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JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LOREAN BARRERA, On Behalf of  
Herself and All Others Similarly  
Situated,

Plaintiff,

v.

PHARMAVITE, LLC, a California  
limited liability company

Defendant.

CASE NO. 2:11-cv-04153-CAS (AGrx)

CLASS ACTION

~~PROPOSED~~ FINAL JUDGMENT AND  
ORDER

1 Plaintiff Lorean Barrera and Defendant Pharmavite LLC (collectively, the  
2 “Parties”) have entered into a Settlement Agreement and General Release  
3 (“Settlement Agreement”) to settle this Litigation, which the Court preliminarily  
4 approved on June 6, 2017 (Dkt. 423). Plaintiff Barrera has filed an Unopposed  
5 Motion for Final Approval of Settlement and a Memorandum in Support of  
6 Unopposed Motion for Final Approval of Settlement (collectively, “Motion for Final  
7 Approval”). The Settlement Agreement, the exhibits thereto, and the exhibits to the  
8 Motion for Final Approval, set forth the terms and conditions for a proposed  
9 settlement and dismissal with prejudice of this Litigation.

10 Having reviewed the Settlement Agreement and its exhibits, the Motion for  
11 Final Approval, the pleadings and other papers on file in this action, and statements  
12 of counsel, and having held a Fairness Hearing on the fairness, adequacy, and  
13 reasonableness of the settlement and considered all of the written submissions and  
14 oral arguments made in connection with final settlement approval, the Court finds  
15 that the Motion for Final Approval should be GRANTED and that this Final  
16 Approval Order should be entered. Terms and phrases used in this Final Approval  
17 Order shall have the same meaning ascribed to them in the Settlement Agreement.

18 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

19 1. For settlement purposes only, the Court certifies the following  
20 Settlement Class:

21 All residents of the United States who purchased for personal use, and not  
22 resale or distribution, a Covered Product between May 1, 2007 and June 6,  
23 2017.

24 Specifically excluded from the Settlement Class are the following persons:

- 25 (i) Pharmavite and its respective affiliates, employees, officers, directors,  
26 agents, and representatives, and their immediate family members;  
27 (ii) Settlement Class Counsel and partners, attorneys, and employees of their  
28 law firms; and  
(iii) The judges who have presided over the Litigation or mediated the  
Settlement, and their immediate family members.

1           2.     For settlement purposes only, the Court appoints the following attorneys  
 2 to act as Lead Settlement Class Counsel:

3           Elaine A. Ryan  
 4           BONNETT, FAIRBOURN,  
 5           FRIEDMAN & BALINT, P.C.  
 6           2325 East Camelback Road, Suite  
 7           300  
 8           Phoenix, Arizona 85016  
 9           Telephone: (602) 274-1100

10           Stewart M. Weltman  
 11           SIPRUT, PC  
 12           17 North State Street, Suite 1600  
 13           Chicago, Illinois 60602  
 14           Telephone: (312) 236-0000

15           3.     For settlement purposes only, the Court appoints the following attorneys  
 16 as Settlement Class Counsel. Settlement Class Counsel are experienced in class  
 17 litigation, including litigation of similar claims in other cases, and have fairly and  
 18 adequately protected the interests of the Settlement Class:

19 Elaine A. Ryan 20 BONNETT, FAIRBOURN, 21 FRIEDMAN 22 & BALINT, P.C. 23 2325 East Camelback Road, Suite 300 24 Phoenix, Arizona 85016 25 Telephone: (602) 274-1100	19 Stewart M. Weltman 20 SIPRUT, PC 21 17 N. State Street 22 Suite 1600 23 Chicago, Illinois 60602 24 Telephone: (312) 236-0000
19 Max A. Stein 20 BOODELL & DOMANSKIS, LLC 21 One North Franklin, Suite 1200 22 Chicago, IL 60606 23 Telephone: (312) 938-1670	19 Howard J. Sedran 20 LEVIN FISHBEIN SEDRAN & 21 BERMAN 22 510 Walnut Street 23 Philadelphia, Pennsylvania 19106 24 hsedran@lfsblaw.com 25 Telephone: (215) 592-1500
23 WESTERMAN LAW CORP. 24 Jeff S. Westerman (94559) 25 1875 Century Park East, Suite 2200 26 Los Angeles, CA 90067 27 Tel: (310) 698-7880	

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1           4.     For settlement purposes only, the Court appoints the Named Plaintiff as  
2 representative of the Settlement Class.

3           5.     The Court finds that notice to the Settlement Class has been provided in  
4 accordance with the Court's Preliminary Approval Order. This notice, in form,  
5 method, and content, fully complied with the requirements of Rule 23 and due  
6 process, constituted the best notice practicable under the circumstances, and  
7 constituted due and sufficient notice to all persons entitled to notice of the settlement.

8           6.     The settlement set forth in the Settlement Agreement is fair, reasonable,  
9 adequate, and in the best interests of the Settlement Class. The Settlement Agreement  
10 was arrived at through good-faith bargaining at arm's-length, without collusion,  
11 conducted by counsel with substantial experience in prosecuting and resolving  
12 consumer class actions. The settlement consideration provided under the Settlement  
13 Agreement constitutes fair value given in exchange for the release of the Released  
14 Claims against the Released Parties. The consideration to be provided to members of  
15 the Settlement Class is reasonable, considering the facts and circumstances of the  
16 numerous types of claims and affirmative defenses asserted in the Litigation, and in  
17 light of the complexity, expense, and duration of litigation and the risks involved in  
18 establishing liability and damages and in maintaining the class action through trial and  
19 appeal. All terms of the settlement and Settlement Agreement are approved by this  
20 Final Approval Order. The fact that this Final Approval Order specifically identifies  
21 or summarily recapitulates some, but not other, provisions of the Settlement  
22 Agreement does not modify any provision of the Settlement Agreement, nor does it  
23 elevate or demote any provision vis á vis any other provision, nor does it create an  
24 inference in that regard.

25           7.     All Settlement Class members who failed to submit an objection to the  
26 settlement in accordance with the deadline and procedure set forth in the Preliminary  
27 Approval Order are deemed to have waived and are forever foreclosed from raising  
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1 the objection and are foreclosed from seeking any adjudication or review of the  
2 Settlement Agreement by appeal or by any other means.

3 8. Any Settlement Class Member who has not submitted a complete and  
4 timely Claim Form in compliance with the Settlement Agreement and the Court's  
5 Preliminary Approval Order shall not be entitled to any benefits under the settlement,  
6 but, unless they have opted out, nonetheless shall be barred by the Release and  
7 provisions of the Settlement Agreement and the Final Order and Judgment.

8 9. The Court orders that any member of the Settlement Class who has not  
9 submitted a timely, written request for exclusion from the Settlement Class (*i.e.*,  
10 become an Opt-Out) as directed in the Preliminary Approval Order is bound by all  
11 proceedings, orders, and judgments in the Litigation, even if such Settlement Class  
12 Member has previously initiated or subsequently initiates individual litigation or other  
13 proceedings encompassed by the Release (as set forth in Section VII Paragraphs D - F  
14 of the Settlement Agreement).

15 10. The Parties, the Released Parties, and each Settlement Class member  
16 have irrevocably submitted to the exclusive jurisdiction of this Court for any suit,  
17 action, proceeding, or dispute relating in any way to, or arising out of, the Released  
18 Claims, the Settlement Agreement, or this Final Judgment and Order.

19 11. The Parties are directed to consummate the Settlement Agreement in  
20 accordance with its terms. The Parties and any and all Settlement Class members who  
21 did not timely exclude themselves from the Settlement Class are bound by the terms  
22 and conditions of the Settlement Agreement.

23 12. The requirements of Rule 23(a) and (b)(3) have been satisfied for  
24 purposes of settlement. The Settlement Class is so numerous that joinder of all  
25 members is impracticable; there are questions of law or fact common to the  
26 Settlement Class; the claims of the Plaintiff are typical of the claims of the Settlement  
27 Class; the Plaintiff has, and Settlement Class Counsel have fairly and adequately  
28 protected the interests of the Settlement Class, and will fairly and adequately protect

1 the interests of the Settlement Class; and the questions of law or fact common to  
2 Settlement Class members predominate over any questions affecting only individual  
3 members.

4 13. Subject to the terms and conditions of the Settlement Agreement, this  
5 Court hereby dismisses the Litigation with prejudice as to all Released Parties, without  
6 fees or costs, except as provided in the Settlement Agreement.

7 14. By operation of this Final Judgment and Order, the Releasing Parties  
8 release and forever discharge the Released Parties from the Released Claims, and the  
9 Released Parties release and forever discharge Plaintiff and Settlement Class Counsel,  
10 as set forth in Section IX, Paragraphs B and C of the Settlement Agreement.

11 15. Pharmavite shall not be required to recall, relabel, repackage, remove  
12 from shelves, or pull or withdraw from distribution or inventory any Covered  
13 Products that have been manufactured or shipped by Pharmavite prior to the date  
14 starting 180 days after the Effective Date.

15 16. Neither the Settlement Agreement, nor any of its provisions, nor any of  
16 the documents (including but not limited to drafts of the Settlement Agreement, this  
17 Preliminary Approval Order, or the Final Order and Judgment), negotiations, or  
18 proceedings relating in any way to the Settlement, shall be construed as or deemed to  
19 be evidence of an admission or concession by any person, including Pharmavite, and  
20 shall not be offered or received in evidence, or subject to discovery, in this or any  
21 other action or proceeding except in an action brought to enforce its terms or except  
22 as may be required by law or Court order.

23 17. The Court makes the following awards to Plaintiff and Settlement Class  
24 Counsel:

25 a. **\$ 3,475,000.00** as attorneys' fees collectively to Bonnett, Fairbourn,  
26 Friedman & Balint, P.C., Siprut, PC, Boodell & Domanskis, LLC, Levin  
27 Sedran & Berman, and Westerman Law Corp.

28 b. **\$ 600,000.00** as costs collectively to Bonnett, Fairbourn, Friedman & Balint,

1 P.C., Siprut, PC, Boodell & Domanskis, LLC, Levin Sedran & Berman, and  
2 Westerman Law Corp.

3 c. **\$ 10,000.00** as an incentive award to the Class Representative.

4 In accordance with the Settlement Agreement, these amounts shall be paid to the  
5 escrow/trust account of Bonnett, Fairbourn, Friedman, & Balint, P.C. for further  
6 distribution to Plaintiff and Settlement Class Counsel.

7 18. Without further order of the Court, the Parties may agree to reasonable  
8 extensions of time to carry out any of the provisions of the Settlement Agreement.

9 19. Neither Settlement Class Counsel's applications for an incentive award,  
10 attorneys' fees, and reimbursement of expenses, nor any order or proceedings relating  
11 to such applications, nor any appeal from any order relating thereto or reversal or  
12 modification thereof, shall in any way affect or delay the finality of this Judgment, and  
13 all such matters shall be considered separate from this Final Judgment and Order.

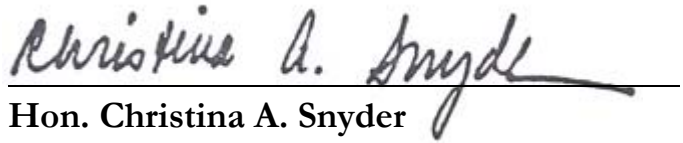
14 20. Without affecting the finality of this Final Judgment and Order, the  
15 Court retains exclusive jurisdiction over this action, the Parties, and all Settlement  
16 Class members to determine all matters relating in any way to the Final Judgment and  
17 Order, the Preliminary Approval Order, or the Settlement Agreement, including but  
18 not limited to the administration, implementation, interpretation, or enforcement of  
19 such orders or Agreement.

20 21. Based upon the Court's finding that there is no just reason for delay of  
21 enforcement or appeal of this Order notwithstanding the Court's retention of  
22 jurisdiction to oversee implementation and enforcement of the Settlement Agreement,  
23 the Court directs the Clerk to enter final judgment.

24 **IT IS SO ORDERED.**

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**Dated: December 4, 2017**

  
**Hon. Christina A. Snyder**  
**U.S. District Judge**