

## Multiple Documents

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| 3    | Declaration of Christina A. Humphrey              |
| 4    | Exhibit 1 to Declaration of Christina A. Humphrey |
| 5    | Declaration of James A. Clark                     |
| 6    | Declaration of Lisa Mullins                       |
| 7    | Exhibit A to Declaration of Lisa Mullins          |
| 8    | Exhibit B to Declaration of Lisa Mullins          |
| 9    | Proposed Order                                    |

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SALVADOR AQUINO, SUSAN  
FORD, MONICALAYLE GARCIA,  
BARBARA KRAUS, MARTHA  
LOPEZ, FRANCISCO MARTINEZ,  
MEGAN SARGENT, individually and  
as a representative of a Putative Class  
of Participants and Beneficiaries, on  
behalf of the 99 CENTS ONLY  
STORES 401(K) PLAN,

Plaintiffs,

v.

99 CENTS ONLY STORES LLC; THE  
RETIREMENT COMMITTEE OF THE  
99 CENTS ONLY 401(K) PLAN; and  
DOES 1 through 20,

Defendants.

Case No. 2:22-cv-01966- SPG

**NOTICE OF PLAINTIFFS’  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION OF  
SETTLEMENT CLASS, APPROVAL  
OF CLASS NOTICE, AND  
SCHEDULING OF A FAIRNESS  
HEARING**

[Filed and served concurrently with  
Memorandum of Points and Authorities,  
Declarations of Attorneys Christina A.  
Humphrey & James A. Clark, Declaration  
of Administrator Lisa Mullins, and  
[Proposed] Order]

Judge: Sherilyn Peace Garnett  
Hearing Date: May 31, 2023  
Hearing Time: 1:30 p.m.  
Courtroom: 5C

1 PLEASE TAKE NOTICE that on May 31, 2023 at 1:30 p.m., or as soon  
2 thereafter as this matter may be heard, in Courtroom 5C of the United States  
3 District Court for the Central District of California, located at First Street  
4 Courthouse, 350 West 1st Street, Los Angeles, CA 90012, before the Honorable  
5 Sherilyn Peace Garnett, Plaintiffs Salvador Aquino, Susan Ford, Monicalayle  
6 Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, Megan Sargent,  
7 individually and as a representative of a Putative Class of Participants and  
8 Beneficiaries, on behalf of the 99 Cents Only Stores 401(K) Plan, (“Plaintiffs”)  
9 (“Plaintiffs”), will and hereby do move the Court to (1) preliminarily approve the  
10 submitted proposed Class Action Settlement, (2) certify the Settlement Class, (3)  
11 find Plaintiffs’ counsel and their respective firms, Christina Humphrey Law, P.C.,  
12 and Tower Legal Group, P.C. as adequate class counsel and certifying them as class  
13 counsel herein, (4) approve the Class Notice, and (5) schedule a Fairness Hearing.

14 Plaintiffs respectfully submit that they are amenable to the Court deciding  
15 this Motion on the papers, without oral argument, if the Court deems it appropriate.  
16 Plaintiffs make this Motion pursuant to Federal Rule of Civil Procedure 23(e)(1)  
17 and Civil Local Rule 7-3. This Motion is based on the Notice of Motion and  
18 Motion; the concurrently filed Memorandum in support; Declarations of Christina  
19 A. Humphrey, James A. Clark, Lisa Mullins (Settlement Administrator, ILYM  
20 Group, Inc.), and all Exhibits appended thereto; all evidence, records, and pleadings  
21 in this action; oral argument that may be presented at any hearing of this Motion;  
22 and all other matters that the Court deems proper.

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Dated: April 19, 2023

**CHRISTINA HUMPHREY LAW, P.C.  
TOWER LEGAL GROUP, P.C.**

By: /s/ Christina A. Humphrey  
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ROBERT N. FISHER  
JAMES A. CLARK  
Attorneys for Plaintiffs

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SALVADOR AQUINO, SUSAN  
FORD, MONICALAYLE GARCIA,  
BARBARA KRAUS, MARTHA  
LOPEZ, FRANCISCO MARTINEZ,  
MEGAN SARGENT, individually and  
as a representative of a Putative Class  
of Participants and Beneficiaries, on  
behalf of the 99 CENTS ONLY  
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v.

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DOES 1 through 20,

Defendants.

Case No. 2:22-cv-01966- SPG

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION OF  
SETTLEMENT CLASS, APPROVAL  
OF CLASS NOTICE, AND  
SCHEDULING OF A FAIRNESS  
HEARING**

[Filed and served concurrently with Notice,  
Declarations of Attorneys Christina A.  
Humphrey & James A. Clark,  
Declaration of Administrator Lisa Mullins,  
and [Proposed] Order]

Judge: Sherilyn Peace Garnett  
Hearing Date: May 31, 2023  
Hearing Time: 1:30 p.m.  
Courtroom: 5C

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, Megan Sargent, individually and as a representative of a Putative Class of Participants and Beneficiaries, on behalf of the 99 Cents Only Stores 401(K) Plan, (“Plaintiffs”), submit this Memorandum in support of their Motion for Preliminary Approval of the Settlement Agreement with 99 Cents Only Stores LLC; The Retirement Committee of the 99 Cents Only 401(K) Plan (“Defendants”) (collectively “the Parties”) dated April 17 2023, which memorializes the settlement in principle the Parties reached following a mediation via Zoom videoconference before Jed Melnick, Esq. JAMS Mediator, on November 7, 2022. Plaintiffs seek an Order to (1) preliminarily approve the submitted proposed Class Action Settlement under Federal Rule of Civil Procedure 23(e), (2) conditionally certify the Settlement Class, (3) find Plaintiffs’ counsel and their respective firms, Christina Humphrey Law, P.C., and Tower Legal Group, P.C. as adequate class counsel and certifying them as class counsel herein, (4) approve the Class Notice, and (5) schedule a Fairness Hearing.

**I. INTRODUCTION**

The proposed gross settlement of \$750,000 should be preliminarily approved under Rule 23(e) because it is a fair, reasonable, and adequate resolution of the 99 Cents Plan’s claims. The proposed settlement would resolve all claims without the substantial risks and delay inherent in any further motion practice, a trial, and any subsequent appeal. The proposed Settlement falls within the scope of reasonable settlements. Moreover, it was reached after over a year of hard-fought litigation, including discovery, motion practice, and after arms-length negotiations. The November 7, 2022, mediation with Jed Melnick, Esq., JAMS Mediator, was the

1 culmination of several months of the parties exchanging settlement communications.  
2 Since November, the Parties have spent substantial time negotiating the specific  
3 terms of the Settlement Agreement and now present it for the Court’s preliminary  
4 approval.

5 **II. THE PROPOSED SETTLEMENT TERMS**

6 The Settlement provides Defendants, through their insurer, will pay  
7 \$750,000.00 to the Plan to be allocated to participants pursuant to a Court-approved  
8 Plan of Allocation. (Exhibit B attached to executed Settlement Agreement, which is  
9 attached as Exhibit 1 to Declaration of Christina A. Humphrey (“Humphrey Decl.”)  
10 and (“Settlement Agreement”). In exchange, Plaintiffs and the Plan will dismiss  
11 their claims, as set forth more fully in the Settlement Agreement. The Settlement  
12 Agreement also provides for the payment of attorneys’ fees of 33.1/3 % of the gross  
13 settlement (maximum \$250,000), attorney expenses of \$82,000, and Plaintiffs’ Case  
14 Contribution Awards of \$10,000 each, all of which are subject to Court approval.  
15 (Settlement Agreement, Sections 1.4 and 1.10) The Settlement will be reviewed by  
16 an independent fiduciary to be appointed by 99 Cents Only Stores LLC. The  
17 independent fiduciary will have no relationship to any of the Settling Parties and will  
18 serve as an independent fiduciary *to the Plan* to approve and authorize the settlement  
19 of Released Claims on behalf of the Plan thirty days prior to the Final Fairness  
20 Hearing. (Settlement Agreement Section 2.1.2)

21 **The Settlement Class.** The Settlement Agreement resolves all the claims  
22 asserted by the Settlement Class (the “Class”), defined as follows: “All persons who  
23 participated in the Plan at any time during the Class Period, including any  
24 Beneficiary of a deceased Person who participated in the Plan at any time during the  
25 Class Period, and any Alternate Payee of a Person subject to a QDRO who  
26 participated in the Plan at any time during the Class Period. Excluded from the

1 Settlement Class are Defendants and their Beneficiaries.” (Settlement Agreement  
2 Section 1.53). The Class Period is March 15, 2016, through the date of the entry of a  
3 Preliminary Approval Order in this case. (Settlement Agreement Section 1.14).  
4 There are approximately 5700 Class Members with account balances and  
5 approximately \$76,827,166 in Plan Assets. Declaration of Christina A. Humphrey in  
6 Support of Pls.’ Mot. (Humphrey Decl. ¶ 9).

7 **Monetary Relief and Plan of Allocation.** Under the Settlement Agreement,  
8 Defendants will pay \$750,000 into an escrow account established for the benefit of  
9 the class and Class Counsel and trusted by an escrow agent (the “Qualified  
10 Settlement Fund” or “QSF”). Following deductions for (i) any Court-approved  
11 Attorneys’ Fees and Expenses; (ii) any Court-approved Class Representative Service  
12 Awards; and (iii) Administrative Expenses, the Net Settlement Amount will be  
13 distributed to the Class in accordance with the Plan of Allocation attached to the  
14 Settlement Agreement as Exhibit B. (Humphrey Decl. ¶ 8; Ex. 1, Ex. B). The Plan of  
15 Allocation provides that each Class Member will receive a share of the Net  
16 Settlement Amount that is proportionate to the value of her individual Plan account  
17 balance relative to the total value of all assets in the Plan. Specifically, each Class  
18 Member’s Distribution shall be calculated as follows:

19 The Settlement Administrator shall determine a “Settlement Allocation Score”  
20 for each Participant, Authorized Former Participant, Beneficiary, or Alternate  
21 Payee by (i) determining the year-end account balances of each Participant and  
22 Authorized Former Participant during the Class Period, or, if a Beneficiary or  
23 Alternate Payee had a separate account in the Plan during the Class Period, by  
24 determining the year-end balance of each such Beneficiary or Alternate Payee,  
25 and (ii) dividing the sum of each Participant’s or Authorized Former  
26 Participant’s, or to the extent applicable, each Beneficiary’s or Alternate  
27 Payee’s, year-end account balances during the Class Period by the total sum of  
28 year-end asset amounts in the Plan during the Class Period.

If the dollar amount of the settlement payment to an Authorized Former

1 Participant, or a Beneficiary or Alternate Payee who does not have an Active  
2 Account, is initially calculated by the Settlement Administrator to be \$10.00  
3 or less, then that person's payment shall be \$10.00. All such amounts shall be  
4 retained in the Qualified Settlement Fund for distribution.

(Plan of Allocation, Ex. B to Settlement Agreement, Sections 1.5.1 and 1.5.2).

5 Current Participants with an Active Account (an individual investment  
6 account in the Plan with a balance greater than \$0 as of the date of Preliminary  
7 Approval Order) will have their final entitlement amount allocated into their Plan  
8 upon receipt of the transfer of funds from the Settlement Administrator. (*Id.* at  
9 Section 1.6.2). The deposited amount shall be invested by the Recordkeeper pursuant  
10 to the Settlement Class Member's investment elections on file for new contributions.  
11 If the Class Member has no election on file, it shall be invested in any default  
12 investment option(s) designated by the Plan. (*Id.* at Section 1.6.3).

13 Former Participants, which means members of the Settlement Class who do  
14 not have an Active Account as of the date of Preliminary Approval, will have the  
15 opportunity to elect a rollover of his or her settlement payment to an eligible  
16 employer plan or IRA or can be paid directly by check. (Plan of Allocation, Exhibit  
17 B to Settlement Agreement, Section 1.7). Checks issued to Former Participants shall  
18 be valid for 180 days from the date of issue. (Settlement Agreement Section 5.5).  
19 Funds remaining uncashed for more than 200 calendar days after issuance shall be  
20 distributed by cy pre to the Pension Rights Center. (*Id.*) None of the Plaintiffs,  
21 Counsel for the Parties, or Defendants have any conflict with the Pension Rights  
22 Center. (Settlement Agreement, Section 13.23).

23 **Independent Fiduciary.** In addition, the Settlement Agreement provides that  
24 the Plan Administrator shall, on behalf of the Plan, retain an Independent Fiduciary.  
25 (Settlement Agreement, Article 2). The Independent Fiduciary shall determine  
26 whether to approve and authorize the settlement of the Released Claims on behalf of

1 the Plan and shall comply with all relevant conditions set forth in Prohibited  
2 Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit  
3 in Connection with Litigation,” issued December 31, 2003, by the United States  
4 Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in making  
5 its determination. (*Id.* at Sections 2.1 - 2.1.1) Further, the Independent Fiduciary will  
6 notify Defendants directly of its determination, in writing (with copies to Class  
7 Counsel and Defense Counsel), which notification shall be delivered no later than  
8 thirty (30) calendar days before the Fairness Hearing. (*Id.* at Sections 2.1.2).

9 **Release of Claims.** In exchange for the relief provided in the Settlement, the  
10 Class will release the Released Parties from the Released Claims:

11 “[A]ny and all actual or potential claims (including any Unknown Claims),  
12 actions, causes of action, demands, obligations, or liabilities (including claims for  
13 attorney’s fees, expenses, or costs), for monetary, injunctive, and any other relief  
14 against the Released Parties through the date the Court enters the Final Approval  
15 Order and Judgment arising out of or in any way related to: (a) the conduct alleged in  
16 the Complaint, including conduct that was alleged in, or could have been alleged in,  
17 the Complaint by any Class Member, whether or not the conduct was actually  
18 included as counts in the Complaint; (b) the selection, retention, and monitoring of  
19 the Plan’s actual or potential investment options and service providers; (c) the  
20 performance, fees, and other characteristics of the Plan’s investment options and  
21 service providers; (d) the Plan’s fees and expenses, including without limitation, its  
22 recordkeeping and other service provider fees; and (e) the nomination, appointment,  
23 retention, monitoring, and removal of the Plan’s fiduciaries.

24 “Released Claims” does not include claims to enforce the covenants or  
25 obligations set forth in this Agreement.

26 “Released Claims” does not include any claims that the Class Representatives  
27 or the Settlement Class have to the value of their respective vested account balances  
28 under the terms of the Plan and according to the Plan’s records as of the date the  
Settlement becomes Final. (Settlement Agreement, at Section 1.44).

**Class Notice.** Each member of the Class will be sent a notice of the Settlement



1 (“Class Notice”) through both email and direct mail of the long form settlement  
2 notice (Settlement Agreement Ex. A) and the Former Participant Claim Form  
3 (Settlement Agreement, Ex. A-1) if applicable. The email and postcard notice both  
4 shall direct Class Members to the Settlement Website.<sup>1</sup> *Id.* The Settlement Notice  
5 will provide information to the Class regarding, among other things: (1) the nature of  
6 the claims; (2) the scope of the settlement class; (3) the terms of the Settlement; (4)  
7 Class Members’ right to object to the Settlement and the deadline for doing so; (5)  
8 the class-wide release; (6) the identity of Class Counsel and the amount of  
9 compensation they will seek in connection with the Settlement; (7) the amount of  
10 any Service Awards requested for Class Representatives; (8) the date, time, and  
11 location of the Fairness Hearing; and (9) Class Members’ right to appear at the  
12 Fairness Hearing.

13 The Plan Recordkeeper maintains updated email and physical mailing  
14 addresses for all Class Members who are Current Participants and will provide those  
15 email addresses to the Settlement Administrator for purposes of the Notice program.  
16 (Humphrey Decl. ¶ 10). Further, the Plan Recordkeeper has last known email and  
17 physical addresses for Former Participants. *Id.* Those addresses will be updated  
18 through the National Change of Address database and skip-traced if necessary.  
19 (Settlement Agreement, Section 2.4).

20 **III. LITIGATION HISTORY**

21 On March 25, 2022, Plaintiffs filed the Class Action Complaint which  
22 included two causes of action, 1) for breach of fiduciary duties of prudence and  
23 loyalty, and 2) for breach of fiduciary duties in violation of the duty to investigate  
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25 <sup>1</sup> The Settlement Website shall contain the Notice, the Settlement Agreement and its exhibits, the entered Preliminary  
26 Approval Order, the operative First Amended Complaint, and the Motions for Preliminary Approval and Final  
27 Approval (when filed); the Motion for Attorneys’ Fees and Expenses (when filed); any other Court orders related to the  
Settlement, any amendments or revisions to these documents, and any other documents or information mutually  
agreed upon by the Parties.



1 and monitor investments and covered service providers. (ECF No. 1). On June 6,  
2 2022, Defendants filed a Motion to Dismiss Plaintiffs' Class Action Complaint, in  
3 Part, challenging (1) Plaintiffs' duty of prudence claim based on the retention of four  
4 actively managed funds, and (2) Plaintiffs' duty of loyalty claim. (ECF No. 31). On  
5 June 27, 2022, Plaintiffs filed the First Amended Class Action Complaint, from  
6 which they removed the duty of loyalty claim, and modified allegations relating to  
7 the duty of prudence claim. (ECF No. 40).

8 On July 11, 2022, Defendants filed a Motion to Dismiss Plaintiffs' First  
9 Amended Class Action Complaint, in Part, challenging Plaintiffs' amended duty of  
10 prudence claim based on the selection and retention of four actively managed funds  
11 and the failure to include more than one index fund option on the Plan's menu. (ECF  
12 No. 44). Plaintiffs filed their Opposition to Defendants' Motion to Dismiss Plaintiffs'  
13 First Amended Class Action Complaint, in Part, and on October 5, 2022, Defendants  
14 filed their reply. (ECF Nos. 55 and 57).

15 Further, on August 10, 2022, the Parties filed a Joint Federal Rule of Civil  
16 Procedure, Rule 26(F) Report. (ECF No. 51). Plaintiffs propounded discovery and  
17 Defendants responded with documents and data after a stipulated protective order  
18 was signed by the Court.

19 Thereafter, the Parties engaged in in settlement discussions and, on October  
20 11, 2022, agreed to and scheduled a mediation conference with Jed D. Melnick of  
21 JAMS for November 7, 2022. (Humphrey Decl at ¶16). On November 7, 2022, the  
22 Parties reached an agreement in principal following a mediation before Jed Melnick,  
23 Esq. JAMS Mediator, on November 7, 2022. (Humphrey Decl at ¶17). Thereafter,  
24 the Parties finalized the long form settlement agreement on April 17, 2023, and  
25 Plaintiffs now move for its approval. (*Id.*)

26 //

1 **IV. ARGUMENT**

2 Under Federal Rule of Civil Procedure 23, when the Court is presented with a  
3 proposed settlement, it must determine whether the proposed settlement class  
4 satisfies the requirements for class certification under Rule 23. *See Amchem Prods.,*  
5 *Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997). Class certification under Rule 23 has  
6 two primary components: a proposed class must meet the four requirements of Rule  
7 23(a) and the requirements of at least one subsection of Rule 23(b). *See id.*; Fed. R.  
8 Civ. P. 23; *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-1022 (9th Cir.  
9 1998).

10 Approval of a settlement under Rule 23 involves “a two-step process”: “First,  
11 the Court decides whether the class action settlement deserves preliminary approval.  
12 Second, after notice is given to class members, the Court determines whether final  
13 approval is warranted.” *Vikram v. First Student Mgt., LLC*, No. 17-CV04656-KAW,  
14 2019 WL 1084169, at \*3 (N.D. Cal. Mar. 7, 2019).

15 In addition, the Court must preliminarily determine whether the Settlement is  
16 fair, reasonable, and adequate. “At the preliminary approval stage, ‘the settlement  
17 need only be potentially fair.’” *Johnson v. Serenity Transp., Inc.*, No. 15-CV02004,  
18 2021 WL 3081091, at \*4 (N.D. Cal. July 21, 2021) (citation omitted). “The Court  
19 cannot, however, fully assess such factors until the final approval hearing.” *De Leon*  
20 *v. Ricoh USA, Inc.*, No. 18-CV-03725, 2019 WL 6311379, at \*10 (N.D. Cal. Nov.  
21 25, 2019).

22 **A. The Court Will Be Able to Certify the Class for Purposes of**  
23 **Settlement**

24 While ERISA representative actions are ideally suited for class action  
25 treatment, when “[c]onfronted with a request for settlement-only class certification, a  
26 district court need not inquire whether the case, if tried, would present intractable  
27 management problems . . . .” *Amchem*, 521 U.S. at 620. In any event, the class action

1 device is the prevailing procedural vehicle by which retirement plan participants  
2 bring representative actions under ERISA § 502(a)(2), and courts routinely grant  
3 certification of ERISA breach of fiduciary duty actions. Additionally, the Court  
4 “must consider whether the Settlement Agreement ‘provides preferential treatment to  
5 any class member.’” *Philips v. Munchery Inc.*, No. 19- CV-00469, 2020 WL  
6 6135996, at \*7 (N.D. Cal. Oct. 19, 2020) (quoting *Villegas v. J.P. Morgan Chase &*  
7 *Co.*, No. CV 09- 00261, 2012 WL 5878390, at \*7 (N.D. Cal. Nov. 21, 2012)).

8 **1. The Settlement Class Satisfies Rule 23(a)**

9 **a. Numerosity**

10 The numerosity requirement of Rule 23 requires that a putative class must be  
11 “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1).  
12 However, “[i]mpracticability is not impossibility, and instead refers only to the  
13 ‘difficult or inconvenience of joining all members of the class.’” *Foster v. Adams &*  
14 *Assocs., Inc.* 2019 WL 4305538, at \*3 (N.D. Cal. Sept. 11, 2019) (finding that this  
15 factor was “easily satisfied” with 2,766 vested plan participants) (citing *Harris v.*  
16 *Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964)). While no  
17 specific number is needed to maintain a class action, courts in this Circuit have  
18 routinely found that a class greater than 40 often satisfies the requirement, let alone  
19 with thousands of putative class members. *See id.* (citing *Rites v. Ariz. Beverages*  
20 *USA LLC*, 287 F.R.D. 523, 526 (N.D. Cal. 2012)). Here, Class Counsel estimates  
21 that there are approximately 5700 Settlement Class members, based on the number  
22 of accounts in the Plan during the Class Period. (Humphrey Decl. ¶9). Thus, the  
23 proposed Class easily meets Rule 23(a)’s numerosity requirements.

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1                   **b. Commonality**

2                   The commonality prerequisite of Rule 23 requires “questions of law or fact  
3 common to the class.” Fed. R. Civ. P. 23(a)(2)<sup>2</sup>. Commonality involves “the capacity  
4 of a class[-]wide proceeding to generate common *answers* apt to drive resolution of  
5 the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (internal  
6 quotations omitted). This occurs when there is at least one common question, the  
7 determination of which “will resolve an issue that is central to the validity of each  
8 one of the claims in one stroke.” *Id.* Courts in this Circuit find “[t]he existence of  
9 shared legal issues with divergent factual predicates is sufficient [to meet the  
10 commonality requirement], as is a common core of salient facts coupled with  
11 disparate legal remedies within the class.” *Foster*, 2019 WL 4305538, at \*3 (citations  
12 omitted). Ultimately, commonality only asks the court to look “for some shared legal  
13 issue or common core of facts” and “requires the plaintiff to demonstrate the class  
14 members have suffered the same injury.” *Id.* (citing *Evon v. Law Offices of Sidney*  
15 *Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012)).

16                   Plaintiffs claim Defendants breached fiduciary duties owed to the Plan under  
17 ERISA § 404, 29 U.S.C. § 1104, and brought the Action in a representative capacity  
18 under ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109, 1132(a)(2). Thus, Plaintiffs’  
19 Plan-wide claims involve legal and factual questions that inherently affect all  
20 participants and beneficiaries in the Plan. Indeed, Plaintiffs’ “br[ought] suit on behalf  
21 of participants in the Plan [], the centralized administration of which is common to  
22 all class members.” *Cunningham v. Cornell Univ.*, 2019 WL 275827, at \*5 (S.D.N.Y.  
23 Jan. 22, 2019). “Because the fiduciary duties are owed to the [Plan] . . . common  
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25 <sup>2</sup> The commonality and typicality requirements of Rule 23(a) tend to merge.” *Gen. Tel. Co. of the Sw. v. Falcon*, 457  
26 U.S. 147, 157 n.13 (1982) (noting also that these requirements often merge with adequacy of representation). While  
27 this memorandum discusses the requirements separately, the discussions of each element are related and arguments  
supporting one requirement frequently support the others.

1 questions of law and fact are central to the case.” *Id.*; *see* 29 U.S.C. § 1104(a)(1) (“a  
2 fiduciary shall discharge his duties with respect to a *plan*”) (emphasis added).

3 The core questions in this Action are common to all Plan participants and  
4 include, *inter alia*: (i) whether Defendants breached their fiduciary duties by  
5 maintaining the challenged investments in the Plan; (ii) whether the Plan suffered  
6 resulting losses; (iii) the manner in which to calculate the Plan’s losses; and (iv) what  
7 equitable relief, if any, is appropriate in light of these alleged breaches. *See Kanawi*  
8 *v. Betchtel Corp.*, 254 F.R.D. 102, 109 (N.D. Cal. 2008) (finding commonality where  
9 injury stemmed from whether defendants breached their fiduciary duties to the Plan  
10 by making imprudent investment decisions); *see also Clark v. Duke Univ.*, 2018 WL  
11 1801946, at \*5 (M.D.N.C. Apr. 13, 2018). While a single common question is  
12 sufficient to meet this standard, the common questions here are numerous. *See Wal-*  
13 *Mart*, 564 U.S., at 359. Here, as in *Kanawi* and *Clark*, Plaintiffs’ claims and each  
14 putative Class member’s claims are based on the same events and legal theory, *i.e.*,  
15 breaches of fiduciary duty stemming from the Defendants’ alleged imprudent  
16 process for selecting, administering, and monitoring the Plan’s investments which is  
17 identical for the named Plaintiffs and the proposed Class members. *Kanawi*, 254  
18 F.R.D. at 109; *Clark*, 2018 WL 1801946, at \*5. Since the central allegations here  
19 concern Defendants’ administration of the Plan, they are common to all Plan  
20 participants who are empowered to bring an action on behalf of the Plan. *Kanawi*,  
21 254 F.R.D. at 109.

22 **c. Typicality**

23 The typicality prerequisite of Rule 23 requires that the claims of the  
24 representative plaintiffs be typical of the claims of the class. *See Fed. R. Civ. P.*  
25 23(a)(3). Typicality is met when “other members have the same or similar injury, . . .  
26 the action is based on conduct which is not unique to the named plaintiffs, and . . .

1 other class members have been injured by the same course of conduct.” *See Kanawi*,  
2 254 F.R.D. at 110 (citing *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th  
3 Cir.1992) (internal quotation marks omitted)). Like commonality, typicality is a  
4 “permissive” standard and “the focus should be on the defendants’ conduct and  
5 plaintiff’s legal theory, not the injury caused to the plaintiff.” *Id.* Since claims under  
6 ERISA § 502(a)(2) are inherently representative claims, any participant’s claim is  
7 necessarily typical of the claims of the Class; this is because every participant is  
8 asserting the Plan’s claim. Indeed, Plaintiffs brought this Action on behalf of the  
9 Plan, such that “[a]ny recovery of lost benefits will go to the Plan and will be held,  
10 allocated, and ultimately distributed in accordance with the requirements of the Plan  
11 and ERISA.” *Tatum v. R.J. Reynolds Tobacco Co.*, 254 F.R.D. 59, 66 (M.D.N.C.  
12 2008).

13 Courts routinely find a retirement plan participant’s breach of fiduciary duty  
14 claim to be typical of the claims of all participants in such a plan. *See Cunningham*,  
15 2019 WL 275827, at \*7 (typicality requirement met where plaintiffs “sufficiently  
16 alleged that the defendants’ failure to manage the Plans affected all proposed  
17 members of the class); *Sacerdote v. New York Univ.*, 2018 WL 840364 at \*3  
18 (S.D.N.Y. Feb. 13, 2018) (noting that analysis of the typicality factor is similar to the  
19 commonality analysis and finding because “[e]ach named plaintiff is asserting a  
20 claim on behalf of the Plans . . . [t]he adjudication of the breach of fiduciary duty  
21 claims will not turn on any individual class member’s circumstance.”); *Kanawi*, 254,  
22 F.R.D. at 110 (typicality met for fiduciary breach claims because “[n]one of the facts  
23 or legal claims are unique to the named Plaintiffs[.]” since “[t]he complaint is based  
24 on allegations and recovery that address the Plan as a whole, not individual  
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1 claimants”).<sup>3</sup> The circumstances in this Action, in which Plaintiffs alleged fiduciary  
2 breaches arising out of Defendants’ purported management and administration of the  
3 Plan, are no exception. Defendants’ Plan-wide alleged conduct at issue in this  
4 Action, of employing an “imprudent process for selecting, administering and  
5 monitoring the Plan’s . . . investments,” is of a kind routinely found to support  
6 determinations of typicality. *Clark*, 2018 WL 1801946 at \*5. Likewise, the remedial  
7 theory asserted by Plaintiffs here is identical among all members of the proposed  
8 Class. *See id.* In sum, Plaintiffs’ claims on behalf of the Plan are typical of all Class  
9 members’ claims.

10 **d. Adequacy**

11 Representative plaintiffs must also show that they will “fairly and adequately  
12 protect the interests of this class.” Fed. R. Civ. P. 23(a)(4). This inquiry analyzes  
13 “whether any conflicts of interest exist between the named plaintiffs and the class  
14 members” and “whether the named Plaintiffs’ counsel will adequately protect the  
15 interests of the class.” *Kanawi*, 254 F.R.D. at 109.

16 Plaintiffs were all participants in the Plan during the statutory period and their  
17 interests are tightly aligned with all other members of the proposed Class by virtue of  
18 the very nature of the claims that they bring. (Humphrey Decl. ¶15) Plaintiffs, acting  
19 in a representative capacity, seek to enforce the duties that Defendants owed to the  
20 Plan and to recover the damages and equitable relief due to them. *See* 29 U.S.C. §§  
21 1109(a), 1132(a)(2); *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S.  
22 134, at 142 n.9 (1985) “There is no reason to doubt that the name[d] plaintiffs will  
23 ‘fairly and adequately protect the interests of the class,’ as they have identical

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25 <sup>3</sup> Since the commonality and typicality requirements “tend to merge,” *Wal-Mart*, 564 U.S. at 349 n.5, Plaintiffs’ claims  
26 are typical for many of the same reasons that commonality is satisfied. In short, because Defendants’ actions were  
27 directed to and affected the Plan as a whole, without distinction among individual participants, the claims of all  
members of the proposed Settlement Class arise out of the same conduct. Likewise, Plaintiffs and all members of the  
proposed Settlement Class have the same claims under the same legal and remedial theory.

1 financial interests in this action as to the proposed class members.” *Sacerdote*, 2018  
2 WL 840364, at \*4 (internal citation omitted) (quoting Fed. R. Civ. P. 23(a)(4)). “The  
3 general rule that there is ‘a relatively low likelihood of intra-class conflicts in cases  
4 of excessive fee claims’ because the recovery is to the Plan, not to individual  
5 Plaintiffs, holds true here.” *Beach v. JPMorgan Chase Bank, N.A.*, 2019 WL  
6 2428631, at \*8 (S.D.N.Y. June 11, 2019) (quoting *Leber v. Citigroup 401(k) Plan*  
7 *Inv. Comm.*, 323 F.R.D. 145, 164 (S.D.N.Y. 2017)); *see also Kanawi*, 254 F.R.D. at  
8 111. Since Plaintiffs are pursuing claims on behalf of the Plan, there are no conflicts  
9 between Plaintiffs’ individual interests and the interests of the proposed Class.  
10 Indeed, Plaintiffs and Class members all share the same objectives, the same factual  
11 and legal positions, and the same interest in establishing Defendants’ liability. *See*  
12 *Kanawi*, 254 F.R.D. at 110 *see also Moreno v. Deutsche Bank Ams. Holding Corp.*,  
13 2017 WL 3868803, at \*7 (Sept. 5, 2017); *West v. Continental Automotive, Inc.*, 2017  
14 WL 2470633, at \*2 (W.D.N.C. June 7, 2017) (“[T]here is no evidence of a direct  
15 conflict of interests between named Plaintiffs and the class they seek to represent.”).

16 A class representative needs only a basic understanding of the claims and a  
17 willingness to participate in the case, requirements that Plaintiffs here easily surpass.  
18 *See Surowitz v. Hilton Hotels Corp.*, 383 U.S. 363, 373 (1966). Plaintiffs have  
19 demonstrated their commitment to pursuing this Action on behalf of a Settlement  
20 Class and have achieved a very favorable result, which does not favor any member  
21 of the Settlement Class at the expense of others. (Humphrey Decl. ¶ 23). Plaintiffs  
22 clearly have, and will continue to, adequately represent all members of the  
23 Settlement Class. In addition, Plaintiffs have retained qualified and competent  
24 counsel, whose adequacy is discussed in greater detail below. *See Bailey v. Verso*  
25 *Corp.*, 337 F.R.D. 500, 507 (S.D. Ohio 2021), *judgement entered*, No. 3:17-cv-332,  
26 2021 WL 5815727 (S.D. Ohio Dec. 6, 2021) (finding that the adequacy requirement



1 satisfied by class counsel who were “experienced ERISA litigators” and had  
2 “administered the settlement of numerous retiree-benefit class actions”).

3 **2. The Settlement Class Satisfies Rule 23(b)(1)**

4 In addition to satisfying the requirements of Rule 23(a), Plaintiffs need only  
5 satisfy one subsection of Rule 23(b). *See Amchem*, 521 U.S. at 613-14. Courts  
6 routinely grant certification under Rule 23(b)(1) in ERISA fiduciary breach cases.  
7 *See Karpik v. Huntington Bancshares Inc.*, 2021 WL 757123, at \*11 (S.D. Ohio Feb.  
8 18, 2021) (noting that cases involving allegations of fiduciary breaches to a trust or  
9 plan[] are precisely the type of cases that are encompassed by” Rule 23(b)(1); *Ortiz*  
10 *v. Fireboard Corp.*, 527 U.S. 815, 833-34 (1999) (calling breach of trust actions a  
11 “classic example” of a Rule 23(b)(1) class); *Shirk v. Fifth Third Bancorp*, 2008 WL  
12 4425535, at \*4 (S.D. Ohio Sept. 30, 2008) (“courts have routinely found that class  
13 certification is appropriate under Rule 23(b), and most usually 23(b)(1)” in ERISA  
14 breach of fiduciary duty cases). Actions under ERISA §§ 409 and 502(a)(2) for  
15 breach of fiduciary duty present a “paradigmatic example” of a Rule 23(b)(1) class.  
16 *Kanawi*, 254 F.R.D. at 111-12 (citations omitted); *see also Foster*, 2019 WL  
17 4305538, at \*7 (“Certification under Rule 23(b)(1) is particularly appropriate in  
18 cases involving ERISA fiduciaries who must apply uniform standards to a large  
19 number of beneficiaries.”) (citations omitted). Certification is appropriate under  
20 either subpart of Rule 23(b)(1). *See Clark*, 2018 WL 1801946, at \*9-\*10 (finding  
21 that plaintiffs established basis for certification under Rule 23(b)(1)(A) and Rule  
22 23(b)(1)(B)).

23 **3. Christina Humphrey Law, P.C. and Tower Legal Group Should Be**  
24 **Appointed as Class Counsel**

25 In appointing Class Counsel, this Court should consider the Rule 23(g)(1)(A)  
26 factors:

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- (i) the work counsel has done in identifying or investigating potential claims in this action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in this action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). Proposed Class Counsel, Christina Humphrey Law, P.C., and Tower Legal Group (collectively, “Class Counsel”) are qualified under these factors. (Humphrey Decl., ¶¶ 1-7). To date, Class Counsel have leveraged their experience and resources to vigorously pursue recovery on behalf of the Plan and protect the interests of all Class Members, including by comprehensively investigating the claims forming the basis of the Action, working with experts, filing detailed pleadings, amending the complaint and fully briefing Defendants’ motion to dismiss, and engaging in the discovery process. (*Id.* ¶ 18).

Christina Humphrey Law, P.C. has filed and litigated several actions across the country involving violations of the Employee Retirement Income Security Act of 1974 (“ERISA”). She has practiced almost exclusively in the area of class actions and complex litigation for twenty (20) years, co-chaired class action trials, and been appointed class counsel in 50-100 cases during her career. (Humphrey Decl. ¶¶ 1-7). Tower Legal also has experience litigating class actions. (Clark Decl. ¶13). Class Counsel will continue to leverage their wealth of relevant experience and resources on behalf of the Settlement Class through final resolution, including addressing inquiries from members of the Settlement Class and supervising the work of the Settlement Administrator. Accordingly, the Court should appoint Christina Humphrey Law, P.C., and Tower Legal Group as Class Counsel.

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1           **B.     The Settlement, Notice Plan, And Plan Of Allocation Warrant**  
2                   **Preliminary Approval**

3                   **1.     The Settlement Should Be Preliminarily Approved**

4           “To preliminarily approve a proposed class-action settlement, Rule 23(e)(2)  
5 requires the Court to determine whether the proposed settlement is fair, reasonable,  
6 and adequate.” *Urakhchin v. Allianz Asset Mgt. of Am., L.P.*, SACV151614, 2018  
7 WL 3000490, at \*5 (C.D. Cal. Feb. 6, 2018) (citing Fed. R. Civ. P. 23(e)(2)). In  
8 determining whether a settlement meets these requirements, courts look to factors  
9 including the strength of the claims and defenses, the risk, expense, and complexity  
10 of continued litigation, the stage of proceedings and extent of discovery completed,  
11 and the experience and views of class counsel. *See id.* The relative importance of  
12 these factors depends upon the unique facts and circumstances of a given case, and  
13 “[i]t is the settlement taken as a whole, rather than the individual component parts,  
14 that must be examined for overall fairness . . . .” *Id.* (citations and alterations  
15 omitted). “[T]here is a strong judicial policy that favors settlements, particularly  
16 where complex class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516  
17 F.3d 1095, 1101 (9th Cir. 2008); *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121  
18 (9th Cir. 2020) (same).

19           As a preliminary matter, although Plaintiffs believe there is strong legal and  
20 factual support for their claims, there is inherent risk in continued litigation of these  
21 complex ERISA claims. The Parties would have engaged in significant motion  
22 practice and trial presentations would rely heavily on competing expert testimony  
23 and likely given way to a complex appeal. Accordingly, the Settlement is a product  
24 of an extensive arm’s-length process in recognition of these risks. *See Urakhchin*,  
25 2018 WL 3000490, at \*4. “An initial presumption of fairness is usually involved if  
26 the settlement is recommended by class counsel after arm’s-length bargaining.”  
27 *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198, 2016 WL 5907869, at \*8 (N.D.

1 Cal. Oct. 11, 2016); *see also Slezak v. City of Palo Alto*, No. 16-CV-03224-LHK,  
2 2017 WL 2688224, at \*5 (N.D. Cal. June 22, 2017) (finding the “likelihood of  
3 fraud or collusion [wa]s low . . . because the Settlement was reached through arm’s-  
4 length negotiations, facilitated by an impartial mediator.”). Further, Class Counsel  
5 and Defendants’ counsel are experienced in ERISA litigation and each possess a  
6 thorough understanding of the factual and legal issues involved in the Action. In  
7 addition, Class Counsel engaged experts who are knowledgeable about ERISA and  
8 fiduciary obligations. *See Tadepalli v. Uber Techs., Inc.*, No. 15-CV-04348-MEJ,  
9 2015 WL 9196054, at \*9 (N.D. Cal. Dec. 17, 2015) (“Settlements are entitled to ‘an  
10 initial presumption of fairness’ because they are the result of arm’s-length  
11 negotiations among experienced counsel.”). (Humphrey Dec. ¶¶ 1-7 and 18)

12 Class Counsel conducted substantial investigation and analysis of thousands  
13 of pages of documents. (Humphrey Dec. ¶18). “Discovery can be both formal and  
14 informal” and, here, Plaintiffs and Class Counsel engaged in significant  
15 investigation of the Parties’ claims and defenses even before filing the initial  
16 complaint, and since then have undertaken formal fact discovery. *See Urakhchin*,  
17 2018 WL 3000490, at \*4. Indeed, the Parties were engaged in contested litigation  
18 when they agreed to the Settlement and further litigation promised to be similarly  
19 lengthy and complex, involving complex motions and further fact and eventual  
20 expert discovery. Thus, Plaintiffs faced meaningful challenges in their ability to  
21 obtain a recovery on behalf of the Plan, even setting aside the additional  
22 complexity and delay of likely appeals, which strongly supports the preliminary  
23 approval of the Settlement. *See Urakhchin*, 2018 WL 3000490, at \*4.

24 Class Counsel has significant experience in class action litigation generally  
25 and ERISA breach of fiduciary duty litigation and are of the opinion that the  
26 Settlement is fair and reasonable. (Humphrey Dec., ¶21) “‘The recommendations of  
27

1 plaintiffs’ counsel should be given a presumption of reasonableness.” *Urakhchin*,  
2 2018 WL 3000490, at \*5 (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d  
3 1036, 1043 (N.D. Cal. 2008) and granting preliminary approval). This presumption  
4 is especially warranted based on the opinion of “experienced plaintiffs’ advocates  
5 and class action lawyers.” *Does I v. Gap, Inc.*, No. CV-01-0031, 2002 WL 1000073,  
6 at \*13 (D.N. Mar. Is. May 10, 2002); *Walsh v. CorePower Yoga LLC*, No. 16-CV-  
7 05610, 2017 WL 589199, at \*10 (N.D. Cal. Feb. 14, 2017) (holding that settlements  
8 that are “the result of arms’- length negotiations among experienced counsel” weigh  
9 in favor of preliminary approval.).

10 The Settlement of \$750,000 provides 25% of the Class’s total potential  
11 damages for all claims of approximately \$3,000,000. For Plaintiffs’ first claim of  
12 excessive recordkeeping fees and share class violations, Plaintiffs’ expert calculated  
13 \$1,007,264.30 in potential damages. Plaintiffs attributed a 100% success rate as to  
14 those claims at trial. (Humphrey Dec., ¶22) For Plaintiffs’ second claim regarding  
15 four of the Plan’s investments’ alleged poor performance when compared to their  
16 passive benchmarks, Plaintiffs estimated approximately \$2,000,000 in potential  
17 losses to the Plan. While Plaintiffs’ experts estimated potential damages of  
18 \$4,000,000 for this claim if successful at trial, Plaintiffs attributed a 50% chance of  
19 success at trial because those claims are riskier and have been subject to dismissal in  
20 the Ninth Circuit. (Humphrey Decl. ¶23)

21 Shortly after Plaintiffs filed the complaint in this action, the Ninth Circuit  
22 affirmed a district court’s dismissal of similar claims. *See Davis v. Salesforce.com,*  
23 *Inc.*, No. 21-15867, 2022 WL 1055557, at \*2 n.1 (9th Cir. Apr. 8, 2022) (per curiam)  
24 (affirming dismissal of claim that “defendants breached the duty of prudence by  
25 failing to adequately consider passively managed mutual fund alternatives to the  
26 actively managed funds offered by the plan”). “Passively managed funds, however,

1 *ordinarily* cannot serve as meaningful benchmarks for actively managed funds,  
2 because the two types of funds ‘have different aims, different risks, and different  
3 potential rewards that cater to different investors.’” *Davis v. Salesforce.com, Inc.*,  
4 No. 20-cv-01753, 2020 WL 5893405, at \*3 (N.D. Cal. Oct. 5, 2020) (emphasis  
5 added) (quoting *Davis v. Washington Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir.  
6 2020)) (explaining the differences between actively and passively managed funds);  
7 *accord Enos v. Adidas Am., Inc.*, No. 3:19-cv-01073, 2021 WL 5622121, at \*7 (D.  
8 Or. Aug. 26, 2021).

9 Given that Plaintiffs’ have recovered 25% of the estimated potential damages  
10 of \$3,000,000, this settlement falls within the range of reasonableness that Courts in  
11 other jurisdictions have approved. *See e.g., Pfeifer v. Wawa, Inc.*, 2018 WL  
12 4203880, at \*9 (E.D. Pa. Aug. 31, 2018) (approving settlement amounting to 25-50%  
13 of potential damages); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL  
14 8334858, at \*5 (C.D. Cal. July 30, 2018) (approving settlement amounting to 17-  
15 54% of potential damages); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 463  
16 (D. Md. 2014) (approving settlement amounting to 3-48% of potential damages).

17 In sum, the Settlement is the product of vigorous litigation and arm’s-length  
18 negotiation by experienced and well-informed counsel, adequately reflects the  
19 strength of the parties’ claims and defenses, is based on sufficient discovery and  
20 information, and provides significant relief to the Settlement Class. Accordingly,  
21 the Court should find the Settlement is fair, reasonable, and adequate, and merits  
22 preliminary approval. Further, the Parties will submit the Settlement and related  
23 applications for fees and expenses to an independent fiduciary retained on behalf  
24 of the Plan, which will provide an opinion on the Settlement’s fairness before the  
25 final fairness hearing.

26 //



1                   **2. The Notice Plan Should Be Preliminarily Approved**

2                   In addition to preliminarily approving the proposed Settlement, the Court  
3 must approve the proposed means of notifying Settlement Class members. *See Fed.*  
4 *R. Civ. P. 23(I)(2)*. Due process and Rule 23(e) do not require that each Class  
5 Member receive notice, but rather that class notice must be “reasonably calculated,  
6 under the circumstances, to apprise interested parties of the pendency of the action  
7 and afforded them an opportunity to present their objections.” *Mullane v. Central*  
8 *Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950). “Individual notice must be  
9 provided to those class members who are identifiable through reasonable effort.”  
10 *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175 (1974). “Notice is satisfactory if  
11 it ‘generally describes the terms of the settlement in sufficient detail to alert those  
12 with adverse viewpoints to investigate and to come forward and be heard.’”  
13 *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

14                   The credentials of the proposed settlement administrator is set forth in the  
15 Declaration of Lisa Mullins, ILYM Group, Inc., submitted herewith. (“Mullins  
16 Dec.”) The Notice Plan is designed to reach the largest number of Settlement Class  
17 members possible. The Settlement Notice will be sent by email and first-class mail  
18 to the last known address of each Settlement Class member prior to the Fairness  
19 Hearing. *See Peters v. Nat’l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir.  
20 1992) (“It is beyond dispute that notice by first class mail ordinarily satisfies Rule  
21 23(c)(2)’s requirement that class members receive ‘the best notice practicable under  
22 the circumstances.’”). Notably, all Settlement Class members had Plan accounts, so  
23 the Plan’s recordkeeper has forwarding addresses and other identifying information  
24 for a substantial portion of the Settlement Class. In addition, the Notice, Settlement  
25 Agreement, preliminary and final approval motions and related applications, and  
26 other litigation documents will be posted on the Settlement Website, and the

1 Settlement Administrator will establish and monitor a toll-free number to field  
2 Settlement Class member inquiries. (Mullins Dec. ¶10). The website will also  
3 provide Class Counsel’s contact information and include instructions on how to  
4 access the case docket via PACER or in person at any of the court’s locations, the  
5 date and time of the final approval hearing, and a note advising Class Members that  
6 the hearing date may change without further notice to the Class and instructions to  
7 check the settlement website or the Court’s PACER site to confirm that the date has  
8 not changed. (Id.)

9 The Notice Plan satisfies all due process considerations and meets the  
10 requirements of Rule 23(e). The Notice Plan clearly describes: (i) the terms and  
11 operation of the Settlement; (ii) the nature and extent of the Released Claims; (iii)  
12 the maximum attorneys’ fees, litigation expenses, and case contribution awards that  
13 may be sought; (iv) the procedure and timing for objections; and (v) subject to the  
14 Court’s schedule, the date and location of the Fairness Hearing.

15 **3. The Plan of Allocation Should Be Preliminarily Approved**

16 The Plan of Allocation provides recovery to members of the Settlement  
17 Class on a *pro rata* basis, with no preferential treatment for the Class  
18 Representatives or any segment of the Settlement Class. A *pro rata* distribution  
19 based on each class member’s loss relative to that of the class as whole “has  
20 frequently been determined to be fair, adequate, and reasonable.” *Hefler v. Wells*  
21 *Fargo & Co.*, No. 16-CV-05479, 2018 WL 6619983, at \*12 (N.D. Cal. Dec. 18,  
22 2018) (collecting cases). This is substantially similar to plans approved by this  
23 Court in analogous ERISA litigation in this District and around the country. *See,*  
24 *e.g., Terraza v. Safeway Inc.*, No. 16-cv-03994-JST, Dkt. 268 (N.D. Cal. Sept. 8,  
25 2020) (“Settlement Scores will be determined by calculating the Class Member’s  
26 year-end asset amounts in the Plan during the Class Period . . .”); *see also Barcnas*



1 *v. Rush Univ. Medical Ctr.*, No. 22-cv-00366, Dkt. 73 (N.D. Ill. Jan. 19, 2023)  
2 (approving substantially similar *pro rata* plan of allocation in analogous ERISA  
3 breach of fiduciary duty action); *Karpik*, 2021 WL 757123, at \*2 (approving a plan  
4 of allocation distributing the settlement fund on a *pro rata* basis). Additionally,  
5 courts within this District hold that “[a] plan of allocation need only have a  
6 reasonable, rational basis, particularly if recommended by experienced and  
7 competent counsel.” *In re Nexus 6P Prods. Liab. Litig.*, No. 17-CV-02185, 2019  
8 WL 6622842, at \*9 (N.D. Cal. Nov. 12, 2019) (citation omitted). In light of the  
9 equitable treatment of Class Members and the competence of Class Counsel, the  
10 Court should find that the Plan of Allocation is also fair, reasonable, and adequate.

11 **V. CONCLUSION**

12 Plaintiffs respectfully submit that the Court should preliminarily approve the  
13 Settlement, Notice Plan, and Plan of Allocation, preliminarily certify the Settlement  
14 Class, and set a date for the Fairness Hearing. A proposed Preliminary Approval  
15 Order is attached to the contemporaneously-filed Settlement Agreement.

16  
17  
18 Dated: April 19, 2023

**CHRISTINA HUMPHREY LAW, P.C.**  
**TOWER LEGAL GROUP, P.C.**

19  
20  
21  
22 By: /s/ Christina A. Humphrey  
CHRISTINA A. HUMPHREY  
ROBERT N. FISHER  
23 JAMES A. CLARK  
24 Attorneys for Plaintiffs  
25

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[Attorneys for Plaintiffs]

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SALVADOR AQUINO, SUSAN  
FORD, MONICALAYLE GARCIA,  
BARBARA KRAUS, MARTHA  
LOPEZ, FRANCISCO MARTINEZ,  
MEGAN SARGENT, individually and  
as a representative of a Putative Class  
of Participants and Beneficiaries, on  
behalf of the 99 CENTS ONLY  
STORES 401(K) PLAN,

Plaintiffs,

v.

99 CENTS ONLY STORES LLC; THE  
RETIREMENT COMMITTEE OF THE  
99 CENTS ONLY 401(K) PLAN; and  
DOES 1 through 20,

Defendants.

Case No. 2:22-cv-01966- SPG

**DECLARATION OF CHRISTINA A.  
HUMPHREY IN SUPPORT OF  
PLAINTIFFS’ UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION OF  
SETTLEMENT CLASS, APPROVAL  
OF CLASS NOTICE, AND  
SCHEDULING OF A FAIRNESS  
HEARING**

[Filed and served concurrently with Notice,  
Memorandum of Points and Authorities,  
Declaration of Attorney James A. Clark,  
Declaration of Administrator Lisa Mullins,  
and [Proposed] Order]

Judge: Sherilyn Peace Garnett  
Hearing Date: May 31, 2023  
Hearing Time: 1:30 p.m.  
Courtroom: 5C

1  
2 I, Christina A. Humphrey, declare:

3 1. I have been practicing law for a total of twenty-two (22) years. For  
4 thirteen years as an associate and partner at Marlin & Saltzman, LLP and  
5 approximately seven (7) years as the owner of my own firm, I have been  
6 responsible for the handling of all facets of class action and other complex  
7 litigation, from pre-filing investigation through trial and appeal, especially in the  
8 area of employment litigation.

9 2. This declaration is given in support of Plaintiffs' Unopposed Motion  
10 for Preliminary Approval of Class Action Settlement, Conditional Certification of  
11 Settlement Class, Approval of Class Notice, and Scheduling of a Fairness Hearing.

12 **I. ADEQUACY AS CLASS COUNSEL**

13 3. From the beginning of my legal career in California in 2003, I have  
14 litigated almost exclusively class and PAGA actions. Currently, my firm is  
15 litigating several class actions across the country involving violations of the  
16 Employee Retirement Income Security Act of 1974 ("ERISA"). I also have a  
17 Bachelor's degree in Business Administration, specializing in finance and have  
18 extensively worked with financial and ERISA experts. I have been appointed class  
19 counsel in at least 50-100 cases throughout my career.

20 4. I have co-chaired two wage and hour class action trials and  
21 successfully arbitrated damage claims for nearly a hundred employees in a certified  
22 class action (damages were determined individually). I have also handled appeals  
23 in at least 10-15 wage and hour class action cases and have published decisions  
24 including *Faulkinbury v. Boyd* (2013) 185 Cal.App.4<sup>th</sup> 1363 and *Hodge v. AON*  
25 (2006) 145 Cal.App.4<sup>th</sup> 278. I have been designated as a Southern California  
26

1 “Rising Star” from 2009-2016 and a Southern California “Superlawyer” from 2021-  
2 2023 in the area of class actions and complex litigation.

3 5. The plaintiff side employment cases that I have either been involved in  
4 or been responsible for directly, have resulted in the payment by defendants of  
5 hundreds of millions of dollars in settlements. Examples of some of the many cases  
6 I have been involved in or directly handled include:

7 (1) **Gutierrez vs. State Farm**, Los Angeles Superior Court. Class action  
8 seeking overtime compensation for insurance claims adjusters  
9 employed by defendant in the State of California. Plaintiff’s counsel.  
10 Certification granted, and then summary adjudication as to liability  
11 granted in favor of the class. Case settled in 2004 for \$135 million,  
12 with Final Approval granted and no objections filed. Full deposition  
13 survey completed, settled on eve of trial.

14 (2) **Bednar vs. Allstate Insurance Company**, Los Angeles Superior  
15 Court. Class action seeking overtime compensation for insurance  
16 claims adjusters employed by defendant in the State of California.  
17 Plaintiff’s counsel. Certification granted, and then summary  
18 adjudication as to liability granted in favor of the class. Case settled in  
19 2005 for \$120 million. Final Approval granted and no objections filed.  
20 Full deposition survey completed, settled on eve of trial.

21 (3) **In re: Wal-Mart Wage and Hour Litigation**, United States District  
22 Court for the Northern District of California. Class action seeking  
23 unpaid vacation pay and penalties. Case settled for maximum payment  
24 of \$86 million. Final approval granted.

25 (4) **Roberts vs. Coast National Insurance**, Orange County Superior  
26 Court. Class action seeking overtime compensation for insurance

1 claims adjusters employed by defendant in the State of California.  
2 Plaintiff's counsel. Certification granted, and then the matter was tried  
3 to binding arbitrator. Case settled for in excess of \$18 million during  
4 class-wide arbitration. Handled adjudication of individual damage  
5 claims in arbitration.

6 (5) **CNA Class Action Litigation**, Los Angeles Superior Court. Class  
7 action seeking overtime compensation for insurance claims adjusters  
8 employed by defendant in the State of California. Plaintiffs' counsel.  
9 Case settled in 2005 for \$33 million.

10 (6) **H & R Block Litigation**, United States District Court for the Northern  
11 District of California. Class certified, and settlement reached prior to  
12 trial. Total settlement was \$35 million.

13 (7) **Hoyng v. AON**, Los Angeles Superior Court. Class action seeking  
14 overtime compensation for certain employees employed by defendant  
15 third party administrator in the State of California. Plaintiffs' counsel.  
16 Certification granted. Case settled for \$10.5 million. Deposition  
17 survey completed.

18 (8) **Parris vs. Lowe's Home Improvement**, Los Angeles Superior Court.  
19 Class action seeking payment of "off the clock" hours worked by all  
20 hourly employees of Lowe's in the State of California. Plaintiffs'  
21 counsel. Case ordered certified by Order of the Court of Appeals,  
22 Second Appellate District, California, on reversal of trial court order  
23 denying certification. Case settled for \$29.5 million. Deposition  
24 survey completed.

25

26

27

28

- 1 (9) **Fulton vs. Cisco Systems, Inc.**, Orange County Superior Court.  
2 Wage and hour litigation seeking overtime and related compensation.  
3 Plaintiffs’ class counsel. Settled for \$6.7 million.
- 4 (10) **Van Heyn vs. WMC Mortgage Corp.**, Los Angeles Superior  
5 Court. Action for violation of Labor Code §§ 2802 and 2804, etc. for  
6 failure to reimburse employees for business expenses. Plaintiffs’  
7 counsel. Case settled for \$3 million.
- 8 (11) **In re: JB Hunt Transport Class Action**, United States District  
9 Court for the Central District of California. Previously appointed  
10 Plaintiffs’ Class counsel for certified class. Case settled in 2018 for  
11 \$15 million after my departure from Marlin & Saltzman. Co-lead  
12 attorney for nine years.
- 13 (12) **Poston vs. Marcus & Millichap Real Estate Investment**, Los  
14 Angeles Superior Court. Action for violation of Labor Code §§2802  
15 and 2804, etc. for failure to reimburse employees for business  
16 expenses. Plaintiffs’ Class counsel. Case settled for \$1.34 million.
- 17 (13) **Dotson vs. Royal SunAlliance**, Orange County Superior Court.  
18 Class action seeking overtime compensation for insurance claims  
19 adjusters employed by defendant in the State of California. Plaintiffs’  
20 counsel. Case settled in 2005 for \$12.3 million.
- 21 (14) **Harris v. Vector Marketing Corp.**, United States District  
22 Court, Northern District of California. Plaintiffs’ Class counsel. Case  
23 settled for \$13 million.
- 24 (15) **Woods v. Vector Marketing Corp.**, United States District  
25 Court, Northern District of California. Plaintiffs’ Class Counsel. Case  
26 settled for \$6.75 million.

- 1 (16) **McCowen v. Trimac Transportation**, United States District  
2 Court, Northern District of California. Appointed Plaintiffs’ Class  
3 Counsel. Certified Class Action. Case settled after my departure from  
4 Marlin & Saltzman.
- 5 (17) **Berner vs. Kraft Foods, Inc.**, United States District Court,  
6 Central District. Counsel for Plaintiffs in “off the clock” action, plus  
7 meal and break time. Case settled.
- 8 (18) **Rounsavall vs. Countrywide Home Loans, Inc.**, Los Angeles  
9 Superior Court. Lead counsel in class action claiming mis-  
10 classification of computer driven underwriting positions. Plaintiffs’  
11 class counsel. Case settled for \$15 million.
- 12 (19) **Ortmann vs. New York Life Insurance**, United States District  
13 Court, Central District. Class action involving alleged failure to pay  
14 minimum wages to employed insurance agents, failure to reimburse,  
15 etc. Plaintiffs’ class counsel. Case settled for \$10 million.
- 16 (20) **Bickley v. Schneider Logistics**, United States District Court,  
17 Northern District of California. Plaintiffs’ Class Counsel. Case settled  
18 for \$28 million.
- 19 (21) **Holmby v. Cardinal Logistics**, United States District Court,  
20 Northern District of California. Plaintiffs’ Class Counsel. Case settled  
21 for \$2 million.
- 22 (22) **Pitshikyan v. Dependable Highway Express, Inc.**, Sacramento  
23 Superior Court. Lead counsel in an alleged class action claiming mis-  
24 classification of truck drivers classified as independent contractors.  
25 Case settled for \$2.5 million.



1 (23) **Ramos v. Cedar Fair, Inc.**, Orange County Superior Court.  
2 Plaintiffs’ Class Counsel. Case settled for \$4.2 million.

3 (24) **Williams v. Chevron Stations, Inc.**, Los Angeles Superior  
4 Court. Plaintiffs’ Class Counsel. Case settled for \$3.2 million.

5 (25) **Takroui v. CoreMark International, Inc.**, Los Angeles  
6 Superior Court. Plaintiff’s Lead Counsel. Case settled for \$1 million.

7 (26) **Weiss v. Carmax Auto Superstores California, LLC et. al**,  
8 Placer County Superior Court. Plaintiffs’ Lead Counsel. Final  
9 approval of \$6.518 million settlement granted and separate  
10 confidential settlement of individually filed mass arbitrations.

11 (27) **Lester v. Harbor Freight, Ventura County Superior Court.**  
12 Plaintiffs’ Co-Lead Counsel. Case settled for \$3.25 million.

13 6. My firm concentrates its efforts on areas of litigation, with a great  
14 emphasis on Plaintiff class action and complex litigation.

15 7. My firm has worked with the representative Plaintiffs, Salvador  
16 Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco  
17 Martinez, and Megan Sargent to protect the interests of the Plan. We are familiar  
18 with the law as it applies to the legal and factual issues relevant to this matter. My  
19 firm has dedicated the necessary personnel and resources to fully develop the case,  
20 and in doing so the firm was also fully enabled to evaluate the settlement risk and  
21 benefits for the case.

22 **II. SETTLEMENT**

23 8. The Attached hereto as Exhibit 1 is a true and correct copy of the  
24 Settlement Agreement executed by the Parties on April 17, 2022, and all exhibits  
25 (Exhibits A - E) to that Settlement Agreement.  
26



1 9. According to data Defendants recently provided to Class Counsel, as  
2 of December 31, 2020 there were approximately 5,700 Class Members with  
3 account balances and \$76,827,166 in Plan assets.

4 10. Defense Counsel have advised me that the Plan Recordkeeper  
5 maintains updated email addresses, as well as physical mailing addresses, for all  
6 Class Members who are Current Participants. Further, the Plan Recordkeeper has  
7 access to the last known email and physical addresses for Former Participants.  
8 This data will be transmitted to the Settlement Administrator as part of the Plan  
9 Data file described in the Settlement Agreement.

10 11. Because Class Members are all current or former employees of 99  
11 Cents, the Settlement proposes an efficient and effective method of distributing  
12 relief. The Class alleged that the Plan's recordkeeping fees were excessive, and as  
13 such, each Class Member's pro rata share of the Settlement will be credited to  
14 their 99 Cents 401(k) account. Class Members who no longer have an open  
15 account in the Plan or who have an account balance of zero (\$0) will receive a  
16 check for their share of the Settlement or can roll the funds into an eligible  
17 employment account or IRA.

18 12. Because the Settlement Agreement defines the costs of issuing Notice  
19 to the Class as an Administrative Expense which is deducted from the Gross  
20 Settlement Amount, Class Counsel endeavored to design a notice program that is  
21 not only effective in reaching all Class Members, but also cost-effective.

22 **III. CLASS COUNSEL AND PLAINTIFFS' EFFORTS**

23 13. Prior to the case being filed, Class Counsel engaged in a thorough pre-  
24 suit investigation, including by reviewing a wide range of publicly available  
25 documents and speaking with 99 Cents Plan participants.

1 14. Plaintiffs’ merits experts provided reports concerning damages and the  
2 fiduciary process.

3 15. Plaintiffs’ counsel verified that all Plaintiffs participated in the Plan  
4 during the proposed class period. Plaintiffs have diligently represented the Class  
5 throughout the last year. Plaintiffs stayed in touch with Class Counsel regarding the  
6 status of the case and carefully considered the merits of the proposed Settlement.

7 16. The Parties engaged in settlement discussions and, on October 11, 2022,  
8 agreed to and scheduled a mediation conference with Jed D. Melnick of JAMS for  
9 November 7, 2022.

10 17. On November 7, 2022, the Parties reached an agreement in principal  
11 following a mediation via Zoom videoconference before Jed Melnick, Esq. JAMS  
12 Mediator. Further, the participation of Jed Melnick, Esq. JAMS Mediator at the  
13 settlement conference is strong assurance that the Settlement is the result of arm’s-  
14 length negotiations. While Mr. Melnick worked with the Parties to give the Parties  
15 time to bridge their differences and reach this Settlement, it took six (6) months to  
16 finalize the settlement.

17 18. The same team of lawyers at Christina Humphrey Law, P.C., and Tower  
18 Legal Group, P.C. who researched and initiated the case on behalf of Plaintiffs,  
19 conducted fact discovery – reviewing thousands of pages of documents, engaged in  
20 motion practice including responding to Defendants’ motion to dismiss and  
21 negotiated this Settlement, extensively worked with experts before and after the  
22 litigation was filed, and participated in the November 7, 2022 mediation. As a  
23 result, at the time of the mediation, Class Counsel were fully immersed in the  
24 factual and legal issues of the case and were aware of the relative strengths and  
25 weaknesses of Plaintiffs’ case. Plaintiffs’ experts were also present at the  
26 mediation.

1 19. Since before filing suit in March of 2022, Class Counsel litigated this  
2 case on a contingent fee basis and advanced all costs of the litigation.

3 20. Class Counsel have incurred costs and expenses of over \$82,000 to  
4 date, costs which were actually incurred and necessary to the successful prosecution  
5 of the case. Prior to the filing of this motion, I reviewed the detailed report of case  
6 expenses and removed any erroneous entries. Approximately \$50,000 of the  
7 expenses incurred were fees paid to Plaintiffs' experts.

8 21. Based on my substantial experience litigating class actions, this  
9 settlement is fair, adequate, and reasonable and the result does not favor any  
10 settlement class member over another.

11 **IV. VALUATION OF SETTLEMENT**

12 22. The Settlement of \$750,000 provides 25% of the Class's total potential  
13 damages for all claims of approximately \$3,000,000. For Plaintiffs' first claim of  
14 excessive recordkeeping fees and share class violations, Plaintiffs' expert calculated  
15 \$1,007,264.30 in potential damages. Plaintiffs attributed a 100% success rate as to  
16 those claims at trial.

17 23. For Plaintiffs' second claim regarding four of the Plan's investments  
18 alleged poor performance when compared to their passive benchmarks, Plaintiffs  
19 estimated approximately \$2,000,000 in potential losses to the Plan. While Plaintiffs'  
20 experts estimated potential damages of \$4,000,000 for this claim if successful at trial,  
21 Plaintiffs attributed a 50% chance of success at trial because those claims are riskier  
22 and have been subject to dismissal in the Ninth Circuit. Shortly after Plaintiffs filed  
23 the complaint in this action, the Ninth Circuit affirmed a district court's dismissal of  
24 similar claims. *See Davis v. Salesforce.com, Inc.*, No. 21-15867, 2022 WL 1055557,  
25 at \*2 n.1 (9th Cir. Apr. 8, 2022) (per curiam) (affirming dismissal of claim that  
26 "defendants breached the duty of prudence by failing to adequately consider

1 passively managed mutual fund alternatives to the actively managed funds offered by  
2 the plan”). “Passively managed funds, however, *ordinarily* cannot serve as  
3 meaningful benchmarks for actively managed funds, because the two types of funds  
4 ‘have different aims, different risks, and different potential rewards that cater to  
5 different investors.’” *Davis v. Salesforce.com, Inc.*, No. 20-cv-01753, 2020 WL  
6 5893405, at \*3 (N.D. Cal. Oct. 5, 2020) (emphasis added) (quoting *Davis v.*  
7 *Washington Univ. in St. Louis*, 960 F.3d 478, 485 (8th Cir. 2020)) (explaining the  
8 differences between actively and passively managed funds); *accord Enos v. Adidas*  
9 *Am., Inc.*, No. 3:19-cv-01073, 2021 WL 5622121, at \*7 (D. Or. Aug. 26, 2021).

10 Given that Plaintiffs’ have recovered 25% of the estimated potential damages  
11 of \$3,000,000, this settlement falls within the range of reasonableness that Courts in  
12 other jurisdictions have approved. *See e.g., Pfeifer v. Wawa, Inc.*, 2018 WL  
13 4203880, at \*9 (E.D. Pa. Aug. 31, 2018) (approving settlement amounting to 25-50%  
14 of potential damages); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL  
15 8334858, at \*5 (C.D. Cal. July 30, 2018) (approving settlement amounting to 17-  
16 54% of potential damages); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 463  
17 (D. Md. 2014) (approving settlement amounting to 3-48% of potential damages).

18  
19 I declare under the penalty of perjury under the laws of the United States and  
20 the State of California that the foregoing is true and correct.

21  
22 Executed this 19th day of April, 2023 at Santa Barbara, California.

23  
24 **CHRISTINA HUMPHREY LAW, P.C.**

25 */s/ Christina A. Humphrey*

26 Christina A. Humphrey

27 Declarant

28 -10-

# EXHIBIT 1

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SALVADOR AQUINO, SUSAN FORD, MONICALAYLE GARCIA, BARBARA KRAUS, MARTHA LOPEZ, FRANCISCO MARTINEZ, MEGAN SARGENT, individually and as a representative of a Putative Class of Participants and Beneficiaries, on behalf of the 99 CENTS ONLY STORES 401(K) PLAN,

Plaintiffs,

v.

99 CENTS ONLY STORES LLC; THE RETIREMENT COMMITTEE OF THE 99 CENTS ONLY 401(K) PLAN; and DOES 1 through 20,

Defendants.

**CIVIL ACTION NO.:**

2:22-cv-01966- SPG

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Class Representatives, all Class Members, and the Defendants.

WHEREAS, on March 25, 2022, Plaintiffs filed a Class Action Complaint in the United States District Court for the Central District of California, entitled *Aquino, et al. v. 99 Cents Only Stores., et al.*, Case No. 2:22-cv-01966 (the “Action”), asserting certain claims for breach of fiduciary duty under Section 404 of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1104(a), and related claims for co-fiduciary liability under ERISA.

WHEREAS, on June 27, 2022, Plaintiffs filed a First Amended Class Action Complaint (“Complaint”).

WHEREAS, on July 11, 2022, Defendants filed a Notice of Motion and Motion to Dismiss Plaintiffs' First Amended Class Action Complaint, in Part.

WHEREAS, on November 7, 2022, the Parties engaged in a mediation session via videoconference with mediator, Jed D. Melnick, Esq. (JAMS), which resulted in a resolution of the Action being reached between the Parties.

NOW, THEREFORE, without any admission or concession on the part of the Class Representatives of any lack of merit of the action whatsoever, and without any admission or concession on the part of Defendants as to the merits of the Action, it is hereby STIPULATED AND AGREED, by and among the Settling Parties to this Settlement Agreement, through their respective attorneys, subject to approval of the Court pursuant to the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties hereto from the Settlement Agreement, that all Released Claims as against the Released Parties shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

**1. ARTICLE 1 – DEFINITIONS**

As used in this Settlement Agreement and the Exhibits hereto, unless otherwise defined, the following terms have the meanings specified below:

1.1. "Active Account" means an individual investment account in the Plan with a balance greater than \$0 as of the date of the Preliminary Approval Order.

1.2. "Administrative Expenses" means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with providing the production, dissemination, and publication of the Notice to the Class Members; (b) all reasonable expenses and costs incurred by the Settlement Administrator in administering and effectuating this Settlement, including the costs of obtaining the Class Members' contact and account information and distributing the Settlement Amount, which costs are necessitated by



performance and implementation of this Agreement and any court orders relating thereto; (c) all reasonable fees charged by the Settlement Administrator; (d) and all taxes on the income of the Escrow Account (“Taxes”) and expenses and costs incurred in connection with the taxation of the Escrow Account (including expenses of tax attorneys and accountants) (“Tax Related Costs”). Administrative Expenses shall be paid from the Gross Settlement Amount.

1.3. “Alternate Payee” means a Person other than a participant or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a QDRO, as determined by the Plan Administrator on or before the date of the Preliminary Approval Order, where the QDRO relates to a Participant’s or Former Participant’s balance in the Plan during the Class Period.

1.4. “Attorneys’ Fees and Costs” shall mean any and all attorneys’ fees, costs (including fees and costs charged or incurred by retained experts or consultants), and expenses of Class Counsel for their past, present, and future work, efforts, and expenditures in connection with the Action and Settlement. The amount of attorneys’ fees for Class Counsel shall not exceed 33 1/3% of the Gross Settlement Amount (a maximum amount of \$250,000.00), which shall be recovered from the Gross Settlement Amount. Class Counsel also will seek reimbursement for all litigation costs and expenses advanced and carried by Class Counsel for the duration of this Class Action through judgment, including the pre-litigation investigation period, not to exceed \$82,000.00, which also shall be recovered from the Gross Settlement Amount.

1.5. “Authorized Administrator” shall have the meaning set forth in Section 5.3 of this Settlement Agreement.

1.6 “Authorized Former Participant” shall mean a Former Participant who has submitted a Former Participant Claim Form by the Claims Deadline set by the Court in the Preliminary Approval Order, and whose Former Participant Claim Form is accepted by the

Settlement Administrator and determined by the Settlement Administrator to be completed and satisfactory.

1.7 “Beneficiary” means any individual, trust, estate, or other recipient entitled to receive death benefits payable under the Plan, on either a primary or contingent basis, other than an Alternate Payee, as determined by the Plan Administrator on or before the date of the Preliminary Approval Order. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, child or other individual or trust designated by the Participant or Former Participant, or determined under the terms of the Plan to be entitled to a benefit.

1.8. “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715.

1.9. “CAFA Notice” means notice of this proposed Settlement to the appropriate federal and state officials pursuant CAFA, to be issued by Defendants, substantially in the form set forth in Exhibit E hereto.

1.10. “Case Contribution Awards” means the monetary amount awarded by the Court to each Class Representative in recognition of the Class Representative’s assistance in the prosecution of this Class Action, for which Class Counsel may seek an amount not exceeding \$10,000 per Class Representative payable from the Gross Settlement Amount. Any such Case Contribution Award shall be subject to the approval of the Court.

1.11. “Class Action” means *Aquino, et al. v. 99 Cents Only Stores., et al.*, Case No. :22-cv-01966 in the United States District Court for the Central District of California.

1.12. “Class Counsel” means Christina Humphrey Law, P.C. and Tower Legal Group, P.C.

1.13. “Class Members” means all individuals in the “Settlement Class” (defined below), including the “Class Representatives” (also defined below).

1.14. “Class Period” means the period from March 25, 2016, through the entry date of the Preliminary Approval Order.

1.15. “Class Representatives” means Salvador Aquino, Susan Ford, Monica Layle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent.

1.16. “Complaint” means the First Amended Complaint filed on June 27, 2022.

1.17. “Court” means the United States District Court for the Central District of California.

1.18. “Defendants” means 99 Cents Only Stores LLC; The Retirement Committee of the 99 Cents Only 401(K) Plan.

1.19. “Defendants’ Counsel” means Steptoe & Johnson LLP.

1.20. “Effective Date” shall mean (a) the date upon which the applicable period to appeal the Final Approval Order and Judgment has expired, if no appeal is taken during the period (thirty-five (35) calendar days after its entry of Order by the Court); or (b) if during the appeals period, an appeal is taken from such Final Approval Order and Judgment, the date upon which all appeals, including further petitions for review, rehearing, or certiorari, and any proceedings resulting therefrom, have been finally disposed of, or the date upon which the applicable period to initiate all further petitions or proceedings has expired. If an appeal is taken, the Parties shall agree in writing when the Effective Date has occurred, and any dispute shall be resolved by the Court. It is expressly agreed by the Parties and their counsel that no Party intends this Section 1.20 or any other part of this Agreement to establish or acknowledge that anyone is entitled to or has the right to appeal from the Final Approval Order and Judgment.

1.21. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.

1.22. “Escrow Account” shall mean an account at an established Financial Institution agreed upon by the Parties that is established for the deposit of the Settlement Amount and amounts relating to it, such as interest earned on investment of the Settlement Amount.

1.23. “Escrow Agent” shall mean the entity approved by the Parties to act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Agreement.

1.24. “Fairness Hearing” means the hearing scheduled by the Court to consider (a) any objections by Class Members to the Settlement; (b) Class Counsel’s petition for Attorneys’ Fees and Costs and Class Representatives’ Case Contribution Awards; and (c) whether to finally approve the Settlement under Fed. R. Civ. P. 23(e). The Fairness Hearing may be conducted remotely.

1.25. “Final Order” or “Final Approval Order and Judgment” shall mean a final order entered by the Court after the Fairness Hearing, substantially the same in all material respects to that attached hereto as Exhibit “D” (subject to the Court’s discretion in awarding Attorney’s Fees and Expenses and Case Contribution Awards, as stated in Article 6 and Section 12.3), granting its approval of the Settlement. The Parties may agree to additions or modifications to the form of the Final Approval Order and Judgment as they agree are appropriate at the time that it is submitted to the Court for final approval of the Settlement.

1.26. “Former Participant” means a member of the Settlement Class who does not have an Active Account as of the date of the Preliminary Approval Order.

1.26.1 “Former Participant Claim Form” shall mean the form to be provided to Former Participants and returned to the Settlement Administrator by Former Participants and Beneficiaries.

1.27. “Gross Settlement Amount” means the sum of seven hundred fifty thousand dollars (\$750,000), contributed to the Qualified Settlement Fund in accordance with Article 5.

Defendants shall cause this amount to be paid directly by their fiduciary liability insurer. The Gross Settlement Amount shall be the full and sole monetary payment to the Settlement Class, Plaintiffs, and Class Counsel made by or on behalf of Defendants in connection with the Settlement effectuated through this Settlement Agreement. Neither Defendants nor their insurer(s) will make any additional payment in connection with the Settlement of the Class Action.

1.28. “Independent Fiduciary” means the person or entity selected by 99 Cents Only Stores, Inc. to serve as an independent fiduciary to the Plan with respect to the Agreement as defined in Section 2.1.

1.29. “Independent Fiduciary Fees and Costs” shall mean fees, costs, and expenses of the Independent Fiduciary not to exceed \$25,000. The Independent Fiduciary Fees and Costs shall be paid from the Settlement Fund after such funds are deposited with the Escrow Agent and upon receipt of an invoice from the Independent Fiduciary.

1.30. “Mediator” means Jed D. Melnick, Esq.

1.31. “Net Settlement Amount” means the Gross Settlement Amount minus (a) all Attorneys’ Fees and Costs paid to Class Counsel as authorized by the Court; (b) all Case Contribution Awards as authorized by the Court; (c) all Independent Fiduciary Fees and Costs not to exceed \$25,000; (d) all Administrative Expenses as authorized by the Court; and (e) a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties that is set aside by the Settlement Administrator for (1) Administrative Expenses incurred before the Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Effective Date, and (3) an amount estimated for adjustments of data or calculation errors.

1.32. “Notice” shall mean the notice, identical in all material aspects to that attached hereto as Exhibit A and A-1 to be provided directly to Settlement Class Members pursuant to Section 2.4 and made available on the Settlement Website.

1.33. “Participant” shall mean any Class Member who maintained a positive balance in the Plan at any time between March 25, 2016, and the date of the Preliminary Approval Order, and has an Active Account.

1.34. “Parties” in the plural shall mean Plaintiffs and Defendants and “Party” in the singular shall mean one of the Parties.

1.35. “Person” means an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.36. “Plaintiffs” means the Class Representatives and each member of the Settlement Class.

1.37. “Plan” means the 99 Cents Only Stores 401(K) Plan, and each of its predecessor plans or successor plans, individually and collectively, and any trust created under such plans.

1.38. “Plan Administrator” shall mean “The Retirement Committee of the 99 Cents Only 401(K) Plan.”

1.39. “Plan of Allocation” means the method of allocating settlement funds to Class Members. A proposed form of the Plan of Allocation is attached hereto as Exhibit B.

1.40. “Plan Recordkeeper” means the entity that maintains electronic records of the Plan’s participants and their individual accounts.

1.41. “Preliminary Approval Order” means the order of the Court in substantially the form attached hereto as Exhibit C, whereby the Court preliminarily approves this Settlement.

1.42. “QDRO” means a Qualified Domestic Relations Order within the meaning of ERISA § 206(d)(3)(B), 29 U.S.C. § 1056(d)(3)(B), as determined by the Plan Administrator on or before the date of the Preliminary Approval Order.

1.43. “Qualified Settlement Fund” means the interest-bearing settlement fund account to be established and maintained by the Escrow Agent in accordance with Article 5 herein and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).

1.44. “Released Claims” shall be any and all actual or potential claims (including any Unknown Claims), actions, causes of action, demands, obligations, or liabilities (including claims for attorney’s fees, expenses, or costs), for monetary, injunctive, and any other relief against the Released Parties through the date the Court enters the Final Approval Order and Judgment arising out of or in any way related to: (a) the conduct alleged in the Complaint, including conduct that was alleged in, or could have been alleged in, the Complaint by any Class Member, whether or not the conduct was actually included as counts in the Complaint; (b) the selection, retention, and monitoring of the Plan’s actual or potential investment options and service providers; (c) the performance, fees, and other characteristics of the Plan’s investment options and service providers; (d) the Plan’s fees and expenses, including without limitation, its recordkeeping and other service provider fees; and (e) the nomination, appointment, retention, monitoring, and removal of the Plan’s fiduciaries.

1.44.1. “Released Claims” does not include claims to enforce the covenants or obligations set forth in this Agreement.

1.44.2. “Released Claims” does not include any claims that the Class Representatives or the Settlement Class have to the value of their respective vested account balances under the terms of the Plan and according to the Plan’s records as of the date the Settlement becomes Final.



1.45. “Released Parties” means (a) Defendants, (b) Defendants’ insurers, co-insurers, and reinsurers, (c) Defendants’ direct and indirect, past, present or future parents, subsidiaries, affiliates, divisions, joint ventures, predecessors, Successors-in Interest, and each person that controls, is controlled by, or is under common control with them, (d) Defendants’ past, present and future members and Representatives; (e) any Person that at any time served as a named or functional fiduciary of the Plan, or as a trustee, administrator, recordkeeper, consultant or other service provider to the Plan (with the exception of the Independent Fiduciary); and (f) heirs, dependents, descendants, spouses, marital communities, executors, conservators, administrators, assigns, attorneys and personal representatives of any Persons identified in (d) or (e) of this Section 1.45.

1.46. “Representatives” shall mean representatives, directors, officers, employees, agents, attorneys, accountants, auditors, advisors and consultants.

1.47. “Review Proceeding” shall have the meaning set forth in Section 1.24.

1.48. “Settlement” means the settlement to be consummated under this Settlement Agreement and its exhibits, including any modifications or amendments adopted pursuant to Section 13.11.

1.49. “Settlement Administrator” means ILYM Group, Inc., the entity selected and retained by Class Counsel to administer the Settlement and Plan of Allocation.

1.50. “Settlement Agreement” means this agreement embodying the terms of the Settlement, including any modifications or amendments hereto.

1.51. “Settlement Agreement Execution Date” means the date on which the final signature is applied to this Settlement Agreement.

1.52. “Settlement Allocation Score” shall have the meaning described in Section 1.5.1 of the Plan of Allocation.

1.53. “Settlement Class” means all persons who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their Beneficiaries.

1.54. “Settling Parties” means the Defendants and the Class Representatives, on behalf of themselves, the Plan, and each of the Class Members.

1.55. “Successors-In-Interest” shall mean a Person or Party’s estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

1.56. “99 Cents” means 99 Cents Only Stores LLC.

1.57. “Transferor” means 99 Cents, as the “transferor” within the meaning of Treas. Reg. § 1.468B-1(d)(1).

1.58. “Unknown Claims” means claims that could have been raised in the Action on behalf of the Plan and that Plaintiffs and any member of the Settlement Class do not know or suspect to exist, which, if known by him, her or it, might affect his, her, or its agreement to release the Released Parties or the Released Claims or might affect his, her, or its decision to agree, to object, or not to object to the Settlement. Upon the date of the Court’s entry of the Final Approval Order and Judgment, Plaintiffs and all Class Members shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the date of the Court's entry of the Final Approval Order and Judgment, Plaintiffs and all Class Members shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code as it applies to Unknown Claims defined above. Plaintiffs and the Settlement Class acknowledge that they may later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but that it is their intention to fully, finally, and forever settle and release all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and all Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged that the foregoing waiver was bargained for and is a key element of the Settlement of which their release and waiver of Unknown Claims is a part.

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**2. ARTICLE 2 – REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY, PRELIMINARY SETTLEMENT APPROVAL, AND SETTLEMENT ADMINISTRATION DUTIES**

2.1. **Independent Fiduciary.** The Independent Fiduciary shall have the following responsibilities, including whether to approve and authorize the settlement of Released Claims and grant a release from the Released Claims to the Released Parties on behalf of the Plan.

2.1.1. The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in making its determination.

2.1.2. The Independent Fiduciary shall notify Defendants directly of its determination, in writing (with copies to Class Counsel and Defendants’ Counsel), which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.

2.1.3. All fees and expenses associated with the Independent Fiduciary’s determination and performance of its other obligations in connection with the Settlement, no greater than \$25,000, shall be deducted from the Gross Settlement Amount.

2.1.4. Defendants, Defendants’ Counsel, and Class Counsel shall respond to reasonable requests by the Independent Fiduciary for information so that the Independent Fiduciary can review and evaluate the Settlement Agreement.

2.1.5. If Defendants conclude that the Independent Fiduciary’s determination does not comply with PTE 2003-39 or is otherwise deficient, Defendants shall so inform

the Independent Fiduciary within fifteen (15) calendar days of receipt of the determination.

2.1.6. A copy of the Independent Fiduciary determination letter and report shall be provided to Class Counsel who may file it with the Court in support of Final approval of the Settlement.

2.2 **Preliminary Approval.** As soon as reasonably possible upon the full execution of this Settlement Agreement by the Settling Parties, the Class Representatives, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement and for entry of the Preliminary Approval Order in substantially the form attached hereto as Exhibit C. Defendants will not object to these motions. The Preliminary Approval Order to be presented to the Court shall, among other things:

2.2.1. Grant the motion to certify the Settlement Class for settlement purposes only under Fed. R. Civ. P. 23(b)(1);

2.2.2. Approve the text of the Notice attached as Exhibit A and the Former Participant Claim Form attached as Exhibit A-1 for mailing and sending by electronic means to Class Members;

2.2.3. Determine that under Fed. R. Civ. P. 23(c)(2), the Notices constitute the best notice practicable under the circumstances, provide due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and comply fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law;

2.2.4. Cause the Settlement Administrator to send by first-class mail and electronic means the Notice to each Class Member identified by the Settlement Administrator based upon the data provided by the Plan's Recordkeeper;

2.2.5. Class Members shall be permitted to object to the Settlement, including any request for award of attorneys' fees and expenses by Class Counsel and any request for Case Contribution Fees for the Class Representatives. Requirements for filing an objection shall be set forth in the Preliminary Approval Order and in the Notice.

2.2.6. Set the date for the Fairness hearing, in order to determine whether (a) the Court should approve the Settlement as fair, reasonable, and adequate; (b) the Court should enter the Final Order; and (c) the Court should approve the application for Attorneys' Fees and Costs, Class Representatives' Case Contribution Awards, Independent Fiduciary Expenses, Administrative Expenses incurred to date, and a reserve for anticipated future Administrative Expenses; and (d) approve the form of the CAFA Notice attached as Exhibit E and order that upon mailing of the CAFA Notices, Defendants shall have fulfilled their obligations under CAFA.

2.3. **Settlement Administration.** The Settlement Administrator shall administer the Settlement subject to supervision by Class Counsel and the Court as circumstances may require.

Defendants and Defendants' Counsel shall use reasonable efforts to respond timely to written requests, including by e-mail, from the Settlement Administrator for readily accessible data that is reasonably necessary to determine the feasibility of administering the Plan of Allocation or to implement the Plan of Allocation. The actual and reasonable expenses of any third party, including the Plan's Recordkeeper, that are necessary to perform such work shall be Administrative Expenses to be deducted from the Gross Settlement Amount.

2.4. **Class Data and Distribution of Notice and Former Participant Claim Form.** Defendants shall use reasonable efforts to cause the Plan's Recordkeeper to provide to the Settlement Administrator, within fifteen (15) calendar days of the entry of the Preliminary Approval Order, the participant data specified in Section 8.2 of this Agreement ("Class Member List") sufficient to effectuate the Notice, implement the Plan of Allocation, and distribute the

Settlement Fund. Within fifteen (15) calendar days of the entry of the Final Approval Order and Judgment, Defendants shall also use reasonable efforts to cause the current Plan Recordkeeper to provide an updated list of Participants prior to the distribution, in order to identify any such participants who have taken a full distribution from their Plan account and no longer have a Plan account with a positive balance.

Within fifteen (15) calendar days of receipt of the Class Member List, the Settlement Administrator shall cause to be sent to each Class Member (electronically and through First Class Mail) identified by the Settlement Administrator (1) a Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibit A or a form subsequently agreed to by the Settling Parties and approved by the Court; and when applicable, (b) the Former Participant Claim Form in the form and manner to be approved by the Court, which shall be in the substantially the form attached hereto as Exhibit A-1. The Settlement Administrator shall update mailing addresses through the National Change of Address database before mailing (with all returned mail skip-traced and promptly re-mailed). The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Notice is returned and re-send such documents one additional time if an updated location is identified. The Settlement Administrator shall re-mail the Notice and Former Participant Claim Form to any Class Member whose Notice is returned within forty-five (45) days from the date of it originally being sent.

The Former Participant Claim Form must be returned to the Settlement Administrator within forty-five (45) calendar days of entry of the Preliminary Approval Order by all Former Participants, and Beneficiaries or Alternate Payees who do not have Active Accounts, who wish to receive the benefits of this Settlement. For each such Former Participant, Beneficiary, and/or Alternate Payee that has not returned the Former Participant Claim Form within twenty (20) days of the date of initial mailing, the Settlement Administrator will send within five (5) business days a post card by electronic mail (if available) or first class mail, postage pre-paid, to such



Class Member notifying them again of the deadline by which to submit the Former Participant Claim Form, unless the previous mailings and communications to the Class Member have been returned as undeliverable and the Settlement Administrator is unable to identify a valid electronic mail or physical mailing address through the electronic mail or physical mailing address through the exercise of reasonable and good faith efforts.

2.5 **Settlement Website.** On the same date the Notice is initially sent to the Class Members, the Settlement Administrator shall establish a website containing the Notice and this Agreement and its exhibits, the First Amended Complaint, the Motions for Preliminary and Final Approval (when filed); and any approval or other Court orders related to the Settlement, and any amendments or revisions to these documents, any other documents or information mutually agreed upon by the Settling Parties, and the date of the Fairness Hearing (and any changes thereto). The Parties will mutually agree to the name or URL address of the Settlement Website.

2.6 **Toll-Free Telephone Number and Email.** On the same date the Notice is initially sent to the Class Members, the Settlement Administrator shall establish a toll-free telephone number and email address to which Class Members can direct questions about the Settlement. The Settlement Administrator shall develop a question and answer type script, with input and approval from Class and Defendants' Counsel, for the use of persons who answer calls to this line.

2.7. **CAFA Notice.** No later than ten (10) calendar days after the filing of the motion for preliminary approval of the Settlement, Defendants will prepare and serve the CAFA Notice in substantially the form attached as Exhibit E hereto on the Attorney General of the United States, the Secretary of the Department of Labor, and the attorneys general of all states in which Class Members reside, as specified by 28 U.S.C. § 1715.

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**3. ARTICLE 3 – FINAL SETTLEMENT APPROVAL**

3.1. No later than Thirty-five (35) calendar days before the Fairness Hearing, Class Counsel shall submit to the Court a motion for entry of the Final Approval Order and Judgment (Exhibit D) in the form approved by Class Counsel and Defendants' Counsel, which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Approval Order and Judgment in accordance with this Settlement Agreement. The Final Approval Order and Judgment as proposed by the Settling Parties shall provide for the following, among other things, as is necessary to carry out the Settlement consistent with applicable law and governing Plan documents:

3.1.1. Approval of the Settlement of the Released Claims covered by this Settlement Agreement adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class Members and directing the Settling Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;

3.1.2. A determination under Fed. R. Civ. P. 23(c)(2) that the Notice constitutes the best notice practicable under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class Members has been provided;

3.1.3. Dismissal with prejudice of the Class Action and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, or on behalf of the Plan, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;

3.1.4. That the Plan and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be (a) conclusively deemed to have, and by operation of the Final Approval Order and

Judgment shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from all Released Claims; and (b) barred and enjoined from suing the Released Parties in any action or proceeding alleging any of the Released Claims.

3.1.5. That each Class Member shall release the Released Parties, Defendants' Counsel, and Class Counsel for any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses;

3.1.6. That the provisions of Sections 3.1.4 and 3.1.5 shall apply even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Class Action and the Released Claims, whether or not such Class Members receive a monetary benefit from the Settlement, whether or not such Class Members actually received the Notice, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;

3.1.7. That all applicable CAFA requirements have been satisfied;

3.1.8. That the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Class Member in accordance with the Plan of Allocation approved by the Court;

3.1.9. That, with respect to any matters that arise concerning the implementation of distributions to Class Members who are current participants in the Plan (after

allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan Administrator or other fiduciaries of the Plan, in accordance with applicable law and the governing terms of the Plan; and

3.1.10. That within twenty-one (21) calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defendants' Counsel a list of each Person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or contribution.

3.2. The Final Approval Order and Judgment entered by the Court approving the Settlement Agreement shall provide that upon its entry, all Settling Parties, the Settlement Class and the Plan shall be bound by the Settlement Agreement and the Final Order.

#### **4. ARTICLE 4 – ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

4.1. No later than ten (10) calendar days after the Preliminary Approval Order is issued, the Settlement Administrator shall establish the Qualified Settlement Fund with the Escrow Agent. The Settling Parties agree that the Qualified Settlement Fund is intended to be, and will be, an interest-bearing “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1. In addition, the Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Section 4.1. If applicable, the Settlement Administrator (as the “administrator” pursuant to Section 4.2) and the Transferor shall fully cooperate in filing the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) to treat the Qualified Settlement Fund as coming into existence as a “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1 as of the earliest permitted date. Such elections shall be made in compliance with the procedures

and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to be timely made.

4.2. The “administrator” within the meaning of Treas. Reg. § 1.468B-2(k)(3) shall be the Settlement Administrator. The Settlement Administrator shall timely and properly cause to be filed on behalf of the Qualified Settlement Fund all informational and other tax returns required to be filed in accordance with Treas. Reg. §§ 1.468B-2(k) and -2(l) with respect to the Gross Settlement Amount (including without limitation applying for a taxpayer identification number for the Qualified Settlement Fund pursuant to Internal Revenue Service Form SS-4 and in accordance with Treas. Reg. § 1.468B-2(k)(4)). Such returns as well as any election described in Section 4.1 shall be consistent with this Article 4 and, in all events, shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Qualified Settlement Fund shall be deducted and paid from the Gross Settlement Amount as provided in Section 4.3.

4.3. Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to: (a) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Qualified Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants with respect to any income earned by the Qualified Settlement Fund for any period during which the Qualified Settlement Fund does not qualify as a “qualified settlement fund” within the meaning of Section 468B of the Code and Treas. Reg. § 1.468B-1; and (b) all tax expenses and costs incurred in connection with the operation and implementation of this Article 4 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 4). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the

Settlement Administrator out of the Gross Settlement Amount without prior order from the Court. The Settlement Administrator shall ensure compliance with withholding and reporting requirements in accordance with Treas. Reg. § 1.468B-2(l) and shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Class Member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses; neither the Released Parties, Defendants' Counsel, nor Class Counsel are responsible nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Settlement Administrator, Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 4.

4.4. Within twenty-one (21) calendar days after the later of (a) the date the Preliminary Approval Order is entered, or (b) the date the Qualified Settlement Fund is established and the Settlement Administrator has furnished to Defendants and/or Defendants' Counsel in writing the Qualified Settlement Fund name, IRS W-9 Form, and all necessary wiring instructions, then the Transferor shall cause its insurer(s) to deposit seven hundred fifty thousand dollars (\$750,000) into the Qualified Settlement Fund.

4.5. All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Agreement.

4.6. The Settlement Administrator shall, at the written direction of Class Counsel, cause the Escrow Agent to invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an agency thereof, or fully insured by the United States Government or an agency thereof, and shall cause the Escrow Agent to reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

4.7. The Settlement Administrator shall not disburse the Gross Settlement Amount or any portion thereof from the Qualified Settlement Fund except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defendants' Counsel. Subject to the orders of the Court, the Settlement Administrator is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement, which include:

- (a) Compensation to Class Members determined in accordance with Plan of Allocation (set forth in Exhibit B);
- (b) Any Case Contribution Awards approved by the Court;
- (c) All Attorneys' Fees and Expenses approved by the Court;
- (d) Independent Fiduciary Fees and Costs;
- (e) Administration Costs;
- (f) Taxes and Tax-Related Costs.

4.8. The Settlement Administrator shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund, and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. The Released Parties, Defendants' Counsel, and/or Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

4.9. No later than February 15 of the year following the calendar year in which Defendants' insurer makes any transfer of the Gross Settlement Amount, or any other amount, to the Qualified Settlement Fund on behalf of the Transferor pursuant to the terms of this Article 4,



the Transferor shall timely furnish a statement to the Settlement Administrator that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B-3(e)(2)(ii), and shall attach a copy of the statement to its federal income tax return filed for the taxable year in which Defendants' insurer makes a transfer on its behalf to the Qualified Settlement Fund.

**5. ARTICLE 5 - PAYMENTS FROM THE QUALIFIED SETTLEMENT FUND**

5.1. **Disbursements from Qualified Settlement Fund prior to Effective Date.** Class Counsel, subject to the approval of Defendants, which approval shall not be unreasonably withheld, shall direct the Escrow Agent to disburse money from the Qualified Settlement Fund as follows:

5.1.1. Notice Expenses. After entry of the Preliminary Approval Order, the Escrow Agent shall be directed in writing to disburse from the Qualified Settlement Fund an amount sufficient for the payment of costs of the Notice. Class Counsel will select a Settlement Administrator to assist with Class Notice and administration of the Settlement. The Settlement Administrator shall enter into a confidentiality agreement and information security agreement to adequately protect information provided to the Settlement Administrator relating to the Settlement. Any costs, expenses, or fees incurred in connection with the administration of this Settlement shall be paid out of the Qualified Settlement Fund. Neither Class Counsel, Defendants, nor Defendants' Counsel are responsible for the Settlement Administrator's work, nor may they be held liable for any act or omission by the Settlement Administrator.

5.1.2. Accounting of Administrative Costs. Beginning thirty (30) calendar days after the entry of the Preliminary Approval Order, and on every thirtieth day (30<sup>th</sup>) calendar day thereafter, the Settlement Administrator shall provide the Parties with a detailed accounting of any Administration Costs expended to date and an invoice for the

amount of such Administration Costs. Any disputes as to whether amounts billed by the Settlement Administrator are reasonable and necessary under this Agreement shall be resolved by the Court.

5.1.3. For taxes and expenses of the Qualified Settlement Fund as provided in Section 4.3.

5.1.4. For fees and expenses of the Independent Fiduciary up to a cap of \$25,000. The Escrow Agent shall be directed to disburse money from the Qualified Settlement Fund to pay the reasonable fees and expenses of the Independent Fiduciary (which shall include any attorneys' fees of the Independent Fiduciary, subject to the cap of \$25,000) retained pursuant to Article 2.1. To the extent Defendants and/or their insurer(s) pay any costs, fees or expenses to the Independent Fiduciary before proceeds from the Qualified Settlement Fund are available for distribution, the Escrow Agent shall be directed to reimburse Defendants and/or their insurer(s) for such amounts.

5.1.5. For costs and expenses of the Settlement Administrator in implementing the Plan of Allocation and otherwise administering the Settlement.

5.1.6. For costs and expenses incurred by the Recordkeeper (or Authorized Administrator) in implementing this Settlement. To the extent Defendants are responsible for paying these costs, they will have the right to recover any sums paid from the Qualified Settlement Fund.

**5.2. Disbursements from Qualified Settlement Fund after Effective Date.**

Following the Effective Date, Class Counsel shall direct the Escrow Agent to disburse money from the Qualified Settlement Fund as follows:

5.2.1. For Attorneys' Fees and Costs, as approved by the Court, and no later than fifteen (15) business days following the Effective Date.

5.2.2. For Class Representatives' Case Contribution Awards, as approved by the Court, and no later than fifteen (15) business days following the Effective Date.

5.2.3. For costs and expenses of the Settlement Administrator in implementing the Plan of Allocation and otherwise administering the Settlement that were not previously paid.

5.2.4. For costs and expenses incurred by the Recordkeeper (or Authorized Administrator) in implementing this Settlement that were not previously paid. To the extent that Defendants are responsible for paying these costs, they will have the right to recover any sums paid from the Qualified Settlement Fund.

5.2.5. The Net Settlement Amount will be distributed in accordance with the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund. The Net Settlement Amount distributed pursuant to the Plan of Allocation shall constitute "restorative payments" within the meaning of Revenue Ruling 2002-45 for all purposes.

5.3. **Implementation of the Plan of Allocation.** Class Counsel shall propose to the Court a Plan of Allocation, in substantial conformity to the one attached hereto as Exhibit B, which shall provide for the calculation, allocation, and distribution of the Net Settlement Amount. Upon the Effective Date, and after the amounts payable pursuant to Sections 5.1 and 5.2 have been disbursed, or, in the case of future estimated expenses set aside and withheld, Class Counsel shall direct the Escrow Agent to disburse the Net Settlement Amount as provided by this Settlement Agreement and the Plan of Allocation. The Recordkeeper or any other entity with appropriate authority under the Plan (an "Authorized Administrator") shall allocate to the Plan accounts of Class Members who are not Former Participants any Net Settlement Amount as calculated by the Settlement Administrator according to the Plan of Allocation, documentation of

which Class Counsel shall direct the Settlement Administrator to provide to the Authorized Administrator pursuant to the Plan of Allocation no later than the distribution of the Net Settlement Amount. The Settlement Administrator shall promptly notify Class Counsel as to the date(s) and amounts(s) of said allocation(s) made to Class Members who are not Former Participants. The Settlement Administrator shall be responsible for distributing the Net Settlement Amount allocated to the Former Participants as provided by the Plan of Allocation, as well as complying with all tax laws, rules, and regulations and withholding obligations with respect to Former Participants. Defendants shall have no liability related to the structure or taxability of such payments. Nothing herein shall constitute approval or disapproval of the Plan of Allocation by Defendants, and Defendants shall have no responsibility or liability for the Plan of Allocation and shall take no position for or against the Plan of Allocation.

5.4. **Final List of Class Members.** Prior to the disbursement of the Net Settlement Amount to the Plan, the Settlement Administrator shall provide to Defendants' Counsel and Class Counsel a final list of Class Members containing the information listed in Section 8.2, in electronic format, to whom the Net Settlement Amount will be distributed in accordance with the Plan of Allocation. Such list shall be final, and only persons on the list or their Beneficiaries or Alternate Payees shall be eligible to receive any recovery from this Settlement.

5.5. **Uncashed Checks and Reissuance of Checks.** Class Members who receive a check from the Settlement Administrator under the Plan of Allocation must cash their checks within one hundred and eighty (180) calendar days of issuance. Checks will remain negotiable for one hundred eighty (180) calendar days and this limitation shall be printed on the face of the check. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Class Member involved and will then perform a single re-mailing. Funds in the

amount of all settlement checks remaining uncashed for more than 200 calendar days after issuance shall be distributed by cy pres to the Pension Right Center. The voidance of checks shall have no effect on the Class Members' release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

5.6. **Payments Not Otherwise Payable.** No sooner than three hundred ninety-five (395) calendar days following the Settlement Effective Date, any Net Settlement Amount remaining in the Qualified Settlement Fund after payments, including costs and taxes, shall be paid to the cy pres, the Pension Rights Center.

5.7. **Responsibility for Taxes Upon Distribution.** Each Class Member who receives a payment under this Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, Defendants' Counsel, the Released Parties, Class Counsel, and the Settlement Administrator harmless from (a) any tax liability, including without limitation penalties and interest, related in any way to payments or credits under this Agreement, and (b) the costs (including, without limitation, fees, costs, and expenses of attorneys, tax advisers, and experts) of any proceedings (including, without limitation, any investigation, response, and/or suit), related to such tax liability.

## 6. **ARTICLE 6 – ATTORNEYS' FEES AND EXPENSES**

6.1. Application for Attorneys' Fees and Expenses and Class Representatives' Case Contribution Awards. Class Counsel intends to seek to recover their attorneys' fees not to exceed \$250,000.00, and litigation costs and expenses advanced and carried by Class Counsel for the duration of the Class Action, not to exceed \$82,000.00, which shall be recovered from the Gross Settlement Amount. Class Counsel also intends to seek Class Representatives' Case Contribution Awards, in an amount not to exceed \$10,000 each for Class Representatives Salvador Aquino,

Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent, which shall be recovered from the Gross Settlement Amount.

6.2. Class Counsel will file a motion for an award of Attorneys' Fees and Costs at least thirty-five (35) calendar days before the deadline set in the Preliminary Approval Order for objections to the proposed Settlement, which may be supplemented thereafter.

## **7. ARTICLE 7 – RELEASE AND COVENANT NOT TO SUE**

7.1. As of the Effective Date, the Plan (by and through the Independent Fiduciary pursuant to Section 2.1) and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and on behalf of the Plan, shall fully, finally, and forever settle, release, relinquish, waive, and discharge all Released Parties from the Released Claims, whether or not such Class Members have received or will receive a monetary benefit from the Settlement, whether or not such Class Members have actually received the Notice, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

7.2. As of the Effective Date, the Class Representatives and the Class Members covenant and agree on behalf of themselves and on behalf of the Plan that they, acting individually or together, or in combination with others, shall not commence or seek to institute, maintain, prosecute, or assert against any Released Party any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement in accordance with the procedures set forth in this Settlement Agreement.

7.3. **Dismissal With Prejudice.** The Class Action and all Released Claims shall be dismissed with prejudice.

7.4. **No Impact on Prior Releases.** The Released Claims in the Class Action shall not invalidate or impair any prior release of claims by any Class Members against any of the Released Parties, whether set forth in a Separation Agreement or otherwise.

## 8. **ARTICLE 8 – COVENANTS**

The Settling Parties covenant and agree as follows:

8.1. **Taxation.** Plaintiffs acknowledge that the Released Parties have no responsibility for any taxes due on funds deposited in or distributed from the Qualified Settlement Fund or that the Plaintiffs or Class Counsel receive from the Gross Settlement Amount. Plaintiffs further acknowledge that any such tax payments, and any professional, administrative, or other expenses associated with such tax payments, shall be paid out of the Qualified Settlement Fund. Nothing herein shall constitute an admission or representation that any such taxes will or will not be due.

8.2. **Cooperation.** Defendants shall cooperate with Class Counsel by using reasonable efforts to provide, to the extent reasonably accessible, information to identify Class Members and to implement the Plan of Allocation.

Defendants or Defendants' Counsel shall work with the Recordkeeper to provide to the Settlement Administrator and/or Class Counsel data regarding class members ("Class Member List") (including names, dates of birth, the final four digits of social security numbers, employee identification numbers, dates of employment, last known primary address, contact information, Beneficiary and Alternate Payee information (as applicable), and end-of-quarter account balances throughout the Class Period), for purposes of effecting the administration of the Plan of Allocation. Neither Plaintiffs, Class Counsel, Defendants, or Defendants' Counsel will be



responsible or liable in any way for ensuring the completeness or accuracy of the information provided by the Recordkeeper pursuant to this section.

The Settlement Administrator shall use the information provided by Defendants, Defendants' Counsel, and/or the Recordkeeper pursuant to Section 8.2 to compile a preliminary list of Class Members for purposes of sending the Class Notice and calculating payments pursuant to the Plan of Allocation.

Class Counsel and their agents will use any information provided by Defendants, Defendants' Counsel, and/or the Recordkeeper pursuant to Section 8.2 solely for the purpose of providing notice and administering this Settlement and for no other purpose, and will take all reasonable and necessary steps as required by law to maintain the security and confidentiality of this information.

8.3. The Settling Parties shall reasonably cooperate with each other to effectuate this Settlement, including with respect to the Plan of Allocation, and shall not do anything or take any position inconsistent with obtaining a prompt Final Order approving the Settlement unless expressly permitted by this Settlement Agreement. The Settling Parties shall suspend any and all efforts to prosecute and to defend the Class Action pending entry of the Final Order or, if earlier, termination of the Settlement Agreement.

## **9. ARTICLE 9 – REPRESENTATION AND WARRANTIES**

9.1. Settling Parties' Representations and Warranties. The Settling Parties, and each of them, represent and warrant as follows, and each Settling Party acknowledges that each other Settling Party is relying on these representations and warranties in entering into this Settlement Agreement:

9.1.1. That they have diligently prepared the case pursuant to the Court's orders; that they are voluntarily entering into this Settlement Agreement as a result of arm's

length negotiations under the auspices of the Mediator; that in executing this Settlement Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Settling Party or by any Person representing any Settling Party to this Settlement Agreement. Each Settling Party assumes the risk of mistake as to facts or law. Each Settling Party further recognizes that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement.

9.1.2. That they have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each Person executing this Settlement Agreement on behalf of each of the Settling Parties. The Settling Parties, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to the Settlement, this Settlement Agreement, and all of the matters pertaining thereto, as he, she, or it deems necessary.

9.2 **Signatories' Representations and Warranties.** Each Person executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Settling Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

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**10. ARTICLE 10 – NO ADMISSION OF LIABILITY**

10.1. The Settling Parties understand and agree that this Settlement Agreement embodies a compromise settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any finding, admission or suggestion of any wrongdoing or liability by any Defendants, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding.

10.2. This Settlement Agreement and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. Defendants specifically deny any such liability or wrongdoing and state that they are entering into this Settlement Agreement to eliminate the burden and expense of further litigation. Further, the Class Representatives, while believing that the claims brought in the Class Action have merit, have concluded that the terms of this Settlement Agreement are fair, reasonable, and adequate to the Plan, themselves and members of the Settlement Class given, among other things, the inherent risks, difficulties and delays in complex ERISA litigation such as the Class Action. Neither the fact nor the terms of this Settlement Agreement shall be used or offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Settlement Agreement or arising out of or relating to the Final Order.

**11. ARTICLE 11 – CONDITIONS TO FINALITY OF SETTLEMENT**

This Settlement shall be contingent upon each of the following conditions in this Article 11 being satisfied. The Settling Parties agree that if any of these conditions is not satisfied, then this Settlement Agreement is terminated (subject to Defendants' right to waive the condition set forth in Section 11.4) and the Class Action will, for all purposes with respect to the Settling Parties, revert to its status as of the Settlement Agreement Execution Date. In such event, Defendants will not be deemed to have consented to the class certification order referenced in

Section 11.1, the agreements and stipulations in this Settlement Agreement concerning class definition or class certification shall not be used as evidence or argument to support a motion for class certification, and Defendants will retain all rights with respect to challenging class certification.

11.1. **Court Approval and Class Certification for Settlement Purposes.** The Court shall have certified the Settlement Class for settlement purposes only (and Defendants will not object to this certification for settlement purposes only), the Settlement shall have been approved by the Court, the Court shall have entered the Final Approval Order and Judgment substantially in the form attached as Exhibit D hereto, and the Effective Date shall have occurred.

11.2. **Finality of Settlement.** The Settlement shall have become final as of the Effective Date.

11.3. **Resolution of CAFA Objections (If Any).** In the event that any of the government officials who received a CAFA Notice object to and request modifications to the Settlement, Class Representatives and Class Counsel agree to cooperate and work with Defendants and Defendants' Counsel to overcome such objection(s) and requested modifications. In the event such objection(s) or requested modifications are not overcome, Defendants shall have the right to terminate the Settlement Agreement pursuant to Article 12.

11.4. **Settlement Authorized by Independent Fiduciary.** At least thirty (30) days before the Fairness Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement and given a release to all the Released Parties in its capacity as fiduciary of the Plan for and on behalf of the Plan in accordance with PTE 2003-39. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to execute the release on behalf of the Plan, then the Settling Parties may mutually agree to modify the terms of this Settlement Agreement as necessary to facilitate an approval by the Independent Fiduciary and/or the Independent Fiduciary's release on behalf of the Plan. Otherwise, Defendants shall

have the option to waive this condition, in which case such option is to be exercised in writing within seven (7) days after the Settling Parties' receipt of the Independent Fiduciary's written determination, unless otherwise agreed by the Settling Parties.

**12. ARTICLE 12 – TERMINATION, CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

12.1. The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:

12.1.1. Under Section 2.1, (a) either the Independent Fiduciary does not approve the Settlement Agreement or disapproves the Settlement Agreement for any reason whatsoever, or Defendants reasonably conclude that the Independent Fiduciary's approval does not include the determinations required by the PTE 2003-39; and (b) the Settling Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39; and (c) Defendants do not exercise their option to waive this condition as provided in Section 11.4;

12.1.2. Under Section 2.1, (a) the Independent Fiduciary refuses to release the Released Parties from the Released Claims on behalf of the Plan; and (b) the Settlement Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate the Independent Fiduciary's release of the Released Parties from the Released Claims on behalf of the Plan; and (c) Defendants do not exercise their option to waive this condition as provided in Section 11.4.

12.1.3. The Preliminary Approval Order or the Final Approval Order and Judgment is not entered by the Court in substantially the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;

12.1.4. The Settlement Class is not certified as defined herein or in a form which is otherwise agreed to by the Settling Parties;

12.1.5. This Settlement Agreement is disapproved by the Court or fails to become effective and the Settling Parties do not mutually agree to modify the Settlement Agreement in order to obtain the Court's approval or otherwise effectuate the Settlement; or

12.1.6. The Preliminary Approval Order or Final Approval Order and Judgment is finally reversed on appeal, or is modified on appeal, and the Settling Parties do not mutually agree to any such modifications.

12.2. If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Class Action and the Released Claims asserted by the Class Representatives shall for all purposes with respect to the Settling Parties revert to their status as though the Settling Parties never executed the Settlement Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Defendants' insurer within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void.

12.3. It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs and/or Class Representatives' Case Contribution Awards and/or modifies any of the proposed orders relating to Attorneys' Fees and Costs and/or Class Representatives' Case Contribution Awards. To the extent the Court does not approve the requested amount of Attorneys' Fees and Costs or Case Contribution Awards, said amount will remain in the Qualified Settlement Fund for distribution to Class Members.

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### **13. ARTICLE 13 – GENERAL PROVISIONS**

13.1. The Settling Parties agree to cooperate fully with each other in seeking Court approvals of the Preliminary Approval Order and the Final Approval Order and Judgment, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms. The Settling Parties agree to provide each other with copies of any filings necessary to effectuate this Settlement reasonably in advance of filing.

13.2. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of any Defendant or Released Party of any wrongdoing, fault, or liability whatsoever by any Defendant or Released Party, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Class Action or any other proceeding.

13.3. Defendants and Released Parties admit no wrongdoing, fault, or liability with respect to any of the allegations or claims in the Class Action. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute admissions of any liability of any kind, whether legal or factual. Subject to Federal Rule of Evidence 408, the Settlement and the negotiations related to it are not admissible as substantive evidence, for purposes of impeachment, or for any other purpose.

13.4. Neither the Settling Parties, Class Counsel, nor Defendants' Counsel shall have any responsibility for or liability whatsoever with respect to (a) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (b) the determination of the Independent Fiduciary; (c) the management, investment, or distribution of the Qualified Settlement Fund; (d) the Plan of Allocation as approved by the Court; (e) the



determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (f) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (g) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor Defendants' Counsel shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.

13.5. Defendants, Defendants' Counsel, and the Released Parties shall not have any responsibility for or liability whatsoever with respect to the Plan of Allocation, including, but not limited to, the determination of the Plan of Allocation or the reasonableness of the Plan of Allocation.

13.6. The Settling Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants, Defendants' Counsel, Class Counsel, and Class Representatives will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in the Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Settling Parties.

13.7. Only Class Counsel shall have standing to seek enforcement of this Settlement Agreement on behalf of Plaintiffs and Class Members. Any individual concerned about Defendants' compliance with this Settlement Agreement may so notify Class Counsel and direct any requests for enforcement to them. Class Counsel shall have the full and sole discretion to

take whatever action they deem appropriate, or to refrain from taking any action, in response to such request. Any action by Class Counsel to monitor or enforce the Settlement Agreement shall be done without additional fee or reimbursement of expenses beyond the Attorneys' Fees and Costs determined by the Court.

13.8. This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, California law.

13.9. The Settling Parties agree that the Court has personal jurisdiction over the Settlement Class and Defendants and shall maintain personal and subject-matter jurisdiction for purposes of resolving any disputes between the Settling Parties concerning compliance with this Settlement Agreement. Any motion or action to enforce this Settlement Agreement—including by way of injunction—may be filed in the U.S. District Court for the Central District of California or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of the Settlement Agreement.

13.10. Each party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that party by his, her, or its counsel.

13.11. Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Fiduciary, this Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only

by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and approved by the Court.

13.12. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

13.13. Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter of this Settlement Agreement.

13.14. All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit A – Notice of Class Action Settlement and Fairness Hearing; Exhibit A-1 – Former Participant Claim Form; Exhibit B – Plan of Allocation; Exhibit C – Preliminary Approval Order; Exhibit D – Final Approval Order and Judgment; Exhibit E – Form of CAFA Notice.

13.15. No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.

13.16. **Principles of Interpretation.** The following principles of interpretation apply to this Settlement Agreement:

13.16.1. Headings. Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Sections they caption.

13.16.2. Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

13.16.3. Gender. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

13.16.4. References to a Person. References to a Person are also to the Person's permitted successors and assigns, except as otherwise provided herein.

13.16.5. Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

13.17. **Survival**. All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No Party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date

13.18. **Notices**. Any notice, demand, or other communication under this Settlement Agreement (other than the Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier or via e-mail:

IF TO CLASS REPRESENTATIVES:

Christina A. Humphrey  
Robert N. Fisher  
CHRISTINA HUMPHREY LAW, P.C.  
1117 State Street  
Santa Barbara, CA 93101

Telephone: (805) 618-2924  
Facsimile: (805) 618-2939  
christina@chumphreylaw.com  
rob@chumphreylaw.com

James A. Clark  
Renee P. Ortega  
TOWER LEGAL GROUP, P.C.  
11335 Gold Express Drive, Ste. 105  
Gold River, CA 95670  
Telephone: (916) 361-6009  
Facsimile: (916) 361-6019  
james.clark@towerlegalgroup.com  
renee.parras@towerlegalgroup.com

IF TO DEFENDANTS:

Robyn C. Crowther  
Tahir L. Boykins  
STEPTOE & JOHNSON LLP  
633 West Fifth Street, Suite 1900  
Los Angeles, CA 90071  
Telephone: (213) 439-9432  
Fax: (213) 439-9599  
rcrowther@steptoe.com  
tboykins@steptoe.com

Paul J. Ondrasik  
Eric G. Serron  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
Telephone: (202) 429-3000  
Fax: (202) 429-3902  
pondrasik@steptoe.com  
eserron@steptoe.com

Any Settling Party may change the address at which it is to receive notice by written notice delivered to the other Settling Parties in the manner described above.

13.19. **Entire Agreement.** This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or

inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto. It specifically supersedes any settlement terms or settlement agreements relating to the Defendants that were previously agreed upon orally or in writing by any of the Settling Parties.

13.20. **Counterparts.** The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.

13.21. **Binding Effect.** This Settlement Agreement binds and inures to the benefit of the Settling Parties hereto, their assigns, heirs, administrators, executors, and successors.

13.22. **Destruction/Return of Confidential Information.** Within thirty (30) days after the Final Order, Class Representatives and Class Counsel shall fully comply with the Stipulated Protective Order Regarding Confidentiality agreed to by the Settling Parties. Further, the Settling Parties agree that the preliminary and final lists of Class Members are deemed Confidential pursuant to the Stipulated Protective Order Regarding Confidentiality, and that the Settling Parties shall have the right to continue to designate documents provided to any party in connection with this Settlement Agreement as Confidential pursuant to the Stipulated Protective Order Regarding Confidentiality.

13.23. **No Conflict of Interest with Cy Pres, Pension Rights Center.** None of the Parties or Counsel below have any financial interest in, employment relationship with, or board service for the Pension Rights Center.

IN WITNESS WHEREOF, the Settling Parties have executed this Settlement Agreement

on the dates set forth below.

[SIGNATURES FOLLOW ON FOLLOWING PAGES]

**CLASS REPRESENTATIVES**

DATED: 4/16/2023

DocuSigned by:  
*Salvador Aquino*  
F2F6BCE34481496...  
\_\_\_\_\_  
Salvador Aquino, Class Representative

DATED:

\_\_\_\_\_  
Susan Ford, Class Representative

DATED:

\_\_\_\_\_  
Monicalayle Garcia, Class Representative

DATED:

\_\_\_\_\_  
Barbara Kraus, Class Representative

DATED:

\_\_\_\_\_  
Martha Lopez, Class Representative



on the dates set forth below.

[SIGNATURES FOLLOW ON FOLLOWING PAGES]

**CLASS REPRESENTATIVES**

DATED:

\_\_\_\_\_  
Salvador Aquino, Class Representative

DATED: 4/12/2023

DocuSigned by:  
*Susan Ford*  
\_\_\_\_\_  
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Susan Ford, Class Representative

DATED:

\_\_\_\_\_  
Monicalayle Garcia, Class Representative

DATED:

\_\_\_\_\_  
Barbara Kraus, Class Representative

DATED:

\_\_\_\_\_  
Martha Lopez, Class Representative

on the dates set forth below.

[SIGNATURES FOLLOW ON FOLLOWING PAGES]

**CLASS REPRESENTATIVES**

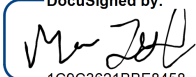
DATED:

\_\_\_\_\_  
Salvador Aquino, Class Representative

DATED:

\_\_\_\_\_  
Susan Ford, Class Representative

DATED: 4/15/2023

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Monicalayle Garcia, Class Representative

DATED:

\_\_\_\_\_  
Barbara Kraus, Class Representative

DATED:

\_\_\_\_\_  
Martha Lopez, Class Representative

on the dates set forth below.

[SIGNATURES FOLLOW ON FOLLOWING PAGES]

**CLASS REPRESENTATIVES**

DATED:

\_\_\_\_\_  
Salvador Aquino, Class Representative

DATED:

\_\_\_\_\_  
Susan Ford, Class Representative

DATED:

\_\_\_\_\_  
Monicalayle Garcia, Class Representative

DATED: 4/12/2023

DocuSigned by:  
*Barbara Kraus*  
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Barbara Kraus, Class Representative

DATED:

\_\_\_\_\_  
Martha Lopez, Class Representative

on the dates set forth below.

[SIGNATURES FOLLOW ON FOLLOWING PAGES]

**CLASS REPRESENTATIVES**

DATED:

\_\_\_\_\_  
Salvador Aquino, Class Representative

DATED:

\_\_\_\_\_  
Susan Ford, Class Representative

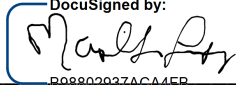
DATED:

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Monicalayle Garcia, Class Representative

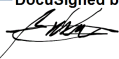
DATED:

\_\_\_\_\_  
Barbara Kraus, Class Representative

DATED: 4/12/2023

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Martha Lopez, Class Representative

DATED: 4/12/2023

DocuSigned by:  
  
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Francisco Martinez, Class Representative

DATED:

\_\_\_\_\_  
Megan Sargent, Class Representative

**99 CENTS ONLY STORES, LLC**

DATED:

\_\_\_\_\_  
Name:

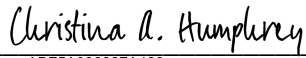
**THE RETIREMENT COMMITTEE OF THE 99 CENTS ONLY 401 (K) PLAN**

DATED:

\_\_\_\_\_  
Name:

**PLAINTIFFS' COUNSEL:**

DATED: 4/17/2023

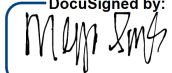
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Christina A. Humphrey  
Robert N. Fisher  
CHRISTINA HUMPHREY LAW, P.C.  
1117 State Street  
Santa Barbara, CA 93101  
Telephone: (805) 618-2924  
Facsimile: (805) 618-2939  
christina@chumphreylaw.com  
rob@chumphreylaw.com

DATED:

\_\_\_\_\_  
Francisco Martinez, Class Representative

DATED: 4/13/2023

DocuSigned by:  
  
7167D505C05A444...  
\_\_\_\_\_  
Megan Sargent, Class Representative

**99 CENTS ONLY STORES, LLC**

DATED:

\_\_\_\_\_  
Name:

**THE RETIREMENT COMMITTEE OF THE 99 CENTS ONLY 401 (K) PLAN**

DATED:

\_\_\_\_\_  
Name:

**PLAINTIFFS' COUNSEL:**

DATED:

\_\_\_\_\_  
Christina A. Humphrey  
Robert N. Fisher  
CHRISTINA HUMPHREY LAW, P.C.  
1117 State Street  
Santa Barbara, CA 93101  
Telephone: (805) 618-2924  
Facsimile: (805) 618-2939  
christina@chumphreylaw.com  
rob@chumphreylaw.com

DATED:

\_\_\_\_\_  
Francisco Martinez, Class Representative

DATED:

\_\_\_\_\_  
Megan Sargent, Class Representative

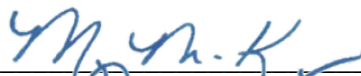
**99 CENTS ONLY STORES, LLC**

DATED: 4/12/23

  
\_\_\_\_\_  
Name: Mary M. Kasper, Chief Legal Officer, General Counsel and Secretary

**THE RETIREMENT COMMITTEE OF THE 99 CENTS ONLY 401 (K) PLAN**

DATED: 4/12/23

  
\_\_\_\_\_  
Name: Mary M. Kasper, Chief Legal Officer, General Counsel and Secretary

**PLAINTIFFS' COUNSEL:**

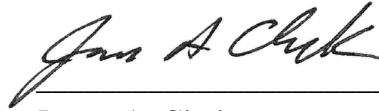
DATED:

\_\_\_\_\_  
Christina A. Humphrey  
Robert N. Fisher  
CHRISTINA HUMPHREY LAW, P.C.  
1117 State Street  
Santa Barbara, CA 93101  
Telephone: (805) 618-2924  
Facsimile: (805) 618-2939  
christina@chumphreylaw.com  
rob@chumphreylaw.com



**PLAINTIFFS' COUNSEL:**

DATED: April 17, 2023



---

James A. Clark  
TOWER LEGAL GROUP, P.C.  
11335 Gold Express Drive, Ste. 105  
Gold River, CA 95670  
Telephone: (916) 361-6009  
Facsimile: (916) 361-6019  
james.clark@towerlegalgroup.com

**DEFENDANTS' COUNSEL:**

DATED:

---

Paul J. Ondrasik, Jr.  
Eric G. Serron  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
Telephone: (202) 429-3000  
Fax: (202) 429-3902  
pondrasik@steptoe.com  
eserron@steptoe.com

**PLAINTIFFS' COUNSEL:**

DATED:

---

James A. Clark  
TOWER LEGAL GROUP, P.C.  
11335 Gold Express Drive, Ste. 105  
Gold River, CA 95670  
Telephone: (916) 361-6009  
Facsimile: (916) 361-6019  
james.clark@towerlegalgroup.com

**DEFENDANTS' COUNSEL:**

DATED: 4/19/2023



Paul J. Ondrasik, Jr.  
Eric G. Serron  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
Telephone: (202) 429-3000  
Fax: (202) 429-3902  
pondrasik@steptoe.com  
eserron@steptoe.com

# **Exhibit A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**If you were or are a participant in the 99 Cents Only Stores 401(K) Plan, your legal rights will be affected by this class action settlement.**

**The case is called *Aquino, et al., v. 99 Cents Only Stores, et al.*, Case No 2:22-cv-01966 (C.D. Ca.). A Court authorized this Notice. This is not a solicitation from a lawyer.**

This Notice advises you of the settlement (“Settlement”) of a lawsuit against 99 Cents Only Stores LLC (“99 Cents”); and The Retirement Committee of the 99 Cents Only 401(K) Plan (“Committee”) (collectively, the “Defendants”). In the lawsuit, Plaintiffs Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent (collectively, “Plaintiffs”) allege that Defendants violated the Employee Retirement Income Security Act of 1974 (“ERISA”) by, among other things, failing to perform proper oversight of the 99 Cents Only Stores LLC 401(k) Plan (“Plan”). Defendants deny these allegations and deny that they engaged in any improper conduct. You should read this entire Notice carefully because your legal rights will be affected by whether you act or not.

Your rights and options, and the deadline for you to object if you are opposed to the Settlement, are explained in this Notice.

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## BASIC INFORMATION

### 1. Why did I get this Notice?

You have been identified as a Participant, Former Participant, Beneficiary or Alternate Payee of a Participant, of the Plan at any time on or after during the period from March 25, 2016, through [the date of Preliminary Approval Order], (the “Class Period”).

You are receiving this Notice because you have a right to know about the proposed Settlement of a class action lawsuit in which you are a Class Member before the Court decides whether to approve the Settlement.

This Notice summarizes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The lawsuit is pending in the United States District Court for the Central District of California (the “Court”). It is known as *Aquino, et al., v. 99 Cents Only Stores, et al.*, Case No 2:22-cv-01966 (C.D. Ca.), and is brought against Defendants.

### 2. What is this Lawsuit about?

On March 25, 2022, this Action was brought by Plaintiffs, against 99 Cents and the Committee, alleging that they violated ERISA by, among other things, failing to perform proper oversight of the Plan. Since the filing of the action, the parties engaged in litigation, including exchanging documentation and engaging in discovery, briefing motions to dismiss and preparing for trial. On November 7, 2022, the Parties mediated the action and ultimately were able to reach the terms of the Settlement explained in this Notice. Defendants have denied and continue to deny any wrongdoing or liability and would continue to vigorously defend the lawsuit if the proposed Settlement is not approved.

### 3. What is a class action lawsuit?

In a class action lawsuit, one or more people called “class representatives” sue on their own behalf and on behalf of other people who they allege may have similar claims. One court resolves all the issues for all class members in a single lawsuit. Plaintiffs, Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent are the class representatives in this lawsuit, and are sometimes referred to in this Notice as the “Class Representatives” or as the “Plaintiffs.”

### 4. Why is there a Settlement?

The Parties have agreed to the Settlement after extensive negotiations. By agreeing to a settlement, the Parties avoid the costs and risks of further litigation, and Plaintiffs and the other members of the Class will get compensation. Class Counsel has conducted an extensive review of the evidence in the case and the potential risks and benefits of continued litigation. Plaintiffs

and Class Counsel agree that the Settlement is in the best interest of the Class. The Court has not made any finding that Defendants have done anything wrong or violated any law or regulation.

**5. How do I get more information about the Settlement?**

This notice summarizes the proposed settlement. For the precise terms and conditions of the Settlement, please see the Amended Settlement Agreement (“Agreement”) available at [www.com](http://www.com), by contacting Class Counsel (see answer to question 12 for contact information) or the Settlement Administrator (see answer to question 6 for contact information), 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 Central District of California -Western Division, First Street U.S. Courthouse, 350 W 1st Street, Suite 4311 Los Angeles, CA 90012-4565, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

**6. Who will administer the Settlement?**

The Settlement Administrator, ILYM Group, Inc., will administer the Settlement, including the processing of the Former Participant Claim Form, if applicable, that you may need to fill out and send in to receive any settlement payment. You may contact the Settlement Administrator by: (a) sending a letter to 99 Cents 401k Settlement Administrator, c/o ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin, CA 92780; (b) sending an e-mail to [info@ilymgroup.com](mailto:info@ilymgroup.com); (c) visiting the Settlement website at [www.com](http://www.com); or (d) calling toll-free at [888.250.6810](tel:888.250.6810).

**THE SETTLEMENT BENEFITS – WHAT DOES THE SETTLEMENT PROVIDE**

**7. What does the Settlement provide?**

Defendants have agreed to pay a total of \$750,000 to the Class Members with up to 33.33% of that amount to be paid to Class Counsel in attorneys’ fees to the extent approved by the Court, up to \$82,000 to be paid to reimburse Class Counsel’s expenses, including expert costs, and \$10,000 to be paid to each of the seven Class Representatives (\$70,000 total), to the extent approved by the Court. The amount that will be available for distribution to Class Members (known as the “Net Settlement Amount”) will be the Settlement Amount minus the amounts used for other Settlement purposes (Case Contribution Fees, Court-approved Attorneys’ Fees and Expenses to Class Counsel, Administration Expenses, and certain taxes and tax-related costs). To the extent the amount requested for Attorneys’ Fees and Expenses and Case Contribution Fees is not approved by the Court, then the money will be included in the amount distributed to Class Members.

**8. How may I benefit from the Settlement?**

You may benefit by receiving payment of a portion of the Net Settlement Amount. The amount paid to each Current Participant and Authorized Former Participant will be determined by a Plan of Allocation. As explained below, if you are a Current Participant, or Beneficiary or Alternate



Payees of a Plan participant and you have an active account in the Plan, you do not need to take any action to receive payment under the Settlement. If you are a Former Participant, or a Beneficiary or Alternate Payee of a Plan participant and you do not have an active account in the Plan, you can submit a Former Participant Claim Form by the deadline for submission in order to receive payment. Payments made to Current Participants, or to Beneficiaries or Alternate Payees of Plan participants who have active accounts in the Plan under the Settlement shall be made into these persons' individual investment accounts in the Plan. Payments made to Authorized Former Participants, or to Beneficiaries or Alternate Payees of Plan participants who do not have active accounts in the Plan under the Settlement may be made either by check or tax-qualified rollover to an individual retirement account or other eligible employer plan.

**9. How do I submit a claim for a Settlement Payment?**

If you are a Current Participant, or a Beneficiary or Alternate Payee of a Plan participant and you have an active account in the Plan, you do not need to submit a claim to be eligible for a payment under the Settlement. Your payment amount will automatically be calculated by the Settlement Administrator. If you are a Former Participant, or a Beneficiary or an Alternate Payee and you do not have an active account in the Plan, you must submit a Former Participant Claim Form by the deadline for submission in order to be eligible for a payment under the Settlement. "Former Participant" means a person who had an account in the Plan during the Class Period and who did not have account in the Plan with a balance greater than \$0 as of [date], 2023 [actual date of Preliminary Approval Order to be substituted in final notice].

**If you are a Former Participant, or a Beneficiary or Alternate Payee of a Plan participant and you do not have an active account in the Plan and want to receive any monetary benefits from the Settlement, you must submit the Former Participant Claim Form by no later than [date], 2023 [actual date to be 45 days after date of anticipated initial mailing to be substituted in final notice]. You must mail the Former Participant Claim Form to the address shown on the Form or email it to the Settlement Administrator at [emailaddress.com](mailto:emailaddress.com).**

A Former Participant Claim Form will be deemed submitted when it is actually received by the Settlement Administrator at the address listed in the Form.

**Even if you do not submit a Former Participant Claim Form, you will be bound by the Settlement. (See answers to question 14 below.)**

**10. What is the Plaintiff receiving from the Settlement?**

In this case, there are seven Class Representatives Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent. Class Counsel intends to ask the Court to award each Class Representative a Case Contribution Fee of \$10,000 in recognition of the work and effort they expended on behalf of the Class.

## **THE SETTLEMENT BENEFITS – WHAT YOU GIVE UP**

### **11. What do I give up by participating in the Settlement?**

Each Member of the Class gives Defendants a “release.” A release means you give up your rights to sue Defendants or receive any benefits from any other lawsuit against Defendants if the lawsuit asserts claims or relates in any way to the practices at issue in this lawsuit.

For additional details about the scope of the release, consult the Agreement or contact Class Counsel. (See answer to question 5 for details.)

## **THE LAWYERS REPRESENTING YOU**

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

Yes. The Court has appointed the law firms of Christina Humphrey Law, P.C. and Tower Legal Group, P.C. as Lead Class Counsel. Each firm’s contact information is provided under question 16. If you want to be represented by a different lawyer in this case, you may hire one at your own expense.

### **13. How will the lawyers (Class Counsel) be paid?**

Class Counsel will ask the Court for an award of attorneys’ fees of up to 33.33% of the Settlement Amount up to \$250,000, based upon the value of the Settlement, the time they have devoted to this engagement, and a separate \$82,000 in expenses they have advanced in prosecuting this matter.

## **OBJECTING TO THE SETTLEMENT**

### **14. What does it mean to object?**

Objecting is simply telling the Court that you do not like something about the Settlement. Objecting will not have any bearing on your right to receive the benefits of the Settlement if it is approved by the Court.

### **15. What is the procedure for objecting to the Settlement, including any objection to Class Counsel’s Motion for Attorneys’ Fees and Expenses or Case Contribution Fees?**

You can ask the Court to deny approval of the Settlement and/or the Motion for Attorneys’ Fees and Expenses of Class Counsel or the Case Contribution Fees to be requested for the Class Representatives by filing an objection or making an appearance at the Final Fairness Hearing and stating your 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. The Court, however, can award less than the amount requested by Class Counsel for attorneys’ fees and expenses or the amount requested for case contribution fees and, if the Court does so, because of an objection or in its own discretion, although that ruling could affect the timing and

amount of settlement payments, any such objection to or reduction in Class Counsel’s attorneys’ fees and expenses or case contribution fees to be paid to the Class Representatives would not otherwise affect the finality of the Settlement.

Any objection to the proposed Settlement or Motion for Attorneys’ Fees and Expenses or Case Contribution Fees can be submitted in writing. If you file a written objection, you may, but are not required to, appear at the Fairness 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 should (a) clearly identify the case name and number *Aquino, et al., v. 99 Cents Only Stores, et al.*, Case No 2:22-cv-01966 (C.D. Ca.), (b) be submitted to the Court either by mailing them to the Clerk, United States District Court for the Central District of California -Western Division, First Street U.S. Courthouse, 350 W 1st Street, Suite 4311 Los Angeles, CA 90012-4565, or by filing them in person at any location of the United States District Court for the Central District of California, and (c) be filed or postmarked on or before [date] [actual date to be 35 days before Final Fairness Hearing]. Your objection should include (1) your full name, current address, and current telephone number, and, if represented by counsel, any of your counsel’s name and contact information; (2) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (3) a statement of the position(s) the objector wishes to assert; (4) copies of any other documents that the objector wishes to submit in support of his/her/its position; and (5) a list of any other objections to any class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years.

**ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED ABOVE SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL NOT HAVE ANY RIGHT TO OBJECT TO THE FAIRNESS OR ADEQUACY OF THE SETTLEMENT.**

| <u>Clerk of the Court</u>   | <u>Class Counsel</u>  | <u>Defense Counsel</u>   |
|---|---|--|
| United States District Court,<br>Central District of California<br>– Western Division<br>First Street U.S. Courthouse<br>350 W 1st Street, Suite 4311<br>Los Angeles, CA 90012-4565 | Christina A. Humphrey<br>Robert N. Fisher<br>CHRISTINA HUMPHREY<br>LAW, P.C.<br>1117 State Street,<br>Santa Barbara, CA 93101<br>(805) 618-2924<br><br>James A. Clark<br>Renee P. Ortega<br>TOWER LEGAL GROUP,<br>P.C.<br>11335 Gold Express Drive,<br>Ste. 105<br>Gold River, CA 95670 | Robyn C. Crowther<br>Tahir L. Boykins<br>STEPTOE & JOHNSON<br>LLP<br>633 West Fifth Street, Suite<br>1900<br>Los Angeles, CA 90071<br><br>Paul J. Ondrasik<br>Eric G. Serron<br>STEPTOE & JOHNSON<br>LLP<br>1330 Connecticut Avenue,<br>NW<br>Washington, DC 20036 |

## THE COURT'S FAIRNESS HEARING

### 16. When/where will the Court decide whether to approve the Settlement?

On [date and time] [To be Established by the Court], in Courtroom 5C of the United States District Court for the Central District of California -Western Division, First Street U.S. Courthouse, 350 W 1st Street, Suite 4311 Los Angeles, CA 90012-4565, the Court will hold a Fairness Hearing to determine whether the proposed Settlement is fair, reasonable, and adequate and whether it should be approved. The hearing may be continued from time to time by the Court without further notice, please check the settlement website at [www.com](http://www.com) for updates. Instructions on appearing remotely via zoom (or some other software) will be posted on the settlement website at [www.com](http://www.com).

### 17. Do I have to attend the Fairness Hearing?

No; however, you are welcome to attend at your own expense. If you file an objection to the Settlement, you do not have to go to Court to talk about it. As long as your objection is filed by [date][35 days before Fairness Hearing] and you comply with the requirements in answer to question 16 above, the Court will consider it. You also may send your own lawyer to attend the Fairness Hearing or you can attend yourself and simply state your objection on the record without filing a written objection beforehand.

### 18. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the hearing.

## IF YOU DO NOTHING

### 19. What happens if I do nothing at all?

If you are a Current Participant, or a Beneficiary or Alternate Payee of a Plan participant and you have an active account in the Plan, you do not need to take any action to be eligible to receive the Settlement benefits. If you are a Former Participant, or a Beneficiary or Alternate Payee of a participant in the Plan and you do not have an active account in the Plan, you must submit a Former Participant Claim Form by the submission deadline or you will not receive any of the settlement payments described above in answer to questions 7 and 8.

DATED: [Date], 2023 [actual Notice date to be no later than 30 days after entry of Preliminary Approval Order]

**THIS NOTICE HAS BEEN SENT TO YOU BY ORDER OF THE UNITED STATES**

**DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA**

# **Exhibit A1**

### Former Participant Claim Form

If you are a Former Participant in a defined contribution 401(k) retirement plan known as the 99 Cents Only Stores LLC 401(k) Plan (the “Plan”) on or after from March 25, 2016, through [insert the date for Preliminary Approval] (the “Class Period”), or a Beneficiary or Alternate Payee (in the case of a person subject to a Qualified Domestic Relations Order (“QDRO”)) of a Former Participant (all of whom will be treated as Former Participants), and would like to receive a payment from the *Aquino, et al., v. 99 Cents Only Stores, et al.* Settlement, you must complete the form below and mail it to 99 Cents 401k Settlement Administrator, c/o ILYM Group, Inc., postmarked **NO LATER THAN \_\_\_\_\_, 2023**. “Former Participant” means a person who had an account in the Plan during the Class Period and who did not have an account in the Plan with a balance greater than \$0 as of [date of preliminary approval order]. “Beneficiary” or “Alternate Payee” means, for the purposes of this Former Participant Claim Form, a Beneficiary or Alternate Payee of a participant in the Plan (who maintained a positive account balance in the Plan during the Class Period), that no longer has an active account in the Plan.

#### Participant Information

|                                      |                   |                   |
|--------------------------------------|-------------------|-------------------|
| Name                                 |                   |                   |
| Address                              |                   |                   |
| Address 2                            |                   |                   |
| City                                 | State             | Zip               |
| Participant’s Social Security Number | Phone (Preferred) | Phone (Alternate) |
| Participant’s Date of Birth          |                   |                   |
| Email Address                        |                   |                   |

**(Continued on page 2)**

**Beneficiary or Alternate Payee Information (IF APPLICABLE)**

|                             |                   |                   |
|-----------------------------|-------------------|-------------------|
| Your Name                   |                   |                   |
| Address                     |                   |                   |
| Address 2                   |                   |                   |
| City                        | State             | Zip               |
| Your Social Security Number | Phone (Preferred) | Phone (Alternate) |
| Your Date of Birth          |                   |                   |
| Email Address               |                   |                   |

**Payment Election (choose only one)**

I WANT A CHECK MADE PAYABLE TO ME AND MAILED TO ME. Choosing this option entails the Settlement Administrator to withhold 20% or more of your total payment for Tax Withholdings. The Settlement Administrator will mail your check to the Name and Address listed above.

**OR**

I WANT A CHECK MADE PAYABLE TO MY RETIREMENT ACCOUNT AS A ROLLOVER DISTRIBUTION. PLEASE MAKE THE CHECK PAYABLE TO:

|                                  |  |
|----------------------------------|--|
| Account Name                     |  |
| Account Number                   |  |
| Contact or Trustee (if required) |  |
| Address Line 1                   |  |
| Address Line 2                   |  |
| City, State, Zip                 |  |

**NOTE: There is no promise or assurance that these funds are eligible for rollover or tax-preferred treatment. The decision to seek rollover treatment is yours alone. Any questions about taxation or rollover treatment must be directed to your tax advisor or accountant. No one associated with this case can provide you with assistance or advice of any kind in this regard or answer any tax questions.**

(Continued on page 3)

**Required Certification Regarding Qualified Domestic Relations Order (“QDRO”):** I hereby certify and represent under penalty of perjury that no portion of the payment to be received hereunder is subject to a QDRO, or, that a true and accurate and current copy of any applicable QDRO is attached hereto along with name and address of any payee other than Class Member. Payment will be made in accordance with any QDRO supplied.

**Signature (Required):** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Deceased Class Members**

Deceased Class Members are not eligible for rollover treatment. A Beneficiary of a deceased person who was a participant in the Plan at any time during the Class Period, including executors, heirs, assigns, estates, personal representatives or successors-in-interest, must provide the following information with this Claim Form to 99 Cents 401k Settlement Administrator, c/o ILYM Group, Inc.:

- Evidence that such person is authorized to receive distribution of the deceased Class Member’s settlement payment and the name and if applicable the percentage entitlement of each person entitled to receive distribution;
- Social Security Number of each person entitled to receive payment;
- Current mailing address of each person entitled to receive payment; and
- Person(s) to whom check(s) should be made payable, and amount(s) of check(s).



## **Exhibit B**

## PLAN OF ALLOCATION

- 1.1 Each capitalized term below has the definition provided in the Settlement Agreement.
- 1.2 After the Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Authorized Former Participants as set forth in Paragraph 1.7 below, and to the Plan for payments to the accounts of Participants as set forth in Paragraph 1.6 below, both in accordance with the Plan of Allocation set forth herein and as ordered by the Court.
- 1.3 To be eligible for a payment from the Net Settlement Amount, a person must be a Participant, an Authorized Former Participant, a Beneficiary, or an Alternate Payee. Participants, and Beneficiaries or Alternate Payees with Active Accounts, shall receive their settlement payments as additions to their Active Accounts, as provided for in Paragraph 1.6 below. Authorized Former Participants, and Beneficiaries or Alternate Payees who do not have Active Accounts, shall receive their settlement payments in the form of rollovers to an individual retirement account or other eligible employer plan or in the form of checks, as provided in Paragraph 1.7 below.
- 1.4 Beneficiaries will receive settlement payments, as described in this Plan of Allocation, in amounts corresponding to their entitlement as Beneficiaries of the Participant or of the Authorized Former Participant with respect to which the payment is made. This includes settlement payments to Beneficiaries based upon the Participant's or Authorized Former Participant's Plan account during the Class Period and/or by the Beneficiary's own Plan account during the Class Period, if an account was created in the Plan for the Beneficiary. Alternate Payees will receive settlement payments if and to the extent they are entitled to receive a portion of a Participant's or Authorized Former Participant's allocation under this Plan of Allocation pursuant to the terms of the applicable QDRO, including Alternate Payees for whom an account was created in the Plan. Beneficiaries and Alternate Payees with Active Accounts will receive payments by the method described in this Plan of Allocation for Participants. Beneficiaries and Alternate Payees who do not have Active Accounts will receive payments by the method described in this Plan of Allocation for Authorized Former Participants. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth herein and as ordered by the Court.
- 1.5 **Calculation of Settlement Payments.** Payments to Authorized Former Participants, Participants, Beneficiaries, or Alternate Payees, shall be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:
  - 1.5.1 The Settlement Administrator shall determine a "Settlement Allocation Score" for each Participant, Authorized Former Participant, Beneficiary, or Alternate Payee by (i) determining the year-end account balances of each Participant and Authorized Former Participant during the Class Period, or, if a Beneficiary or Alternate Payee had a separate account in the Plan during the Class Period, by

determining the year-end balance of each such Beneficiary or Alternate Payee, and (ii) dividing the sum of each Participant's or Authorized Former Participant's, or to the extent applicable, each Beneficiary's or Alternate Payee's, year-end account balances during the Class Period by the total sum of year-end asset amounts in the Plan during the Class Period.

- 1.5.2 If the dollar amount of the settlement payment to an Authorized Former Participant, or a Beneficiary or Alternate Payee who does not have an Active Account, is initially calculated by the Settlement Administrator to be \$10.00 or less, then that person's payment shall be \$10.00. All such amounts shall be retained in the Qualified Settlement Fund for distribution under Paragraph 1.13.
  - 1.5.3 The Plan Recordkeepers (or designee) shall provide the necessary data subject to its control as may be reasonably available and necessary to enable the Settlement Administrator to perform the above calculations.
  - 1.5.4 The Settlement Administrator shall utilize the calculations required to be performed herein for (a) making the required payments to Authorized Former Participants, and to Beneficiaries or Alternate Payees who do not have Active Accounts, under Paragraph 1.7 of this Plan of Allocation; and (b) instructing the Plan as to the amount of the Net Settlement Amount to be allocated to Participants, and to Beneficiaries or Alternate Payees who have Active Accounts, under Paragraph 1.6 of this Plan of Allocation and calculating the total amount to deposit into each of their Active Account(s) to fulfill this instruction.
  - 1.5.5 The total amount of all rollovers or checks to be paid by the Settlement Administrator for Authorized Former Participants, and Beneficiaries or Alternate Payees who do not have Active Accounts, plus the total amount of all allocations that the Plan is instructed to make to Participants, and Beneficiaries or Alternate Payees who have Active Accounts, may not exceed the Net Settlement Amount. Nothing in this Paragraph 1.5 is intended to modify the requirements of Paragraph 1.8 below. In the event that the Settlement Administrator determines that the Plan of Allocation total would otherwise exceed the Net Settlement Amount, the Settlement Administrator is authorized and required to make such pro rata changes as are necessary to the Plan of Allocation such that said total does not exceed the Net Settlement Amount.
- 1.6 **Payments to Participants and Beneficiaries or Alternate Payees with Active Accounts.** Participants, and Beneficiaries or Alternate Payees who have Active Accounts, will not be required to submit a Former Participant Claim Form to receive a settlement payment.
- 1.6.1 Within two (2) business days after the Settlement Administrator has completed all payment calculations for all Participants, and Beneficiaries or Alternate Payees who have Active Accounts, the Settlement Administrator will provide the Plan's Recordkeepers, in a format and via a delivery method mutually agreed upon by the Settlement Administrator and the Plan's Recordkeepers, with an Excel

spreadsheet containing the name, Social Security number (or alternative identifier(s) mutually acceptable), and amount of the settlement payment to be made into the Active Account(s) for each of these persons. In the event the Excel spreadsheet includes Social Security numbers, the Settlement Administrator will transmit the spreadsheet in a manner to protect the confidentiality of any such Social Security numbers.

- 1.6.2 Thereafter, within ten (10) business days' written notice to the Plan and the Plan's Recordkeepers, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the trust for the Plan of the aggregate amount of all settlement payments payable to Active Participants, and Beneficiaries or Alternate Payees who have Active Accounts, as reflected in the spreadsheet provided by the Settlement Administrator. 99 Cents Only Stores LLC (or its designee) shall direct the Plan's Recordkeepers to credit the individual Active Account(s) of each such person in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to each such person.
- 1.6.3 The settlement payment for each Participant who is an active participant in the Plan (i.e. has the right to make contributions to the Plan), will be invested in accordance with and proportionate to such Participant's investment elections then on file for new contributions. If the Participant is no longer an active participant in the Plan, or does not have an investment election on file, then such Participant shall be deemed to have directed such payment to be invested in the Plan's default investment option. Likewise, the settlement payment to each Beneficiary or Alternate Payee who has an Active Account will be invested in accordance with and proportionate to such person's investment elections then on file, or if such a person does not have investment elections on file, then such persons will be deemed to have directed such payments to be invested in the Plan's default investment option.
- 1.6.4 The Plan's Recordkeeper shall process all settlement payments to Participants, and Beneficiaries or Alternate Payees who have Active Accounts, as soon as administratively feasible after the Plan receives the payment from the Qualified Settlement Fund and the Excel spreadsheet containing the agreed-upon information.
- 1.6.5 The Plan may be amended, to the extent necessary, to reflect the settlement allocation to Active Account(s) in accordance with this Plan of Allocation.
- 1.6.6 If, as of the date when payments pursuant to this Settlement Agreement are made, a Participant, or Beneficiary or Alternate Payee who had an Active Account, no longer has an Active Account, he or she will be treated as an Authorized Former Participant for purposes of the settlement distribution only and will receive his or her payment from the Settlement Administrator in the form of a check or rollover as described in Paragraph 1.7. A Participant, or Beneficiary or Alternate Payee who had an Active Account, who no longer has an Active Account on the date of

his or her settlement distribution need not complete a Former Participant Claim Form.

1.7 **Payments to Authorized Former Participants, and Beneficiaries or Alternate Payees without Active Accounts.** Each Authorized Former Participant, and Beneficiary or Alternate Payee who does not have an Active Account, will have the opportunity to elect a rollover of his or her settlement payment to an individual retirement account or other eligible employer plan, which he or she has identified on the Former Participant Claim Form, provided that such a person supplies adequate information to the Settlement Administrator to effect the rollover. Otherwise, the Authorized Former Participant, or Beneficiary or Alternate Payee who does not have an Active Account, will receive his or her settlement payment directly by check. The distributions shall be issued as follows:

1.7.1 The Settlement Administrator will either effect from the Qualified Settlement Fund the rollover elected by the Authorized Former Participant, or Beneficiary or Alternate Payee who does not have an Active Account, in the Former Participant Claim Form (if the conditions for such rollover are satisfied) and any associated paperwork necessary to effect the settlement distribution by rollover, *or* issue a check from the Qualified Settlement Fund to the Authorized Former Participant, or Beneficiary or Alternate Payee who does not have an Active Account, and mail the check to the address of such person listed in his or her Former Participant Claim Form, or in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means.

1.7.2 With respect to settlement payments that are not rolled over, the Settlement Administrator shall (i) calculate and withhold any applicable taxes associated with the payments allocable to the Authorized Former Participant, or Beneficiary or Alternate Payee who does not have an Active Account; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to these persons.

1.8 This Plan of Allocation is based upon preliminary data regarding the Class Members who may be entitled to settlement payments. If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, the Settling Parties agree to promptly discuss modifications to the terms of this Plan of Allocation and present such modified terms to the Court for its approval. Direct mailed notice to Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted by the Settlement Administrator on the Settlement Website.

The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.

1.9 Within ten (10) business days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel and Defense Counsel one or more

affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice and/or the Former Participant Claim Form, and the address of such mailing; (b) the date(s) upon which the Settlement Administrator sent the Settlement Notice and/or the Former Participant Claim Form; (c) the name of each Class Member whose Settlement Notice and/or Former Participant Claim Form was returned as undeliverable; (d) the efforts made by the Settlement administrator to find the correct address and to deliver the Settlement Notice and/or Former Participant Claim Form for each such Class Member; and (e) the name of each Class Member to whom the Settlement Administrator made a payment from the Net Settlement Amount, together with the amount and form of the payment, the name of the payee, the date of payment, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

- 1.10 The Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants and Defense Counsel will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Parties.
- 1.11 Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, the Released Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold Defendants, the Released Parties, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.
- 1.12 All checks issued pursuant to this Plan of Allocation shall expire one hundred eighty (180) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall be paid to the designated cy pres, Pension Rights Center, per para. 5.5 of the Class Action Settlement Agreement.
- 1.13 No sooner than three hundred ninety-five (395) calendar days following the Settlement Effective Date, any Net Settlement Amount remaining in the Qualified Settlement Fund after payments, including costs and taxes, shall be paid to the designated cy pres, Pension Rights Center, per para. 5.6 of the Class Action Settlement Agreement.

# **Exhibit C**

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 2:22-cv-01966- SPG

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER [ECF No. 67]**

SALVADOR AQUINO, SUSAN  
FORD, MONICALAYLE GARCIA,  
BARBARA KRAUS, MARTHA  
LOPEZ, FRANCISCO MARTINEZ,  
MEGAN SARGENT, individually and  
as a representative of a Putative Class  
of Participants and Beneficiaries, on  
behalf of the 99 CENTS ONLY  
STORES 401(K) PLAN,

Plaintiffs,

v.

99 CENTS ONLY STORES LLC; THE  
RETIREMENT COMMITTEE OF THE  
99 CENTS ONLY 401(K) PLAN; and  
DOES 1 through 20,

Defendants.



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**PRELIMINARY APPROVAL ORDER**

- (1) CONFIRMING PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS;**
- (2) GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT;**
- (3) APPOINTING A SETTLEMENT ADMINISTRATOR;**
- (4) ENJOINING CLASS MEMBERS FROM PURSUING ANY CLAIMS THAT ARISE OUT OF OR RELATE IN ANY WAY TO THE RELEASED CLAIMS PENDING FINAL APPROVAL OF THE SETTLEMENT;**
- (5) DIRECTING NOTICE TO CLASS MEMBERS AND APPROVING THE FORM AND MANNER OF NOTICE;**
- (6) APPROVING THE PLAN OF ALLOCATION;**
- (7) SCHEDULING A FAIRNESS HEARING; AND**
- (8) SCHEDULING A HEARING ON CLASS COUNSEL’S FEE AND EXPENSE APPLICATION AND PLAINTIFFS’ REQUEST FOR CASE CONTRIBUTION AWARDS.**

The Court, having received and considered the Unopposed Motion for a Preliminary Approval Order (the “Motion”) of Plaintiffs and Class Representatives Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent (collectively, “Plaintiffs” or “Class Representatives”) in *Aquino, et al., v. 99 Cents Only Stores, et al.*, C.D. Cal. Case No. 2:22-cv-01966-SPG, and the papers filed in support of the Motion, including the Class Action Settlement Agreement entered into as of April 17, 2023 and all exhibits thereto (the “Agreement”), and the declarations of counsel, having further considered the arguments of counsel and the pleadings and record in this case, and finding good cause for granting the Motion,

**HEREBY ORDERS AS FOLLOWS:**

1           1.     Capitalized terms not defined in this Order shall have the meaning  
2 ascribed to them in Article I of the Agreement.

3           2.     This Court has jurisdiction to consider the Motion and the relief  
4 requested therein under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

5           3.     Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

6           4.     The Court finds, on a preliminary basis and for the purposes of  
7 settlement only, that the requirements for certification under Rule 23(a) and Rule  
8 23(b)(1) are satisfied:

9           a)     The Settlement Class meets the numerosity requirement of Rule  
10 23(a)(1), as it consists of approximately 5700 class members.

11          b)     The Class Representatives have asserted claims that have at least one  
12 common question of law or fact to the Settlement Class and relate to the  
13 management of the Plan as a whole.

14          c)     The Class Representatives are current and former participants in the  
15 Plan and are typical of other Class Members.

16          d)     The Class Representatives have no conflicts with other Class Members,  
17 are adequate to represent the Settlement Class, and have retained experienced and  
18 qualified counsel to represent the Settlement Class as Class Counsel.

19          5.     Class certification is appropriate under Rule 23(b)(1) because the Class  
20 Representatives assert claims on behalf of the Plan as a whole, and prosecution of  
21 separate actions by individual class members would create a risk of inconsistent or  
22 varying adjudications with respect to individual class members that would establish  
23 incompatible standards of conduct for Defendants and would be dispositive of the  
24 interests of other class members as a practical matter or would substantially impair or  
25 impede their ability to protect their interests.

26          a)     The Court appoints Christina Humphrey Law, P.C., and Tower Legal  
27 Group, P.C. as Class Counsel, and appoints Salvador Aquino, Susan Ford,  
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1 Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan  
2 Sargent, the Named Plaintiffs, as the Class Representatives.

3       b) The non-opt out Settlement Class will be preliminarily certified for  
4 settlement purposes only, under the terms of the Agreement. The Settlement Class is  
5 defined as: All current and former participants and beneficiaries of the Plan at any  
6 time during the period from March 25, 2016 through the entry date of this  
7 Preliminary Approval Order (the “Class Period”), including any beneficiary of a  
8 deceased person who was a participant in the Plan at any time during the Class  
9 Period, and any alternate payees, in the case of a person subject to a [qualified  
10 domestic relations order (“QDRO”)] who was a participant in the Plan at any time  
11 during the Class Period.

12       c) If the Court does not issue the Final Approval Order and Judgment, then  
13 the certification will be vacated, and Defendants shall not be deemed to have  
14 admitted the propriety of Class certification under any provision of Federal Rule 23.

15       d) The terms set forth in the Agreement are preliminarily approved, subject  
16 to further consideration at the hearing the Court will hold pursuant to Federal Rule of  
17 Civil Procedure 23(e) to determine whether the Settlement should receive final  
18 approval by the Court, as provided for below (the “Fairness Hearing”). Having  
19 considered the terms of the Settlement and the submissions in support of preliminary  
20 approval, the Court determines, in accordance with Fed. R. Civ. P. 23(e)(1)(B), that  
21 it is likely that the Court will be able to grant final approval of the Settlement under  
22 Fed. R. Civ. P. 23(e)(2) following notice and a hearing. The Agreement therefore is  
23 sufficiently within the range of reasonableness to warrant the preliminary approval of  
24 the Agreement, the scheduling of the Fairness Hearing, and the issuance of Notice to  
25 Class Members, each as provided for in this Order.

26       6. The Court approves the retention by Class Counsel of ILYM Group,  
27 Inc. as the Settlement Administrator.

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1           7.       In further aid of the Court’s jurisdiction to review, consider, implement,  
2 and enforce the Settlement, the Court orders that Plaintiffs, all Class Members and  
3 the Plan are preliminarily enjoined and barred from commencing, prosecuting, or  
4 otherwise litigating, in whole or in part, either directly, individually, representatively,  
5 derivatively, or in any other capacity, whether by complaint, counterclaim, defense,  
6 or otherwise, in any local, state, or federal court, arbitration forum, or in any agency  
7 or other authority or forum wherever located, any contention, allegation, claim, cause  
8 of action, matter, lawsuit, or action (including but not limited to actions pending as  
9 of the date of this Order), including, without limitation, any Unknown Claims, that  
10 arises out of or relates in any way to the Released Claims or the Action.

11           8.       The Court approves the Notice to Class Members in substantially the  
12 forms attached as **Exhibits A-A1** to the Agreement. The Court approves the form  
13 and content of the Notice and finds that the proposed Settlement Notices fairly and  
14 adequately:

- 15           a.       Summarize the claims that are asserted;
- 16           b.       Identify the Settlement Class;
- 17           c.       Describe the terms and effect of the Settlement Agreement,  
18 including the benefits of the Settlement and the class  
19 release;
- 20           d.       Provide information regarding who is required to submit a  
21 Claim Form and the process for doing so;
- 22           e.       Notify the Settlement Class that Class Counsel will seek  
23 compensation from the Net Settlement Amount for  
24 Administrative Expenses, Attorneys’ Fees and Expenses,  
25 and Case Contribution Fees;
- 26           f.       Describe how the recipients of the Class Notice may object to the  
27 Settlement, or any requested Administrative Expenses, Attorneys’ Fees  
28 and Expenses, or Case Contribution Fees; and
- 29           g.       Give notice to the Settlement Class of the time and place of  
the Fairness Hearing, and Class Members’ right to appear.

30           9.       The Court finds that the Plan of Allocation proposed by Plaintiffs and  
31 Class Counsel for allocating the Settlement Amount to Class Members, as described

1 in **Exhibit B** to the Agreement, is likely to receive final approval and that the  
2 agreement is within the range of reasonableness to warrant preliminary approval.

3 //

4 **Manner of Giving Notice**

5 10. Defendants shall use reasonable efforts to cause the Plan Recordkeepers  
6 to provide to the Settlement Administrator, within fifteen (15) calendar days of the  
7 entry of this Preliminary Approval Order, the Class Member List, as defined in the  
8 Settlement Agreement in Section 8.2, sufficient to implement the Plan of Allocation,  
9 and distribute the Net Settlement on the terms provided for in the Agreement. The  
10 names and addresses provided to the Settlement Administrator pursuant to this Order  
11 shall be used solely for the purpose of providing Notice of this Settlement and  
12 distribution of the Settlement Fund, and for no other purpose and shall be treated as  
13 “Confidential” under the Protective Order governing the Action (Case No. 2:22-cv-  
14 01966-SPG, Dkt. 53).

15 11. Within fifteen (15) calendar days of receipt of the Class Member List,  
16 the Settlement Administrator shall cause the Notice to be sent to each Class Member  
17 by First Class Mail.

18 12. The same date the Notice is initially mailed, the Settlement  
19 Administrator shall establish a website containing, the Notice, the Agreement and its  
20 exhibits, this Order, the First Amended Complaint, and the Motions for Preliminary  
21 Approval and Final Approval (when filed); the Motion for Attorneys’ Fees and  
22 Expenses (when filed); any approval order or other Court orders related to the  
23 Settlement, any amendments or revisions to these documents, and any other  
24 documents or information mutually agreed upon by the Parties, as well as the date,  
25 time, and instructions to attend the Fairness Hearing (and any changes thereto).

26 13. The same date the Notice is initially mailed, the Settlement  
27 Administrator shall establish a toll-free telephone number to which Class Members  
28 can direct questions about the Settlement.



1 18. Not later than thirty-five (35) calendar days before the Fairness Hearing,  
2 Class Counsel shall submit their papers in support of final approval of the Agreement  
3 and in support of Class Counsel’s Fee and Expense Application and Approval of  
4 Case Contribution Awards.

5 19. Not later than thirty (30) calendar days before the Fairness Hearing, the  
6 Independent Fiduciary shall submit its written determination to Defendants’ Counsel  
7 and Class Counsel pursuant to Section 2.1 of the Agreement.

8 20. Not later than thirty-five (35) calendar days before the Fairness Hearing,  
9 the Settlement Administrator shall submit its declaration affirming that the notice  
10 process has been completed pursuant to the Settlement Agreement.

11 **Objections to the Settlement**

12 21. Class Members can request the Court to deny approval of the Settlement  
13 and/or the Motion for Attorneys’ Fees and Expenses of Class Counsel or the Case  
14 Contribution Fees to be requested for the Class Representatives by filing an  
15 objection or making an appearance at the Fairness Hearing and stating the objection.  
16 The Court will consider written comments and objections to the Settlement, to the  
17 proposed Motion for Attorneys’ Fees and Expenses, and to Plaintiffs’ request for  
18 Case Contribution Awards. No appearance is necessary at the Fairness Hearing if the  
19 objection is submitted in writing. If the objection is submitted in writing, it should  
20 (a) clearly identify the case name and number (i.e. *Aquino, et al. v. 99 Cents Only*  
21 *Stores., et al.*, Case No. 22-cv- 01966-SPG), (b) be submitted to the Court either by  
22 mailing it to the Clerk of the Court, United States District Court for the Central  
23 District of California, Clerk of the Court for the United States District Court for the  
24 Central District of California -Western Division, First Street U.S. Courthouse, 350  
25 W. 1st Street, Suite 4311, Los Angeles, CA 90012-4565, or by filing it in person at  
26 any location of the United States District Court for the Central District of California,  
27 and (c) be filed or postmarked on or before \_\_\_\_\_ [actual date to be 35 days  
28 before Final Fairness Hearing]. Your objection should including the following



1 information: (1) his/her/its full name, current address, and current telephone number,  
2 and, if represented by counsel, any of his/her/its counsel's name and contact  
3 information; (2) whether the objection applies only to the objecting Class Member,  
4 to a specific subset of the Class, or to the entire Class; (3) a statement of the  
5 position(s) the objector wishes to assert; (4) copies of any other documents that the  
6 objector wishes to submit in support of his/her/its position; and (5) a list of any other  
7 objections to any class action settlements submitted in any court, whether state,  
8 federal, or otherwise, in the United States in the previous five (5) years.

9 22. Any Class Member who files and serves a written comment or objection  
10 may also appear at the Fairness Hearing either in person or through qualified counsel  
11 retained at their own expense. Any comment or objection that is timely filed or  
12 postmarked will be considered by the Court even in the absence of a personal  
13 appearance by the Class Member or that Class Member's counsel.

14 23. The Parties may file written responses to any objections not later than  
15 five (5) business days before the Fairness Hearing or submit an oral response at the  
16 Fairness Hearing.

17 **Termination of Settlement**

18 24. This Order shall become null and void, *ab initio*, and shall be without  
19 prejudice to the rights of the Parties, all of whom shall be deemed to have reverted to  
20 their respective status in the Action as of April 1, 2023, (for Plaintiffs and the 99  
21 Cents Defendants), if Settlement is terminated in accordance with the terms of the  
22 Agreement.

23 **Use of Order**

24 25. This Order is not admissible as evidence for any purpose against the  
25 Defendants or the Released Parties in any pending or future litigation. This Order:  
26 (a) shall not give rise to any inference of, and shall not be construed or used as an  
27 admission, concession, or declaration against any of the Defendants or the Released  
28 Parties of wrongdoing or liability in the Action or any other proceeding; (b) is not an



1 admission of any liability of any kind, whether legal or factual; (c) shall not be used  
2 or received in evidence in any action or proceeding for any purpose, except in an  
3 action or proceeding to enforce the Agreement, whether affirmatively or defensively;  
4 (d) shall not be construed or used as an admission, concession, or declaration by or  
5 against Plaintiffs, the Plan, or the Class Members that their claims lack merit or that  
6 the relief requested in the Action is inappropriate, improper or unavailable; and (e)  
7 shall not be construed or used as an admission, concession, declaration or waiver by  
8 any Party of any arguments, defenses, or claims he, she, or it may have in the event  
9 that the Agreement is terminated. This Order and the Agreement and any  
10 proceedings taken pursuant to the Agreement are for settlement purposes only.

11 **Jurisdiction**

12 26. The Court may adjourn or continue the Fairness Hearing without further  
13 direct notice to the Class Members other than by notice to Class Counsel and retains  
14 jurisdiction to consider all further applications or matters arising out of or connected  
15 with the proposed Settlement. The Court may approve the Settlement, with such  
16 modifications as may be agreed to by the Parties, if appropriate, without further  
17 notice to the Class.

18  
19 **IT IS SO ORDERED.**

20  
21 Dated:

\_\_\_\_\_  
22 HON. SHERILYN PEACE GARNETT  
23 UNITED STATES DISTRICT JUDGE  
24  
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## **Exhibit D**

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 2:22-cv-01966- SPG

**[PROPOSED] FINAL APPROVAL  
ORDER AND JUDGMENT (ECF No. \_)**

SALVADOR AQUINO, SUSAN  
FORD, MONICALAYLE GARCIA,  
BARBARA KRAUS, MARTHA  
LOPEZ, FRANCISCO MARTINEZ,  
MEGAN SARGENT, individually and  
as a representative of a Putative Class  
of Participants and Beneficiaries, on  
behalf of the 99 CENTS ONLY  
STORES 401(K) PLAN,

Plaintiffs,

v.

99 CENTS ONLY STORES LLC; THE  
RETIREMENT COMMITTEE OF THE  
99 CENTS ONLY 401(K) PLAN; and  
DOES 1 through 20,

Defendants.

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

2 WHEREAS, Plaintiffs and Class Representatives Salvador Aquino, Susan  
3 Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and  
4 Megan Sargent (collectively, “Plaintiffs”) in the action, *Aquino, et al., v. 99 Cents*  
5 *Only Stores, et al.*, C.D. Cal. Case No. 2:22-cv-01966-SPG, on behalf of themselves  
6 and the Class and the Plan, on the one hand, and Defendants 99 Cents Only Stores  
7 LLC; and The Retirement Committee Of The 99 Cents Only 401(K) Plan  
8 (collectively, the “Defendants”), on the other hand, have entered into a Settlement  
9 Agreement and Release dated April 17, 2023(the “Agreement” or “Settlement  
10 Agreement”), which provides for a complete dismissal with prejudice of all claims  
11 asserted in the Action against Defendants by the Class on the terms and conditions  
12 set forth in the Agreement, subject to the approval of this Court (the “Settlement”);

13 WHEREAS, the capitalized terms not defined in this Final Approval Order  
14 and Judgment shall have the same meaning ascribed to them in Article I of the  
15 Agreement;

16 WHEREAS, by Order dated [REDACTED], 2023 (the “Preliminary  
17 Approval Order”), this Court (1) preliminarily certified the Class for settlement  
18 purposes only; (2) preliminarily approved the Settlement; (3) appointed a Settlement  
19 Administrator; (4) directed notice be given to the Class and approved the form and  
20 manner of Notice; (5) approved the Plan of Allocation; and (6) scheduled a Fairness  
21 Hearing;

22 WHEREAS, the Court conducted a hearing on [REDACTED], 2023 (the  
23 “Fairness Hearing”) to consider, among other things: (1) whether the Class should be  
24 certified for settlement purposes only; (2) whether the proposed Settlement on the  
25 terms and conditions provided for in the Agreement is fair, reasonable, adequate, and  
26 in the best interests of the Class and should be finally approved by the Court; (3)  
27 whether Class Counsel’s Fee and Expense Application is reasonable and should be  
28 approved; (4) whether Plaintiffs’ requests for Case Contribution Awards are

1 reasonable and should be approved; and (5) whether this Final Approval Order and  
2 Judgment should be entered dismissing with prejudice all claims asserted in the  
3 Action against Defendants; and

4 WHEREAS, the Court having reviewed and considered the Agreement, all  
5 papers filed and proceedings held herein in the Action in connection with the  
6 Settlement, all oral and written comments received regarding the Settlement, and the  
7 record in the Action, and good cause appearing therefor;

8 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND  
9 DECREED:

10 1. **Jurisdiction**: The Court has jurisdiction over the subject matter of the  
11 Action, and all matters relating to the Settlement, as well as personal jurisdiction  
12 over all of the Parties and each of the Class Members.

13 2. **Incorporation of Settlement Documents**: This Final Approval Order  
14 and Judgment incorporates and makes a part hereof: (a) the Agreement filed with the  
15 Court on April 19, 2023, including the exhibits submitted therewith; and (b) the  
16 Notice approved by the Court on [REDACTED], 2023.

17 3. **Class Certification**: The Court has held that the non-opt out Class  
18 should be certified under Federal Rule of Civil Procedure 23(a) and 23(b)(1), under  
19 the terms of the Agreement. The Court confirms that the class preliminarily certified  
20 under Fed. R. Civ. P. 23(b)(1) is appropriate for the reasons set forth in its  
21 Preliminary Approval Order, and hereby finally certifies the following non-opt-out  
22 class:

23 All persons who participated in the Plan at any time during the period from  
24 March 25, 2016 through and including [the date of the Preliminary Approval  
25 Order] (the “Class Period”), including any Beneficiary of a deceased Person  
26 who participated in the Plan at any time during the Class Period, and any  
27 Alternate Payee of a Person subject to a QDRO who participated in the Plan at  
28

1 any time during the Class Period. Excluded from the Settlement Class are  
2 Defendants and their Beneficiaries.

3 4. **Notice:** The Court finds that the dissemination of the Notice: (a) was  
4 implemented in accordance with the Preliminary Approval Order; (b) constituted the  
5 best notice reasonably practicable under the circumstances; (c) constituted notice that  
6 was reasonably calculated, under the circumstances, to apprise all Class Members of  
7 the pendency of the Action, of the effect of the Settlement (including the releases  
8 provided for therein), of their right to object to the Settlement and appear at the  
9 Fairness Hearing, of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of  
10 Expenses, and of the Class Representatives’ request for Case Contribution Awards;  
11 (d) constituted due, adequate, and sufficient notice to all persons or entities entitled  
12 to receive notice of the proposed Settlement; and (e) satisfied the requirements of  
13 Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution  
14 including the Due Process Clause, and all other applicable law and rules.

15 5. **Objections:** The Court finds that there were no objections submitted to  
16 the Settlement Agreement, to the Administration Costs, to the Motion for Attorneys’  
17 Fees, Reimbursement of Expenses, and the Class Representatives’ request for Case  
18 Contribution Awards.

19 6. **Final Settlement Approval:** Pursuant to Fed. R. Civ. P. 23(e), the  
20 Court hereby approves the Settlement and the terms therein as a fair, reasonable, and  
21 adequate settlement and compromise of the claims asserted in the Class Action. The  
22 Court finds that the Settlement is fair, reasonable, and adequate to the Plan and Class  
23 Members based on the following findings of fact, conclusions of law, and  
24 determinations of mixed fact/law questions:

- 25 a. The Settlement resulted from arm’s-length negotiations by experienced and  
26 competent counsel overseen by a neutral mediator;
- 27 b. The Settlement was negotiated only after Class Counsel had conducted a  
28 pre-settlement investigation and received pertinent information and

- 1 documents from Defendants in discovery;
- 2 c. Class Counsel and Plaintiffs were well-positioned to evaluate the value of
- 3 the Action;
- 4 d. If the Settlement had not been achieved, Plaintiffs and the Class Members
- 5 faced significant expense, risk, and uncertainty in connection with the
- 6 litigation, which likely would have been prolonged;
- 7 e. The amount of the Settlement is fair, reasonable, and adequate in light of the
- 8 claims that were asserted, the risks of litigation, and settlements in other
- 9 similar cases, and the Plan of Allocation is also fair, reasonable, and
- 10 appropriate;
- 11 f. The Class Representatives and Class Counsel support the Settlement, and
- 12 have concluded that the Agreement is fair, reasonable, and adequate;
- 13 g. Class Members had the opportunity to be heard on all issues relating to the
- 14 Settlement and the requested Administrative Expenses, Attorneys' Fees and
- 15 Costs, and Class Representatives' Compensation by submitting objections
- 16 to the Settlement Agreement to the Court. There were no objections to the
- 17 Settlement.
- 18 h. The Settlement also was reviewed by an Independent Fiduciary, who has
- 19 approved and authorized the Settlement.

20 7. The Motion for Final Approval of the Settlement Agreement is hereby

21 GRANTED, the Settlement of the Class Action is APPROVED as fair, reasonable,

22 and adequate to the Plan and the Settlement Class, and the Parties are hereby directed

23 to take the necessary steps to effectuate the terms of the Agreement.

24 8. Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses,

25 and Class Representatives' Case Contribution Awards, is hereby approved.

26 9. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of

27 Civil Procedure, this Court fully and finally approves the Settlement set forth in the

28 Agreement in all respects including, without limitation, the terms of the Settlement;

1 the releases provided for therein; and the dismissal with prejudice of the claims  
2 asserted in the Action, and finds that the Settlement is, in all respects, fair,  
3 reasonable, and adequate, and is in the best interests of Plaintiffs, the Class, and the  
4 Plan. The Parties are directed to implement, perform, and consummate the  
5 Settlement in accordance with the terms and provisions of the Agreement.

6 10. The Settlement Administrator shall have final authority to determine the  
7 share of the Net Settlement Amount to be allocated to each Active Participant and  
8 each Authorized Former Participant pursuant to the Plan of Allocation.

9 11. With respect to payments or distributions to Authorized Former  
10 Participants, all questions not resolved by the Settlement Agreement shall be  
11 resolved by the Settlement Administrator in its sole and exclusive discretion.

12 12. Within twenty-one (21) calendar days following the issuance of all  
13 settlement payments to Class Members as provided by the Plan of Allocation, the  
14 Settlement Administrator shall prepare and provide to Class Counsel and Defense  
15 Counsel a list of each person who received a settlement payment or contribution  
16 from the Qualified Settlement Fund and the amount of such payment or contribution.

17 13. **Dismissal of Claims:** As of the Effective Date, pursuant to Fed. R. Civ.  
18 P. 54(b), all of the Claims against Defendants are dismissed with prejudice. The  
19 Parties shall bear their own costs and expenses, except as otherwise expressly  
20 provided in the Agreement.

21 14. **Binding Effect:** The terms of the Agreement and of this Final Approval  
22 Order and Judgment shall be forever binding on Defendants, Plaintiffs, and all Class  
23 Members, as well as their respective current and former beneficiaries, heirs,  
24 descendants, dependents, marital communities, administrators, executors,  
25 representatives, predecessors, successors, and assigns, and as described under the  
26 Agreement.

27 15. **CAFA:** Pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, et  
28 seq., a separate notice of the Settlement (“CAFA Notice”) was provided to the



1 Attorneys General for each of the states in which a Class Member resides, the  
2 Attorney General of the United States, and the United States Secretary of Labor. All  
3 requirements of the Class Action Fairness Act (“CAFA”), 29 U.S.C. § 1711, et seq.,  
4 have been met, and Defendants have fulfilled their obligations under CAFA.

5 16. **Releases:** The releases of the Released Claims, as set forth in the  
6 Agreement (the “Releases”), are expressly incorporated herein in all respects. The  
7 Releases are effective as of the date of the entry of this Final Approval Order and  
8 Judgment.

9 17. **No Admissions:** This Final Approval Order and Judgment, the  
10 Preliminary Approval Order, the Agreement, including the exhibits thereto and the  
11 Plan of Allocation contained therein (or any other plan of allocation that may be  
12 agreed-upon by the Parties or approved by the Court) and any other supporting  
13 papers, and any related negotiations or proceedings: (a) shall not give rise to any  
14 inference of, and shall not be construed or used as an admission, concession, or  
15 declaration against any of the Defendants or Released Parties of wrongdoing or  
16 liability in the Action or any other proceeding; (b) are not an admission of any  
17 liability of any kind, whether legal or factual; (c) shall not be used or received in  
18 evidence in any action or proceeding for any purpose, except in an action or  
19 proceeding to enforce the Agreement, whether affirmatively or defensively; (d) shall  
20 not be construed or used as an admission, concession, or declaration by or against  
21 Plaintiffs, the Plan, or the Class that their claims lack merit or that the relief  
22 requested in the Action is inappropriate, improper, or unavailable; and (e) shall not  
23 be construed or used as an admission, concession, declaration, or waiver by any  
24 Party of any arguments, defenses, or claims he, she, or it may have in the event that  
25 the Agreement is terminated. This Final Approval Order and the Agreement and any  
26 proceedings taken pursuant to the Agreement are for settlement purposes only.

27 18. **Retention of Jurisdiction:** Without affecting the finality of this Final  
28 Approval Order and Judgment in any way, this Court retains continuing and

1 exclusive jurisdiction over: (a) the Parties for purposes of the administration,  
2 interpretation, implementation, and enforcement of the Settlement; (b) the  
3 disposition of the Settlement Fund; (c) Class Counsel’s Fee and Expense Application  
4 and the Class Representatives’ request for Case Contribution Awards; and (d) the  
5 Class Members for all matters relating to the Action.

6 19. **Modification of the Agreement:** Without further approval from the  
7 Court, Plaintiffs and Defendants are authorized to agree to and adopt such  
8 amendments or modifications of the Agreement or any exhibits attached thereto to  
9 effectuate this Settlement that: (a) are not materially inconsistent with this Final  
10 Approval Order and Judgment; and (b) do not materially limit the rights of Class  
11 Members in connection with the Settlement.

12 20. **Termination:** If the Settlement does not go into effect or is terminated  
13 as provided for in the Agreement, then this Final Approval Order and Judgment (and  
14 any orders of the Court relating to the Settlement) shall be vacated, rendered null and  
15 void, and be of no further force or effect, except as otherwise provided by the  
16 Agreement.

17 21. **Entry of Final Judgment:** There is no just reason to delay entry of this  
18 Final Approval Order and Judgment as a final judgment with respect to the claims  
19 asserted in the Action. Accordingly, the Clerk of the Court is expressly directed to  
20 immediately enter this Final Approval Order and Judgment pursuant to Fed. R. Civ.  
21 P. 54(b) as against Defendants.

22  
23 **IT IS SO ORDERED.**

24  
25 Dated:

26 \_\_\_\_\_  
27 HON. SHERILYN PEACE GARNETT  
28 UNITED STATES DISTRICT JUDGE

# **Exhibit E**

Eric G. Serron.  
202 429 6470  
ESerron@steptoe.com

**Steptoe**

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
202 429 3000 main  
www.steptoe.com

April \_\_, 2023

**VIA FEDERAL EXPRESS**

The Honorable Merrick B. Garland  
Attorney General of the United States of America  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The State Attorneys General (identified on Attachment A hereto)

**Re: Defendants' Class Action Fairness Act Notice in *Aquino v. 99 Cents Only Stores LLC and The Retirement Committee of the 99 Cents Only 401(k) Plan, Case No. 2:22-cv-01966-SPG (AFMx), C. D. Ca.***

Dear Attorney General Garland and State Attorneys General:

In accordance with the Class Action Fairness Act of 2005 ("CAFA"), Defendants 99 Cents Only Stores LLC and The Retirement Committee of the 99 Cents Only 401(k) Plan, in the above action, provide this Notice to advise you that, on April 19, 2023, Plaintiffs Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent filed a proposed class action settlement agreement in the above action. This letter and enclosures are submitted on behalf of all parties named as defendants.

The specified documents referenced in CAFA are contained on the CD enclosed with this letter. The CD contains a .PDF copy of each of the following:

- Class Action Complaint of Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent (ECF 1);
- First Amended Class Action Complaint of Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent (ECF 40);

- Notice of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Settlement Class, Approval of Class Notice, and Scheduling of a Fairness Hearing (ECF [REDACTED]);
- Memorandum of Points and Authorities in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Settlement Class, Approval of Class Notice, and Scheduling of a Fairness Hearing (ECF [REDACTED]);
- Declaration of Christina A. Humphrey in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Settlement Class, Approval of Class Notice, and Scheduling of a Fairness Hearing (ECF [REDACTED]);
- Declaration of James A. Clark in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Settlement Class, Approval of Class Notice, and Scheduling of a Fairness Hearing (ECF [REDACTED]);
- Declaration of Lisa Mullins (ECF [REDACTED]);
- Class Action Settlement Agreement (ECF [REDACTED]);
- Notice of Class Action Settlement (ECF [REDACTED]);
- Class Counsel's Proposed Plan of Allocation (ECF [REDACTED]);
- [Proposed] Preliminary Approval Order (ECF [REDACTED]);
- [Proposed] Final Approval Order and Judgment (ECF [REDACTED]);

Based on currently available information, a reasonable estimate of the number of settlement class members residing in each State is shown on Attachment B. It is not feasible to provide the estimated proportionate share of class members' claims to the entire settlement pursuant to 28 U.S.C. § 1715(b)(7). Plaintiffs are developing a Plan of Allocation to be submitted to the Court in connection with final approval of the settlement. Under the Class Action Settlement Agreement, a portion of the settlement fund of \$750,000 will be used to pay plaintiffs' attorneys fees and costs, service awards to class representatives, settlement administration expenses, as well as any taxes that are or will be owed.

The final fairness hearing is scheduled for \_\_\_\_\_, 2023, at \_\_\_\_\_ .m., before United States District Court Judge Sherilyn Peace Garnett, at the First Street Courthouse, 350 West 1st Street, Courtroom 5C, Los Angeles, California 90012.

There are no settlements or other agreements contemporaneously made between the class counsel and counsel for defendants other than as contained in the Settlement Agreement.

If you are unable to access any of the information included on the enclosed CD, or if you have other questions, please contact us.

Very truly yours,

Eric G. Serron

*On Behalf of Defendants 99 Cents Only Stores LLC  
and The Retirement Committee of the 99 Cents Only  
401(k) Plan*

cc: Paul J. Ondrasik, Jr., Esq. (without enclosure)

Christina Humphrey, Esq. (without enclosure)

James A. Clark, Esq. (without enclosure)

Renee P. Ortega, Esq. (without enclosure)

**ATTACHMENT A  
State Attorneys General**

The Honorable Ellen F. Rosenblum  
Attorney General of Oregon  
Office of the Attorney General  
ATTN: CAFA Coordinator  
1162 Court St. NE  
Salem, OR 97301-4096

The Honorable Andrea Campbell  
Attorney General of the Commonwealth of Massachusetts  
Office of the Attorney General  
ATTN: CAFA Coordinator/General Counsel's Office  
One Ashburton Place  
Boston, MA 02108

The Honorable Chris Carr  
Attorney General of the State of Georgia  
Office of the Attorney General  
ATTN: CAFA Coordinator  
40 Capitol Square, SW  
Atlanta, GA 30334

The Honorable Letitia James  
New York Attorney General  
Office of the Attorney General  
ATTN: CAFA Coordinator  
The Capitol  
Albany, NY 12224-0341

The Honorable Ashley Moody  
Attorney General of the State of Florida  
Office of the Attorney General  
ATTN: CAFA Coordinator  
PL-01 The Capitol  
Tallahassee, FL 32399-1050

The Honorable Rob Bonta  
Attorney General of California  
Office of the Attorney General  
ATTN: CAFA Coordinator  
Office of the Attorney General  
Consumer Protection Section  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102

The Honorable Josh Stein  
Attorney General of North Carolina  
Department of Justice  
ATTN: CAFA Coordinator  
9001 Mail Service Center  
Raleigh, NC 27699-9001

The Honorable Steve Marshall  
Attorney General of Alabama  
ATTN: CAFA Coordinator  
501 Washington Ave. P.O. Box 300152  
Montgomery, AL 36130-0152

The Honorable Kris Mayes  
Attorney General of Arizona  
ATTN: CAFA Coordinator  
2005 N Central Avenue  
Phoenix, AZ 85004 |

The Honorable Tim Griffin  
Attorney General of Arkansas  
323 Center St., Suite 200  
Little Rock, AR 72201-2610

The Honorable Phil Weiser  
Attorney General of Colorado  
ATTN: CAFA Coordinator  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10th Floor  
Denver, CO 8020



The Honorable Anne E. Lopez  
Attorney General of Hawaii  
425 Queen Street  
Honolulu, HI 96813

The Honorable Todd Rokita  
Attorney General of Indiana  
ATTN: CAFA Coordinator  
Indiana Government Center South – 5th Floor  
302 West Washington Street  
Indianapolis, IN 46204

The Honorable Brenna Bird  
Attorney General of Iowa  
ATTN: CAFA Coordinator  
Hoover State Office Bldg.  
1305 E. Walnut  
Des Moines, IA 50319

The Honorable Dana Nessel  
Attorney General of Michigan  
ATTN: CAFA Coordinator  
P.O. Box 30212  
525 W. Ottawa St.  
Lansing, MI 48909-0212

The Honorable Keith Ellison  
Attorney General of Minnesota  
ATTN: CAFA Coordinator  
Suite 102, State Capital  
75 Dr. Martin Luther King Blvd.  
St. Paul, MN 55155

The Honorable Andrew Bailey  
Attorney General of Missouri  
Supreme Ct. Bldg.  
207 W.High St.  
Jefferson City, MO 65101

The Honorable Aaron D. Ford  
Attorney General of Nevada  
ATTN: CAFA Coordinator  
Old Supreme Ct. Bldg  
100 N. Carson St.  
Carson City, NV 89701

The Honorable Matthew Platkin  
Attorney General of New Jersey  
ATTN: CAFA Coordinator  
Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 080  
Trenton, NJ 08625

The Honorable Raul Torrez  
Attorney General of New Mexico  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508

The Honorable Gentner Drummond  
Attorney General of Oklahoma  
ATTN: CAFA Coordinator  
313 NE 21<sup>st</sup> St.  
Oklahoma City, OK 73105

The Honorable Jonathan Skrmetti  
Attorney General of Tennessee  
ATTN: CAFA Coordinator  
425 5th Avenue North  
Nashville, TN 37243

The Honorable Ken Paxton  
Attorney General of Texas  
ATTN: CAFA Coordinator  
Capitol Station  
P.O.Box 12548  
Austin, TX 78711-2548

The Honorable Sean Reyes  
Attorney General of Utah  
ATTN: CAFA Coordinator  
State Capitol, Rm. 236  
Salt Lake City, UT 84114-0810

The Honorable Jason Miyares  
Attorney General of Virginia  
ATTN: CAFA Coordinator  
202 North Ninth Street  
Richmond, VA 23219

The Honorable Bob Ferguson  
Attorney General of Washington  
ATTN: CAFA Coordinator  
1125 Washington St. SE  
P.O. Box 40100  
Olympia, WA 98504-0100

The Honorable Josh Kaul  
Attorney General of Wisconsin  
ATTN: CAFA Coordinator  
Wisconsin Department of Justice  
State Capitol, Room 114 East  
P. O. Box 7857  
Madison, WI 53707-7857

**ATTACHMENT B**

| <b>STATE</b>   | <b>Estimated Numbers of Class Members</b> |
|----------------|---|
| AL             | 2   |
| AR             | 1   |
| AZ             | 479                                       |
| CA             | 4402                                      |
| CO             | 4   |
| FL             | 13  |
| GA             | 1   |
| HI             | 2   |
| IA             | 2   |
| IN             | 1   |
| MA             | 1   |
| MI             | 2   |
| MN             | 1   |
| MO             | 2   |
| NC             | 3   |
| NJ             | 1   |
| NM             | 1   |
| NV             | 243                                       |
| NY             | 1   |
| OK             | 1   |
| OR             | 3   |
| TN             | 5   |
| TX             | 523                                       |
| UT             | 2   |
| VA             | 1   |
| WA             | 2   |
| WI             | 2   |
| Out of Country | 2   |

1 **CHRISTINA HUMPHREY LAW, P.C.**  
2 Christina A. Humphrey (SBN 226326)  
3 Robert N. Fisher (SBN 302919)  
4 1117 State Street  
5 Santa Barbara, CA 93101  
6 Telephone: (805) 618-2924  
7 Facsimile: (805) 618-2939  
8 Email: christina@chumphreylaw.com  
9 Email: rob@chumphreylaw.com

**TOWER LEGAL GROUP, P.C.**  
James A. Clark (SBN 278372)  
Renee P. Ortega (SBN 283441)  
11335 Gold Express Drive, Ste. 105  
Gold River, CA 95670  
Telephone: (916) 361-6009  
Facsimile: (916) 361-6019  
Email: james.clark@towerlegalgroup.com  
Email: renee.parras@towerlegalgroup.com

[Attorneys for Plaintiffs]

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SALVADOR AQUINO, SUSAN  
FORD, MONICALAYLE GARCIA,  
BARBARA KRAUS, MARTHA  
LOPEZ, FRANCISCO MARTINEZ,  
MEGAN SARGENT, individually and  
as a representative of a Putative Class  
of Participants and Beneficiaries, on  
behalf of the 99 CENTS ONLY  
STORES 401(K) PLAN,

Plaintiffs,

v.

99 CENTS ONLY STORES LLC; THE  
RETIREMENT COMMITTEE OF THE  
99 CENTS ONLY 401(K) PLAN; and  
DOES 1 through 20,

Defendants.

Case No. 2:22-cv-01966- SPG

**DECLARATION OF JAMES A.  
CLARK IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION  
OF SETTLEMENT CLASS,  
APPROVAL OF CLASS NOTICE,  
AND SCHEDULING OF A FAIRNESS  
HEARING**

[Filed and served concurrently with  
Notice, Memorandum of Points and  
Authorities, Declaration of Attorney  
Christina A. Humphrey, Declaration of  
Administrator Lisa Mullins, and  
[Proposed] Order]

Judge: Sherilyn Peace Garnett  
Hearing Date: May 31, 2023  
Hearing Time: 1:30 p.m.  
Courtroom: 5C

1  
2 I, James A. Clark, declare:

3 1. I am an adult above the age of eighteen years of age. I am the managing  
4 partner of TOWER LEGAL GROUP, P.C., and counsel of record for  
5 Plaintiffs Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus,  
6 Martha Lopez, Francisco Martinez, and Megan Sargent in the above entitled action.  
7 I am an attorney licensed to practice law in all of the Courts of the State of  
8 California. I am also admitted to practice in the Northern, Central, and Eastern  
9 United States District Courts. I have personal knowledge of the facts set forth  
10 herein, and, if called as a witness, could and would testify competently thereto.

11 2. This declaration is given in support of Plaintiffs' Unopposed Motion for  
12 Preliminary Approval of Class Action Settlement, Conditional Certification of  
13 Settlement Class, Approval of Class Notice, and Scheduling of a Fairness Hearing.

14 **I. ADEQUACY AS CLASS COUNSEL**

15 3. I received my law degree in 2011 from Lincoln Law School of  
16 Sacramento, where I graduated in the top 3 of my class, receiving the *Outstanding*  
17 *Academic Achievement Award*. I attended law school in the evenings while working  
18 full time. In 1997, I earned my Bachelor's Degree in Biology and Chemistry, from  
19 Capital University in Columbus, Ohio. In 1998, I received a Certified Quality  
20 Engineer certificate from the American Society for Quality. In 1993, I enlisted in  
21 the United States Marine Corps, and received an Honorable Discharge in 2001 as a  
22 rank of Sergeant.

23 4. Prior to completing law school, I worked for over 15 years as a Quality  
24 Engineer for large manufacturing corporations, with my most recent employment  
25 title as Director of Operations for North America. In this role, I oversaw the  
26 manufacturing of beverages distributed throughout North America, including

1 multiple locations in California. Also in this role, I gained extensive experience in  
2 Employment Policies and Procedures, including interacting with employees to  
3 ensure proper classification of exempt and non-exempt. Additionally, I was  
4 extensively involved with creating job descriptions throughout manufacturing roles,  
5 including supply and storeroom employees. In these roles, I gained extensive  
6 experience and practical knowledge of real-life practices of employees and  
7 employers engaging in the interactive process and ensuring proper pay practices,  
8 pursuant to California laws and regulations.

9 5. I am the managing partner of the law firm of Tower Legal Group,  
10 P.C. (“TLG”). My firm opened in early 2012. Since then, TLG attorneys have  
11 successfully litigated cases involving numerous alleged violations of various  
12 employment laws and practices, including harassment, discrimination and retaliation,  
13 as well as wage and hour violations including off-the-clock/unpaid time allegations  
14 and reimbursement of expenses, improper wage statement and other wage and hour  
15 violations. The plaintiff side employment cases that we have either been involved in  
16 or been responsible for directly, have resulted in the payment by defendants of  
17 millions of dollars in settlements.

18 6. TLG attorneys have experience trying cases to verdict. Our firm  
19 concentrates its efforts on areas of Plaintiff Employment litigation. TLG attorneys  
20 have tried multiple Plaintiff employment cases to verdict. In 2013, my co-counsel  
21 and I obtained a \$133,000 jury verdict in a misrepresentation and breach of contract  
22 case in the Yolo County Superior Court (*Sterling v. All Phase Security*) involving an  
23 employee who was fired after he complained he had not received the health  
24 insurance benefits he had been promised upon hiring. In 2017, my law partner and I  
25 obtained a \$420,000 jury verdict in a FEHA disability discrimination case in Yuba  
26 County (*Abinante v. The Fremont-Rideout Health Group*). In 2018, we were

1 defended at trial in an Age Discrimination case in Placer County (*Harrington v.*  
2 *Housing Alternatives, Inc*), whereas my firm lost significant costs invested into the  
3 contingency case. In November of 2021, my firm obtained a \$9.9 million verdict in  
4 Sutter County Superior Court (*Tahara v. County of Sutter*), on behalf of the Plaintiff  
5 for sexual harassment and disability discrimination. In December of 2022, my firm  
6 obtained a \$55,000 verdict in Placer County (*Khatami v. RJUHSD*), on behalf of the  
7 Plaintiff for Defamation and Labor code violations.

8 7. TLG Attorneys also have experience trying criminal defense cases.  
9 Thus far, we have completed approximately 25 criminal defense trials in Sacramento  
10 County, San Joaquin County and Placer County. This experience has been  
11 beneficial in gaining general trial experience, including, evidence presentation,  
12 opening statements, closing arguments, jury voir dire, etc.

13 8. In recognition of my professional achievements, each year from 2015 to  
14 the Present, I have been selected to the Super Lawyers list.

15 9. TLG Attorneys volunteer with the Eastern District of California Federal  
16 Court in two capacities. First, we volunteer on the Pro Bono Panel to represent  
17 inmates and indigent plaintiffs in Civil Rights Cases. Thus far, we have litigated 2  
18 cases Pro Bono in the Eastern District of California, including *Young v. Jefferies*  
19 *2:12-cv-02673*, and *Gillam v. City of Vallejo 2:14-cv-2217*). Second, we volunteer  
20 as a mediator in ADA violations cases. We have mediated 6 cases in this capacity.  
21 Each of these capacities have developed skillset directly to become advanced in my  
22 practice of law.

23 10. TLG Attorneys have represented all Plaintiff Employment clients on  
24 pure contingency. We do not charge my clients any fees nor cost retainer up front  
25 (few of them would be able to afford it). We also front all out of pocket costs on my  
26 cases.



1           11. Renee Parras Ortega is a partner at TLG. She received a law degree in  
2 2011 from Lincoln Law School of Sacramento. She worked full time and attended  
3 law school in the evenings. She graduated in the top 10 of her class. In 2005, she  
4 earned two Bachelor's Degrees: a degree in Political Science and a degree in  
5 Sociology with an emphasis in law and society, from the University of California,  
6 Davis.

7           12. Ms. Parras Ortega has extensive experience litigating individual and  
8 class employment cases on behalf of Plaintiffs.

9           13. The cases TLG Attorneys have been involved in and have co-counseled  
10 whereas attorney fee declarations were submitted to the court include:

11           a. **Holmby v. Cardinal Logistics, (2015)** United States District Court,  
12 Northern District of California. Plaintiffs' Class Counsel. Final  
13 Approval of \$2 million settlement granted.

14           i. James Clark and Renee Parras Ortega of Tower Legal Group, PC  
15 submitted hourly rates of \$400 per hour to the Court in 2015.  
16 Settlement Approved.

17           b. **Rani M. v. San Mateo-Foster City School District. (2015)** San  
18 Mateo County Court. Co-Counsel a sexual assault and battery case  
19 against a school district. The minor's compromise required submitting a  
20 declaration of attorney fees. Confidential Settlement value.

21           i. James Clark and Renee Parras Ortega of Tower Legal Group, PC  
22 submitted hourly rates of \$450 per hour to the San Mateo Court  
23 in 2015. Settlement Approved.

24           c. **Pitshikyan v. Dependable Highway Express, Inc., (2016)**  
25 Sacramento Superior Court. Co-Lead counsel in an alleged class action  
26

1 claiming mis-classification of truck drivers classified as independent  
2 contractors. Final Approval of \$2.5 million settlement granted.

3 i. James Clark and Renee Parras Ortega of Tower Legal Group, PC  
4 submitted hourly rates of \$450 per hour to the Sacramento Court  
5 in 2017. Settlement Approved.

6 d. **Stovall, et al. v. Golfland Entertainment Centers. (2017)** Santa  
7 Clara County Court. Lead Counsel in an alleged class action claiming  
8 failure to pay minimum wage and failure to reimburse business  
9 expenses. Preliminary Approval of \$450,000 occurred on October 20,  
10 2017.

11 i. James Clark and Renee Parras Ortega of Tower Legal Group, PC  
12 submitting hourly rates of \$450 per hour to the Court in 2017.  
13 Settlement Approved.

14 e. **Parnow, et al. v. Universal Protection Services. (2019)** Yolo  
15 County Superior Court. Co-Counsel in alleged class action claiming  
16 failure to pay minimum wage and failure to reimburse expenses. Final  
17 approval for \$933,000. Settlement Approved.

18 i. James Clark and Renee Parras Ortega of Tower Legal Group, PC  
19 submitting hourly rates of \$550 per hour to the Court in 2019.

20 f. **Weiss v. Carmax Auto Superstores, Inc. (2020)** Placer County  
21 Superior Court. Co-Counsel in alleged class action claiming failure to  
22 pay for all hours worked for commission-based employees. Final  
23 approval of 6.518 million settlement granted.

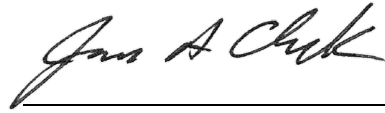
24 i. James Clark and Renee Parras Ortega of Tower Legal Group, PC  
25 submitting hourly rates of \$550 per hour to the Court in 2020.  
26

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I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18 day of April, 2023 at Sacramento, California.

**TOWER LEGAL GROUP, P.C.**



---

James A. Clark  
Declarant

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Email: renee.parras@towerlegalgroup.com

[Attorneys for Plaintiffs]

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SALVADOR AQUINO, SUSAN  
FORD, MONICALAYLE GARCIA,  
BARBARA KRAUS, MARTHA  
LOPEZ, FRANCISCO MARTINEZ,  
MEGAN SARGENT, individually and  
as a representative of a Putative Class  
of Participants and Beneficiaries, on  
behalf of the 99 CENTS ONLY  
STORES 401(K) PLAN,

Plaintiffs,

v.

99 CENTS ONLY STORES LLC; THE  
RETIREMENT COMMITTEE OF THE  
99 CENTS ONLY 401(K) PLAN; and  
DOES 1 through 20,

Defendants.

Case No. 2:22-cv-01966- SPG

**DECLARATION OF SETTLEMENT  
ADMINISTRATOR LISA MULLINS  
OF ILYM GROUP, INC., IN SUPPORT  
OF PLAINTIFFS' UNOPPOSED  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, CONDITIONAL  
CERTIFICATION OF SETTLEMENT  
CLASS, APPROVAL OF CLASS  
NOTICE, AND SCHEDULING OF A  
FAIRNESS HEARING**

[Filed and served concurrently with  
Notice, Memorandum of Points and  
Authorities, Declaration of Attorneys  
Christina A. Humphrey & James A. Clark,  
and [Proposed] Order]

Judge: Sherilyn Peace Garnett  
Hearing Date: May 31, 2023  
Hearing Time: 1:30 p.m.  
Courtroom: 5C

1 **DECLARATION OF LISA MULLINS**

2 1. I am a resident of the United States of America and am over the age  
3 of 21. I am the President for ILYM Group, Inc., (herein after referred to as  
4 “ILYM Group”), a professional class action services provider. I am preparing  
5 this declaration at the request of Plaintiff’s Counsel. I have personal knowledge  
6 of the facts herein, and, if called upon to testify, I could and would testify  
7 competently to such facts.

8 2. ILYM Group has extensive experience in disseminating ERISA class  
9 action notices and administering class action settlements, including direct mail  
10 services, telephone, and web-based support, database management, opt-out  
11 processing, and settlement fund distribution services for class actions ranging in  
12 size from 26 to 4.5 million Class Members. Attached hereto, as **Exhibit A**, is a  
13 true and correct copy of ILYM Group’s current CV, reflecting our primary  
14 competencies as they relate to class action administration. ILYM Group  
15 maintains the highest level of confidentiality. The class data and all forms of  
16 communication received by ILYM Group, Inc. will be held in strict  
17 confidentiality and will not be disclosed. ILYM Group, will set up a login for  
18 Defense Counsel to transmit the class data through our encrypted secure portal.  
19 Attached hereto, as **Exhibit B** is ILYM Group’s Security Summary and Protocol.  
20 ILYM Group is insured with E&O and Cyber Insurance policies.

21 3. ILYM Group has never had any financial interests in nor affiliation  
22 with the parties or counsel in the *Aquino v. 99 Cents Only Stores, LLC* matter.

23 4. If appointed by the Court to disseminate the ERISA class action  
24 notice in this case, ILYM Group’s duties will include but not limited to: (a)  
25 conducting address traces to locate class member addresses as necessary; (b)  
26 mailing the class notice to the class members; (c) handing inquiries from class

1 members concerning the ERISA class notice; and (d) performing other such  
2 duties as the parties and/or the Court may direct.

3 5. Upon appointment, ILYM Group will provide an email address,  
4 mailing address, and toll-free telephone number to receive correspondence and  
5 inquiries from class members. After receiving the class data file from Defendant’s  
6 recordkeeper, that should contain the class members’ names, last known  
7 addresses, and social security numbers, ILYM Group will upload the data into our  
8 database and check for duplicates and other possible discrepancies.

9 6. As part of the preparation for the emailing and mailing the class  
10 notice, ILYM Group will process class members’ names and addresses against the  
11 National Change of Address (“NCOA”) database, maintained by the United States  
12 Postal Service (“USPS”), for the purpose of updating and confirming the mailing  
13 addresses of the class members before mailing of the class notice and opt-in form.  
14 To the extent an updated address is found in the NCOA database, ILYM Group  
15 will use the updated address for mailing the class notice. If ILYM Group does not  
16 locate an updated address in the NCOA database, it will use the original address  
17 provided by Defendant for mailing the class notice.

18 7. Should any class notices be returned to ILYM Group’s office as  
19 undeliverable, ILYM Group will attempt to locate an updated address using the  
20 NCOA database and/or other skip trace efforts and will promptly re-mail the class  
21 notice.

22 8. Prior to sending out the notice in English, ILYM Group will fill in the  
23 specific date for the deadline so that all class members will be apprised of  
24 exactly when all applicable forms will be due, depending on the deadlines set by  
25 the Court, i.e file an objection. At the expiration of the deadline, ILYM Group  
26 will inform all parties as to the number and name of those individuals who filed

1 a claim form or objection.

2 9. ILYM Group’s Disbursement Process will include but not limited to;  
3 (a) applying for case EIN; (b) establishing Qualified Settlement Fund ([“QSF”]  
4 Escrow Account), with administering tasks including but limited to overview and  
5 reconciliation of account; (c) calculating the individual settlement amounts; (d)  
6 transferring funds to the recordkeeper for distribution and preparing,  
7 administrating and distributing settlement award checks to the Former  
8 Participants when called for, including necessary tax forms (1099); (e) calculating  
9 and withholding all applicable state and federal taxes; and (f) performing other  
10 such duties as the Parties and/or the Courts direct.

11 10. In addition, the Notice, Settlement Agreement, preliminary and final  
12 approval motions and related applications, and other litigation documents will be  
13 posted on the Settlement Website, and the Settlement Administrator will establish  
14 and monitor a toll-free number to field Settlement Class member inquiries. The  
15 website will also provide Class Counsel’s contact information and include  
16 instructions on how to access the case docket via PACER or in person at any of  
17 the court’s locations, the date and time of the final approval hearing, and a note  
18 advising Class Members that the hearing date may change without further notice  
19 to the Class and instructions to check the settlement website or the Court’s  
20 PACER site to confirm that the date has not changed.

21  
22 I declare, under penalty of perjury under the laws of the United States of  
23 America and the State of California that the foregoing is true and correct.

24 Executed this 19<sup>th</sup> day of April 2023, at Tustin, California.

25  
26   
27 \_\_\_\_\_  
28 Lisa Mullins

# **EXHIBIT “A”**



# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

## Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification, and direct media outlets firm. With over 20 years of combined experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and has become the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

### AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- ERISA
- TCPA
- Antitrust
- Securities

#### Ramirez v JC Penney.

- ERISA Case with a class size of 26,000.

#### Kruger, et al. v. Novant Health

- ERISA Case with a class size of \$32 million.

#### Abbott, et al. v. Lockheed Martin Corp.

- ERISA Case with \$62 million.

#### Jacqueline Jones vs. I.Q. Data International, Inc.

• TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

#### Reza Barani vs. Wells Fargo Bank, N.A.

• TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

#### Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

#### Robert Stone, et al. v. Universal Protection Services, LP, et al.

- Wage & Hour Case with a class size of 75,351.

# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

## PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

## MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

## MEDIA & INTERNET BANNER ADS

### Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.
- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

## PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing, Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID’s. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages. All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ’s) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels’ no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

## DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID's to ensure all collected member data coincides with all received claims.

## DISTRIBUTION AND SETTLEMENT FUNDING

- **Distribution and Management:** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- **Check Printing and Mailing:** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- **Preparation, Filing and Reporting of Taxes:** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

## CASE CONCLUSION

- **Data Manager Final Report:** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- **Project Manager Final Report:** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- **Affidavits:** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- **Document Retention:** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

# **EXHIBIT “B”**



### ILYM GROUP Security Summary – White Paper

ILYM Group, in conjunction with our security and Information technology vendors, is committed to the continued security of all data handled on behalf of our client base. We at ILYM ensure that this data security is enforced in a number of ways including, but not limited to, clean desk policies, security training, and implementation of industry best practices that allow our data to be compliant with relevant industry standard security compliance levels. These enforced practices and policies allow us to ensure, to the best of our ability, that all ILYM and client data is protected as best as possible from unauthorized access, is kept secure and private, and is accessible only by authorized parties if/when needed or appropriate purposes. We at ILYM, our security vendors, and our Information Technology vendors all also undergo continued training to ensure that all best practices in compliance are kept as up to date as possible for continued data security.

ILYM also ensures client access data is only used when needed and that client data is only accessed/available to be accessed by those that need to and are trained to do so. Also, access to class member data is limited per role to what information is needed to perform said role so that class member info, and subsets of class member info, is not available unless it is explicitly needed, employee, vendors, and contractors alike. ILYM also ensures client data security by thoroughly vetting employees, vendors, and contractors before employment by way of checking references, industry experience, and, for those eligible for employment, doing background checks. Any employee, vendor, or contractor that does not meet proper requirements will not be eligible to work with ILYM Group.

ILYM follows the below best practices to ensure that all ILYM/Client data is properly secured:

- All data transmitted to/from clients encrypted with SSL or comparable encryption scheme
- All email communications protected via email encryption using SSL or comparable encryption scheme
- Data Loss Prevention, intrusion prevention, and user risk management facilities used to safeguard data leakage and/or unauthorized access to cloud or local data.
- Access to client/class member data, and subsets of client data, in cloud and locally is controlled by role based access
- Strong passwords are in use for cloud, local, and VPN access
- 2fa is in use for all users for Cloud access and for cloud/local/VPN access for needed employees
- All devices used to store Client/Class member data are encrypted and/or have physical security in place to prevent data from being removed
- Office employs physical security to safeguard assets/data
- Identity and access management in place
- Discipline policy in place for violating of security/clean desk policies
- Terminated employees, vendors, or contractors access immediately severed on departure
- Antivirus, persistent threat monitoring, IPS/IDS, layer 7 firewalling, GeoBlocking, etc.. in use to protect all devices local and external
- All software and hardware (drivers, etc...) updated on proper schedule as per vendors requirements. OOB patches handled with automation
- Business continuity and Disaster recovery plans written

ILYM Group, Inc. (ILYM) in conjunction with our security and Information Technology (IT) vendor(s), maintains the highest level of confidentiality of class member data. The class data and all forms of communication received by ILYM, will be held in strict confidentiality and will not be disclosed. Data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. ILYM will set up a login for Defense Counsel to transmit the class data through our encrypted secure portal. ILYM processes adhere to the Settlement Administration Data Protection Checklist in the Northern District of California and are summarized in the tables below.

### Technical Controls

|   |     |
|---|-----|
| Firewalls and intrusion detection/prevention systems      | Yes |
| Endpoint Detection and Response (EDR) Systems             | Yes |
| Complex Password Requirements                             | Yes |
| MultiFactor Authentication for Access to Systems and Data | Yes |
| Malware Protection and AntiVirus                          | Yes |
| Vulnerability Scanning/Pen Testing                        | Yes |
| Data Encryption   | Yes |
| Key Management for access to encrypted Data               | Yes |
| Access only provided on need-to-know basis                | Yes |
|   |     |

### Administrative Policies

|  |                                   |
|--|-----------------------------------|
| Personnel and support staff risk assessment and management, including pre-hire background checks and screening processes | Yes                               |
| Personnel and support staff required to enter into non-disclosure and confidentiality agreements                         | Yes                               |
| Access controls to systems and data, including guidance for granting, modifying, and reviewing access rights             |                                   |
| Information security and privacy policy training, including policy review, best practices, and data security             | Yes                               |
| No remote access to systems for Employees  | No                                |
| Exit interviews/confirmation that terminated/departed employees are immediately cut off from access                      | Yes                               |
| Robust audits of data privacy policies by third-party vendors  | Yes – enhanced with SOC 2 efforts |
| Accreditation in accordance with ISO 27001 and SOC2 (among the industry standards listed below)                          | SOC 2 in progress                 |
| Disclosure of external certifications and any notice of expiration   | Yes                               |

### Crisis and Risk Management

|  |   |
|--|---|
| Incident response/disaster plan for immediate response to security incidents such as data breach.  | Yes   |
| Process and timing for notification to attorneys, claimants, and other stakeholders of a data breach and consideration of resources and/or remedies to provide thereto | Yes   |
| Vendor management program that determines and defines requirements to manage risk associated with outsourcing  | Core Vendors are limited and have been vetted. New program being implemented as part of SOC 2 efforts |



### Physical Access Controls

|   |  |
|---|--|
| Physical Access Security<br>Security Guards<br>Access Cards to facilities with assignment of identification card subject to approval and review<br>Logs of Access | Logs and “codes”<br>No cards – just codes<br>No security guards<br>Logs are kept |
| Alarm Systems   | Yes  |
| CCTV recording Systems  | Yes  |

### Data Collection and Retention

|   |     |
|---|-----|
| Minimization of collection of personally identifiable information, e.g., social security numbers and banking information  | Yes |
| Data collection only required to extent necessary for settlement administration   | Yes |
| Various methods for ensuring data protection and security of Data classification (including implementation of appropriate safeguards to protect from theft, loss, and/or unauthorized disclosure, use, access, destruction)<br>Compliance with applicable laws and regulations (see below) Secure data transfer | Yes |

### Data Destruction

|  |  |
|--|--|
| Preservation of data only for so long as required for administration of the settlement and any relevant reporting required following the payments or distributions | Yes                                      |
| Secure data destruction (e.g., 6 months – 1 year or when no longer required)   | In Process of codifying as part of SOC 2 |
| Physical media (e.g., paper, CDs) shredded or destroyed to point where they cannot be reconstructed  | Yes                                      |
| Destruction of all derivative copies and/or back-ups   | Yes                                      |

### Applicable Laws, Standards, and Other Regulation

|  |     |
|--|-----|
| Industry standards: National Institute of Standards and Technology (NIST), HIPAA, FISMA, System and Organization Controls (SOC1 and SOC2) or more advanced assessment, ISO 27001 | Yes |
| Local, national, international privacy regulations (including CCPA)  | Yes |





**Ethical Rules**

|   |     |
|---|-----|
| Administrative policies and/or employee handbook incorporating commitment to ethical rules (e.g., company, court ethical rules) setting forth standards of ethical and legal behavior | Yes |
| Enforcement clauses, violation resulting in disciplinary action including and up to termination of employment   | Yes |

**Customer Service Measures**

|  |     |
|--|-----|
| Description of settlement website and posting thereto of relevant privacy policies or statements (including portal for reporting suspected loss of confidential data submitted with claim)   | Yes |
| Explanation of role of claims administrator and how to prevent phishing (e.g., clear indication that administrator will not request confidential information by e-mail and how to identify a valid e-mail sent from the administrator) | Yes |

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 2:22-cv-01966- SPG

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER [ECF No. 67]**

SALVADOR AQUINO, SUSAN  
FORD, MONICALAYLE GARCIA,  
BARBARA KRAUS, MARTHA  
LOPEZ, FRANCISCO MARTINEZ,  
MEGAN SARGENT, individually and  
as a representative of a Putative Class  
of Participants and Beneficiaries, on  
behalf of the 99 CENTS ONLY  
STORES 401(K) PLAN,

Plaintiffs,

v.

99 CENTS ONLY STORES LLC; THE  
RETIREMENT COMMITTEE OF THE  
99 CENTS ONLY 401(K) PLAN; and  
DOES 1 through 20,

Defendants.

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**PRELIMINARY APPROVAL ORDER**

- (1) CONFIRMING PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS;**
- (2) GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT;**
- (3) APPOINTING A SETTLEMENT ADMINISTRATOR;**
- (4) ENJOINING CLASS MEMBERS FROM PURSUING ANY CLAIMS THAT ARISE OUT OF OR RELATE IN ANY WAY TO THE RELEASED CLAIMS PENDING FINAL APPROVAL OF THE SETTLEMENT;**
- (5) DIRECTING NOTICE TO CLASS MEMBERS AND APPROVING THE FORM AND MANNER OF NOTICE;**
- (6) APPROVING THE PLAN OF ALLOCATION;**
- (7) SCHEDULING A FAIRNESS HEARING; AND**
- (8) SCHEDULING A HEARING ON CLASS COUNSEL’S FEE AND EXPENSE APPLICATION AND PLAINTIFFS’ REQUEST FOR CASE CONTRIBUTION AWARDS.**

The Court, having received and considered the Unopposed Motion for a Preliminary Approval Order (the “Motion”) of Plaintiffs and Class Representatives Salvador Aquino, Susan Ford, Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan Sargent (collectively, “Plaintiffs” or “Class Representatives”) in *Aquino, et al., v. 99 Cents Only Stores, et al.*, C.D. Cal. Case No. 2:22-cv-01966-SPG, and the papers filed in support of the Motion, including the Class Action Settlement Agreement entered into as of April 17, 2023 and all exhibits thereto (the “Agreement”), and the declarations of counsel, having further considered the arguments of counsel and the pleadings and record in this case, and finding good cause for granting the Motion,

**HEREBY ORDERS AS FOLLOWS:**

1           1.     Capitalized terms not defined in this Order shall have the meaning  
2 ascribed to them in Article I of the Agreement.

3           2.     This Court has jurisdiction to consider the Motion and the relief  
4 requested therein under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

5           3.     Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

6           4.     The Court finds, on a preliminary basis and for the purposes of  
7 settlement only, that the requirements for certification under Rule 23(a) and Rule  
8 23(b)(1) are satisfied:

9           a)     The Settlement Class meets the numerosity requirement of Rule  
10 23(a)(1), as it consists of approximately 5700 class members.

11          b)     The Class Representatives have asserted claims that have at least one  
12 common question of law or fact to the Settlement Class and relate to the  
13 management of the Plan as a whole.

14          c)     The Class Representatives are current and former participants in the  
15 Plan and are typical of other Class Members.

16          d)     The Class Representatives have no conflicts with other Class Members,  
17 are adequate to represent the Settlement Class, and have retained experienced and  
18 qualified counsel to represent the Settlement Class as Class Counsel.

19          5.     Class certification is appropriate under Rule 23(b)(1) because the Class  
20 Representatives assert claims on behalf of the Plan as a whole, and prosecution of  
21 separate actions by individual class members would create a risk of inconsistent or  
22 varying adjudications with respect to individual class members that would establish  
23 incompatible standards of conduct for Defendants and would be dispositive of the  
24 interests of other class members as a practical matter or would substantially impair or  
25 impede their ability to protect their interests.

26          a)     The Court appoints Christina Humphrey Law, P.C., and Tower Legal  
27 Group, P.C. as Class Counsel, and appoints Salvador Aquino, Susan Ford,  
28

1 Monicalayle Garcia, Barbara Kraus, Martha Lopez, Francisco Martinez, and Megan  
2 Sargent, the Named Plaintiffs, as the Class Representatives.

3       b) The non-opt out Settlement Class will be preliminarily certified for  
4 settlement purposes only, under the terms of the Agreement. The Settlement Class is  
5 defined as: All current and former participants and beneficiaries of the Plan at any  
6 time during the period from March 25, 2016 through the entry date of this  
7 Preliminary Approval Order (the “Class Period”), including any beneficiary of a  
8 deceased person who was a participant in the Plan at any time during the Class  
9 Period, and any alternate payees, in the case of a person subject to a [qualified  
10 domestic relations order (“QDRO”)] who was a participant in the Plan at any time  
11 during the Class Period.

12       c) If the Court does not issue the Final Approval Order and Judgment, then  
13 the certification will be vacated, and Defendants shall not be deemed to have  
14 admitted the propriety of Class certification under any provision of Federal Rule 23.

15       d) The terms set forth in the Agreement are preliminarily approved, subject  
16 to further consideration at the hearing the Court will hold pursuant to Federal Rule of  
17 Civil Procedure 23(e) to determine whether the Settlement should receive final  
18 approval by the Court, as provided for below (the “Fairness Hearing”). Having  
19 considered the terms of the Settlement and the submissions in support of preliminary  
20 approval, the Court determines, in accordance with Fed. R. Civ. P. 23(e)(1)(B), that  
21 it is likely that the Court will be able to grant final approval of the Settlement under  
22 Fed. R. Civ. P. 23(e)(2) following notice and a hearing. The Agreement therefore is  
23 sufficiently within the range of reasonableness to warrant the preliminary approval of  
24 the Agreement, the scheduling of the Fairness Hearing, and the issuance of Notice to  
25 Class Members, each as provided for in this Order.

26       6. The Court approves the retention by Class Counsel of ILYM Group,  
27 Inc. as the Settlement Administrator.

28

1           7.       In further aid of the Court’s jurisdiction to review, consider, implement,  
2 and enforce the Settlement, the Court orders that Plaintiffs, all Class Members and  
3 the Plan are preliminarily enjoined and barred from commencing, prosecuting, or  
4 otherwise litigating, in whole or in part, either directly, individually, representatively,  
5 derivatively, or in any other capacity, whether by complaint, counterclaim, defense,  
6 or otherwise, in any local, state, or federal court, arbitration forum, or in any agency  
7 or other authority or forum wherever located, any contention, allegation, claim, cause  
8 of action, matter, lawsuit, or action (including but not limited to actions pending as  
9 of the date of this Order), including, without limitation, any Unknown Claims, that  
10 arises out of or relates in any way to the Released Claims or the Action.

11           8.       The Court approves the Notice to Class Members in substantially the  
12 forms attached as **Exhibits A-A1** to the Agreement. The Court approves the form  
13 and content of the Notice and finds that the proposed Settlement Notices fairly and  
14 adequately:

- 15           a.       Summarize the claims that are asserted;
- 16           b.       Identify the Settlement Class;
- 17           c.       Describe the terms and effect of the Settlement Agreement,  
18 including the benefits of the Settlement and the class  
19 release;
- 20           d.       Provide information regarding who is required to submit a  
21 Claim Form and the process for doing so;
- 22           e.       Notify the Settlement Class that Class Counsel will seek  
23 compensation from the Net Settlement Amount for  
24 Administrative Expenses, Attorneys’ Fees and Expenses,  
25 and Case Contribution Fees;
- 26           f.       Describe how the recipients of the Class Notice may object to the  
27 Settlement, or any requested Administrative Expenses, Attorneys’ Fees  
28 and Expenses, or Case Contribution Fees; and
- 29           g.       Give notice to the Settlement Class of the time and place of  
the Fairness Hearing, and Class Members’ right to appear.

          9.       The Court finds that the Plan of Allocation proposed by Plaintiffs and  
Class Counsel for allocating the Settlement Amount to Class Members, as described

1 in **Exhibit B** to the Agreement, is likely to receive final approval and that the  
2 agreement is within the range of reasonableness to warrant preliminary approval.

3 //

4 **Manner of Giving Notice**

5 10. Defendants shall use reasonable efforts to cause the Plan Recordkeepers  
6 to provide to the Settlement Administrator, within fifteen (15) calendar days of the  
7 entry of this Preliminary Approval Order, the Class Member List, as defined in the  
8 Settlement Agreement in Section 8.2, sufficient to implement the Plan of Allocation,  
9 and distribute the Net Settlement on the terms provided for in the Agreement. The  
10 names and addresses provided to the Settlement Administrator pursuant to this Order  
11 shall be used solely for the purpose of providing Notice of this Settlement and  
12 distribution of the Settlement Fund, and for no other purpose and shall be treated as  
13 “Confidential” under the Protective Order governing the Action (Case No. 2:22-cv-  
14 01966-SPG, Dkt. 53).

15 11. Within fifteen (15) calendar days of receipt of the Class Member List,  
16 the Settlement Administrator shall cause the Notice to be sent to each Class Member  
17 by First Class Mail.

18 12. The same date the Notice is initially mailed, the Settlement  
19 Administrator shall establish a website containing, the Notice, the Agreement and its  
20 exhibits, this Order, the First Amended Complaint, and the Motions for Preliminary  
21 Approval and Final Approval (when filed); the Motion for Attorneys’ Fees and  
22 Expenses (when filed); any approval order or other Court orders related to the  
23 Settlement, any amendments or revisions to these documents, and any other  
24 documents or information mutually agreed upon by the Parties, as well as the date,  
25 time, and instructions to attend the Fairness Hearing (and any changes thereto).

26 13. The same date the Notice is initially mailed, the Settlement  
27 Administrator shall establish a toll-free telephone number to which Class Members  
28 can direct questions about the Settlement.





1 18. Not later than thirty-five (35) calendar days before the Fairness Hearing,  
2 Class Counsel shall submit their papers in support of final approval of the Agreement  
3 and in support of Class Counsel’s Fee and Expense Application and Approval of  
4 Case Contribution Awards.

5 19. Not later than thirty (30) calendar days before the Fairness Hearing, the  
6 Independent Fiduciary shall submit its written determination to Defendants’ Counsel  
7 and Class Counsel pursuant to Section 2.1 of the Agreement.

8 20. Not later than thirty-five (35) calendar days before the Fairness Hearing,  
9 the Settlement Administrator shall submit its declaration affirming that the notice  
10 process has been completed pursuant to the Settlement Agreement.

11 **Objections to the Settlement**

12 21. Class Members can request the Court to deny approval of the Settlement  
13 and/or the Motion for Attorneys’ Fees and Expenses of Class Counsel or the Case  
14 Contribution Fees to be requested for the Class Representatives by filing an  
15 objection or making an appearance at the Fairness Hearing and stating the objection.  
16 The Court will consider written comments and objections to the Settlement, to the  
17 proposed Motion for Attorneys’ Fees and Expenses, and to Plaintiffs’ request for  
18 Case Contribution Awards. No appearance is necessary at the Fairness Hearing if the  
19 objection is submitted in writing. If the objection is submitted in writing, it should  
20 (a) clearly identify the case name and number (i.e. *Aquino, et al. v. 99 Cents Only*  
21 *Stores., et al.*, Case No. 22-cv- 01966-SPG), (b) be submitted to the Court either by  
22 mailing it to the Clerk of the Court, United States District Court for the Central  
23 District of California, Clerk of the Court for the United States District Court for the  
24 Central District of California -Western Division, First Street U.S. Courthouse, 350  
25 W. 1st Street, Suite 4311, Los Angeles, CA 90012-4565, or by filing it in person at  
26 any location of the United States District Court for the Central District of California,  
27 and (c) be filed or postmarked on or before \_\_\_\_\_ [actual date to be 35 days  
28 before Final Fairness Hearing]. Your objection should including the following

1 information: (1) his/her/its full name, current address, and current telephone number,  
2 and, if represented by counsel, any of his/her/its counsel's name and contact  
3 information; (2) whether the objection applies only to the objecting Class Member,  
4 to a specific subset of the Class, or to the entire Class; (3) a statement of the  
5 position(s) the objector wishes to assert; (4) copies of any other documents that the  
6 objector wishes to submit in support of his/her/its position; and (5) a list of any other  
7 objections to any class action settlements submitted in any court, whether state,  
8 federal, or otherwise, in the United States in the previous five (5) years.

9 22. Any Class Member who files and serves a written comment or objection  
10 may also appear at the Fairness Hearing either in person or through qualified counsel  
11 retained at their own expense. Any comment or objection that is timely filed or  
12 postmarked will be considered by the Court even in the absence of a personal  
13 appearance by the Class Member or that Class Member's counsel.

14 23. The Parties may file written responses to any objections not later than  
15 five (5) business days before the Fairness Hearing or submit an oral response at the  
16 Fairness Hearing.

### 17 **Termination of Settlement**

18 24. This Order shall become null and void, *ab initio*, and shall be without  
19 prejudice to the rights of the Parties, all of whom shall be deemed to have reverted to  
20 their respective status in the Action as of April 1, 2023, (for Plaintiffs and the 99  
21 Cents Defendants), if Settlement is terminated in accordance with the terms of the  
22 Agreement.

### 23 **Use of Order**

24 25. This Order is not admissible as evidence for any purpose against the  
25 Defendants or the Released Parties in any pending or future litigation. This Order:  
26 (a) shall not give rise to any inference of, and shall not be construed or used as an  
27 admission, concession, or declaration against any of the Defendants or the Released  
28 Parties of wrongdoing or liability in the Action or any other proceeding; (b) is not an

1 admission of any liability of any kind, whether legal or factual; (c) shall not be used  
2 or received in evidence in any action or proceeding for any purpose, except in an  
3 action or proceeding to enforce the Agreement, whether affirmatively or defensively;  
4 (d) shall not be construed or used as an admission, concession, or declaration by or  
5 against Plaintiffs, the Plan, or the Class Members that their claims lack merit or that  
6 the relief requested in the Action is inappropriate, improper or unavailable; and (e)  
7 shall not be construed or used as an admission, concession, declaration or waiver by  
8 any Party of any arguments, defenses, or claims he, she, or it may have in the event  
9 that the Agreement is terminated. This Order and the Agreement and any  
10 proceedings taken pursuant to the Agreement are for settlement purposes only.

11 **Jurisdiction**

12 26. The Court may adjourn or continue the Fairness Hearing without further  
13 direct notice to the Class Members other than by notice to Class Counsel and retains  
14 jurisdiction to consider all further applications or matters arising out of or connected  
15 with the proposed Settlement. The Court may approve the Settlement, with such  
16 modifications as may be agreed to by the Parties, if appropriate, without further  
17 notice to the Class.

18  
19 **IT IS SO ORDERED.**

20  
21 Dated:

\_\_\_\_\_  
22 HON. SHERILYN PEACE GARNETT  
23 UNITED STATES DISTRICT JUDGE  
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## Notes

No Notepad Content Found

## General Information

|                               |   |
|-------------------------------|---|
| <b>Case Name</b>              | Salvador Aquino et al v. 99 Cents Only Stores LLC et al   |
| <b>Court</b>                  | U.S. District Court for the Central District of California  |
| <b>Date Filed</b>             | Fri Mar 25 00:00:00 EDT 2022  |
| <b>Judge(s)</b>               | Sherilyn P Garnett  |
| <b>Federal Nature of Suit</b> | Labor: Employee Retirement Income Security Act (E.R.I.S.A.) [791]   |
| <b>Docket Number</b>          | 2:22-cv-01966   |
| <b>Parties</b>                | Megan Sargent; Martha Lopez; 99 Cents Only Stores LLC; The Retirement Committee of the 99 Cents Only 401 (K) Plan; Salvador Aquino; Barbara Kraus; Does; Susan Ford; Monicalayle Garcia; Francisco Martinez |