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11 *Counsel for Plaintiff and the Proposed*
 12 *Class*

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

15 MELISSA RIVAS, on behalf of herself
 16 and all others similarly situated,

17 Plaintiffs,

18 v.

19 PHYSICIAN LABORATORIES, INC.,
 20 an Arizona corporation; MDX
 21 LOGISTICS, Michigan corporation;
 22 SEBAPHARMA GmbH & CO, KG, a
 23 corporation organized under the laws of
 24 Germany; COSTCO WHOLESALE
 25 CORPORATION, a Washington
 26 corporation; RITE AID
 27 CORPORATION, a Delaware
 28 corporation; ALEX FAZELI, an
 individual; MONROE FAZELI, an
 individual; and DOES 1 through 100,

Defendants.

Case No.: 8:18-cv-00729-DOC-AGR

**NOTICE OF VOLUNTARY
 DISMISSAL WITHOUT
 PREJUDICE PURSUANT TO
 41(a)(1)(A)(i) OF ENTIRE
 ACTION; ORDER [73]**

[Case Removed: April 27, 2018]

[Assigned to the Hon. David O. Carter]

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

3 PLEASE TAKE NOTICE that Melissa Rivas ("Lead Plaintiff"), through her
4 counsel of record, hereby voluntarily dismisses the action without prejudice,
5 pursuant to Fed. R. Civ. P 41(a)(1)(A)(i) as follows:

6 WHEREAS, Lead Plaintiff's complaint asserting claims under the California
7 Consumers Legal Remedies Act [Cal. Civ. Code §§ 1750 et seq.] and related
8 claims was filed on March 9, 2018 in California state court;

9 WHEREAS, on April 27, 2018 the Action was removed to this Court;

10 WHEREAS, on November 5, 2018 a second amended complaint was filed;

11 WHEREAS, defendants have neither answered nor moved for summary
12 judgment;

13 WHEREAS, the action was filed as a class action but has not been certified
14 as such;

15 WHEREAS, Lead Plaintiff and her counsel have decided to voluntarily
16 dismiss the claims of Lead Plaintiff without prejudice;

17 WHEREAS, Lead Plaintiff and her counsel have entered into no agreement
18 with any defendant in connection with the voluntary dismissal without prejudice;

19 WHEREAS, under Federal Rule of Civil Procedure 41(a)(1)(A)(i), Lead
20 Plaintiff is entitled to dismiss this action on her own initiative:

21 *"Subject to the provisions of Rule 23(e), of Rule 66, and*
22 *of any statute of the United States, an action may be*
23 *dismissed by the plaintiff without order of the court (i) by*
24 *filing a notice of dismissal at any time before service by*
25 *the adverse party of an answer or of a motion for*
26 *summary judgment. . . ."*

27 WHEREAS, this case involves putative class claims;

28 WHEREAS, neither Lead Plaintiff nor Lead Counsel has received or will

1 receive any consideration for the dismissal without prejudice;

2 WHEREAS, Federal Rule of Civil Procedure 23(e)(1)(A) is inapplicable to
3 the instant dismissal as Rule 23(e) was amended in 2003 to resolve the ambiguity
4 in former Rule 23(e)'s reference to dismissal of "*a class action*," (See, 2003
5 Advisory Committee Notes), and now provides:

6 *"The court must approve any settlement, voluntary*
7 *dismissal, or compromise of the claims, issues, or*
8 *defenses of a **certified class**."*

9 Fed. R. Civ. P. 23(e); see e.g., *Cook v. WMC Mortgage Corp.*, No. 06-535, 2006
10 WL 2873439, at * 1 (S.D. Ill. Oct. 5, 2006)(permitting voluntarily dismissal of
11 putative class action pursuant to Fed. R. Civ. P 41(a)(1)(i) and discussing Rule 23
12 amendments);

13 WHEREAS, no prejudice to absent putative class members will result from
14 dismissal of the action, because a class has not been certified and the dismissal will
15 not affect their rights;

16 WHEREAS, Federal Rule of Civil Procedure 23(e)(1)(B) is inapplicable to
17 the instant dismissal as none of the absent putative class members would be bound:

18 *"The court must direct notice in a reasonable*
19 *manner to all class members who would be bound*
20 *by a proposed settlement, voluntary dismissal, or*
21 *compromise."*

22 Fed. R. Civ. P. 23(e)(1)(B); see also 2003 Advisory Committee Notes ("notice is
23 not required when the settlement only binds the individual class representatives.");
24 and

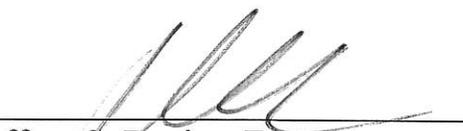
25 WHEREAS, no notice need be sent to absent putative class members,
26 because a class has not been certified, the case is in its infancy, the case has not
27 been widely publicized and no absent putative class member will be bound by the
28 voluntary dismissal of Lead Plaintiff's claims.

1 THEREFORE, Lead Plaintiff hereby dismisses the action without prejudice
2 as to the individual claims of Lead Plaintiff.

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Dated: December 11, 2018

Respectfully Submitted,



Jeffrey S. Benice, Esq.
Attorney for Plaintiff,
Plaintiff and the Proposed Class

SO ORDERED.

Dated: December 13, 2018



DAVID O. CARTER
U.S. District Judge