It further seeks injunctive relief and damages.

1.2 In April 2016, and from September 2018 through April 2019, CVS and the Representative Plaintiffs, individually and on behalf of the other members of the Settlement Class, engaged in arm's length, good-faith negotiations in an effort to reach an amicable resolution to the Action through a mediation process conducted by David Geronemus, Esq., of JAMS in New York.

1.3 As a result of the negotiations, the Parties agreed to settle the Action pursuant to the terms set forth in this Settlement Agreement. Both CVS and Representative Plaintiffs and Class Counsel believe that the Settlement Agreement provides benefits to the Settlement Class, is fair, reasonable, and adequate, and is in the best interests of the Parties, including the Representative Plaintiffs and the Settlement Class Members.

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

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

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

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

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

1.8 CVS denies the material allegations made in the Class Action and denies any and all liability with respect to all facts and claims alleged therein, and further denies that any of the

Settlement Class Members, or anyone, has suffered any harm or damage or is entitled to any monetary or equitable relief in connection with the Action.

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

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

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

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

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

## TERMS AND CONDITIONS OF SETTLEMENT

### 2. DEFINITIONS

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

2.2 “**Action**” or “**Class Action**” means the civil action pending in the United States District Court for the Eastern District of New York, *Worth et al. v. CVS Pharmacy, Inc.*, Case No. 16-cv-00498.

2.3 “**Agreement**,” “**Settlement Agreement**,” or “**Stipulation**” means the terms and conditions of settlement set forth in the paragraphs above and below, including all Exhibits hereto.

2.4 “**Algal-900 DHA**” or “**Algal-900 DHA Product**” or “**Product**” means the CVS proprietary brand dietary supplement product containing, on the label and/or on the packaging, the claim of “clinically shown to improve memory” or “clinically shown memory improvement.”

2.5 **“Challenged Claims”** means the claims of “clinically shown to improve memory” or “clinically shown memory improvement.”

2.6 **“Claimant”** or **“Class Claimant”** means a Settlement Class Member who submits a Claim Form.

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

2.8 **“Claim Form”** means the document that Settlement Class Members seeking damages in the form of cash or vouchers must complete, execute, and submit to the Claims Administrator in order to obtain the relief provided in this Agreement. The Claim Form will be available online at the Settlement Website and will be substantially the same form attached hereto as Exhibit A.

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

2.10 **“Class Counsel”** means Kaplan Fox & Kilsheimer, LLP; Reese LLP; Mehri & Skalet, PLLC; and, Center for Science in the Public Interest (“CSPI”).

2.11 **“Class Representative Incentive Award”** means an award approved by the Court to compensate the Representative Plaintiffs for their time and effort on behalf of the Settlement Class in this litigation.

2.12 **“Class Settlement Notice,” “Class Notice,”** or **“Notice”** means the Court-approved notices entitled “Notice of Proposed Class Action Settlement,” and substantially in the forms attached hereto as Exhibits B (Long-form Notice), C (Short-form Notice), D (E-mail Notice), E

(Post-card Notice), and F (In-store receipt Notice), but which may be modified as necessary to comply with the provisions of any order entered by the Court, and which are to be provided to the Settlement Class Members pursuant to this Agreement.

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

2.14 “**Defendant’s Counsel**” means the law firm Polsinelli PC.

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

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

2.17 “**Fee and Expense Award**” means the amount awarded to Representative Plaintiffs’ Counsel by the Court for reasonable attorneys’ fees, costs and expenses, up to \$447,000.00.

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

2.19 “**Final Settlement Approval Date**” means the date thirty-five (35) days after the Court enters the Settlement Order and Judgment on the Parties and all objectors to the Settlement Agreement, if any, without any appeal being taken, or if an appeal or request for review has been taken, the date on which the Settlement Order and Judgment has been affirmed or modified by the court of last resort to which an appeal or request for review has been taken and such affirmance or modification is no longer subject to further appeal or review, or the date of denial of review after

exhaustion of all appellate remedies, or the date on which all appellate rights with respect to the Settlement Order and Judgment have expired.

2.20 “**In-store receipt Notice**” means the Class Settlement Notice substantially in the form attached hereto as Exhibit F.

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

2.22 “**Incentive Award**” means any award sought by application to and approved by the Court that is payable to the Representative Plaintiffs for their service to the Class.

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

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

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

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

2.27 “**Objection**” is the written communication that a Settlement Class Member may file with the Court in order to object to this Agreement as provided for in paragraphs 9.1-9.4 below.



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

2.29 “**Parties**” means Plaintiffs Jeff Worth and Robert Burns and Defendant CVS.

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

2.31 “**Post-card Notice**” means the Class Settlement Notice substantially in the form attached hereto as Exhibit E.

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

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

2.34 “**Proof of Purchase**” means documentation provided to Class Members in connection with their purchase showing the purchase or price paid for Algal-900 DHA.

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

Action against any of the Released Parties arising out of or relating to the Challenged Claims on the Product. Released claims expressly exclude claims relating to CVS Algal-900 DHA products whose labels and marketing do not carry the Challenged Claims, i.e., products bearing revised labels with alternative structure/function claims.

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

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

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

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

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

2.38 “**Representative Plaintiffs**” or “**Class Plaintiffs**” means the named Plaintiffs in the Action: Jeff Worth and Robert Burns.

2.39 “**Request for Exclusion**” means the written communication that a Settlement Class Member must submit to the Claims Administrator by the Objection/Exclusion Deadline in order to be excluded from the Settlement as provided for in paragraph 9.5 below.

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

2.41 “**Settlement Class Members**” or “**Settlement Class**” means: All consumers in the United States who purchased Algal-900 DHA during the Settlement Class Period. Excluded from this definition are the Released Persons, any government entities, and persons who made such purchase for the purpose of resale. Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in paragraph 9.5 below, shall thereafter no longer be Settlement Class Members and shall not be bound by this Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of this Settlement Agreement.

2.42 “**Settlement Class Period**” or “**Class Period**” means the period of time from November 15, 2008, up to and including September 30, 2016.

2.43 “**Settlement Order and Judgment**” means an order and judgment issued and entered by the Court approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members and dismissing the Action with prejudice, and setting the amount for an award of attorneys’ fees, costs and expenses, not to exceed \$447,000.00, to Class Counsel by the Court. The

Settlement Order and Judgment shall constitute a judgment within the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure.

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

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

### 3. SETTLEMENT RELIEF AND CONSIDERATION

#### Damages/Compensation

3.1 Damages/Compensation. Defendant shall offer to any Class Member who submits a valid Claim Form to the Class Action Administrator, on or before the Claim Period Close Date compensation as follows:

Proof of Purchase: For those Class Members who provide a Proof of Purchase with their Claim they will be entitled to the following: (a) a full refund of the price paid by the Claimant for Algal-900 DHA for the Product, if the Claim Form is accompanied by a valid Proof of Purchase(s) indicating the actual price paid or (b) a refund based on the average retail price for the Algal-900 DHA Product set out in Exhibit G, if the Claim Form is accompanied by a valid Proof of Purchase that does not indicate the actual purchase price paid.

No Proof of Purchase, But Proof of ExtraCare Account:

For those Class Members who provide a CVS ExtraCare account number (or for whom the Claims Administrator can otherwise link to an ExtraCare account either through a phone number or other means), and the ExtraCare account is associated with a purchase of the Product, either in a CVS store or through an online purchase, a refund of the amount indicated in CVS's records paid to the Class Member in the form of a credit to the purchaser's ExtraCare account in the full amount paid for the Product.

No Proof of Purchase or ExtraCare Account, but Record of Online Purchase:

If a Claim Form is submitted without Proof of Purchase and the Claims Administrator cannot tie an ExtraCare account to the purchase but there exists a record of an online purchase at cvs.com, then the Claimant will receive a voucher toward the purchase of any CVS product, in the full amount of the purchase indicated in CVS's records.

No Proof of Purchase or ExtraCare Account or Online Purchase:

For Claim Forms not accompanied by a Proof of Purchase and the Claims Administrator cannot tie an ExtraCare account or online record to the Purchase as described above, Defendant shall provide to any Class Member who submits a valid Claim Form to the Class Action Administrator, on or before the Claim Period Close Date, either the total (regardless of the number of purchases) of (a) \$5.50 in cash value or (b) \$7.00 in voucher value toward the purchase of any product sold at CVS. The form of compensation – cash or voucher, shall be the choice of the Claimant. No more than one claim per Claimant and two Claimants per household shall receive \$5.50 in cash value and/or \$7.00 in voucher value if they submit their Claim Forms without a valid Proof of Purchase. The eligibility requirements for Claimants are described in further detail in Section 8 below.

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

### **Injunctive Relief**

3.3 In a process that culminated in December 2015, before the filing of this action, CVS created new labels for the Algal-900 DHA Product and ceased receiving Algal-900 DHA with the old labels containing the Challenged Claims. CVS agrees not to make the Challenged Claims for a period of two years from the Final Settlement Approval Date.

## **4. ATTORNEYS' FEES, COSTS AND EXPENSES**

4.1 Class Administration. CVS shall pay the full costs and expenses of administering the Settlement.

4.2 Attorneys' Fees and Expenses. Class Counsel will petition the Court for an award of reasonable attorneys' fees and for their costs and expenses. Class Counsel agree that they will not seek more than a cumulative total of \$ 447,000.00 in attorneys' fees, costs and expenses.

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

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

4.5 The payment of Class Counsel's fees shall be made to Reese LLP as agent for Class Counsel, in accordance with and delivery of wire instructions/routing information and tax I.D.

numbers provided by Reese LLP. CVS shall pay the Fee and Expense Award by wire transfer to Class Counsel within sixty (60) days after the later of the Final Settlement Approval Date and the delivery to CVS of all payment routing information and tax I.D. numbers for Class Counsel.

4.6 The Court's award of any fees and expenses shall be separate from its determination of whether to approve this Agreement. In the event the Court approves the Settlement set forth in this Agreement but declines to award fees and expenses in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement in this Agreement, the Fee and Expense Award shall not be paid, and no attorneys' fees and expenses shall be paid.

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

4.8 The Parties agree and confirm that they negotiated and reached agreement on the Class Counsel fees and expenses only after reaching agreement on all other material terms of this Agreement.

#### **5. CLASS REPRESENTATIVE INCENTIVE AWARD**

5.1 Class Counsel shall petition the Court for, and CVS shall not oppose, a Class Representative Incentive Award of no more than \$2,500.00 to each of the Representative Plaintiffs (for a total of \$5,000), in recognition of their multi-year efforts on behalf of the Settlement Class during the course of this hard-fought litigation. The Court's award of any Class Representative Incentive Award shall be separate from its determination of whether to approve the Settlement as set forth in this Agreement. In the event the Court approves the Settlement, but it declines to award a Class Representative Incentive Award or awards a lesser amount than that requested by Class

Counsel, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement, no Class Representative Incentive Award shall be paid. CVS shall pay such awards by wire transfer to Reese LLP within sixty (60) days after the later of the Final Settlement Approval Date and the delivery to CVS of all payment routing information and tax I.D. number for each Representative Plaintiff. Payment by CVS of the Class Representative Incentive Award is separate from, and in addition to, the other relief afforded to the Settlement Class Members in this Agreement.

## 6. NOTICE OF SETTLEMENT

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

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

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

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

- a. Inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive relief under the proposed settlement;



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

k. Contain other information as agreed to by the Parties.

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

- a. Publication Notice. CVS or its designee will cause the Short-form Notice, in the form approved by the Court, to be published to the Settlement Class Members on or before the date specified in the Preliminary Approval Order, including once in AARP Magazine; twice in USA Today as well as 30 days of Internet banner notifications that contain links to the Settlement Website.
- b. Direct Notice. CVS or its designee, through the Claims Administrator, will cause the E-mail Notice, in the form approved by the Court, to be sent on or before the date specified in the Preliminary Approval Order, to each person identified as a potential Class Member, based on the Claims Administrator's review of CVS's records relating to Product purchases during the Class Period, for whom CVS possesses a valid email address. The E-mail Notice will include a hypertext link to the Settlement Website. If any E-mail Notices are returned as undeliverable, the Post-card Notice will be mailed by the Claims Administrator, if a physical address is available, to the last known physical/postal address that CVS has on file. If CVS has a physical/postal address for the potential Class Member on file but has no corresponding e-mail address for that potential Class Member, the Post-card Notice will be mailed by the Claims Administrator to the last known physical/postal address that CVS has on file in the first instance.
- c. Website Notice. The Claims Administrator will establish a Settlement Website for the purposes of disseminating to Settlement Class Members the Class Settlement

Notice, this Agreement, information relating to filing a claim, opting out of the settlement, objecting to the settlement, deadlines relating to the settlement, pleadings, contact information for all Class Counsel, and other information relevant to the settlement. The Claims Administrator shall establish the Settlement Website within 45 days of Preliminary Approval in this Action using a website name and format to be mutually agreed on by the Parties.

- d. In-store receipt Notice: CVS will include a conspicuous notice on the printed customer receipt for every purchase made by an ExtraCare account holder for whom CVS's records show a purchase of the Product during the Class Period. CVS will do this for a period of four months after an order granting Preliminary Approval is entered. The In-store receipt Notice will be prominent and set off by a row of asterisks above and below the notice. The In-store receipt Notice will inform Class members that if they purchased Algal-900 DHA they may be eligible for a credit and will direct them to the Settlement Website to determine eligibility.

## **7. ADMINISTRATION OF SETTLEMENT**

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

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

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

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

following this notice to challenge the claim. CVS will be permitted to submit to the Claims Administrator, with a copy to Class Counsel, any information demonstrating that the submitted claim is not valid. The Claims Administrator may then contact the Settlement Class Member who submitted the claim to request any further information. The Claims Administrator will then make a final determination that is not challengeable by any Party.

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

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

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

## **8. ELIGIBILITY OF CLASS CLAIMANT FOR RELIEF**

8.1 Eligibility. To be eligible to receive relief under this Agreement, Settlement Class Members must submit a claim to the Claims Administrator by completing the online Claim Form on the Settlement Website or completing and mailing the Claim Form to the Claims Administrator.

The Claim Form must be submitted online or postmarked no later than the Claim Period Close Date. Claim Forms submitted or postmarked after the Claim Period Close Date will be denied by the Claims Administrator and CVS will not be obligated to make any payment on such claims.

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

8.3 Proof of Claim. Proof of claim for cash compensation, Extra Care account credit or for a CVS voucher must be submitted as follows:

- a. For a Claimant making a claim for the full cash refund of the purchase of the Product, Claimant must provide a Proof of Purchase indicating the actual price paid for the Product, along with a valid and completed Claim Form. There is no limit to the number of claims that a Claimant may make if he or she provides a Proof of Purchase for each claim.
- b. For a Claimant making a claim for a cash refund of the purchase of the Product in accordance with Exhibit G (average retail price), Claimant must provide a Proof of Purchase along with a valid and completed Claim Form. There is no limit to the number of claims that a Claimant may make if he or she provides a Proof of Purchase for each claim.
- c. If a Claimant does not provide Proof of Purchase, and CVS's records indicate the Claimant purchased the Product using an Extra Care account, then CVS will issue a full credit to the Claimant's Extra Care account in the amount of the purchase(s) indicated in CVS's records.

- d. If a Claimant does not provide Proof of Purchase and CVS's records indicate the Claimant purchased the Product online through cvs.com without an associated Extra Care account, then CVS will issue a voucher to the Claimant in the amount of the online purchase(s) indicated in CVS's records.
- e. For a Claimant who does not have Proof of Purchase and who is making a claim for either (i) \$5.50 in cash (payable via check), or (ii) a \$7.00 voucher toward the purchase of any product sold at CVS, Claimant must submit: (a) a completed Claim Form, either electronically online on the Settlement Website or in hard copy and mailed to the Claims Administrator, confirming (i) the Product purchased and (ii) that the purchase was made within the Class Period. A maximum number of one (1) claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member under this subsection. A maximum number of two (2) claims may be submitted per each Settlement Class Member's household under this subsection.

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

8.5 Incomplete Claims Forms. Submitted Claim Forms containing inaccurate or disqualifying information, and/or submitted Claims Forms omitting required information will be returned by the Claims Administrator via first class mail to the Settlement Class Member's address indicated on

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

## 9. EXCLUSIONS AND OBJECTIONS

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

9.2 Objections. Any Objection regarding or related to the Agreement should identify the name of the lawsuit, *Worth v. CVS Pharmacy, Inc.*, Case No. 16-cv-00498, and also should contain information sufficient to identify and contact the objecting Settlement Class Member – including the Class Member's name, current address, and telephone number, and the name, address, and telephone number of the Class Member's lawyer, if the Class Member is objecting through counsel. The Objection should also contain a clear and concise statement of the Settlement Class Member's objections, and the reasons for each. The Objection should be accompanied by documents sufficient to establish the basis for the Settlement Class Member's standing (i.e., verification as to the date and location of their purchase of the Product or a Proof of Purchase



reflecting such purchase). The Objection should also include a list of any documents the Class Member plans to submit to the Court for consideration; a list of legal authorities for the Court's consideration; and the names and addresses of any witness the Class Member wants to call to testify. The Objection should also include a statement indicating whether the Class Member, or the Class Member's lawyer, will appear and speak at the Fairness Hearing. Finally, the Objection should include the Class Member's signature, or his/her attorney's signature. The Objection must be filed with the Court and should also be served upon CVS's Counsel and Class Counsel so that such papers are actually received by them by the date specified in the Class Settlement Notice. Notwithstanding the foregoing, the decision as to whether a Settlement Class Member has made a valid objection to the settlement is one for the Court.

9.3 Appearance at Hearing. Class Member will be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) or to object to the Agreement, and no written objections or briefs submitted by any Settlement Class Member will be received or considered by the Court at the Fairness Hearing, unless written notice of the Settlement Class Member's intention to appear at the Fairness Hearing, and copies of any written Objections or briefs, have been filed with the Court and served on counsel for the Parties on or before the Objection/Exclusion Deadline, as instructed in the Settlement Notice. The Class Member's notice of appearance should contain: (1) the title of the lawsuit, Worth v. CVS Pharmacy, Inc., Case No. 16-cv-00498; (2) a statement that the Class Member wishes to appear at the Fairness Hearing; (3) a statement that the Class Member or his/her lawyer would like to speak at the Court's Fairness Hearing; and (4) the Class Member's signature or the Class Member's lawyer's signature. Notwithstanding the foregoing, the determination of whether a Settlement Class Member may be heard at the Fairness Hearing is one for the Court.

9.4 Right to Respond to Objections. Class Counsel and CVS will have the right to respond to objections, if any, prior to the Fairness Hearing.

9.5 Requesting Exclusion/“Opt Out.” Any Settlement Class Member who does not wish to be a member of the Class or participate in this Settlement must submit a Request for Exclusion to the Claims Administrator stating an intention to be “excluded” from this Settlement. The Request for Exclusion must contain the name of the Action, *Worth v. CVS Pharmacy, Inc.*, Case No. 16-cv-00498, and must also contain the Settlement Class Member’s name, current address, and telephone number. The Request for Exclusion must also contain a clear statement of the Class Member’s intent to exclude him or herself, such as “I wish to be excluded from the Class.” The Request for Exclusion must be either (i) personally signed by the Settlement Class Member, dated and mailed to the Claims Administrator and postmarked on or before the Objection/Exclusion Deadline, or (ii) electronically signed by the Settlement Class Member, and submitted to the Claims Administrator through the Settlement Website on or before the Objection/Exclusion Deadline. So-called “mass” or “class” opt-outs will not be allowed. The date of the postmark on the return mailing envelope and/or the date of online submission through the Settlement Website will be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member whose request to be excluded from the Settlement Class is approved by the Court will not be bound by this Settlement Agreement or have any right to object, appeal or comment thereon.

9.6 Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Objection/Exclusion Deadline will be bound, to the extent allowed by law, by all terms of the Settlement Agreement and any Judgment entered in the Action if the Settlement

Agreement is approved by the Court, regardless of whether they have requested exclusion from the Class.

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

## 10. CLASS SETTLEMENT PROCEDURES

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

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

10.2 Stay of the Action. The Parties will request that the Court, in connection with Preliminary Approval, issue an immediate stay of the Action. Following Preliminary Approval, all activity in the Action will be stayed except to the extent necessary to effectuate this Agreement, and then

until this Agreement is terminated pursuant to its terms and conditions. Plaintiffs and/or Defendant will also request that any related actions be stayed by the courts where any such actions may be pending.

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

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

10.5 Fairness Hearing. The Court will conduct a Fairness Hearing so that the Court may review any Objections to this Agreement, consider the fairness, reasonableness and adequacy of this Agreement and consider the petition for Final Approval and Class Counsel's Application for a Fee and Expense Award. The date of the Fairness Hearing will be posted on the Settlement Website in advance of the hearing. If the date of the Fairness Hearing is subsequently modified by the Court,

no further notice is required to be published to Settlement Class Members, except that the Parties will notify any Settlement Class Member who has filed a timely Objection in writing of any change to the date of the Fairness Hearing.

10.6 Dismissal of this Action. The Final Approval will provide that this Action is dismissed, with prejudice, on the Final Settlement Approval Date.

## 11. TERMINATION

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

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

## 12. RELEASES

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

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

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

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

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

### **13. CERTIFICATION OF THE SETTLEMENT CLASS**

13.1 Certification of Settlement Class for Settlement Purposes. The Parties agree, for settlement purposes only, that this Action shall be certified and proceed as a class action under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), with a class consisting of all Settlement Class Members, and with the named Plaintiffs as Representative Plaintiffs and Plaintiffs' Counsel as counsel for the Settlement Class Members. Any certification of a conditional, preliminary or final settlement class pursuant to the terms of this Settlement shall not constitute, and shall not be construed as, an admission on the part of CVS that this Action, or any other proposed or certified class action, is appropriate for class treatment for any other purpose pursuant to Federal Rule of Civil Procedure 23 or any similar state or federal class action statute or rule. This Settlement Agreement will be without prejudice to the rights of CVS to: (a) move to dismiss or stay this Action on any applicable basis; (b) oppose final certification in this Action should this Settlement Agreement not be approved or implemented for any reason; or (c) oppose certification in any other proposed or certified class action. Neither the fact of this settlement nor this Settlement Agreement shall be

used in connection with efforts in any proceeding to seek certification of any claims asserted against CVS.

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

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

#### **14. MISCELLANEOUS PROVISIONS**

14.1 Reasonable Efforts. Subject to the other terms and conditions of this Settlement Agreement, the Parties and their respective counsel will use reasonable efforts to cause the Court to give Preliminary Approval to this Settlement Agreement as promptly as practicable, to take all



steps contemplated by this Settlement Agreement that are necessary (by order of the Court or otherwise) to effectuate the Settlement on the stated terms and conditions (including giving due consideration to any changes to the Settlement Agreement that the Court might suggest) and to obtain Final Approval of this Settlement Agreement and achieve a Final Settlement Approval Date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.15 Notices. All notices to the Parties or counsel required by this Settlement Agreement will be made in writing and communicated by email and mail to the following addresses as stated on the next page:

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

Maia Kats  
**KAPLAN FOX & KILSHEIMER LLP**  
6109 32<sup>nd</sup> Place, N.W.  
Washington, D.C. 20015  
Telephone: (202) 669-0658  
*MKats@kaplanfox.com*

Michael R. Reese  
**REESE LLP**  
100 West 93<sup>rd</sup> Street, 16<sup>th</sup> Floor  
New York, New York 10025  
Telephone: (212) 643-0500  
*mreese@reesellp.com*

Steven A. Skalet  
Craig Briskin  
**MEHRI & SKALET, PLLC**  
1250 Connecticut Avenue, N.W., Suite 300  
Washington, D.C. 20036  
Telephone: (202) 822-5100  
*SSkalet@findjustice.com*  
*cbriskin@findjustice.com*

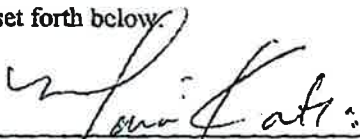
Matthew Simon  
**CENTER FOR SCIENCE  
IN THE PUBLIC INTEREST**  
1220 L Street, NW, Suite 300  
Washington, D.C. 20005  
Telephone: (202) 777-8361  
*msimon@cspinet.org*


b. If to CVS or Defendant's Counsel:

Frank Spano  
**POLSINELLI PC**  
600 Third Avenue, 42<sup>nd</sup> Floor  
New York, New York 10016  
Telephone: (212) 413-2848  
*fspano@polsinelli.com*


***[REST OF PAGE INTENTIONALLY LEFT BLANK]***

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


By:   
Maia Kats  
KAPLAN FOX & KILSHEIMER, LLP  
6109 32<sup>nd</sup> Place, N.W.  
Washington, D.C. 20015  
Telephone: (202) 669-0658  
MKats@kaplanfox.com

By:   
Michael R. Reese  
REESE LLP  
100 West 93<sup>rd</sup> Street, 16<sup>th</sup> Floor  
New York, New York 10025  
Telephone: (212) 643-0500  
mreese@reesellp.com

By:   
Steven A. Skalet  
Craig L. Briskin  
MEHRI & SKALET, PLLC  
1250 Connecticut Avenue, N.W., Suite 300  
Washington, D.C. 20036  
Telephone: (202) 822-5100  
sskalet@findjustice.com  
cbriskin@findjustice.com

By:   
Matthew Simon  
CENTER FOR  
SCIENCE IN THE PUBLIC INTEREST  
1220 L Street, NW, Suite 300  
Washington, DC 20005  
(202) 777-8361  
msimon@cspinet.org

*Class Counsel*

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

*Counsel for Defendant CVS Pharmacy, Inc.*

**EXHIBIT A**

**CLAIM FORM AND INSTRUCTIONS**

1. In order for you to be eligible to receive any Settlement benefits, you must complete this Claim Form.
2. Please review the Class Notice and have the Class Notice with you when you complete your Claim Form. A copy of the Class Notice is available at [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com).
3. You must accurately complete all required portions of this Claim Form.
4. You must sign this Claim Form.
5. You may submit a completed Claim Form online at [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com) on or before \_\_\_\_\_ 2019. Alternatively, you may mail the Claim Form, postmarked no later than \_\_\_\_\_ to:

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

Please Print or Type

\_\_\_\_\_  
LAST NAME FIRST NAME

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Telephone Number (Day) Telephone Number (Night)

\_\_\_\_\_  
CVS ExtraCare Account Number (if one exists and is known by the Claimant):

\_\_\_\_\_  
Email Address:

I certify that the Claimant purchased one or more CVS Algal-900 DHA product(s), containing, on the label and/or on the packaging, the claim that it is “clinically shown to improve memory” or offers “clinically shown memory improvement,” during the period between November 15, 2008 and September 30, 2016.

**Please check the type of compensation you are claiming:**

- Full Cash Refund with Proof of Purchase(s) setting forth actual purchase price
- Cash Payment of average retail price with Proof of Purchase(s) lacking purchase price
- Credit to Extra Care account in the amount of purchase(s) indicated in CVS's records<sup>†</sup>
- Voucher for the amount of online purchase(s) through cv.com indicated in CVS's records<sup>†</sup>
- \$5.50 Cash (No Proof of Purchase or CVS record of purchase necessary)<sup>††</sup> or
- \$7.00 voucher (No Proof of Purchase or CVS record of purchase necessary)<sup>††</sup>

<sup>†</sup> If you select this option and CVS's records do not indicate that you purchased CVS Algal-900 DHA, then you will receive one \$7.00 voucher toward the purchase of any product sold at CVS.

<sup>††</sup> Settlement compensation in the form of \$5.50 in cash value or \$7.00 in voucher value is limited to one claim per person and a maximum of two Claimants per household. If you select either the \$5.50 cash or \$7.00 voucher option and CVS records indicate that you purchased CVS Algal-900 DHA using an ExtraCare account or online through cv.com, then you will receive a refund in the amount of your purchase(s) of CVS Algal-900 DHA indicated in CVS's records in the form of either a credit to your ExtraCare account or a voucher towards the purchase of any product sold at CVS. If you choose the \$5.50 cash option, you receive that payment via check.

**Signature:** \_\_\_\_\_

**Print name here:** \_\_\_\_\_

Date: \_\_\_\_\_

**Reminder Checklist:**

1. Sign the above Claim Form.
2. Enclose a copy of your Proof(s) of Purchase, if you have them.
3. Keep a copy of your Claim Form and supporting documentation for your records.
4. If you move or your name changes, please send your new address, new name or contact information to the Claim Administrator via the Settlement Website, mail or by calling the Claims Administrator's toll-free telephone number, each listed in the Notice. Failure to do this may result in waiver of your refund or voucher.

## EXHIBIT B

### UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

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

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

- A proposed settlement has been reached with CVS Pharmacy, Inc. (“CVS”) in a class action lawsuit about the statements made on the labels and packaging of a CVS-branded dietary supplement containing docosahexaenoic acid (DHA).
- You are included in the Settlement if you purchased a CVS-branded Algal-900 DHA dietary supplement in the United States between November 15, 2008 and September 30, 2016 that contained claims of “clinically shown to improve memory” or “clinically shown memory improvement” on the label or packaging (“CVS Algal-900 DHA Products”).
- Those included may submit a Claim Form to receive:
  - a refund of the price(s) paid to purchase CVS Algal-900 DHA Products—if the Claim Form is accompanied by a Proof of Purchase that shows the actual price paid;
  - a cash payment equal to the average retail price of CVS Algal-900 DHA Products—if the Claim Form is accompanied by a Proof of Purchase reflecting the purchase of Algal-900 DHA but not the price;
  - an ExtraCare account credit in the amount of your CVS Algal-900 DHA Product purchase(s)—if the Claim Form is submitted without Proof of Purchase, but CVS’s records indicate you purchased the Product using an ExtraCare account;
  - a voucher in the amount of your CVS Algal-900 DHA Product purchase(s) that is good toward the purchase of any product sold at CVS—if the Claim Form is submitted without Proof of Purchase, but CVS’s records indicate you purchased Algal-900 DHA online through [cvs.com](http://cvs.com) and there is no ExtraCare account associated with your purchase;
  - maximum of \$5.50 in cash (payable via check) or a \$7.00 voucher toward the purchase of any product sold at CVS—if the Claim Form is submitted without Proof of Purchase and CVS does not have record of your CVS Algal-900 DHA Product purchase(s).
- Your rights are affected whether you act or do not act. Please read this Notice carefully.



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

- These rights and options, **and the deadlines to exercise them**, are further explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. The settlement benefits will be made available if the Court approves the Settlement and after any appeals are resolved.

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

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

## BASIC INFORMATION

### 1. Why did I get this Notice?

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

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

Judge Frederic Block of the United States District Court for Eastern District of New York is overseeing this class action. The case is known as *Worth v. CVS Pharmacy, Inc.*, case no. 16-cv-498 (E.D.N.Y.). The people who sued are called the Plaintiffs, and the company they sued, CVS Pharmacy, Inc., is called the Defendant.

### 2. What is this lawsuit about?

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

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

### 3. What is a class action?

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

### 4. Why is there a proposed Settlement?

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

## WHO IS INCLUDED IN THE PROPOSED SETTLEMENT

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

You are a Class Member if, between November 15, 2008 and September 30, 2016, you purchased any CVS-branded Algal-900 DHA dietary supplements containing “clinically shown to improve memory” or “clinically shown memory improvement”, on the label and/or packaging.

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

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

## THE PROPOSED SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY

### 7. What does the proposed Settlement provide?

The proposed Settlement provides refunds, cash payments, ExtraCare account credits, and vouchers to eligible Class Members who submit a valid Claim Form. Refund and payment amounts will depend on the purchase price paid for CVS Algal-900 DHA Products; whether and what type of proof of purchase (such as a register receipt, cancelled check or product package) illustrating the purchase of, or price paid for, CVS Algal-900 DHA Products (“Proof of Purchase”) is submitted with the Claim Form; and/or whether CVS records indicate that the Class Member purchased the Product. Vouchers and ExtraCare account credits may be used toward the purchase of any product sold at CVS.

In addition, CVS will pay for Notice to the Class and administration costs of the Settlement, as well as a \$2,500 Incentive Award each to the Class Representatives.

### 8. How much will my Settlement benefit be?

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

- If you include Proof of Purchase that shows the actual price paid for the CVS Algal-900 DHA Product with your Claim Form, you will receive a full refund cash payment of the price you paid to purchase CVS Algal-900 DHA Products.
- If you include Proof of Purchase such as a product package that shows only the purchase of CVS Algal-900 DHA Products but not the actual price you paid with your Claim Form you will receive a cash payment of the average retail price of CVS Algal-900 DHA Products.

- If you submit a Claim Form without any Proof of Purchase, but CVS's records indicate you purchased CVS Algal-900 DHA Products using an ExtraCare account, you will receive a credit to your ExtraCare account in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS's records.
- If you submit a Claim Form without any Proof of Purchase, but CVS's records indicate you purchased CVS Algal-900 DHA Products online through [cvs.com](http://cvs.com) and there is no ExtraCare account associated with your purchase, you will receive a voucher toward the purchase of any product sold at CVS, in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS's records.
- If you Submit a Claim Form without any Proof of Purchase and CVS does not have any record that you purchased CVS Algal-900 DHA Products, you have the option of receiving a maximum of \$5.50 in cash or a \$7.00 in voucher toward the purchase of any product sold at CVS. One claim per person and two claims per household will be accepted without Proof of Purchase.

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

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

**10. What are the Released Claims?**

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

in this class action arising out of or relating to the allegations in the complaints filed in this class action.

The specific claims you will be releasing are described in sections 2.35–2.37 and 12 of the Stipulation of Settlement, available at [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com).

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

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

You must complete and submit a Claim Form by [\_\_\_\_\_, \_\_\_\_] 2019. If you did not receive a Claim Form in the mail or by email, you may get one from [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com), by calling 1-888-283-6979, or by writing to CVS DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007.

Read the instructions carefully, and submit your Claim Form online on or before [\_\_\_\_\_, \_\_\_\_] 2019, or by mail postmarked no later than [\_\_\_\_\_, \_\_\_\_] 2019.

### 12. When will I receive my refund, cash payment, ExtraCare account credit, or voucher?

The Court will hold a Fairness Hearing on \_\_\_, 2019 to decide whether to grant final approval to the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. Settlement benefits will be issued to Class Members who submit valid Claim Forms within 30 days after the Settlement Order and Judgment becomes final (“Final Settlement Approval Date”); or the date a claim is approved, whichever comes later.

## EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

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

To exclude yourself from the proposed Settlement, you must send a letter by mail or submit a form through the Settlement website. Your request for exclusion must contain: (1) the name of this lawsuit, *Worth v. CVS Pharmacy, Inc.*, Case Number 2:16-cv-498; (2) your full name, current address and telephone number; (3) a clear statement of your intention to exclude yourself such as “I wish to be excluded from the Class”; and (4) your signature.

Your written request for exclusion must be mailed so that is postmarked no later than [\_\_\_\_\_, \_\_\_\_] 2019 addressed to: CVS DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007, or submitted online at [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com) no later than \_\_\_\_, 2019. You cannot exclude yourself on the phone or by e-mail.

**13. If I exclude myself, can I still get a refund, cash payment, ExtraCare account credit or voucher from the proposed Settlement?**

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

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

No. Unless you exclude yourself, you are giving up the right to sue CVS and the Released Parties for the claims that this proposed Settlement resolves. If you have a pending lawsuit against CVS or the Released Parties for the same claims made in this lawsuit or released by this proposed Settlement, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class to continue with your own lawsuit.

**OBJECTING TO THE PROPOSED SETTLEMENT**

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

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

If you are a Class Member, you can object to the proposed Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter containing: (1) your name, current address and telephone number; (2) the name, address and telephone number of your lawyer if you are objecting through counsel; (3) the name of the lawsuit, *Worth v. CVS Pharmacy, Inc.*, Case Number 16-cv-00498; (4) proof of your membership in the Settlement Class (such as verification under oath as to the date and location of purchase of a CVS Algal-900 DHA Product, or Proof of Purchase); (5) a statement of your objections and the reasons for each; (6) a list of any documents you plan to give to the Court to support your objection, if any; (7) a list of legal authorities you want the Court to consider; (8) the names and addresses of any witness you want to call to testify; (9) a statement indicating whether you (or your lawyer) want to appear and speak at the Fairness Hearing; and (10) your signature (or your lawyer's signature).

Your signed objection must be mailed with any supporting documents, and filed with the Court and received by Counsel for the Class and Counsel for Defendant CVS by [\_\_\_\_\_, \_\_\_\_] **2019** at the following addresses:

Clerk of Court  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201



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SCIENCE IN THE PUBLIC INTEREST**  
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*msimon@cspinet.org*

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

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

**APPEARING AT THE FAIRNESS HEARING  
ABOUT THE PROPOSED SETTLEMENT**

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

Yes, as long as you remain a Class Member (do not exclude yourself), you or your lawyer may appear and speak in this lawsuit and proposed Settlement. To do so, you must file a written "Notice of Appearance" with the Court. Your Notice of Appearance must contain: (1) the title of the lawsuit (*Worth v. CVS Pharmacy, Inc.*, Case Number 16-cv-00498); (2) a statement that you wish to appear

at the Fairness Hearing; (3) a statement that you or your lawyer would like to speak at the Court's Fairness Hearing; and (4) your signature or your lawyer's signature.

Your Notice of Appearance must be signed, mailed, and filed with the Court and received by Counsel for the Class and Counsel for Defendant CVS by [\_\_\_\_\_, \_\_\_\_] 2019 at the addresses listed in Question 16.

### **IF YOU DO NOTHING**

#### **18. What happens if I do nothing at all?**

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

### **THE LAWYERS REPRESENTING YOU**

#### **19. Do I have a lawyer in this Case?**

Yes, the Court has appointed Reese LLP; Kaplan Fox & Kilsheimer, LLP; Mehri & Skalet, PLLC; and The Center For Science In The Public Interest to act as legal counsel for the Class. These law firms are called Class Counsel. You will not be personally charged for these lawyers. You may hire your own lawyer at your own expense to represent you in this case, but you do not have to.

#### **20. How will the lawyers be paid?**

When Class Counsel asks the Court to approve the proposed Settlement, they will also ask the Court for an award of attorneys' fees, costs and reimbursement of expenses of up to \$447,000.00. Class Counsel have agreed to a split of these fees, after reimbursement of their costs, as follows: KAPLAN FOX & KILSHEIMER, LLP: 11%; REESE LLP: 30%; MEHRI & SKALET, PLLC: 30%; and CENTER FOR SCIENCE IN THE PUBLIC INTEREST: 29%.

If the Court grants Class Counsel's request, CVS will separately pay those fees, costs and expenses. This amount will not reduce the amount of refunds, cash payments, ExtraCare account credit or vouchers that will be made available to Class Members who submit valid Claim Forms.

### **THE COURT'S FAIRNESS HEARING**

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

#### **21. When and where will the Court decide whether to approve the proposed Settlement?**

The United States District Court for the Eastern District of New York will hold a Fairness Hearing at the Federal Courthouse located at 225 Cadman Plaza East, Brooklyn, New York, 11201, on [\_, 2019] to decide whether the proposed Settlement is fair, reasonable, and adequate and to determine the amount of attorneys' fees and costs and Class Representative Incentive Award. If there are

objections, the Court will consider them. After the hearing, the Court will decide whether to approve the proposed Settlement and whether to grant Class Counsel's request for attorneys' fees and expenses and Class Representative Incentive Award. We do not know how long these decisions will take.

**22. Do I have to come to the hearing?**

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

**23. What happens if the proposed Settlement receives final approval?**

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

**GETTING MORE INFORMATION**

**24. Are there more details about the Settlement?**

Yes. This Notice is only intended to provide a summary of the proposed Settlement. More information is available at [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com), by calling 1-888-283-6979 or by writing to CVS DHA Settlements Class Administrator, \_\_\_\_\_. You may also obtain the Amended Stipulation of Settlement and other documents in the case from the Court file, which is available for your inspection during regular business hours at the Office of the Clerk of the United States District Court for the Eastern District of New York, at the Federal Courthouse located at 225 Cadman Plaza East, Brooklyn, NY, under the Civil Action Number 16-cv-00498, or from the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.edny.uscourts.gov/>.

You may also contact Class Counsel by email at [mreese@reesellp.com](mailto:mreese@reesellp.com).

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

## EXHIBIT C

### LEGAL NOTICE

#### **If you purchased CVS Algal-900 DHA products, you could get benefits from class action settlements.**

A proposed settlement has been reached in a class action lawsuit against CVS Pharmacy, Inc. (“CVS”) concerning whether the marketing of a dietary supplement containing docosahexaenoic acid (DHA) was untrue and misleading. CVS stands by its marketing and denies that it did anything wrong. The Court has not decided who is right in the lawsuit. Instead, the parties have agreed to settle the case (the “CVS Algal-900 DHA Settlement”).

#### **Who Is Included?**

The CVS Algal-900 DHA Settlement includes everyone in the United States who purchased a CVS-branded Algal-900 DHA dietary supplement between November 15, 2008 and September 30, 2016 that contained “clinically shown to improve memory” or “clinically shown memory improvement” claims on the label and/or on the packaging (“CVS Algal-900 DHA Product”). You are not included in either Settlement if you purchased these products for resale purposes.

#### **What Do the Settlements Provide?**

If approved, the CVS Algal-900 DHA Settlement will provide refunds, cash payments, ExtraCare account credits and vouchers toward the purchase of any product sold at CVS. If you submit a Claim Form: (i) with Proof of Purchase that shows the actual price paid for the CVS Algal-900 DHA Product, you will receive a full refund of the price you paid to purchase CVS Algal-900 DHA Product(s); (ii) with Proof of Purchase such as a product package showing only the purchase of CVS Algal-900 DHA Products but not the actual price you paid, you will receive a cash payment of the average retail price of CVS Algal-900 DHA Products; (iii) without any Proof of Purchase, but CVS’s records indicate you purchased CVS Algal-900 DHA Products using an ExtraCare account, you will receive a credit to your ExtraCare account in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS’s records; (iv) without any Proof of Purchase, but CVS’s records indicate you purchased CVS Algal-900 DHA Products online through [cvs.com](http://cvs.com) and there is no ExtraCare account associated with your purchase, you will receive a voucher toward the purchase of any product sold at CVS, in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS’s records; and (v) without any Proof of Purchase and CVS does not have any record that you purchased CVS Algal-900 DHA Products, you have the option of receiving a maximum of \$5.50 in cash or \$7.00 in a voucher toward the purchase of any product sold at CVS. One claim per person and two claims per household will be accepted without Proof of Purchase for this last option (v).

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

You must complete and submit a Claim Form by \_\_\_\_\_, 2019. Claim Forms may be submitted online at [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com), or printed from the website and submitted by

mail. Claim Forms are also available by calling 1-888-283-6979 or by writing to the Claims Administrator at the address below.

### **What Are Your Other Options?**

If you do nothing, your rights will be affected but you will not get any benefits from these Settlements. If you do not want to be legally bound by the CVS Algal-900 DHA Settlement, you must exclude yourself by \_\_\_\_\_, 2019. Unless you exclude yourself, you will not be able to sue or continue to sue CVS or other released parties for any claim resolved by the Stipulation of Settlement. If you exclude yourself, you cannot get benefits from the Settlement, but you are free to pursue any claims that you may have against Defendant CVS in a different lawsuit. If you are included in the Settlement your rights will be affected by the Settlement. If you stay in of the Settlement (that is, don't exclude yourself from the Settlement), you may object and notify the Court at you or your lawyer intends to appear at the Court's Fairness Hearing. Objections are due by \_\_\_\_\_, 2019.

### **The Fairness Hearing.**

The United States District Court for the Eastern District of New York will hold a Fairness Hearing on [\_\_\_\_], 2019, at [\_\_\_\_] a.m.

At the Fairness Hearing, the Court will decide whether to approve: the Settlement as fair, reasonable and adequate; Class Counsel's request for attorneys' fees, costs and expenses (up to \$447,000); and an Incentive Award to the Class Representatives (\$2,500 each). If approved, these fees, costs, expenses and awards will be paid by CVS and will not reduce the amount of Settlement benefits available to you. You may appear at one or both hearings, but you do not have to. You may also hire your own attorney, at your own expense, to appear or speak for you at one or both hearings.

### **Want More Information?**

Visit [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com) (detailed Notices and other relevant documents), call 1-888-283-6979, or write to CVS DHA Settlements Claims Administrator, PO Box 40007, College Station, TX 77842-4007.

## EXHIBIT D

To: XXXXXXXXXXXX

From: XXXXXXXXXXXX

Re: CVS Algal-900 DHA PRODUCTS CLASS ACTION SETTLEMENT

**You are receiving this e-mail because you may have purchased a CVS-branded Algal-900 DHA dietary supplement containing on the label/and/or on the packaging, the claim that it is “clinically shown to improve memory” or offers “clinically shown memory improvement,” between November 15, 2008 and September 30, 2016. This Notice is to inform you of a proposed class action settlement that could affect your legal rights.**

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

### **Why Am I Receiving This Notice?**

A proposed settlement has been reached in a class action lawsuit pending in the United States District Court for the Eastern District of New York. The lawsuit alleges violations of consumer protection laws and claims that CVS Pharmacy, Inc. (“CVS”) misrepresented certain benefits of a supplement sold as Algal-900 DHA in the United States. CVS denies all of these allegations. The Court did not rule in favor of Plaintiff or CVS. Instead the parties agreed to a proposed settlement in order to avoid the expense and risks of continuing the lawsuit. You are receiving this Notice because you may have purchased a qualifying Algal-900 DHA product between November 15, 2008 and September 30, 2016.

### **Am I Included in The Proposed Settlement?**

You are included in the proposed Settlement as a “Class Member” if you purchased a CVS-branded Algal-900 DHA dietary supplement which contained docosahexaenoic acid, an Omega-3 fatty acid claiming that it was “clinically shown to improve memory” or “clinically shown memory improvement” on the label and/or packaging, in the United States between November 15, 2008 and September 30, 2016 (“CVS Algal-900 DHA Product”). You are not included in the proposed Settlement if you purchased CVS Algal-900 DHA Products for the purpose of resale.

### **What Does the Settlement Provide?**

If the proposed Settlement is approved by the Court, CVS will provide Class Members with refunds, cash payments, ExtraCare account credits or vouchers toward the purchase of any product sold at CVS.

- If you submit a Claim Form with Proof of Purchase:
  - that shows the actual price paid for the CVS Algal-900 DHA Product, you will receive a full refund of the price you paid to purchase CVS Algal-900 DHA Products.

- such as a product package that only shows you purchased of CVS Algal-900 DHA Products but not the actual price you paid, you will receive a cash payment of the average retail price of CVS Algal-900 DHA Products.
- If you submit a Claim Form without any Proof of Purchase:
  - but CVS's records indicate you purchased CVS Algal-900 DHA Products using an ExtraCare account, you will receive a credit to your ExtraCare account in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS's records.
  - but CVS's records indicate you purchased CVS Algal-900 DHA Products online through [cvs.com](http://cvs.com) and there is no ExtraCare account associated with your purchase, you will receive a voucher toward the purchase of any product sold at CVS, in the amount of your purchase(s) of CVS Algal-900 DHA Products as indicated in CVS's records.
  - and CVS does not have any record that you purchased CVS Algal-900 DHA Products, you have the option of receiving a maximum of \$5.50 in cash or a \$7.00 in voucher toward the purchase of any product sold at CVS. One claim per person and two claims per household will be accepted without Proof of Purchase.

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

You must complete and submit a Claim Form by [\_\_\_\_\_, 2019]. Claim Forms may be submitted online at [cvswww.cvsdhasettlement.com](http://cvswww.cvsdhasettlement.com), or printed from the website and submitted by mail. Claim Forms are also available by calling 1-888-283-6979 or by writing to CVS DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007.

### **What Are My Other Rights?**

If you do nothing, your rights will be affected but you will not get any Settlement benefits. If you do not want to be legally bound by the proposed Settlement, you must exclude yourself from it by \_\_\_\_\_, 2019. Unless you exclude yourself, you will not be able to sue or continue to sue CVS for any claim resolved by this proposed Settlement. If you exclude yourself, you cannot get any Settlement benefits from the proposed Settlement, but you are free to pursue any claims that you may have against CVS in a different lawsuit. If you stay in the proposed Settlement (that is, don't exclude yourself), you may object to it by \_\_\_\_\_, 2019. More information can be found in the detailed Notice and Amended Stipulation of Settlement, which are available at [cvswww.cvsdhasettlement.com](http://cvswww.cvsdhasettlement.com).

### **The Fairness Hearing.**

On \_\_\_\_\_, 2019, at \_\_\_\_\_ a.m., the Court will hold a hearing in this case (*Worth v. CVS Pharmacy, Inc.*, Case No. 16-cv-00498) in the United States District Court for the Eastern District of New York. At the hearing, the Court will determine whether: (1) the proposed Settlement is fair, reasonable and adequate and should receive final approval; (2) to grant Class Counsel's request for attorneys' fees, costs and expenses of up to \$447,000.00; and (3) to award a \$2,500 Incentive Award to each Class Representative. If approved, these fees, costs, expenses and awards will be paid separately by CVS and will not reduce the amount of benefits available to Class Members

who submit valid Claim Forms. You may appear at the hearing, but you do not have to. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

**How Can I Get More Information?**

If you have questions or want a detailed notice or other documents regarding this lawsuit and your rights, visit [www.cvsdhasettlement.com](http://www.cvsdhasettlement.com) or click on the links below. You may also contact Class Counsel by emailing [mreese@reesellp.com](mailto:mreese@reesellp.com), or by writing to: CVS DHA Settlements Claims Administrator, P.O. Box 40007, College Station, TX 77842-4007, or by calling 1-888-283-6979.

Please do not contact the Court or Clerk for information.



EXHIBIT E

[Form of Post-card Notice]

LEGAL NOTICE

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

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

1-888-283-6979

www.CVSDHASettlement.com

CVY

Worth v. CVS Pharmacy, Inc. Settlement Administrator P.O. Box Louisville, KY

First-Class Mail US Postage Paid Permit #

«Barcode»

Postal Service: Please do not mark barcode

Claim #: CVY- «ClaimID» - «MailRec» «First1» «Last1» «CO» «Addr1» «Addr2» «City», «St» «Zip» «Country»

A proposed settlement has been reached with CVS Pharmacy, Inc. packaging of a CVS-branded dietary supplement containing Omega-3 fatty acids. Both sides agree to the settlement. Who is included? You are included in the proposed settlement if you purchased any CVS-branded Algal-900 DHA dietary supplement, on the label and/or packaging.

Worth v. CVS Pharmacy, Inc. Settlement Administrator P.O. Box Louisville, KY

about the statements made on the labels and packaging. The Court did not find that CVS did anything wrong. The Court did not find that CVS improved memory or clinically shown memory.

What does the settlement provide? The proposed Settlement provides refunds, cash payments, ExtraCare account credits, and vouchers to eligible Class Members who submit a valid Claim Form. Class Members who submit a Claim Form will receive: a refund of the price paid for CVS Algal-900 DHA Products (if proof of purchase shows the actual price paid); a cash payment equal to the average retail price of CVS Algal-900 DHA Products (if proof of purchase reflects the purchase, but not price); an ExtraCare account credit for Product purchases (without proof of purchase, but CVS's records indicate Product purchases using an ExtraCare account); a voucher in the amount of Product purchased—good toward the purchase of any product sold at CVS—(without proof of purchase, but CVS's records indicate you purchased the Product at cvs.com without an associated ExtraCare account); and up to \$5.50 in cash or a \$7.00 voucher (without any information or proof of purchase). Refund and payment amounts will depend on the purchase price paid for CVS Algal-900 DHA Products, the information available in CVS's records, and the proof of purchase submitted with the Claim Form.

How do I get a benefit? Go to www.CVSDHASettlement.com and file a claim online or download, print, complete, and mail a Claim Form to the Settlement Administrator. Claim Forms are also available by calling 1-888-283-6979. Claim Forms must be submitted online or postmarked by Month, 2019.

What are my other options? If you do not want to be legally bound by the settlement, you must exclude yourself by Month, 2019. Unless you exclude yourself from the settlement, you will not be able to sue CVS or related parties for any claim released by the Settlement Agreement. If you do not exclude yourself from the settlement, you may object to it and notify the Court that you or your lawyer intend to appear at the Court's fairness hearing. Objections are due Month, 2019. For more information, including the Long Form Notice and Settlement Agreement, call or go to www.CVSDHASettlement.com.

The Court's Fairness Hearing. The U.S. District Court for the Eastern District of New York, located at 225 Cadman Plaza E, Brooklyn, New York 11201, will hold a hearing in this case (Worth v. CVS Pharmacy, Inc., No. 16-cv-498) on Month, 2019, at :00 p.m. At the Fairness Hearing, the Court will decide whether to approve: (1) the settlement; and (2) Class Counsel's request for attorneys' fees, costs and expenses (up to \$447,000 paid separately by CVS), and \$5,000 in Class Representative service awards. You may appear at the hearing, but you do not have to. You also may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

**EXHIBIT F**

[Form of In-Store Receipt Notice]

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YOU MAY BE ENTITLED TO A CREDIT IF YOU PURCHASED  
THE CVS ALGAL 900 PRODUCT BETWEEN NOVEMBER 15,  
2008 AND SEPTEMBER 30, 2016. PLEASE SEE  
WWW.CVSDHASETTLEMENT.COM TO DETERMINE YOUR  
ELIGIBILITY.

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