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9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 KRISTAL NUCCI and KELLY SHAW, )  
individually and on behalf of all others )  
14 similarly situated and the California )  
Labor & Workforce Development )  
15 Agency, and ANA GOSWICK, )  
individually and on behalf of all others )  
16 similarly situated, )

17 Plaintiffs,

18 v.

19 RITE AID CORPORATION, )  
THRIFTY PAYLESS, INC. and DOES )  
20 1-10, inclusive, )

21 Defendants.  
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Case No.: 19-cv-01434-LHK

**NOTICE OF PLAINTIFF’S UNOPPOSED  
MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

Date: February 10, 2022

Time: 1:30 PM

Hon. Lucy H. Koh  
Courtroom 8  
280 South First Street, 4th Floor  
San José, CA 95113

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION AND MOTION** ..... 1

**MEMORANDUM OF POINTS AND AUTHORITIES** ..... 3

I. INTRODUCTION ..... 3

II. FACTUAL BACKGROUND..... 4

III. PROCEDURAL HISTORY ..... 5

**A. Mediation** ..... 7

IV. TERMS OF THE SETTLEMENT ..... 7

    A. Basic Terms and Value of the Settlement..... 7

    B. Settlement Class Period ..... 9

    C. Allocation and Awards..... 9

    D. Scope of Release ..... 11

    E. Settlement Administration ..... 11

    F. Payment Options ..... 12

V. LEGAL DISCUSSION..... 13

    A. The Court Should Grant Preliminary Approval of the Settlement..... 13

    B. The Settlement Should Be Preliminarily Approved Because it Is Fair, Reasonable, and Adequate ..... 13

        i. The terms of the Settlement are fair, reasonable, and adequate ..... 14

        ii. The Parties’ discovery enabled them to make informed decisions regarding settlement. 15

        iii. Litigating the Action not only would delay recovery, but would be expensive, time consuming, and involve substantial risk. .... 16

        iv. The Settlement is the product of informed, non-collusive, and arm’s-length negotiations between experienced counsel. .... 17

    C. The Service Awards to Representative Plaintiffs Are Reasonable ..... 18

    D. The Requested Attorney’s Fees and Costs Are Reasonable ..... 18

    E. The Proposed Notice of Settlement and Claims Process Are Reasonable..... 21

    F. Class Members Already Had an Opportunity to Opt Out..... 22

1	G. The Court Should Approve the Proposed Schedule.....	22
2	VI. CONCLUSION .....	23
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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 17  
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 26  
 27  
 28

1 **NOTICE OF MOTION AND MOTION**

2 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on February 10, 2022, at 1:30 p.m., in Courtroom 8 of  
4 the United States District Court for the Northern District of California, San José Division, the  
5 Honorable Lucy H. Koh, presiding, Plaintiffs Kristal Nucci, Kelly Shaw, and Ana Goswick, on  
6 behalf of themselves, the Plaintiff Class, the California Labor Workforce Development  
7 Agency, and all others similarly situated (collectively “Plaintiffs”), move the Court for  
8 preliminary approval of the Class Action and Private Attorneys General Act  
9 (“PAGA”) Settlement Agreement and Release (the “Settlement Agreement” or the  
10 “Settlement,” attached as **Exhibit 1** to the accompanying Declaration of Hallie Von Rock).

11 The Settlement resolves all of the claims in this action on a class basis. In particular,  
12 Plaintiffs move for orders:

- 13 (1) Granting preliminary approval of the Settlement;
- 14 (2) Approving the proposed schedule and procedure for completing the final  
15 approval process for the Settlement, including setting the Final Approval Hearing;
- 16 (3) Approving the Class Notice as it pertains to the Class (attached as **Exhibit A** to  
17 the Settlement Agreement);
- 18 (4) Approving the Postcard Class Notice as it pertains to the Class (attached as  
19 **Exhibit B** to the Settlement Agreement);
- 20 (5) Appointing Aiman-Smith & Marcy, PC, as Class Counsel for purposes of this  
21 Settlement;
- 22 (6) Appointing Kristal Nucci, Kelly Shaw, and Ana Goswick as Class  
23 Representatives for purposes of this Settlement;
- 24 (7) Preliminarily appointing and approving Atticus Administration (“Atticus”) as the  
25 Settlement Administrator for the Class;
- 26 (8) Authorizing the Settlement Administrator to mail and email the approved Class  
27 Notice to the Class as set forth in the Settlement Agreement; and
- 28 (9) Preliminarily approving Class Counsel’s request for attorney’s fees and costs.

1 Plaintiffs bring this unopposed Motion pursuant to Federal Rule of Civil Procedure  
2 23(e). The Motion is based on this notice, the following Memorandum of Points and  
3 Authorities, the Declaration of Hallie Von Rock, the Settlement Agreement attached as Exhibit  
4 1 thereto, and all other records, pleadings, and papers on file in the consolidated action and  
5 such other evidence or argument as may be presented to the Court at the hearing on this  
6 Motion. Plaintiffs also submit a Proposed Order Granting Preliminary Approval of Class  
7 Action Settlement with their moving papers.

8  
9 Date: October 22, 2021

Respectfully submitted,

10 /s/ Hallie Von Rock

11 Hallie Von Rock  
12 AIMAN-SMITH & MARCY PC  
13 Attorneys for Plaintiffs and the Plaintiff Class  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Kristal Nucci, Kelly Shaw, and Ana Goswick, on behalf of themselves, the  
 4 Plaintiff Class, and the Labor Workforce Development Agency (collectively “Plaintiffs”),  
 5 having reached a class-wide settlement with Defendants Rite Aid Corporation and Thrifty  
 6 Payless, Inc. (collectively “Defendants” or “Rite Aid”), seek preliminary approval of the  
 7 Settlement. After two and a half years of intense litigation, and on the eve of trial, and  
 8 following class certification, formal discovery, expert discovery, pending cross-motions for  
 9 summary judgment and a motion to decertify the class that were fully briefed, and extensive  
 10 arm’s-length negotiations in four mediations, the Parties have reached a settlement,  
 11 memorialized in the proposed Class Action and Private Attorneys General Act Settlement  
 12 Agreement and Release (the “Settlement Agreement” or the “Settlement”). *See*, Declaration of  
 13 Hallie Von Rock (“Von Rock Dec.”), **Exhibit 1** (filed herewith).

14 In June 2020, the Court ordered certification of a Rule 23(b)(3) class defined as: “All  
 15 non-exempt employees, excluding pharmacists, pharmacy interns, and asset protection agents,  
 16 working in any Rite Aid store in California at any time from March 13, 2015 through the trial  
 17 date.” (ECF 69). The Settlement Class is co-extensive with the Certified Class, except that the  
 18 Settlement Class Members will be Class Members employed from March 19, 2015 through the  
 19 date of preliminary approval. *See*, Von Rock Dec. ¶ 3.

20 There are approximately 25,000 Class Members who will benefit from this Settlement  
 21 (“the Class Members”) (the Aggrieved Employees are a subset of the Class Members). *Id.* ¶  
 22 4.<sup>1</sup> Plaintiffs contend that Defendants violated California wage and hour laws by requiring  
 23 Class Members to wear and purchase uniforms and allege that Defendants failed to compensate  
 24 Class Members for uniforms, which resulted in violations of various California Labor Code  
 25 sections (including, *inter alia*, unreimbursed business expenses, unpaid minimum wages, wage  
 26 \_\_\_\_\_

27 <sup>1</sup> At the time the Class List was provided in September 2020, there were approximately 19,940 Class Members. Rite Aid  
 28 has represented there are approximately 4,500 Class Members hired after the Team Colors policy ended on March 22,  
 2020; these Class Members would not be subject to the Team Colors policy at issue in this Action, but they are being  
 included in this Settlement. The precise Class Member data will be provided to the Settlement Administrator.



1 statement violations, failure to pay wages upon separation, and PAGA).

2 The Settlement resolves the Class and PAGA claims for a total non-reversionary  
3 settlement of \$12,000,000. By any standard, this is a fair, adequate, and reasonable settlement.  
4 Both Parties believe in the merits of their cases and compromised to reach this settlement. The  
5 outcome of the liability trial hinged on the rulings of the competing summary judgment  
6 motions and the Court's definition of a "uniform" under California law; even if Plaintiffs  
7 prevailed, penalties were uncertain to be awarded and the amount of expense reimbursement  
8 and minimum wage violations were subject to differing expert opinions that could significantly  
9 reduce the damages amounts. Lengthy appeals were also likely to follow any judgment. This  
10 Settlement provides immediate relief to Class Members and Aggrieved Employees, who will  
11 not have to deal with the uncertainty and delay through lengthy trials and appeals.

12 The Settlement provides an average recovery for those Class Members subject to the  
13 Team Colors Policy of \$600 gross and approximately \$365 net. Plaintiffs' expert survey  
14 calculated that Class Members spent an average of \$286 on uniform purchases. *See*, Von Rock  
15 Dec. ¶5. Thus, the net recovery of \$365 constitutes full reimbursement of all uniform  
16 purchases plus a compromised amount for potential penalties. Additionally, those Class  
17 Members hired after the Team Colors policy ended will receive a \$25 payment for a release of  
18 their claims. Aggrieved Employees will also receive a *pro rata* share of the \$50,000 Net  
19 PAGA settlement amount. On top of the net recovery amounts, Class Members and Aggrieved  
20 Employees will have received the benefits of the services of experienced class action counsel,  
21 the litigation costs expended by class counsel, and claims administration services, as well as  
22 payment to the LWDA under the PAGA settlement.

23 Plaintiffs request, therefore, that the Court grant their motion for preliminary approval,  
24 order the Class Notices to be sent out, and set a date and time for a fairness hearing pursuant to  
25 Rule 23(e)(2). If the Court is inclined to decide this motion on the papers, the parties would  
26 agree to proceed without a hearing.

## 27 **II. FACTUAL BACKGROUND**

28 Plaintiffs are those individuals who, according to Defendants' personnel and payroll

1 records, worked for Rite Aid as non-exempt associates, excluding pharmacists, pharmacy  
2 interns, and asset protection agents, in Rite Aid retail stores in California at any time during the  
3 period of March 19, 2015 through the date of preliminary approval. *See*, ECF 69; Von Rock  
4 Dec., ¶ 3. The Class is comprised of approximately 19,940 members who were subject to the  
5 Team Colors Policy and approximately 4,500 members who worked after the Team Colors  
6 Policy ended (i.e., after March 22, 2020). *Id.*, ¶ 4.

7 Plaintiffs allege that Class Members experienced wage and hour violations in their work  
8 for Defendants. *Id.*, ¶ 6. In particular, Plaintiffs contend that Rite Aid required Class Members  
9 to dress in “Team Colors,” consisting of navy blue tops and khaki bottoms with specific style  
10 requirements for both garments. *Id.* The gravamen of Plaintiffs’ case is that Team Colors are a  
11 uniform under the Wage Order and, accordingly, Labor Code section 2802 requires Rite Aid to  
12 reimburse its employees for purchases of Team Colors clothing. Plaintiffs also assert  
13 additional claims based on wage and hour violations, including for minimum wages, wage  
14 statement penalties, waiting time penalties, and PAGA penalties, all related to Class Members’  
15 uniform clothing purchases.

16 Defendants have at all times denied, and continue to deny, all of these allegations, and  
17 deny any and all liability for Plaintiffs’ claims.

### 18 **III. PROCEDURAL HISTORY**

19 On March 19, 2019, Plaintiff Kristal Nucci filed a class action Complaint in this Court  
20 for Failure to Indemnify Business Expenses (Labor Code §2802); Failure to Reimburse for  
21 Required Uniforms (IWC Wage Order 7, § 9 (A)); Unfair Business Practices (Business and  
22 Professions Code § 17200, *et seq.*); and Injunction. *See*, ECF 1.

23 On May 23, 2019, a First Amended Complaint was filed that added Plaintiff Ana  
24 Goswick and added cause of actions for Failure to Pay Minimum Wage (Labor Code §§ 1194,  
25 1194.,2, 1197, IWC Wage Order No. 7, § 4(A)), Failure to Furnish Accurate Wage Statements  
26 (Labor Code § 226), Waiting Time Penalties (Labor Code §§ 201, 202, and 203), and Penalties  
27 under the Private Attorneys General Act (“PAGA”) (Labor Code § 2698, *et seq.*). *See*, ECF 13.

28 On October 2, 2019, a Second Amended Complaint was filed that added Plaintiff Kelly

1 Shaw. *See*, ECF 30. This is the operative Complaint.

2 On February 6, 2020, Plaintiffs moved for Class Certification. The Court granted  
3 Plaintiffs’ motion for Class Certification on June 16, 2020. *See*, ECF 69.

4 On December 3, 2020, the Court granted Plaintiffs’ Motion for Provision of Notice of  
5 Pendency of Class Action. *See*, ECF 86. The Class Notice provided Class Members with an  
6 opportunity to opt-out and ordered that “By doing nothing, you are staying in the Class. If you  
7 stay in, regardless of whether the Plaintiffs win or lose the trial, you will not be able to sue, or  
8 continue to sue, Rite Aid—as part of any other lawsuit—about the same legal claims that are the  
9 subject of this lawsuit. You will also be legally bound by all of the Orders the Court issues and  
10 judgments the Court makes in this class action.” *Id.* The Notice of Class Action was sent on  
11 December 23, 2020. The exclusion deadline was January 27, 2021; twenty-two (22) persons  
12 excluded themselves from the Class Action. *See*, Von Rock Dec., ¶ 7.

13 On July 20, 2021, Plaintiffs filed a Motion for Partial Summary Judgment, Defendants  
14 filed a Motion for Summary Judgment, and Defendants filed a Motion to Decertify Class. *See*,  
15 ECF 95, 97, 98. These motions were fully briefed as of August 10, 2021; the respective hearing  
16 dates were vacated by the Court and no rulings were issued. *See*, Von Rock Dec., ¶ 8.

17 Trial was set for November 19, 2021, with a final pre-trial conference scheduled for  
18 October 28, 2021. *See*, ECF 90.

19 On June 17, 2021, the Court ordered the parties to mediate by September 27, 2021 and  
20 set a Case Management Conference for October 6, 2021. *See*, ECF 94.

21 On September 13, 2021, the Parties requested the mediation deadline be continued to  
22 September 30, 2021, which the Court granted. *See*, ECF 109, 110. On September 30, 2021, the  
23 parties conducted a fourth mediation, this time with Jeffrey A. Ross. *See*, Von Rock Dec. ¶ 9.

24 On October 1, 2021, the Parties filed a Joint Case Management Statement informing the  
25 Court that the Action had settled. *See*, ECF 112. That same date, the Court continued the Case  
26 Management Conference to October 28, 2021. *See*, ECF 113.

27 In the intervening time since informing the Court that the Action had settled, the Parties  
28 have negotiated and drafted the Settlement Agreement and Notices.



1 Agency (“LWDA”) for its 75% share of the PAGA penalties (\$150,000.00).<sup>2</sup> *Id.*

2 The Gross Settlement Amount is a negotiated amount that resulted from substantial  
3 arms’ length negotiations and significant investigation and analysis by Class Counsel. *Id.*, ¶ 13.  
4 Class Counsel based their damages analysis and settlement negotiations on the discovery  
5 propounded, including payroll and timekeeping data, the survey conducted by Plaintiffs’  
6 expert, Jeffrey Petersen, Ph.D., and the damages analysis conducted by Plaintiffs’ expert,  
7 Dwight Steward, Ph.D. *Id.* Based on the analysis of the documents and data produced by  
8 Defendants and on the survey results, Plaintiffs made reasonable assumptions regarding the  
9 wage and hour violation rates, and resulting damages and potential penalties. *Id.* ¶¶ 13, 14.

10 Using these assumptions and further assuming that Plaintiffs and the Class Members  
11 would prevail on all claims at summary judgment and/or at trial, the maximum total amount of  
12 damages and penalties is broken down as follows:

13 The total principal amount for unreimbursed uniform purchases is \$5,002,535. Interest  
14 through August 2021 is \$2,484,810, totaling \$7,487,345. *Id.*, ¶¶ 15, 16.

15 The total principal amount of unpaid minimum wages is \$528,055, plus \$176,864 in  
16 interest, totaling \$704,919. *Id.*, ¶ 17.

17 During the statutory period from March 15, 2018-2020, if the court were to find that  
18 Class Members suffered injury, Class counsel calculated 86,642 potential wage statement  
19 violations affecting 18,510 Class Members, resulting in maximum section 226 statutory  
20 penalties of \$7,738,700. *Id.*, ¶ 18.

21 During the statutory period from March 15, 2016-2020, if the court were to find that  
22 there was no good faith defense, waiting time penalties were calculated for 4,793 Class  
23 Members, resulting in maximum section 203 statutory penalties of \$12,300,000. *Id.*, ¶ 19.

24 For PAGA penalties, the Court has discretion over the penalty amount to be awarded.  
25 However, Class Counsel calculated a maximum potential exposure of over \$18,000,000 for  
26

27 <sup>2</sup> The Parties agreed to allocate \$200,000.00 of the Gross Settlement Amount to the settlement of the PAGA claims, which  
28 the Parties believe in good faith is a fair and reasonable apportionment. The Settlement Administrator shall pay 75%, or  
\$150,000.00, of this amount to the LWDA, and 25% will remain as part of the Net Settlement Amount. *See*, Von Rock Dec.  
¶ 12. The Net PAGA Settlement Amount is to be divided equally amongst all PAGA Aggrieved Employees. *Id.*

1 initial violations. *Id.*, ¶¶ 20-25.

2 Totaling these estimated substantive and derivative damages across the Settlement Class  
3 yields the total estimated damages amount for the entire action of approximately \$46,230,694.  
4 *Id.*, ¶ 26.

5 Thus, the Gross Settlement Amount of \$12,000,000 represents more than 25% of the  
6 total estimated damages and penalties for all claims. Again, these figures are based on  
7 Plaintiffs' assessment of a best-case-scenario. On a more realistic note, the \$12,000,000  
8 settlement represents a full recovery for the unreimbursed uniform purchases and minimum  
9 wages, valued at \$8,192,264 (including interest). That Class Counsel was able to secure a full  
10 payment of out-of-pocket expenses and unpaid wages for Class Members plus nearly  
11 \$4,000,000 more in a compromise of penalties, which were uncertain, provides an excellent  
12 recovery in the face of expanding and uncertain litigation. *Id.* ¶ 27.

13 The Settlement will result in immediate and certain payment to Class Members of  
14 meaningful amounts. *Id.*, ¶ 28. For those Class Members subject to the Team Colors Policy,  
15 the average net recovery is approximately \$365 per Class Member (this amount is the average  
16 division of the *net* Settlement Class recovery, after deducting the expected \$25 payments to the  
17 approximately 4,500 Class Members hired after March 22, 2020). *Id.* Additionally, \$50,000  
18 will be shared among the Aggrieved Employees. *Id.*, ¶ 29. This amount provides significant  
19 compensation to the Class Members, and in light of all of the risks, the settlement amount is  
20 fair, reasonable, and adequate. *Id.*, ¶ 30.

#### 21 **B. Settlement Class Period**

22 The Class Members are as defined in the Court's Order granting class certification: All  
23 non-exempt employees, excluding pharmacists, pharmacy interns, and asset protection agents,  
24 working in any Rite Aid store in California. *See*, ECF 69. The Settlement Class Period is from  
25 March 19, 2015 through the date of final approval. The PAGA Class Period is from March 19,  
26 2018 through the date of final approval.

#### 27 **C. Allocation and Awards**

28 The Net Settlement Amount to be paid to Class Members is approximately \$7,398,400.

1 See, Von Rock Dec. at ¶ 11. Class Members will receive a direct settlement award payment  
2 without the need to submit a claim form. *Id.*, ¶ 31.

3 The allocation is set forth as follows: (1) Rite Aid implemented a new dress code policy  
4 on March 22, 2020, which no longer required that Class Members dress in Rite Aid's specific  
5 "Team Colors" – accordingly, those Class Members hired after March 22, 2020 were not  
6 necessarily required to purchase uniform clothing and, therefore, a nominal payment of \$25.00  
7 is being provided to Class Members hired after March 22, 2020 for the release of any potential  
8 claims alleged in the Action; (2) for Class Members hired prior to March 22, 2020, Class  
9 Members will receive a share of the Net Settlement Amount, after subtracting the payment to  
10 the Class Members hired after March 22, 2020, based on their pro-rata percentage of  
11 workweeks determined by dividing the number of weeks worked (that is, weeks of  
12 employment, regardless of any leave or vacation) by the Class Member as a non-exempt  
13 employee, excluding pharmacists, pharmacy interns, and asset protection agents, in any Rite  
14 Aid store in California at any time from March 19, 2015 through the date of preliminary  
15 approval of the settlement by the Court, such that these Class Members will receive a dollar  
16 amount calculated by multiplying each of their respective percentages by the Net Settlement  
17 Amount; (3) for those Class Members hired prior to March 22, 2020 whose employment has  
18 terminated with Defendants, an additional four workweeks will be added to their total  
19 workweeks, as described above in this paragraph, in consideration of their release of waiting  
20 time penalties; and (4) for Aggrieved Employees, the Net PAGA Settlement Amount of  
21 \$50,000 will be shared on a pro rata basis among Aggrieved Employees in addition to the  
22 amounts they are otherwise eligible for under (1) through (3). See, Von Rock Dec. at ¶ 32;  
23 Settlement Agreement, ¶ 11.

24 Class Members will have 35 days to object to the settlement and motion for attorney's  
25 fees and costs. See, *id.*, ¶ 33; Settlement Agreement, ¶ 31(a).

26 Class Members will have an option to choose a digital payment or a hard copy check.  
27 See, Von Rock Dec. at ¶ 34; Settlement Agreement, ¶ 29. If a Class Member does not  
28 affirmatively choose a digital payment, a hard copy check will be mailed. *Id.* The digital

1 payment options will include E-Mastercard, Paypal, and Venmo. Class members will have one  
2 hundred eighty (180) calendar days to activate their digital payment. *Id.*

3 All settlement checks will be valid for one hundred eighty (180) calendar days. At the  
4 end of the 180-day period, settlement checks will be canceled and digital payments not  
5 activated will be combined with the uncashed settlement checks. *Id.*

6 If the total residual amount of uncashed settlement checks and non-activated digital  
7 payments is less than \$200,000.00, then the amount will revert to *cy prè*s. *See*, Von Rock Dec.  
8 at ¶ 36; Settlement Agreement ¶ 29. The Parties propose that the *cy prè*s recipient be Legal Aid  
9 at Work, which provides legal services assisting low-income, working families and promotes  
10 better understanding of the conditions, policies, and institutions that affect the well-being of  
11 workers and their families and communities. *See*, Settlement Agreement ¶ 29(d)(i).

12 If the total residual amount is \$200,000.00 or greater, a second distribution will occur to  
13 those Class Members who cashed their Settlement Award checks and activated their digital  
14 payments. *See*, Von Rock Dec. at ¶ 37; Settlement Agreement, ¶ 29(d)(ii). Any residual funds  
15 uncashed after the second distribution will revert to the *cy prè*s recipient. *Id.*

#### 16 **D. Timeline**

17 The proposed timeline is set forth in the [Proposed] Order and Von Rock Declaration.

#### 18 **E. Scope of Release**

19 Upon the Final Approval by the Court, and subject to the exclusions described below,  
20 each Class Member fully releases all claims that were raised in the litigation and all claims that  
21 could have been brought based on the facts alleged in the complaint. *See*, Von Rock Dec. at ¶  
22 38; Settlement Agreement ¶ 33, 35. The released claims are co-extensive with the certified  
23 claims, with the addition of a release of potential claims arising from the same facts under the  
24 Fair Labor Standards Act. *Id.* Plaintiffs Nucci, Shaw, and Goswick also agree to a general  
25 release from all known and unknown claims they may have against the Released Parties. *Id.*;  
26 Settlement Agreement ¶ 34.

#### 27 **F. Settlement Administration**

28 Plaintiffs obtained quotes for settlement administration from four established



1 administration firms. The parties have agreed to use Atticus Administration (“Atticus”) to  
2 administer the Settlement. Class Counsel have successfully used Atticus in four recent class  
3 actions. *See*, Von Rock Dec., ¶ 39.

4 Atticus provided a competitive bid for the services offered of total fees and costs  
5 currently estimated at \$67,000. *Id.* Atticus will distribute the Postcard Notices of Settlement  
6 via U.S. mail and email, re-mail any Postcard Notices returned as non-deliverable but with  
7 forwarding addresses, and re-mail the Notice to any new address obtained by way of skip-  
8 trace. *Id.*, ¶ 40; Settlement Agreement ¶ 24(b). Atticus will also receive and process workweek  
9 disputes, calculate the settlement payments, calculate all applicable payroll taxes,  
10 withholdings, and deductions; and prepare and issue all disbursements to Class Members,  
11 Service Awards to Plaintiffs, payment to the LWDA payment, payment to Class Counsel for  
12 fees and costs, and payment to itself for fees in administering the settlement. *Id.*; Settlement  
13 Agreement ¶ 24.

14 Atticus will also create a website for the Settlement which will allow Class Members to  
15 view the Class Notice in substantially the form attached as “**Exhibit A**” to the Settlement  
16 Agreement, the Settlement Agreement, Plaintiffs’ preliminary and final approval motions, and  
17 payment options. *Id.*; Settlement Agreement ¶ 24(c). The Settlement Administrator will also  
18 establish a toll-free call center for inquiries from Class Members. *Id.*

### 19 **G. Payment Options**

20 Class Members will have the option to receive their settlement amount in a digital form,  
21 through a prepaid E-Mastercard, or electronically with a Paypal or Venmo account. These  
22 digital payment options provide more flexibility and provide a substantial benefit to Class  
23 Members who do not have traditional bank accounts. The Settlement Administrator will have a  
24 secure link on the settlement website for Class Members to submit a request for a digital  
25 payment option. *See*, Von Rock Dec. ¶ 34. If a Class Member does not submit a request for a  
26 digital payment option, the Settlement Administrator will mail a check to the Class Member.

27 ///

28 ///

1 **V. LEGAL DISCUSSION**

2 **A. The Court Should Grant Preliminary Approval of the Settlement**

3 A certified class action may only be settled with court approval. *See* Fed.R.Civ.P. 23(e).  
 4 Court approval of a class action settlement requires three steps: (1) preliminary approval of the  
 5 proposed settlement upon a written motion; (2) dissemination of notice of the settlement to all  
 6 class members; and (3) a final settlement approval hearing at which objecting class members  
 7 may be heard, and at which evidence and argument concerning the fairness, adequacy, and  
 8 reasonableness of the settlement is presented. Manual for Complex Litigation, *Judicial Role in*  
 9 *Reviewing a Proposed Class Action Settlement*, § 21.61 (4th ed. 2004). The decision to  
 10 approve or reject a proposed settlement is committed to the sound discretion of the court. *See*  
 11 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Rule 23 requires that all class  
 12 action settlements satisfy two primary prerequisites before a court may grant certification for  
 13 purposes of preliminary approval: (1) that the settlement class meets the requirements for class  
 14 certification if it has not yet been certified; and (2) that the settlement is fair, reasonable, and  
 15 adequate. Fed.R.Civ.P. 23(a), (e)(2); *Hanlon*, 150 F.3d at 1020.

16 Here, the proposed Settlement Class definition is consistent with the Class previously  
 17 certified (ECF 69) and therefore meets the requirements of Federal Rule of Civil Procedure 23  
 18 for the reasons set forth in the Order Denying Motion to Strike and Granting Class  
 19 Certification (ECF 69). Furthermore, the Settlement is fair, reasonable, and adequate in  
 20 accordance with Rule 23(e)(2). *See*, Von Rock Dec. ¶¶ 3, 30. Accordingly, the Court should  
 21 preliminarily approve the Settlement. *Id.*

22 **B. The Settlement Should Be Preliminarily Approved Because it Is Fair,**  
 23 **Reasonable, and Adequate**

24 In deciding whether to approve a proposed class settlement, the Court must find that the  
 25 proposed settlement is “fair, reasonable, and adequate.” Fed.R.Civ.P. 23(e)(2); *Officers for*  
 26 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982); *Lynn’s Food Stores*, 679 F.2d  
 27 at 1354-55. Included in this analysis are considerations of: (1) the strength of the plaintiff’s  
 28 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of

1 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5)  
 2 the extent of discovery completed and the stage of the proceedings; (6) the experience and  
 3 views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the  
 4 class members to the proposed settlement. *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566,  
 5 575 (9th Cir. 2004) (citing *Hanlon*, 150 F.3d at 1026). Importantly, courts apply a  
 6 presumption of fairness, where, as is the case here, “the settlement is recommended by class  
 7 counsel after arm’s-length bargaining.” *Wren v. RGIS Inventory Specialists*, No. C-06-05778  
 8 JCS, 2011 WL 1230826, at \*6 (N.D. Cal. Apr. 1, 2011). There is also “a strong judicial policy  
 9 that favors settlements, particularly where complex class action litigation is concerned.” *In re*  
 10 *Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). In light of these factors, the  
 11 proposed settlement is fair, reasonable, and adequate.

12  
 13 *i. The terms of the Settlement are fair, reasonable, and adequate.*

14 In evaluating the fairness of a proposed settlement, courts compare the settlement  
 15 amount with the estimated maximum damages recoverable in a successful litigation. *In re*  
 16 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.2000). Courts routinely approve  
 17 settlements that provide a fraction of the maximum potential recovery. *See, e.g., Officers for*  
 18 *Justice*, 688 F.2d at 623; *Viceral v. Mistras Grp., Inc.*, Case No. 15-cv-2198-EMC, 2016 WL  
 19 5907869, at \*7 (N.D. Cal. Oct. 11, 2016) (approving wage and hour settlement which  
 20 represented 8.1% of the total verdict value).<sup>3</sup> A review of the Settlement Agreement reveals  
 21 the fairness, reasonableness, and adequacy of its terms. *See, Von Rock Dec.*, ¶ 41. The Gross  
 22 Settlement Amount of \$12,000,000, represents 100% of the unreimbursed business expenses  
 23

24  
 25 <sup>3</sup> *See also Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at \*4 (N.D. Cal. June 17, 2015)  
 26 (“10% gross and 7.3% net figures are ‘within the range of reasonableness’”); *Balderas v. Massage*  
 27 *Envy Franchising, LLP*, 2014 WL 3610945, at \*5 (N.D. Cal. July 21, 2014) (gross settlement amount  
 28 of 8% of maximum recovery and net settlement amount of 5%); *Ma v. Covidien Holding, Inc.*, 2014  
 WL 360196, at \*4-5 (C.D. Cal. Jan. 31, 2014) (9.1% of “the total value of the action” is within the  
 range of reasonableness).

1 and minimum wages plus interest, plus an additional \$3.8 million, representing 10% of the  
2 approximately \$38 million in maximum potential statutory and PAGA penalties. *Id.*

3 Again, these figures are based on Plaintiffs' assessment of a best-case-scenario. *Id.* ¶ 42.  
4 To obtain such a result at trial, Plaintiffs would have to prove that each Class Member  
5 purchased uniform clothing on average of \$286 during their employment, that such purchases  
6 reduced their pay below minimum wages, that injury was caused by having incorrect "wages  
7 earned" on their paychecks during the pay periods when uniform clothing was purchased, and  
8 that Defendants did not act in good faith when failing to paying all wages due for purchased  
9 uniform clothing at the time of termination. *Id.* These figures would of course be disputed and  
10 hotly contested, and any award of that size would inevitably be appealed. *Id.*

11 The final settlement amount takes into account the substantial risks inherent in any class  
12 action wage and hour case, as well as the procedural posture of the Actions and the specific  
13 defenses asserted by Defendants, including that the Team Colors dress code did not constitute  
14 a uniform, and the pending motion by Defendants to decertify the class. *Id.*, ¶ 43; *see Officers*  
15 *for Justice*, 688 F.2d at 623. By obtaining 100% of the claimed unreimbursed purchases and  
16 minimum wages plus over 10% of potential statutory and PAGA penalties, which were  
17 uncertain to be awarded, the settlement is an excellent recovery for Class Members. *Id.*

18 *ii. The Parties' discovery enabled them to make informed*  
19 *decisions regarding settlement.*

20 The amount of discovery completed prior to reaching a settlement is important because  
21 it bears on whether the Parties and the Court have sufficient information before them to assess  
22 the merits of the claims. *See, e.g., Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617, 625 (N.D. Cal.  
23 1979); *Lewis v. Starbucks Corp.*, 2008 WL 4196690, at \*6 (E.D. Cal. Sept. 11, 2008).

24 Here, both fact and expert discovery had ended by the time of the mediation on  
25 September 30, 2021, and the parties were preparing for trial. The Parties engaged in extensive  
26 discovery, including: initial disclosures; two sets of supplemental initial disclosures; Plaintiffs  
27 served and Defendants responded to four sets of document demands and three sets of special  
28 interrogatories; Defendants amended multiple responses following extensive meet and confer

1 efforts; Defendants provided thousands of pages of documents and time and payroll records;  
2 Defendants served and Plaintiffs responded to three sets of document demands and three sets  
3 of special interrogatories; Plaintiffs' depositions were taken; Defendants' 30(b)(6) depositions  
4 were taken with four deponents; the deposition of a store manager was taken; a total of 64  
5 Class Member declarations obtained by Plaintiffs and Defendants were exchanged; expert and  
6 rebuttal expert reports were exchanged; and expert depositions were taken. *See*, Von Rock  
7 Dec., ¶ 44.

8 Accordingly, the Parties were able to accurately assess the legal and factual issues that  
9 would arise if the case proceeded to trial. *Id.* ¶ 45. In addition, in reaching this Settlement,  
10 Class Counsel relied on their substantial litigation experience in similar wage and hour class  
11 actions. *Id.* Class Counsel's liability and damages evaluation was premised on a careful and  
12 through analysis of the effects of Defendants' policies and practices on Class Members' pay.  
13 *Id.* Ultimately, in their fourth mediation, facilitated by mediator Jeffrey Ross, the Parties used  
14 this information and discovery to fairly resolve the litigation. *Id.*

15 *iii. Litigating the Action would delay recovery and be*  
16 *expensive, time consuming, and involve substantial risk.*

17 The monetary value of the proposed Settlement represents a fair compromise given the  
18 risks and uncertainties posed by continued litigation. *See*, Von Rock Dec., ¶ 46. Litigating the  
19 class action claims would require substantial additional preparation and resources. *Id.* The  
20 parties were preparing for a series of pre-trial deadlines for a rapidly approaching trial date of  
21 November 19, 2021, the consideration, preparation, and presentation of voluminous  
22 documentary and witness evidence. *Id.*

23 Additionally, dispositive motions were pending that could have seriously curtailed  
24 Plaintiffs' claims if the Court were to adopt Defendants' definition of a "uniform." *See*, Von  
25 Rock Dec. ¶ 47. Furthermore, whichever way the Court ruled on the definition of a uniform  
26 would have likely resulted in the losing party appealing, since there is virtually no binding  
27 precedent on this issue. Plaintiffs' statutory penalty claims were also subject to formidable  
28 defenses by Defendants, including that failure to include unreimbursed business expenses on

1 wage statements are not an injury subject to Labor Code section 226 penalties and that  
 2 Defendants had a good faith belief that the Rite Aid dress code did not require a “uniform,”  
 3 which would prevent Labor Code section 203 penalties. *Id.* If the Court had sided with  
 4 Defendants on either of those defenses, Class Members would not receive any statutory  
 5 penalties. *Id.* As to PAGA penalties, it is within the Court’s discretion to determine the  
 6 amount, which could have resulted in a lesser award than recovered under the Settlement. *Id.*, ¶  
 7 48. For example, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the trial Court  
 8 reduced the PAGA penalty amount to only \$5 per pay period and in *Magadia v. Wal-Mart*  
 9 *Associates, Inc.* (May 31, 2019) 384.F.Supp.3d 1058, this Court awarded only \$5.8 Million of  
 10 the \$34.7 Million in PAGA penalties sought by Plaintiffs. Defendants also had a pending  
 11 motion to decertify the class. If the Court had granted Defendants’ motion, it would have  
 12 resulted in substantial delay or no recovery at all for Class Members. *Id.*

13 In contrast to litigating and appealing this suit, resolving this case by means of the  
 14 Settlement will yield a prompt, certain, and very substantial recovery for the Class Members.  
 15 *Id.*, at ¶ 49. Such a result will benefit the Parties and the court system. *Id.* It will bring finality  
 16 to the Action and will foreclose the inevitability of expanding litigation. *Id.*

17 *iv. The Settlement is the product of informed, non-collusive,*  
 18 *and arm’s-length negotiations between experienced*  
*counsel.*

19 Courts routinely presume a settlement is fair where it is reached through arm’s-length  
 20 bargaining. *See, Hanlon*, 150 F.3d at 1027; *Wren*, 2011 WL 1230826, at \*14. Furthermore,  
 21 where counsel are well-qualified to represent the class in a settlement based on their extensive  
 22 class action experience and familiarity with the strengths and weaknesses of the action, courts  
 23 find this factor to support a finding of fairness. *Wren*, 2011 WL 1230826, at \*10; *Carter v.*  
 24 *Anderson Merchandisers, LP*, 2010 WL 1946784, at \*8 (C.D. Cal. May 11, 2010) (“Counsel’s  
 25 opinion is accorded considerable weight.”).

26 Here, the settlement was a product of non-collusive, arm’s-length negotiations. *See,*  
 27 *Von Rock Dec.*, ¶ 50. The Parties participated in four mediations during this litigation. *Id.* On  
 28 nearly the eve of trial, the last mediation session was held before Jeffrey Ross, a skilled

1 mediator with many years of experience mediating employment matters. *Id.* The day after the  
 2 mediation, the Parties agreed to a mediator’s proposal. *Id.* The parties then went through  
 3 several rounds of edits related to the terms and details of the Settlement. *Id.* Plaintiffs are  
 4 represented by experienced and respected class action litigators who feel strongly that the  
 5 proposed Settlement achieves an excellent result for the Class Members. *Id.*, ¶ 51, Ex. 2.

6 The Settlement also compares favorably to past settlements reached by Plaintiffs’  
 7 Counsel in other uniform reimbursement cases and against the same Defendants. *Id.* ¶ 52, Ex. 3  
 8 (Chart of Prior Uniform Reimbursement Settlements).

9 **C. The Service Awards to Representative Plaintiffs Are Reasonable**

10 Named plaintiffs in class action litigation are eligible for reasonable service awards. *See*  
 11 *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (“Courts routinely approve incentive  
 12 awards to compensate named plaintiffs for the services they provided and the risks they  
 13 incurred during the course of the class action litigation”); *Van Vranken v. Atl. Richfield Co.*,  
 14 901 F.Supp. 294, 300 (N.D. Cal. 1995) (named plaintiff received \$50,000 for work in class  
 15 action). The service payments requested here of \$10,000 each (totaling \$30,000) are intended  
 16 to compensate the Named Plaintiffs for the critical role they played in this case, and the time,  
 17 effort, and risks undertaken in helping secure the result obtained on behalf of the Class  
 18 Members. *See*, Von Rock Dec., ¶ 53. In agreeing to serve as Class Representatives, these  
 19 individuals formally agreed to accept the responsibilities of representing the interests of all  
 20 Class Members. *Id.* Each Named Plaintiff participated fully in discovery, worked closely with  
 21 Class Counsel, and had her deposition taken by Defendants. *Id.* Defendants do not oppose the  
 22 requested payments to these representatives as reasonable service awards. *Id.* Moreover, the  
 23 service awards are fair when compared to the awards approved in similar cases in the Northern  
 24 District and by this Court. *Id.*, ¶ 54. An award at the higher end of the range typically approved  
 25 by this Court is appropriate here where each Plaintiff was deposed and participated fully in  
 26 discovery and settlement efforts, up through the eve of trial. *Id.*, ¶ 55.

27 **D. The Requested Attorney’s Fees and Costs Are Reasonable**

28 In their fee motion to be submitted with the final approval papers, Class Counsel will

1 request a percentage of the common fund, up to 33.33% of the Gross Settlement Amount, or  
2 \$3,999,600.00, plus reimbursement of costs up to \$305,000. *See*, Von Rock Dec., ¶ 56.  
3 Defendants do not oppose this request. *Id.* At final approval, Plaintiffs will present the factors  
4 that district courts in the Ninth Circuit normally consider in awarding attorney’s fees,  
5 including: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the  
6 quality of work; (4) the contingent nature of the fee and the financial burden carried by the  
7 plaintiffs; and (5) awards made in similar cases. *See*, *Vizcaino v. Microsoft Corp.* (9th Cir.  
8 2002) 290 F.3d 1043, 1048-50. Plaintiffs will also provide an index of all costs expended in  
9 this matter. Relevant case law supports Plaintiffs’ request for fees and costs.

10 The percentage fee will also be reasonable on a lodestar/multiplier basis. Based on  
11 Plaintiffs’ current lodestar, the multiplier sought will be in the range of 1.5 -2.0, which is well  
12 within the range California courts consider reasonable. *See*, Von Rock Dec., ¶ 57; see also,  
13 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (multiples “can range from  
14 2 to 4 or even higher”); *Vizcaino*, 290 F.3d 1043 (holding 3.65 multiplier appropriate).

15 When a district court exercises diversity jurisdiction over a case consisting of  
16 exclusively California claims, as here, California substantive law applies to the calculation of  
17 the attorney fee award. *See*, *Mangold v. Cal. Pub. Utils. Comm’n*, 67 F.3d 1470, 1478-1479  
18 (9th Cir. 1995) (finding state law to be applicable in “in determining not only the right to fees,  
19 but also the method of calculating the fees.”); *see also*, *Rodriguez v. Disner*, 688 F.3d 645, 653  
20 fn. 6 (9th Cir. 2012) (“If ... we were exercising our diversity jurisdiction, state law would  
21 control whether an attorney is entitled to fees and the method of calculating such fees”);  
22 *Gonzalez v. Southern Wine & Spirits of Am., Inc.*, 555 Fed.Appx. 704, 704-705 (9th Cir. 2014)  
23 (finding district court abused its discretion in applying federal law instead of California  
24 substantive law to the calculation of attorneys’ fees, holding that, because the court exercised  
25 diversity jurisdiction, California substantive law should have been applied).

26 Here, Plaintiffs’ claims arise exclusively from California law. Accordingly, the Court  
27 should apply the method for calculating attorney’s fees as set forth by California jurisprudence.  
28 *See*, e.g., *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503-506 (2016) (percentage



1 method with a lodestar crosscheck is appropriate in common fund cases). Furthermore, use of  
2 the percentage method in common fund cases appears to be dominant in the Ninth Circuit. *See,*  
3 *e.g., Vizcaino*, 290 F.3d 1043, 1047; *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904  
4 F.2d 1301, 1311 (9th Cir. 1990). The advantages of using the percentage method have been  
5 described thoroughly by other courts. *See, e.g., In re Activision Sec. Litig.*, 723 F.Supp. 1373,  
6 1374-77 (N.D. Cal. 1989).

7 In California, federal and state courts have customarily approved payments of attorney's  
8 fees amounting to one-third of the common fund in comparable wage and hour class actions.  
9 *See, e.g., Soto et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-VC, ECF  
10 304 (N.D. Cal. Oct. 23, 2019) (approving attorneys' fees of one-third of the gross settlement in  
11 recent hybrid FLSA/Rule 23 settlement); *Regino Primitivo Gomez, et al. v. H&R Gunlund*  
12 *Ranches, Inc.*, No. CV F 10-1163 LJO MJS, 2011 WL 5884224 (E.D. Cal. 2011) (approving  
13 attorneys' fees award equal to 45% of the settlement fund); *Wren*, 2011 WL 1230826  
14 (approving attorneys' fee award of just under 42% of common fund); *Martin v. FedEx Ground*  
15 *Package System, Inc.* 2008 WL 5478576, \*8 (N.D. Cal) (trucker meal break class action where  
16 the court approved attorneys' fees of 1/3 of common fund stating); *see also, Vasquez v. Coast*  
17 *Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Cal. 2010) (citing to five recent wage and  
18 hour class actions where federal district courts approved attorney fee awards ranging from 30  
19 to 33%); *Singer v. Becton Dickson and Co.*, 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104,  
20 \*8 (S.D. Cal. June 1, 2010) (approving attorney fee award of 33.33% of the common fund and  
21 holding that award was similar to wage and hour cases where fees ranged from 30.3% to 40%).

22 Further, under the circumstances present here, upward adjustment from the Ninth  
23 Circuit "benchmark" of 25% is warranted not only by the application of California fee award  
24 jurisprudence, but by the circumstances of the case. Plaintiffs obtained a rare class certification  
25 in a uniform reimbursement case, filed a summary judgment motion which may well have  
26 made new law, and litigated the case to the eve of trial.

27 The amount of fees and costs requested are clearly set forth in the Notice. Accordingly,  
28 Plaintiffs respectfully request the Court preliminarily approve the terms of the settlement,

1 including the request for fees and costs. Any objections by Class Members to the request for  
 2 fees and costs may be considered by the Court at final approval.

3 **E. The Proposed Notice of Settlement and Claims Process Are Reasonable**

4 The Court must ensure that Class Members receive the best notice practicable under the  
 5 circumstances of the case. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985);  
 6 *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974). Procedural due process does not  
 7 guarantee any particular procedure, but rather requires only notice reasonably calculated “to  
 8 apprise interested parties of the pendency of the action and afford them an opportunity to  
 9 present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314  
 10 (1950); *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). A settlement notice “is  
 11 satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to alert  
 12 those with adverse viewpoints to investigate and to come forward and be heard.’” *Churchill*  
 13 *Village LLC*, 361 F.3d at 575.

14 The parties propose sending a Postcard Notice, attached as **Exhibit B** to the Settlement  
 15 Agreement, which summarizes the settlement and directs the Class Members to the long form  
 16 Notice of Settlement, attached as **Exhibit A** to the Settlement Agreement, on the settlement  
 17 website. *See, Von Rock Dec.*, ¶ 58. The parties also propose sending the information contained  
 18 on the Postcard Notice via email to all Class Members for whom an email address is provided  
 19 that includes a link to the settlement website with the long form Notice of Settlement. This is  
 20 “the best notice practicable.” *Id.*; Fed.R.Civ.P. 23(c)(2)(B). Mailing of a postcard saves on the  
 21 costs of administration and Class Members will immediately see the settlement information on  
 22 the postcard, rather than opening an envelope, which could be inadvertently tossed as junk  
 23 mail. *Id.* The proposed Notice is clear and straight-forward and provides information on the  
 24 nature of the action, the terms and provisions of the Settlement Agreement, and the monetary  
 25 awards that the Settlement will provide Class Members. *Id.* In addition, the Parties will provide  
 26 a settlement website that provides the Notice, the Settlement Agreement, and other case related  
 27 documents and contact information. *Id.*

28 The proposed Notice fulfills the requirement of neutrality in class notices. *See, Conte*,

1 Newberg on Class Actions (3rd Ed. 1992) § 8.39. It summarizes the proceedings necessary to  
 2 provide context for the Settlement Agreement and summarizes the terms and conditions of the  
 3 Settlement, including an explanation of how the settlement amount will be allocated between  
 4 the Named Plaintiffs, Class Counsel, the Settlement Administrator, and the Class Members, in  
 5 an informative, coherent and easy-to-understand manner, all in compliance with the Manual for  
 6 Complex Litigation’s recommendation that “the notice contain a clear, accurate description of  
 7 the terms of the settlement.” *See*, Manual for Complex Litigation (4th ed. 2004) § 21.312.

8 The Notice of Settlement clearly explains the procedures and deadlines for objecting to  
 9 the Settlement, and the date, time and place of the Final Approval Hearing. *See*, Von Rock  
 10 Dec., ¶ 59. Pursuant to Rule 23(h), the proposed Notice of Settlement also sets forth the  
 11 amounts of attorney’s fees and costs sought by Plaintiffs, as well as an explanation of the  
 12 procedure by which Class Counsel will apply for them. *Id.* The Notice of Settlement clearly  
 13 states that the Settlement does not constitute an admission of liability by Defendants. *Id.*  
 14 Accordingly, the Notice of Settlement complies with the standards of fairness, completeness,  
 15 and neutrality required of a settlement class notice disseminated under authority of the Court.

16 Accordingly, the Notice of Settlement should be preliminarily approved.

17 **F. Class Members Already Had an Opportunity to Opt Out**

18 As described above, Class Members will have an opportunity to object to the  
 19 Settlement. However, there will not be a second opportunity to opt out because the Court  
 20 previously ordered the dissemination of individual notice of the pendency of a class action to  
 21 Class Members and ample opportunity to opt out, which 22 Class Members did.

22 Members of a Rule 23(b)(3) class need not be given a second chance to opt out at the  
 23 settlement stage. *See*, *Low v. Trump Univ., LLC* (9th Cir. 2018) 881 F.3d 1111; *Moorer v.*  
 24 *Stemgenex Med. Group*, 2021 U.S.Dist.LEXIS 4037 (S.D.Cal. Jan. 8, 2021). Accordingly,  
 25 Class Members need not be given a second opportunity to opt out at the settlement stage.

26 **G. The Court Should Approve the Proposed Schedule**

27 The last step in the settlement approval process is to hold a Final Approval Hearing at  
 28 which the court will hear argument and make a final decision about whether to approve the

1 Settlement pursuant to Rule 23(e)(3). *See*, Manual for Complex Litigation, *supra*, at §21.63.  
2 Plaintiffs have submitted a proposed order setting forth the proposed schedule of events from  
3 here through final approval. *See*, Von Rock Dec., ¶60 and [Proposed] Order. Plaintiffs submit  
4 that the proposed schedule complies with Rule 23 and secures the benefits for Class Members  
5 in a timely fashion.

6 **VI. CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully request that this Court grant  
8 preliminary approval of the Settlement Agreement in accordance with the proposed schedule.

9 Date: October 22, 2021

Respectfully submitted,

10 /s/ Hallie Von Rock

11 Hallie Von Rock  
12 AIMAN-SMITH & MARCY PC  
13 Attorneys for Plaintiffs and the Plaintiff Class  
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8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 KRISTAL NUCCI and KELLY SHAW, )  
13 individually and on behalf of all others )  
14 similarly situated and the California )  
Labor & Workforce Development )  
15 Agency, and ANA GOSWICK, )  
individually and on behalf of all others )  
16 similarly situated, )

17 Plaintiffs,

18 v.

19 RITE AID CORPORATION, )  
THRIFTY PAYLESS, INC. and DOES )  
20 1-10, inclusive, )

21 Defendants. )

Case No.: 19-cv-01434-LHK

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Hon. Lucy H. Koh

1 This matter before the Court is Plaintiffs’ Motion for Preliminary Approval of Class  
2 Action and PAGA Settlement. Plaintiffs, individually and on behalf of the proposed settlement  
3 class, and Defendants have entered into a Settlement Agreement that, if approved, would settle  
4 the above captioned litigation (the “Action”). Having considered the motion, the Class Action  
5 and Private Attorneys General Act Settlement Agreement and Release (“Settlement  
6 Agreement”) together with all exhibits and attachments thereto, submitted as Exhibit 1 to the  
7 Declaration of Hallie Von Rock in Support of Plaintiffs’ Motion for Preliminary Approval of  
8 Class Action and PAGA Settlement, the record in this matter, and the briefs and arguments of  
9 counsel, the Court finds as follows: This Court heard Plaintiffs Kristal Nucci, Ana Goswick,  
10 and Kelly Shaw’s (“Plaintiffs”) Motion for Preliminary Approval of Class Action and PAGA  
11 Settlement; this Court reviewed the motion, including the Settlement Agreement and  
12 supporting declaration of Class Counsel; and based on this review and the findings below, the  
13 Court finds good cause to grant the motion.

14 **FINDINGS:**

15 1. The Court has reviewed the terms of the proposed Settlement Agreement, the  
16 exhibits and attachments thereto, Plaintiffs’ motion papers and briefs, and the declaration of  
17 counsel. Based on its review of these papers, the Court finds that the Settlement Agreement  
18 appears to be the product of serious, informed, non-collusive negotiations conducted with the  
19 assistance of mediator Jeffrey Ross, Esq. The Court further observes that the Settlement  
20 Agreement was entered into after over two and a half years of litigation, and on the eve of trial,  
21 and following class certification, formal discovery, expert discovery, pending cross-motions  
22 for summary judgment and a motion to decertify the class that were fully briefed, and  
23 extensive arm’s-length negotiations in four mediations. The terms of the Settlement Agreement  
24 do not improperly grant preferential treatment to any individual within or segment of the  
25 Settlement Class and falls within the range of possible approval as fair, reasonable, and  
26 adequate.

27 2. The Long-Form Notice and Postcard Notice (attached to the Settlement  
28 Agreement as Exhibits A and B, respectively), and their manner of transmission, are

1 reasonably calculated to adequately apprise class members of: (i) the pending lawsuit, (ii) the  
2 proposed settlement, and (iii) their rights to object to the settlement and, thus, comply with  
3 Rule 23 and the principles of due process.

4 **IT IS ORDERED THAT:**

5 1. Settlement Approval. The Settlement Agreement, including the Long-Form  
6 Notice and Postcard Notice, attached to the Settlement Agreement as Exhibits A and B,  
7 respectively, are approved.

8 2. Appointment of Settlement Administrator and the Provisions of Class Notice.  
9 Pursuant to the Settlement Agreement, the Parties have designated Atticus Administration as  
10 the Settlement Administrator. The Settlement Administrator shall perform all the duties of the  
11 Settlement Administrator set forth in the Settlement Agreement.

12 3. Provision of Class List. Within thirty (30) calendar days of the date this Order  
13 Granting Preliminary Approval of Class Action and PAGA Settlement, Defendants shall  
14 provide to the Settlement Administrator and Class Counsel a list containing, for each Class  
15 Member, the following information: (1) name; (2) last known address, email address (to the  
16 extent such information is maintained in Defendants' Human Resources Information System),  
17 and telephone number (to the extent such information is maintained in Defendants' Human  
18 Resources Information System); (3) Social Security Number; (4) number of weeks worked by  
19 each individual as a Class Member in a Rite Aid retail store during the Class Period; and (5)  
20 identity of Class Members whose employment has terminated with Defendants.

21 4. Notice of Settlement. Within ten (10) business days of receipt of the Class List,  
22 the Postcard Notice, in the form attached to the Settlement Agreement as Exhibit "B" shall be  
23 sent by the Administrator to each Class Member. The Postcard Notice shall be sent by first  
24 class mail to each Class Member's current or last known address, following an updated review  
25 of the National Change of Address Registry by the Administrator, as well as by email (where  
26 available). The long form Notice, in the form attached hereto as Exhibit "A" will be posted on  
27 the settlement website.

28 5. Claim for Settlement Award. Class Members will have an option to choose a

1 digital payment or a hard copy check. If a Class Member does not affirmatively choose a  
2 digital payment, a hard copy check will be mailed, if Final Approval is granted.

3 5. Objection to Settlement. Class Members shall be permitted to object to the  
4 Settlement before final approval. All written objections and supporting papers must (a) clearly  
5 identify the case name and number (Kristal Nucci, et al. v. Rite Aid Corporation, et al., United  
6 States District Court, Northern District Case No. 19-cv-01434-LHK); (b) be submitted to the  
7 Court either by mailing them to the Class Action Clerk, United States District Court for the  
8 Northern District of California, 280 South 1st Street, San Jose, CA 95113, or by filing them in  
9 person at any location of the United States District Court for the Northern District of  
10 California, and be submitted to the Settlement Administrator; and (c) be filed or postmarked on  
11 or before 35 calendar days from the date the Notice is sent to the Class Members.

12 6. Certification of Settlement Class. The Court finds that the proposed Settlement  
13 Class definition is consistent with the Class previously certified (ECF 69) and, therefore, meets  
14 the requirements of Federal Rule of Civil Procedure 23 for the reasons set forth in the Order  
15 Denying Motion to Strike and Granting Class Certification (ECF 69). Class Representatives  
16 Kristal Nucci, Ana Goswick, and Kelly Shaw are appointed as Settlement Class  
17 Representatives to implement the settlement in accordance with the Settlement Agreement.  
18 Class Counsel Aiman-Smith & Marcy shall continue to serve as Class Counsel.

19 8. Termination. If this Settlement Agreement terminates for any reason, this Action  
20 will revert to its previous status in all respects as it existed immediately before the Parties  
21 executed the Settlement Agreement. This Order will not waive or otherwise impact the Parties'  
22 rights or arguments.

23 9. Motion for Final Approval of Settlement and Motion for Fees, Expenses, and  
24 Incentive Awards. No later than 35 days before the Fairness Hearing, Plaintiffs shall file their  
25 Motion for Final Approval of Settlement and Motion for Fees, Expenses, and Incentive  
26 Awards. Plaintiffs shall be permitted to file a reply to any objections to their request for fees,  
27 expenses, or incentive awards on or before 35 days before the Fairness Hearing.

28 10. Final Approval Hearing. The Court will hold a Final Approval Hearing on



1 \_\_\_\_\_, at \_\_\_\_\_ in Courtroom 8, 4th Floor, of the Northern District of California,  
 2 280 South 1st Street, San Jose, CA 95113.

3 11. At the Final Approval Hearing, the Court will consider whether: (a) the  
 4 Settlement is fair, reasonable, and adequate; (b) the Settlement Class should be finally  
 5 certified; (c) a final judgment should be entered; (d) Class Counsel’s motion for attorneys’ fees  
 6 and expenses should be granted; and (e) the incentive payments sought for Settlement Class  
 7 Representatives should be awarded.

8 12. The Court reserves the right to continue the date of the Final Approval hearing  
 9 without further notice to Settlement Class Members. If that occurs, the updated hearing date  
 10 shall be posted on the Settlement Website. Other than the Settlement Website posting, the  
 11 Parties will not be required to provide any additional notice to Class Members.

12 14. Stay of Dates and Deadlines. All pretrial and trial proceedings and deadlines are  
 13 vacated until further notice from the Court, except for such actions as are necessary to  
 14 implement the Settlement Agreement and this Order.

15 15. The Proposed Timeline of events set forth below is adopted:

Date of preliminary approval of the Settlement as to the Class	
Deadline for Defendants to pay the Administrator all amounts awarded and approved by the Court (“Payment Date”)	The latest of: <ul style="list-style-type: none"> <li>• 14 calendar days following the entry of a Judgment finally approving this Settlement</li> <li>• If an objection is filed, 14 calendar days after any deadline to file an appeal has expired</li> <li>• If an appeal has been taken or sought, 14 calendar days after the Judgment is finally affirmed by an appellate court with no possibility of subsequent appeal or judicial review, or the date the appeal(s) or reviews are finally dismissed</li> </ul>
Deadline for Defendants to provide to	Within 30 calendar days of the Court’s

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Administrator and Class Counsel a list containing, for each Class Member, the following information: (1) name; (2) last known address, email address (to the extent such information is maintained in Defendants' Human Resources Information System) and phone number (to the extent such information is maintained in Defendants' Human Resources Information System); (3) Social Security Number; (4) number of weeks worked by each individual as a Class Member in a Rite Aid retail store during the Class Period; and (5) identity of Class Members whose employment has terminated with Defendants.	Preliminary Approval Order
16 17	Deadline for Administrator to mail and email the Class Notice to Class Members	Within 10 business days after Administrator receives the Class List
18 19 20	Deadline for Settlement Class Members to submit challenges regarding the number of workweeks worked	Within 35 days after Notice is initially mailed to the class
21 22 23	Deadline for Settlement Class Members to postmark request to file objections to the Settlement	Within 35 days after Notice is initially mailed to the class
24 25 26	Deadline for Administrator to provide the Court with a declaration attesting to completion of the notice process	At least 10 days prior to the Final Approval Hearing
27 28	Deadline for filing of Final Approval Motion	In accordance with Local Rule 7-2

1	Final Approval Hearing	
2	Effective Date	Upon execution by all Parties, Class
3		Counsel, Defendants’ counsel, and Final
4		Approval from the Court, following
5		Notice to Class Members and a formal
6		fairness hearing and entry of a final
7		judgment by the Court
8	Deadline for Administrator to make all	Within ten (10) business days of the
9	payments due under the Settlement	Payment Date
10	Check-cashing / Digital Payment deadline	180 days after issuance
11	Deadline for Administrator to either	As soon as practicable after check-
12	distribute uncashed check funds to <i>cy pres</i>	cashing deadline
13	recipient or redistribute such funds	
14	Deadline for Plaintiffs to file a Post-	Within 21 days after the distribution of
15	Distribution Accounting	any remaining monies to Class Members
16		who cashed their Settlement Award
17		check or to the <i>cy pres</i> recipient
18		

19 For the reasons set forth above, the Court GRANTS Plaintiffs’ motion for preliminary  
 20 approval.

21  
 22 DATED:

23 \_\_\_\_\_  
 24 Hon. Lucy H. Koh  
 25 United States District Court Judge  
 26  
 27  
 28