

1 TODD M. SCHNEIDER (State Bar #158253)
2 GUY B. WALLACE (State Bar #176151)
3 JOSHUA KONECKY (State Bar #182897)
4 ANDREW P. LEE (State Bar #245903)
5 SCHNEIDER WALLACE
6 COTTRELL BRAYTON KONECKY LLP
7 180 Montgomery Street, Suite 2000
8 San Francisco, CA 94104
9 Tel: (415) 421-7100
10 Fax: (415) 421-7105

11 THOMAS W. FALVEY (State Bar #65744)
12 LAW OFFICES OF THOMAS W. FALVEY
13 301 North Lake Avenue, Suite 800
14 Pasadena, CA 91101
15 Tel: (626) 795-0205
16 Fax: (626) 795-3096

17 Attorneys for Plaintiffs

18 SUPERIOR COURT OF CALIFORNIA
19 COUNTY OF LOS ANGELES

20 DAT CHAU and DALE HILDEBRAND,
21 individually, and on behalf of all others similarly
22 situated, and GABE S. TONG, individually;

23 Plaintiffs,

24 v.

25 CVS RX SERVICES, INC.; and
26 DOES 1 through 50, inclusive;

27 Defendants.

Case No.: BC349224

~~Proposed~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, REASONABLE
ATTORNEYS' FEES AND COSTS AND
SERVICE PAYMENTS TO THE CLASS
REPRESENTATIVES

Date: September 19, 2008
Time: 1:30 P.M.
Place: Dept. 307

The Honorable William F. Highberger

[COMPLEX CASE; CLASS ACTION]

Original
FILED
LOS ANGELES SUPERIOR COURT

SEP 24 2008

JOHN A. CLARKE, CLERK
Andrea H. Steward
BY ANDREA H. STEWARD, 2008

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SEP 23 2008
Dept. 307

28 [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, REASONABLE ATTORNEYS' FEES
AND COSTS AND SERVICE PAYMENTS TO THE CLASS REPRESENTATIVES
CHAU ET AL., V. CVS RX SERVICES, INC., ET AL., CASE NO. BC349224

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ORDER

This Court, having considered the Motion of Plaintiffs Dat Chau and Dale Hildebrand ("Plaintiffs") for Final Approval of Class Action Settlement and the papers submitted in support of the Motion, and having heard oral argument of the parties, and in recognition of the Court's duty to make a determination as to the reasonableness of any proposed class action settlement, and to conduct a hearing as to good faith, fairness, adequacy, and reasonableness of any proposed settlement, HEREBY ORDERS as follows:

I. Background

On March 17, 2006, Gabe Tong, on behalf of himself and all others similarly situated, filed this class action alleging various violations of the California Labor Code, including denial of meal and rest periods, failure to pay wages for all hours worked, failure to pay overtime wages, failure to provide itemized wage statements, waiting-time penalties, and violations of California Business & Professions Code §§ 17200, *et seq.* Specifically, Plaintiffs allege that these violations are the result of Defendant's failure to adequately staff its retail pharmacies. Plaintiffs allege that Defendant maintains a policy that its pharmacies must remain open continuously and that at least one pharmacist be on duty at all times, however, it only schedules one pharmacist per shift. As a result, Pharmacists are unable to take the meal and rest periods to which they are legally entitled, and are denied proper compensation for all hours worked. Defendant denies these allegations.

On January 22, 2008, this Court granted Plaintiffs Motion for Leave to Amend Complaint, permitting Plaintiffs to add Dat Chau and Dale Hildebrand as Representative Plaintiffs.

Over a nine-month period, the parties engaged in discovery and three separate mediation sessions. Notwithstanding their adversarial positions in this matter, Plaintiffs and CVS RX Services, Inc. ("CVS" or "Defendant") have negotiated a settlement of this litigation. The terms of the proposed settlement ("Settlement") are set forth in the proposed Stipulation and Settlement Agreement of Class Action Claims ("Settlement Agreement").

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1 **II. Definition of Settlement Class**

2 The parties have entered into the Settlement Agreement solely for the purposes of
3 compromising and settling their disputes in this matter. As part of the Settlement Agreement,
4 CVS has agreed not to oppose, for settlement purposes only, final certification of the following
5 settlement class:

6 All individuals who are currently employed, or formerly have been
7 employed, as Pharmacists at a CVS store in California, or at a stand-alone
8 Sav-On drugstore acquired by CVS, at any time between March 17, 2002
 and the Date of Preliminary Approval of Class Settlement

9 All members of the class allege the same claims and there are no subclasses.

10 **III. Final Approval of the Terms of the Settlement Agreement**

11 Except as otherwise specified herein, the Court for purposes of this Order adopts all defined
12 terms set forth in the Settlement Agreement, attached as Exhibit A to the March 10, 2008 order
13 granting preliminary approval.

14 The Court has reviewed the terms of the Settlement Agreement, and the parties' description
15 of the Settlement in the Motion papers. Based on that review, the Court concludes that the
16 Settlement is fair, reasonable, and adequate. Specifically, the proposed method of allocation is
17 equitable and will accurately reflect the meal and rest periods denied and the unpaid wages earned
18 by individual Class Members.

19 The Court has also read the declarations of Guy B. Wallace in support of final approval.
20 Based on review of these declarations, the Court concludes that the settlement was negotiated at
21 arm's length, in good faith, and was not collusive. The Court further finds that Class Counsel
22 were fully informed about the strengths and weaknesses of the Plaintiffs' case when they entered
23 into the Settlement Agreement.

24 Accordingly, the Court concludes that the settlement is fair, adequate, and reasonable in all
25 respects and confirms as final its approval of the terms of the Settlement Agreement.

26 **IV. Appointment of Class Representatives and Class Counsel**

27 The Court confirms as final the appointment of Dat Chau and Dale Hildebrand as class
28 representatives. The Court confirms as final the appointment of the law firm of Schneider

1 Wallace Cottrell Brayton Konecky LLP ("Schneider Wallace") as Class Counsel.

2 **V. Final Approval of the Form and Manner of Class Notice and Claim Form**

3 The Class Notice and Claim Form distributed to Class Members, pursuant to this Court's
4 Order, constituted the best notice practical under the circumstances, was accomplished in all
5 material respects, and fully met the requirements of procedural due process and California Rule of
6 Court 3.766.

7 **VI. Response of the Class**

8 Virtually all of the 1,946 class members were eventually contacted (1,941 of 1,946). There
9 are no longer any objectors and only seven opt-outs. About half the class submitted timely claims
10 (938) and an additional 20 untimely claims are now in hand, which the Court allows. All late
11 claims received by September 19, 2008, are approved if otherwise complete. Uncompleted forms
12 should not be paid unless they are made substantially complete by October 5, 2008, upon notice to
13 the claimant given by September 25, 2008 (date of first class mailing to claimant).

14 This is a common fund such that all claimants with completed forms will absorb the full
15 settlement amount available after court-approved administrative, legal and incentive expenses
16 have been first deducted. **The basic settlement in terms of payments to the class members is**
17 **thus reasonable and approved. Class counsel and class representatives are approved. The**
18 **notice and claim form is approved.**

19 **a. Ms. Craya Caron**

20 On June 12, 2008, settlement class member Craya Caron filed an objection to the proposed
21 class action settlement. On August 29, 2008, Ms. Caron filed a Request for Leave to Withdraw
22 Objection to the Proposed Final Settlement Agreement Re: Chau, et al. v. CVS RX Service Inc.
23 Counsel for Plaintiffs and Defendant both represent to the Court that no consideration has been
24 paid to former Objector Craya Caron beyond her participation in the claims process as a regular
25 class member who has not opted out. **Ms. Caron's request to withdraw her objection is**
26 **granted.**

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1 **VII. Method of Allocation**

2 The Court finds that the plan of allocation is rationally related to the relative strengths and
3 weaknesses of the respective claims asserted. The mechanisms and procedures set forth in the
4 Settlement Agreement by which payments are to be calculated and made to class members filing
5 timely claims are fair, reasonable, and adequate and shall be made according to those allocations
6 and pursuant to the procedures set forth in the Settlement Agreement.

7 **VIII. Distribution from the Settlement Fund**

8 **a. Payments of Attorneys' Fees and Costs**

9 Plaintiff class counsel has now made a showing in support of a lodestar analysis of the
10 value of their services. The lodestar amount sought is \$1,243,980 with a request for an additional
11 \$75,000 for necessary future work to complete the settlement, in all its particulars, a total of
12 \$1,318,980. The senior lawyers seek \$600/hour (Mr. Schneider, Mr. Wallace and Mr. Falvey),
13 and other lawyers who helped seek \$550-350/hour depending on experience. The senior lawyers
14 appear to have been the largest time billers, which is acceptable as that tends to further efficient
15 litigation. These rates are consistent with the applicable legal market (insofar as hourly billing
16 services are provided by attorneys as opposed to "pure" contingency fee arrangements). If one
17 references the "common fund" alternative analysis, the requested fee of \$5,000,000 of the total
18 anticipated recovery of \$19,750,000 is 25.3% of the recovery, which is consistent with federal and
19 state court fee approvals in similar class actions, and lower than the commonly applicable
20 contingency fee agreements in the Southern California legal community.

21 While the Court has had to point out to senior plaintiff class counsel their repeated,
22 careless errors in their recent motion practice, the Court recognizes that on balance the services
23 provided by senior class counsel and their colleagues have been of great value in obtaining cash in
24 hand for a large plaintiff class in a field of law where the prospects of success continue to be very
25 uncertain. Cf. *Brinker Restaurant v. Superior Court* (2008) 165 Cal.App.4th 25, pet rev. pending.
26 The Court will therefore exercise its discretion to reduce the lodestar amount by only one percent
27 from \$1,318,980 down to \$1,305,790 to reflect the imperfections in the services provided by
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1 plaintiff class counsel as against their desire for a full lodestar amount without adjustment for
2 inefficiencies, do-overs and carelessness.

3 The results obtained are such that a multiplier is fully warranted; the real question is how
4 much. The excellent results were obtained here with relative efficiency, and the Court is
5 experienced enough to know that a contested lawsuit is never the model of smooth efficiency
6 even when one side is trying to reduce cost and time invested. The Court believes that the
7 requested multiplier of 3.8 (which defendant agreed not to oppose, in terms of maximum potential
8 attorneys fees paid and which no class member is now objecting to) is justified on the unique facts
9 of this case when all considerations are evaluated. In particular, given the uncertainty of the law,
10 there is a contingency risk which is not reflected in the hourly rates approved above which rates
11 are now typical of rates paid without regard to actual success. **The resulting fee award which**
12 **the Court will approve (apart from separately analyzed out-of-pocket costs) is \$4,962,002**
13 **(\$1,305,790 x 3.8).**

14 **Disbursements of \$75,720.60 are approved.** Any future out-of-pocket expenses are to be
15 borne by class counsel in recognition of the larger than normal lodestar multiplier awarded to
16 them in the calculation of the attorney fee award.

17 **b. Payment to the California Labor and Workforce Development Agency**

18 The Court approves the payment of one percent of the settlement as Private Attorney
19 General Act penalties split between the class (25 percent = \$32,021.32) and the California Labor
20 and Workforce Development Agency (75 percent = \$96,063.97).

21 **c. Appointment of Claims Administrator**

22 The Court confirms the appointment of RG/2 Claims Administration, LLC as the settlement
23 Claims Administrator. The claims administration request for \$49,873.97 appears to be justified as
24 below the anticipated cost and reasonable for the necessary services provided and is thus
25 **approved.**

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1 **d. Reserve Fund and Cy Pres**

2 The Court approves the withholding of \$250,000 from the total settlement fund to pay the
3 20 late claims received by the Claims Administrator. These claims amount to \$237,748.49, which
4 leaves a remainder of \$12,251.51. In lieu of any *cy pres* from the residual fund, the Court directs
5 that the claimants should be the beneficiaries of a pro rata distribution of any unanticipated
6 residual funds beyond those originally expected to be available to pay class member claims.

7 **e. Representative Plaintiffs' Service and Release Payments**

8 The supplemental showings by named plaintiffs Dat Chau and Dale Hildebrand in support
9 of their request for judicial approval of the agreed incentive payment of \$20,000 each are
10 persuasive, both as to the time invested and the inherent risks borne by bringing this successful
11 class action, and **this is approved.**

12 **IX. Entry of Final Judgment**

13 The Second Amended Complaint filed in this action and all claims contained therein are
14 dismissed in their entirety with prejudice as to all Class Members other than those who have filed
15 timely requests for exclusion (Minah Bang, Thomas Doung, Mary Hong, Echo Jablonski, Jim
16 Salamon, Silvana West, and Jamie Won).

17 By operation of the entry of this Order and the Final Judgment, all Released Claims are
18 fully, finally, and forever released, relinquished and discharged, pursuant to the terms of the
19 Settlement Agreement, as to all Class Members other than those listed above. The Court has
20 reviewed the release in the Settlement Agreement, which is incorporated in the Claim Form, and
21 the individual releases as to Plaintiffs Chau and Hildebrand, and finds that these releases are fair,
22 reasonable, and enforceable under California law and all other applicable law.

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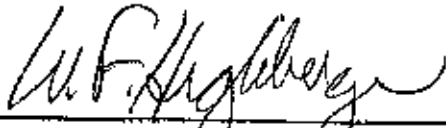
FAXED

1 X. Jurisdiction

2 This Court retains jurisdiction over the subject matter of this litigation and all matters
3 relating thereto, and over the Plaintiffs and Defendant, for purposes of enforcing the settlement
4 agreement.

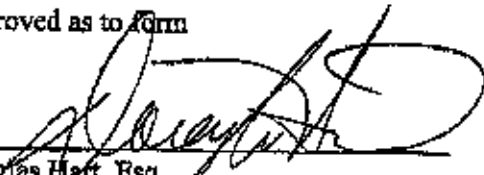
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6 **IT IS SO ORDERED.**

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8 Dated: September 24, 2008



HON. WILLIAM F. HIGHBERGER
Judge of the Superior Court for Los Angeles County

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13 Approved as to form



Douglas Hart, Esq.
Counsel for CVS RX Services, Inc.

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