

1 MORGAN, LEWIS & BOCKIUS LLP
Jennifer B. Zargarof, Bar No. 204382
2 Julianne G. Park, Bar No. 312791
300 South Grand Avenue
3 Twenty-Second Floor
Los Angeles, CA 90071-3132
4 Tel: +1.213.612.2500
Fax: +1.213.612.2501
5 jennifer.zargarof@morganlewis.com
julianne.park@morganlewis.com

6 Attorneys for Defendants
7 CVS PHARMACY, INC. and CAREMARK, LLC

8 Christopher J. Hamner, Esq. (SBN 197117)
9 **HAMNER LAW OFFICES, APLC**
26565 West Agoura Road, Suite 200-197
10 Calabasas, California 91302
Telephone: (888) 416-6654
11 chamner@hamnerlaw.com

12 Attorneys for Plaintiff
13 CAROL LEWALLEN and the proposed class

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF ORANGE - COMPLEX
17

18 CAROLE LEWALLEN, an individual
California resident,

19 Plaintiff,

20 vs.

21 CVS PHARMACY, INC., a Rhode Island
22 corporation; CAREMARK, LLC, a California
23 limited liability company, and DOES 1 through
100, inclusive,

24 Defendants.

Case No. 30-2020-01152123-CU-DE-CXC

Assigned for All Purposes to the
Hon. Glenda Sanders, Dept. CX-101

**SECOND AMENDED CLASS AND
PAGA ACTION SETTLEMENT
AGREEMENT AND RELEASE**

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CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT AND
RELEASE

1 This Second Amended Class Action Release and Settlement Agreement is entered into by
2 and between Plaintiff Carole Lewallen, on behalf of herself and all others similarly situated
3 members of the "Settlement Class" (defined below), on the one hand, and Defendants CVS
4 Pharmacy, Inc., and Caremark, LLC (together, "Defendants" or "CVS") on the other hand. This
5 Class and PAGA Action Settlement Agreement and Release shall be binding on Plaintiff, the
6 current and former employees she seeks to represent, the Settlement Class and PAGA Employees,
7 the State of California, and on Defendants and subject to the definitions, recitals, and terms set
8 forth herein and the approval of the Court.

9 **I. DEFINITIONS**

10 1. "Action" means the lawsuit entitled *Carole Lewallen. v. CVS Pharmacy, Inc., et*
11 *al.*, Case No. 30-2020-01152123-CU-OE-CXC, pending in the Superior Court of California,
12 County of Orange.

13 2. "Plaintiff" means Carole Lewallen.

14 3. "Defendants" means CVS Pharmacy, Inc., and Caremark, LLC, (collectively,
15 "CVS").

16 4. "Parties" means collectively Plaintiff and Defendants, as defined herein.

17 5. "Court" means the Superior Court of California, County of Orange.

18 6. "Complaint" means the First Amended Complaint ("FAC") to be filed in this
19 Action based on a joint stipulation, or as otherwise required by the Court, which FAC is attached
20 here to as **Exhibit D**.

21 7. "Defendants' Counsel" means Morgan Lewis & Bockius LLP.

22 8. "Class Counsel" means Hamner Law Offices, APLC.

23 9. "Class Member(s)" means all employees who worked as Nurse Clinical Educators
24 for Caremark, LLC, in the state of California, during the Class Period, a total of 14 individuals.

25 10. "Class Period" means between November 4, 2015 to the Date of Preliminary
26 Approval, inclusive.

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11. "Class Claims" means all wage and hour claims, rights, demands, liabilities and causes of action of every nature and description related to the claims litigated in the Action, or claims that were or could have been brought as part of the Action against Defendants, including without limitation statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, restitution, equitable relief, or any other relief, including, but not limited to, claims based on the following categories of allegations during the Class Period: (a) all claims for unpaid overtime; (b) all claims for meal and rest period violations; (c) all claims for unpaid minimum wages; (d) all claims for failure to timely pay wages upon termination; (e) all claims for failure to timely pay wages during employment, including at or after termination of employment; (f) all claims for failure to pay wages; (g) all claims for failure to provide accurate, itemized, or otherwise proper wage statements; (h) all claims for failure to reimburse business expenses; (i) all claims asserted through California Labor Code sections 2699 *et seq.* (the Private Attorneys General Act of 2004 ("PAGA")) arising out of the aforementioned claims; (j) all claims asserted through the Fair Labor Standards Act ("FLSA") arising out of the aforementioned claims; (k) all claims asserted through California Business & Professions Code §17200 *et seq.* arising out of the aforementioned claims; and (l) all other claims for penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, equitable relief, or additional damages that allegedly arise out of the aforementioned claims. The Class Claims specifically include any and all claims arising under the California Labor Code, including, without limitation, §§ 201-204, 210, 218.5, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 2802, 2698-2699.5, Cal. Business & Professions Code §§ 17200, *et seq.*, and Cal. Code of Civil Procedure § 1021.5, any derivative claims based on such alleged violations, including those under the Fair Labor Standards Act ("FLSA") or any applicable California Industrial Welfare Commission Wage Order.

12. "Class Notice" shall mean the document attached hereto as Exhibit A.

1 13. "Date of Preliminary Approval" means the date the Court preliminarily approves
2 this Settlement Agreement, and the exhibits thereto, and enters an order preliminarily approving
3 the Settlement.

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

7 15. "Effective Date" means the date the Final Order and Judgment becomes binding.
8 The Final Order and Judgment becomes binding on the later of: (i) fifteen (15) calendar days after
9 entry of the Final Order and Judgment if no appeal is filed; or (ii) if an appeal or motion to
10 intervene is filed, the date of final resolution of any challenge to the Final Order and Judgment
11 where the resolution affirms the final approval order and judgment. The Effective Date cannot
12 occur, and Defendants will not be obligated to fund this Settlement, unless and until there is no
13 possibility of an appeal or further appeal (by anyone who has the right to, or claims to have the
14 ability to, take an appeal) that could potentially prevent this Settlement Agreement from
15 becoming final and binding.

16 16. "Fairness Hearing" means the hearing on Plaintiff's motion for judgment and final
17 approval of this Settlement.

18 17. "Final Order and Judgment" means the final order entered by the Court after the
19 Fairness Hearing, approving the settlement and entering judgment pursuant to this Settlement
20 Agreement, and which shall be substantially in the form attached hereto as Exhibit B.

21 18. "Net Settlement Amount" means the portion of the Gross Settlement Amount
22 eligible for distribution to Participating Class Members. It equals the Gross Settlement Amount
23 less Class Counsel's attorneys' fees and actual litigation costs as ordered to be paid by this Court,
24 Settlement Administration Expenses, the PAGA Payment, and Service Enhancement to Plaintiff.

25 19. "Gross Settlement Amount" is the sum of Five Hundred Thousand Dollars
26 (\$500,000.00), which represents the maximum amount payable in this Settlement by Defendants,
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1 and includes all attorneys' fees, litigation costs, claims administration fees, and incentive payment
2 to the Class Representative.

3 20. "Order Granting Preliminary Approval" means the Order entered by the Court
4 substantially in the form attached hereto as Exhibit C and preliminarily approving, *inter alia*, the
5 terms and conditions of this Agreement, the manner and timing of providing notice to the
6 Settlement Employees, and the time period for Class Members to opt-out of and/or make
7 objections to the settlement of the Class Claims under this Settlement.

8 21. "PAGA" means the California Labor Code Private Attorneys General Act,
9 California Labor Code §§ 2698 *et seq.*

10 22. "PAGA Claims" means all claims for PAGA civil penalties that were stated or
11 could have been stated based on the facts alleged in the Action based on the allegations in the
12 Complaint and LWDA Notice, including but not limited to claims for PAGA civil penalties based
13 on the Class Claims.

14 23. "PAGA Employees" all employees who worked as Nurse Clinical Educators for
15 Caremark, LLC, in the state of California, during the PAGA Period.

16 24. "PAGA Period" means the period from October 21, 2018 and the Date of
17 Preliminary Approval of this Settlement.

18 25. "PAGA Payment" means the \$20,000.00 of the Gross Settlement Amount
19 allocated to the settlement of PAGA Claims which is comprised of the LWDA PAGA Penalty
20 Amount and the PAGA Employee Payment.

21 26. "PAGA Employee Payment" is the 25% share of the \$20,000.00 (or \$5,000.00)
22 allocated from the Gross Settlement Amount for PAGA penalties that will be paid to members of
23 the PAGA Group.

24 27. "LWDA" means the California Labor and Workforce Development Agency.

25 28. "LWDA PAGA Penalty Amount" is the 75% share of the \$20,000.00 (or
26 \$15,000.00) allocated from the PAGA Payment for civil penalties that will be paid to the LWDA.
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1 29. "Participating Class Members" means those Class Members who do not opt out or
2 otherwise exclude themselves from of the settlement of the Class Claims portion of this
3 Settlement.

4 30. "Participating Settlement Employees" means all Participating Class Members and
5 PAGA Employees.

6 31. "Released Class Claims" means the Class Claims that Participating Class
7 Members are fully and irrevocably releasing the Released Parties from in exchange for the
8 consideration provided by this Settlement Agreement, whether arising at law, in contract, or in
9 equity, and whether for economic or non-economic damages, restitution, injunctive relief,
10 penalties, or liquidated damages. The Released Class Claims are set forth in further detail in
11 Section VII, Paragraph 80 below.

12 32. "Released PAGA Claims" means the PAGA Claims that Plaintiff, on behalf of
13 herself, the State of California and PAGA Employees, are fully and irrevocably releasing the
14 Released Parties from provided by this Settlement Agreement. The Released PAGA Claims are
15 set forth in further detail in Section VII, Paragraph 82 below.

16 33. "Released Parties" means CVS Pharmacy, Inc. and Caremark, LLC, and their
17 affiliates, divisions, subsidiaries, parents, predecessors, any merged entity or merged entities
18 and/or its or their present and former officers, partners, directors, managers, supervisors,
19 employees, attorneys, agents, shareholders and/or successors, assigns, trustees, heirs,
20 administrators, executors, representatives and/or principals thereof.

21 34. "Request for Exclusion" means a written request to opt out of the settlement of
22 Class Claims in this Settlement completed by a Class Member and timely submitted to the
23 Settlement Administrator as set forth in this Agreement.

24 35. "Service Enhancement" means the incentive payment to the Plaintiff, not to
25 exceed Twenty-Five Thousand Dollars (\$25,000.00).

26 36. "Settlement Administrator" means Phoenix Class Action Administration
27 Solutions.

1 37. "Settlement Administration Expenses" means those expenses incurred by the
2 Settlement Administrator in effectuating the settlement.

3 38. "Settlement Agreement" means this Class Action Settlement and Release.

4 39. "Settlement Employees" means all Class Members and PAGA Employees.

5 40. "Settlement Employee Data" means all information that CVS provides to the
6 Settlement Administrator that identifies or can be used to identify Settlement Employees,
7 including, without limitation, their names, addresses, phone numbers, email addresses, employee
8 numbers, and social security numbers, and the respective number of pay periods each Settlement
9 Employee worked during the Class Period and PAGA Period.

10 41. "Settlement Period" means the applicable Class Period and PAGA Period, as
11 defined herein.

12 **II. LITIGATION BACKGROUND**

13 42. On October 22, 2019, Plaintiff filed a notice with the LWDA. On November 4,
14 2019, Plaintiff filed a lawsuit in United States District Court, Central District of California, Case
15 No. 8:19-cv-02121-DOC-ADS, alleging wage and hour and derivative claims under the Fair
16 Labor Standards Act (FLSA), the California Labor Code, the Private Attorneys General Act
17 (PAGA), and the Unfair Competition Law, under a misclassification theory. On March 12, 2020,
18 the Parties filed a Joint Stipulation for Remand to State Court. On March 13, 2020, the Court
19 remanded the case to Superior Court of the State of California, County of Orange.

20 43. On July 20, 2020, Plaintiff's counsel filed the Complaint in the Orange Superior
21 Court, reasserting the class action claims for the Labor Code violations that underlie Plaintiff's
22 representative action under PAGA, and alleging that the new case relates back to the original
23 complaint filed in district court.

24 44. CVS denies Plaintiff's claims, and asserts that, during all relevant times, Class
25 Members were exempt from the various wage and hour laws under the California and federal law.
26 CVS also asserts that, at all times, Class Members received wage statements that were compliant
27 with the Labor Code, were timely paid all wages as required under the Labor Code, and that Class
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1 Members who ended their employment with CVS during the Class Period were properly
2 compensated for all wages due as required by California law. Consequently, CVS does not
3 believe that any liability to Plaintiff or Class Members exists, or that Plaintiff or Class Members
4 are entitled to any recovery. In addition, CVS contends that Plaintiff's claims are not suitable for
5 class, collective, or representative treatment. CVS has agreed to resolve the Action via this
6 Settlement Agreement, but to the extent this Settlement Agreement is deemed void or the
7 Effective Date does not occur, CVS does not waive, but rather expressly reserves, all rights to
8 challenge all such claims and allegations in the Action upon all procedural, merit, and factual
9 grounds, including, without limitation, the ability to challenge class and representative treatment
10 on any grounds, the ability to compel some or all claims to individual arbitration, as well as
11 asserting any and all other privileges and potential defenses.

12 45. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
13 discharge all Released Class Claims and Released PAGA Claims against the Released Parties.

14 46. It is the intention of the Parties that this Settlement Agreement shall constitute a
15 full and complete settlement and release of the Released Class Claims and Released PAGA
16 Claims as to all of the Released Parties.

17 **III. JURISDICTION AND VENUE**

18 47. This Court has jurisdiction over the Parties and the subject matter of this Action.
19 This Court will have continuing jurisdiction over the terms and conditions of this Class Action
20 Settlement Agreement and Release, until all payments and obligations provided for herein have
21 been fully executed.

22 **IV. TERMS OF SETTLEMENT**

23 48. **Non-Admission.** Nothing in this Settlement Agreement, or any communications,
24 papers, or orders related to this Settlement Agreement, shall be construed to be or deemed an
25 admission by the Released Parties of any liability, culpability, or wrongdoing toward the Plaintiff,
26 the Settlement Employees, or any other person, and Defendants specifically disclaim any liability,
27 culpability, or wrongdoing toward the Plaintiff, the Settlement Employees, or any other person, or
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1 that class certification or a representative action is appropriate in this or any other matter. Each of
2 the Parties has entered into this Settlement Agreement with the intention to avoid further disputes
3 and litigation with the attendant inconvenience, expenses, and contingencies. This Settlement
4 Agreement and any communications, papers, or orders related to the Settlement Agreement may
5 not be cited or otherwise admitted as evidence of liability or that class certification is appropriate
6 or that a representative action could ever be manageably tried before a court. There has been no
7 final determination by any court as to whether a class should be certified, or whether the
8 representative claims can manageably be adjudicated, other than for settlement purposes only.
9 Furthermore, nothing in this Settlement shall be considered any form of waiver of any alternative
10 dispute resolution provisions, including, but not limited to, those provisions in CVS' Arbitration
11 of Workplace Legal Disputes training program, or any other applicable alternative dispute
12 resolution policy.

13 49. Certification of Class Members as to Class Claims and Approval of

14 Representative Action. The Parties stipulate, for settlement purposes only, to the certification
15 by the Court of a class of Class Members as to all Class Claims asserted in the Action for
16 settlement purposes only. The Parties also stipulate to the approval by the Court of a PAGA
17 representative action as to all PAGA Claims asserted in the Action for settlement purposes only.
18 The Parties further stipulate that, for settlement purposes only, Hamner Law Offices, APLC, may
19 be preliminarily and conditionally appointed as Class Counsel. CVS' stipulation to the
20 certification of a class of Class Members and to a representative action for PAGA Employees
21 shall not be construed as an admission or acknowledgment of any kind that any class should be
22 certified or that any claims should be given class or representative action treatment

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

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- (a) The Settlement Agreement shall have no force or effect, other than the confidentiality and non-disclosure provisions and the non-admission provisions;
- (b) The Settlement Agreement shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
- (c) The preliminary certification of the class of Class Members and the approval of a representative action shall become null and void, and the fact that the Parties stipulated to the certification of Class Members and Class Claims, and to approval of representative treatment of the PAGA Claims, for purposes of this Settlement shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
- (d) None of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments with respect to the issue of class certification, representative treatment, or the merits of Plaintiff's claims.

51. **Settlement Allocation.** CVS agrees to pay a Gross Settlement Amount of Five Hundred Thousand Dollars (\$500,000.00). The Parties agree, subject to Court approval, to the following allocations:

- (a) From the Gross Settlement Amount, Class Counsel may seek from the Court a maximum of \$165,000.00 (33%) of the Gross Settlement Amount in attorneys' fees in addition to actual litigation costs of up to \$15,000.00 for serving as Class Counsel, which CVS will not oppose.
- (b) From the Gross Settlement Amount, Plaintiff may seek from the Court Service Enhancements not to exceed \$25,000.00 for her efforts and service leading to this Settlement, which CVS will not oppose.

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- (c) From the Gross Settlement Amount, the Parties agree to allocate the payment of Settlement Administration Expenses in a reasonable amount, which amount shall not exceed \$3,000.00.
- (d) If the Court approves a lesser amount of attorney's fees, litigation costs, Service Enhancements, or Settlement Administration Expenses than those sought by Plaintiff and/or Class Counsel, any amount disallowed by the Court shall be added to the Net Settlement Amount and apportioned equally to Participating Class Members.
- (e) From the Gross Settlement Amount, the Parties agree to allocate \$20,000.00 to the PAGA Payment as follows: (1) the \$15,000.00 LWDA Penalty Amount, and (2) the \$5,000.00 PAGA Employee Payment on a pro rata basis based on the number of pay periods that PAGA employees were employed during the PAGA Period. CVS shall provide the Settlement Administrator the number of pay periods worked by PAGA Employees during the PAGA Period. The number of pay periods worked by PAGA Employees shall be determined solely based on CVS' employment records. The PAGA Employee Payment shall be treated as miscellaneous income, which shall be reported on an IRS 1099 without withholdings.
- (f) The Net Settlement Amount is the balance of the Gross Settlement Amount including interest accruing to it, after payments have been made for attorneys' fees and litigation expenses, Settlement Administration Expenses, Plaintiff's Service Enhancement, and the PAGA Payment (the LWDA PAGA Penalty Amount and the PAGA Employee Payment). Settlement Payments shall be allocated to the Participating Class Members for allegedly unpaid wages, overtime, premium wages, the Participating Class Members' share of payroll taxes, and related fees, interest, and penalties. The Net Settlement Amount shall be used to pay all Settlement

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Payment amounts due to Participating Class Members based on their weeks worked in the Class Period.

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

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

53. **Opt Outs By Class Members from the Settlement of Class Claims.** Class

Members who wish to “opt-out” of and be excluded from the settlement of the Class Claims must submit a written Request for Exclusion to the Class Claims aspects of the settlement, as described in more detail in Paragraph 62, below. Even if a Class Member opts out of the settlement of the Class Claims, he/she shall receive his/her portion of the PAGA Employee Payment, and shall be deemed to have fully, finally, and forever released the Released Parties from the Released PAGA Claims as set forth in full in Section VII, below. In the event any Class Members opts out of the Settlement, Defendants have the right to retain the Settlement share of any Class Member who opts out.

54. **Releases.** Upon the Effective Date, all Participating Settlement Employees shall

be deemed to have fully, finally, and forever released all Released Parties from the Released Class Claims and Released PAGA Claims as set forth in full in Section VII, below.

55. **No Reliance.** All Parties represent that they have not received, and shall not rely

on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

56. **Entry of Judgment.** At the Fairness Hearing, the Parties will request that the

Court, among other things: (a) certify the Class Members and Class Claims for purposes of settlement only; (b) enter a Final Order and Judgment substantially in the form attached hereto as

Exhibit B; (c) approve the settlement of the Class Claims as fair, adequate, reasonable, and

1 binding on all Participating Settlement Employees; (d) approve the settlement of the PAGA
2 Claims as providing genuine and meaningful relief, consistent with the underlying purpose of the
3 PAGA to benefit the public; (e) enter a Judgment terminating the Action with prejudice; (f) enter
4 an order permanently enjoining all Participating Settlement Employees from pursuing and/or
5 seeking to reopen claims that have been released by this Agreement; and (f) incorporate the terms
6 of this Settlement Agreement into its Final Order and Judgment.

7 57. Notice to the LWDA. In connection with their filing of a motion requesting
8 preliminary approval of the Settlement, Plaintiff and Class Counsel shall notify the LWDA of the
9 existence of the Settlement as required pursuant to Labor Code Section 2699 et seq.

10 **V. SETTLEMENT ADMINISTRATION**

11 58. Summary of Duties. The Settlement Administrator shall be responsible for:
12 (a) estimating each Settlement Employee's recovery from the Net Settlement Amount;
13 (b) preparing and mailing Class Notices with estimated settlement payment amounts to all
14 Settlement Employees, including taking appropriate steps to trace, update and locate any
15 individual Settlement Employee whose address or contact information as provided to the
16 Settlement Administrator is inaccurate or outdated; (c) receiving and serving on Class Counsel,
17 Defendants' Counsel, and the Court, any opt out statements, copies of written objections, and any
18 withdrawal and rescission statements from Class Members; (d) providing to Class Counsel and
19 Defendants' Counsel a weekly report of activity; (e) establishing a toll-free telephone line and
20 responding to inquiries and requests for information or assistance from Settlement Employees; (f)
21 maintaining the Gross Settlement Amount account at a federally insured banking institution;
22 (g) determining and paying the final amounts due to be paid to Participating Settlement
23 Employees after adjustment for funds due to Class Members who opt out of the settlement of
24 Class claims; (h) preparing and delivering to Participating Settlement Employees necessary tax
25 reporting documents, including Form 1099 where applicable, (i) reporting to Class Counsel,
26 Defendants' Counsel, and the Court regarding the completion of the tasks identified in this
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1 paragraph; and (j) carrying out other related tasks in accordance with the terms of this Settlement
2 Agreement.

3 59. **Use of Settlement Employee Data.** The Settlement Administrator has, and will
4 maintain for as long as it accesses, processes, stores or transmits any Settlement Employee Data
5 supplied by CVS, a comprehensive, written information security program that complies with
6 applicable law and industry best practices (the "Security Program"). The Security Program will
7 apply to all locations, systems, devices and equipment used by the Settlement Administrator (or
8 any vendors, subcontractors, or third parties retained by Administrator) to access, process, store,
9 or transmit Settlement Employee Data ("Administrator Systems"), and it will include physical,
10 administrative, and technical security controls that prevent unauthorized access to, disclosure of,
11 loss of, or use of the Administrator Systems and the Settlement Employee Data that those
12 Administrator Systems process, store, or transmit. In the event that the Settlement Administrator
13 suspects that any Administrator Systems or Settlement Employee Data that the Administrator
14 Systems or the Settlement Administrator processes, stores, or transmits is subject to any suspected
15 or actual unauthorized access, use, or disclosure, the Settlement Administrator will immediately
16 notify counsel for CVS. The Settlement Administrator shall use Settlement Employee Data only
17 to the extent necessary to administer the settlement, shall securely delete Settlement Employee
18 Data when no longer required for that purpose or by law, and shall not disclose Settlement
19 Employee Data to any third party.

20 60. **Disputes.** All disputes relating to the Settlement Administrator's ability and need
21 to perform its duties shall be referred to the Court, if necessary, which will have continuing
22 jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and
23 obligations contemplated by the Settlement Agreement have been fully executed.

24 61. **Objections.** Class Members may only object to the settlement of the Class
25 Claims. The Settlement Administrator shall receive any objections from Participating Class
26 Members, and verify their timeliness. All objections must be sent to the Settlement Administrator
27 no later than sixty (60) days from the date of mailing of the Notice, and such deadline applies

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notwithstanding any argument regarding non-receipt of the notice. The date of the postmark on the envelope containing the objection shall be the exclusive means used to determine whether the objection has been timely submitted. Anyone who fails to postmark an objection in this manner shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement and from filing any appeal from any Final Order and Judgment issued by the Court. The Parties may file a response to any objections submitted by Participating Class Members at or prior to the Fairness Hearing. Participating Class Members shall be permitted to withdraw their objections in writing by submitting a withdrawal statement to the Settlement Administrator not later than one (1) business day prior to the Court's Fairness Hearing, or as otherwise ordered by the Court. The Court will review any objection, request for exclusion or disputed workweeks, even if untimely. The Court, for good cause, may hear all objections, even if untimely or considered invalid by the Claims Administrator.

62. **Requests for Exclusion.** Class Members may only opt out of the settlement of the Class Claims. The Settlement Administrator shall receive any opt outs from Class Members, and verify their timeliness and compliance with these terms. Any request to opt out must bear a postmark within sixty (60) days from the date of mailing of the Notice. The request to opt-out must include: (a) the Class Member's name; (b) a statement that the Class Member desires to exclude himself or herself from the case; and (c) the last four digits of the Class Member's social security number. If a Class Member submits a deficient opt-out, the Settlement Administrator shall notify the Class Member of the deficiency within five (5) business days of receipt. The Class Member shall have ten (10) business days after the notice of deficiency is sent by the Settlement Administrator to cure said deficiencies. Otherwise, if his or her Request for Exclusion is not postmarked within ten (10) business days of the date of the notice of deficiency, his or her request to opt out will be rejected. The date of the postmark on the envelope containing the request for exclusion shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Requests for exclusion must be exercised individually by a Class Member. Attempted group, class, or subclass requests for exclusions shall be ineffective and disregarded by

1 the Settlement Administrator. Class Members submitting untimely or deficient opt-outs shall
2 become Class Members, shall be bound by the Settlement, and will receive a Class Settlement
3 Payment. The Settlement Administrator shall not accept late opt-out Forms without the written
4 authorization of Defendants.

5 63. **Final List of Participating Settlement Employee Payments.** When and if the
6 Court enters the Final Order and Judgment, and the Effective Date as defined herein has passed,
7 the Settlement Administrator shall prepare a final list of all Participating Settlement Employees
8 and their applicable estimated Class Settlement Payment and/or PAGA Employee Payment. The
9 Settlement Administrator shall calculate applicable federal and state deductions for the Class
10 Settlement Payment and shall include such information in the final list. The Settlement
11 Administrator shall provide this list to CVS within five (5) court days after the Effective Date.
12 For each Participating Settlement Employee on this list, the Settlement Administrator will issue
13 checks payable to said Participating Settlement Employees.

14 64. **Calculation of Payments to Settlement Employees.** The Settlement
15 Administrator will calculate pro rata Class Settlement Payments to Participating Class Members
16 based on each Participating Class Member's relative percentage of eligible employee work weeks
17 in the Class Period as reflected on CVS' internal records. This same percentage will also
18 determine the pro rata share of the PAGA Employee Payment to the PAGA Employees. After
19 deducting for attorney's fees, litigation costs, the Service Enhancement, the PAGA payment (both
20 the LWDA PAGA Penalty Amount and the PAGA Group Payments paid to the PAGA Group),
21 and Settlement Administration Expenses, the remainder of the Gross Settlement Amount will be
22 allocated to Class Members as the Net Settlement Amount.

23 65. **Allocation of Payments to Settlement Employees.** All Class Settlement
24 Payments to Participating Class Members shall be allocated as follows: (a) 25% as wages, (b)
25 50% as penalties, and (c) 25% as interest. All PAGA Employee Payments will be allocated
26 entirely to penalties. CVS is responsible for funding the payment of the employer tax
27 contributions as required by law. Plaintiff and Participating Class Members must pay their own
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1 portion of payroll and all applicable income taxes on the 25% of Class Settlement Payment that is
2 unpaid wages, and such amounts will be withheld from Class Settlement Payments. Plaintiff and
3 Participating Class Members shall be exclusively liable for any and all tax liability, if any, other
4 than for the employer tax contributions.

5 66. **Qualified Settlement Fund.** CVS shall provide payment to the Settlement
6 Administrator within ten (10) court days after the Effective Date. The Settlement Administrator
7 shall create a Qualified Settlement Fund ("QSF"), to be funded by Defendants and administered
8 by the Settlement Administrator.

9 67. **Timing of Distribution of Settlement Checks.** Within seven (7) court days after
10 Defendants fund the Settlement as set forth herein, the Settlement Administrator shall distribute
11 checks to all Participating Settlement Employees, pay Plaintiff her Service Enhancement, issue a
12 check to the LWDA for the LWDA PAGA Penalty Amount, and pay Class Counsel's attorney's
13 fees and costs.

14 68. **Declaration of Settlement Administrator.** The Settlement Administrator shall
15 provide a declaration of payment, which will be filed with the Court and served on Class Counsel
16 and Defendants within thirty (30) calendar days of mailing the payments to Participating
17 Settlement Employees, Plaintiff, and Class Counsel.

18 69. **Uncashed Settlement Checks.** Participating Settlement Employees who are sent
19 Settlement payments shall have at least one hundred and eighty (180) calendar days after mailing
20 by the Settlement Administrator to cash their settlement checks and will be so advised of such
21 deadline. If any Participating Settlement Employees do not cash their checks within that period,
22 those checks will become void. Five (5) court days after the 180th day elapses, the Parties shall
23 report to the Court the total amount that was actually paid to Participating Settlement Employees
24 who cashed their check(s). Funds represented by Settlement checks returned as undeliverable and
25 checks remaining uncashed for more than one hundred and eighty (180) calendar days after
26 issuance shall be sent to the State Controller's Office under the Unclaimed Property Law Statutes.

27 **VI. NOTICE OF SETTLEMENT**

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

71. The Settlement Administrator shall prepare for mailing the Class Notice (Exhibit A, hereto). Class data for Settlement Employees shall not be disclosed to Plaintiff, Class Counsel, or any other Settlement Employees without the written consent of Defendants.

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

73. The Parties agree that the procedures set forth in this Section comply with due process requirements, constitute reasonable and the best practicable notice under the circumstances, and constitute an appropriate and sufficient effort to locate current addresses for Class Members such that no additional efforts to do so shall be required. Any Class Members who do not receive the Class Notice after these procedures have been followed will nonetheless be bound by this Settlement.

VII. RELEASES BY PARTICIPATING SETTLEMENT EMPLOYEES

74. Release by the Plaintiff. The releases agreed upon and made part of the settlement by Plaintiff (the "General Release") shall include a general release of Released Parties from all claims, actions, causes of action, lawsuits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements,

1 promises, claims, charges, complaints and demands whatsoever, whether in law or equity, known
2 or unknown, which against the Released Parties, the Plaintiff and the Plaintiff's heirs, executors,
3 administrators, successors, and assigns, may now have or hereafter later determine that they have
4 or had upon, or by reason of, any cause or thing whatsoever relating to their employment or
5 termination of employment, including, but not limited to, claims arising under the Americans
6 With Disabilities Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal
7 Pay Act, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as
8 amended, but not limited to, breach of fiduciary duty and equitable claims to be brought under
9 § 1132(a)(3) ("ERISA"), the Worker Adjustment and Retraining Notification Act, as amended,
10 Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Civil
11 Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family
12 and Medical Leave Act (to the extent permitted by law), the California Family Rights Act
13 ("CFRA"), California's PAGA, Cal. Bus. and Prof. Code § 17200 *et seq.* ("UCL"), the California
14 Labor Code, and/or any other federal, state or local human rights, civil rights, wage-hour, pension
15 or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or
16 tort law, or any claim of retaliation under such laws, or any claim of breach of any contract
17 (whether express, oral, written or implied from any source), or any claim of intentional or
18 negligent infliction of emotional distress, tortious interference with contractual relations,
19 wrongful or abusive or constructive discharge, defamation, prima facie tort, fraud, negligence,
20 loss of consortium, malpractice, breach of duty of care, breach of fiduciary duty or any action
21 similar thereto against Releasees, including any claim for attorneys' fees, expenses or costs based
22 upon any conduct up to and including the date of this General Release; provided, however, that
23 Plaintiff does not waive any right to file an administrative charge with the Equal Employment
24 Opportunity Commission ("EEOC") or the National Labor Relations Board ("NLRB"), subject to
25 the condition that Plaintiff agrees not to seek, or in any way obtain or accept, any monetary
26 award, recovery or settlement therefrom and agrees that she understands that such limitation does
27 not in any way restrict her ability to file and pursue such charge consistent with the
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1 confidentiality obligations set forth in this Settlement Agreement; and further provided, however,
2 that Plaintiff does not waive any rights with respect to, or release Released Parties from, any
3 claims for California Workers' Compensation benefits (except that Plaintiff hereby releases and
4 waives any claims that, as a result of her termination, she is entitled to additional benefits or
5 payments); and further provided, however, that Plaintiff does not release any claim for
6 unemployment compensation benefits; and further provided, however, that Plaintiff does not
7 release any claim that cannot be released by private contract, or for breach of the terms of the
8 Settlement Agreement between Plaintiff and Defendants.

9 75. Thus, for the purpose of implementing a full and complete release and discharge of
10 the Released Parties, Plaintiff expressly acknowledges that this General Release is intended to
11 include in its effect, without limitation, all claims which Plaintiff does not know or suspect to
12 exist in Plaintiff's favor at the time of execution hereof, and that this General Release
13 contemplates the extinguishment of any such claim or claims.

14 76. In connection with such waiver and relinquishment, Plaintiff hereby acknowledges
15 that she or her attorneys may hereafter discover claims or facts in addition to, or different from,
16 those which they now know or believe to exist, but that Plaintiff expressly agrees to fully, finally
17 and forever settle and release any and all claims, known or unknown, suspected or unsuspected,
18 which exist or may exist on their behalf against Released Parties at the time of execution of the
19 Settlement Agreement, including, but not limited to, any and all claims relating to or arising from
20 Plaintiff's employment with CVS or the cessation of that employment. Plaintiff and Defendants
21 further acknowledge, understand and agree that this representation and commitment is essential to
22 each Party and that this Settlement Agreement would not have been entered into were it not for
23 this representation and commitment.

24 77. It is further understood and agreed that as a condition of this General Release,
25 Plaintiff hereby expressly waives and relinquishes any and all claims, rights or benefits that she
26 may have under California Civil Code Section 1542, which provides as follows:

27 **A general release does not extend to claims that the creditor or**
28 **releasing party does not know or suspect to exist in his or her**

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favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

78. Nothing in this General Release shall prohibit or restrict Plaintiff from:
(i) providing information to, or otherwise assisting in, an investigation by Congress, the Equal Employment Opportunity Commission or the NLRB, the Securities and Exchange Commission ("SEC") or any other federal regulatory or law enforcement agency or self-regulatory organization ("SRO"); (ii) testifying, participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or any rule or regulation of the SEC or any SRO; or (iii) complying with a lawful subpoena or other legal process, subject to the terms of the Settlement Agreement.

79. If any of the provisions, terms, clauses, waivers or releases of claims and rights contained in this General Release are declared illegal, unenforceable, or ineffective in a legal forum of competent jurisdiction, such provisions, terms, clauses, waivers or releases of claims or rights shall be modified, if possible, in order to achieve, to the extent possible, the intentions of the parties and, if necessary, such provisions, terms clauses, waivers and releases of claims and rights shall be deemed severable, such that all other provisions, terms, clauses and waivers and releases of claims and rights contained in this General Release shall remain valid and binding upon all parties, provided, however, that, notwithstanding any other provision of this General Release, if any portion of the waiver or release of claims or rights is held to be unenforceable, Defendants may, at their option, seek modification or severance of such portion, or terminate the Settlement Agreement pursuant to Section XI.

80. **Release by Participating Class Members**. As of the Effective Date, in exchange for the consideration set forth in this Agreement, Plaintiff and Participating Class Members release the Released Parties from the Released Class Claims. Released Class Claims include all wage and hour claims, rights, demands, liabilities and causes of action of every nature and description related to the claims litigated in the Action, or claims that were or could have been brought as part of the Action against Defendants based on the factual allegations in the FAC,

1 including without limitation statutory, constitutional, contractual or common law claims for
2 wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest,
3 restitution, equitable relief, or any other relief, including, but not limited to, claims based on the
4 following categories of allegations during the Class Period: (a) all claims for unpaid overtime; (b)
5 all claims for meal and rest period violations; (c) all claims for unpaid minimum wages; (d) all
6 claims for failure to timely pay wages upon termination; (e) all claims for failure to timely pay
7 wages during employment; (f) all claims for failure to pay wages; (g) all claims for failure to
8 provide accurate, itemized, or otherwise proper wage statements; (h) all claims for failure to
9 reimburse business expenses; (i) all claims asserted through California Labor Code sections 2699
10 *et seq.* (the Private Attorneys General Act of 2004 (“PAGA”) arising out of the aforementioned
11 claims; (j) all claims asserted through the Fair Labor Standards Act (“FLSA”) arising out of the
12 aforementioned claims; (k) all claims asserted through California Business & Professions Code
13 §17200 *et seq.* arising out of the aforementioned claims; and (l) all other claims for penalties,
14 liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution,
15 equitable relief, or additional damages that allegedly arise out of the aforementioned claims.

16 81. The Released Class Claims specifically include any and all claims arising under
17 the California Labor Code, including, without limitation, §§ 201-204, 210, 218.5, 226, 226.3,
18 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 2802,
19 2698-2699.5, Cal. Business & Professions Code §§ 17200, *et seq.*, and Cal. Code of Civil
20 Procedure § 1021.5, any derivative claims based on such alleged violations, including those under
21 any applicable California Industrial Welfare Commission Wage Order.

22 82. All Participating Class Members will release any and all causes of action under the
23 FLSA relating to claims alleged or which could have been alleged in the Action based on the
24 factual allegations in the FAC. *See Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d
25 1106 (9th Cir. 2018).

26 83. The period of the Released Class Claims shall extend to the limits of the Class
27 Period. The judgment entered as a result of this settlement shall have *res judicata* effect to the
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1 fullest extent allowed by law. The definition of Released Class Claims shall not be limited in any
2 way by the possibility that Plaintiff or Participating Class Members may discover new facts, legal
3 theories or legal arguments not alleged in the Action as to CVS distribution centers but which
4 might serve as an alternative basis for pursuing the same claims, causes of action, or legal
5 theories of relief falling within the definition of Released Class Claims. Any Class Member who
6 submits a timely and valid request for exclusion to the settlement of the Class Claims will not be
7 bound by the release of the Released Class Claims. However, he/she will still be bound by the
8 release of the Released PAGA Claims.

9 84. **Release of PAGA Claims.** Plaintiff, on behalf of herself, the State of California
10 and all PAGA Employees, release the Released Parties from the Released PAGA Claims. No
11 PAGA Employee may opt out of this release. The Released PAGA Claims include all claims
12 against Defendants during the PAGA Period seeking civil penalties under PAGA that Plaintiff in
13 her capacity as proxy for the State of California, the LWDA, and as a private attorney general
14 acting on behalf of herself and the PAGA Employees, asserted or could reasonably have asserted
15 based on the facts alleged in the Action and/or LWDA letters.

16 85. The period of the Released PAGA Claims shall extend to the limits of the PAGA
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 PAGA Claims shall not be limited in
19 any way by the possibility that Plaintiff may discover new facts, legal theories or legal arguments
20 not alleged in the Action as to CVS distribution centers but which might serve as an alternative
21 basis for pursuing the same claims, causes of action, or legal theories of relief falling within the
22 definition of Released PAGA Claims.

23 **VIII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL AND**
24 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

25 86. Class Counsel will submit this Settlement Agreement to the Court together with a
26 Motion for Preliminary Approval of Settlement and Certification of the Class Members, and shall
27 report the settlement to the LWDA and otherwise comply with Section 2699(I) of the Labor
28 Code. The motion shall also seek an order:

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- (a) Preliminarily approving the settlement;
- (e) Approving as to form and content the proposed Class Notice;
- (f) Directing the mailing of the Class Notice and instructions by first class mail to Settlement Employees;
- (g) Preliminarily certifying the Class Members and Class Claims for purposes of settlement and preliminarily appointing Plaintiff and Class Counsel as representatives of the Class Members;
- (h) Preliminarily approving settlement administration services to be provided by the Settlement Administrator; and
- (i) Scheduling a Fairness Hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Class Members.

87. CVS shall provide to the Settlement Administrator the Settlement Employee Data within twenty (20) calendar days after the Date of Preliminary Approval. CVS shall submit this information in electronic format as specified by the Settlement Administrator.

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

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

IX. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL

1 90. Class Counsel will submit a proposed Final Order and Judgment for approval,
2 which shall include findings and orders:

- 3 (a) Confirm that Plaintiff provided adequate notice to the LWDA of the PAGA
4 portions of the settlement;
5 (b) Approving the PAGA portions of the settlement as providing genuine and
6 meaningful relief, consistent with the underlying purpose of the PAGA to
7 benefit the public;
8 (c) Approving the settlement of the Class Claims, adjudging the terms thereof
9 to be fair, reasonable and adequate, and directing that its terms and
10 provisions be carried out;
11 (j) Approving the payment of Service Enhancements to the Plaintiff;
12 (k) Approving Class Counsel's application for an award of attorneys' fees and
13 reimbursement of out-of-pocket litigation expenses; and
14 (l) Providing that the Court will retain jurisdiction to oversee administration
15 and enforcement of the terms of the Settlement and the Court's orders.

16 91. Following entry of the Court's Final Order and Judgment approving the Settlement
17 Agreement, the parties will each act to assure its timely execution and the fulfillment of all its
18 provisions, including but not limited to the following:

- 19 (a) Should an appeal be taken from the Final Order and Judgment approving
20 the Settlement Agreement, all parties will support the Final Order and
21 Judgment on appeal;
22 (m) The Parties and Class Counsel will certify to the Court completion of all
23 payments required to be made by this Settlement Agreement.

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

25 92. The preliminary schedule for notice, approval, and payment procedures carrying
26 out this Settlement is as follows. This schedule is only intended to summarize pertinent events as
27 they relate to settlement administration; it does not modify any other provisions of this
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Agreement or otherwise alter the Parties' obligations hereunder. The schedule may be modified depending on whether and when the Court grants necessary approvals and orders notice to the class, and sets further hearings. In the event of such modification, the parties shall cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Within 10 days after the Date of Preliminary Approval	CVS to provide the Settlement Administrator Settlement Employee Data, as well as any relevant information regarding their dates of employment and the number of pay periods worked by Settlement Employees during the applicable Settlement Period.
15 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.
60 days after mailing of Class Notice	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.

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<p>Fifteen (15) days after entry of the Court's order granting final approval of the Settlement Agreement unless an appeal and/or motion to intervene is timely filed. If an appeal or motion to intervene is filed, then "Effective Date" means the date of final resolution of any appeal from the order granting final approval of the Settlement Agreement where the resolution affirms the final approval order and judgment. The Effective Date cannot occur, and CVS will not be obligated to fund this Settlement, unless and until there is no possibility of an appeal or further appeal that could potentially prevent this Settlement Agreement from becoming final and binding.</p>	<p>Effective Date</p>
<p>Within 5 court days after the Effective Date</p>	<p>Settlement Administrator to make the final calculation of payments from the Net Settlement Amount to be distributed to the Participating Settlement Employees and provide CVS' counsel with a report listing the amount of all payments to be made to each Participating Settlement Employee.</p>
<p>Within 10 court days after the Effective Date</p>	<p>CVS 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.</p>
<p>Within 7 court days of CVS' transfer of Gross Settlement Amount to the Settlement Administrator</p>	<p>Settlement Administrator to distribute and pay: Settlement checks to all Participating Settlement Employees and the LWDA; the Service Enhancements approved by the Court to Plaintiff; Settlement Administration Expenses; and the attorney's fees and costs approved by the Court to Class Counsel.</p>
<p>180 days after payment of settlement checks</p>	<p>Expiration of Participating Settlement Employees' settlement checks.</p>

<p>1 Within 10 days of expiration of 2 Participating Settlement 3 Employees' settlement checks 4</p>	<p>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 CVS. Settlement Administrator to issue checks to the State Controller's Office, Unclaimed Property Division</p>
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5 **XI. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT**

6 93. Separate and in addition to the requirements that the conditions precedent set forth
7 herein are fulfilled before this settlement becomes effective, Defendants also have the right to
8 withdraw from the Settlement at any time prior to final approval if: (a) two (2) or more of Class
9 Members opt out of the Settlement; or (b) the Settlement is construed in such a fashion that
10 Defendants are required to pay more than the Gross Settlement Amount (except for Defendants'
11 obligation to pay the employer's share of payroll taxes which is not included in the Gross
12 Settlement Amount and will be funded separately by Defendants); or (c) the Court does not
13 certify the Class Members or does not certify a class releasing the claims set forth herein, or
14 otherwise makes an order inconsistent with any of the terms of this Settlement Agreement; or (d)
15 Plaintiff or her counsel breach this Settlement Agreement. In the event of Defendants'
16 withdrawal, Defendants will pay the costs already incurred by the Settlement Administrator
17 unless the withdrawal is the result of Plaintiff's or her counsel's breach of the Settlement
18 Agreement.

19 94. If for any reason the Settlement is not approved by the court, or if Defendants or
20 Plaintiff withdraw from the Settlement, this Settlement Agreement and any related settlement
21 documents will be null and void, other than the confidentiality, non-disclosure provisions and the
22 non-admission provisions herein and any class or collective action certified or approved for
23 settlement purposes will be vacated. In such an event, neither this Settlement Agreement, nor the
24 settlement documents, nor the negotiations leading to the Settlement may be used as evidence for
25 any purpose, and Defendants shall retain the right to challenge all claims and allegations in the
26 action, to assert all applicable defenses, and to dispute the propriety of class or collective
27 certification on all applicable grounds.

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

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

9 **XII. CONFIDENTIALITY AND PUBLICITY**

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

15 98. Plaintiff and Class Counsel agree not to disclose the terms of this Settlement,
16 except in court papers, or if required by legal process, as necessary to effectuate and administer
17 the terms of this Settlement, or for accounting or tax reporting purposes. Neither Plaintiff nor
18 Class Counsel, directly or indirectly, shall issue a press release or hold a press conference, publish
19 information about the settlement on any website (other than used by the Settlement Administrator
20 for settlement administration purposes), or otherwise publicize the settlement. Plaintiff and Class
21 Counsel agree not to respond to any press inquiries concerning the settlement except to refer
22 reporters to the papers filed with the Court. Notwithstanding the foregoing, Class Counsel may
23 refer to the Settlement in any adequacy of counsel declarations, or related court filings.

24 **XIII. PARTIES' AUTHORITY**

25 99. The signatories hereby represent that they are fully authorized to enter into this
26 Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

27 **XIV. MUTUAL FULL COOPERATION**

1 100. The Parties agree to fully cooperate with each other to accomplish the terms of this
2 Settlement Agreement, including but not limited to, executing such documents and taking such
3 other action as may reasonably be necessary to implement the terms of this Settlement
4 Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all
5 efforts contemplated by this Settlement Agreement and any other efforts that may become
6 necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the
7 terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class
8 Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all
9 necessary steps to secure the Court's preliminary and final approval of this Settlement
10 Agreement.

11 **XV. NOTICES**

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

16 To Class Counsel:

17 Christopher J. Hamner, Esq.
18 HAMNER LAW OFFICES, APLC
19 26565 West Agoura Road, Suite 200-197
20 Calabasas, California 91302
21 Telephone: (888) 416-6654
22 chamner@hamnerlaw.com

23 To Defendants' Counsel:

24 Jennifer B. Zargarof
25 MORGAN LEWIS & BOCKIUS LLP
26 300 S. Grand Avenue
27 Twenty-Second Floor
28 Los Angeles, CA 90071
Tel: 213.612.2500
Fax: 213.612.2501
jennifer.zargarof@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 **XVI. MISCELLANEOUS PROVISIONS**

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

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

15 104. **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, that
17 party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent
18 to such a request for an extension will not be unreasonably withheld by the other party.

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

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

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

9 107. **Integration.** This Settlement Agreement contains the entire agreement between
10 the Parties relating to the settlement and transaction contemplated hereby, and all prior or
11 contemporaneous agreements, understandings, representations, and statements, whether oral or
12 written and whether by a Party or such Party's legal counsel, are merged herein. No rights
13 hereunder may be waived except in writing.

14 108. **No Prior Assignments.** This Settlement Agreement shall be binding upon and
15 inure to the benefit of the Parties hereto and their respective heirs, trustees, executors,
16 administrators and successors. The Parties hereto represent, covenant, and warrant that they have
17 not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
18 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
19 action or rights herein released and discharged except as set forth herein.

20 **XVII. COUNTERPARTS**

21 109. **Counterparts.** This Settlement Agreement may be executed in counterparts with
22 signatures transmitted by facsimile or as an electronic image (including DocuSign) of the original
23 signature. When each Party has signed and delivered at least one such counterpart, each
24 counterpart shall be deemed an original, and, when taken together with other signed counterparts,
25 shall constitute one Settlement Agreement, which shall be binding upon and effective as to all
26 Parties. A facsimile signature or electronic image shall have the same force and effect as the
27 original signature.

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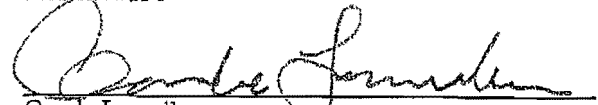
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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 7/7/21


Carole Lewallen

**DEFENDANTS CVS PHARMACY, INC. AND
CAREMARK, LLC**

Dated: _____

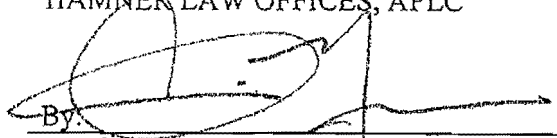
Name: John J. Shea
Title: Senior Legal Counsel

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APPROVED AS TO FORM.

Dated: June __, 2021
7/7/21

HAMNER LAW OFFICES, APLC

By: 

Christopher J. Hamner
Attorneys for Plaintiff

Dated: June __, 2021

MORGAN, LEWIS & BOCKIUS LLP

By _____
Jennifer B. Zargarof
Attorneys for Defendants
CVS Pharmacy, Inc. and Caremark, LLC

1 **APPROVED AS TO FORM.**

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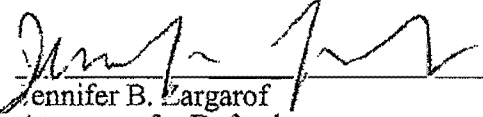
Dated: July __, 2021

HAMNER LAW OFFICES, APLC

By: _____
Christopher J. Hamner
Attorneys for Plaintiff

Dated: July 7, 2021

MORGAN, LEWIS & BOCKIUS LLP

By:  _____
Jennifer B. Zargarof
Attorneys for Defendants
CVS Pharmacy, Inc. and Caremark, LLC

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READ CAREFULLY BEFORE SIGNING

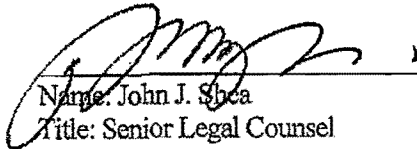
PLAINTIFF

Dated: _____

Carole Lewallen

**DEFENDANTS CVS PHARMACY, INC. AND
CAREMARK, LLC**

Dated: 6/11/2011



Name: John J. Shea
Title: Senior Legal Counsel