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24 Attorneys for Defendants

25 UNITED STATES DISTRICT COURT

26 NORTHERN DISTRICT OF CALIFORNIA

27 SAN JOSE DIVISION

28 KRISTAL NUCCI and KELLY SHAW, )  
individually and on behalf of all others )  
29 similarly situated and the California )  
30 Labor & Workforce Development )  
31 Agency, and ANA GOSWICK, )  
32 individually and on behalf of all others )  
33 similarly situated, )

34 Plaintiffs, )

35 v. )

36 RITE AID CORPORATION, )  
37 THRIFTY PAYLESS, INC. and DOES )  
38 1-10, inclusive, )

39 Defendants. )

Case No.: 19-cv-01434-LHK

**CLASS ACTION AND PRIVATE  
ATTORNEYS GENERAL ACT  
SETTLEMENT AGREEMENT AND  
RELEASE**

Hon. Lucy H. Koh

1 This Class Action and Private Attorneys General Act Settlement Agreement and  
2 Release (hereinafter “**Settlement**” or “**Agreement**”) is made and entered into by and  
3 between Plaintiffs Kristal Nucci, Kelly Shaw, and Ana Goswick (hereinafter, “**Plaintiffs**”  
4 or “**Representative Plaintiffs**”), individually and on behalf of all Class Members (as  
5 defined in Paragraph 8(b)), on the one hand, and Defendants Thrifty Payless, Inc. (“TPI”)  
6 and Rite Aid Corporation (“RAC”) (collectively, “**Defendants**”), on the other hand,  
7 (collectively, the “**Parties**”), and subject to the approval of the Court.

8  
9 1. On March 19, 2019, Plaintiff Kristal Nucci filed a class action Complaint in the  
10 United States District Court, Northern District, Case No. 19-cv-01434-LHK, that  
11 included causes of action for Failure to Indemnify Business Expenses (Labor Code  
12 §2802); Failure to Reimburse for Required Uniforms (IWC Wage Order 7, § 9  
13 (A)); Unfair Business Practices (Business and Professions Code § 17200, et seq);  
14 and Injunction (Business and Professions Code § 17200, et seq). On May 23, 2019,  
15 a First Amended Complaint was filed that added Plaintiff Ana Goswick and added  
16 cause of actions for Failure to Pay Minimum Wage (Labor Code §§ 1194, 1194.,2,  
17 1197, IWC Wage Order No. 7, § 4(A)), Failure to Furnish Accurate Wage  
18 Statements (Labor Code § 226), Waiting Time Penalties (Labor Code §§ 201, 202,  
19 and 203), and Penalties under the Private Attorneys General Act (“PAGA”) (Labor  
20 Code § 2698, et seq). On October 2, 2019, a Second Amended Complaint was filed  
21 that added Plaintiff Kelly Shaw.

22  
23 2. In the Second Amended Complaint, Representative Plaintiffs allege, *inter alia*, that  
24 Defendants required non-exempt associates in Rite Aid retail stores to wear and  
25 purchase uniforms. Representative Plaintiffs allege that this resulted in Defendants  
26 failing to compensate associates for uniforms and resulted in violations of various  
27 California Labor Code sections (including, *inter alia*, unreimbursed business  
28

1 expenses, unpaid minimum wages, wage statement violations, failure to pay wages  
2 upon separation, and PAGA).

3  
4 3. A class action was certified on June 14, 2020. The Notice of Class Action was sent  
5 on December 23, 2020. The exclusion deadline for the Class Action was January  
6 27, 2021; twenty-two (22) persons excluded themselves from the Class Action.

7  
8 4. The Parties participated in four mediations: prior to class certification, two  
9 mediations were held with Michael Loeb, Esq; following class certification, a  
10 mediation was held with Hon. Daniel Weinstein (Ret.) and Lizbeth Hasse;  
11 following the parties' filing cross summary judgment motions and defendants'  
12 motion to decertify class, a mediation was held on September 30, 2021, with  
13 highly-regarded mediator Jeff Ross, Esq. Following the mediation session with  
14 Mr. Ross, a mediator's proposal for settlement of the entire action was accepted  
15 by Plaintiffs and Defendants on October 1, 2021.

16  
17 5. Prior to mediation with Jeff Ross, the Parties engaged in formal written discovery,  
18 obtained multiple declarations, performed surveys, conducted depositions,  
19 exchanged expert reports, and conducted expert depositions. Fact discovery  
20 closed and the parties were preparing for trial, set for November 19, 2021. There  
21 were pending cross motions for summary judgment and Defendants' motion to  
22 decertify class. Substantial raw data and data compilations and analysis  
23 concerning the Class was performed by Plaintiffs' experts. Furthermore, counsel  
24 for the Parties conferred extensively concerning this information, the merits of the  
25 Parties' claims and/or defenses, and other issues relevant to reaching a settlement.

26  
27 6. Representative Plaintiffs and their counsel have conducted sufficient discovery  
28 and analysis to evaluate the strengths and weaknesses of their respective claims

1 and Defendants' defenses and to recommend this Settlement to the Class Members  
2 and the Court.

3  
4 7. Class Counsel has fully advised Representative Plaintiffs of this Agreement and  
5 represents that they approve of and consent to the terms herein.

6  
7 **TERMS OF SETTLEMENT**

8  
9 NOW, THEREFORE, in consideration of the mutual covenants, promises and  
10 warranties set forth herein, the Parties agree, subject to the Court's approval, as follows:

11  
12 8. Definitions of Certain Settlement Terms:

13  
14 a. **"Person"** shall have the meaning set forth in California Government Code  
15 Section 17.

16  
17 b. **"Class"**: All non-exempt employees, excluding pharmacists, pharmacy  
18 interns, and asset protection agents, working in any Rite Aid store in  
19 California at any time from March 19, 2015 through the date of the  
20 preliminary approval of the settlement by the Court.

21  
22 i. The Class shall exclude the following twenty-two (22) persons who  
23 opted-out of the class action:

24

FirstName	LastName
Alexandra	Stronge
Amber J	Clanton
Firozuddin	Vora

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Paul	Ko
Samuel V	Cardona
Mercedes	Mcconohy
Mark A	Collins
Prerana A	Reddy
Tipawan	Kerareenuntawut
Selvin V	Morales
Beverly	Jones
Lissette	Luna Ramirez
Ernesto E	Rodriguez
Lorraine M	Paredes Villa
Crystal	Rim
Joseph E	Nasr
Gayaneh	Herabidian
Teqwan K	Nicholas
Iridian	Rojas
Anum I	Issa
Nathaniel K	Johnson
Jennifer L	Bowyer

- c. **“Class Period”**: March 19, 2015 through the date of the final approval of the settlement by the Court.
  
- d. Each individual member of the Class shall be referred to as a **“Class**

1           **Member.”**

- 2
- 3           e.    **“PAGA Aggrieved Employees”**: All non-exempt employees, excluding
- 4           pharmacists, pharmacy interns, and asset protection agents, working in any
- 5           Rite Aid store in California at any time from March 19, 2018 through the
- 6           date of the preliminary approval of the settlement by the Court.
- 7
- 8           f.    **“Class Counsel”**: Aiman-Smith & Marcy PC.
- 9
- 10          g.    **“Notice”**: The notice form to Class Members, substantially in the form
- 11          attached hereto as **Exhibit A**, which will, among other things, notify Class
- 12          Members of the preliminary approval of the settlement and scheduling of the
- 13          final approval hearing.
- 14
- 15          h.    **“Postcard Notice”**: The postcard notice form to Class Members,
- 16          substantially in the form attached hereto as **Exhibit B**, which will, among
- 17          other things, notify Class Members of the settlement website for viewing the
- 18          long form **Notice**.
- 19
- 20          i.    **“Notice Deadline”** means the date that is thirty (30) days after the Notice is
- 21          initially mailed to the Settlement Class. Class Members shall have until the
- 22          Notice Deadline to object to the Settlement.
- 23
- 24          j.    **“Effective Date”**: The Settlement embodied in this Agreement shall
- 25          become effective upon execution by all Parties, Class Counsel, Defendants’
- 26          counsel, and Final Approval from the Court, following Notice to Class
- 27          Members and a formal fairness hearing and entry of a final judgment by the
- 28          Court in accordance with and upholding its terms herein.

1 k. **“Final Approval”**: The date of the Court’s order granting final approval of  
2 the Settlement.

3  
4 l. **“Administrator”**: The administrator responsible for administering this  
5 settlement, Atticus Administration (subject to court approval).  
6

7 9. Settlement of the Action: As detailed in the Release set forth in Paragraph 33, all  
8 causes of action alleged in the Action and any claims, damages, or causes of action  
9 that could have been brought based on the factual allegations in the Action,  
10 including any claims arising from the alleged violation of any provision of  
11 California and/or federal law which were or could have been raised as a part of the  
12 Action shall be settled and compromised in full and without exception as between  
13 each Class Member and Defendants, subject to the terms and conditions set forth in  
14 this Agreement and the approval of the United States District Court for the  
15 Northern District of California.

16  
17 10. Settlement Amount:

18  
19 a. **“Gross Settlement Amount”**: In consideration for this Settlement and a  
20 release by the Class Members, Defendants have agreed to pay the sum of  
21 Twelve Million Dollars and Zero Cents (\$12,000,000.00). The Gross  
22 Settlement Amount is the maximum amount that Defendants are required to  
23 pay for any and all purposes under this Agreement. The Gross Settlement  
24 Amount shall exclude Defendants’ share of federal, state, and local taxes,  
25 and such amounts will be paid separately by Defendants. In no event shall  
26 any part of the Gross Settlement Amount revert to the Defendants.  
27  
28

- 1           b.     **“Net Settlement Amount”**: The Gross Settlement Amount of Twelve  
2           Million Dollars and Zero Cents (\$12,000,000.00) less the following  
3           deductions:
- 4
- 5           i.       The sum of Thirty Thousand Dollars and Zero Cents (\$30,000.00)  
6           for the representative payment award to Plaintiffs, with Ten  
7           Thousand Dollars (\$10,000) to be paid each to Kristal Nucci, Kelly  
8           Shaw, and Ana Goswick, or such other amount as approved by the  
9           Court;
- 10
- 11          ii.       The sum of attorneys’ fees to Class Counsel under Paragraph 16(a),  
12          which shall not exceed Three Million Nine Hundred and Ninety-  
13          Nine Thousand Six Hundred Dollars and Zero Cents (\$3,999,600.00)  
14          (33.33 % of the Gross Settlement Amount);
- 15
- 16          iii.       The sum of costs awarded to Class Counsel under Paragraph 16(b),  
17          which shall not exceed Three Hundred and Five Thousand Dollars  
18          and Zero Cents (\$305,000.00);
- 19
- 20          iv.       The administrative expenses approved by the Court pursuant to this  
21          Agreement, estimated at Fifty-Three Thousand Six Hundred Ninety  
22          Five Dollars and Zero Cents (\$53,695.00); and
- 23
- 24          v.       One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00),  
25          which is 75% of the Two Hundred Thousand Dollars and Zero Cents  
26          (\$200,000.00) earmarked for the release of Representative Plaintiffs’  
27          and each Class Member’s PAGA claims, and which will be paid to  
28          the California Labor and Workforce Development Agency.



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c. The Net Settlement Amount is comprised of two parts: (1) the “**Net PAGA Settlement Amount**” (*i.e.*, the \$50,000.00 earmarked for the release of Representative Plaintiffs’ and each PAGA Aggrieved Employee’s PAGA claims that is not payable to the California Labor and Workforce Development Agency); and (2) the “**Net Class Settlement Amount**” (*i.e.*, the entire Net Settlement Amount less the Net PAGA Settlement Amount, which is approximately \$7,411,705.00).

11. Settlement Formula and Distribution: Subject to the conditions of this Agreement, Class Members shall be entitled to a share (the “**Settlement Share**”) of the Net Settlement Amount. The allocation is set forth as follows: (1) Rite Aid implemented a new dress code policy in March 2020, which no longer required that Class Members dress in Rite Aid’s “Team Colors,” therefore, a nominal payment of \$25.00 will be paid to Class Members hired after March 2020 for the release of any potential claims alleged in the Action; (2) for Class Members hired prior to March 2020, Class Members will receive a share of the Net Settlement Amount, after subtracting the payment to the Class Members hired after March 2020, based on their pro-rata percentage of workweeks determined by dividing the number of weeks worked (that is, weeks of employment, regardless of any leave or vacation) by the Class Member as a non-exempt employee, excluding pharmacists, pharmacy interns, and asset protection agents, in any Rite Aid store in California at any time from March 19, 2015 through the date of preliminary approval of the settlement by the Court, such that these Class Members will receive a dollar amount calculated by multiplying each of their respective percentages by the Net Settlement Amount; (3) for those Class Members hired prior to March 2020 whose employment has terminated with Defendants, an additional four workweeks will be added to their total workweeks, as described above in this paragraph, in consideration of their

1 release of waiting time penalties; and (4) for Aggrieved Employees, the Net PAGA  
2 Settlement Amount of \$50,000 will be shared on a pro rata basis among Aggrieved  
3 Employees.

4  
5 12. Reference to TPI's Records: The number of weeks worked by Class Members as  
6 non-exempt employees, excluding pharmacists, pharmacy interns, and asset  
7 protection agents, in any Rite Aid store in California during the Class Period will  
8 be determined by reference to TPI's records. TPI's records shall be presumptively  
9 correct for determining who the Class Members are and the number of weeks  
10 worked by the Class Members during the Class Period. TPI's records shall also be  
11 presumptively correct for determining the identities of Class Members whose  
12 employment has terminated with Defendants.

13  
14 13. Allocation of Settlement Payments:

- 15  
16 a. Ten percent of all Settlement Share payments to Class Members shall be  
17 considered wages and shall be subject to the withholding of all applicable  
18 local, state and federal taxes. Class Members will receive from the  
19 Administrator an IRS Form W-2 for the payment and taxes that will be  
20 withheld at the rate required by law. Furthermore, Defendants (via the  
21 Administrator) will pay all amounts required by law to be paid by the  
22 employer to any federal, state or local tax authority.
- 23  
24 b. Ninety percent of all Settlement Share payments to Class Members shall be  
25 considered non-wages for the settlement of expense reimbursements, interest  
26 claims, statutory and civil penalty claims, and for attorneys' fees. Class  
27 Members will receive from the Administrator an IRS Form 1099 for these  
28 payments, in accordance with and if required by IRS requirements, and will

1 be responsible for correctly characterizing this compensation for tax  
2 purposes and to pay any taxes owing.  
3

4 14. Service Payment Award to Representative Plaintiffs: From the Gross Settlement  
5 Amount, each Representative Plaintiff will be paid Ten Thousand Dollars and Zero  
6 Cents (\$10,000.00) as a service award for their time and efforts as Representative  
7 Plaintiffs. These service payment awards are in addition to their rights to payments  
8 provided in this Agreement for initiating and pursuing the Action, undertaking the  
9 risk of liability for attorneys' fees and expenses in the event they were unsuccessful  
10 in the prosecution of the Action, and granting the general release under the  
11 Settlement. Tax deductions and withholdings will not be taken from the  
12 Representative Payments, and instead a Form 1099 will be issued to each Plaintiff  
13 with respect to this payment. Representative Plaintiffs will be responsible for  
14 correctly characterizing this compensation for tax purposes and to pay any taxes  
15 owing. The Representative Plaintiffs hereby indemnify and hold Defendants  
16 harmless for and against any action or liability of Representative Plaintiffs, if any  
17 tax authority should dispute the characterization of this compensation. The  
18 Representative Plaintiffs shall not be entitled to the payment set forth in this  
19 Subparagraph unless they provide their Social Security number or tax identification  
20 numbers to the Administrator.  
21

22 15. PAGA Payment: Subject to Court Approval, from the Gross Settlement Amount, a  
23 payment of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00)  
24 will be made to the California Labor and Workforce Development Agency  
25 ("LWDA"), which is the payment to the State of California for its share of civil  
26 penalties pursuant to the Labor Code Private Attorneys General Act, Cal. Labor  
27 Code §§ 2698, *et seq.* ("PAGA"), approved by the Court. The One Hundred Fifty  
28 Thousand Dollars and Zero Cents (\$150,000.00) payment is 75% of Two Hundred

1 Thousand Dollars and Zero Cents (\$200,000.00), which is the amount that the  
2 Parties have earmarked for the release of claims under PAGA. The remaining  
3 Twenty-Five Percent (25%), or Fifty Thousand Dollars and Zero Cents  
4 (\$50,000.00), will be allocated to the Net PAGA Settlement Amount for  
5 distribution to the PAGA Aggrieved Employees as set forth in Paragraph 10, above.  
6 The Net PAGA Amount will be divided equally amongst the PAGA Aggrieved  
7 Employees.

8  
9 16. Attorneys' Fees and Costs

10  
11 a. Class Counsel shall submit an application for an award of attorneys' fees not  
12 to exceed Three Million Nine Hundred and Ninety-Nine Thousand Six  
13 Hundred Dollars and Zero Cents (\$3,999,600.00) (33.33 % of the Gross  
14 Settlement Amount). This amount will cover all work performed to date and  
15 all work to be performed in connection with the approval by the Court of  
16 this Agreement and the final conclusion of this Consolidated Action.  
17 Defendants agree not to oppose any fee application that is not in excess of  
18 the amount specified in this Paragraph. Should the fee and costs Award  
19 approved by the Court be less than the amount sought, the difference shall  
20 be added to the Net Settlement Sum. Payment of the fees and costs to Class  
21 Counsel shall constitute full satisfaction of any obligation to pay any  
22 amounts to any person, attorney or law firm for attorneys' fees, expenses or  
23 costs in the Action, and shall relieve Defendants of any other claims or  
24 liability to any other attorney or law firm for any attorneys' fees, expenses  
25 and/or costs to which any of them may claim to be entitled on behalf of  
26 Plaintiffs and/or the Class.

27  
28 b. Class Counsel shall submit an application for the reimbursement of costs

1 and expenses in an amount not to exceed Three Hundred Five Thousand  
2 Dollars and Zero Cents (\$305,000.00). This amount will cover all costs and  
3 expenses incurred to date or to be incurred. This amount shall come from  
4 the Gross Settlement Amount. Defendants agree not to oppose any cost and  
5 expense application that is not in excess of the amount specified in this  
6 Paragraph.

7 c. Except as provided herein, each party shall be responsible for its own  
8 attorneys' fees and costs.

9  
10 17. Date of Defendants' Payment to Administrator: Defendants shall pay the  
11 Administrator all amounts awarded and approved by the Court, for payment to the  
12 Class, to the LWDA, the service payment awards, and for attorneys' fees and costs  
13 on the "**Payment Date**," which shall be the latest of the following occurrences:

14  
15 a. Fourteen (14) calendar days following the entry of a Judgment finally  
16 approving this Settlement, provided no objection is made to this Settlement  
17 prior to or at the hearing for final approval of this Settlement, or if any  
18 objection is made, but is resolved formally and withdrawn prior to the final  
19 approval hearing of this Settlement.

20  
21 b. If an objection to this Settlement is made before or at the hearing for final  
22 approval (that is not resolved prior to the hearing and is formally  
23 withdrawn), fourteen (14) calendar days after any deadline to file an appeal  
24 under Federal Rule of Appellate Procedure 4 has expired, provided no  
25 appeal is filed.

26  
27 c. If an appeal has been taken or sought, fourteen (14) calendar days after the  
28 date the Judgment is finally affirmed by an appellate court with no

1 possibility of subsequent appeal or other judicial review, or the date the  
2 appeal(s) or other judicial review are finally dismissed (and upholding the  
3 Settlement) with no possibility of subsequent appeal or other judicial review.  
4

5 18. Date of Administrator's Payment to Recipients: Within ten (10) business days of  
6 the Payment Date, the Administrator shall distribute all payments due under the  
7 Settlement, including the payments to each Class Member, to Representative  
8 Plaintiffs, to the LWDA, and Class Counsel. Also, within ten (10) business days of  
9 the Payment Date, the Administrator shall remit payment to the appropriate tax  
10 authorities of the employee's and employer's share of taxes with respect to the  
11 wage-portion.  
12

13 19. No Further Payments: Defendants shall have no obligation to pay or provide any  
14 further consideration to any Class Member by reason of this Agreement or because  
15 of the foregoing payments, including but not limited to contributions to any 401(k)  
16 or other retirement or employee benefit plan, vacation or sick pay, etc. Any  
17 payments made pursuant to this Agreement will not trigger any obligation of  
18 Defendants to make any withholding for 401(k) contributions or to make any  
19 contributions to any 401(k) or similar plan. Nor will it trigger any obligation of  
20 Defendants to make any contributions to any employee welfare benefit plan for the  
21 benefit of any Class Member who is a member of any union.  
22

23 20. Parties' Contentions: In entering into this Agreement, Defendants do not admit to  
24 any liability or wrongdoing of any kind associated with the asserted claims. In  
25 entering into this Agreement, Representative Plaintiffs believe that they have filed  
26 a meritorious action.  
27

28 21. Settlement Fair, Reasonable, and Adequate: Representative Plaintiffs and Class

1 Counsel are of the opinion that the terms set forth in this Agreement are fair,  
2 reasonable, and adequate and this Agreement is in the best interest of the Class in  
3 light of all known facts and circumstances, including the risk of pending motions  
4 and the trial, defenses asserted by Defendants, and numerous potential appellate  
5 issues. Defendants and their counsel also agree that this Agreement is fair and is in  
6 the best interests of the Class and each Class Member.

7  
8 **THE ADMINISTRATOR**

9  
10 22. Selection of Administrator: Subject to the Court's approval, Atticus  
11 Administration shall be retained as the Administrator.

12  
13 23. Class List: Within thirty (30) calendar days of the date the Court enters an order  
14 granting preliminary approval of the Settlement (the "**Preliminary Approval**  
15 **Date**"), Defendants shall provide to the Administrator and Class Counsel a list  
16 containing, for each Class Member, the following information: (1) name; (2) last  
17 known address, email address (to the extent such information is maintained in  
18 Defendants' Human Resources Information System) and phone number (to the  
19 extent such information is maintained in Defendants' Human Resources  
20 Information System); (3) Social Security Number; (4) number of weeks worked by  
21 each individual as a Class Member in a Rite Aid retail store during the Class  
22 Period; and (5) identity of Class Members whose employment has terminated with  
23 Defendants. Class Counsel agrees to only use this information for the purposes of  
24 communicating with Class Members about the Settlement.

25  
26 24. Administrator's Duties: The Administrator's duties will include:

27  
28 a. updating addresses contained in the Class List by way of search of the

1 National Change of Address registry before the initial mailing of the Notice  
2 Packet;

3  
4 b. preparing, printing, mailing and emailing (where email is available pursuant  
5 to Paragraph 23) the Postcard Notice, in substantially the form attached  
6 hereto as “**Exhibit B**” to Class Members, as well as re-mailing any Postcard  
7 Notice that is returned by the U.S. Postal Service as non-deliverable but with  
8 a forwarding address; conducting a skip-trace on any Postcard Notice  
9 returned by the U.S. Postal Service as non-deliverable, as needed, and re-  
10 mailing the Postcard Notice to any new address obtained by way of skip-  
11 trace. The Administrator will also mail reminder postcards to all Class  
12 Members who have been issued checks or digital payments but have not  
13 cashed their check or verified their digital payment issued to them within  
14 ninety (90) calendar days after the checks’ or payments’ issuance;

15  
16 c. creating a website for the Settlement which will allow Class Members to  
17 view the Class Notice in substantially form attached hereto as “**Exhibit A**”,  
18 this Settlement Agreement, all papers filed by Class Counsel to obtain  
19 preliminary and final approval of the Settlement Agreement, and payment  
20 options. Additionally, the Settlement website will provide contact  
21 information for Class Counsel and the Settlement Administrator. The  
22 Settlement Administrator will provide Class Counsel and Defendants’  
23 counsel with a preview of the proposed website. Class Counsel and  
24 Defendants’ counsel must approve the website before it goes live and also  
25 must approve any modifications to the website. The Settlement  
26 Administrator shall also create a toll-free call center to field telephone  
27 inquiries from Class Members during the notice and settlement  
28



1 administration periods. The Settlement Administrator will be directed to  
2 take the website and call center down 180 days after the Payment Date.

3  
4 d. conducting any necessary verifications of Social Security Numbers;

5  
6 e. reviewing and processing disputes (as defined in Paragraph 32) and  
7 objections to the Settlement (as defined in Paragraph 31);

8  
9 f. providing Class Counsel and Defendants' Counsel with periodic status  
10 reports about the delivery of the Notice, disputes, and objections to the  
11 Settlement;

12  
13 g. issuing payment to effectuate the payments due under the Settlement.  
14 Settlement checks will be valid for one hundred and eighty (180) days.  
15 Digital payments will be able to be activated for one hundred and eighty  
16 (180) days. At the end of that 180-day period, settlement checks will be  
17 void and non-activated digital payments will be combined with the sum of  
18 uncashed checks. The amounts of any uncashed checks and non-activated  
19 digital payments shall undergo a second distribution to Class Members  
20 and/or be distributed to the charitable organization agreed to by the Parties  
21 and approved by the Court as detailed in Paragraph 29(d);

22  
23 h. providing a report listing the amounts of payments made to each Class  
24 Member; issuing the tax reports required under this Settlement; and

25  
26 i. otherwise administering the Settlement pursuant to this Agreement.  
27  
28

1 25. Qualified Settlement Fund: The Parties agree that the settlement funds will be  
2 placed in an account held by the Administrator to effectuate the terms of this  
3 Agreement and the orders of the Court. The Parties agree that the settlement fund  
4 (1) shall be established pursuant to an order of the Court prior to the receipt of any  
5 monies from Defendants; (2) that it shall be established to resolve and satisfy the  
6 contested claims that have resulted, or may result, from the matters that are the  
7 subject of this Action and that are released by this Settlement; and (3) that the fund  
8 or account that is established and its assets are segregated and shall be segregated  
9 (within a separately established fund or account) from the assets of Defendants and  
10 all related other persons. The Administrator shall be responsible for establishing,  
11 administering, and otherwise operating the settlement fund, including the  
12 preparation and filing of federal, state, and local tax returns. The Administrator  
13 shall also be responsible for preparing and issuing all payments to the Class  
14 Members, Representative Plaintiffs, Class Counsel, the employer's share of any  
15 payroll taxes and all checks for claims administration costs and expenses that are  
16 approved by the Court and any other payments included in this Agreement and  
17 approved by the Court.

18  
19 26. Administrator's Findings: The Administrator shall report, in summary or narrative  
20 form, the substance of its findings regarding the notice and claims process, and, in  
21 that regard, the Administrator's approval of claims shall be conclusive and binding.  
22 The Administrator shall be granted reasonable access to TPI's records to perform  
23 its duties. All disputes relating to the Administrator's ability and need to perform  
24 its duties shall be referred, if necessary, to the Court, which will have continuing  
25 jurisdiction over the terms and conditions of this Agreement. The Administrator  
26 submits to the jurisdiction of the Court in connection with its appointment as  
27 Administrator.

28

1 27. Administrator's Reports: The Administrator shall provide weekly reports to  
2 counsel concerning receipt of Class Members' requests for exclusion and returned  
3 mail.

4  
5 **ADMINISTRATION OF SETTLEMENT**  
6

7 28. Notice: Within ten (10) business days of receipt of the Class List, the Postcard  
8 Notice, in the form attached hereto as Exhibit "B", as approved by the Court, shall  
9 be sent by the Administrator to each Class Member. The Postcard Notice shall be  
10 sent by first class mail to each Class Member's current or last known address on  
11 file with TPI, following an updated review of the National Change of Address  
12 Registry by the Administrator, as well as by email (where available). The long form  
13 Notice, in the form attached hereto as Exhibit "A" will be posted on the settlement  
14 website.

15  
16 a. Returned Postcard Notice: For Postcard Notices returned from this mailing  
17 with forwarding addresses affixed thereto, the Administrator will promptly  
18 perform a single re-mailing of the Notice Packet to the forwarding address.  
19 For Postcard Notices returned without a forwarding address, the  
20 Administrator will utilize reasonable and customary skip-tracing efforts to  
21 locate an updated address, and promptly perform a single re-mailing to such  
22 updated address, if found.

23  
24 b. It will be presumed that that a Class Member received the Postcard Notice if  
25 it has not been returned within thirty (30) days of mailing.

26  
27 c. At least ten (10) days prior to the final approval hearing, the Administrator  
28 shall provide the Court with a declaration of due diligence and proof of

1 mailing with regard to the mailing of the Postcard Notice, all attempts to  
2 locate Class Members, and confirmation of the posting of the long form  
3 Notice on the settlement website. Class Counsel shall be responsible for  
4 working with the Administrator to timely file the declaration of due  
5 diligence.

6  
7 29. Administrator's Responsibility for Payment:

- 8  
9 a. Class Members will have an option to choose a digital payment or a hard  
10 copy check. If a Class Member does not affirmatively choose a digital  
11 payment, a hard copy check will be mailed.
- 12  
13 b. The digital payment options will include E-Mastercard, Paypal, and Venmo.  
14 Class members will have one hundred eighty (180) calendar days to activate  
15 their digital payment.
- 16  
17 c. All settlement checks will be valid for one hundred eighty (180) calendar  
18 days.
- 19  
20 d. At the end of the 180-day period, settlement checks will be cancelled and  
21 digital payments not activated will be combined with the uncashed  
22 settlement checks.
- 23  
24 i. If the total residual amount of uncashed settlement checks and non-  
25 activated digital payments is less than Two Hundred Thousand  
26 Dollars and Zero Cents (\$200,000.00), then the amount will revert to  
27 *cy pres*. The *cy pres* recipient shall be proposed by the parties and  
28 approved by the Court. The Parties propose Legal Aid at Work

1 which provides legal services assisting low-income, working families  
2 and promotes better understanding of the conditions, policies, and  
3 institutions that affect the well-being of workers and their families  
4 and communities. The Settlement Administrator shall distribute any  
5 *cy pres* payment.

- 6
- 7 ii. If the total residual amount is Two Hundred Thousand Dollars and  
8 Zero Cents (\$200,000.00) or greater, a second distribution will occur  
9 to those Class Members who cashed their Settlement Award checks  
10 and activated their digital payments. The second distribution will  
11 occur on a pro rata basis as provided for in Paragraph 11. In the  
12 event of a redistribution of uncashed check and non-activated digital  
13 payments funds to Class Members who cashed or activated their  
14 Settlement Award, the additional settlement administration costs  
15 related to the redistribution will be deducted from the total amount of  
16 uncashed checks and non-activated digital payments prior to the  
17 redistribution. If a check to a Settlement Class Member is returned to  
18 the Settlement Administrator as undeliverable during the second  
19 distribution, the Settlement Administrator shall promptly attempt to  
20 obtain a valid mailing address by performing a skip trace search and,  
21 if another address is identified, shall mail the check to the newly  
22 identified address. If none is found, then said check shall revert to  
23 the *cy pres* recipient. If there are uncashed check funds or digital  
24 payments not activated remaining from redistribution as described in  
25 this Paragraph, then the amount will revert to *cy pres* regardless of  
26 the amount and there will not be a second redistribution.
- 27
- 28

1           iii.     Within twenty-one (21) days after the distribution of any remaining  
2 monies to Class Members who cashed their Settlement Award check  
3 or activated their digital payment or to the *cy pres* recipient,  
4 Representative Plaintiffs will file a Post-Distribution Accounting.  
5 The Post-Distribution Accounting will set forth the total settlement  
6 fund, the total number of Class Members, the total number of Class  
7 Members to whom notice was sent and not returned as undeliverable,  
8 the number and percentage of objections, the average and median  
9 recovery per claimant, the method(s) of notice and the method(s) of  
10 payment to class members, the number and value of checks not  
11 cashed and digital payments not activated, the amounts distributed to  
12 the *cy pres* recipient (if applicable), the administrative costs, the  
13 attorneys' fees and costs, the attorneys' fees in terms of percentage of  
14 the settlement fund, and the multiplier, if any.

15  
16 30.     No Class Member Exclusions to the Settlement:

17     Class Members were given the opportunity to exclude themselves from the Class  
18 Action through the Notice of Class Action sent on December 23, 2020. In the  
19 Notice, Class Members were informed that they faced a binary choice – to stay in  
20 the lawsuit, or to opt out – and that they needed to make that choice by January 27,  
21 2021. There were twenty-two (22) persons who excluded themselves from the  
22 Class Action. Due process has been met and a second opt-out opportunity is not  
23 warranted.

24  
25 31.     Objections to the Settlement:

26  
27     a.     Class Members shall be permitted to object to the Settlement before final  
28 approval. To object, a Class Member must file a timely written objection

1 with the Court. An objection to approval of the Settlement will be  
2 considered timely if it is filed with the Court no later 30 days after the initial  
3 mailing of the Notice of Settlement (*i.e.*, the Notice Deadline).

4  
5 b. Such objection shall not be valid unless it includes the information specified  
6 in the Settlement Notice. The statement must be signed personally by the  
7 objector, and shall state each specific objection and any legal and factual  
8 support for each objection. The objection must also state the Class  
9 Member's full name, address, the dates of his/her employment at TPI, and  
10 whether the objector intends to appear at the Final Approval Hearing.

11  
12 c. No Class Member shall be entitled to be heard at the Final Approval Hearing  
13 (whether individually or through counsel), unless written notice of the Class  
14 Member's intention to appear at the Final Approval Hearing has been timely  
15 filed with the Court and served upon Class Counsel and Defendants'  
16 Counsel. The postmark date of mailing to Class Counsel and Defendants'  
17 Counsel shall be the exclusive means for determining that an objection is  
18 timely mailed to counsel. If postmark dates differ, the later of the two  
19 postmark dates will control.

20  
21 d. If the Court rejects the Class Member's objection, the Class Member will  
22 still be bound by the terms of this Agreement including the release.

23  
24 e. The requirement that the Class Member submit a written objection or any of  
25 the other foregoing terms related to objections may be excused by the Court  
26 upon a showing of good cause.

27  
28 f. None of the Parties, their counsel, nor any person on their behalf, shall seek

1 to solicit or otherwise encourage anyone to object to the settlement, or  
2 appeal from any order of the Court that is consistent with the terms of this  
3 Settlement.

4  
5 32. Handling of Disputes Regarding Workweeks: Class Member disputes may arise  
6 regarding the number of weeks worked as a Class Member in Rite Aid retail stores  
7 in California during the Class Period (from March 19, 2015 through the date of  
8 Preliminary Approval) as shown in his or her Settlement Notice. To the extent that  
9 any Class Member disputes the number of workweeks that the Class Member  
10 worked, such Class Members may produce evidence to the Settlement  
11 Administrator establishing the dates they contend to have worked for Defendants.  
12 The deadline for Class Members to submit disputes pursuant to this paragraph is  
13 the Notice Deadline (*i.e.*, thirty (30) days after the date Notices are sent to the  
14 Settlement Class). Disputes must be postmarked by that date. Unless the Class  
15 Member presents convincing evidence proving he or she worked more workweeks  
16 than shown by Defendants' records, his/her Settlement Award will be determined  
17 based on Defendants' records. The Settlement Administrator shall notify counsel  
18 for the Parties of any disputes it receives. Defendants shall review its records and  
19 provide further information to the Settlement Administrator, as necessary. The  
20 Settlement Administrator shall provide a recommendation to counsel for the  
21 Parties. Counsel for the Parties shall then meet and confer in an effort to resolve  
22 the dispute. If the dispute cannot be resolved by the Parties, it shall be presented to  
23 the Court for a resolution. The Settlement Administrator will notify the disputing  
24 Class Member of the decision.



**RELEASE OF CLASS CLAIMS**

33. Release of Claims by Class members and Representative Plaintiffs: Upon the Final Approval by the Court of this Agreement, and except as to such rights or claims as may be created by this Agreement, each Class Member fully releases and discharges Defendants, their present, former, and future parents, subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective past and present members, shareholders, directors, officers, employees, agents, servants, registered representatives, insurers and attorneys (collectively hereafter, the “**Released Parties**”) from any and all claims, debts, liabilities, demands, claims for restitution or injunctive relief, obligations, guarantees, costs, expenses, attorneys’ fees, damages, interest, liquidated damages, penalties, loss of wages, actions, causes of action and any other relief (of whatever kind or nature, whether known or unknown) that were asserted in the Action or could have been asserted based on the same factual predicates contained in the Action, from March 19, 2015 through the date of the final approval of the settlement by the Court, including but not limited to claims for violations of California and/or federal law pertaining to (1) failure to reimburse for business expenses; (2) failure to pay minimum wages; (3) failure to provide accurate itemized wage statements; (4) waiting time penalties; (5) violation of California Business and Professions Code; (6) injunctive relief pursuant to California Business and Professions Code; and (7) PAGA civil penalties to the extent based on the six immediately preceding and identified issues in Subsections (1)-(6). This release includes but is not limited to claims for violations of California Labor Code §§ 201, 202, 203, 204, 204b, 210, 226, 510, 558, 1194, 1194.2, 1197, 1197.1, 2802, and § 2698, *et seq.*; IWC Wage Order No. 7, §§ 4 and 9(A); California Code of Civil Procedure § 1021.5; California Business & Professions Code § 17200, *et seq.* (to the extent based on the same protections as provided by each of the statutes listed immediately above); and any claims under

1 the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.*, that  
2 are or could be based on the same factual allegations in the Action. (All together  
3 collectively, “**Released Claims**”).  
4

5 a. In order to achieve a full and complete release of the Released Parties as to  
6 the release directly above, the Representative Plaintiffs and each Class  
7 Member acknowledge that the release directly above is also intended to  
8 include in its effect all such Released Claims listed above whether or not the  
9 Representative Plaintiffs and each Class Member know or suspect them to  
10 exist.  
11

12 b. If any Class Member initiates a new lawsuit against Defendants based on  
13 any claim released under this Agreement, and the Court invalidates the  
14 release, any recovery by the Class Member shall be offset by the amount, if  
15 any, paid to the Class Member in connection with this Settlement. The  
16 language in this Paragraph shall be included in the Notice of Settlement.  
17

18 34. Release of Claims by Representative Plaintiffs: Upon the Final Approval by the  
19 Court of this Agreement, in consideration of their awarded Representative  
20 Payments, their Settlement Shares, and the other terms and conditions of the  
21 Settlement, Plaintiffs hereby fully and finally release and discharge **Released**  
22 **Parties** from all known and unknown claims they have or may have against the  
23 **Released Parties**, of every nature and description whatsoever, up to the date the  
24 District Court’s approval of the Settlement Agreement is Final. This general  
25 release of claims includes any and all known or unknown contract, tort, statutory,  
26 common law, constitutional, discrimination, public policy, retaliation, wrongful  
27 discharge and other claims of any type whatsoever, to the fullest extent such  
28

1 claims are releasable by law, arising out of Plaintiffs' employment with  
2 Defendants (collectively "Plaintiffs' Released Claims").

3  
4 35. Waiver of Rights under California Civil Code Section 1542: The Plaintiffs'  
5 Released Claims and the Class Members' Released Claims, include all such  
6 respective claims, whether known or unknown by the releasing party. Thus, even  
7 if a Plaintiff, a Class Member, or Class Counsel discovers facts in addition to or  
8 different from those that they now know or believe to be true with respect to the  
9 subject matter of their respective Plaintiffs' Released Claims and Class Members'  
10 Released Claims will remain released and forever barred. Therefore, with respect  
11 to those respective released claims, Plaintiffs and Class Members expressly waive  
12 and relinquish the provisions, rights and benefits of section 1542 of the California  
13 Civil Code, which reads:

14 **A general release does not extend to claims which the creditor**  
15 **does not know or suspect to exist in his or her favor at the time**  
16 **of executing the release, which if known by him or her must**  
17 **have materially affected his or her settlement with the debtor.**

18  
19 **DUTIES OF THE PARTIES FOR PRELIMINARY COURT APPROVAL**

20  
21 36. Plaintiffs shall promptly submit an Unopposed Motion for Preliminary Approval of  
22 Settlement Agreement, requesting that the Court determine that this Agreement is  
23 fair, adequate, and reasonable. Class Counsel shall submit the preliminary  
24 approval papers to Defendants' Counsel for their review three (3) business days  
25 prior to the filing of such papers with the Court.

26  
27 **DUTIES OF THE PARTIES FOR FINAL COURT APPROVAL**

1 37. Class Counsel will file an Unopposed Motion for Final Approval of Settlement  
2 Agreement, and approval of the requested Service Awards, Fee Award, Class  
3 Counsel's Costs, and Settlement Administrator's Costs to be heard at the Final  
4 Approval Hearing. Class Counsel shall submit the final approval papers to  
5 Defendants' Counsel for their review three (3) business days prior to the filing of  
6 such papers with the Court.

7  
8 38. Plaintiffs shall request that the Court schedule the Final Approval Hearing to  
9 determine final approval of the settlement and to enter a Final Approval Order:

10  
11 a. finding dissemination of the Settlement Notice was accomplished as directed  
12 and met the requirements of due process;

13  
14 b. approving the Settlement as final and its terms as a fair, reasonable and  
15 adequate;

16  
17 c. approving the payment of the Service Award to Plaintiffs Kristal Nucci,  
18 Kelly Shaw, and Ana Goswick;

19  
20 d. approving Class Counsel's application for an award of attorneys' fees and  
21 reimbursement of out-of-pocket litigation costs and expenses;

22  
23 e. directing that the Settlement funds be distributed in accordance with the  
24 terms of this Settlement Agreement;

25  
26 f. directing that the Action be dismissed finally, fully, forever and with  
27 prejudice and in full and final discharge of any and all Released Claims; and  
28

1 g. retaining continuing jurisdiction over this Action for purposes only of  
2 overseeing all settlement administration matters.

3  
4 **VOIDING THE AGREEMENT**

5  
6 39. If the Court disapproves of or refuses to enforce any of the material conditions set  
7 forth in the preceding Paragraphs, with the exception of the Court's reduction of  
8 the amounts of attorneys' fees and costs, the Parties agree to engage in follow up  
9 negotiations with the intent of resolving the Court's concerns that precluded  
10 approval, and if feasible, to resubmit the settlement for approval within thirty (30)  
11 days. If the Settlement is not approved as resubmitted or if the Parties are not able  
12 to reach another agreement, then either Party may void this Agreement. At that  
13 point, the Parties agree that each shall return to their respective positions on the day  
14 before this Agreement and that this Agreement shall not be used in evidence or  
15 argument in any other aspect of their litigation.

16  
17 40. If the conditions of the Settlement set forth herein are not satisfied, or if either of  
18 the Parties void the Settlement under Paragraph 39 above, or if the Payment Date  
19 does not occur, or, if one or more of the material terms of the Agreement is not  
20 approved or is materially modified or reversed, with the exception of the Court's  
21 reduction of the amounts of attorneys' fees and costs, Representative Plaintiffs'  
22 service payment award, or Administrator's fee, then this Agreement shall be  
23 cancelled, terminated, and shall have no force or effect, unless the Parties agree  
24 otherwise. If the Settlement is not finally approved, or if this Settlement is  
25 terminated, revoked or cancelled pursuant to its terms, the Parties to this Settlement  
26 shall be deemed to have reverted to their respective status as of the date and time  
27 immediately prior to the execution of this Agreement.

1 **PARTIES' AUTHORITY**

2  
3 41. The signatories hereby represent that they are fully authorized to enter into this  
4 Agreement and bind the Parties hereto to the terms and conditions hereof.  
5

6 **MUTUAL FULL COOPERATION**

7  
8 42. The Parties shall fully cooperate with each other to accomplish the terms of this  
9 Agreement, including the execution of such documents and to take such other  
10 action as may reasonably be necessary to implement the terms of this Agreement  
11 and to secure the Court's Final Approval of this Agreement.  
12

13 **NO PRIOR ASSIGNMENTS**

14  
15 43. The Representative Plaintiffs hereto represent, covenant, and warrant that they have  
16 not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
17 transfer, or encumber to any Person or entity any portion of any liability, claim,  
18 demand, action, cause of action, or rights herein released and discharged except as  
19 set forth herein.  
20

21 **NO ADMISSION**

22  
23 44. Nothing contained herein, including the consummation of this Agreement, is to be  
24 construed or deemed an admission of liability, culpability, negligence, or  
25 wrongdoing on the part of Defendants. Each of the Parties hereto has entered into  
26 this Agreement with the intention to avoid further disputes and litigation settled  
27 herein with the attendant inconvenience, expenses, and uncertainties. This  
28 Agreement is a settlement document and shall, pursuant to Federal Rule of

1 Evidence 408 and California Evidence Code Section 1152, be inadmissible in  
2 evidence in any proceeding, except an action or proceeding to approve, interpret, or  
3 enforce this Agreement.  
4

5 **TAXES**  
6

7 45. Neither Class Counsel nor Defendants' counsel intend anything contained herein to  
8 constitute legal advice regarding the taxability of any amount paid hereunder, nor  
9 shall it be relied upon as such. The tax issues for each Class Member may be  
10 unique, and each Class Member is advised to obtain tax advice from his/her own  
11 tax advisor with respect to any payments resulting from this Agreement.  
12

13 46. It shall be the responsibility of the Administrator to timely and properly withhold  
14 from individual settlement payments to Class Members all applicable federal, state  
15 and local income and employment taxes and to prepare and deliver the necessary  
16 tax documentation for signature by all necessary Parties and, thereafter, to cause  
17 the appropriate deposits of withholding taxes and informational and other tax return  
18 filing to occur. It shall be the responsibility of the Administrator to pursue tax  
19 refunds on any uncashed checks, and to remit such payments accordingly.  
20 Payments to Class Members and to Class Counsel pursuant to this Agreement shall  
21 be reported on IRS Forms W-2 and/or 1099, and provided by the Administrator to  
22 the respective Class Members, Class Counsel and all applicable governmental  
23 authorities as required by law.  
24

25 **NOTICES**  
26

27 47. Unless otherwise specifically provided herein, all notices, demands or other  
28 communications given hereunder shall be in writing and shall be deemed to have

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been duly given as of the third business day after mailing by United States certified mail with return receipt requested, addressed as follows:

To Plaintiffs and Class:

Randall B. Aiman-Smith, Esq.  
Reed W.L. Marcy, Esq.  
Hallie Von Rock, Esq.  
Brent A. Robinson, Esq.  
Aiman-Smith & Marcy PC  
7677 Oakport St., Suite 1150  
Oakland, CA 94621

To Defendants’ Counsel:

Jonathan Allan Klein, Esq.  
Thomas K. Hockel, Esq.  
Sweta H. Patel, Esq.  
Klein, Hockel, Iezza & Patel P.C.  
1981 North Broadway, Suite 220  
Walnut Creek, CA 94596

**CONSTRUCTION**

48. The terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her, or its counsel participated in its drafting.

**CAPTIONS AND INTERPRETATIONS**

49. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.



1 **MODIFICATION**

2  
3 50. This Agreement may not be changed, altered, or modified, except in writing and  
4 signed by the Parties hereto. This Agreement may not be discharged except by  
5 performance in accordance with its terms or by a writing signed by the Parties  
6 hereto.

7  
8 **INTEGRATION CLAUSE**

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

15  
16 **BINDING ON ASSIGNS**

17  
18 52. This Agreement shall be binding upon and inure to the benefit of the Parties hereto  
19 and their respective spouses, heirs, trustees, executors, administrators, successors,  
20 and assigns, including Defendants and the Released Parties.

21  
22 **CLASS MEMBER SIGNATORIES**

23  
24 53. Because the Class is so numerous, it is impossible or impractical to have each  
25 member execute this Agreement. The Notice, **Exhibit "A"** hereto, as approved by  
26 the Court, and the other forms of notice described herein will advise each Class  
27 Member of the binding nature of the release and such shall have the same force and  
28 effect, to the extent permitted by law, as if this Agreement were executed by each

1 Class Member.  
2

3 **CORPORATE SIGNATORIES**  
4

5 54. Any Person executing this Agreement or any such related document on behalf of a  
6 corporate signatory hereby warrants and promises for the benefit of all Parties  
7 hereto that such Person has been duly authorized by such corporation to execute  
8 this Agreement or any such related document.  
9

10 **COUNTERPARTS**  
11

12 55. This Agreement may be executed in counterparts, and when each Party has signed  
13 and delivered at least one such counterpart, each counterpart shall be deemed an  
14 original, and, when taken together with other signed counterparts, shall constitute  
15 one Agreement, which shall be binding upon and effective as to all Parties as set  
16 forth herein. Copies and facsimile transmissions of signatures shall be considered  
17 the same as an original signature.  
18

19 **CONTROLLING LAW**  
20

21 56. The Agreement shall be governed by and construed in accordance with the laws of  
22 the State of California. In any dispute about the scope of the Release provisions set  
23 forth herein or their application to bar any future claim, including regarding the  
24 assertion of a res judicata / collateral estoppel defense, this Agreement is governed  
25 exclusively by California state law and without regard to any other state or federal  
26 law.  
27  
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**IT IS SO AGREED.**

**[SIGNATURES ON THE FOLLOWING PAGE]**


DATED: Oct 21, 2021, 2021 PLAINTIFF KRISTAL NUCCI

By:   
Kristal D Nucci (Oct 21, 2021 12:46 CDT)  
\_\_\_\_\_  
KRISTAL NUCCI


DATED: Oct 21, 2021, 2021 PLAINTIFF KELLY SHAW

By:   
Kelly Sarah Shaw (Oct 21, 2021 13:36 PDT)  
\_\_\_\_\_  
KELLY SHAW


DATED: Oct 21, 2021, 2021 PLAINTIFF ANA GOSWICK

By:   
Ana Goswick (Oct 21, 2021 11:45 PDT)  
\_\_\_\_\_  
ANA GOSWICK

DATED: 10/20 2021 DEFENDANT RITE AID CORPORATION

By:   
\_\_\_\_\_  
Its: UP LEGAL  
\_\_\_\_\_

DATED: 10/30, 2021 DEFENDANT THRIFTY PAYLESS, INC.

By:   
\_\_\_\_\_  
Its: UP LEGAL  
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DATED: October 21, 2021 AIMAN-SMITH & MARCY PC

By:   
HALLIE VON ROCK, Esq.

Attorneys for Plaintiff and the Class

DATED: October 20, 2021 KLEIN, HOCKEL, IEZZA & PATEL P.C.

By:   
THOMAS K. HOCKEL, Esq.  
Attorneys for Defendants Rite Aid Corporation  
and Thrifty Payless, Inc.

**Exhibit A**

**NOTICE OF CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND  
RELEASE**

*Kristal Nucci, et al. v. Rite Aid Corporation, et al.*  
United States District Court, Northern District  
Case No. 19-cv-01434-LHK

**You could get a payment from a class action settlement if you worked for Thrifty Payless, Inc. dba Rite Aid in California as a non-exempt retail store associate (excluding pharmacists, pharmacy interns, and asset protection agents) at any time during the period from March 19, 2015 through [DATE OF PRELIMINARY APPROVAL].**

**This Notice is only a *summary* of the class action settlement. You can (and are encouraged to) access and review the entire Class Action and Private Attorneys General Act Settlement Agreement and Release, with all of the settlement terms to which you are bound, including the “Release of Claims” set forth in Paragraph 33 therein, at the settlement website [INSERT URL].**

***The United States District Court authorized this notice. This is not a solicitation from a lawyer. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or do not act.***

- Plaintiffs Kristal Nucci, Kelly Shaw, and Ana Goswick sued Thrifty Payless, Inc. and Rite Aid Corporation (hereinafter referred to collectively as “Rite Aid”), claiming that Rite Aid violated California law by purportedly requiring non-exempt associates in Rite Aid retail stores to wear and purchase uniforms. Plaintiffs allege that this resulted in Rite Aid failing to compensate associates for uniforms and resulted in violations of various California Labor Code sections (including, inter alia, unreimbursed business expenses, unpaid minimum wages, wage statement violations, failure to pay wages upon separation, and PAGA).
- Rite Aid has denied these claims and the Court has not decided the merits of these claims.
- To avoid litigation expenses, Rite Aid has agreed to settle these claims and this Notice is a summary of your rights and options under this Settlement—including the deadlines to exercise them.

**1. Am I Affected by this Settlement?**

If you received a Postcard Notice, or Notice by email, Rite Aid’s records identified you as a non-exempt retail store associate (excluding pharmacists, pharmacy interns, and asset protection agents) employed by Rite Aid in the state of California during the period of March 19, 2015 through [the date of Preliminary Approval]. As such, you are a Class Member in this lawsuit.

The Court granted class certification of this Action on June 14, 2020. The Notice of Class Action was sent to Class Members on December 23, 2020. If you did not opt-out of the Class Action, then you are a Class Member bound by this Settlement.

The purpose of this Notice is to describe the litigation to you, inform you about the Settlement, and inform you of your rights and options in connection with the Settlement.

The Court in charge of the case is the United States District Court, Northern District, and the case is known as *Kristal Nucci, et al. v. Rite Aid Corporation, et al.*, Case No. 19:cv-01434-LHK (referred to as the “Action”). The judge currently presiding over the lawsuit is the Honorable Lucy H. Koh, in Courtroom 8.

## 2. What is a class action and who is involved?

In class and representative actions, one or more people called “Class Representatives” (which – in this case – are Kristal Nucci, Kelly Shaw, and Ana Goswick) sue on behalf of themselves and other individuals who have similar claims. The Class Representatives and these other individuals together are a “Class” or “Class Members.” Each person receiving this notice is a “Class Member” for purposes of this Settlement. The Court granted class certification of this Action on June 14, 2020, and decided that this lawsuit can be resolved on a class-wide basis because it meets the requirements of federal law governing the resolution of claims through a class action.

## 3. What does the lawsuit complain about?

Plaintiffs’ Action alleges that Rite Aid violated the rights of non-exempt retail store associates under California law. Specifically, Plaintiffs claim that non-exempt retail store associates (excluding pharmacists, pharmacy interns, and asset protection agents) employed by Rite Aid in California during the relevant time period were required to wear uniforms, resulting in a: 1) Failure to Indemnify Business Expenses; 2) Failure to Reimburse for Required Uniforms; 3) Unfair Business Practices; 4) Failure to Pay Minimum Wages; 5) Failure to Furnish Accurate Wage Statements; 6) Waiting Time Penalties; and 7) and Penalties under the Private Attorneys General Act (“PAGA”) (Labor Code § 2698, et seq).

Class Counsel is experienced in class action litigation and has a duty to represent the interests of all Class Members. Based on analyzing the law concerning the claims, analyzing records, making factual investigations, considering risks involved in further litigation, ensuring that the Class receives payment without having to wait for years of protracted litigation with no certainty of success, and using a professional third-party mediator to assist in reaching a fair settlement of this lawsuit, Class Counsel believes the Settlement is fair, adequate, and reasonable.

You are receiving Class Notice of this Settlement because the Court has reviewed the Settlement and has preliminarily determined the Settlement is fair and reasonable and can go forward.

The Settlement is the result of good faith, arm’s length negotiations between Plaintiffs and Rite Aid, through their respective attorneys and aided by a well-respected mediator. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendants.

The Court has not decided whether Plaintiffs’ claims have any merit. There was no trial. Instead of going to trial, both sides agreed to this settlement.

## 4. What does the settlement provide?

- Rite Aid will pay \$12,000,000.00 (“Total Settlement Amount”) to end this lawsuit.
- Class Members will receive a portion of the Net Settlement Amount in the manner described under Question 5. The Net Settlement Amount is the Total Settlement Amount minus the following deductions: (1) up to \$10,000.00 to each of the Class Representatives as approved by the Court; (2) up to \$3,999,600.00 as attorneys’ fees to Class Counsel as approved by the Court; (3) up to \$305,000.00 as costs to Class Counsel as approved by the Court; (4) approximately \$67,000.00 as Administrative Expenses as approved by the Court; and (5) \$150,000.00 to the California Labor & Workforce Development Agency. The Net Settlement Amount is estimated to be \$7,448,400.00.

## 5. How much will my payment be?

A Class Member’s Settlement Payment will be his or her share of the Net Settlement Amount. The Net Settlement

Amount is comprised of two parts: (1) the Net PAGA Settlement Amount (*i.e.*, \$50,000 earmarked for the release of Representative Plaintiffs’ and each PAGA Aggrieved Employee’s PAGA claims that is not payable to the California Labor and Workforce Development Agency), and (2) the Net Class Settlement Amount (*i.e.*, the entire Net Settlement Amount less the Net PAGA Settlement Amount which is approximately \$7,398,400.00).

Class Members shall be entitled to a share (the “Settlement Share”) of the Net Settlement Amount. The allocation is set forth as follows: (1) Rite Aid implemented a new dress code policy in March 22, 2020, which no longer required that Class Members dress in Rite Aid’s specific “Team Colors” – accordingly, those Class Members hired after March 22, 2020 were not necessarily required to purchase uniform clothing and, therefore, a nominal payment of \$25.00 is being provided to Class Members hired after March 22, 2020 for the release of any potential claims alleged in the Action; (2) for Class Members hired prior to March 22, 2020, Class Members will receive a share of the Net Settlement Amount, after subtracting the payment to the Class Members hired after March 22, 2020, based on their pro-rata percentage of workweeks determined by dividing the number of weeks worked (that is, weeks of employment, regardless of any leave or vacation) by the Class Member as a non-exempt employee, excluding pharmacists, pharmacy interns, and asset protection agents, in any Rite Aid store in California at any time from March 19, 2015 through the date of preliminary approval of the settlement by the Court, such that these Class Members will receive a dollar amount calculated by multiplying each of their respective percentages by the Net Settlement Amount; (3) for those Class Members hired prior to March 2020 whose employment has terminated with Defendants, an additional four workweeks will be added to their total workweeks, as described above in this paragraph, in consideration of their release of waiting time penalties; and (4) for Aggrieved Employees, the Net PAGA Settlement Amount of \$50,000 will be shared on a pro rata basis among Aggrieved Employees in addition to the amounts they are otherwise eligible for under (1) through (3). All Settlement Payment determinations will be based on Rite Aid’s timekeeping, payroll, and/or human resources records for Class members. The number of workweeks that you worked for Rite Aid during the relevant period, as shown by company records, was included on the Postcard Notice mailed to you.

If you dispute the number of workweeks as shown on the Postcard Notice, you may produce evidence to the Settlement Administrator establishing the dates you contend to have worked for Rite Aid from March 19, 2015 through [the date of preliminary approval]. Corrections to the number of workweeks must be supported by documentation or other evidence to constitute a valid dispute of workweeks. The Settlement Administrator shall provide a recommendation to counsel for the Parties and counsel will meet and confer to resolve the dispute. Corrections and supporting evidence must be mailed to [INSERT ADDRESS], faxed to [INSERT FAX NUMBER], or emailed to [INSERT EMAIL ADDRESS]. The deadline to submit corrections and supporting evidence is [INSERT DATE].

For tax purposes, the individual Settlement Payments will be allocated as follows: ten percent (10%) of all settlement payments to Settlement Class Members shall be considered wages and shall be subject to the withholding of all applicable local, state and federal taxes; ninety percent (90%) of all payments to Settlement Class Members shall be considered non-wages for the settlement of interest claims, statutory and civil penalty claims, and for attorneys’ fees. The portion allocated to wages shall be reported on an IRS Form W-2, and the portion allocated to reimbursement, penalties, and interest shall be reported on an IRS Form 1099. You should consult with your tax advisors concerning the tax consequences of the payments you receive under the settlement. Neither Class Counsel nor Rite Aid’s counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid, nor shall it be relied upon as such.

**6. Will being part of this Settlement affect my job with Rite Aid?**

Rite Aid encourages all Class Members to participate in the Settlement. Rite Aid represents that, as required by law, it will not retaliate against any associate as a result of his or her participation in the Settlement.



## 7. How do I receive payment from the Settlement Amount?

To receive a digital payment by E-Mastercard, PayPal, or Venmo, go to ([website](#)), and select Payment Options by [MM/DD/YY](#) [35 days from the Postcard Notice being mailed].

If you do not choose a digital payment option, a settlement check will be mailed to your address on file.

## 8. What claims am I releasing as part of this lawsuit?

As a Class Member, you are bound by the release of claims in this Settlement. This release includes the wage and hour claims that were pleaded in the Action (or that could have been pleaded based on the facts alleged in the Action), which arise out of the Class Members' work performed for Rite Aid as non-exempt retail store associates (excluding pharmacists, pharmacy interns, and asset protection agents) in the state of California between March 19, 2015 and the Final Approval Date.

More specifically, if the Court grants final approval of the Settlement, all Class Members will be barred from bringing certain claims described below. Class Members fully release and discharge Rite Aid from any and all claims that were asserted in the Action or could have been asserted based on the same factual predicates contained in the Action from March 19, 2015 through the Final Approval Date, including but not limited to claims for violations of California and/or federal law pertaining to (1) failure to reimburse for business expenses; (2) failure to pay minimum wages; (3) failure to provide accurate itemized wage statements; (4) waiting time penalties; (5) violation of California Business and Professions Code; (6) injunctive relief pursuant to California Business and Professions Code; and (7) PAGA civil penalties to the extent based on the six immediately preceding and identified issues in Subsections (1)-(6). This release includes but is not limited to claims for violations of California Labor Code §§ 201, 202, 203, 204, 204b, 210, 226, 510, 558, 1194, 1194.2, 1197, 1197.1, 2802, and § 2698, et seq.; IWC Wage Order No. 7, §§ 4 and 9(A); California Code of Civil Procedure § 1021.5; California Business & Professions Code § 17200, et seq. (to the extent based on the same protections as provided by each of the statutes listed immediately above); and any claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, et seq., that are or could be based on the same factual allegations in the Action. (All together collectively, "Released Claims").

If any Class Member initiates a new lawsuit against Rite Aid based on any claim released under this Agreement, and the Court invalidates the release, any recovery by the Class Member shall be offset by the amount, if any, paid to the Class Member in connection with this Settlement.

**For the full language of the release, as well as additional documents related to the settlement, including the complete Class Action and Private Attorneys General Act Settlement Agreement and Release and the documents filed by the Parties to obtain approval of the settlement, you may visit the settlement website at [\[INSERT URL\]](#). You may also contact the Settlement Administrator for a copy of the Class Action and Private Attorneys General Act Settlement Agreement and Release that has been filed with the United States District Court, located at 280 South 1st Street, San Jose, CA 95113.**

## 9. What are my options?

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

<p style="text-align: center;"><b>RECEIVE A DIGITAL PAYMENT OR CHECK FOR YOUR SETTLEMENT SHARE</b></p>	<p>If this settlement is finally approved and judgment is entered, you will receive your settlement share.</p> <p>To receive a digital payment by E-Mastercard, PayPal, or Venmo, go to (website), and select Payment Options by MM/DD/YY.</p> <p>If you do not choose a digital payment option, a settlement check will be mailed to your address on file.</p>
<p style="text-align: center;"><b>OBJECT</b></p>	<p>Write to the Court about what you do not like about the Settlement, and if you so choose, attend Court to speak about the fairness of the Settlement.</p>

## 10. Can I be excluded from the settlement?

No. Class Members were given the opportunity to exclude themselves from the Class Action through the Notice of Class Action sent on December 23, 2020. In the Notice, Class Members were informed that they faced a binary choice – to stay in the lawsuit, or to opt out – and that they needed to make that choice by January 27, 2021. There were twenty-two (22) persons who excluded themselves from the Class Action. If you did not exclude yourself from the Class Action, then you are bound by the terms of this Class Action and Private Attorneys General Act Settlement and Release.

## 11. How do I object to the settlement?

You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Kristal Nucci, et al. v. Rite Aid Corporation, et al.*, United States District Court, Northern District Case No. 19-cv-01434-LHK) (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, or by filing them in person at any location of the United States District Court for the Northern District of California, and be submitted to the Settlement Administrator, at [INSERT ADDRESS], and (c) be filed or postmarked on or before [REDACTED], 2021 (which is 35 calendar days from the date this Notice is sent to the Class Members.)

If a Class Member objects to the Settlement, he/she will remain a member of the Class, and, if the Court grants final approval of the Settlement, he/she will be bound by the Settlement in the same way and to the same extent as a Class Member who does not object. Any member of the Class who does not make and serve his/her written objection in the manner provided above, shall be deemed to have waived such objections and shall be foreclosed from making any objections by appeal or otherwise to the Settlement.

## 12. Do I have a lawyer in this case?

The Court has approved and Aiman-Smith & Marcy, PC, to represent you and other Class Members in this action. These lawyers are called Class Counsel. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense. A Class Member may enter an appearance through an attorney if the Class Member so desires. Aiman-Smith & Marcy, PC are available as your counsel to answer your questions. The names

and contact information of Class Counsel are listed below:

<b>Class Counsel</b>
Randall B. Aiman-Smith Reed W.L. Marcy Hallie Von Rock Brent A. Robinson Aiman-Smith & Marcy, PC 7677 Oakport St., Suite 1150 Oakland, CA 94621 Telephone: (510) 817-2711 Facsimile: (510) 562-6830 Email: hvr@asmlawyers.com

**13. How will the lawyers be paid?**

Class counsel would ask the Court to approve a payment of up to \$3,999,600.00 for attorneys' fees and up to \$305,000 for litigation costs, which will be paid out of the \$12,000,000.00 settlement fund. These attorneys' fees will pay Class Counsel for bringing the lawsuit on your behalf, investigating the facts, litigating the case, and negotiating the Settlement. Rite Aid has agreed not to oppose these attorneys' fees or costs. The Court may award less than these amounts.

**14. When will final approval occur?**

The Court will hold a final hearing to decide whether or not to approve the Settlement. You may attend, either in person or remotely depending on the Court's procedure at the time of the hearing due to the pandemic, and you may ask to speak, but you don't have to. The Final Approval Hearing is scheduled for [REDACTED], 2021, at [REDACTED] a.m. in the United States District Court, Northern District, Courtroom 8, located at 280 South 1st Street, San Jose, CA 95113.

**15. How do I get more information?**

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www. [REDACTED URL].com, by contacting the Settlement Administrator at [REDACTED PHONE NUMBER], by contacting class counsel at hvr@asmlawyers.com, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, at 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You also have the right to speak with an attorney of your choosing at your own expense. A Class Member may enter an appearance through an attorney if the Class Member so desires.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE, OR ANY OF RITE AID'S MANAGERS OR SUPERVISORS, TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

**Exhibit B**

## POSTCARD – SUMMARY NOTICE

On \_\_\_\_\_, 2021, the US District Court for the Northern District of California preliminarily approved a class action settlement in the case *Nucci, et al. v. Rite Aid Corporation, et al.*, Case Number No. 5:19-cv-01434-LHK.

**You could get a payment from a class action settlement if you worked for Thrifty Payless, Inc. dba Rite Aid in California as a non-exempt employee (excluding any work as a pharmacist, pharmacy intern, and asset protection agent) at any time from March 19, 2015 through [the date of Preliminary Approval].**

**This Notice is only a *summary* of the class action settlement. You can (and are encouraged to) access and review the full-length Notice of Class Action Settlement, with all of the settlement terms to which you are bound at the settlement website [INSERT URL].**

**Rite Aid has denied the claims in this action and the Court has not decided the merits of the claims. To avoid litigation expenses, Rite Aid has agreed to settle these claims.**

**What does the settlement provide?** Rite Aid will pay \$12,000,000.00 (“Total Settlement Amount”) to end this lawsuit. The proposed deductions from the Total Settlement Amount for payments to the Representative Plaintiffs, Class Counsel, Claims Administrator, and the LWDA are included in the full-length Notice of Class Action Settlement. Class Members hired prior to March 22, 2020 will receive a portion of the Net Settlement Amount on a pro rata basis calculated from their workweeks worked in a Rite Aid store in California at any time from March 19, 2015 through [the date of Preliminary Approval]. Class Members hired after March 22, 2020, will receive a \$25 payment.

**How much will my payment be?** Rite Aid’s records show you worked \_\_\_\_\_ workweeks during the Class Period. Your total estimated settlement payment will be approximately \$ \_\_\_\_\_. This amount is an estimated amount, and your final settlement payment is expected to differ from this amount (*i.e.*, it could be higher or lower). If you dispute the workweeks shown here, you must follow the dispute procedures set forth in the full-length Notice of Class Action Settlement by **MM/DD/YY**.

**What are my Options?** To receive a digital payment by E-Mastercard, PayPal, or Venmo, go to (**website**), and select Payment Options by **MM/DD/YY**. If you do not choose a digital payment option, a check will be mailed to your address on file. To object to the settlement, you must submit a written objection by no later than **MM/DD/YY**. Further details for objecting to the settlement are set forth in the full-length Notice of Class Action settlement.

**For more information, including the full-length Notice of Class Action Settlement, go to (**website**) or call (**XXX**) **XXX-XXXX**.**