

# NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

*Carole Lewallen. v. CVS Pharmacy, Inc., et al.*, Superior Court of the State of California, County of Orange,  
Case No. 30-2020-01152123-CU-OE-CXC

*A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.*

IF YOU WERE EMPLOYED AS NURSE CLINICAL EDUCATOR FOR CAREMARK, LLC IN CALIFORNIA AT ANY TIME DURING THE PERIOD OF NOVEMBER 4, 2015 TO AUGUST 26, 2021, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

## **Why should you read this Notice?**

A proposed settlement (the “Settlement”) has been reached in the class and representative action lawsuits entitled *Carole Lewallen. v. CVS Pharmacy, Inc., et al.*, Superior Court of the State of California, County of Orange, Case No. 30-2020-01152123-CU-OE-CXC between Plaintiffs Carole Lewallen (“Plaintiff”) and Defendants CVS Pharmacy, Inc., and Caremark, LLC (“Defendants” or “CVS”).

The purpose of this Notice of Proposed Class Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

A hearing regarding final approval of the proposed Settlement will be held before the Honorable Glenda Sanders on December 10, 2021 at 1:30 p.m. in Department CX-101 of the Orange County Superior Court, 751 West Santa Ana Blvd., Santa Ana, California 92701, to determine whether the Settlement is fair, adequate, and reasonable (“Final Approval Hearing”). As a Settlement Class Member, you are eligible to receive an individual Settlement Share under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING</b>	If you do nothing, you will be considered part of the Settlement Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendants for the Released Claims asserted in the Action as explained more fully below.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS</b>	You have the option to pursue separate legal action against Defendants about the claims in the Action (in court or in arbitration, as applicable). If you exclude yourself from the Settlement (also called “opting out”), you will give up your right to receive your Individual Class Settlement Payment (described below), although you will still receive your pro-rata share, if any, of the PAGA Employee Payment (also described below). If you exclude yourself, you retain any right to pursue a separate legal action against Defendants regarding the claims in this Action. If you want to exclude yourself, you must do so by submitting a <i>written</i> Exclusion Request by the Response Deadline set forth below.
<b>OBJECT</b>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit an Exclusion Request if you wish to object.

## **Who is affected by this proposed Settlement?**

The Court has certified, for settlement purposes only, the following class (the “Settlement Class”):

All current and former employees who worked as Nurse Clinical Educators for Caremark, LLC, in the state of California, at any time during the period of November 4, 2015 through August 26, 2021 (“Class Period”).

According to Defendants’ records, you are a member of the Settlement Class (a “Class Member”).

### ***What is this case about?***

In the Action, Plaintiff Carole Lewallen (“Plaintiff”) allege on behalf of herself and the Settlement Class that Defendants: (1) failed to pay minimum wages; (2) failed to provide rest breaks; (3) failed to provide meal periods; (4) failed to pay overtime wages; (5) failed to furnish accurate itemized wage statements; (6) failed to timely pay all wages to terminated employees; (7) violated California’s Unfair Competition Law, California Business and Professions Code section 17200 et seq.; and (8) violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiff seeks unpaid wages, actual damages, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendants deny all liability and are confident they have strong legal and factual defenses to these claims. However, Defendants recognize the risks, distractions, and costs associated with litigation. Defendants contend that their conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s-length negotiations between Plaintiff and Defendants (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendants. Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate, and reasonable. Plaintiff also believe this Settlement is in the best interests of all Settlement Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendants’ defenses.

### ***Who are the attorneys representing the Parties?***

The Court has granted preliminary approval of the Settlement and has appointed the lawyers bringing the Class Action to serve as “Class Counsel” to represent all Settlement Class Members affected by the Settlement. The attorneys representing the Settlement Class Members are:

#### **Class Counsel**

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

### ***What are the Settlement terms?***

Subject to final Court approval, Defendants will pay \$500,000 (the “Gross Settlement Amount”) for: (a) Class Settlement Payments to Settlement Class Members who do not request to be excluded from the Settlement (“Participating Class Members”); (b) the Court-approved Service Enhancement to Plaintiff; (c) the Court-approved attorneys’ fees and costs to Class Counsel; (d) the costs of administering the Settlement; (e) payment to the State of California Labor and Workforce Development Agency (“LWDA”) for PAGA penalties; and (f) the PAGA Employee Payment to the PAGA Employees.

**Individual Class Settlement Payments.** After deduction from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and costs, the Service Enhancement to Plaintiff, the payment to the LWDA for PAGA penalties, the PAGA Employee Payment to the PAGA Employees, and the costs of administering the Settlement, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendants will make an individual Class Settlement Payments to each Settlement Class Member who does not ask to be excluded from the Settlement (“Participating Class Members”).

The Net Settlement Amount shall be divided among all Participating Class Members on a pro rata basis based upon the total number of workweeks each respective Participating Class Member worked as Nurse Clinical Educator by Caremark, LLC in California during the Class Period. Your estimated individual Settlement Share is listed on the **Settlement Payment Information Sheet** accompanying this Notice.

For tax reporting purposes, the payments to Participating Class Members will be allocated 25% as wages, 50% as penalties, and 25% as interest. The wage portion of the individual Class Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Class Settlement Payments. The portion of the Class Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. Any taxes owed on that other miscellaneous income will be the responsibility of each Participating Class Member receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendants.

Any amount paid to Participating Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendants, unless otherwise required by law.

Settlement checks will remain valid for 180 days from issuance. If a settlement check remains uncashed after 180 days, the Settlement Administrator shall distribute the value of the uncashed checks to the State of California Controller pursuant to the Unclaimed Property Law, Code of Civil Procedure section 1500, et seq. with the identity of the Participating Class Members to whom the funds belong to be held for them. The Settlement Administrator shall void any tax documents issued to Participating Class Members who did not cash their checks within 180 days of issuance. In such event, the Participating Class Members will remain bound by the terms of the Settlement and all Court orders.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Settlement Class Member.

**Class Counsel Attorneys' Fees and Costs, Class Representative Service Enhancements, Settlement Administration Costs, and Payment to the LWDA.** Class Counsel will ask the Court to award attorneys' fees up to \$165,000.00 (33%) of the Gross Settlement Amount and reimbursement of reasonable litigation costs, not to exceed \$15,000, incurred in the Action. In addition, Class Counsel will ask the Court to authorize Class Representative Service Enhancement in a total amount of up to \$25,000 to Plaintiff Carole Lewallen for her efforts in bringing the case on behalf of the Class. The Parties estimate that the cost of administering the Settlement will not exceed \$3,000. A payment in the amount of \$15,000 will also be made to the LWDA for its share of PAGA penalties, which represents 75% of the \$20,000 set aside for payment under PAGA; the remaining \$5,000 ("PAGA Employee Payment") of the \$20,000 allocated to PAGA penalties shall be distributed pro rata to those Class Members ("PAGA Employees") who worked as Nurse Clinical Educators for Caremark, LLC in California at any time during the period of October 21, 2018 to August 26, 2021 ("PAGA Period"); the pro-rata distribution shall be based on the number of pay periods each PAGA Employee worked during the PAGA Period.

#### ***What claims are being released by the proposed Settlement?***

Upon the final approval by the Court of this Settlement, and except as to such rights or claims as may be created by the Settlement, Plaintiff and all Participating Class Members release Defendants CVS Pharmacy, Inc., Caremark, LLC, and their affiliates, divisions, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, managers, supervisors, employees, attorneys, agents, shareholders and/or successors, assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, from 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, 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; (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 Released 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.

All Participating Class Members will release any and all causes of action under the FLSA relating to claims alleged or which could have been alleged in the Action based on the factual allegations in the FAC.

#### ***What are my options in this matter?***

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Settlement Class and receive a Class Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), remaining in the Settlement Class, you may also object to the Settlement, as explained below.

If you remain in the Settlement Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Class Claims as described above.

**OPTION A. Remain in the Class.** If you wish to remain in the Settlement Class and be eligible to receive a Class Settlement Payment, **you do not need to take any action.** By remaining in the Settlement Class and receiving a Class Settlement Payment, you consent to the release of the Released Class Claims described above.

**Objecting to the Settlement:** If you believe the proposed Settlement is not fair, reasonable, or adequate, you may object to it. To object, you may appear in person (including by telephone) at the Final Approval Hearing, have an attorney object for you, or mail a written statement of objection (“Notice of Objection”) to the Settlement Administrator at Lewallen v. CVS et al., c/o Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, the Notice of Objection must be postmarked no later than November 9, 2021 and set forth the following: (1) the name of the case and case number (shown on page 1 of this Notice), (2) your full name, address, and dates of employment, (3) the basis for any objection, and (4) the name and address of your counsel if you are represented by counsel for purposes of objecting. The Parties shall file responses to any Notices of Objection before the Final Approval Hearing. If you do not object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. ***Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of the Released Class Claims set forth above, unless the Court does not grant final approval of the Settlement.***

**OPTION B. Request to Be Excluded from the Settlement and Receive No Money from the Class Settlement Payment.** If you do not want to be part of the Settlement, you must sign and return the attached “Request for Exclusion” to the Settlement Administrator at Lewallen v. CVS et al., c/o Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your Request for Exclusion must include your name, address, telephone number and the last four digits of your social security number (to confirm your identity and make certain that only persons requesting exclusion are removed from the Settlement), along with a statement like the following:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE ‘LEWALLEN v. CVS’ CLASS ACTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT.”

Your Request for Exclusion must then be ***signed by you*** and ***postmarked no later than November 9, 2021***. If you do not submit a signed Request for Exclusion on time (as evidenced by the postmark), your Request for Exclusion will be rejected, you will be deemed a Participating Class Member, and you will be bound by the release of Released Class Claims as described above and all other terms of the Settlement. You will still receive your pro-rata portion of the PAGA Employee Payment.

#### ***What is the next step in the approval of the Settlement?***

The Court will hold the Final Approval Hearing to decide whether the Settlement is fair, reasonable, and adequate on December 10, 2021 at 1:30 p.m., in Department CX-101 of the Orange County Superior Court, 751 West Santa Ana Blvd., Santa Ana, California 92701. The Final Approval Hearing may be continued without further notice. You need not attend the Final Approval Hearing to receive a Class Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website created by the Settlement Administrator for this case for a period of 90 days following the entry of that Order in the Court record, in compliance with California Rules of Court, rule 3.771. That website is: [www.phoenixclassaction.com/](http://www.phoenixclassaction.com/).

Class Settlement Payments will be mailed to Participating Class Members after the Court grants Final Approval of the Settlement. If the Court grants Final Approval, there may be appeals. If there are any appeals, resolving them could take some time, so please be patient.

It is your responsibility to maintain your current address with the Settlement Administrator, Phoenix Settlement Administrators. If you move, you should send a letter updating your address to Lewallen v. CVS et al., c/o Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. Maintaining your current address with the Settlement Administrator is the best way to ensure that you receive your Class Settlement Payment.

#### ***How can I get additional information?***

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Consolidated Amended Complaint and the Class and PAGA Settlement Agreement and Release, which are posted on the Settlement Administrator’s website. These documents and all other records relating to the Action are available for inspection and/or copying at the Civil Records Office of the Orange County Superior Court. You may also request a copy of the Settlement Agreement from Class Counsel, at the addresses listed above. You may also locate court records on the court website by visiting:

<https://ocjustice.occourts.org/civilwebShoppingNS/ShowCase.do?index=0&number=30-2020-01152123-CU-OE-CXC&tab=0#caseAnchor>

**PLEASE DO NOT CONTACT THE COURT, CVS, OR CVS’S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.**