

1 JAMES F. CLAPP (145814)
jclapp@clapplegal.com
2 MARITA MURPHY LAUINGER (199242)
mlauinger@clapplegal.com
3 CLAPP & LAUINGER LLP
701 Palomar Airport Road, Suite 300
4 Carlsbad, California 92011
Tel: 760-209-6565 ext. 101
5 Fax: 760-209-6565

6 BEVIN ALLEN PIKE (221936)
Bevin.Pike@CapstoneLawyers.com
7 ORLANDO VILLALBA (230763)
Orlando.Villalba@CapstoneLawyers.com
8 CAPSTONE LAW APC
1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
Tel: 310-556-4811
10 Fax: 310-943-0396

11 KEVIN J. MCINERNEY (46941)
kevin@mcinerneylaw.net
12 1050 N. Hills Blvd., #61388
Reno, Nevada 89506
13 Tel: 775-849-3811

14 Attorneys for Plaintiffs
15 CABRAL, JONES, KINCAID AND SMILES

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF ALAMEDA – OAKLAND

18 DARLENE CABRAL, NATAYNA
19 JONES, THERESA KINCAID, as
aggrieved employees pursuant to the Labor
20 Code Private Attorneys General Act of
2004 ("PAGA"), on behalf of the State of
21 California and other aggrieved employees,
22 Plaintiffs,

23 v.

24 WALGREEN CO., an Illinois corporation,
and DOES 1 through 10, inclusive,

25 s.
26

FILED
ALAMEDA COUNTY

APR 10 2023

CLERK OF THE SUPERIOR COURT

By  Deputy

CASE NO. RG21093196

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

DATE: April 4, 2023
TIME: 3:00 p.m.
DEPT: 23

Assigned for All Purposes to
Judge Brad Seligman

1 On October 18, 2022, the Court entered an order granting preliminary approval of the
2 proposed class action and PAGA settlement between representative plaintiffs Darlene Cabral,
3 Natayna Stewart (nee Jones), Theresa Kincaid and Eden Smiles (“Plaintiffs”), and defendant
4 Walgreen Co. (“Defendant”) as set forth in the Settlement Agreement and Release and the
5 attached Memorandum of Agreement, attached as Exhibit 2 to the Declaration of James F.
6 Clapp in support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA
7 Settlement. Plaintiffs now seek an order granting final approval of the settlement.

8 Due and adequate notice having been given to the Class Action Members, as defined
9 below, and the Court having considered Plaintiffs’ Motion for Final Approval of Class
10 Action and PAGA Settlement and Motion for Attorneys’ Fees, Costs and Service Awards,
11 the declarations in support thereof, and all pleadings and papers filed in this action and good
12 cause appearing,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

14 **RECITALS**

15 1. On August 7, 2019, the Hon. Brad Seligman of the Alameda County Superior
16 Court entered judgment in *Smiles v. Walgreen Co.*, Case No. RG17862495 (the “Smiles
17 Action”). Smiles alleged that Walgreens failed to provide suitable seating to employees
18 while they worked at the front-end checkstands of Walgreens’ California retail stores in
19 violation of Wage Order 7-2001, §14.

20 2. The settlement agreement in *Smiles* (the “Prior *Smiles* Settlement”) imposed
21 certain obligations on Walgreens to place suitable seats at the front-end checkstands of its
22 California retail stores. Judge Seligman retained jurisdiction to enforce the Prior Smiles
23 Settlement.

24 3. On March 25, 2021, Plaintiffs Cabral, Jones, and Kincaid filed a separate
25 lawsuit in the Alameda County Superior Court entitled *Cabral v. Walgreen Co.*, Case No.
26 RG21093196 (the “Cabral Action”). Cabral alleged that Walgreens’ violated Wage order 7-
27 2001 §14 and violated the Prior *Smiles* Settlement. Defendant denies all wrongdoing and
28 liability to Plaintiffs, Representative Action Members, or Class Action Members. No aspect

1 of the settlement will be construed to mean or constitute evidence that Walgreens was at any
2 time prior to the implementation of the "Interim Seating Program" not in compliance with
3 suitable seating or related obligations, nor shall it be construed as any admission of liability
4 that Walgreens violated any aspect of the *Smiles* Settlement.

5 4. On March 14, 2022 and April 6, 2022, the Parties attended a private mediation
6 before Lou Marlin in an attempt to resolve their disputes regarding the Prior *Smiles*
7 Settlement and *Cabral*. On April 6, 2022, the Parties reached a tentative settlement of all
8 outstanding disputes between them.

9 5. On April 28, 2022, the Parties fully executed a Binding Memorandum of
10 Agreement ("MOA") memorializing their settlement, which MOA is attached as Exhibit A
11 and incorporated by reference to the Settlement Agreement and Release. On July 7, 2022,
12 the Parties fully executed the Settlement Agreement and Release ("Settlement").

13 6. The Court adopts and incorporates by reference all defined terms as set forth
14 in the Settlement Agreement and Release and MOA.

15 7. The Court has jurisdiction over the subject matter of the *Cabral* Action and
16 the *Smiles* Action, the Plaintiffs, the Class Action Members, the Representative Action
17 Members, Defendant, and the Settlement.

18 FINDINGS

19 8. The Court finds the Settlement was the product of arm's length negotiations
20 between experienced counsel, and is fair, reasonable and adequate. The Settlement provides
21 meaningful relief to the Class Action Members and Representative Action Members as
22 defined in the Settlement as well as relief to the State of California consistent with the
23 purposes of PAGA.

24 9. The Court finds, for settlement purposes only, that the Class satisfies the
25 applicable standards for certification under Code of Civil Procedure §382, Civil Code §
26 1781, California Rules of Court, rules 3.766 and 3.769, and the California and United States
27 Constitutions.

28 ///

10. The Court finds the notice procedure carried out by the Settlement Administrator constituted the best notice practicable under the circumstances and fully satisfied all necessary requirements of due process.

11. The Court finds there are no objections to the Settlement.

ORDER

12. For settlement purposes only, the Court has certified a class defined as: “All individuals who do not opt out of the Class Settlement and who were employed by Walgreens as Beauty Advisors, Beauty Consultants, Customer Service Associates, Look Boutique Beauty Advisors, Look Boutique Lead Beauty Advisors, Look Boutique Assistant Lead Beauty Advisors, Senior Beauty Advisors, and/or Service Clerks in the State of California at any time between March 23, 2016 to and including August 6, 2019.”

13. For purposes of the settlement, Representative Action Members are individuals who are or were employed by Walgreens as Beauty Advisors or Customer Service Associates in the State of California at any time between August 7, 2019 through June 14, 2022.

14. Nine Class Action Members filed timely requests for exclusion from the Settlement and therefore Subparagraphs (3) and (4) of Paragraph 6.b of the MOA shall not apply to them. Those individuals are Tran L. Lieu, Mariah C. Faris, Verity June Gladden, William H. Smith, Victoria Rose Veasley, Sam R. Delrooz, Cindy Alvarez, David M. Sand, and Mohammad Ziaul Haider.

15. Upon entry of this Order and Judgment, Plaintiffs, all Class Action Members, all Representative Action Members, the Labor Workforce and Development Agency, and the State of California shall fully and forever release and discharge all claims or causes of action as set forth in the Settlement at MOA page 3, paragraph 6.b, provided that subparagraphs (3) and (4) of MOA Paragraph 6.b shall not apply to the nine individuals who submitted valid requests for exclusion and who are listed in Paragraph 14 directly above.

16. The Maximum Settlement Amount and the methodology used to calculate and pay each Class Action Member who has not been excluded, and to pay Representative Action Members are fair and reasonable. The Court authorizes the Settlement Administrator, CPT

Group, to pay the Class Action Members and Representative Action Members in accordance with the terms of the Settlement.

17. Upon entry of this Order and Judgment, distribution of the Maximum Settlement Amount shall be made pursuant to the terms of the Settlement Agreement and the parties shall implement the non-monetary provisions of the Settlement pursuant to the terms of the Settlement Agreement.

18. From the Maximum Settlement Amount, \$2,404,323.69 shall be distributed to the Class Action Members who have not been excluded in accordance with the terms of the Settlement.

19. From the Maximum Settlement Amount, \$5,000 each shall be paid to the Class Representatives Darlene Cabral, Natayna Stewart (nee Jones), Theresa Kincaid, and Eden Smiles for their service to the Class.

20. From the Maximum Settlement Amount, \$129,009.64 shall be paid to Class Counsel as reimbursement for costs.

21. From the Maximum Settlement Amount, \$1,666,666.67 shall be paid to Class Counsel for their reasonable attorneys' fees.

22. 10% of the attorneys' fees award shall be kept in the administrator's trust fund until completion of the distribution process and Court approval of a final accounting.

23. From the Maximum Settlement Amount, \$80,000 shall be paid to CPT Group, Inc. for the cost of administration.

24. From the Maximum Settlement Amount, \$700,000 shall be reserved to pay Compliance Expenses and PAGA Penalties as set forth in the Settlement at MOA, page 5, paragraph 7.v.

25. Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement is hereby Granted and the Court directs that Judgment be entered in accordance with the terms of this Order.

26. A Compliance Hearing will be held on January 23, 2024 at 3:00 p.m. in Department 23 of the above-captioned Court. On or before January 16, 2023, counsel must

1 file a final report and proposed amended judgment with a Word version emailed to the
2 department clerk per Code of Civil Procedure § 384.

3 27. To the extent permitted by law, Plaintiffs, acting as proxies for the State of
4 California, agree that compliance with the Settlement shall be considered to be compliance
5 with Sections 14(A) and 14(B) of Wage Order 7-2001.

6 **JUDGMENT**

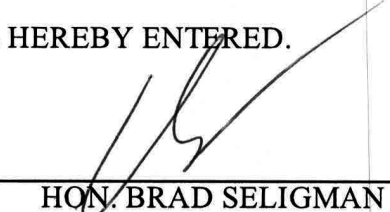
7 28. Pursuant to California Rules of Court, rule 3.769(h), this Court retains
8 jurisdiction over the Parties and the Settlement to enforce the terms of the Judgment.

9 29. This Judgment is intended to be a final disposition of the *Cabral* Action and the
10 *Smiles* Action, and is intended to be immediately appealable.

11 30. The Court hereby enters Judgment in this case, which will be *res judicata* as to
12 the released claims of Plaintiffs, Class Action Members, Representative Action Members, the
13 LWDA, and the State of California.

14 IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED.

15
16 DATED: 4/10/23

17 By: 
18 HON. BRAD SELIGMAN
19 Judge of the Superior Court
20
21
22
23
24
25
26
27
28