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FILED
Superior Court of California
County of Los Angeles

FEB 28 2017

Sherri B. Carter, Executive Officer/Clerk
By *Anthony Ortiz* Deputy

REC'D
FEB 01 2017
FILING WINDOW

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

KIMBERLY MURPHY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CVS CAREMARK CORPORATION, CVS
PHARMACY INC., GARFIELD BEACH
CVS, LLC, LONGS DRUG STORES
CALIFORNIA, LLC, and DOES 1-10

Defendant.

Case No. BC 464785

Assigned to: Hon. Richard E. Rico

**[AMENDED PROPOSED] ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
AWARDING ATTORNEY'S FEES AND
COSTS**

DATE: February 14, 2017
TIME: 8:30 a.m.
DEPT.: 17

Complaint filed: July 5, 2011

03/08/2017

1 The Motion by Plaintiffs Kimberly Murphy, Elizabeth Ortiz and Gail Miller ("Plaintiffs")
2 for Final Approval of Class Action and Award of Attorney's Fees and Costs ("Motion") came on
3 for hearing on February 14, 2017. The Court, having considered whether to order final approval of
4 the settlement of the above-captioned action pursuant to the Class Action Settlement Agreement
5 entered by the parties on or about September 2, 2016 ("Settlement"),¹ having read and considered
6 all of the papers and argument of the parties and their counsel, having granted preliminary
7 approval on October 3, 2016, having directed that notice be given to all Class Members of
8 preliminary approval of the Settlement and the final approval hearing and the right to be excluded
9 from the Settlement, and having received three (3) objections, and good cause appearing,

10 IT IS HEREBY ORDERED AS FOLLOWS:

11 1. All defined terms contained herein shall have the same meaning as set forth in the
12 Settlement executed by the Parties and filed with this Court.

13 2. The Court finds that certification of the following Class is appropriate for
14 settlement purposes:

15 "All nonexempt employees who worked in CVS stores in California from July 5, 2007,
16 through October 3, 2016, and who do not submit valid and timely requests for exclusion
17 pursuant to the terms of this Settlement."

18 3. The Court hereby finds that the Notice of Settlement, as mailed to all Class
19 Members on November 22, 2016, fairly and adequately described the terms of the proposed
20 Settlement, the manner in which Class Members could object to or participate in the Settlement,
21 and the manner in which Class Members could opt out of the Settlement Class; was the best notice
22 practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and
23 complied fully with Rules 3.766 and 3.769 of the California Rules of Court, due process, and all
24 other applicable laws.

25 4. The Court further finds that a full and fair opportunity has been afforded to Class
26 Members to participate in the proceedings convened to determine whether the proposed Settlement

27 ¹ A true and correct copy of the Class Action Settlement Agreement is attached as Exhibit 1 to the
28 Declaration of Robert D. Newman in support of the Motion for Final Approval of Class Action
Settlement and Award of Attorney's Fees and Costs, filed on January 31, 2017.

03/06/2017

1 should be given final approval.

2 5. The Settlement is all-cash with no reversion and any unclaimed amounts will be
3 allocated pro-rata amongst class members who file a valid claim.

4 6. As set forth in the Settlement, in the event that any of claimants fail to cash their
5 checks after 180 days from issuance, the Claims Administrator will make all reasonable efforts to
6 locate the individual claimant. In the event the Claims Administrator is unsuccessful after 180
7 days in locating the individual claimant, the amount owed to that claimant shall be donated to the
8 California State Bar's Justice Gap Fund.

9 7. The Court hereby finds that the Settlement, including the Settlement Amount, is
10 fair, reasonable, and adequate as to the Class, Plaintiffs and Defendants CVS Caremark
11 Corporation, CVS Pharmacy Inc., Garfield Beach CVS LLC, and Longs Drug Stores California,
12 LLC ("Defendants") and is the product of good faith, arms-length negotiations between the Parties,
13 and further, that the Settlement is consistent with public policy, and fully complies with all
14 applicable provisions of law. The Court makes this finding based on a weighing of the strength of
15 Plaintiffs' claims and Defendants' defenses with the risk, expense, complexity, and duration of
16 further litigation.

17 8. The Court also finds that the Settlement is the result of non-collusive arms-length
18 negotiations between experienced counsel representing the interests of the Class and Defendants,
19 after thorough factual and legal investigation. In granting final approval of the Settlement, the
20 Court considered the nature of the claims, the amounts paid in settlement, the allocation of
21 settlement proceeds among the Class Members, and the fact that the Settlement represents a
22 compromise of the Parties' respective positions rather than the result of a finding of liability after
23 appeal. Additionally, the Court finds that the terms of the Settlement have no obvious deficiencies
24 and do not improperly grant preferential treatment to any individual Class Member.

25 9. The Court further finds that the response of the Class to the Settlement supports
26 final approval of the Settlement. Specifically, as of January 31, 2017, while 20,693 Class
27 Members (over 32%) have submitted claims for payment, only 54 of the 64,587 putative Class
28 Members have requested exclusion (0.084%) and another 3 Class Members have filed objections

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1 (0.005%). Accordingly, the Court finds that the terms of the Settlement are fair, reasonable, and
2 adequate to the Class and to each Class Member. *See, e.g., Dunk v. Ford Motor Co.*, 48 Cal. App.
3 4th 1794, 1801(1996); *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th
4 399, 407 (2010).

5 10. The Court also hereby finds that Plaintiffs have satisfied the standards and
6 applicable requirements for final approval of this class action settlement under Rule 3.769 of the
7 California Rules of Court, for the reasons stated in the Motion for Final Approval.

8 11. Each of the three Objections to the Settlement is denied.

9 12. The Court orders the Parties to implement, and comply with, the terms of the
10 Settlement.

11 13. The Court approves the Plan of Allocation of the \$12,750,000 ("Settlement Fund")
12 set forth in the Settlement Agreement, including payments of: \$50,000 to the California Labor and
13 Workforce Development Agency; \$3,825,000.00 in reasonable attorneys' fees and \$200,000 in
14 costs to Class Counsel; enhancement awards of \$5,000 for each Plaintiff, and up to \$250,000 to
15 CAC Services Group, LLC,, for the costs of administration. The Court finds that it is fair,
16 reasonable and adequate to the Class.

17 14. The Court approves the settlement of the Released Claims as defined in the
18 Settlement. As of the Effective Date of the Settlement, as defined in the Settlement, all of the
19 Released Claims of each Class Member who did not timely file a Request for Exclusion, as well as
20 the Class Representatives' Released Claims, are and shall be deemed to be conclusively released as
21 against the Defendants. Except as to such rights or claims that may be created by the Settlement,
22 all Class Members as of the date of the Judgment and Order of Final Approval who did not timely
23 opt out are hereby forever barred and enjoined from commencing or prosecuting any of the
24 Released Claims, either directly, representatively or in any other capacity, against Defendants.

25 15. Class Counsel - Robert D. Newman Attorney at Law, Hadsell Stormer & Renick,
26 LLP, and Aiman-Smith & Marcy - shall continue to serve as Class Counsel and shall oversee and
27 perform the duties necessary to effectuate the Settlement, including the submission to the Court of
28

1 the Administrator's Final Report, as well as all papers necessary to allow this court to evaluate the
2 claims process and order distribution of the settlement fund to class members.

3 16. The amount of \$50,000 shall be paid to the California Labor and Workforce
4 Development Agency ("LWDA") as an allocation of 75% of the penalties pursuant to the Private
5 Attorneys' General Act ("PAGA"). The Court finds this payment to the LWDA to be reasonable
6 and adequate after full consideration of the information provided to the Court regarding Plaintiffs'
7 PAGA claim.

8 17. An award of attorney's fees in the amount of \$3,825,000 shall be paid from the
9 Settlement Fund according to the terms of the Settlement. The fee sought represents 30% of the
10 Settlement Fund. Applying the percentage of recovery analysis, the Court determines that an
11 award of fees of less than one-third of the total settlement consideration is consistent with fee
12 awards in similar cases, consistent with the market for contingent litigation of this nature, and is
13 reasonable and appropriate under the circumstances of this case.

14 18. The award of fees is also based on the lodestar method for determining a
15 reasonable award of attorney's fees. Plaintiffs' Counsel's total lodestar is \$4,479,945.00. The
16 Court finds that the lodestar that Plaintiff's Counsel has accumulated was reasonable and
17 consistent with the litigation in this case. The Court further finds that Plaintiff's Counsel's hourly
18 rates were reasonable for the work they performed.

19 19. In setting an award of attorney's fees, costs and expenses, the Court has considered
20 the following factors: (1) the time and labor required; (2) preclusion of other employment; (3) the
21 contingent nature of the case; (4) the experience, reputation, and ability of Plaintiffs' Counsel and
22 the skill they displayed in the litigation; (5) the results achieved; and (6) the reaction of plaintiffs
23 and the class members. *See, e.g. Serrano v. Priest*, 20 Cal.3d 25, 49 (1977).

24 20. The attorney's fee award requested is \$3,825,000.00 (30% of the Settlement Fund),
25 which is less than the aggregate fees reasonably incurred by Class Counsel in this litigation of
26 \$4,479,945.00. The Court finds that the fee award requested is fair, reasonable, and proper based
27 on a lodestar cross-check.

28 21. Plaintiff's Counsel is further awarded reimbursement of reasonable costs in the

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1 amount of \$200,000, which shall be paid from the Settlement Fund according to the terms of the
2 Settlement. Plaintiffs' Counsel incurred a total of \$205,514.09 in unreimbursed expenses in
3 prosecuting this case, all of which were reasonable and appropriate given the circumstances of this
4 action.

5 22. The Representative Plaintiffs, Kimberly Murphy, Elizabeth Ortiz and Gail Miller,
6 are each awarded an enhancement award in the amount of \$5,000. This payment shall be made
7 from the Settlement Fund according to the terms of the Settlement. In approving this amount, the
8 Court considered the risk and expense Plaintiffs have incurred in conferring a benefit on the Class.

9 23. Plaintiffs' Counsel may set aside up to \$250,000 as payment to CAC Services
10 Group, LLC, for the costs of administration.

11 24. Defendants shall have no further liability for costs, expenses, interest, attorneys'
12 fees, or for any other charge, expense, or liability, in connection with the above-captioned action
13 except as provided in the Settlement.

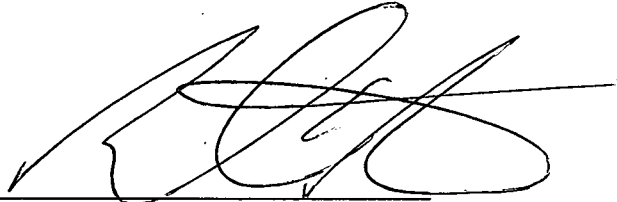
14 25. Plaintiffs shall file a Final Accounting Distribution Report with the Court within 60
15 days of this Order, which includes the amounts of distribution to each class member.

16 26. This Court shall enter final judgment in the above-captioned action on the terms set
17 forth in the Settlement and in accordance with this Order of Final Approval.

18 27. Without affecting the finality of this Order of Final Approval, the Court retains
19 exclusive and continuing jurisdiction over this action, Plaintiffs, all Class Members and
20 Defendants for purposes of supervising, implementing, interpreting and enforcing this Order of
21 Final Approval and the Settlement. Nothing in this Order of Final Approval precludes any action
22 to enforce the Parties' obligations under the Settlement or under this Order.

23
24 **IT IS SO ORDERED.**

25
26
27 DATED: 2/28/17


Honorable Richard E. Rico
Judge of the Los Angeles Superior Court

03/08/2017 10:17:24

1 **PROOF OF SERVICE**

2 I am employed in the county of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action; my business address is 128 N. Fair Oaks Avenue, Pasadena,
4 California 91103.

5 On February 1, 2017, I served the foregoing document described as: ~~AMENDED~~
6 **PROPOSED** ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT
7 AND AWARDING ATTORNEY'S FEES AND COSTS on the interested parties in this cause by
8 placing true and correct copies thereof in envelopes addressed as follows:

9 Douglas R. Hart
10 Jennifer B. Zargarof
11 David R. Carpenter
12 Heidi Larson Howell
13 SIDLEY AUSTIN LLP
14 555 West Fifth Street, Suite 4000
15 Los Angeles, California 90013
16 dhart@sidley.com
17 jzargarof@sidley.com
18 drcarpenter@sidley.com
19 hhowell@sidley.com

Attorneys for Defendants
CVS Caremark Corporation, CVS Pharmacy, Inc.,
Garfield Beach CVS LLC, and Longs Drug Stores
California, LLC

20 **BY PERSONAL SERVICE**

21 I delivered such envelope by hand to the addressee(s) listed above.

22 **XX** **BY E-MAIL**

23 **XX** I caused the foregoing document(s) to be transmitted to: dhart@sidley.com;
24 jzargarof@sidley.com; drcarpenter@sidley.com; hhowell@sidley.com

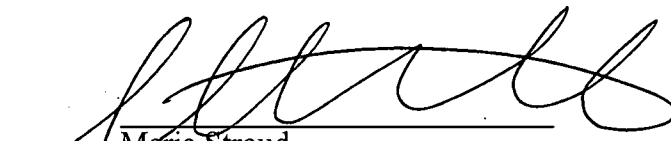
25 **BY MAIL**

26 I deposited such envelope in the mail at Pasadena, California. The envelope was
27 mailed with postage thereon fully prepaid.

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

Executed on February 1, 2017 at Pasadena, California.

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


Maria Stroud
Declarant