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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

WILLIAM JACKSON, EDWARD BUCHANNAN and THAMAR SANTISTEBAN CORTINA, on behalf of themselves, all others similarly situated and the general public,

Plaintiffs,

v.

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

Defendants.

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION FOR (1) CERTIFICATION OF A SETTLEMENT CLASS; (2) PRELIMINARY APPROVAL OF CLASS SETTLEMENT; (3) SCHEDULING FINAL APPROVAL HEARING; AND (4) DIRECTING THAT NOTICE BE SENT TO CLASS MEMBERS.

Date: July 6, 2018
Time: 9:00 AM
Dept.: C-73
Judge: Hon. Joel R. Wohlfeil

[Declaration of Ronald A. Marron; Declaration of David C. Allen; Declaration of Gajan Retnasaba]

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I. INTRODUCTION

While the Complaint in this action was filed on August 1, 2017, this dispute is over four years old. The parties litigated extensively in federal court, before dismissals without prejudice sent the parties to this Court. Mediation efforts that began in federal court continued after the dismissals and after the filing of this action. The parties have reached a hard-fought settlement and seek the Court's approval, as required by law and court rules.

Plaintiffs William Jackson, Edward Buchannan and Thamar Santisteban Cortina (collectively "Plaintiffs") and Defendants Lang Pharma Nutrition, Inc. ("Lang"), Wal-Mart Stores, Inc. ("Wal-Mart"), CVS Pharmacy, Inc. ("CVS"), Walgreen Company ("Walgreens"), and Meijer Distribution, Inc. ("Meijer") (collectively "Defendants") jointly submit this memorandum of points and authorities in support of the proposed class action settlement ("Settlement").

The Complaint alleges that Lang, as a manufacturer of Coenzyme Q-10 ("Lang CoQ-10 Products), and Wal-Mart, CVS, Walgreens, and Meijer, as retailers, violated various laws by allegedly mislabeling the retailers' store-brand CoQ-10 products. Plaintiffs allege that Defendants are liable to them and other class members for these violations during the relevant four-year statutory time period.

The instant matter is the expected follow-up to four class actions filed in federal district courts ("Prior CoQ-10 Cases"). The Prior CoQ-10 Cases involved the same facts and some combination of the same defendants (excluding Meijer), as well as nearly all of the same attorneys. During the Prior CoQ-10 Cases, the parties undertook extensive discovery and attended two mediation sessions with The Honorable David H. Bartick[1]. The parties failed to reach a settlement, but the basic structure of a settlement was created. Thereafter, the Prior CoQ-10 cases were dismissed, without prejudice, one for lack of subject matter jurisdiction and the other three by voluntary dismissal. A condition of the voluntary dismissals was the parties' stipulation that discovery completed in the Prior CoQ-10 cases would be used in future litigation. The parties anticipated that the dispute would be refiled in state court.

The parties believe that they have achieved a fair, adequate and reasonable class settlement. The Settlement Agreement, a true and correct copy of which is attached as Exhibit 1 to the concurrently filed

[1] David H. Bartick is a Magistrate Judge in the United States District Court for the Southern District of California.

Declaration of David C. Allen, includes the following consideration given to all qualified class members who make a timely claim: the choice between a cash refund of $3.50 pro rata after expenses are offset or a product credit valued at $12.50, which can be redeemed for a variety of dietary supplements or vitamins at a dedicated website. Additionally, the Settlement imposes injunctive relief in the form of changes to the product labels on the retailers' respective store-brand Lang CoQ-10 products. This settlement is a fair result for the Class, and future customers will receive the benefits of revised product labeling.

Based on the discovery obtained and the motion practice during the Prior CoQ-10 Cases, if Plaintiffs would have rejected the Settlement and continued to litigate this action through trial, there would have been a significant risk that no monetary recovery and injunctive relief would have been obtained. Likewise, litigation of this magnitude has been and would continue to be very costly for Defendants and the outcome uncertain. In view of the risks associated with Plaintiffs claims and Defendants defenses, the parties respectfully submit that this Settlement is the result of arms-length negotiation and is fair, just and adequate.

Through this motion, the parties request the Court to enter an order that : (1) certifies a class for settlement purposes; (2) preliminarily approves the proposed class action settlement; (3) schedules a Final Approval Hearing; and (4) directs that notice of the proposed settlement be given to class members.

At the Final Approval Hearing, the following will be considered: (1) the request for final approval of the proposed settlement; (2) Plaintiffs' request for an award of attorneys' fees and costs; (3) Plaintiffs' request for incentive awards for the class representatives; and (4) the entry of the Final Judgment. The proposed preliminary approval order ("Preliminary Approval Order"), filed concurrently herewith as Exhibit D to the Settlement Agreement, establishes certain dates for the mailing of notice to the Settlement Class, the procedure and timing for filing of objections, if any, to the settlement as well as requests for exclusion by members of the Settlement Class.

II. FACTUAL BACKGROUND

Cortina v. Wal-Mart Stores, Inc., Case No. 13-cv-020540, was filed in 2013 in the United States District Court for the Southern District of California. Declaration of David C. Allen ("Allen Decl.") ¶ 2. *Cortina* was one of four California district court cases filed by Plaintiffs' counsel. Id.; Declaration of

Ronald A. Marron ("Marron Decl.") ¶ 2. The other three cases are: *Harris v. CVS Pharmacy*, Inc. Case No. 5:13-cv-02329, United States District Court for the Central District of California; *Alvandi v. CVS Pharmacy, Inc.*, Case No. 2:15-cv-01503, United States District Court for the Central District of California; *Reynolds, et al. v. Walgreens, Inc.*, Case No. 4:15-cv-00324, United States District Court for the Northern District of California. Allen Decl. ¶ 2. All of these cases involved substantially similar allegations about the same Lang CoQ-10 Product, which was sold under different retailers' store brand names. Allen Decl. ¶ 3. Specifically, the gravamen of each of the Prior CoQ-10 Cases is that the labeling on, and advertising about, Lang's CoQ-10 products contain several allegedly misleading or fraudulent product claims and the products do not perform as advertised. Allen Decl. ¶ 4. Plaintiffs alleged claims for breach of express and implied warranty, violation of Business & Professions Code section 17200, violation of Business and Professions Code section 17500, and violations of the Consumer Legal Remedies Act and the Magnuson-Moss Warranty Act. Id.

The district court in *Cortina* ordered coordination of discovery in the Prior CoQ-10 cases, so that written discovery responses, document productions and depositions could be used in all cases then pending in the district courts. Allen Decl. ¶ 5. In the Prior CoQ-10 Cases, extensive discovery was performed, including multiple rounds of written discovery, depositions of Defendants' key employees and third-parties, thousands of documents produced by the parties and third-parties. Id.

Discovery revealed that the district courts in *Alvandi* and *Reynolds* lacked subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d) and, as a result, the claim under the Magnuson-Moss Warranty Act could not be maintained as a class action. 15 U.S.C. § 2310 (d) (3) (C). The *Alvandi* court agreed and dismissed the case for lack of subject matter jurisdiction. Allen Decl. ¶6. Thereafter, plaintiffs in *Reynolds* and *Harris* voluntarily dismissed their complaints, without prejudice. Allen Decl. ¶ 7. The parties understood that these class action claims would eventually be refiled in state court. Allen Decl. ¶ 8.

Settlement Negotiations

After extensive discovery and motion practice, on April 3, 2015 and August 24, 2015 the parties in the Prior CoQ-10 Cases attended two Early Neutral Evaluations with Magistrate Judge Bartick, who was assigned to the *Cortina* case. Allen Decl. ¶ 9; Marron Decl. ¶ 3-4. The negotiations sought a global

settlement of all four Prior CoQ-10 Cases by a nationwide class action. Id. The parties agreed on the elements of the settlement, including (a) a cash payment for costs of notice to the class, settlement administration, payments to class members, and attorney fees, (b) credits that class members could redeem for a choice of products, and (c) an injunction that mandated changes to the retailers' store-brand labels. Allen Decl. ¶10; Marron Decl. ¶5. At that time, the parties could not agree on the values and particulars of each element, and Judge Bartick's "mediator's offer", which was based on the above settlement structure, failed to produce a settlement. Allen Decl. ¶ 11; Marron Decl. ¶ 6. Subsequently, after Magistrate Judge Bartick's "mediator's offer" failed to settle the case, the district court in *Cortina* granted a voluntary dismissal with conditions, including that the parties stipulate to using existing discovery in future litigation involving the alleged class. Allen Decl. ¶ 12; Marron Decl. ¶ 7.

After dismissal of *Cortina*, the parties continued settlement negotiations. Marron Decl. ¶ 8; Allen Decl. ¶ 13. On or about August 1, 2017, as the Parties neared settlement, Plaintiffs filed this class action. Marron Decl. ¶ 9. This case is the anticipated continuation of the Prior CoQ-10 Cases. Marron Decl. at ¶ 9; Allen Decl. ¶ 14.

For years, Plaintiffs' counsel has undertaken a substantial investigation, including extensive discovery and negotiations. Marron Decl. at ¶ 10. At the same time, Defendants' legal counsel undertook significant investigation to determine the validity of Plaintiffs' claims. Allen Decl. at ¶ 15. Ronald A. Marron ("Class Counsel") has a long history of representing plaintiffs in consumer class action cases. Marron Decl. at ¶¶ 22-39. He has been involved in numerous class action settlements over the last 22 years, many of them nation-wide class settlements. Id.

Mr. Allen has been defending class actions and coordinated proceedings (federal multi-district litigation and California coordinated proceedings) for over 20 years. Allen Decl. at ¶ 16. Messrs. Marron and Allen negotiated the settlement. Marron Decl. at ¶ 11; Allen Decl. at ¶ 17. The settlement memorialized in the Settlement Agreement is not the result of collusion; in fact, it is the result of a long and difficult arms-length negotiation. Marron Decl. at ¶ 12; Allen Decl. at ¶ 17. Both Class Counsel and Defendants' counsel are of the opinion that the consideration, terms and conditions of the Settlement are fair, reasonable and adequate and that the Settlement is in the best interest of the class, in light of all

known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and the risk of no recovery. Marron Decl. ¶ 13; Allen Decl. ¶ 18.

In particular, negotiations have taken place off and on over several years, and more intensely over the last five months. Marron Decl. ¶ 14. It is undeniable that the goal of this litigation, to seek redress for the Class, has been met. Marron Decl. ¶ 18. There is a substantial risk to the class if this action was not settled. Marron Decl. ¶19. Plaintiffs may not prevail at trial or obtain restitution for class members; thereby ensuring no potential for monetary recovery on behalf of consumers. Id.

The parties believe that the settlement represents a significant but fair compromise of the parties' respective positions. Marron Decl. ¶ 15; Allen Decl. ¶ 19. Plaintiffs believe in the merits of their claims and that a contested class certification motion could be granted, but they acknowledge that, in light of the discovery and efforts in the Prior CoQ-10 cases, there is a significant risk that a class might not be certified and, if certified, of no recovery for the class on the merits. Marron Decl. ¶ 16. On the other hand, Defendants believe that it is likely a contested motion to certify a class would be denied. Allen Decl. ¶ 21. Further, Defendants believe that they have meritorious substantive defenses to plaintiffs', but they recognize that these endpoints are uncertain and achievable only after considerable further expense for defendants. Id. In summary, while acknowledging the strengths and weakness of the parties' respective positions, a four-year dispute that has spaned a series of cases in several courts has reached a difficult but fair accord. Marron Decl. ¶ 17; Allen Decl. ¶ 22.

III. CLASS DEFINITION

Plaintiffs agreed to settle this dispute on behalf of a class of similarly situated persons nationwide, whose membership (i.e., the "Class Members" or the "Class") is defined as follows:

> All persons in the United States who purchased a Coenzyme Q-10 softgel product manufactured by Lang Pharma Nutrition, Inc. (hereafter, "Lang Pharma CoQ-10 Softgel") and sold under store brand labels by the defendant retailers, CVS, Wal-Mart, Walgreens and Meijer ("Defendant Retailers"), from July 1, 2013 until the date notice is disseminated in this action. Excluded from the Settlement Class are (1) the judge presiding over this action (or the judge or Magistrate presiding over the action

> through which this matter is presented for settlement); (2) the defendants, defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which the defendants or their parents have a controlling interest and their current or former officers, directors, and employees; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) legal representatives, successors or assigns of any such excluded person.

Allen Decl., Exhibit 1 at p. 7.

It is the intent of the Parties to include any person who currently has a claim against Defendants regarding the causes of action now alleged or similar causes of action. To the extent that any jurisdiction contains a statute of limitations longer than four (4) years, persons who made purchases prior to four years before the start of this litigation are considered part of the class, but only in those jurisdictions with longer statutes of limitations and only to the extent allowed by law. Allen Decl. ¶ 18, Exhibit 1.

IV. DESCRIPTION OF THE PROPOSED SETTLEMENT

The Parties agreed to a proposed settlement which, if approved by this Court, will result in the dismissal of this action with prejudice and a release of liability in exchange for the provision of certain benefits to the members of the Class. Under the terms of the Settlement Agreement, Defendants will pay $656,000 into a non-reversionary settlement fund ("Cash Settlement Fund") and will issue credits redeemable for a variety of dietary supplements and vitamins valued at $650,000 ("Product Voucher Settlement Fund"). Allen Decl., Exhibit 1 at pp.10-12. Class Members who submit a claim and qualify for benefits under the Settlement Agreement, will have a choice between: (1) a cash refund of $3.50 pro rata after expenses are offset by notice and administrative expenses, Plaintiffs' attorneys' fees, Plaintiffs' incentive awards, and a maximum of $65,000 paid toward estimated shipping and handling costs ("Qualified Cash Claimants") and (2) a credit valued at $12.50 each to be redeemed for purchases of Lang branded products through a dedicated Lang website ("Qualified Voucher Claimants"). Id. Lang will be responsible for all shipping and handling costs in excess of $65,000. No Qualified Voucher Claimant will be charged for shipping and handling costs. Id. at pp. 11-12.

If the number of claims for the cash refund exceeds what is available in Cash Settlement Fund, then the cash refund to Qualified Cash Claimants will be reduced pro rata. Id. at pp. 11-12. If the number of claims for the cash refund does not exceed what is available in Cash Settlement Fund, then the cash refund to Qualified Cash Claimants will increase pro rata. Id. For credits for products will be limited to one (1) per claimant, unless actual receipts of purchase are provided, and then up to five (5) credits per claimant per household may be claimed. Id. at p. 12. If the Product Credit Settlement Fund is not exhausted by the number of claims, Qualified Credit Claimants may receive more than one credit. Id. If the Product Credit Settlement Fund is exhausted by the number of claims, the value of each credit will will be reduced pro rata. Id.

***Cy Pres* Donation**

Any unclaimed cash from the Cash Settlement Fund and any claimed product credits that remain unused after 60 days will be donated as *cy pres* gift to Consumer Union, a nonprofit organization dedicated to consumer protection. Allen Decl., Exhibit 1 at p. 12.

Mandatory Injunctive Relief

Additionally, Defendants agree to injunctive relief in the form of label changes as indicated in the Settlement Agreement. Allen Decl., Exhibit 1 at pp. 12-13. Specifically, defendants will implement changes to each of the Retailers' store brand CoQ10 products that were manufactured by Lang. Id.

Class Administration and Settlement Website

The Settlement will be administered by Classaura, LLC., a neutral, third-party claims administrator who will oversee the claims and payment process. Allen Decl., Exhibit 1 at pp. 7, 14; Declaration of Gajan Retnasaba ("Retnasaba Decl."). The claims administrator will be retained and paid for by the Cash Settlement Fund. Allen Decl., Exhibit 1 at p. 11. The claims administrator shall maintain a settlement website www.Q10Settlement.com ("the Settlement Website"). At the appropriate time, the claims administrator will post prominently on the Settlement Website information pertaining to the nature of this action and terms of the Settlement. Retnasaba Decl. ¶¶ 18-20. It will also post copies of the notice to the Class ("Notice"), operative complaint in this Action, Settlement Agreement and other relevant documents. Id.

Claims Process

In order to make a claim, a class member must certify under the penalty of perjury that he or she is a member of the Class, provide his or her name, select which retailers' product was purchased, how many products were purchased during the class period and the approximate date of purchase, including how many products were purchased during the class period. Allen Decl., Exhibit 1 at pp. 15-16. The claims administrator shall review each claim form submitted by Class Members to determine whether the claim form is valid, and will reject any invalid claims. Id.; Retnasaba Decl. ¶¶ 21-25. The Claims Administrator shall promptly report all such determinations of invalidity to both Class Counsel and Defendants' counsel via weekly updates. Allen Decl., Exhibit 1 at pp.15-16.

Class Counsel agrees to file a motion with the Court for an award of attorneys' fees and reimbursement of actual expenses, which will be inclusive of all four district court CoQ-10 cases mentioned above and *Jackson*. Marron Decl. ¶ 20. The Parties agreed to the following incentive awards: $1,000 each for Plaintiffs Jackson and Buchannan and, due to her long involvement in this dispute, $4,000 for Plaintiff Cortina. Allen Decl., Exhibit 1 at pp.16-17.

V. NOTICE AND ADMINISTRATION OF THE SETTLEMENT

The Settlement Agreement contains a Notice of Proposed Settlement of Class Action, substantially in the form set forth in Exhibit A to the Settlement Agreement, which will be distributed to Class Members once the court enters its Preliminary Approval Order. Upon entry of the Preliminary Approval Order, Defendants in cooperation with defense counsel and the claims administrator shall take the following actions:

1. Implement the Notice distribution strategy created by the Claims Administrator that is described in detail in the Declaration of Gajan Retnasaba and will include publication of the notice via online social media, newspapers, press release and a dedicated website. The strategy is designed to meaningfully reach the largest possible number of potential Class Members, including consumers who (a) prescribed statins, (b) are interested in heart health, (c) have an interest in dietary supplements, and (d) have an

interest in health generally. The Notice will have a hyperlink that will take consumers directly to the Settlement Website. Retnasaba Decl. ¶¶ 10-20.

The Settlement Website will contain the following relevant information: (a) the Notice, (b) the Settlement Agreement; (d) a summary of the Settlement Agreement, (e) a list of important dates, (f) a summary of how to make a claim, how to file an objection and how to opt-out of the settlement, (g) a claim form that can be submitted electronically, by telephone or U.S. Mail, and (h) any other information to which the Parties may agree. Retnasaba Decl. ¶¶ 18-20. All costs associated with providing notice and administering the claim, including costs associated with preparing and disseminating the Notice, as directed by the Court in the Preliminary Approval Order, shall be paid out of the Cash Settlement Fund. Allen Decl., Exhibit 1 at p. 16.

VI. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL

A. Approval of a Class Settlement is a Three-Step Process

When a proposed class-wide settlement is reached, to prevent fraud, collusion or unfairness to the class, the settlement of a class action must be submitted to the court for approval. *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal. App.3d 573,578-79; *see also* Newberg on Class Actions (2017) at § 13.12.[2] The trial court must determine whether the settlement is fair adequate and reasonable. *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801 (Citations omitted). Preliminary approval is the first of three steps of the class action settlement procedure, which requires that the parties file a motion for preliminary approval of the settlement. Id. at §13:10. If a class has not yet been certified, the parties will simultaneously move for certification of a settlement class, typically conditioned upon approval of the settlement. Id. at § 13:12. The second step, which occurs after the court preliminarily approves the settlement (and conditionally certifies the class), notice is sent to the class describing the terms of the proposed settlement. Id. at §13:10. The third step is a final settlement approval hearing, during which the court decides to grant final approval of the settlement. Id.

[2] California courts have cited to Newberg on Class Actions as an authority on class action settlements. *See, e.g.*, *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802 (Citing to the treatise in the context of reviewing a trial court's final approval of a settlement).

The preliminary approval process is used as a threshold examination of the overall fairness and adequacy of the settlement in light of the likely outcome and cost of continued litigation. Id. at § 13.12. There is an initial presumption of fairness where (1) the settlement was negotiated at arm's length by counsel for the class, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, and (3) counsel is experienced in litigation. *Dunk*, 48 Cal.App.4th at 1802 (Citations omitted). As set forth in the accompanying declarations of Class Counsel and counsel for defendants, all three of these elements are present here.

B. The Role of the Court in Preliminary Approval of a Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba v. Apple Coomputer, Inc.* (2001), 91 Cal. App. 4th 224, 234-235; *Dunk*, 48 Cal. App. 4th at 1801. When considering a motion for preliminary approval of settlement, a trial court should consider the following factors: "the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed, the stage of the proceedings, and the experience and views of counsel . . .". *Dunk*, 48 Cal.App.4th at 1801, *citing Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F. 2d 615, 624. This list is not exhaustive, and the inquiry should be tailored to the facts of the case before the Court. *Id.*

Additionally, due regard should be given to a consensual agreement between the parties. Id. As the Court of Appeals stated in *Dunk*, the inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud, or overreaching by, or collusion between, the negotiating parties, and that the settlement, rake as a whole, is fair, reasonable and adequate to all concerned". *Id.* (Citations omitted).

Trial courts should focus on the negotiation process, as a judge cannot really make a substantive judgment on the issues in the case without conducting some sort of trial, which is what settlements intend to avoid. *General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.* (3rd Cir. 1995), 55 F.3d 768, 797. Accordingly, the standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval phase. Newberg on Class Actions § 13:13.

The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "the terms of the compromise with the likely rewards of litigation." *Weinberger v. Kendrick* (2nd Cir. 1982) 698 F.2d 61, 73, *cert. denied* 464 U.S. 818 (1983). With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.* (D. Ariz. 1989), 720 F. Supp. 1379, 1392. Accordingly, the parties' decision regarding the respective merits of their position has an important bearing on this case.

C. Factors to be Considered in Granting Preliminary Approval

Preliminary approval of a settlement should be granted when the following factors are met: (1) the proposed settlement appears to be the product of serious, informed, and non-collusive negotiations; (2) the settlement has no obvious deficiencies; (3) the settlement does not improperly grant preferential treatment to class representatives or segments of the class; (4) the settlement falls within the range of possible judicial approval. Newberg on Class Actions § 13:13. This settlement meets all of these criteria.

1. <u>The Settlement is the Product of Serious, Informed, and Non-Collusive Negotiations</u>

At the preliminary approval stage, a presumption of fairness exists where, as here, the settlement was obtained through arms-length negotiations, investigation and discovery is sufficient to allow counsel and the Court to act intelligently, and counsel are experienced in similar litigation. *Dunk*, 48 Cal.App.4th at 1802. As set forth in the declarations of counsel, this settlement is the result of extensive and protracted negotiations, including two sessions with a neutral mediator. Class Counsel and Defendant's counsel conducted a thorough investigation into the facts of the class action, including extensive discovery during the Prior CoQ-10 Cases.[3] Defendants deny and continue to deny the claims and contentions alleged in this Action. Nonetheless, Defendants have concluded that it is desirable that this action be settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to void the

[3] Note that discovery done in related cases has been deemed relevant to the assessment of whether a thorough investigation has been done. *See Dunk*, 48 Cal.App.4th at 1800 n. 5 (In finding that counsel had conducted a thorough investigation, the Court of Appeals included in its assessment the fact that class counsel had reviewed depositions that had been taken in a similar action in a different county).

expense, inconvenience and burden of further legal proceedings, and the uncertainties of trial. Class Counsel is of the opinion that the consideration and terms set forth in the Settlement Agreement are fair, reasonable and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Defendants, and the potential risk of no recovery.

The settlement structure was negotiated with the aid of a neutral mediator in two sessions. The parties continued negotiations after the dismissal of the Prior CoQ-10 Cases and reached an agreement based on that same settlement structure. As the court noted in *In re Wash. Public Power*, "[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." 720 F. Supp. at 1392.

2. The Settlement has No "Obvious Deficiencies" and Falls Well Within the Range for Approval

The proposed Settlement Agreement has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will have the same opportunity to participate and have a choice between a cash refund or product credit. It is undeniable that the goal of this litigation, to seek redress for the Class, has been met. Marron Decl. ¶ 18. There is a substantial risk to the class if this action was not settled. Plaintiffs may not prevail at trial or obtain restitution for class members; thereby ensuring no potential for monetary recovery on behalf of consumers. Marron Decl. ¶19.

3. The Settlement Does Not Improperly Grant Preferential Treatment to the Class Representative or Segments of the Class

The relief provided in the Settlement will benefit all Class Members equally. The Settlement does not improperly grant preferential treatment to Plaintiffs or segments of the Class in any way. Each qualified Class Member, including Plaintiffs, who files a timely claim, shall receive the choice of a $3.50 payment or a Lang product credit valued at $12.50. Additionally, Plaintiffs Jackson and Buchannon will receive an incentive payment of $1,000 each and, because of her involvement in this dispute since 2013, Plaintiff Cortina will receive $4,000. Allen Decl., Exhibit 1 at pp. 16-17.

4. The Settlement Falls Within the Range of Possible Judicial Approval

In addition to the individual benefits class members can choose to receive, the Class will benefit collectively from the injunctive relief mandated by the Settlement. All of the Retailers have agreed to changes to their product labels. Allen Decl., Exhibit 1 at pp. 12-13. Such relief is within the range of possible approval. It is respectfully submitted that Notice should be provided to the Class Members so they can consider the Settlement.

VII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The parties have agreed upon procedures by which the Class will be provided with notice of the Settlement. Class notice is sufficient when it informs potential class members about the benefits they could expect to receive under the settlement, the procedure for objecting, excluding themselves altogether from the settlement, the amount of attorney fees and costs that may be awarded by the Court, and the date of the Final Approval Hearing.

This notice program was designed to meaningfully reach the largest possible number of potential Class Members. Therefore, it complies fully with applicable case law that the notice given should have a reasonable chance of reaching a substantial percentage of the Class Members. The notice program contemplated in this Settlement satisfies the requirements of due process, and is the best notice practicable under the circumstances and constitutes due and sufficient notice to all persons entitled thereto. The Notice is accurate, informative, provides information on the terms and provisions of the Settlement, the benefits that settlement provides Class Members, and the procedure and deadlines for submitting claims, objections, and requests for exclusion.

Therefore, the proposed notice procedures comply fully with applicable case law because the notice should have a reasonable chance of reaching a substantial percentage of the Class Members.

VIII. CONCLUSION

Counsel for the Parties have committed nearly four years of time, energy, and resources litigating and ultimately settling these claims. After weighing the substantial, certain, and immediate benefits of this settlement against the uncertainty of trial, the parties and their respective counsel believe that the proposed settlement is fair, reasonable, adequate, and warrants this Court's preliminary approval.

Accordingly, Plaintiffs and Defendants respectfully request that the Court, certified a class for settlement purposes, preliminarily approve the Settlement Agreement and enter the proposed preliminary approval order filed contemporaneously herewith to permit the dissemination of Notice to the Class Members. The Parties also respectfully request that the Court schedule a Final Approval Hearing.

Dated: May 17, 2018

LAW OFFICES OF RONALD A. MARRON, APLC

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