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and all other similarly-situated and aggrieved employees

Filed - 11/17/2023

Electronically filed by Superior Court of California
County of Placer on 11/17/2023
Jake Chatters, Clerk of the Court
By C. Waggoner Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

DANIEL MARDEN, on behalf of himself
and all other similarly-situated and
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

CLASS AND REPRESENTATIVE ACTION

[PROPOSED] ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT

Hearing: October 5, 2023
Time: 8:30 a.m.
Dept: 3
Judge: Hon. Michael Jones

Complaint filed: December 4, 2020
Trial date: Not set

1 On October 5, 2023 in Department 3 of the above-captioned court located at 101 Maple
2 Street, Auburn, California 95603, Plaintiff’s Motion for Order Granting Final Approval of
3 Class Action Settlement and Entering Judgment (“Motion”) pursuant to California Rule of
4 Court 3.769, the Order Granting Preliminary Approval of Class Action Settlement
5 (“Preliminary Approval Order”), and the Class and PAGA Settlement Agreement and Release
6 (“Agreement”), filed with this Court on April 6, 2023, came on for hearing.

7 Having received and considered the Agreement, the supporting papers, evidence and
8 argument received by the Court with the Motion for Preliminary Approval of Class Action
9 Settlement, and evidence and argument received by the Court with the Motion for Order
10 Granting Final Approval of Class Action Settlement, the Court grants final approval of the
11 Settlement and ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

12 1. Pursuant to the Agreement and Preliminary Approval Order, Notice of Class and
13 Representative Action Settlement (“Class Notice”) was sent to each Class Member by
14 first-class United States mail, informing the Class of the Settlement terms, right to receive a
15 Settlement Payment without taking any action, comment on or object to the Settlement, and
16 appear in person or by counsel and be heard at the final approval hearing. Adequate periods of
17 time were provided for each of these procedures.

18 2. No Settlement Class Member filed a written objection to the proposed
19 Settlement or stated an intention to appear at the final approval hearing.

20 3. Fourteen (14) Class Members requested to be excluded from the Settlement:
21 Melissa Burckhartt, Rita Delgado, Aida Demerjian, Jan Fairman, Brittany Francisco, Manuel
22 Fumero, Mireya Garcia, Mohammed Khalid, Elizabeth Malinowski, Majid Mostofitehrani,
23 Nejat Nakyanzi, Marie Oefinger, Dorothy Silverberg, and Caroline Sun.

24 4. The Court finds and determines this notice procedure afforded adequate
25 protections to the Class and provides the basis for the Court to make an informed decision
26 regarding approval of the Settlement based on the responses of the Class. The Court finds and
27 determines the notice provided in this case was the best notice practicable, which satisfies the
28 requirements of law and due process.

1 5. For purposes of Settlement approval only, the Court finds: (a) the proposed
2 Class is ascertainable and so numerous joinder of all members of the Class is impracticable;
3 (b) there are questions of law or fact common to the proposed Class, and a well-defined
4 community of interest among members of the proposed Class with respect to the subject matter
5 of the class action; (c) the claims of the Class Representative are typical of the claims of the
6 members of the proposed Class; (d) the Class Representative has and will fairly and adequately
7 protect the interests of the Members of the Class; (e) a class action is superior to other available
8 methods for an efficient adjudication of this controversy in the context of settlement; and
9 (f) counsel of record for the Plaintiff/Class Representative are qualified to serve as counsel for
10 him as well as in his representative capacity and for the Class.

11 6. The Court confirms certification, for settlement purposes only, a Class defined
12 as: All current and former non-exempt employees of Defendants [CVS Pharmacy, Inc. and Longs
13 Drug Stores California, LLC] who worked in California at any time from September 17, 2019 to
14 July 24, 2022 who received sick pay and additional compensation in the same pay period, and the
15 regular rate of their sick pay was not adjusted.

16 7. For settlement purposes, PAGA Employees are defined as: all current and
17 former non-exempt employees of Defendants who worked in a Covered Position in California
18 at any time during the PAGA Period [September 17, 2019 to July 24, 2022] who received sick
19 pay and additional compensation in the same pay period, and the regular rate of their sick pay
20 was not adjusted.

21 8. The Court finds the Parties conducted extensive investigation, research, and
22 formal and informal discovery, and that their attorneys were able to reasonably evaluate their
23 respective positions. The Court also finds that settlement will enable the Parties to avoid
24 additional and potentially substantial litigation costs, as well as delay and risks if litigation
25 continued. The Court finds and determines the terms set forth in the Agreement are fair,
26 reasonable, and adequate and, having found the Settlement was reached as a result of informed
27 and non-collusive arms'-length negotiations facilitated by a neutral and experienced mediator,
28 directs the Parties to effectuate the Settlement according to the Agreement's terms.

1 9. The Court finds and determines the terms of the Settlement are fair, reasonable
2 and adequate to the Class and each Class Member, the Settlement is ordered finally approved,
3 and all terms of the Agreement should be and are ordered to be consummated.

4 10. The Court finds and determines the Settlement Payments to be paid to
5 Participating Class Members and PAGA Employees as provided for by the Settlement are fair
6 and reasonable. The Court grants final approval to and orders the payment of those amounts to
7 the Participating Class Members and PAGA Employees in accordance with the Agreement.

8 11. The Court finds and determines fees and expenses to administer the Settlement
9 incurred by Atticus Administration, LLC, of \$58,983 are fair and reasonable. The Court grants
10 final approval to and orders payment of that amount in accordance with the Agreement.

11 12. The Court finds and determines the Class Representative Service Payment of
12 \$10,000 to Plaintiff Daniel Marden is fair and reasonable, and orders the Administrator to make
13 this payment in accordance with the terms of the Agreement.

14 13. The Court finds and determines payment to the California Labor and Workforce
15 Development Agency of \$22,500 as its share of the Settlement of civil penalties under the
16 Private Attorneys General Act is fair, reasonable, and appropriate. The Court grants final
17 approval to and orders that amount be paid in accordance with the Agreement.

18 14. The Court awards Class Counsel attorneys' fees of \$248,562.50 and litigation
19 costs of \$13,540. The Court finds such amounts to be fair and reasonable. The Court orders the
20 Administrator to make these payments in accordance with the Agreement.

21 15. Without affecting the finality of this Order or the entry of judgment in any way,
22 the Court retains jurisdiction of all matters relating to the interpretation, administration,
23 implementation, effectuation, and enforcement of this Order and the Agreement.

24 16. The Settlement is not an admission of liability by Defendants CVS Pharmacy,
25 Inc. or Longs Drug Stores California, LLC, or any Released Party, nor is this Order or the entry
26 of judgment a finding any claim in the Actions against Defendants, or any Release Party, is
27 valid. Neither this Order or the entry of judgment, nor the Settlement, may be construed as, or
28 used as an admission of any fault, wrongdoing or liability by Defendants, or any Released

1 Party. Entering or carrying out the Settlement, and related negotiations, shall not be offered in
2 evidence against Defendants, or any Released Party, in any action or proceeding in any court,
3 administrative agency or other tribunal for any purpose other than to enforce this Order or
4 Judgment of Settlement. Notwithstanding these restrictions, any Released Party may file in the
5 Action or any proceeding, this Order or Judgment, the Settlement, or any papers on file in the
6 Action, to support a defense of res judicata, collateral estoppel, release, or other theory of claim
7 or issue preclusion or similar defense.

8 17. Plaintiff and Participating Class Members fully release CVS Pharmacy, Inc.,
9 CVS Longs Drug Stores California, LLC, and CVS Health Corporation and their affiliates,
10 divisions, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or
11 their present and former officers, partners, directors, managers, supervisors, employees,
12 attorneys, agents, shareholders and/or successors, assigns, trustees, heirs, administrators,
13 executors, representatives and/or principals thereof (“Released Parties”) from any and all
14 claims, demands, rights, liabilities, and causes of action that have been or could have been
15 asserted in the instant Action based on the allegations in the First Amended Complaint for the
16 duration of the Class Period, including but not limited to, claims for (1) Failure to Pay Sick
17 Leave, (2) Failure to Provide Accurate Wage Statements; (3) Failure to Timely Pay Final
18 Wages; and (4) Unfair Competition. In addition, each Participating Class Member who cashes
19 their settlement payment shall be deemed to have released all claims set forth above under the
20 California Labor Code. The time period governing the Released Class Claims shall be the same
21 as the Class Period (“Released Class Claims”).

22 18. Plaintiff, on behalf of himself, the State of California, and all PAGA Employees,
23 relinquishes any and all claims for civil penalties under the Private Attorneys General Act,
24 Labor Code § 2698 et seq., that have been or could have been asserted by Plaintiff against the
25 Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts
26 stated in Plaintiff’s First Amended Complaint, including all PAGA claims seeking civil
27 penalties for (1) Failure to Pay Sick Leave; (2) Failure to Provide Accurate Wage Statements;
28 and (3) Failure to Timely Pay Final Wages, and based on or arising from alleged violations of

1 the California Labor Code, including Sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226,
2 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, 2699, et seq.,
3 and of the California Wage Orders. The time period governing the PAGA Released Claims
4 shall be any time during the PAGA Period. The PAGA Released Claims do not release any
5 potential claims for wages or statutory penalties (“Released PAGA Claims”).

6 19. Nothing in this Order shall preclude any action to enforce the Parties’
7 obligations under the Agreement or this Order, including Defendants’ obligation to make
8 payments to Participating Class Members and PAGA Employees set forth in the Agreement.

9 20. The Court enters final judgment in accordance with the terms of the Agreement,
10 the Court’s Preliminary Approval Order, and this Order.

11 21. The Judgment once entered shall constitute a judgment for purposes of
12 California Rules of Court, Rule 3.769(h). In accordance with, and for the reasons stated in this
13 Order, judgment shall be entered within the meaning and for purposes of Code of Civil
14 Procedure §§ 577 and 904.1(a), and the Plaintiff and Participating Class Members shall take
15 nothing from any Released Party except as expressly set forth in the Agreement.

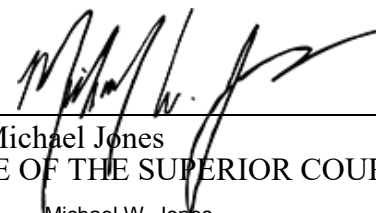
16 22. The Parties will comply with Cal. Rules of Court Rule 3.771(b), by giving
17 notice to the Class Members with the posting of the Final Approval Order and this Judgment on
18 the Settlement Administrator’s website, www.CVssickpaysettlement.com.

19 23. Pursuant to Labor Code section 2699(1)(3), Plaintiff shall submit a copy of this
20 Order and Judgment to the California Labor and Workforce Development Agency within 10
21 days after entry of the Judgment.

22 24. The Parties will bear their own costs and attorneys’ fees except as otherwise
23 provided by this Court’s Order awarding Class Counsels’ attorneys’ fees and litigation costs.

24 IT IS SO ORDERED.

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27 Date: PL[ç^ { à^i/Ài ÉGEGH

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Hon. Michael Jones
JUDGE OF THE SUPERIOR COURT

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Michael W. Jones