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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 16 2015

Sherri R. Carter, Executive Officer/Clerk
By: B. Burns Tucker, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TIMOTHY J. CONNELL, an Individual,
Individually and on behalf of, all others
similarly situated and the general public,
PLAINTIFF,
v.
CVS PHARMACY, INC., *et al.*,
Defendants.

KLARA PAKSY, an Individual, Individually
and on behalf of, all others similarly situated
and the general public,
PLAINTIFFS,
v.
CVS PHARMACY, INC., *et al.*,
Defendants.

DALE BYSTROM, an Individual,
Individually and on behalf of, all others
similarly situated and the general public,
PLAINTIFFS,
v.
CVS PHARMACY, INC., *et al.*,
Defendants.

CASE NO. BC523172
CASE NO. BC523491
CASE NO. BC525991
[CLASS ACTIONS]
Hon. Elihu M. Berle
Dept. 323

**[PROPOSED] ORDER FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
SETTING OF A FINAL APPROVAL
HEARING, AND APPROVAL OF
NOTICE TO THE CLASS**

RECEIVED
JUL 13 2015
BY: *[Signature]*

1 The Court, having fully reviewed the Class Representatives' unopposed Motion for
2 Certification of Settlement Class and Preliminary Approval of Class Action Settlement, the
3 supporting Points and Authorities, the Declaration of V. James DeSimone ("DeSimone
4 Declaration") in support thereof, the Request for Exclusion Form attached as Exhibit 4 to the
5 DeSimone Declaration, the Supplemental Declaration of V. James DeSimone ("Supplemental
6 DeSimone Declaration"), as well as the fully-executed CVS 7 Day Cases Settlement Agreement
7 ("Settlement Agreement"), the Addendum to the Settlement Agreement, revised proposed Notice
8 of Class Action Settlement, and revised Claim Form attached as Exhibits 1-4 to the Supplemental
9 DeSimone Declaration, and the amended complaints that have been lodged with the Court; and in
10 recognition of the Court's duty to make a preliminary determination as to the reasonableness of
11 any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure
12 proper notice is provided to Putative Class Members in accordance with due process requirements;
13 and to conduct a Final Approval hearing as to the good faith, fairness, adequacy and
14 reasonableness of any proposed settlement, HEREBY MAKES THE FOLLOWING
15 DETERMINATIONS AND ORDERS:

16
17 1. The provisions of the Settlement Agreement are hereby provisionally approved,
18 subject to further consideration thereof at the Fairness Approval hearing set forth below. The
19 Court finds that this settlement is sufficiently within the range of reasonableness that notice of the
20 proposed settlement should be given as provided for in this Order.

21
22 2. The Court finds, on a preliminary basis, that the Settlement Agreement appears to
23 be within the range of reasonableness of a settlement which could ultimately be given final
24 approval by this Court; the Court notes that Defendants CVS Pharmacy, Inc.; CVS RX Services,
25 Inc.; and Garfield Beach CVS, LLC ("Defendants") have agreed to pay the entire Settlement
26 Amount of \$7,461,600.00, inclusive of the employer's share of payroll taxes, to the Putative Class
27 Members, Class Representatives, Class Counsel, the Settlement Administrator, and the State of
28

1 California Labor Workforce and Development Agency, in full satisfaction of the claims as more
2 specifically described in the Settlement Agreement;

3 It further appears to the Court, on a preliminary basis, that the settlement is fair and
4 reasonable to Putative Class Members when balanced against the probable outcome of further
5 litigation, liability and damages issues, and potential appeals of rulings. It further appears that
6 significant formal and informal discovery, investigation, research, and litigation has been
7 conducted such that counsel for the Parties at this time are able to reasonably evaluate their
8 respective positions. It further appears that settlement at this time will avoid substantial costs,
9 delay and risks that would be presented by the further prosecution of the litigation. It also appears
10 that the proposed Settlement has been reached as the result of intensive, informed and non-
11 collusive negotiations between the Parties;

12
13 3. The Court finds for the purposes of settlement only that: (i) the number of
14 individuals in the Settlement Class is so numerous that joinder would be impractical; (ii) there is a
15 commonality of interests between the Class Representatives and the members of the Settlement
16 Class; (iii) there are questions of law and fact that are common to the Settlement Class, and the
17 common questions related to the settlement predominate over individual questions; (iv) the Class
18 Representatives' claims are typical of the claims of absent members of the Settlement Class; and
19 (v) the Class Representatives will fairly and adequately represent the interests of the absent
20 members of the Settlement Class.

21
22 ACCORDINGLY, GOOD CAUSE APPEARING, THE MOTION FOR ORDER OF
23 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS HEREBY GRANTED.

24
25 4. The mailing to the present and last known addresses of the Putative Class Members
26 constitutes an effective method of notifying Putative Class Members of their rights with respect to
27 the Settlement; ACCORDINGLY, IT IS HEREBY ORDERED as follows:

1 (a) By July 26, 2015, Defendants shall forward to the appointed Settlement
2 Administrator, Kurtzman Carson Consultants, LLC ("KCC") and to Class Counsel, a database (in
3 an electronic spreadsheet format) of all Putative Class Members, including full names, last known
4 addresses, telephone numbers, hire and termination dates, and social security numbers, as well as
5 raw punch data and pay data ("Class Information"), during the Class Period (October 2, 4, and 29,
6 2009, respectively, for *Connell, Paksy, and Bystrom*, through April 30, 2015); and

7 (b) By August 9, 2015, KCC shall mail to each member of the Settlement Class, by
8 first class, postage pre-paid, the Notice of Class Action Settlement, Claim Form, and Request for
9 Exclusion Form. All mailings shall be made to the present and/or last known mailing address of
10 the Putative Class Members based on Defendants' records, as well as addresses that may be
11 located by the Settlement Administrator, who will conduct standard address searches in cases of
12 returned mail. The Court finds that the mailing of notices to Putative Class Members as set forth
13 in this paragraph is the best means practicable by which to reach Putative Class Members and is
14 reasonable and adequate pursuant to all constitutional and statutory requirements, including all due
15 process requirements;

16
17 5. IT IS FURTHER ORDERED:

18 (a) Claim Forms must be mailed to the Settlement Administrator, postmarked
19 on or before October 8, 2015, excepting Putative Class Members who had Notice Packets
20 re-mailed, who shall have until October 23, 2015 to mail a timely Claim Form;

21 (b) Requests for Exclusion must be mailed to the Settlement Administrator,
22 postmarked on or before ^{October}~~September~~ 8, 2015, excepting Putative Class Members who had
23 Notice Packets re-mailed, who shall have until ^{October}~~September~~ 23, 2015 to mail a timely
24 Request for Exclusion;

25 (c) Objections must be mailed to the Settlement Administrator as described in
26 the Notice of Class Action Settlement, and must be postmarked on or before ^{October}~~September~~ 8,
27 2015, excepting Putative Class Members who had Notice Packets re-mailed, who shall
28 have until ^{October}~~September~~ 23, 2015 to mail a timely Objection;

1
2 6. IT IS FURTHER ORDERED that KCC shall submit a report on the result of the
3 claims process to Class Counsel, which shall be filed with the Court as soon as practicable but in
4 any event no later than ~~October 30, 2015~~. *November 13, 2015* *EMB*

5
6 7. IT IS FURTHER ORDERED that, in the event that any Putative Class Member
7 submits an objection to the proposed settlement, Plaintiffs will respond to any such objections by
8 ~~October 26, 2015~~; *November 13, 2015* *EMB*

9
10 8. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before
11 the undersigned at 10:00 a.m., [~~or _____ a.m./p.m.~~ ²³] on November ~~2~~, 2015, at Department 323 of *EMB*
12 the above-entitled court located at 600 S. Commonwealth Ave., Los Angeles, California 90005 to
13 consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily
14 approved by this Order of Preliminary Approval, and to consider the application of Class Counsel
15 for an award of reasonable attorneys' fees, litigation expenses, Class Representative Service
16 Payments, and for costs of settlement administration incurred;

17
18 9. IT IS FURTHER ORDERED that all briefs in support of final approval of the
19 Settlement and for Award of Attorneys' Fees, Costs, and Class Representative Service Awards
20 shall be served and filed with the Court by ~~October 9, 2015~~, *September 21, 2015*, and that Plaintiffs may file a *EMB*
21 ~~supplemental briefs in support of final approval and fees, costs, and awards no later than October~~
22 ~~26, 2015~~;

23
24 10. IT IS FURTHER ORDERED that pending final determination of whether this
25 proposed Settlement should be granted final approval, no Putative Class Member, either directly or
26 representatively, or in any other capacity, shall commence or prosecute any action or proceeding
27 asserting any of the Putative Class Members' Released Claims, as defined in the Settlement
28 Agreement, against Defendants in any court or tribunal;

1 11. IT IS FURTHER ORDERED that any party to this case, including Putative Class
2 Members, may appear at the Final Approval Hearing in person or by counsel, and may be heard to
3 the extent allowed by the Court, in support of or in opposition to, the Court's determination of the
4 good faith, fairness, reasonableness and adequacy of the proposed Settlement, the requested
5 attorneys' fees and litigation expenses, and any Order of Final Approval and Judgment regarding
6 such Settlement, fees and expenses; provided, however, that no person, except Class Counsel and
7 counsel for Defendants, shall be heard in opposition to such matters unless such person has
8 complied with the conditions set forth in the Notice of Class Action Settlement;

9
10 12. IT IS FURTHER ORDERED that the Court grants preliminary approval of V.
11 James DeSimone, Michael D. Seplow, and Aidan C. McGlaze of Schonbrun DeSimone Seplow
12 Harris & Hoffman LLP; Thomas W. Falvey, Michael H. Boyamian and Armand Kizirian of the
13 Law Offices of Thomas W. Falvey; and Hirad D. Dadgostar and Alireza Alivandivafa as Class
14 Counsel;

15
16 13. IT IS FURTHER ORDERED that, in the event of the occurrence of the Effective
17 Date, as defined in the Settlement Agreement:

18
19 (a) All Putative Class Members who submitted a valid Claim Form, and their
20 successors, shall conclusively be deemed to have given full releases of any and all Released
21 Claims as defined in the Settlement Agreement against Defendants, their affiliated and related
22 companies and business concerns, their franchisors, their purchasers and/or successors, their
23 parents, members, subsidiaries, past and present, and each of them, as well as each of their
24 insurers, partners, trustees, directors, shareholders, officers, agents, attorneys, servants, and
25 employees, past and present, and each of them, including, but not limited to, any individual or
26 entity which could be jointly liable with Defendants;

1 (b) All Putative Class Members who submitted a valid Exclusion Form, and their
2 successors, shall not be bound by the terms of the Settlement;

3
4 (c) All Putative Class Members who fail to submit either a valid Claim Form or a valid
5 Exclusion Form, and their successors, shall conclusively be deemed to have given full releases of
6 any and all Released Claims as defined in the Settlement Agreement against Defendants, their
7 affiliated and related companies and business concerns, their franchisors, their purchasers and/or
8 successors, their parents, members, subsidiaries, past and present, and each of them, as well as
9 each of their insurers, partners, trustees, directors, shareholders, officers, agents, attorneys,
10 servants, and employees, past and present, and each of them, including, but not limited to, any
11 individual or entity which could be jointly liable with Defendants, except as to any and all claims
12 arising under the Fair Labor Standards Act (29 U.S.C. §§201, et seq.);

13
14 14. IT IS FURTHER ORDERED that if, for any reason, the Court does not execute and
15 file an Order of Final Approval, or if the Effective Date does not occur for any reason whatsoever,
16 the proposed Settlement Agreement and the proposed Settlement subject of this Order and all
17 evidence and proceedings had in connection therewith, shall be without prejudice to the status quo
18 ante rights of the parties to the litigation as more specifically set forth in the Settlement
19 Agreement.

20
21 15. IT IS FURTHER ORDERED that, pending further order of this Court, all
22 proceedings in this matter except those contemplated herein and in the Settlement Agreement are
23 stayed.

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25 16. IT IS FURTHER ORDERED that the amended complaints in each of the above-
26 captioned actions that have been lodged with the Court shall be deemed filed as of the date of this
27 order.

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The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time-to-time without further notice to the Putative Class Members.

IT IS SO ORDERED.

DATE: July 16, 2015

ELIHU M. BERLE

THE HONORABLE ELIHU M. BERLE
JUDGE OF THE SUPERIOR COURT OF
CALIFORNIA, COUNTY OF LOS ANGELES

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am a resident of the aforesaid county, State of California; I am over the age of 18 years
4 and not a party to the within action; my business address is 723 Ocean Front Walk, Venice,
California 90291.

5 On July 13 2015 I served the foregoing document described as:

6 **[PROPOSED] ORDER FOR PRELIMINARY APPROVAL OF CLASS ACTION**
7 **SETTLEMENT, SETTING OF A FINAL APPROVAL HEARING,**
8 **AND APPROVAL OF NOTICE TO THE CLASS**

on all interested parties in these actions addressed as follows:

9 Timothy J. Long
10 tjlong@orrick.com
11 Byron R. Lau
12 blau@orrick.com
13 ORRICK, HERRINGTON & SUTCLIFFE LLP
14 777 South Figueroa St., Suite 3200
15 Los Angeles, California 90017-5855

Michael D. Weil
mweil@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard St.
San Francisco, California 94105

16 X **[BY MAIL]** I caused such envelope to be deposited in the mail at Venice,
California. The envelope was mailed with postage thereof fully prepaid.

17 _____ **[FEDERAL EXPRESS]** I caused such envelope to be delivered via federal
express overnight from Venice, California.

18 _____ **[BY PERSONAL SERVICE]** I caused such envelope to be delivered by hand to
the addressee(s).

19 X **[E-MAIL]** I caused such document to be delivered by email to the email
addresses listed above.

20 _____ **[BY FAX]** I transmitted the above document to the above facsimile.

21 X **[STATE]** I declare under penalty of perjury under the laws of the State of
22 California that the foregoing is true and correct.

23 Executed on July 13, 2015, at Venice, California.

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