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

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

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

15 Plaintiffs,

16 v.

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

20 Defendants.
21

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Superior Court of California,
County of San Diego

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By E- Filing, Deputy Clerk

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

NOTICE OF ENTRY OF JUDGMENT

IMAGED FILE

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

Action Filed: August 1, 2017

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TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 20, 2018, judgment was entered approving class action settlement (the “Final Order and Judgment Approving Class Action Settlement”). A true and correct copy of the Final Order and Judgment Approving Class Action Settlement is attached hereto as Exhibit A.

Dated: January 15, 2019

BARNES & THORNBURG LLP

By: /s/David C. Allen
David C. Allen
Attorneys for Defendants
LANG PHARMA NUTRITION, INC.,
WAL-MART STORES, INC., CVS
PHARMACY, INC., WALGREEN CO.,
and MEIJER DISTRIBUTION, INC.

Exhibit A

Exhibit A

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12 *Attorneys for Defendants*

13
14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
15
16 IN AND FOR THE COUNTY OF SAN DIEGO

17 WILLIAM JACKSON and EDWARD
18 BUCHANNAN, on behalf of themselves, all
19 others similarly situated and the general
public,

20 Plaintiffs,

21 v.

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

25 Defendants.
26
27
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Case No. 37-2017-00028196-CU-BC-CTL

~~PROPOSED~~ **FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Date: November 29, 2018

Time: 9:00 a.m.

Dept.: 73

Judge: Hon. Joel R. Wohlfeil

1 The Parties’ joint motion for final approval of a proposed class action settlement, Class Counsel’s
2 Motion for Attorney Fees and Costs and Frank Manuel Villasenor, III’s objections to the proposed
3 settlement came on for hearing on November 29, 2018. Having read and considered the parties’
4 Settlement Agreement and exhibits thereto, the motions, declarations and all exhibits and evidence
5 submitted in connection therewith, having reviewed the objections of Frank Manuel Villasenor, III and
6 supporting papers submitted by Mr. Villasenor and having heard argument from counsel for the parties
7 and Mr. Villasenor, **IT IS HEREBY ORDERED:**

8 1. This Order incorporates by reference the definitions in the Settlement Agreement, and
9 all terms used herein shall have the same meaning as that set forth in the Settlement Agreement, provided
10 however, that in the event of any inconsistency, the terms of this Order shall control.

11 2. This is a nationwide consumer class action in which plaintiffs allege that defendants
12 misleadingly labeled and advertised a dietary supplement named CoQ-10, which is manufactured by
13 Lang Pharma Nutrition, Inc. and sold by the following retailers under their respective store brands: Wal-
14 Mart Stores, Inc., CVS Pharmacy, Inc. (a.k.a. CVS Health), Walgreens Co., and Meijer Distribution, Inc.
15 “Collectively referred to as “Lang CoQ-10”). Defendants have denied all of the allegations of
16 wrongdoing.

17 3. This litigation began in 2013 with four earlier cases filed in federal court, where the
18 parties engaged in extensive discovery, including written discovery and depositions of parties and third-
19 parties before the cases were dismissed without prejudice. Plaintiffs then re-filed the instant class action.

20 4. The Class is defined as all persons who purchased Lang CoQ-10 between July 1, 2013
21 and July 26, 2018, the date of publication of Notice to the Class.

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

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

- 28 (a) Wal-Mart's Equate Clinical Strength High Absorption CoQ-10 100 mg
 (b) CVS/Pharmacy Ultra CoQ-10 100 mg

- 1 (c) CVS/Health Ultra CoQ-10 100 mg
- 2 (d) CVS/Pharmacy Enhanced Absorption Formula CoQ-10 100 mg
- 3 (e) CVS/Health Enhanced Absorption Formula CoQ-10 100 mg
- 4 (f) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 100 mg
- 5 (g) Walgreens Well at Walgreens CoQ-10 Enhanced Absorption Formula 200 mg
- 6 (h) Meijer's Ultra CoQ-10 100 mg

7 6. The Court has independently evaluated the strength and weaknesses of Plaintiffs claims
8 based on the evidence submitted by declarations, the exhibits attached thereto and the arguments of the
9 parties and Mr. Villasenor, the sole objector to the proposed settlement agreement. The Court sees many
10 consumer class action cases, including those that have gone to trial. The Court notes that these cases are
11 difficult to win. For example only, here the heart of the Plaintiffs' claims is the absorption rate and
12 efficacy of Lang CoQ-10. The evidence submitted to the Court demonstrates that there is a substantial
13 issue of fact on these issues.

14 7. On the one hand, Defendants submitted a clinical study published in a peer-reviewed
15 journal that reports the actual absorption of the Lang CoQ-10 formulation into the bloodstreams of the
16 study participants. Plaintiffs took the deposition of one of the authors of the study, who testified under
17 oath that the absorption rate data were correctly reported in the published study. On the other hand, there
18 are reports submitted by the Plaintiffs, and relied on by Mr. Villasenor, of laboratory test results from a
19 United States Pharmacopeial ("USP") quality control test method that measures the time for
20 disintegration of the Lang CoQ-10 capsules. Separately, Plaintiffs obtained the declaration of Susan
21 Schniepp, a Distinguished Fellow with Regulatory Compliance, Inc. who had 35 years of quality
22 assurance experience and from 2000 to 2010 served as an Expert Committee Member for several USP
23 committees, including one on USP's Reference Standards. Ms.Schniepp opined in her declaration that
24 Lang was wrong to state that failed USP disintegration tests were irrelevant on the issue of absorption.
25 In the same declaration she acknowledged that disintegration tests are not a surrogate for showing
26 absorption into the human bloodstream and that in order to demonstrate in vivo absorption and
27 bioavailability after consumption of the product, the consumer would need to be subjected to a blood
28 test.. In sum, the parties obtained evidencethey assert is relevant to the gravamen of the Plaintiffs' claims.
Mr. Villasenor submitted with his objections an Expert Report of Christopher L. German, Ph.D., who

1 has degrees in biology and molecular neuroscience. Using the absorption rates reported in the clinical
2 study and the results of the USP disintegration tests referenced above, Dr. German offered a calculation
3 of the absorption rate of the Lang CoQ-10 product tested in the USP tests. Based on his calculation, he
4 opined that the absorption rate was less than that claimed on the product labeling. The Court does not
5 decide the merits of this dispute but notes that these key factual disputes on the absorption rate and
6 efficacy of the Lang CoQ-10 demonstrate the difficulty of prevailing on the merits of Plaintiff's claims.

7 8. Based on the amount in controversy, the total revenue from the sales of Lang CoQ-10,
8 and the strengths and weaknesses of the evidence supporting Plaintiffs' claims, the Court finds that the
9 value of the settlement is fair, represents a reasonable compromise after five years of litigation, and is
10 adequate for the Class. *See, e.g., Dunk v. Ford Motor Co.* (1996) 48 Cal. App.4th 1794, 1800-01; Cal.
11 Rules of Court, Rule 3.769(g). The reasonableness of the settlement is further demonstrated by the fact
12 that there were no requests for exclusion from the class and only one objection. Accordingly, the Court
13 GRANTS the Parties' joint motion for final approval of the class action settlement.

14 9. The Court finds that the requirements of Cal. Code Civ. P. § 382 have been satisfied, and
15 the Court has made a final determination that plaintiffs William Jackson, Edward Buchannan and Thamar
16 Santisteban Cortina are adequate Class Representatives for the Class.

17 10. The Court finds that plaintiff's counsel, Ronald A. Marron of The Law Office of Ronald
18 A. Marron, APLC, and each of their attorneys, has adequately represented the Class, and hereby appoints
19 them Class Counsel.

20 11. The Court approves the attorney fee and expense payment sought by Class Counsel and
21 hereby GRANTS Class Counsel's Motion for Attorney Fees and costs. Class Counsel is hereby awarded
22 \$435,289.80 in attorneys' fees, which represents 33.33% of the total Settlement Fund. In addition, the
23 Court awards Class Counsel \$39,031.51 in costs that were reasonably necessary to prosecute the Action.
24 In so ruling, the Court notes that, pursuant to Section D of the Settlement Agreement, the settlement was
25 structured so that Class Members had priority access to the Cash Settlement Fund and, as such, had the
26 option of choosing the cash award benefit over the product credit benefit before Class Counsel submitted
27 the motion for attorney fees and costs.
28

1 12. The Court approves the following incentive awards sought by the Class Representatives:
2 \$4,000 to Class Representative Cortina and \$1,000 each to Class Representatives William Jackson and
3 Edward Buchannan.

4 13. Regarding the notice to the class, the Court was presented with evidence showing that
5 nearly all of the purchases of Lang CoQ-10 were in-store sales, rather than purchases over the Internet.
6 For example, Wal-Mart was by far the largest seller of Lang CoQ-10, and less than 0.0014% of those
7 sales were online. As such, and based on the Declaration of Gajan Retnasaba, the Claims Administrator,
8 the Court finds that the notice of settlement to the Settlement Class and the plan for distribution of the
9 notice implemented by the Class Administrator following the Order Granting Preliminary Approval of
10 the Settlement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably
11 calculated, under the circumstances, to apprise the Settlement Class of the pendency of the action, their
12 right to object to or exclude themselves from the Settlement and their right to appear at the final fairness
13 hearing; (iii) were reasonable and constituted due, adequate and sufficient notice to persons entitled to
14 receive notice; and (iv) met all applicable requirements of the California Code of Civil Procedure and
15 due process of law.

16 14. The Court overrules the objections to the Final Approval of the Settlement and Class
17 Counsel's Motion for Attorney Fees and Costs filed by Frank Manual Villasenor, III.

18 15. The Court finds that no individuals have requested exclusion from the Settlement Class.
19 Therefore, all Class Members are bound by this Final Judgment.

20 16. The Court finds that all Class Members have released from liability, and provided a
21 covenant not to sue, the Released Parties, pursuant to the terms of Section K of the Settlement
22 Agreement.

23 17. The Parties are to give notice to all Class Members of this Final Order and Judgment in
24 accordance with California Rule of Court 3.771(b) by directing the Class Administrator to post this Final
25 Order and Judgment on its website in accordance with the terms of the Settlement Agreement.

26 18. To the extent not specifically ordered herein, the Court orders the parties to comply with
27 all obligations arising under the Settlement Agreement in a reasonable time and manner.
28

1 19. Nothing in this Order shall preclude any action to enforce or interpret the terms of the
2 Settlement Agreement. Any action to enforce or interpret the terms of the Settlement Agreement shall
3 be brought solely in this Court.

4 20. The Court expressly retains jurisdiction as to all matters relating to the Settlement and
5 this Order, and for any other necessary and appropriate purpose.

6 21. The Final Approval Order and Judgment pursuant to California Rules of Court Rule
7 3.769(h), wherein the Court retains jurisdiction over the parties to enforce the terms of the judgment,
8 should be entered.

9
10 **IT IS SO ORDERED.**



11 Dated: **12/20/2018** 8

12 _____
13 Hon. Joel R. Wohlfeil
14 Judge of the Superior Court

1 **PROOF OF SERVICE**

2 I am employed in Los Angeles County, California. I am over the age of eighteen years
3 and not a party to the within-entitled action. My e-mail address is david.kirvan@btlaw.com, and
4 my business address is 2029 Century Park East, Suite 300, Los Angeles, California 90067. On
5 January 15, 2019, I served a copy of the within document(s):

6 **NOTICE OF ENTRY OF JUDGMENT**

- 7 BY ELECTRONIC TRANSMISSION - Pursuant to CRC 2.251 I provided the
8 document(s) to the Court’s electronic service provider, One Legal, and thereby
9 caused the document(s) listed above to be sent to the respective e-mail address(es)
10 of the party(ies) set forth below.
- 11 by placing the document(s) listed above in a sealed envelope with postage thereon
12 fully prepaid, the United States mail at Los Angeles, California addressed as set
13 forth below.
- 14 by placing the document(s) listed above in a sealed FedEx envelope and affixing a
15 pre-paid air bill, and causing the envelope to be delivered to a FedEx agent for
16 delivery.
- 17 by personally delivering the document(s) listed above to the person(s) at the
18 address(es) set forth below.
- 19 by transmitting via e-mail or electronic transmission the document(s) listed above
20 to the person(s) at the e-mail address(es) set forth below.

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Attorneys for Plaintiffs and the Proposed Class

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 15, 2019, at Los Angeles, California.



David B. Kirvan