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28 CVS Pharmacy, Inc.; Longs Drug Stores California, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

DANIEL MARDEN, on behalf of himself
and all other aggrieved employees,

Plaintiff,

v.

CVS PHARMACY, INC., a Rhode Island
Corporation; LONGS DRUG STORES
CALIFORNIA, L.L.C.; a California Limited
Liability Company; and DOES 1 through 10,
Inclusive,

Defendants.

Case No.: S-CV-0045902

[Assigned to Hon. Trisha Hirashima]

**CLASS AND PAGA SETTLEMENT
AGREEMENT AND RELEASE**

Complaint Filed: December 4, 2020

1 Plaintiff Daniel Marden (“Plaintiff”) and Defendants CVS Pharmacy, Inc. and Longs
2 Drug Stores California, LLC (“Defendants”) (Plaintiff and Defendants are collectively referred to
3 as the “Parties”) agree to settle this class and Private Attorneys General Act (“PAGA”) action
4 subject to the terms and conditions below.

5 **I. DEFINITIONS**

6 1. “Action” means the lawsuit entitled *Daniel Marden vs. CVS Pharmacy, Inc. and*
7 *Longs Drug Stores California LLC, et al*, Case No. S-CV-0045902, pending in the Superior
8 Court of the State of California for Placer County.

9 2. “Class Claims” means all claims for wages, benefits, and related penalties
10 actually asserted or that reasonably could have been asserted in the Action based on the facts
11 alleged in the Action including but not limited to all of the following: (1) Failure to Pay Sick
12 Leave; (2) Failure to Provide Accurate Itemized Wage Statements; (3) Failure to Timely Pay
13 Wages Due at Separation from Employment; (4) Violation of the Unfair Competition Law; and
14 (5) PAGA Penalties for Wage Statement Violations, Sick Pay Violations and Final Wages
15 Violations.

16 3. “Class Counsel” means Michael D. Singer, Esq. and Jeff Geraci, Esq. of
17 Cohelan, Khoury & Singer LLP located at 605 C Street, Suite 200, San Diego, CA 92101, and
18 Emil Davtyan, Esq. of Davtyan Law Firm, Inc. located at 880 E. Broadway, Glendale, CA
19 91205.

20 4. “Class Counsels’ Attorneys Fees’ and Costs” means attorneys’ fees and costs
21 agreed upon by the Parties and approved by the Court for Class Counsel’s fees incurred in the
22 Action, including through final approval and disbursement of payments under this Settlement
23 and obtaining entry of the Judgement terminating the Action, and which shall not exceed one-
24 third of the Gross Settlement Amount (\$248,562.50) in fees, plus reasonable litigation costs
25 not to exceed \$20,000.

26 5. “Class Member(s)” means all current and former non-exempt employees of
27 Defendants who worked in California at any time during the Class Period who received sick
28

1 pay and additional compensation in the same pay period, and the regular rate of their sick pay
2 was not adjusted.

3 6. “Class Notice” means the document attached as **Exhibit A**.

4 7. “Class Period” means between September 17, 2019 to July 24, 2022.

5 8. “Class Settlement Payment” is the allocation from the Net Settlement Amount
6 paid to Participating Class Members on a pro rata basis and does not include the PAGA
7 Employee Payment to PAGA employees.

8 9. “Complaint” means the operative First Amended Complaint filed in this Action
9 by Plaintiff Daniel Marden on October 18, 2022 in the Superior Court of the State of
10 California for the County of Placer, Case No. S-CV-0045902.

11 10. “Court” means the Superior Court of the State of California for the County of
12 Placer.

13 11. “Date of Preliminary Approval” means the date the Court preliminarily
14 approves this Settlement Agreement, and the exhibits, and enters the Order Granting
15 Preliminary Approval.

16 12. “Defendants” mean CVS Pharmacy, Inc. and Longs Drug Stores California,
17 LLC (“CVS”).

18 13. “Defendant’s Counsel” means Morgan Lewis & Bockius LLP.

19 14. “Effective Date” means the date the Final Order and Judgment becomes
20 binding. The Final Order and Judgment becomes binding on the later of: (i) if no Class
21 Member timely and properly intervenes or files a motion to vacate the Judgment under Code of
22 Civil Procedure § 663, then thirty (30) calendar days after the date the Court enters an order
23 granting Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion
24 to vacate the Judgment, then sixty-one (61) calendar days following the date of final resolution
25 of any challenge to the Final Order and Judgment where the resolution affirms the final
26 approval order and judgment, assuming no appeal is filed; or (iii) if a Class Member timely
27 and properly intervenes or files a motion to vacate the Judgment under Code of Civil
28 Procedure § 663, and if a timely appeal is filed, then the date of final resolution of that appeal

1 (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial
2 approval of the Settlement. The Effective Date cannot occur, and Defendants will not be
3 obligated to fund this Settlement, unless and until there is no possibility of an appeal or further
4 appeal (by anyone who has the right to, or claims to have the ability to, take an appeal) that
5 could potentially prevent this Settlement Agreement from becoming final and binding.

6 15. “Eligible Pay Periods” means those pay periods in which a Class Member
7 received sick pay and additional compensation, and the regular rate of their sick pay was not
8 adjusted.

9 16. “Final Approval Hearing” means the hearing on Plaintiff’s motion for judgment
10 and final approval of this Settlement.

11 17. “Final Order and Judgment” means the final order entered by the Court after the
12 Final Approval Hearing, approving the settlement and entering judgment pursuant to this
13 Settlement Agreement.

14 18. “Gross Settlement Amount” means the maximum amount payable by
15 Defendants under this Agreement, inclusive of all payments made to Participating Settlement
16 Employees, to Class Counsel, to the California Labor and Workforce Development Agency
17 (“LWDA”) in settlement of the California Private Attorney General Act, Cal. Lab. Code
18 §2698, *et seq.* claims, and to the Settlement Administrator for Administrative Costs, which is
19 the sum of Seven Hundred Forty Five Thousand Six Hundred Eighty Seven Dollars and Fifty
20 Cents (\$745,687.50). Defendants shall separately pay the employers’ share of applicable
21 payroll tax obligations on the wage portion of the payments.

22 19. “LWDA” means the California Labor and Workforce Development Agency.

23 20. “LWDA PAGA Penalty Amount” is the 75% share (or \$22,500) of the \$30,000
24 allocated from the PAGA Payment for civil penalties that will be paid to the LWDA.

25 21. “Net Settlement Amount” is the portion of the Gross Settlement Amount
26 eligible for distribution to Participating Class Members. It equals the Gross Settlement amount
27 less Class Counsels’ Attorney Fees’ and Costs, Settlement Administration Expenses, and the
28 PAGA Payment.

1 22. “Order Granting Preliminary Approval” means the Order entered by the Court
2 substantially in the form attached to Plaintiff’s Motion for Preliminary Approval of this
3 Settlement and preliminarily approving, *inter alia*, the terms and conditions of this Agreement,
4 the manner and timing of providing notice to the Settlement Employees, and the time period
5 for Class Members to opt-out of and/or make objections to the settlement of the Class Claims
6 under this Settlement.

7 23. “PAGA” means the California Labor Code Private Attorneys General Act,
8 California Labor Code §§ 2698 *et seq.*

9 24. “PAGA Claims” means all claims for PAGA civil penalties that were stated or
10 could have been stated based on the facts alleged in the First Amended Complaint, including
11 but not limited to claims for PAGA civil penalties based on all of the following: (1) Failure to
12 Pay Sick Leave; (2) Failure to Provide Accurate Itemized Wage Statements; and (3) Failure to
13 Timely Pay Wages Due at Separation from Employment.

14 25. “PAGA Employees” means all current and former non-exempt employees of
15 Defendants who worked in a Covered Position in California at any time during the PAGA
16 Period who received sick pay and additional compensation in the same pay period, and the
17 regular rate of their sick pay was not adjusted.

18 26. “PAGA Employee Payment” is the 25% share (or \$7,500) of the Thirty
19 Thousand Dollars (\$30,000) allocated from the Gross Settlement Amount for PAGA penalties
20 that will be paid to members of the PAGA Employees.

21 27. “PAGA Payment” means the Thirty Thousand Dollars (\$30,000.00) of the
22 Gross Settlement Amount allocated to the settlement of the PAGA claims which is comprised
23 of the LWDA PAGA Penalty Amount and the PAGA Employee Payment.

24 28. “PAGA Period” means the period from September 17, 2019 and July 24, 2022.

25 29. “Participating Class Members” means those Class Members who do not opt out
26 of the Class Claims portion of this Settlement by submitting a timely valid Request for
27 Exclusion.

28

1 30. “Participating Settlement Employees” means all Participating Class Members
2 and PAGA Employees.

3 31. “Parties” means collectively Plaintiff and Defendants, as defined herein.

4 32. “Plaintiff” means Plaintiff Daniel Marden.

5 33. “Released Class Claims” means the Class Claims that Participating Class
6 Members are fully and irrevocably releasing the Released Parties from in exchange for the
7 consideration provided by this Settlement Agreement, including any and all claims, demands,
8 rights, liabilities, and causes of action that have been or could have been asserted in the instant
9 Action based on the allegations in the First Amended Complaint for the duration of the Class
10 Period, including but not limited to, claims for (1) Failure to Pay Sick Leave, (2) Failure to
11 Provide Accurate Wage Statements; (3) Failure to Timely Pay Final Wages; and (4) Unfair
12 Competition. In addition, each Participating Class Member who cashes their settlement
13 payment shall be deemed to have released all claims set forth above under the California Labor
14 Code. The time period governing the Released Class Claims shall be the same as the Class
15 Period.

16 34. “Released PAGA Claims” means any and all claims for civil penalties under the
17 Private Attorneys General Act, Labor Code § 2698 *et seq.*, that have been or could have been
18 asserted by Plaintiff against the Released Parties, on behalf of Aggrieved Employees and State
19 of California, based on the facts stated in Plaintiff’s First Amended Complaint , including all
20 PAGA claims seeking civil penalties for (1) Failure to Pay Sick Leave; (2) Failure to Provide
21 Accurate Wage Statements; and (3) Failure to Timely Pay Final Wages, and based on or
22 arising from alleged violations of the California Labor Code, including Sections 200, 201, 202,
23 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1,
24 1198, and 1199, 2699, *et seq.*, and of the California Wage Orders. The time period governing
25 the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released
26 Claims do not release any potential claims for wages or statutory penalties.

27 35. “Released Parties” means CVS Pharmacy, Inc., CVS Longs Drug Stores
28 California, LLC, and CVS Health Corporation and their affiliates, divisions, subsidiaries,

1 parents, predecessors, any merged entity or merged entities and/or its or their present and
2 former officers, partners, directors, managers, supervisors, employees, attorneys, agents,
3 shareholders and/or successors, assigns, trustees, heirs, administrators, executors,
4 representatives and/or principals thereof.

5 36. “Request for Exclusion” means a timely submitted written request to opt out of
6 the settlement of Class Claims in this Settlement by any Class Member other than Plaintiff,
7 pursuant to the procedure set forth in Paragraph 62 below.

8 37. “Response Deadline” is forty-five (45) calendar days from the date the Notice is
9 mailed to the Class Members and PAGA Employees, or in the case of re-mailed notices, sixty
10 (60) days from the date the original Notice is mailed to the Class Members and PAGA
11 Employees.

12 38. “Settlement Administrator” means the third-party class action settlement
13 administrator as agreed to by the Parties and approved by the Court for the purposes of
14 administering this settlement. The Parties each represent they do not have any financial
15 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
16 Administrator that could create a conflict of interest.

17 39. “Settlement Administration Expenses” means the costs payable from the Gross
18 Settlement Amount to the Settlement Administrator for administering this Settlement,
19 including, but not limited to printing, distributing and tracking documents for this Settlement,
20 calculating estimated amounts per Settlement Member, distributing the Settlement Amount,
21 providing necessary reports and declarations, and other duties and responsibilities set forth
22 herein to process and in effectuating this Settlement, as requested jointly by the parties.

23 40. “Settlement Agreement” means this Class Action and PAGA Settlement and
24 Release.

25 41. “Settlement Employees” means all Class Members and PAGA Employees.

26 42. “Settlement Employee Data” means all information that Defendants provide to
27 the Settlement Administrator that identifies or can be used to identify Settlement Employees,
28 including, without limitation, their names, addresses, phone numbers, email addresses,

1 employee numbers, and social security numbers, and the respective number of pay periods
2 each Settlement Employee worked during the Class Period and PAGA Period.

3 43. "Settlement Period" means the applicable Class Period and PAGA Period, as
4 defined herein.

5 **II. LITIGATION BACKGROUND**

6 44. On September 17, 2020, Plaintiff Daniel Marden submitted a notice with the
7 LWDA. On December 4, 2020, he filed a representative PAGA action in the Superior Court of
8 the State of California for the County of Placer alleging various Labor Code violations by
9 Defendants, including (1) Failure to Pay Overtime Wages, (2) Failure to Pay Sick Leave; (3)
10 Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks, (5) Failure to Provide
11 Accurate Wage Statements; and (6) Failure to Timely Pay Final Wages. On October 18,
12 2022, Plaintiff filed a First Amended Complaint amending his complaint to assert the
13 following putative class and PAGA claims for: (1) Failure to Pay Sick Leave; (2) Failure to
14 Provide Accurate Wage Statements; (3) Failure to Timely Pay Final Wages; (4) Unfair
15 Competition; (5) PAGA Penalties for Failure to Pay Sick Leave; (6) PAGA Penalties for Wage
16 Statement Violations; and (7) PAGA Penalties for Failure to Timely Pay Final Waves.

17 45. Defendants deny Plaintiff's claims, and assert that, during all relevant times,
18 Class Members and PAGA Employees were properly paid for all hours worked and received
19 all wages and sick pay to which such Class Members and PAGA Employees were entitled in
20 accordance with California law. Defendants also assert that, at all times, Class Members and
21 PAGA Employees received wage statements that were compliant with the Labor Code, were
22 timely paid all wages as required under the Labor Code, and that Class Members and PAGA
23 Employees who ended their employment with Defendants during the Class Period and PAGA
24 Period were properly compensated for all wages due as required by California law.
25 Consequently, Defendants do not believe that any liability to Plaintiff or Class Members and
26 PAGA Employees exists, or that Plaintiff or Class Members and PAGA Employees are entitled
27 to any recovery. In addition, Defendants contend that Plaintiff's claims are not suitable for
28 class, collective, or representative treatment. Defendant has agreed to resolve the Action via

1 this Settlement Agreement, but to the extent this Settlement Agreement is deemed void or the
2 Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights
3 to challenge all such claims and allegations in the Action upon all procedural, merit, and
4 factual grounds, including, without limitation, the ability to challenge class and representative
5 treatment on any grounds, assert any and all other privileges and potential defenses, and
6 enforce its representative action waiver (including waiver of Plaintiff's non-individual PAGA
7 claims) in its arbitration agreements.

8 46. It is the desire of the Parties to fully, finally, and forever settle, compromise,
9 and discharge all Released Class Claims and Released PAGA Claims against the Released
10 Parties. The Parties understand, acknowledge, and agree that this Agreement constitutes a
11 compromise of Plaintiff's representative PAGA claim, and that it is the desire and intention of
12 the Parties to affect a final and complete resolution of the class and PAGA claims against
13 Defendants. The Parties further acknowledge that this Agreement is a compromise of disputed
14 claims and that nothing in this Agreement shall be construed as an admission by Defendants of
15 liability.

16 47. The Parties believe and agree that this Agreement provides for a fair, adequate,
17 and reasonable resolution of the Class and PAGA representative claims, given the strengths
18 and weaknesses of Plaintiff's claims, Defendants' defenses to liability, and the risk that the
19 Court would significantly reduce any penalties awarded under Labor Code section 2699(e)(2).
20 The Parties have arrived at this settlement after extensive, arms-length negotiations in a full-
21 day private mediation, taking into account all relevant factors, present and potential. It is the
22 intention of the Parties that this Settlement Agreement shall constitute a full and complete
23 settlement and release of the Released Class Claims and Released PAGA Claims as to all of
24 the Released Parties.

25 **III. TERMS OF SETTLEMENT**

26 The Parties to the Action agree as follows:

27 48. **Non-Admission.** Nothing in this Settlement Agreement, or any
28 communications, papers, or orders related to this Settlement Agreement, shall be construed to

1 be or deemed an admission by the Released Parties of any liability, culpability, or wrongdoing
2 toward the Plaintiff, the Settlement Employees, or any other person, and Defendants
3 specifically disclaims any liability, culpability, or wrongdoing toward the Plaintiff, the
4 Settlement Employees, or any other person, or that class certification or a representative action
5 is appropriate in this or any other matter. Each of the Parties has entered into this Settlement
6 Agreement with the intention to avoid further disputes and litigation with the attendant
7 inconvenience, expenses, and contingencies. This Settlement Agreement and any
8 communications, papers, or orders related to the Settlement Agreement may not be cited or
9 otherwise admitted as evidence of liability or that class certification is appropriate or that a
10 representative action could ever be manageably tried before a court. There has been no final
11 determination by any court as to whether a class should be certified, or whether the
12 representative claims can manageably be adjudicated, other than for settlement purposes only.
13 Furthermore, nothing in this Settlement shall be considered any form of waiver of any
14 alternative dispute resolution provisions.

15 49. **Certification of Class Members as to Class Claims and Approval of**
16 **Representative Action.** The Parties stipulate, for settlement purposes only, to the certification
17 by the Court of a class of Class Members as to all Class Claims asserted in the Action for
18 settlement purposes only. The Parties also stipulate to a court forum for purposes of seeking
19 court approval of the settlement of the PAGA claims. The Parties further stipulate that, for
20 settlement purposes only, Cohelan, Khoury & Singer LLP and Davtyan Law Firm, may be
21 preliminarily and conditionally appointed as Class Counsel. Defendants' stipulation to the
22 certification of a class of Class Members and to a representative action for PAGA Employees
23 shall not be construed as an admission or acknowledgment of any kind that any class should be
24 certified or that any claims should be given class or representative action treatment

25 50. **Non-Approval By The Court.** In the event that this Settlement Agreement is
26 not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by
27 the Court:
28

1 a. The Settlement Agreement shall have no force or effect, other than the confidentiality and
2 non-disclosure provisions and the non-admission provisions;

3 b. The Settlement Agreement shall not be admissible in any judicial, administrative or
4 arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

5 c. The preliminary certification of the class of Class Members and the approval of a
6 representative action shall become null and void, and the fact that the Parties stipulated to the
7 certification of Class Members and Class Claims, and to approval of representative treatment of
8 the PAGA Claims, for purposes of this Settlement shall not be admissible in any judicial,
9 administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or
10 procedural; and

11 d. None of the Parties to this Settlement Agreement will be deemed to have waived any
12 claims, objections, defenses or arguments with respect to the issue of arbitration, class
13 certification, representative treatment, or the merits of Plaintiff's claims.

14 51. **Settlement Allocation.** Defendants agree to pay the Gross Settlement Amount,
15 subject to Court approval, to the following allocations:

16 a. From the Gross Settlement Amount, Class Counsel may seek
17 from the Court the Class Counsels' Attorney Fees' and Costs, which CVS will not
18 oppose.

19 b. From the Gross Settlement Amount, Class Counsel may seek a Class
20 Representative Service Payment of \$10,000, which CVS will not oppose.

21 c. From the Gross Settlement Amount, the Parties agree to allocate the
22 payment of Settlement Administration Expenses in a reasonable amount.

23 d. If the Court approves a lesser amount of attorney's fees, litigation costs, or
24 Settlement Administration Expenses than those sought, any amount disallowed by
25 the Court shall be added to the Gross Settlement Amount and apportioned equally
26 to the Participating Class Members.

27 e. From the Gross Settlement Amount, the Parties agree to allocate \$30,000 to
28 the PAGA Payment as follows: (1) the \$22,500 LWDA Penalty Amount, and (2)

1 the \$7,500 PAGA Employee Payment on a pro rata basis based on the number of
2 pay periods that PAGA employees worked during the PAGA Period. CVS shall
3 provide the Settlement Administrator the number of pay periods worked by PAGA
4 Employees during the PAGA Period. The number of pay periods worked by
5 PAGA Employees shall be determined based on CVS' employment records. The
6 PAGA Employee Payment shall be treated as miscellaneous income, which shall
7 be reported on an IRS 1099 without withholdings.

8 f. The Net Settlement Amount is the balance of the Gross Settlement Amount
9 after payments have been made for Class Counsels' Attorney Fees' and Costs,
10 Settlement Administration Expenses, and the PAGA Payment (the LWDA PAGA
11 Penalty Amount and the PAGA Employee Payment). Settlement Payments shall
12 be allocated to the Participating Class Members for allegedly unpaid wages,
13 overtime, premium wages, the Participating Class Members' share of payroll
14 taxes, and related fees, interest, and penalties. The Net Settlement Amount shall
15 be used to pay all Settlement Payment amounts due to Participating Class
16 Members based on their pay periods worked in the Class Period.

17 52. **Objections by Participating Class Members to the Settlement of Class**

18 **Claims.** Any Class Member who opts out of the settlement of the Class Claims may not object
19 to the settlement. Any Class Member who does not opt out will become a Participating Class
20 Member, and will still be bound by the settlement even if he/she objects to the settlement so
21 long as his/her objection is overruled. The procedure for filing an objection is described in
22 more detail in Paragraph 61, below.

23 53. **Opt Outs By Class Members from the Settlement of Class Claims.** Class
24 Members who wish to "opt-out" of and be excluded from the settlement of the Class Claims
25 must submit a written Request for Exclusion to the Class Claims aspects of the settlement, as
26 described in more detail in Paragraph 62, below. Even if a Class Member opts out of the
27 settlement of the Class Claims, he/she shall be deemed to have fully, finally, and forever
28

1 released the Released Parties from the Released PAGA Claims as set forth in full in Section
2 VI, below.

3 54. **Releases.** Upon the Effective Date, all Participating Settlement Employees
4 shall be deemed to have fully, finally, and forever released all Released Parties from the
5 Released Class Claims and Released PAGA Claims as set forth in full in Section VI, below.

6 55. **No Reliance.** All Parties represent that they have not received, and shall not
7 rely on, advice or representations from other Parties or their agents or attorneys regarding the
8 tax treatment of payments under federal, state, or local law.

9 56. **Entry of Judgment.** At the Final Approval Hearing, the Parties will request
10 that the Court, among other things: (a) certify the Class Members and Class Claims for
11 purposes of settlement only; (b) enter a Final Order and Judgment; (c) approve the settlement
12 of the Class Claims as fair, adequate, reasonable, and binding on all Participating Settlement
13 Employees; (d) approve the settlement of the PAGA Claims as providing genuine and
14 meaningful relief, consistent with the underlying purpose of the PAGA to benefit the public;
15 and (e) incorporate the terms of this Settlement Agreement into its Final Order and Judgment.

16 57. **Notice to the LWDA.** In connection with their filing of a motion requesting
17 preliminary approval of the Settlement, Class Counsel shall provide all required notices to the
18 LWDA, including this Settlement Agreement, the Motions for Preliminary and Final Approval,
19 and of the Final Order and Judgment as required pursuant to Labor Code Section 2699 *et seq.*

20 **IV. SETTLEMENT ADMINISTRATION**

21 58. **Summary of Duties.** The Settlement Administrator shall be responsible for:
22 (a) estimating each Settlement Employee's recovery from the Net Settlement Amount;
23 (b) preparing and mailing Class Notices with estimated settlement payment amounts to all
24 Settlement Employees, including taking appropriate steps to skip trace, update and locate any
25 individual Settlement Employee whose address or contact information as provided to the
26 Settlement Administrator is inaccurate or outdated; (c) receiving and serving on Class Counsel,
27 Defendant's Counsel, and the Court, any Requests for Exclusion, copies of written objections,
28 and any withdrawal and rescission statements from Class Members; (d) providing to Class

1 Counsel and Defendant’s Counsel a weekly report of activity; (e) establishing a toll-free
2 telephone line and responding to inquiries and requests for information or assistance from
3 Settlement Employees; (f) maintaining the Gross Settlement Amount account at a federally
4 insured banking institution; (g) determining and paying the final amounts due to be paid to
5 Participating Settlement Employees after adjustment for funds due to Class Members who opt
6 out of the settlement of Class Claims; (h) preparing and delivering to Participating Settlement
7 Employees necessary tax reporting documents, including Forms W2 and 1099 where
8 applicable, (i) reporting to Class Counsel, Defendant’s Counsel, and the Court regarding the
9 completion of the tasks identified in this paragraph; and (j) carrying out other related tasks in
10 accordance with the terms of this Settlement Agreement.

11 59. **Certification Reports Regarding Settlement Employees Payment**

12 **Distribution.** Within seven (7) calendar days after expiration of the Response Deadline, the
13 Settlement Administrator will provide Defendants’ counsel and Class Counsel with a written
14 report which certifies: a.) the number of Class Members who have submitted valid Requests
15 for Exclusion; b.) the number of Settlement Members who have submitted a timely and valid
16 objection to the settlement, along with copies of all such objections. Additionally, the
17 Settlement Administrator will provide to counsel for the Parties any updated reports regarding
18 the administration of the Settlement Agreement as reasonably requested by a Party.

19 60. **Use of Settlement Employee Data.** The Settlement Administrator has, and
20 will maintain for as long as it accesses, processes, stores or transmits any Settlement Employee
21 Data supplied by Defendants, a comprehensive, written information security program that
22 complies with applicable law and industry best practices (the “Security Program”). The
23 Security Program will apply to all locations, systems, devices and equipment used by the
24 Settlement Administrator (or any vendors, subcontractors, or third parties retained by
25 Administrator) to access, process, store, or transmit Settlement Employee Data
26 (“Administrator Systems”), and it will include physical, administrative, and technical security
27 controls that prevent unauthorized access to, disclosure of, loss of, or use of the Administrator
28 Systems and the Settlement Employee Data that those Administrator Systems process, store,

1 or transmit. In the event that the Settlement Administrator suspects that any Administrator
2 Systems or Settlement Employee Data that the Administrator Systems or the Settlement
3 Administrator processes, stores, or transmits is subject to any suspected or actual unauthorized
4 access, use, or disclosure, the Settlement Administrator will immediately notify counsel for
5 CVS. The Settlement Administrator shall use Settlement Employee Data only to the extent
6 necessary to administer the settlement, shall securely delete Settlement Employee Data when
7 no longer required for that purpose or by law, and shall not disclose Settlement Employee Data
8 to any third party.

9 61. **Disputes.** All disputes relating to the Settlement Administrator’s ability and
10 need to perform its duties shall be referred to the Court, if necessary, which will have
11 continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all
12 payments and obligations contemplated by the Settlement Agreement have been fully
13 executed.

14 62. **Objections.** Any Class Member, other than Plaintiff, may object to the terms of
15 this Settlement, except as to the Released PAGA Claims. To submit a written objection, a
16 Class Member shall inform the Settlement Administrator, in writing, of his or her objection
17 which must be postmarked by the Response Deadline at the address set forth in the Class
18 Notice. Such objection shall include the objecting Class Member’s full name, address,
19 telephone number, and dates of employment with Defendants, the case name and number, the
20 basis for the objection, including any legal support and each specific reason in support of the
21 objection, as well as any documentation or evidence in support thereof, and, if the Objecting
22 Class Member is represented by counsel, the name and address of his or her counsel. The
23 Settlement Administrator shall provide written objections, if any, to Class Counsel and
24 Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator
25 shall attach the same to its declaration of due diligence and file with the Court prior to the
26 Final Approval Hearing. Class Members may appear at the Final Approval Hearing,
27 personally or through counsel, and raise an objection, without first submitting a written
28 objection. Any Participating Class Member who files an objection remains eligible to receive

1 monetary compensation from the Settlement. Plaintiff and Defendant shall not be responsible
2 for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related
3 to any objections to the Settlement. Submitting an objection does not preserve the right to
4 appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record
5 by timely and properly intervening or filing a motion to vacate the judgment under Code of
6 Civil Procedure Section 663. Class Members and PAGA Employees may not object to or opt-
7 out of the Settlement with respect to the PAGA Claims. The Parties may file a response to any
8 objections submitted by Participating Class Members at or prior to the Final Approval Hearing.
9 Participating Class Members shall be permitted to withdraw their objections in writing by
10 submitting a withdrawal statement to the Settlement Administrator not later than one (1)
11 business day prior to the Court’s Final Approval Hearing, or as otherwise ordered by the
12 Court. Any Class Member who desires to object to the Released Class Claims in the
13 Settlement but fails to timely submit a written objection or in person objection at the Final
14 Approval Hearing waives any right to object and will be foreclosed from making any objection
15 to this Settlement. Any Class Member who does not timely and properly become a party of
16 record by intervening or filing a motion to vacate the judgment waives any and all rights to
17 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
18 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under
19 California Code of Civil Procedure Section 473, and extraordinary writs.

20 63. **Requests for Exclusion.** Any Class Member, other than Plaintiff, may request
21 to be excluded from the Settlement by submitting a “Request for Exclusion” to the Settlement
22 Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
23 should state words to the effect of:

24 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
25 MINITECLINIC LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED
26 FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM
27 THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”

1 To be valid, any Request for Exclusion must include the full name, address, telephone number,
2 last four digits of the social security number or date of birth, and signature of the Class
3 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
4 Settlement Administrator at the specified address in the Class Notice. Any such Request must
5 be made in accordance with the terms set forth in the Class Notice. A Request for Exclusion
6 will be timely only if postmarked by the Response Deadline, unless the Parties otherwise agree
7 in writing. Any Settlement Class Member who timely requests exclusion in compliance with
8 these requirements: (i) will not have any rights under this Agreement with respect to the
9 Released Class Claims, including the right to object, appeal, or comment on the Settlement; (ii)
10 will not be entitled to receive any payments under this Agreement for the Released Class
11 Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the
12 Released Class Claims. Any PAGA Employee who requests timely exclusion will still be
13 subject to the PAGA Released Claims to the fullest extent permitted by law and shall be sent
14 his or her share of PAGA Penalties. Attempted group, class, or subclass requests for exclusions
15 shall be ineffective and disregarded by the Settlement Administrator. Class Members
16 submitting untimely or deficient opt-outs shall become Class Members, shall be bound by the
17 Settlement, and will receive a Class Settlement Payment. Class Members shall be permitted to
18 rescind their opt out statements in writing by submitting a rescission statement to the
19 Settlement Administrator not later than one (1) business day prior to the Court's Final
20 Approval Hearing, or as otherwise ordered by the Court. The Settlement Administrator shall
21 not accept late opt-outs without the written authorization of Defendant beyond the Response
22 Deadline.

23 64. The Parties shall request that a Final Approval Hearing be set within a
24 reasonable time after the last day of the Notice Period, and no earlier than 90 calendar days
25 after the Motion for Preliminary Approval of Settlement is filed with the Court.

26 65. No later than thirty (30) calendar days before the Final Approval Hearing, the
27 Settlement Administrator shall provide Class Counsel and counsel for Defendant with a
28

1 “Declaration of Compliance” with the terms of this Settlement to be filed with the court by
2 Class Counsel.

3 66. Class Counsel shall file a Motion for Final Approval, Memorandum of Points
4 and Authorities in Support of the Settlement, and any other documents reasonably necessary to
5 obtain the Court’s approval of Settlement pursuant to Code or on the date required by the
6 Court.

7 67. **Report re Exclusions and Objections.** If the Court enters the Order Granting
8 Preliminary Approval, then at the resulting Final Approval Hearing, Plaintiff and Defendants,
9 through their counsel of record, shall address any timely written objections, and any objections
10 made at for the first time at the Hearing, if any, from Class Members who are not opt-outs, and
11 any concerns of the Court, if any. Along with the motion for final approval, the Settlement
12 Administrator will present a full declaration to the Court on all disputes, exclusions and
13 objections received, any evidence submitted, and any initial resolution of dispute made by the
14 Settlement Administrator. The Court will consider any disputes and objections at Final
15 Approval Hearing and shall have the right to review and reverse any decision made by the
16 Settlement Administrator regarding a claim dispute.

17 68. **Final List of Participating Settlement Employee Payments.** When and if the
18 Court enters the Final Order and Judgment, and the Effective Date as defined herein has
19 passed, the Settlement Administrator shall prepare a final list of all Participating Settlement
20 Employees and their applicable estimated Class Settlement Payment and/or PAGA Employee
21 Payment. The Settlement Administrator shall calculate applicable federal and state deductions
22 for the Class Settlement Payment and shall include such information in the final list. The
23 Settlement Administrator shall provide this list to the Parties within five (5) court days after
24 the Effective Date. For each Participating Settlement Employee on this list, the Settlement
25 Administrator will issue checks payable to said Participating Settlement Employees.

26 69. **Calculation of Payments to Settlement Employees.** The Net Settlement
27 Amount shall be divided among all Participating Class Members based on their pro-rata share
28 of Eligible Pay Periods. The Settlement Administrator will calculate each Participating Class

1 Member's pro rata share by dividing the number of Eligible Pay Periods worked by that
2 Participating Class Member by the total number of Eligible Pay Periods worked by all Class
3 Members, as reflected on Defendants' internal records.

4 70. Calculation of Payments to PAGA Employees. The PAGA Employee Payment
5 shall be divided among all PAGA Employees based on their pro-rata share of Eligible Pay
6 Periods during the PAGA Period. The Settlement Administrator will calculate each PAGA
7 Employee's pro rata share by dividing the number of Eligible Pay Periods worked by that
8 PAGA Employee by the total number of Eligible Pay Periods worked by all PAGA Employees
9 as reflected on Defendants' internal records.

10 71. **Disputes re Individual Class Settlement Payments and PAGA Employee**
11 **Payments.** The Class Notice will inform Class Members of the number of pay periods they
12 worked in the Class Period and PAGA Period and their estimated Class Settlement Payment
13 and PAGA Employee Payment. Settlement Class Members will have the opportunity, should
14 they disagree with Defendant's records regarding the pay periods stated on the Class Notice, to
15 provide documentation and/or an explanation to show contrary dates of work in relevant
16 positions. Such dispute must be submitted to the Settlement Administrator by the Response
17 Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to
18 determine whether an adjustment is warranted. The Settlement Administrator will determine
19 the eligibility for, and the amounts of, any individual Class Settlement Payment or PAGA
20 Employee Payment under the terms of this Agreement. The Settlement Administrator's
21 determination of the eligibility for and amount of any Class Settlement Payment and PAGA
22 Employee Payment will be binding upon the Settlement Class Member and the Parties, subject
23 to Court review.

24 72. **Allocation of Payments to Settlement Employees.** All Class Settlement
25 Payments to Participating Class Members shall be allocated as follows: (a) 10% as wages, (b)
26 45% as penalties, and (c) 45% as interest. All PAGA Employee Payments will be allocated
27 entirely to penalties. Defendants are responsible for funding the payment of the employer tax
28 contributions as required by law. Participating Class Members must pay their own portion of

1 payroll and all applicable income taxes on the 10% of Class Settlement Payment that is unpaid
2 wages, and such amounts will be withheld from Class Settlement Payments. Participating
3 Class Members shall be exclusively liable for any and all tax liability, if any, other than for the
4 employer tax contributions.

5 73. **Qualified Settlement Fund.** Defendants shall provide payment to the
6 Settlement Administrator within fifteen (15) court days after the Effective Date. The
7 Settlement Administrator shall create a Qualified Settlement Fund (“QSF”), to be funded by
8 Defendant and administered by the Settlement Administrator.

9 74. **Timing of Distribution of Settlement Checks.** Within seven (7) court days
10 after Defendants fund the Settlement as set forth herein, the Settlement Administrator shall
11 distribute checks to all Participating Settlement Employees, issue a check to the LWDA for the
12 LWDA PAGA Penalty Amount, and pay Class Counsels’ Attorney Fees’ and Costs.

13 75. **Uncashed Settlement Checks.** Participating Settlement Employees shall have
14 180 calendar days after mailing by the Settlement Administrator to cash their settlement
15 checks. If any Participating Settlement Employee’s check is not cashed within that period, the
16 check will be void and a stop-payment will be issued, and the Settlement Administrator shall
17 issue the unclaimed funds to cy pres recipient Legal Aid at Work, a non-profit providing
18 education and representation to employees throughout California.. The release will be binding
19 upon all Participating Settlement Employees who do not cash their checks within the 180-day
20 period. In the event that any settlement check is returned to the Settlement Administrator
21 within 180 days of mailing, the Settlement Administrator will, within five (5) business days of
22 receipt of the returned settlement check, perform a skip trace to locate the individual, and
23 notify Defense Counsel and Class Counsel of the results. If a new address is located by these
24 means, the Administrator will have ten (10) business days to re-issue the check. Neither
25 Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will
26 have any liability for lost or stolen settlement checks, forged signatures on settlement checks,
27 or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event
28 a Participating Settlement Employees notifies the Settlement Administrator that he or she

1 believes that a settlement check has been lost or stolen, the Settlement Administrator shall
2 immediately stop payment on such check. If the check in question has not been negotiated
3 prior to the stop payment order, the Settlement Administrator will issue a replacement check.

4 76. **Declaration of Settlement Administrator.** On a date to be determined by the
5 Court after the 180 day check cashing deadline, the Settlement Administrator shall provide a
6 declaration describing all payments that were issued from the Gross Settlement Amount,
7 including the number of uncashed checks, the value of the uncashed checks and the date upon
8 which the uncashed check fund was transmitted to the approved cy pres recipient, which will
9 be filed with the Court by Class Counsel and served on all Parties.

10 **V. NOTICE OF SETTLEMENT**

11 77. Within twenty (20) calendar days after the Date of Preliminary Approval by the
12 Court, Defendant shall provide to the Settlement Administrator the Settlement Employee Data.
13 As set forth in Paragraph 59, above, the Settlement Administrator shall keep this information
14 confidential and secure from breach.

15 78. The Settlement Administrator shall finalize for mailing the Class Notice
16 (**Exhibit A**). Class data for Settlement Employees shall not be disclosed to Plaintiff, Class
17 Counsel, or any other Settlement Employees without the written consent of Defendant.

18 79. Prior to mailing the Class Notices, the Settlement Administrator will update the
19 Settlement Employee Data using the National Change of Address database and other available
20 resources deemed suitable by the Settlement Administrator. Any returned envelopes from the
21 initial mailing with forwarding addresses will be used by the Settlement Administrator to
22 locate Settlement Employees and re-mail the Class Notice to the correct or updated address.
23 The Settlement Administrator will use all appropriate tracing methods, including skip tracing,
24 to ensure that the Class Notices are received by Settlement Employees. The Settlement
25 Administrator shall also take reasonable steps including skip tracing to locate any Settlement
26 Employees whose Class Notice is returned as undeliverable.

27 80. The Parties agree that the procedures set forth in this Section comply with due
28 process requirements, constitute reasonable and the best practicable notice under the

1 circumstances, and constitute an appropriate and sufficient effort to locate current addresses
2 for Class Members such that no additional efforts to do so shall be required. Any Class
3 Members who do not receive the Class Notice after these procedures have been followed will
4 nonetheless be bound by this Settlement.

5 **VI. RELEASES BY PARTICIPATING SETTLEMENT EMPLOYEES AND**
6 **PLAINTIFF**

7 81. **Release by Participating Class Members.** Upon entry of the Final Approval
8 Order and Defendant's funding of the Gross Settlement Amount, and except as to such rights
9 or claims as may be created by this Settlement Agreement, the Participating Class Members
10 will forever completely release and discharge the Released Parties from the Released Class
11 Claims for the Class Period. It is the intent of the Parties that the Final Order and judgment
12 entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect
13 and be final and binding upon Participating Class Members regarding the Released Class
14 Claims. Each Participating Class Member will be deemed to have made the foregoing Release
15 as if by manually signing it.

16 82. The period of the Released Class Claims shall extend to the limits of the Class
17 Period. The judgment entered as a result of this settlement shall have *res judicata* effect to the
18 fullest extent allowed by law. The definition of Released Class Claims shall not be limited in
19 any way by the possibility that Plaintiff or Participating Class Members may discover new
20 facts, legal theories or legal arguments not alleged in the Action as to Defendants but which
21 might serve as an alternative basis for pursuing the same claims, causes of action, or legal
22 theories of relief falling within the definition of Released Class Claims. Any Class Member
23 who submits a timely and valid request for exclusion to the settlement of the Class Claims will
24 not be bound by the release of the Released Class Claims. However, he/she will still be bound
25 by the release of the Released PAGA Claims.

26 83. **Release of PAGA Claims.** Upon entry of the Approval Order and Defendants'
27 funding of the Gross Settlement Amount, Plaintiff, standing in the shoes of the Labor
28 Commissioner/LWDA, and on behalf of the State of California and all Aggrieved Employees,

1 will forever completely release and discharge the Released Parties from the Released PAGA
2 Claims through the PAGA Period. It is the intent of the Parties that the Approval Order and
3 judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata*
4 effect and be final and binding upon Aggrieved Employees regarding the Released PAGA
5 Claims. No PAGA Employee may opt out of this release.

6 84. The period of the Released PAGA Claims shall extend to the limits of the
7 PAGA Period. The judgment entered as a result of this settlement shall have *res judicata* effect
8 to the fullest extent allowed by law. The definition of Released PAGA Claims shall not be
9 limited in any way by the possibility that Plaintiff may discover new or different facts, legal
10 theories or legal arguments not alleged in the Action as to Defendants but which might serve as
11 an alternative basis for pursuing the same claims, causes of action, or legal theories of relief
12 falling within the definition of Released PAGA Claims.

13 **VII. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT**

14 85. Defendants shall have the right to withdraw from the Settlement at any time
15 prior to final approval if: (a) Defendants are required to pay more than \$745,687.50 (except for
16 Defendants' obligation to pay the employer's share of payroll taxes which is not included in
17 the Gross Settlement Amount and will be funded separately by Defendants); or (b) the Court
18 does not approve the Settlement Agreement, or otherwise makes an order materially
19 inconsistent with any of the terms of this Settlement Agreement; or (c) Plaintiff or his counsel
20 breach this Settlement Agreement. In the event of Defendants' withdrawal, Defendants will
21 pay the costs already incurred by the Settlement Administrator unless the withdrawal is the
22 result of Plaintiff's or her counsel's breach of the Settlement Agreement.

23 86. If for any reason the Settlement is not approved by the court, or if Defendants or
24 Plaintiff withdraw from the Settlement, this Settlement Agreement and any related settlement
25 documents will be null and void, other than the confidentiality, non-disclosure provisions and
26 the non-admission provisions, and any class or collective action certified or approved for
27 settlement purposes will be vacated. In such an event, neither this Settlement Agreement, nor
28 the settlement documents, nor the negotiations leading to the Settlement may be used as

1 evidence for any purpose, and Defendants shall retain the right to challenge all claims and
2 allegations in the action, to assert all applicable defenses, and to dispute the propriety of class
3 or collective certification on all applicable grounds.

4 87. If any time period specified in the above three paragraphs passes before the
5 party holding a right or option to request adjustment or rescind exercises that right or option,
6 that party shall be deemed to have waived its right or option and the Settlement Agreement
7 shall proceed on the terms specified herein.

8 88. Other than as specified above, this Settlement Agreement may not be changed,
9 amended, altered, or modified, except in writing and signed by counsel for the Parties hereto,
10 and approved by the Court. This Settlement Agreement may not be discharged except by
11 performance in accordance with its terms or by a writing signed by the Parties hereto.

12 **VIII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL AND**
13 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

14 89. Class Counsel will submit this Settlement Agreement to the Court together with
15 a Motion for Preliminary Approval of Settlement and Certification of the Class, and shall
16 report the settlement to the LWDA and otherwise comply with Section 2699(l) of the Labor
17 Code. The motion shall also seek an order:

- 18 (a) Preliminarily approving the settlement;
- 19 (b) Approving as to form and content the proposed Class Notice;
- 20 (c) Directing the mailing of the Class Notice and instructions by first class
21 mail to Settlement Employees;
- 22 (d) Preliminarily certifying the Class Members and Class Claims for purposes
23 of settlement and preliminarily appointing Plaintiff and Class Counsel as
24 representatives of the Class Members;
- 25 (e) Preliminarily approving settlement administration services to be provided
26 by the Settlement Administrator; and

1 (f) Scheduling a Final Approval Hearing on the question of whether the
2 proposed settlement should be finally approved as fair, reasonable and
3 adequate as to the Class Members.

4 90. Defendants shall provide to the Settlement Administrator the Settlement
5 Employee Data within twenty (20) calendar days after the Date of Preliminary Approval.
6 Defendants shall submit this information in electronic format as specified by the Settlement
7 Administrator.

8 91. The Parties shall cooperate with each other and the Settlement Administrator
9 during the process of giving Settlement Employees notice and Class Members the opportunity
10 to opt out of the settlement of the Class Claims, in every way necessary and appropriate to
11 assure effective communication to individual Class Members of information concerning their
12 rights and obligations under this Settlement Agreement.

13 92. Class Counsel shall provide the Court in connection with the Motion for Final
14 Approval of the Settlement a declaration by the Settlement Administrator of due diligence and
15 proof of mailing of the Notice of Settlement required to be mailed to Class Members by this
16 Settlement Agreement, and of the delivery results of the Settlement Administrator's mailings
17 including tracing and re-mailing efforts.

18 **IX. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL**

19 93. Class Counsel will submit a proposed Final Order and Judgment for approval,
20 which shall include findings and orders:

21 (g) Confirm that Plaintiff provided adequate notice to the LWDA of the
22 PAGA portions of the settlement;

23 (h) Approving the PAGA portions of the settlement as providing genuine and
24 meaningful relief, consistent with the underlying purpose of the PAGA to
25 benefit the public;

26 (i) Approving the settlement of the Class Claims, adjudging the terms thereof
27 to be fair, reasonable and adequate, and directing that its terms and
28 provisions be carried out;

- 1 (j) Approving Class Counsel’s application for an award of attorneys’ fees and
- 2 reimbursement of out-of-pocket litigation expenses; and
- 3 (k) Providing that the Court will retain jurisdiction after the Final Approval
- 4 Order solely for purposes of addressing (i) the interpretation and
- 5 enforcement of the terms of this Stipulation; (ii) Settlement Administration
- 6 matters; and (iii) such post-Final Judgment matters as may be appropriate
- 7 under court rules or as otherwise sets forth in this Stipulation.

8 94. Following entry of the Court’s Final Order and Judgment approving the

9 Settlement Agreement, the parties will each act to assure its timely execution and the

10 fulfillment of all its provisions, including but not limited to the following:

- 11 (a) Should an appeal be taken from the Final Order and Judgment approving the Settlement
- 12 Agreement, all parties will support the Final Order and Judgment on appeal;
- 13 (b) The Parties and Class Counsel will certify to the Court completion of all payments
- 14 required to be made by this Settlement Agreement.

15 **X. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT**

16 95. The preliminary schedule for notice, approval, and payment procedures

17 carrying out this Settlement is as follows. This schedule is only intended to summarize

18 pertinent events as they relate to settlement administration; it does not modify any other

19 provisions of this Agreement or otherwise alter the Parties’ obligations hereunder. The

20 schedule may be modified depending on whether and when the Court grants necessary

21 approvals and orders notice to the class, and sets further hearings. In the event of such

22 modification, the parties shall cooperate in order to complete the settlement procedures as

23 expeditiously as reasonably practicable.

<p>24</p> <p>25 Within 20 days after the Date of</p> <p>26 Preliminary Approval</p>	<p>27 Defendants to provide the Settlement Administrator</p> <p>28 Settlement Employee Data, as well as any relevant</p> <p>information regarding their dates of employment and</p> <p>the number of pay periods worked by Settlement</p> <p>Employees during the applicable Settlement Period.</p>
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30 days after Preliminary Approval of Settlement	Settlement Administrator to complete any skip trace or other address searched for Settlement Employees, including updating any contact information. Mailing by first class mail of Class Notice.
45 days after mailing of Class Notice; and 60 days after initial mailing of Class Notice for re-mailed Class Notices	“Response Deadline” for Class Members to opt-out or object to the settlement of the Class Claims.
1 business day prior to the hearing on Final Approval	Last day for Class Members to rescind objections or opt-outs to the settlement of the Class Claims.
As defined herein.	Effective Date
Within 5 court days after the Effective Date	Settlement Administrator to make the final calculation of payments from the Net Settlement Amount to be distributed to the Participating Settlement Employees and provide Defendants’ counsel with a report listing the amount of all payments to be made to each Participating Settlement Employee.
Within 15 court days after the Effective Date	Defendants to transfer the Gross Settlement Amount to the Settlement Administrator who will deposit in a Settlement Administrator-established account at a federally insured banking institution, plus remit the employer’s share of payroll taxes.
Within 7 court days of Defendants’ transfer of Gross Settlement Amount to the Settlement Administrator	Settlement Administrator to distribute and pay: Settlement checks to all Participating Settlement Employees and the LWDA; Settlement Administration Expenses; and the attorney’s fees and costs approved by the Court to Class Counsel.
180 days after payment of settlement checks	Expiration of Participating Settlement Employees’ settlement checks.
TBD	Settlement Administrator to provide a declaration of payment and report regarding uncashed checks, which will be filed with the Court and served on Class Counsel and Defendants. Settlement Administrator to issue checks to the approved cy pres recipient

1 **XI. CONFIDENTIALITY AND PUBLICITY**

2 96. Settlement Employee Data shall be kept strictly confidential by the Settlement
3 Administrator who will not release such information to Class Counsel and will only file such
4 information under seal if necessary. Class Counsel agrees that any information they receive or
5 have received in connection with this Settlement, may be used for this action only, and may
6 not be used for any purpose or in any other action or proceeding.

7 97. Plaintiff and Plaintiff's Counsel agree not to disclose the terms of this
8 Settlement, except in court papers, or if required by legal process, as necessary to effectuate
9 and administer the terms of this Settlement, or for accounting or tax reporting purposes.
10 Neither Plaintiff nor Plaintiff's Counsel, directly or indirectly, shall issue a press release or
11 hold a press conference, publish information about the settlement on any website (other than
12 used by the Settlement Administrator for settlement administration purposes), or otherwise
13 publicize the settlement. Plaintiff and Plaintiff's Counsel agree not to respond to any press
14 inquiries concerning the settlement except to refer reporters to the papers filed with the Court.
15 Notwithstanding the foregoing, Plaintiff's Counsel may refer to the Settlement in any
16 adequacy of counsel declarations, or related court filings.

17 **XII. PARTIES' AUTHORITY**

18 98. The signatories hereby represent and warrant that they are fully authorized to
19 enter into this Settlement Agreement and bind the respective Parties hereto to the terms and
20 conditions hereof.

21 **XIII. MUTUAL FULL COOPERATION**

22 99. The Parties agree to fully cooperate with each other to accomplish the terms of
23 this Settlement Agreement, including but not limited to, executing such documents and taking
24 such other action as may reasonably be necessary to implement the terms of this Settlement
25 Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all
26 efforts contemplated by this Settlement Agreement and any other efforts that may become
27 necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the
28 terms set forth herein. As soon as practicable after execution of this Settlement Agreement,

1 Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take
2 all necessary steps to secure the Court's preliminary and final approval of this Settlement
3 Agreement.

4 **XIV. NOTICES**

5 100. Unless otherwise specifically provided herein, all notices, demands or other
6 communications given hereunder shall be in writing and shall be deemed to have been duly
7 given as of the third business day after mailing by United States registered or certified mail,
8 return receipt requested, addressed as follows:

9 To Class Counsel: Michael D. Singer, Esq. and Jeff Geraci, Esq. of Cohelan, Khoury & Singer
10 LLP located at 605 C Suite, San Diego, CA 92101, and Emil Davtyan, Esq. of Davtyan Law
11 Firm, Inc. located at 880 E. Broadway, Glendale, CA 91205

12 COHELAN, KHOURY & SINGER LLP

13 Michael D. Singer, Esq.

14 *msinger@ckslaw.com*

15 Jeff Geraci, Esq.

16 *jgeraci@ckslaw.com*

17 605 C Street, Suite 200

18 San Diego, CA 92101

19 DAVTYAN LAW FIRM, INC.

20 Emil Davtyan, Esq.

21 *support@davtyanlaw.com*

22 880 E. Broadway

23 Glendale, CA 91205

24 To Defendant's Counsel:

25 Jennifer B. Zargarof, Esq.

26 Sonia A. Vucetic, Esq.

27 MORGAN LEWIS & BOCKIUS LLP

28 300 S. Grand Avenue

Twenty-Second Floor

Los Angeles, CA 90071

Tel: 213.612.2500

Fax: 213.612.2501

jennifer.zargarof@morganlewis.com

sonia.vucetic@morganlewis.com

1 If the identity of the persons to be notified for any party changes, or their address changes,
2 that party shall notify all other parties of said change in writing.

3 **XV. MISCELLANEOUS PROVISIONS**

4 101. **Captions and Titles.** Paragraph titles or captions contained herein are inserted
5 as a matter of convenience and for reference, and in no way define, limit, extend, or describe
6 the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement
7 Agreement is contractual and not merely a recital.

8 102. **Drafting.** The Parties hereto agree that the terms and conditions of this
9 Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the
10 Parties supervised by an experienced employment law mediator. Neither party shall be
11 considered the “drafter” of the Settlement Agreement for purposes of having terms construed
12 against that party, and this Settlement Agreement shall not be construed in favor of or against
13 any Party by reason of the extent to which any Party or his, her or its counsel participated in
14 the drafting of this Settlement Agreement.

15 103. **Extensions of Time.** If a party cannot reasonably comply with an obligation
16 under this Settlement Agreement by the deadline set forth herein applicable to that obligation,
17 that party may apply to the Court for a reasonable extension of time to fulfill that obligation.
18 Consent to such a request for an extension will not be unreasonably withheld by the other
19 party.

20 104. **Governing Law.** The rights and obligations of the parties hereunder shall be
21 construed and enforced in accordance with, and shall be governed by, the laws of the State of
22 California, without regard to principles of conflict of laws.

23 105. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any
24 amounts paid under the Settlement Agreement will modify any previously credited hours or
25 service under any employee benefit plan, policy, or bonus program sponsored by Defendants.
26 Such amounts will not form the basis for additional contributions to, benefits under, or any
27 other monetary entitlement under Defendants’ sponsored benefit plans, policies, or bonus
28 programs. The payments made under the terms of this Settlement shall not be applied

1 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
2 form of compensation for the purposes of Defendant’s benefit plan, policy, or bonus program.
3 Defendants retain the right to modify the language of its benefit plans, policies and bonus
4 programs to effect this intent, and to make clear that any amounts paid pursuant to this
5 Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any
6 similar measuring term as defined by applicable plans, policies and bonus programs for
7 purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional
8 contributions or benefits are not required by this Settlement Agreement.

9 106. **Integration.** This Settlement Agreement contains the entire agreement between
10 the Parties relating to the Settlement and transaction contemplated hereby, and supersedes and
11 replaces all prior negotiations, understandings, memoranda of understanding and proposed
12 agreements, written and oral, relating thereto. No extrinsic oral or written representations or
13 terms shall modify, vary or contradict the terms of this Settlement Agreement unless made in
14 writing and signed by duly authorized representatives of all Parties and approved in writing by
15 a final order of the Court. No waiver of any term, provision or condition of this Settlement
16 Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to
17 be or construed as a further or continuing waiver of any such term, provision or condition. The
18 Parties and their respective counsel all participated in the negotiation and drafting of this
19 Settlement Agreement and had available to them the advice and assistance of independent
20 counsel.

21 107. **Succession and No Prior Assignments.** This Settlement Agreement shall be
22 binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees,
23 executors, administrators, legal representatives, and successors. The Parties hereto represent,
24 covenant, and warrant that they have not directly or indirectly, assigned, transferred,
25 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion
26 of any liability, claim, demand, action, cause of action or rights herein released and discharged
27 except as set forth herein.

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READ CAREFULLY BEFORE SIGNING
PLAINTIFF

Dated: 1/27/2023

Daniel Marden
Daniel Marden

DEFENDANTS CVS PHARMACY, INC.;
LONGS DRUG STORES CALIFORNIA, LLC.

Dated: _____

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**READ CAREFULLY BEFORE SIGNING
PLAINTIFF**

Dated: _____

Daniel Marden

**DEFENDANTS CVS PHARMACY, INC.;
LONGS DRUG STORES CALIFORNIA, LLC.**

Kimberly A. Lawrence

Dated: February 2, 2023

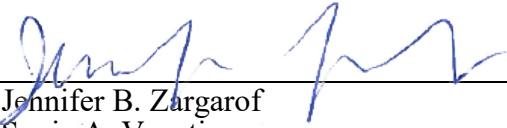
By: Kimberly Lawrence
Its: Vice President & Senior Legal Counsel

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APPROVED AS TO FORM.

Dated: February 3, 2023

MORGAN, LEWIS & BOCKIUS LLP

By 
Jennifer B. Zargarof
Sonia A. Vucetic
Attorneys for Defendants
CVS Pharmacy, Inc.; Longs Drug Stores
California, LLC

Dated: _____, 2023

COHELAN KHOURY & SINGER

By _____
Michael D. Singer
Jeff Geraci
Attorneys for Plaintiff
Daniel Marden

Dated: _____, 2023

DAVTYAN LAW FIRM, INC.

By _____
Emil Davtyan
Attorneys for Plaintiff
Daniel Marden

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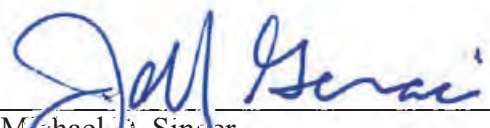
Dated: _____, 2023

MORGAN, LEWIS & BOCKIUS LLP

By _____
Jennifer B. Zargarof
Sonia A. Vucetic
Attorneys for Defendants
CVS Pharmacy, Inc.; Longs Drug Stores
California, LLC

Dated: 1/31, 2023

COHELAN KHOURY & SINGER

By  _____
Michael D. Singer
Jeff Geraci
Attorneys for Plaintiff
Daniel Marden

Dated: Jan 31, 2023

DAVTYAN LAW FIRM, INC.

By  _____
Emil Davtyan
Attorneys for Plaintiff
Daniel Marden

EXHIBIT A

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Marden v. CVS Pharmacy, Inc., et al., Placer County Superior Court Case No. S-CV-0045902

PLEASE READ THIS NOTICE AS IT MAY AFFECT YOUR LEGAL RIGHTS.

THE FOLLOWING INFORMATION IS IN THIS NOTICE

1. Why Did I Get This Notice? Page 1

2. What is this Case About? Page 1

3. What is a “Class Action”? Page 2

4. Am I a Class Member or PAGA Employee? Page 2

5. How Does the Class Action Settlement Work? Page 2

6. Who Are the Attorneys Representing the Parties? Page 2

7. What Are My Options? Page 3

8. How Do I Opt Out or Exclude Myself from the Class Action Settlement? Page 3

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1. Why Did I Get This Notice?

A proposed Settlement has been reached in *Marden v. CVS Pharmacy, Inc., et al.* This Notice is being sent to you by order of the Court which has preliminarily approved the Settlement and conditionally certified a class. Because your rights may be affected by this Settlement, you should read this Notice carefully.

This Notice briefly describes the claims alleged, the key Settlement terms, and your rights and options. Unless you timely request to be excluded, the Settlement, if finally approved by the Court, will be binding on you. The Court has not determined whether CVS Pharmacy, Inc. or Longs Drug Stores California, L.L.C. (“CVS”) broke any law. Both sides agreed to settle the case to avoid the risks and cost of a trial. CVS expressly denies that it did anything wrong or that it violated the law and denies any liability to Plaintiff or to the Class.

2. What is this Case About?

Daniel Marden (“Plaintiff”) sued CVS on December 4, 2020 in California Superior Court County of Placer Case No. S-CV-0045902) (the “Lawsuit”), seeking restitution, penalties, interest, costs, and attorneys’ fees, for (1) failure to pay sick pay (Labor Code §§ 245, 246), (2) failure to provide accurate itemized wage statements (§ 226), (3) failure to pay earned wages upon termination (§§ 201-203), and (4) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). This part of the case is known as a Class Action lawsuit on and the affected employees are Class Members, who will receive a settlement payment unless they opt out as described below.

The case also seeks civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”) for alleged violations of the California Labor Code sections mentioned above. This part of the case is known as a PAGA Action and the affected employees (called the PAGA Employees) will receive a payment from this portion of the Settlement regardless of whether they opt out of participating in the Class Action.

3. What is a “Class Action”?

In a class action, a class representative sues on behalf of people who are affected by similar policies. A class action allows a court to resolve at one time all issues for all the class members who do not exclude themselves

from the class. A class member is bound by the judgment entered in the case, whether the class wins or loses, and may not sue over the same claims that were decided in the class action.

4. Am I a Class Member or PAGA Employee?

You are a Class Member if you worked at a CVS store in California as a non-exempt employee any time between September 17, 2019 and July 24, 2022, and received sick pay and additional compensation in the same pay period, and the regular rate of your sick pay was not adjusted. As a Class Member, you will receive a Settlement payment unless you opt out of the class as described below.

You are a PAGA Employee if you worked at a CVS store in California as a non-exempt employee any time between September 17, 2019 and July 24, 2022, and received sick pay and additional compensation in the same pay period, and the regular rate of your sick pay was not adjusted. As a PAGA Employee, you will receive a payment for the PAGA portion of the Settlement whether you opt out of the class or not.

5. How Does the Class Action Settlement Work?

In this Lawsuit, the Plaintiff sued on behalf of himself and all other similarly-situated current and former employees. The Class Action Settlement will release all claims by Class Members who do not exclude themselves from the Class by opting out. Class Members who opt out will not receive any payment from the Class Action Settlement. Your share will be automatically mailed to you after the Court grants final approval of the Settlement at a Final Fairness Hearing, unless you opt out. You need to take action only if you do not want to participate in the Settlement (opt out). The procedure for opting out is described in paragraph 8 below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable.

On **XXXXXX**, 2023, in the Placer County Superior Court, the Court conditionally certified a class for settlement purposes only and directed that you receive this Notice. The attorneys for Plaintiff and the Class have copies of all documents related to the Settlement and can provide them to you free of charge upon your request. Documents are also available on the Settlement Administrator's website, **xxx.com**. Contact information for the Plaintiff's attorneys is provided below.

The Final Fairness Hearing concerning the proposed Settlement will occur on **[date of final approval hearing]**, 2023 at **X:XX [a.m./p.m.]**, located at 101 Maple Street Auburn, CA 95603, before Placer County Superior Court Judge Michael W. Jones.

6. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Class:
COHELAN KHOURY & SINGER
Jeff Geraci
605 C Street, Suite 200,
San Diego, California 92101
Telephone: (619) 595-3001
jgeraci@ckslaw.com

Attorneys for CVS:
MORGAN, LEWIS & BOCKIUS LLP
Jennifer B. Zargarof
Sonia Vucetic
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Los Angeles, California 90071
Telephone: (213) 612-2500
jennifer.zargarof@morganlewis.com
sonia.vucetic@morganlewis.com

The Court has decided that the attorneys for the Plaintiff are qualified to represent you and all other Class Members simultaneously in this Settlement. You do not need to hire your own attorney because Class Counsel are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

7. *What Are My Options?*

DO NOTHING: If you do nothing, you *will* receive payment and you *will* be bound by the release of Class Action claims stated in this Notice and Settlement as stated in Section No. 10 below.

OPT OUT: If you “opt out” in the manner described below, then you will remove yourself from the Class Action. If the Court grants final approval of the Class Action Settlement, then you will *not* receive any payment, except for your share of the PAGA award. This option will retain your right to sue CVS on your own behalf for any of the Class Action claims covered by the Settlement.

OBJECT: If you want to object to any part of the proposed Settlement, you can write the Settlement Administrator. If you want to object, then you must not opt out.

The procedures for opting out or objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself from the Class Action Settlement” and “How Do I Object to the Class Action Settlement?”

Note: *CVS will not retaliate in any way against you—and is forbidden by law to retaliate in any way against you—for either participating or not participating in this Settlement.*

8. *How Do I Opt Out or Exclude Myself from the Class Action Settlement?*

If you do not want to take part in the Class Action Settlement, then you must sign and mail a written exclusion request to the Settlement Administrator, **XXXXXXXXXXXX**. The request must (1) contain your name, address, telephone number, the last four digits of your Social Security number, and your signature, (2) should state words to the effect of: “I WISH TO BE EXCLUDED FROM THE CVS CLASS ACTION SETTLEMENT. I UNDERSTAND IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”, (3) be returned by mail to the Settlement Administrator, and (4) be postmarked on or before **[45 days after notice packet is mailed]**.

The entry of final judgment, following final approval, will bind all Class Members who do not opt out.

9. *How Do I Object to the Class Action Settlement?*

If you are a Class Member who does not opt out, then you may object by writing to the Settlement Administrator on or before **[45 days after notice packet is mailed]**. The objection must include (a) your full name, address, telephone number, dates of employment with CVS, (b) a written statement of the reasons for the objection, (c) if you are represented by an attorney, the name and address of your attorney. Class Members who fail to file and serve timely objections run the risk of having waived their right to object (whether through an appeal or otherwise), unless otherwise ordered by the Court, although Class Members may appear at the Final Approval Hearing and object even if they have not submitted a written objection.

If the Court rejects the objection, then the objector will receive a Class Action Settlement payment and will be bound by the terms of the Class Action Settlement and Released Class Claims by Participating Class Members as defined in this Notice and in the Settlement.

10. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed Settlement is approved by the Court, then a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will release CVS and the other Released Parties from all claims that were or could have been asserted in this Lawsuit or that were based on or arose out of the facts alleged in this Lawsuit, including, without limitation, claims any and all claims, demands, rights, liabilities, and causes of action that have been or could have been asserted in the instant Action based on the allegations in the First Amended Complaint for the duration of the Class Period, including but not limited to, claims for (1) Failure to Pay Sick Leave, (2) Failure to Provide Accurate Wage Statements; (3) Failure to Timely Pay Final Wages; and (4) Unfair

Competition. Even if you opt out, you will release claims for civil penalties under Labor Code §§ 2698, et seq. for the violations above. “Released Parties” means CVS Pharmacy, Inc., CVS Longs Drug Stores California, LLC, and CVS Health Corporation and their affiliates, divisions, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, managers, supervisors, employees, attorneys, agents, shareholders and/or successors, assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof.

Entry of judgment after the Court grants final approval of the Settlement will preclude actions by you or those acting on your behalf for any of the claims identified above against CVS or the Released Parties from September 17, 2019 through July 24, 2022. Entry of judgment will also preclude PAGA civil-penalty actions for alleged violations of any Labor Code section mentioned above from September 17, 2019 through July 24, 2022.

11. What are the Main Terms of the Settlement?

CVS will pay \$745,687.50 in a Gross Settlement Amount. Of that amount, \$30,000 will be allocated to PAGA, and 75% of that payment will go to the California Labor and Workforce Development Agency and 25% will go to PAGA Employees based on the number of pay periods during the PAGA period. From the \$715,687.50 remaining, the following shall be deducted: (1) Class Representative Payment to Plaintiff in an amount up to \$10,000, for prosecuting this case and undertaking risks for the payment of CVS’ costs in the event this case had been lost, (2) settlement administration costs in an amount estimated not to exceed \$60,000, (3) payment of attorneys’ fees to Class Counsel in an amount not to exceed \$248,562.50 (one-third of the Gross Settlement Amount), plus reasonable litigation costs, not to exceed \$20,000. All these deductions are subject to court approval. What remains is the Net Settlement Amount to be distributed to Settlement Class Members. The Settlement Administrator will determine their payments based on the number of pay periods each received sick pay and additional compensation, and the regular rate of their sick pay was not adjusted.

Tax consequences. The overall Net Settlement Amount will be allocated (a) 10% as wages, (b) 45% as penalties, and (c) 45% as interest for Class Settlement Payments. All PAGA Employee Payments will be allocated entirely to penalties. You will receive a Form W-2 for any wages, and Form-1099 for the other amounts.

12. How Much Can I Expect to Receive from this Settlement?

Your payment as a Class Member, which you will receive if you do not opt out, will reflect the number of pay periods in which you took paid sick leave during the period September 17, 2019 through July 24, 2022. Based on your eligible pay periods—**XXX**—your preliminary estimated Class Settlement Payment will be approximately **\$XXXXXX**.

If you are a PAGA Employee, you will receive a payment for your portion of the PAGA settlement whether or not you opt out of the class. Your payment as a PAGA Employee will be based on the number of pay periods in which you took paid sick leave during the period September 17, 2019 through July 24, 2022.

13. What if I had more Pay Periods Where I Took Sick Leave Than Reported in This Notice?

You can dispute the number of pay periods in which sick leave was taken by mailing the Settlement Administrator at **[INSERT ADDRESS]** by **[45 days from mailing]** and providing credible evidence. The Settlement Administrator will use CVS’s records and information you provide to resolve any disputes. The Settlement Administrator’s determination will be final and binding, subject to Court review and approval.

14. How Will the Class Representative and Class Counsel be Paid?

The attorneys who represent the Class Representative and the rest of the Class will be paid from the Gross Settlement Fund. Subject to Court approval, Class Counsel may be paid an amount not to exceed one-third of the Gross Settlement Fund (\$248,562.50) in fees plus litigation costs actually incurred, supported by adequate documentation.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the *Marden v. CVS Pharmacy* Class Action Settlement.

This Notice does not contain all the proposed terms of settlement or all details of court proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Placer County Superior Court at the address given above, or you may ask for a free copy from Class Counsel. Materials also appear on the Settlement Administrator's website: xxxx.com.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT