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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11
12 SHERICE DUNCAN, individually, and on
13 behalf of other members of the general public
similarly situated,

14 Plaintiff,

15 vs.

16 CLAIRE'S BOUTIQUES, INC., a Colorado
17 corporation; and DOES 1 through 10, inclusive,

18 Defendants.

Case No.: 20STCV15355

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: February 17, 2021
Time: 11:00 a.m.
Place: Department 10

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

2 **PLEASE TAKE NOTICE** that on February 17, 2021 at 11:00 a.m., or as soon thereafter as
3 counsel may be heard, in Department 10 of the above-captioned court, located at 312 North Spring
4 Street, Los Angeles, CA 90012, the Honorable William F. Highberger presiding, Plaintiff Sherice
5 Duncan will, and hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action
7 Settlement and Release, attached as Exhibit 1 to the Declaration of Raul Perez;
- 8 2. Conditionally certify the proposed Settlement Class;
- 9 3. Appoint Sherice Duncan as the representative for the Settlement Class;
- 10 4. Appoint Capstone Law APC as Class Counsel;
- 11 5. Approve distribution of the proposed Notice of Class Action Settlement to the
12 Settlement Class;
- 13 6. Appoint CPT Group, Inc. as the Settlement Administrator; and
- 14 7. Set a hearing date for final approval of the settlement.

15 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
16 Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the
17 Declaration of Raul Perez; (4) the Joint Stipulation of Class Action Settlement and Release; (5) the
18 Notice of Class Action Settlement; (6) the [Proposed] Order Granting Preliminary Approval of Class
19 Action Settlement; (7) the records, pleadings, and papers filed in this action; and (8) upon such other
20 documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of
21 this Motion. As this Motion is unopposed, the Parties respectfully request relief from the page limit
22 requirement set by California Rules of Court, Rule 3.1113(9).

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Dated: January 22, 2021

Respectfully submitted,

By: _____

Raul Perez
Bevin Allen Pike
Orlando Villalba
Trisha K. Monesi
CAPSTONE LAW APC

Attorney for Plaintiff Sherice Duncan

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sherice Duncan (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class Action Settlement and Release,¹ which if approved, would provide considerable monetary relief for approximately 2,520 current and former employees of Defendant Claire’s Boutiques, Inc. (“Defendant” or “Claire’s”) (collectively with Plaintiff, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All persons who worked for Defendants as non-exempt, hourly paid employees in California at any time from March 1, 2018 to the date of Preliminary Approval (“Class Members”).
- (2) A **non-reversionary** Class Settlement Amount of \$1,375,000. Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which will not be paid from the Class Settlement Amount. The Class Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$791,667 (the Class Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the Class Representative Enhancement Payment), which will be allocated to all Class Members on a pro-rata basis according to the number of weeks each Class Member worked during the Class Period. **The Entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**
 - (b) Attorneys’ fees in the amount of one-third of the Class Settlement Amount (or \$458,333), and litigation costs and expenses not to exceed \$20,000, to Capstone Law APC (“Plaintiff’s Counsel”).

¹ Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

- (c) Settlement administration costs of approximately \$20,000, to be paid to the jointly selected Settlement Administrator, CPT Group, Inc. (“CPT”).
- (d) A \$75,000 payment to the LWDA pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
- (e) A Class Representative Enhancement Payment of \$10,000 to Sherice Duncan for her service on behalf of the Settlement Class, the risks she took in bringing the action on behalf of the class, and for a general release of all claims arising out of her employment with Defendant.

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with helpful guidance from Michael Dickstein, Esq., an experienced and well-respected class action mediator, and the Settlement confers substantial benefits to Class Members. This relief—averaging approximately \$315 per Class Member from the Net Settlement Amount—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement Agreement.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

Plaintiff Sherice Duncan filed this action against Defendant on April 21, 2020 in the California Superior Court, County of Los Angeles. Defendant removed the case to U.S. District Court for the Central District of California. On July 24, 2020, Plaintiff filed a First Amended Complaint, adding a cause of action for PAGA. On November 2, 2020, the Parties stipulated to remand the action. The district court remanded the case later that day. (Declaration of Raul Perez [“Perez Decl.”] ¶ 2.)

On October 5, 2020, the Parties participated in full-day mediation with Michael Dickstein, an

1 experienced mediator of wage and hour class actions. Mr. Dickstein helped to manage the Parties’
2 expectations and provided a useful, neutral analysis of the issues and risks to both sides. With Mr.
3 Dickstein’s guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiff’s
4 claims. The terms of the settlement are now set forth in complete and final form in the Joint Stipulation
5 of Class Action Settlement and Release. At all times, the Parties’ negotiations were adversarial and non-
6 collusive. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims
7 at issue. (Perez Decl. ¶ 3.)

8 **B. The Proposed Settlement Fully Resolves Plaintiff’s Claims**

9 **1. Composition of the Settlement Class**

10 The proposed Settlement Class consists of all persons who worked for Defendants as non-
11 exempt, hourly paid employees in California at any time from March 1, 2018 to the date of Preliminary
12 Approval. (Settlement Agreement ¶ 5.) There are approximately 2,520 Class Members.

13 **2. Settlement Consideration**

14 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the
15 Class Settlement Amount of \$1,375,000. The Class Settlement Amount includes: (1) automatic
16 payments to all Participating Class Members—meaning, all Class Members except those who submit
17 timely and valid Requests for Exclusion—from the Net Settlement Amount; (2) \$458,333 in attorneys’
18 fees (i.e., one-third of the common fund) and up to \$20,000 in litigation costs to Plaintiff’s Counsel; (3)
19 Settlement Administration Costs of approximately \$20,000; (4) a \$75,000 payment to the LWDA; and
20 (5) a Class Representative Enhancement Payment of \$10,000 for Plaintiff’s service on behalf of the
21 Settlement Class, the risks she took in bringing her representative claims, and for a release of all claims
22 arising out of her employment with Defendant. (Settlement Agreement ¶¶ 30-34.)

23 Subject to the Court approving Attorneys’ Fees and Costs, Settlement Administration Costs, the
24 payment to the LWDA, and the Class Representative Enhancement Payment, the Net Settlement
25 Amount will be distributed to Participating Class Members in full. (Settlement Agreement ¶ 35.)

26 **3. Formula for Calculating Payments from the Net Settlement Amount**

27 Each Class Member’s share of the Net Settlement Amount will be proportional to the number
28 of weeks he or she worked during the Class Period. (Settlement Agreement ¶ 36.) The Settlement

1 Administrator will calculate Individual Settlement Payments as follows:

- 2 • Defendant will calculate the total number of Workweeks worked by each Class Member
3 during the Class Period and the aggregate total number of Workweeks worked by all
4 Class Members during the Class Period.
- 5 • To determine each Class Member's estimated "Individual Settlement Payment," the
6 Settlement Administrator will use the following formula: The Net Settlement Amount
7 will be divided by the aggregate total number of Workweeks, resulting in the
8 "Workweek Value." Each Class Member's "Individual Settlement Payment" will be
9 calculated by multiplying each individual Class Member's total number of Workweeks
10 by the Workweek Value.
- 11 • The Individual Settlement Payment will be reduced by any required deductions for each
12 Participating Class Members as specifically set forth herein, including employee-side tax
13 withholdings or deductions.
- 14 • The entire Net Settlement Amount will be disbursed to all Class Members who do not
15 submit timely and valid Requests for Exclusion. If there are any valid and timely
16 Requests for Exclusion, the Settlement Administrator shall proportionately increase the
17 Individual Settlement Payment for each Participating Class Member according to the
18 number of Workweeks worked, so that the amount actually distributed to the Settlement
19 Class equals 100% of the Net Settlement Amount.

20 (Settlement Agreement ¶ 36.)

21 Given that there are approximately 2,520 Class Members, the average net recovery will be
22 approximately \$315. This average net recovery is significantly greater than many other wage and hour
23 class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of*
24 *Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of
25 approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
26 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
27 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
28 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90);

1 *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of
2 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.)
3 (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213
4 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon,*
5 *Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath*
6 *& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately
7 \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.)
8 (average net recovery of approximately \$80).

9 **4. Release by the Settlement Class**

10 In exchange for the Class Settlement Amount, Plaintiff and Participating Class Members will
11 agree to release the Released Claims during the Class Period:

12 All claims under state, federal or local employment and labor laws, whether
13 statutory, common law or administrative law, arising out of or related to
14 allegations set forth in the operative statutory, common law or administrative
15 law, arising out of or related to allegations set forth in the operative Complaint or
16 PAGA Notice to the LWDA, including but not limited to: claims for minimum
17 wage violations; failure to pay overtime wages; unreimbursed expenses; rest
18 period violations; meal period violations; itemized wage statement violations;
19 waiting time penalties; unfair competition; declaratory relief; and claims for
violation of the California Private Attorneys General Act based on the preceding
violations; including, but not limited to, injunctive relief; punitive damages;
liquidated damages, penalties of any nature; interest; fees; costs; and all other
claims and allegations made or which could have been made in the Action based
on the facts alleged in the operative Complaint or PAGA Notice, through the date
of Final Approval of the Settlement.

20 (Settlement Agreement ¶ 23.)

21 **III. ARGUMENT**

22 **A. The Court Should Preliminarily Approve the Proposed Class Action Settlement**

23 **1. Courts Review Class Action Settlements to Ensure that the Terms Are** 24 **Fair, Adequate, and Reasonable**

25 California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class
26 action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court;
27 and (2) a subsequent "final" review after notice of the settlement has been distributed to class members
28 for their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.

1 App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a
2 final approval hearing to inquire into the fairness of the proposed settlement”). The motion for
3 preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the
4 class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement
5 concerning the payment of attorneys’ fees. *Id.* at 3.769(b).

6 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to
7 (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide
8 notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also
9 approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final
10 approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at
11 3.769(g).

12 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
13 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” *See*
14 *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90
15 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

16 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through
17 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court
18 to act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors
19 “is small” (collectively, “Dunk Factors”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).²

20
21 ² The presumption of fairness is consistent with California’s public policy goal of favoring
22 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors
23 settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally
24 favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*
25 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
26 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”);
27 *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages
28 litigation and encourages settlement [because settlements] can produce peace and goodwill in the
community while reducing the expense and persistency of litigation”). Additionally, in reviewing the
fairness of a class action settlement, due regard should be given to what is “otherwise a private
consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at
1117. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

1 **2. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual and**
2 **Legal Issues and Were Thus Able to Objectively Assess the Settlement’s**
3 **Reasonableness**

4 Plaintiff’s Counsel conducted a thorough investigation into the factual and legal issues
5 implicated by Plaintiff’s claims, and were able to objectively assess the settlement’s reasonableness. For
6 example, prior to filing the action, Plaintiff contacted Plaintiff’s Counsel to discuss the factual bases for
7 pursuing an action against Defendant for Labor Code violations. Having worked for Defendant as a
8 Store Manager, Plaintiff was intimately familiar with Defendant’s labor policies and practices, and over
9 the course of multiple interviews, knowledgeably summarized those policies and practices to Plaintiff’s
10 Counsel. During those conversations, she explained how the policies and practices were instituted and
11 provided valuable insight into how they gave rise to the alleged Labor Code violations. Based on these
12 interviews with Plaintiff, Plaintiff’s Counsel determined that there were legally sufficient grounds for
13 pursuing an action against Defendant. (Perez Decl. ¶ 4.)

14 Plaintiff’s Counsel also prepared a detailed letter (17 pages, single-spaced) to notify the LWDA
15 of Plaintiff’s intent to seek civil penalties and other available relief recoverable under PAGA for Labor
16 Code violations. Significant research and effort were expended to prepare a PAGA notice that was
17 consistent with the developing legal requirements so as to withstand any challenge from Defendant
18 regarding the notice’s sufficiency. (Perez Decl. ¶ 5.)

19 In preparation for drafting the complaint, Plaintiff’s Counsel conducted their own preliminary
20 investigation into the factual bases for Plaintiff’s claims, which entailed, *inter alia*, a careful examination
21 of Plaintiff’s personnel file and associated records. Following the filing of the Complaint, and in response
22 to Plaintiff’s discovery requests, Plaintiff’s Counsel received a considerable amount of documents and
23 data, including employee demographic data, a sample of time and pay records, and hundreds of pages of
24 Defendant’s policies and procedures manuals which covered a broad range of topics including, *inter alia*,
25 employee clock-in policies and procedures, attendance policies, meal periods/rest periods, overtime &
26 premium pay, etc. The document and data exchanges allowed Plaintiff’s Counsel to fully assess the
27 nature and magnitude of the claims being settled, as well as the impediments to recovery, and ultimately
28 enabled Plaintiff’s Counsel so as to make an independent assessment of the reasonableness of the

1 settlement's terms. Additionally, Plaintiff's Counsel inspected eight stores throughout the state of
2 California as part of their investigation of Plaintiff's seating claim. (Perez Decl. ¶ 6.)

3 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue,
4 which included: (1) determining Plaintiff's suitability as a private attorney general and class
5 representative through interviews, background investigations, and analyses of her employment files and
6 related records; (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar
7 wage and hour class actions as to the claims brought, the nature of the positions, and the type of
8 employer; (4) analyzing employees' time and wage records; (5) reviewing Defendant's employment
9 policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's claims and
10 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
11 participating in the mediation. (Perez Decl. ¶ 7.)

12 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
13 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
14 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
15 known facts and circumstances, including the risk of significant delay and uncertainty associated with
16 litigation, and various defenses asserted by Defendant. (Perez Decl. ¶ 8.)

17 **3. The Settlement Was Reached Through Arm's-Length Bargaining in which**
18 **All Parties Were Represented by Experienced Counsel**

19 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
20 settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume
21 the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
22 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, §
23 11.51.

24 As explained above, the Parties participated in a mediation with Mr. Dickstein, an experienced
25 mediator of wage and hour class actions. Mr. Dickstein helped manage the Parties' expectations and
26 provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod.*
27 *Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in
28 favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL),

2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation “tends to support the conclusion that the settlement process was not collusive”); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation “tends to support the conclusion that the settlement process was not collusive”). At all times, the Parties’ negotiations were adversarial and non-collusive. (Perez Decl. ¶ 3.)

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff is represented by Capstone Law APC. Plaintiff’s Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Perez Decl. ¶¶ 9-11, Ex. 2.)

Defendant is represented by Jackson Lewis, P.C., a respected defense firm.

4. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation

In seeking approval, a settling party must provide sufficient information to “enable the court to make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In

other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.³

Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar does not ... require any such explicit statement of [maximum] value;** it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As explained in detail below, the Class Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

Defendant’s Exposure for the Class Claims	
Off-the-Clock Claim (Security Searches)	\$515,450.00
Regular Rate of Pay Claim	\$21,100.00
Meal Period Claim	\$1,615,320.00
Rest Period Claim	\$3,205,345.00
Compelled Patronization Claim	\$258,000.00
Wage Statement Claim ⁴	\$998,625.00

³ Federal district courts also recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Id.* at 188, quoting *Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.). See *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008); see also *Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Justice v. Civil Serv. Comm.*, 688 F. 2d 615, 628 (C.A. Cal. 1982) (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

⁴ Based on the foregoing allegations, Plaintiff alleges that Defendant failed to issue Class Members accurate wage statements in violation of Labor Code section 226(a). Penalties for wage statement violations are calculated according to the formula provided by Labor Code section 226(e)(1): An employee suffering injury as a result of a knowing and intentional failure by an employer to comply

Defendant's Exposure for the Class Claims	
Final Pay Claim ⁵	\$3,848,525.00
TOTAL	\$10,462,365.00

This estimate assumes that each and every one of Plaintiff's claims would have been certified for

with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees. Courts disagree, however, about whether notice is sufficient to trigger a "subsequent" violation penalty, or if the "subsequent" penalty applies only after a court or the Labor Commissioner determines that the employer has violated Labor Code section 226. Compare *Robinson v. Open Top Sightseeing San Francisco, LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (the \$100 "subsequent" penalty does not apply until after "the employer has learned its conduct violates the Labor Code"; prior to receiving notice of a violation from a court or commission, violations are only subject to an "initial" \$50 penalty) citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) ["[u]ntil the employer has been notified that it is violating a Labor Code provision . . . the employer cannot be presumed to be aware that its [conduct] is a 'violation' subject to penalties"]; see also *Chen v. Morgan Stanley Smith Barney, LLC*, No. 14-cv-01077ODW, 2014 WL 4961182 at *2 (C.D. Cal. 2014) (disallowing heightened penalties where the defendant had not received notice of a violation from a court or commissioner); *Trang v. Turbine Engine Components Technologies Corp.*, 2012 WL 6618854 at *5 ("Under California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless) with *Garnett v. ADT LLC*, 74 F. Supp. 3d 1332, 1336 (E.D. Cal. 2015) (the heightened \$100 penalty is assessed for § 226 violations committed in each pay period after the initial pay period in which a \$50 penalty is assessed, without regard to notice to the employer). Given the current split in authority, Plaintiff conservatively estimated Defendant's potential exposure for Section 226 penalties by treating all pay periods with alleged violations as "initial" pay periods subject to the \$50 rate: 79,890 pay periods × \$50 = \$3,994,500. However, this derivative wage statement claim is only as strong as the underlying predicate claims, and Defendant also argued that to recover penalties for wage statement violations, Plaintiff would have had to show that it knowingly and intentionally issued wage statements with unlawful deficiencies. See Lab. Code § 226; *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1142-43 (2011). Given the contingent nature of the wage statement claim, and the strength of Defendant's defenses to all claims, Plaintiff discounted Defendant's exposure by 75%, or to \$998,625.

⁵ Plaintiff also alleges that Defendant is liable for derivative waiting-time penalties. Defendant's total potential exposure for Section 203 penalties was calculated as follows: 3,762 former employees x \$17.05/hour x 8 hours/day x 30 days = \$15,394,104. However, while Section 203 penalties are relatively straightforward to calculate, the analysis becomes more difficult for settlement purposes as derivative waiting-time penalties are only as strong as the underlying predicate claims, and are subject to good faith defenses. For example, Defendant argued that no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an element that Plaintiff acknowledges would have been difficult to prove. See Cal. Code Regs. tit. 8, § 13520 ("[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."); *Smith v. Rae Venter Law Group*, 29 Cal. 4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties). Defendant argued that an employer's failure to pay wages is not willful unless it reached the standard of "gross negligence or recklessness." See *Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1201 (2008). Given the contingent nature of the Section 203 claim, and the strength of Defendant's defenses, Plaintiff discounted Defendant's exposure by 75%, or to \$3,848,525.

1 class-wide resolution, that Plaintiff's would have prevailed at trial, and that the jury's verdict would have
2 been affirmed on appeal. In other words, this estimate assumes complete victory. Understandably, for
3 purposes of evaluating the settlement's reasonable, this estimate must be "tempered by factors such as
4 the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
5 measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
6 *(FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

7 Ultimately, Plaintiff's Counsel determined an appropriate range of recovery for settlement
8 purposes by offsetting Defendant's maximum theoretical liability by: (i) the strength of the defenses to
9 the merits of Plaintiff's claims; (ii) the risk of class certification being denied; (iii) the risk of losing on
10 any of a number of dispositive motions that could have been brought between certification and trial (e.g.,
11 motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have
12 eliminated all or some of Plaintiff's claims, or barred evidence/testimony in support of the claims; (iv)
13 the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the
14 difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

15 After taking into account the Discount Factors, Plaintiff's Counsel determined that it would be
16 reasonable to settle for a fraction of Defendant's maximum potential exposure for the class claims
17 (PAGA discussed in the following section), or approximately 13%, which is essentially the product of
18 the probability of: (i) certification being granted on **all claims** ($\approx 50\%$); (ii) prevailing on summary
19 judgment/motions in limine/renewed motions to deny certification on **all claims** ($\approx 50\%$); (iii) prevailing
20 at trial on **all of Plaintiff's claims** ($\approx 50\%$); i.e., $50\% \times 50\% \times 50\%$.

21 Such a discount is inherently reasonable given that Plaintiff would have had to overcome
22 **multiple, dependent** contingencies to prevail on her claims. If anything, the projected odds for each of
23 the above contingencies is generous to the class' position, since plaintiffs in employment cases rarely
24 prevail on **all of the claims** at any of these dispositive stages. Courts routinely approve settlements that
25 provide a similar discounted range of the maximum potential recovery. *See, e.g., In re Warfarin Sodium*
26 *Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount
27 can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp.
28 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were

approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).⁶

B. The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy Discounted by the Risks of Continued Litigation

Pursuant to the Settlement Agreement, \$100,000 from the Class Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$75,000) will be paid directly to the LWDA, and the remaining 25% (\$25,000) will be paid to Participating Class Members. (Settlement Agreement ¶ 34.)

This result was reached after good-faith negotiation between the parties. The amount was valued as follows: Based on information and evidence produced by Defendant during discovery, Plaintiff determined that aggrieved employees worked a combined total of approximately 28,100 pay periods during the PAGA statute of limitations period (“PAGA Period”). Unless otherwise provided by the Labor Code,⁷ PAGA civil penalties for Labor Code violations are calculated according to Labor Code

⁶ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

⁷ For example, Labor Code section 558 authorizes the Labor Commissioner to seek civil penalties for overtime and other workday violations at an initial violation rate of \$50 for each underpaid employee for each pay period and a subsequent violation rate of \$100 for each underpaid employee for

2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation (the “subsequent violation penalty”).

However, some courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced “subsequent violation penalty” or “heightened penalty” only after an employer has been notified that its conduct violates the Labor Code. *See Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430 (S.D. Cal. 2009) (finding that California law imposes the “subsequent violation penalty” only after an employer has been notified its conduct violates the Labor Code). Based on the above line of cases, Plaintiff estimates that, if proven, Defendant’s exposure would be calculated as follows: 28,100 pay periods × \$100 = \$2,810,000.

It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA penalties, courts have considered issues including whether the employees suffered actual injury from the violations, whether the defendant was aware of the violations, and the employer’s willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA

each pay period. *See* Lab. Code § 558; *see also ZB, N.A. v. Super. Ct.*, 8 Cal. 5th 175, 197 (2019) (calculating PAGA penalties for overtime violations according to the Section 558 penalty rates); *Lawson v. ZB, N.A.*, 18 Cal. App. 5th 705, 724 (2017), as modified (Dec. 21, 2017), *aff’d* but criticized sub nom. *ZB, N.A. v. Super. Ct.*, 8 Cal. 5th 175 (2019) (“we note that with respect to the meal break and rest break violations . . . section 558 provides either a \$50 or \$100 assessment for each violation during a pay period”).

1 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—
2 **or 0.21% of the maximum**—and stated that this reduction was warranted because imposing the
3 maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith
4 attempts” to comply with meal period obligations and because the court found the violations were
5 minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced
6 award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had been applied here,
7 Plaintiff would have recovered only approximately \$5,900 ($\$2,810,000 \times 0.0021$ reduction).

8 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
9 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*
10 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
11 under specified PAGA claim where the employer produced evidence that it took its obligations
12 seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May
13 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven,
14 remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A*
15 *Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,
16 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with
17 recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis*
18 *Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
19 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
20 other PAGA claims).

21 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
22 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
23 approved by California courts.⁸ Where PAGA penalties are negotiated in good faith and “there is no
24

25 ⁸ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
26 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
27 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
28 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,
2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC

1 indication that [the] amount was the result of self-interest at the expense of other Class Members,” such
2 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009
3 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal.
4 App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which
5 does not allocate any damages to the PAGA claims.”).

6 **C. The Court Should Preliminarily Approve the Negotiated Class Representative**
7 **Enhancement Payment**

8 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*
9 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*
10 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
11 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
12 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class representatives
13 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
14 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
15 *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making enhancement or incentive awards to named
16 plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a
17 benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th
18 785, 806 (2009).

19 Approximately 2,520 current and former employees will share a \$1,375,000 settlement fund due
20 entirely to the effort and commitment of Sherice Duncan. Subject to Court approval, therefore, the
21

22 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
23 fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);
24 *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane
25 Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated
26 to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County
27 Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
28 approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta*
Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F.
Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the
settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which
\$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

1 Settlement provides for a Class Representative Enhancement Payment of \$10,000.⁹ The Class
2 Representative Enhancement Payment is fair and reasonable compensation for Plaintiff's effort in
3 pursuing the action, serving as a private attorney general under PAGA, assisting counsel with the
4 litigation and settlement, regularly conferring with counsel on the status of her case and the strategies for
5 prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and
6 provide adequate relief for the Settlement Class.

7 Plaintiff will file a formal motion for the negotiated Class Representative Enhancement Payment
8 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
9 showing is sufficient for preliminary approval of the negotiated Class Representative Enhancement

10 ⁹ This amount is reasonable by reference to the amounts that California courts (both federal and
11 state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter v.*
12 *GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000
13 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146
14 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named
15 plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento
16 County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff);
17 *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016)
18 (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*,
19 No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the
20 named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.
21 April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United*
22 *Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costa County Super. Ct. April 15, 2016)
23 (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire's Boutiques, Inc.*,
24 No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the
25 named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS
26 (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named
27 plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16,
28 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*,
No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to
three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A.
County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann*
Stores, Inc., No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health*
Services, Inc., No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement
payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No.
BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the
named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct.
Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs); *Magee v.*
American Residential Services, LLC, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding
\$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967
(L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named
plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010)
(awarding \$10,000 enhancement payment).

1 Payment.

2 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and**
3 **Costs**

4 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took
5 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
6 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
7 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
8 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
9 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards
10 in class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-
11 approval of attorneys' fees of \$458,333 (one-third of the Class Settlement Amount) and \$20,000 in
12 litigation costs.

13 **E. California Law Authorizes Provisional Certification for Settlement Purposes**

14 **1. The California Standard for Class Certification**

15 Class actions are statutorily authorized "when the question is one of common or general interest,
16 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
17 court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
18 certification is appropriate when there is an "ascertainable class and a well-defined community of interest
19 among class members." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class
20 treatment is appropriate even if class members at some point may be required to make an individual
21 showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193,
22 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

23 Conditional certification of the proposed Settlement Class is particularly warranted here given
24 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor*
25 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class certification
26 in settlement cases).¹⁰ In *Dunk*, the California Court of Appeal specifically rejected the argument that
27

28 ¹⁰ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts "declin[e] to treat formal class

the standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of litigation:

Geer argues the court must use the same standard under Federal Rules of Civil Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser standard of scrutiny for settlement cases . . . We agree with the latter. The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the non-representative class members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, only makes a difference if the non-representative class members would do much better by litigating on their own or in their own jurisdiction. The second category concerns are protected by the trial court’s fairness review of the settlement.

Id. at n19.

2. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

In April of 2012, the California Supreme Court expounded on the element of predominance:

The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared with those requiring separate

certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia, Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class can be preliminarily certified based on a less rigorous analysis than that necessary for final certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, “the Court must determine whether the proposed class should be conditionally certified, and leave the final certification decision for the Fairness Hearing.”).

1 adjudication, are so numerous or substantial that the maintenance of a class
2 action would be advantageous to the judicial process and to the litigants.”

3 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

4 The proposed Settlement Class consists of all persons who worked for Defendants as non-
5 exempt, hourly paid employees in California at any time from March 1, 2018 to the date of Preliminary
6 Approval. Because all Class Members are either current or former employees of Defendant, the class is
7 readily ascertainable from Defendant’s regular business records.

8 Here, common issues of fact and law predominate because the California statutes relating to
9 each of Plaintiff’s claims, and Defendant’s defenses thereto, apply with equal force and effect to all Class
10 Members. Factually, Plaintiff contends that Defendant’s policies and practices apply class-wide and
11 Defendant’s liability can be determined by facts common to all members of the class. The wage and hour
12 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
13 with the claims of the Settlement Class Members.

14 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
15 from the same factual bases and are based on the same legal theories applicable to the other Class
16 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Class. Plaintiff
17 maintains that she was injured by the same company-wide practices to which the proposed Settlement
18 Class was subject and seeks the same relief. Plaintiff has already demonstrated her ability to advocate for
19 the interests of the Class by initiating this litigation, undertaking representative discovery, and evaluating
20 the proposed settlement to assure that it is fair.

21 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
22 litigating wage and hour class action cases. (Perez Decl. ¶¶ 9-11, Ex. 2.) Plaintiff’s Counsel have
23 successfully briefed, argued, certified, and gained state and federal court settlement approval of the same
24 class-wide causes of action that are at issue in this case. (*Id.*) Plaintiff’s Counsel’s wage and hour class
25 action expertise establishes that they are well qualified to represent the interests of this Class.

26 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
27 each individual Class Member’s claim, Class Members likely have little incentive to litigate their claims
28 on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate

each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

3. The Proposed Notice Properly Informs Class Members about the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).¹¹

The Parties have jointly drafted the Notice of Class Action Settlement (“Class Notice”) which fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed Class Notice will be mailed to all Class Members by First Class mail and will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure and time period within which to submit Requests for Exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit A.)

In the event Class Notices are returned as undeliverable, the Settlement Administrator will attempt to locate a current address using, among other resources, a skip-trace search. (Settlement Agreement ¶ 42.)

¹¹ Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.”).

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminary approval, the Parties request that the Court preliminarily approve the settlement.

Dated: January 22, 2021

Respectfully submitted,

By: Paul P.

Raul Perez
Bevin Allen Pike
Orlando Villalba
Trisha K. Monesi
CAPSTONE LAW APC

Attorney for Plaintiff Sherice Duncan

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5 Capstone Law APC
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6 Los Angeles, California 90067
Telephone: (310) 556-4811
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiff Sherice Duncan

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11
12 SHERICE DUNCAN, individually, and on
13 behalf of other members of the general public
similarly situated,

14 Plaintiff,

15 vs.

16 CLAIRE'S BOUTIQUES, INC., a Colorado
17 corporation; and DOES 1 through 10, inclusive,

18 Defendants.

Case No.: 20STCV15355

**DECLARATION OF RAUL PEREZ IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: February 17, 2021
Time: 11:00 a.m.
Place: Department 10

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1 pursuing an action against Defendant for Labor Code violations. Having worked for Defendant as a
2 Store Manager, Plaintiff was intimately familiar with Defendant's labor policies and practices, and over
3 the course of multiple interviews, knowledgeably summarized those policies and practices to Plaintiff's
4 Counsel. During those conversations, she explained how the policies and practices were instituted and
5 provided valuable insight into how they gave rise to the alleged Labor Code violations. Based on these
6 interviews with Plaintiff, Plaintiff's Counsel determined that there were legally sufficient grounds for
7 pursuing an action against Defendant.

8 5. Plaintiff's Counsel also prepared a detailed letter (17 pages, single-spaced) to notify the
9 California Labor and Workforce Development Agency ("LWDA") of Plaintiff's intent to seek civil
10 penalties and other available relief recoverable under PAGA for Labor Code violations. Significant
11 research and effort were expended to prepare a PAGA notice that was consistent with the developing
12 legal requirements so as to withstand any challenge from Defendant regarding the notice's sufficiency.

13 6. In preparation for drafting the complaint, Plaintiff's Counsel conducted their own
14 preliminary investigation into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
15 examination of Plaintiff's personnel file and associated records. Following the filing of the Complaint,
16 and in response to Plaintiff's discovery requests, Plaintiff's Counsel received a considerable amount of
17 documents and data, including employee demographic data, a sample of time and pay records, and
18 hundreds of pages of Defendant's policies and procedures manuals which covered a broad range of
19 topics including, *inter alia*, employee clock-in policies and procedures, attendance policies, meal
20 periods/rest periods, overtime & premium pay, etc. The document and data exchanges allowed Plaintiff's
21 Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments
22 to recovery, and ultimately enabled Plaintiff's Counsel so as to make an independent assessment of the
23 reasonableness of the settlement's terms. Additionally, Plaintiff's Counsel inspected eight stores
24 throughout the state of California as part of their investigation of Plaintiff's seating claim.

25 7. In summary, Plaintiff's Counsel performed a thorough investigation into the claims at
26 issue, which included: (1) determining Plaintiff's suitability as a private attorney general and class
27 representative through interviews, background investigations, and analyses of her employment files and
28 related records; (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar

1 wage and hour class actions as to the claims brought, the nature of the positions, and the type of
2 employer; (4) analyzing employees' time and wage records; (5) reviewing Defendant's employment
3 policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's claims and
4 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
5 participating in the mediation.

6 8. By engaging in such a thorough investigation and evaluation of Plaintiff's claims,
7 Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in the
8 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in
9 light of all known facts and circumstances, including the risk of significant delay and uncertainty
10 associated with litigation, and various defenses asserted by Defendant.

11 CAPSTONE LAW APC FIRM PROFILE

12 9. Capstone is one of California's largest plaintiff-only labor and consumer law firms.
13 With over twenty-five seasoned attorneys, Capstone has the experience, resources, and expertise to
14 successfully prosecute complex employment and consumer actions.

15 10. Since its founding in 2012, Capstone has emerged as a major force in aggregate
16 litigation, making law on cutting-edge issues and obtaining over \$200 million in recovery for employees
17 and consumers. The firm's accomplishments include:

- 18 a. In February 2015, Ryan H. Wu and I were honored with the prestigious California
19 Lawyer of the Year (CLAY) award in labor and employment for our work in the
20 landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348
21 (2014), which preserved the right of California workers to bring representative
22 actions under the Labor Code Private Attorneys General Act ("PAGA")
23 notwithstanding a representative action waiver in an arbitration agreement.
- 24 b. Recognized as a leading firm in the prosecution of PAGA enforcement actions,
25 Capstone is responsible for some of the most important decisions in this area. In
26 *Williams v. Superior Court (Marshalls of Calif.)*, 2017 WL 2980258, Capstone
27 attorneys achieved a landmark decision before the California Supreme Court as to
28 the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs.*

1 *Corp*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone
2 attorneys successfully argued that PAGA actions are state enforcement actions not
3 covered by the Class Action Fairness Act.

4 11. Attached as Exhibit 2 is a true and correct copy of Capstone's firm resume.

5
6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct. Executed this 22nd day of January, 2021, at Los Angeles, California.

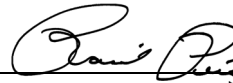
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 Raul Perez

Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SHERICE DUNCAN, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

CLAIRE'S BOUTIQUES, INC., a Colorado
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 20STCV15355

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Sherice Duncan (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly situated, and Defendant Claire’s Boutiques, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Duncan v. Claire’s Boutiques, Inc.*, No. 20STCV15355 (Los Angeles County Superior Court).

2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to fees and expenses of experts, investigation expenses, postage, telephone, and photocopying charges, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Class Settlement Amount, or Four Hundred Fifty Eight Thousand Three Hundred Thirty Three Dollars (\$458,333). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to Twenty Thousand Dollars (\$20,000), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.

3. “Class Counsel” means Capstone Law APC.

4. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within thirty (30) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address

1 and telephone number; Social Security number; dates of employment; the respective number of
2 Workweeks that each Class Member worked during the Class Period; and any other relevant information
3 needed to calculate settlement payments.

4 5. "Class Member(s)" or "Settlement Class" means all persons who worked for Defendants
5 as non-exempt, hourly paid employees in California at any time from March 1, 2018 to the date of
6 Preliminary Approval.

7 6. "Class Period" means the period from March 1, 2018 to the date of Preliminary
8 Approval.

9 7. "Class Representative Enhancement Payment" means the amount to be paid to Plaintiff
10 in recognition of her effort and work in prosecuting the Action on behalf of Class Members, and for her
11 general release of claims. Subject to the Court granting final approval of this Settlement Agreement and
12 subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class
13 Representative Enhancement Payment of Ten Thousand Dollars (\$10,000).

14 8. "Class Settlement Amount" means the Class Settlement Amount of One Million Three
15 Hundred Seventy Five Thousand Dollars (\$1,375,000), to be paid by Defendant in full satisfaction of all
16 Released Claims arising from the Action, which includes all Individual Settlement Payments to
17 Participating Class Members, Attorneys' Fees and Costs to Class Counsel, the Class Representative
18 Enhancement Payment to Plaintiff, the Labor and Workforce Development Agency Payment, and
19 Settlement Administration Costs to the Settlement Administrator. This Class Settlement Amount has
20 been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon settlement value
21 of individual claims. In no event will Defendant be liable for more than the Class Settlement Amount
22 except as otherwise explicitly set forth herein. There will be no reversion of the Class Settlement
23 Amount to Defendant. Defendant will be separately responsible for any employer payroll taxes required
24 by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the
25 Class Settlement Amount.

26 9. "Court" means the Los Angeles County Superior Court.

27 10. "Defendant" means Defendant Claire's Boutiques, Inc.

28 11. "Defense Counsel" means Adam Y. Siegel and Carmen Miranda of Jackson Lewis P.C.

12. “Effective Date” means the date by which this Settlement is finally approved as provided herein and the Superior Court’s Judgment becomes binding. For purposes of this Settlement, the Judgment becomes binding upon the later of: (i) sixty-two (62) days after Plaintiff files and serves Defendant with a Notice of Entry of Judgment, and no appeal is filed within that period; (ii) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial or otherwise, the day after the last date for filing a request for further review of the Court of Appeal’s decision passes, and no further review is requested; (iii) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal’s decision is requested, the day after the request for review is denied with prejudice and/or no further review of the judgment can be requested, or (iv) if review is accepted, the day the California Supreme Court affirms the Settlement.

13. “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement Agreement.

14. “Individual Settlement Payment” means each Participating Class Member’s respective share of the Net Settlement Amount.

15. “Labor and Workforce Development Agency Payment” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that One Hundred Thousand Dollars (\$100,000) of the Class Settlement Amount will be allocated to the resolution of Class Members’ claims arising under PAGA. Pursuant to PAGA, Seventy-Five Percent (75%), or Seventy Five Thousand Dollars (\$75,000), of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency, and Twenty-Five Percent (25%), or Twenty Five Thousand Dollars (\$25,000), of the PAGA Settlement Amount will be included in the Net Settlement Amount.

16. “Net Settlement Amount” means the portion of the Class Settlement Amount remaining after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the Labor and Workforce Development Agency Payment, and Settlement Administration Costs. The Net Settlement Amount will be distributed to Participating Class Members. There will be no reversion of the Net Settlement Amount to Defendant.

1 17. “Notice of Objection” means a Class Member’s valid and timely written objection to the
2 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector’s full
3 name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection
4 accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other
5 documents upon which the objection is based; and (iv) a statement whether the objector intends to appear
6 at the final fairness hearing. Any Class Member who does not submit a timely written objection to the
7 Settlement, or who fails to otherwise comply with the specific and technical requirements of this section,
8 will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the
9 Settlement, by appeal or otherwise. At no time shall any of the Parties, Class Counsel, or Defense
10 Counsel seek to solicit or otherwise encourage Class Members to submit a Notice of Objection or
11 file an appeal from the Final Order and Judgment. Class Members are not permitted to object to the
12 Labor and Workforce Development Agency Payment.

13 18. “Notice Packet” means the Notice of Class Action Settlement, substantially in the form
14 attached as Exhibit A.

15 19. “Parties” means Plaintiff and Defendant collectively.

16 20. “Participating Class Members” means all Class Members who do not submit timely and
17 valid Requests for Exclusion.

18 21. “Plaintiff” means Sherice Duncan.

19 22. “Preliminary Approval” means the date on which the Court enters an order granting
20 preliminary approval of the Settlement Agreement.

21 23. “Released Claims” means all claims under state, federal or local employment and labor
22 laws, whether statutory, common law or administrative law, arising out of or related to allegations set
23 forth in the operative statutory, common law or administrative law, arising out of or related to allegations
24 set forth in the operative Complaint or PAGA Notice to the LWDA, including but not limited to: claims
25 for minimum wage violations; failure to pay overtime wages; unreimbursed expenses; rest period
26 violations; meal period violations; itemized wage statement violations; waiting time penalties; unfair
27 competition; declaratory relief; and claims for violation of the California Private Attorneys General Act
28 based on the preceding violations; including, but not limited to, injunctive relief; punitive damages;

1 liquidated damages, penalties of any nature; interest; fees; costs; and all other claims and allegations
2 made or which could have been made in the Action based on the facts alleged in the operative Complaint
3 or PAGA Notice, through the date of Final Approval of the Settlement.

4 24. "Released Parties" means Defendant, its past or present officers, directors, shareholders,
5 employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and
6 reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and
7 attorneys, if any.

8 25. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a
9 request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,
10 address, telephone number and last four digits of the Social Security Number of the Class Member
11 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement
12 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;
13 and (v) be faxed or postmarked on or before the Response Deadline. A Class Member who does not
14 request exclusion from the Settlement will be deemed a "Participating Class Member" and will be
15 bound by all terms of the Settlement, if the Settlement is granted final approval by the Court. No
16 later than ten (10) calendar days after the Response Deadline, the Settlement Administrator shall
17 provide counsel for the Parties a complete list of all Class Members who submitted a timely and
18 valid Request for Exclusion. Defendant, at its sole discretion, then shall have the right, but not the
19 obligation, to revoke the Settlement if five percent (5%) or more of the Class Members timely
20 exclude themselves. Defendant shall exercise its revocation rights, if at all, within thirty (30)
21 calendar days of the Response Deadline. If Defendant exercises its right of revocation, then
22 Defendant will be responsible for all Settlement Administration Costs incurred to the date of rescission.
23 Class Members shall be prohibited from submitting a Request for Exclusion with respect to claims under
24 PAGA and thus shall receive their portion of the Labor and Workforce Development Agency Payment.

25 26. "Response Deadline" means the deadline by which Class Members must postmark or
26 fax to the Settlement Administrator Requests for Exclusion, or postmark Notices of Objection to the
27 Settlement Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
28 mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day

falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

27. “Settlement Administration Costs” means the costs payable from the Class Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of approximately Two Thousand Five Hundred and Thirteen (2,513) Class Members, the Settlement Administration Costs are currently estimated to be Twenty Thousand Dollars (\$20,000).

28. “Settlement Administrator” means CPT Group, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

29. “Workweeks” means the number of days of employment for each Class Member during the Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek.

TERMS OF AGREEMENT

The Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

30. Funding of the Class Settlement Amount. Defendant will make a one-time deposit of the Class Settlement Amount of One Million Three Hundred Seventy Five Thousand Dollars (\$1,375,000) into a Qualified Settlement Account to be established by the Settlement Administrator. Defendant will pay the employer’s share of payroll taxes separately, but such payroll taxes shall be deposited into the Qualified Settlement Account. After the Effective Date, the Class Settlement Amount will be used for: (i) Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment; (iii) the Class Representative Enhancement Payment; (iv) Attorneys’ Fees and Costs;

1 and (v) Settlement Administration Costs. Defendant will deposit the Class Settlement Amount and the
2 employer's share of payroll taxes within five (5) business days after the Effective Date ("Funding Date").

3 31. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application
4 or motion by Class Counsel for Attorneys' Fees and Costs of not more than Four Hundred Fifty Eight
5 Thousand Three Hundred Thirty Three Dollars (\$458,333), plus the reimbursement of all out-of-pocket
6 costs and expenses associated with Class Counsel's litigation and settlement of the Action (including
7 expert fees, investigations expenses, photocopying, etc.), not to exceed Twenty Thousand Dollars
8 (\$20,000), both of which will be paid from the Class Settlement Amount. Class Counsel shall be solely
9 and legally responsible to pay all applicable taxes on the Class Counsel Award. The Settlement
10 Administrator shall issue an IRS Form 1099 to Class Counsel for the Class Counsel Award. Any
11 Attorneys' Fees and Costs not awarded by the Court shall become part of the Net Settlement Amount
12 and shall be distributed to Participating Class Members as described in this Settlement Agreement.

13 32. Class Representative Enhancement Payment. In exchange for a general release, and in
14 recognition of her effort and work in prosecuting the Action on behalf of Class Members, Defendant
15 agrees not to oppose or impede any application or motion for a Class Representative Enhancement
16 Payment of Ten Thousand Dollars (\$10,000), to Plaintiff. The Class Representative Enhancement
17 Payment will be paid from the Class Settlement Amount and will be in addition to Plaintiff's Individual
18 Settlement Payment paid pursuant to the Settlement. The Settlement Administrator shall issue an IRS
19 Form 1099 to Plaintiff for her Class Representative Enhancement Payment. Plaintiff will be solely and
20 legally responsible to pay any and all applicable taxes on the Class Representative Enhancement
21 Payment and shall hold harmless Defendant, Class Counsel and Defense Counsel from any claim or
22 liability for taxes, penalties, or interest arising as a result of payment of the Class Representative
23 Enhancement Payment. Any amount requested by Plaintiff for the Class Representative Enhancement
24 Payment and not awarded by the Court shall become part of the Net Settlement Amount and shall be
25 distributed to Participating Class Members as part of their Individual Settlement Awards.

26 33. Settlement Administration Costs. The Settlement Administrator will be paid for the
27 reasonable costs of administration of the Settlement and distribution of payments from the Class
28 Settlement Amount, which is currently estimated to be Twenty Thousand Dollars (\$20,000). These

costs, which will be paid from the Class Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice Packets, calculating and distributing the Class Settlement Amount, and providing necessary reports and declarations.

34. Labor and Workforce Development Agency Payment. Subject to Court approval, the Parties agree that the amount of One Hundred Thousand Dollars (\$100,000) from the Class Settlement Amount will be designated for satisfaction of Plaintiff's and Class Members' PAGA claims. Pursuant to PAGA, Seventy-Five Percent (75%), or Seventy Five Thousand Dollars (\$75,000), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or Twenty Five Thousand Dollars (\$25,000), will become part of the Net Settlement Amount. Class Members are prohibited from objecting to and/or seeking a Request for Exclusion with respect to the Labor and Workforce Development Agency Payment.

35. Net Settlement Amount. The entire Net Settlement Amount will be distributed to Participating Class Members. No portion of the Net Settlement Amount will revert to or be retained by Defendant.

36. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period. Specific calculations of Individual Settlement Payments will be made as follows:

36(a) Defendant will calculate the total number of Workweeks worked by each Class Member during the Class Period and the aggregate total number of Workweeks worked by all Class Members during the Class Period.

36(b) To determine each Class Member's estimated "Individual Settlement Payment," the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the "Workweek Value." Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek

1 Value.

2 36(c) The Individual Settlement Payment will be reduced by any required
3 deductions for each Participating Class Member as specifically set forth
4 herein, including employee-side tax withholdings or deductions.

5 36(d) The entire Net Settlement Amount will be disbursed to all Class Members
6 who do not submit timely and valid Requests for Exclusion. If there are any
7 valid and timely Requests for Exclusion, the Settlement Administrator shall
8 proportionately increase the Individual Settlement Payment for each
9 Participating Class Member according to the number of Workweeks
10 worked, so that the amount actually distributed to the Settlement Class
11 equals 100% of the Net Settlement Amount. However, each individual
12 Class Member shall receive his/her share of the Labor Workforce
13 Development Agency Payment even if such Class Member submitted a
14 Request for Exclusion as the Settlement Class may not submit a Request for
15 Exclusion as to claims under PAGA.

16 37. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
17 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
18 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
19 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
20 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
21 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
22 or amounts to which any Class Members may be entitled under any benefit plans.

23 38. All monies received by Participating Class Members under the Settlement which
24 are attributable to wages shall constitute income to such Participating Class Members solely in the
25 year in which such monies actually are received by the Participating Class Members. It is the
26 intent of the Parties that Individual Settlement Payments provided for in this Settlement are the sole
27 payments to be made by Defendant to Participating Class Members in connection with this
28 Settlement, with the exception of Plaintiff, and that the Participating Class Members are not

entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments. Furthermore, the receipt of Individual Settlement Payments by Participating Class Members shall not, and does not, by itself establish any general, special, or joint employment relationship between and among the Participating Class Member(s) and Defendant.

39. Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

40. Delivery of the Class List. Within thirty (30) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator and to Class Counsel.

41. Notice by First-Class U.S. Mail. Class Counsel and Defense Counsel will instruct the Settlement Administrator to mail, within ten (10) calendar days after receiving the Class List from Defendant, a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

42. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement Administrator:

- Perform a search, prior to mailing, based on the National Change of Address Database for information to update and correct for any known or identifiable address changes
- Promptly send any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline via regular First-Class U.S. Mail to the forwarding address affixed thereto and will indicate the date of such re-mailing on the Notice Packet or, if no forwarding address is provided, promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and then perform a single re-mailing.

Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

43. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet

1 will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's
2 principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective
3 Class Member worked for Defendant during the Class Period; (v) each Class Member's estimated
4 Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the
5 dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or
6 Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax Request for
7 Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be released.

8 44. Disputed Information on Notice Packets. Class Members will have an opportunity to
9 dispute the information provided in their Notice Packets. To the extent Class Members dispute their
10 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
11 Settlement Administrator showing that such information is inaccurate. Class Counsel and Defense
12 Counsel agree that the Settlement Administrator will decide the dispute and will authorize and instruct
13 the Settlement Administrator to do so. Defendant's records will be presumed correct, but the Settlement
14 Administrator will evaluate the evidence submitted by the Class Member and will make the final
15 decision as to the merits of the dispute. All disputes will be decided within ten (10) business days of the
16 Response Deadline.

17 45. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
18 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
19 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
20 receiving the defective submission to advise the Class Member that his or her submission is defective
21 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will
22 have until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter,
23 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
24 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

25 46. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
26 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
27 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
28 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request

1 for Exclusion has been timely submitted. Class Members shall be prohibited from objecting to and/or
2 seeking a Request for Exclusion with respect to claims under PAGA.

3 47. Proportional Increase to Class Settlement Amount. The Class Settlement Amount was
4 calculated with, and is premised on, the understanding that there are approximately Two Thousand Five
5 Hundred and Thirteen (2,513) Class Members eligible to participate in the Settlement as of May 31,
6 2020. If the actual number of Class Members eligible to participate in the Settlement is greater than one
7 hundred and ten percent (110%) of this estimate as of May 31, 2020, or greater than Two Thousand
8 Seven Hundred Sixty-Five (2,765) Class Members, then either the Class Settlement Amount will be
9 increased by the same proportion above one hundred and ten percent (110%) or Defendant, at its sole
10 discretion, may elect to cut off the Settlement Class as of the date the Settlement Class exceeds 2,765
11 members.

12 48. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
13 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
14 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
15 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
16 Settlement.

17 49. Releases by Participating Class Members. Upon the Funding Date, each Participating
18 Class Member, together and individually, on their behalf and on behalf of their respective spouses, heirs,
19 executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the
20 Released Parties, or any of them, from each of the Released Claims during the Class Period.

21 50. Defendant's Right to Rescind. If five percent (5%) or more of the Class Members
22 validly opt out of the Settlement, Defendant may, at its election and in its sole discretion, rescind the
23 Settlement and all actions taken in furtherance of it will thereby be null and void. Defendant must
24 exercise this right of rescission in writing, by certified or electronic mail to Class Counsel, within thirty
25 (30) calendar days of the Response Deadline. If Defendant exercises its option to rescind the Settlement,
26 then it must pay all Settlement Administration costs incurred to the date of rescission.

27 51. Objection Procedures. To object to the Settlement Agreement, a Class Member must
28 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response

1 Deadline. The Notice of Objection must be signed by the Class Member and contain all information
2 required by this Settlement Agreement. The postmark will be deemed the exclusive means for
3 determining that the Notice of Objection is timely. Class Members who fail to object in the manner
4 specified above will be deemed to have waived all objections to the Settlement and will be foreclosed
5 from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Class
6 Members who postmark timely Notices of Objection will have a right to appear at the Final Approval
7 Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their
8 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
9 Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any
10 Class Members with respect to any such objections to this Settlement. Class Members shall be prohibited
11 from objecting to claims under PAGA.

12 52. Certification Reports Regarding Individual Settlement Payment Calculations. The
13 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that
14 certifies the number of Class Members who have submitted valid Requests for Exclusion, objections to
15 the Settlement, and whether any Class Member has submitted a challenge to any information contained
16 in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both
17 Parties any updated reports regarding the administration of the Settlement Agreement as needed or
18 requested.

19 53. Distribution Timing of Individual Settlement Payments. Within twenty (20) calendar
20 days of the Effective Date, the Settlement Administrator will issue payments to: (i) Participating Class
21 Members; (ii) the Labor and Workforce Development Agency; (iii) Plaintiff; and (iv) Class Counsel.
22 The Settlement Administrator will also issue a payment to itself for Court-approved services performed
23 in connection with the Settlement.

24 54. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
25 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
26 more than one hundred and eighty (180) calendar days after issuance will be tendered to the State
27 Controller's Office, Unclaimed Property Division. In the event a Participating Class Member fails to
28 cash/deposit his or her Individual Settlement Payment check, the Participating Class Member shall

1 nevertheless remain bound by the Settlement.

2 55. Certification of Completion. Upon completion of administration of the Settlement, the
3 Settlement Administrator will provide a written declaration under oath to certify such completion to the
4 Court and counsel for all Parties.

5 56. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
6 be allocated as follows: (i) Twenty-Five Percent (25%) of each Individual Settlement Payment will be
7 allocated as wages for which IRS Forms W-2 will be issued; and (ii) Seventy-Five (75%) will be
8 allocated as non-wages for which IRS Forms 1099-MISC will be issued.

9 57. Administration of Taxes by the Settlement Administrator. The Settlement
10 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
11 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
12 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
13 and penalties to the appropriate government authorities.

14 58. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect
15 of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on
16 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this
17 regard. Participating Class Members and Class Counsel understand and agree that Participating
18 Class Members shall be responsible for the payment of all taxes and penalties assessed on the
19 payments specified herein, and shall hold the Parties, Class Counsel and Defense Counsel free and
20 harmless from and against any claims resulting from treatment of such payments as non-taxable,
21 including the treatment of such payments as not subject to withholding or deduction for payroll
22 and employment taxes.

23 59. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
24 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
25 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
26 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
27 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
28 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR

1 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
2 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
3 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
4 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
5 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
6 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
7 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
8 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
9 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
10 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
11 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
12 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
13 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
14 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
15 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
16 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
17 AGREEMENT.

18 60. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
19 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
20 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
21 action or right herein released and discharged.

22 61. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
23 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
24 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
25 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
26 likewise be treated as void from the beginning and this Settlement and any documents related to it shall
27 not be used by any Class Member or Class Counsel to support any claim or request for class certification
28 in the Action, and shall not be used in any other civil, criminal or administrative action against Defendant

1 or any of the other Released Parties. Additionally, should the Settlement not become final for any
2 reason, the Parties will request that the Court reopen proceedings within thirty (30) calendar days, and
3 any Settlement Administration Costs already incurred by the Settlement Administrator shall be split
4 evenly amongst the Parties. The Parties agree to ensure that the matter is transferred to Federal Court,
5 where the matter will continue. If Defendant elects to revoke the Settlement, as specified in Paragraph 51
6 (Defendant's Right to Rescind), the Parties and any monies required to be paid under this Settlement
7 shall be returned to their respective statuses as of the date and time immediately prior to the execution of
8 this Settlement, and the Parties shall proceed in all respects as if this Settlement had not been executed,
9 except that any Settlement Administration Costs already incurred by the Settlement Administrator shall
10 be paid to the Settlement Administrator by Defendant. In the event an appeal is filed from the Court's
11 Final Order and Judgment, or any other appellate review is sought, administration of the Settlement shall
12 be stayed pending final resolution of the appeal or other appellate review and the stay shall only be lifted
13 if the end result of the appeal or other proceeding is that the terms of this Settlement Agreement are
14 upheld.

15 62. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
16 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
17 Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii)
18 preliminary approval of the proposed Settlement Agreement, (iii) setting a date for a final fairness
19 hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class
20 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will
21 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
22 proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible
23 for drafting all documents necessary to obtain preliminary approval.

24 63. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
25 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
26 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
27 Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs; (ii)
28 the Class Representative Enhancement Payment; (iii) Individual Settlement Payments; (iv) the Labor

1 and Workforce Development Agency Payment; (v) all Settlement Administration Costs. The final
2 fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class
3 Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel
4 will also be responsible for drafting the attorneys' fees and costs application to be heard at the final
5 approval hearing.

6 64. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
7 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
8 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
9 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
10 administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or
11 as set forth in this Settlement Agreement.

12 65. Release by Plaintiff. Upon the Effective Date, in addition to the claims being released by
13 all Participating Class Members, Plaintiff releases and forever discharges the Released Parties, to the
14 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not
15 asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this
16 Settlement Agreement ("Plaintiff's Released Claims"). Plaintiff's Released Claims include, but are
17 not limited to, all of the Released Claims and any other claims arising under the California Labor
18 Code; any claim arising out of the California common law of contract; the Fair Labor Standards
19 Act, 29 U.S.C. § 201 *et seq.*, and federal common law; all claims for lost wages and benefits,
20 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under
21 federal, state, or local laws for discrimination, harassment, and wrongful termination, including
22 but not limited to, 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the
23 Americans with Disabilities Act, the Age Discrimination in Employment Act, the California Fair
24 Employment and Housing Act, the California Labor Code, and the law of contract and tort. This
25 release excludes the release of claims not permitted by law.

26 Plaintiff's Released Claims include all claims, whether known or unknown. Even if Plaintiff
27 discover facts in addition to or different from those that she now knows or believes to be true with
28 respect to the subject matter of Plaintiff's Released Claims, those claims will remain released and forever

1 barred. To effect a full and complete general release as described above, Plaintiff expressly waives any
2 and all rights and benefits conferred upon her by the provisions of Section 1542 of the California Civil
3 Code or similar provisions of applicable law which are as follows:

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

10 Thus, notwithstanding the provisions of section 1542, and to implement a full and
11 complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this
12 Settlement is intended to include in its effect, without limitation, all claims Plaintiff does not know
13 or suspect to exist in Plaintiff's favor at the time of signing this Settlement, and that this
14 Settlement contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
15 has read this Settlement, including this waiver of California Civil Code section 1542, and that
16 Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing
17 about this Settlement and specifically about the waiver of section 1542, and that Plaintiff
18 understands this Settlement and the section 1542 waiver, and so Plaintiff freely and knowingly
19 enters into this Settlement. Plaintiff further acknowledges that Plaintiff later may discover facts
20 different from or in addition to those Plaintiff now knows or believes to be true regarding the
21 matters released or described in this Settlement, and even so Plaintiff agrees that the releases and
22 agreements contained in this Settlement shall remain effective in all respects notwithstanding any
23 later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of
24 any mistake in connection with the true facts involved in the matters, disputes, or controversies
25 released or described in this Settlement or with regard to any facts now unknown to Plaintiff
26 relating thereto.

27 66. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
28 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set

1 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

2 67. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
3 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
4 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
5 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
6 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
7 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
8 contradict the terms of this Settlement Agreement.

9 68. Amendment or Modification. No amendment, change, or modification to this
10 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

11 69. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
13 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
14 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
15 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
16 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
17 unable to reach agreement on the form or content of any document needed to implement the Settlement,
18 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,
19 the Parties may seek the assistance of the Court to resolve such disagreement.

20 70. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
21 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

22 71. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
23 will be governed by and interpreted according to the laws of the State of California.

24 72. Execution and Counterparts. This Settlement Agreement is subject only to the execution
25 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
26 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
27 copies of the signature page, will be deemed to be one and the same instrument.

28 73. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this

1 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
2 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
3 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
4 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
5 fairness and reasonableness of this Settlement.

6 74. Invalidity of Any Provision. Before declaring any provision of this Settlement
7 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
8 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
9 valid and enforceable.

10 75. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
11 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
12 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
13 and either party may appeal any court order that materially alters the Settlement Agreement's terms.

14 76. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate
15 to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
16 approved, the stipulation to certification will be void. The Parties further agree that certification for
17 purposes of the Settlement is not an admission that class action certification is proper under the standards
18 applied to contested certification motions and that this Settlement Agreement will not be admissible in
19 this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendant
20 is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

21 77. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
22 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
23 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any
24 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
25 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
26 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
27 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any
28 of the negotiations connected with it, will be construed as an admission or concession by Defendant of

1 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding
2 to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not
3 be offered or received as evidence in any action or proceeding to establish any liability or admission on
4 the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
5 compliance with, federal, state, local or other applicable law.

6 78. No Public Comment: The Parties and their counsel agree that they will not issue any
7 press releases, initiate any contact with the press, respond to any press inquiry, or have any
8 communication with the press about the fact, amount or terms of the Settlement. Class Counsel further
9 agrees not to use the Settlement or any of its terms for any marketing or promotional purposes. Nothing
10 herein will restrict Class Counsel from including publicly available information regarding this settlement
11 in future judicial submissions regarding Class Counsel's qualifications and experience. Further, Class
12 Counsel will not include, reference or use the Settlement for any marketing or promotional purposes, or
13 for attempting to influence business relationships at Claire's locations, either before or after the Motion
14 for Preliminary Approval is filed.

15 79. Waiver. No waiver of any condition or covenant contained in this Settlement
16 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
17 imply or constitute a further waiver by such party of the same or any other condition, covenant, right or
18 remedy.

19 80. Enforcement Actions. In the event that one or more of the Parties institutes any legal
20 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
21 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
22 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
23 expert witness fees incurred in connection with any enforcement actions.

24 81. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
25 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
26 more strictly against one party than another merely by virtue of the fact that it may have been prepared
27 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
28 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

82. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

83. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

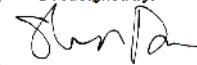
84. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

85. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 12/8/2020

DocuSigned by:

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DEFENDANT CLAIRE'S BOUTIQUES, INC.

Dated: _____

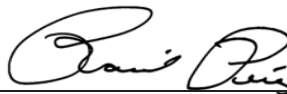
 Please Print Name of Authorized Signatory

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: December 8, 2020

By:



Raul Perez

Attorneys for Plaintiff Sherice Duncan

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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Sherice Duncan

DEFENDANT CLAIRE'S BOUTIQUES, INC.

Dated: December 1, 2020

Brendan McKeough

Please Print Name of Authorized Signatory
Brendan McKeough

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: _____

By: _____

Raul Perez

Attorneys for Plaintiff Sherice Duncan

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JACKSON LEWIS, P.C.

Dated: December 8, 2020

By: 
Adam Y. Siegel

Attorneys for Defendant Claire's Boutiques, Inc.

4837-9983-8927, v. 2

Exhibit A

Duncan v. Claire's Boutiques, Inc., No. 20STCV15355
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All persons who worked for Defendant Claire's Boutiques, Inc. ("Defendant") as non-exempt, hourly paid employees in California at any time from March 1, 2018 to [the date of Preliminary Approval].

On _____, the Honorable William F. Highberger of the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant's records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.** All checks will be negotiable for 180 days—checks that are not cashed within 180 days will be paid to the California State Controller to be deposited in the Unclaimed Property Fund in the Class Members' name.

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 ____m. on _____, 2021 in Department 10 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012. You are not required to attend the hearing.

Please note that face masks and/or facial coverings are required and mandatory at all times to enter any courthouse or courtroom and must be worn covering the nose and mouth. This policy applies to attorneys, parties, witnesses, court staff, Judges, Commissioners, vendors and the general public. The only exceptions to this policy will be for a documented medical condition or excuse, or an ADA accommodation approved by the Court. If an exception is granted, admittance into the courthouse may be restricted to a specific time of the day. If necessary, the time allotted for any granted exception may require the individual to wait until later in the day or schedule an appointment for admittance. Visit http://www.lacourt.org/pdf/recovery_social_distancing_all.pdf for more information about the Court's social distancing protocol.

Summary of the Litigation

Plaintiff Sherice Duncan, on her behalf and on behalf of other current and former non-exempt employees, alleges that Defendant violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) reimburse employees for necessary business expenses; and (5) provide employees with accurate, itemized wage statements.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On October 5, 2020, the parties participated in a mediation with Michael Dickstein, an experienced and well-respected class action mediator. With Mr. Dickstein's guidance, the parties were able to negotiate a complete settlement of Plaintiff's claims.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff's claims and that it has complied with all requirements under the law. By agreeing to settle,

Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

Summary of The Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$1,375,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payment of \$10,000 to Sherice Duncan for her services on behalf of the class; (3) \$458,333 in attorneys' fees and up to \$20,000 in litigation costs and expenses; (4) a \$75,000 payment to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$20,000. After deducting the Class Representative Enhancement Payment, attorneys' fees and costs, the payment to the LWDA, and the Settlement Administrator's fees and expenses, a total of approximately ____ will be allocated to Class Members who do not opt out of the settlement ("Net Settlement Amount").

Each Class Member's settlement payment will be based on the number of Workweeks each Class Member worked in a non-exempt position during the period from March 1, 2018 to [the date of Preliminary Approval] ("Class Period"). The formula for calculating settlement payments is as follows:

- (a) Defendant will calculate the total aggregate number of Workweeks that all Class Members worked during the applicable Class Period ("Total Workweeks").
- (b) The value of each individual Workweek shall then be determined by dividing the proceeds of the Net Settlement Amount by the Total Workweeks amount, resulting in the "Workweek Point Value".
- (c) An "Individual Settlement Payment" amount for each Class Member will then be determined by multiplying the individual Class Member's number of Workweeks by the Workweek Point Value.
- (d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

According to Defendant's records, you worked during the Class Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment is approximately \$ _____. If you believe the information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes should be postmarked or faxed on or before [insert date of Response Deadline] to:

Settlement Administrator

c/o _____

Fax No. _____

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 25% of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued, and 75% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims (“Released Claims”): All claims under state, federal or local employment and labor laws, whether statutory, common law or administrative law, arising out of or related to allegations set forth in the operative statutory, common law or administrative law, arising out of or related to allegations set forth in the operative Complaint or PAGA Notice to the LWDA, including but not limited to: claims for minimum wage violations; failure to pay overtime wages; unreimbursed expenses; rest period violations; meal period violations; itemized wage statement violations; waiting time penalties; unfair competition; declaratory relief; and claims for violation of the California Private Attorneys General Act based on the preceding violations; including, but not limited to, injunctive relief; punitive damages; liquidated damages, penalties of any nature; interest; fees; costs; and all other claims and allegations made or which could have been made in the Action based on the facts alleged in the operative Complaint or PAGA Notice, through the date of Final Approval of the Settlement.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The written request to be excluded must be postmarked or faxed not later than _____, 2021. If you submit a request for exclusion which is not postmarked or faxed by _____, 2021, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not be deemed to have released the Released Claims, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement. However, Class Members are prohibited from opting out of the settlement with respect to claims asserted under PAGA and shall receive their portion of the Labor and Workforce Development Agency Payment.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you must submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the settlement. Written objections must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator’s address].

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

All written objections must be received by the administrator by not later than _____ 2021. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only. However, Class Members are prohibited from objecting to the settlement with respect to claims asserted under PAGA and shall receive their portion of the Labor and Workforce Development Agency Payment.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Los Angeles and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez
Capstone Law APC
1875 Century Park E., Suite 1000
Los Angeles, CA 90067
Phone: (888) 819-3505

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT'S ATTORNEYS WITH INQUIRIES.

4851-2262-1135, v. 2

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Exhibit 2

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshall's of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.
- Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).

SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Melissa Grant. Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

Ryan H. Wu. Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshall's of CA LLC)*, 3 Cal.5th 531 (2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of "benefit of the bargain" damages models in consumer class actions.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation: Employees' Perspective*," both published in the *California Labor & Employment Law Review*.

Robert Drexler. Robert Drexler is a partner with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims

such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2020.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored *Defective Prosthetic Devices: Strict Tort Liability for the Hospital?* 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

Jamie Greene. is a partner with Capstone Law, where she leads the firm's business development and case generation team. Ms. Greene is responsible for evaluating all potential new cases and referrals, developing new claims, and managing the firm's client and cocounseling relationships. She also supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation.

Before joining Capstone, Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. Ms. Greene is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California.

Senior Counsel

Theresa Carroll. Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

Liana Carter. Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Anthony Castillo. Anthony Castillo is a senior counsel with Capstone Law. His practice focuses on analyzing and developing pre-litigation wage-and-hour and consumer claims, including PAGA representative actions and class actions for failure to pay overtime and minimum wages, meal and rest period violations, and claims under the Fair Labor Standards Act and the Investigative Consumer Reporting Agency Act. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues.

Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

Molly DeSario. Molly DeSario is a senior counsel with Capstone Law, specializing in employment class action litigation. Ms. DeSario's practice focuses primarily on wage-and-hour class action and Private Attorneys General Act litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work. She has experience briefing and arguing a multitude of dispositive motions in state and federal court and has successfully certified and settled numerous classes for claims such as exempt misclassifications, unpaid wages, missed meal and rest breaks, and unreimbursed business expenses.

Ms. DeSario began her career as a general practice litigation associate with Sandler & Mercer in Rockville, Maryland, handling a wide range of civil and criminal matters. Since 2005, she has primarily litigated class action cases and, for the last seven years, has focused on representing employees and consumers in class and collective actions across California and the nation, helping them recover millions of dollars in unpaid wages, restitution, and penalties. Molly graduated from Northeastern University School of Law in 2002. During law school, she interned for the U.S. Attorney's Office in Boston, Massachusetts, and the Honorable Paul L. Friedman at the U.S. District Court for the District of Columbia. She received her undergraduate degree in Marketing and International Business from the University of Cincinnati, where she graduated summa cum laude.

Robert Friedl. Robert Friedl is a senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

Daniel Jonathan. Daniel Jonathan is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Mr. Jonathan began his career as an associate at Kirkland & Ellis representing Fortune 500 clients in high-stakes litigation in various matters, including class action defense and plaintiff's actions for accounting fraud. Following that, he was a senior counsel at a boutique litigation firm where he successfully first-chaired several trials. Mr. Jonathan graduated from the Northwestern University School of Law. He received his undergraduate degree in Accounting from the University of Southern California, where he graduated cum laude. He has passed the CPA examination and worked as an auditor at Deloitte before attending law school.

Jonathan Lee. A senior counsel with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California.

Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Mark A. Ozzello. Mark A. Ozzello is a senior counsel with Capstone Law, where he leads the firm's consumer team. He is a nationally recognized and respected consumer and employment attorney who has litigated those issues throughout the country. He has always been at the forefront of consumer rights, sitting on the Board of Governors for the Consumer Attorneys of California and regularly appearing as a featured speaker on consumer rights issues nationwide.

Mr. Ozzello is a former partner of Arias Ozzello & Gignac and, most recently, was Of Counsel to Markun Zusman Freniere & Compton, LLP. In his capacity as a litigator, he has obtained results for his clients in excess of \$200 million dollars. Mark has also achieved consistent success in the California Courts of Appeal, and several judicial opinions regularly cite to his matters as authority for class certification issues. He has also argued appellate issues in several Circuit Courts of Appeals with great success. Mr. Ozzello attended Pepperdine University School of Law where he was an Editor to the Law Review, publishing several articles during his tenure in that capacity. He received his undergraduate degree from Georgetown University.

Mr. Ozzello has always strived to be an integral part of local communities. He has established educational scholarship programs at several charitable organizations, including El Centro De Amistad in Los Angeles and St. Bonaventure Indian Mission and School in Thoreau, New Mexico, and presides over a legal clinic in Los Angeles which provides pro bono legal assistance to non-English speaking individuals.

Bevin Allen Pike. Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Eduardo Santos. Eduardo Santos is a senior counsel at Capstone Law, and concentrates his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

Mao Shiokura. Mao Shiokura is a senior counsel with Capstone. Her practice focuses on identifying, evaluating, and developing new claims, including PAGA representative actions and class actions for wage-and-hour violations and consumer actions under the Consumers Legal Remedies Act, False Advertising Law, Unfair Competition Law, and other consumer protection statutes. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships.

Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

John Stobart. John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

Orlando Villalba. Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor's degree in International Business from the University of Southern California.

Steven Weinmann. Steven Weinmann is a senior counsel with Capstone Law and leads the consumer rights team. His practice encompasses complex and class action litigation, including consumer product and services cases under California's Unfair Competition Law (UCL), data privacy breach cases, and a special emphasis on vehicle defect litigation. He has a background in securities litigation, antitrust, environmental law, and consumer class action cases.

Prior to joining Capstone, Steven's experience included litigating class actions on behalf of employees and consumers, in addition to representing individuals and small and large companies in various types of litigation, from business disputes to personal injury, financial fraud, construction defects, and products liability. Steven has been instrumental in achieving favorable results for numerous certified classes, including cases against Home Depot USA (for wage and hour and UCL claims); LegalZoom.com, Inc. (claims involving illegal practice of law); Wells Fargo Bank, N.A. (UCL, CLRA, federal Truth in Lending Act [TILA] claims). Steven briefed and help bring about numerous reported decisions including *Fraleigh v. Facebook*, 830 F.Supp.2d 785 (N.D. Cal. 2011) (defeating a motion to dismiss on claims involving the right to publicity); *Ceja v. Rudolph & Sletten*, 194 Cal.App.4th 584 (Sixth Appellate Div. 2011), affirmed, California Supreme Court, 56 Cal. 4th 1113 (2013) (confirming the test for determining putative spouse status is a subjective one). He also helped brief and obtained a decision favorable to plaintiffs in a seminal case under California's UCL, *McAdams v. Monier, Inc.*, 182 Cal.App.4th 174 (2010) (deciding only the named class representative needed to satisfy Proposition 64 standing requirements). He received his J.D. with distinction from the Hofstra University School of Law, where he was an associate editor on the Hofstra Law Review, and earned his undergraduate degree in English Literature and Political Science from Rutgers University.

Tarek Zohdy. A senior counsel with Capstone Law, Tarek Zohdy develops, investigates and litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class actions from investigation through settlements that have provided significant relief to millions of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

Associates

Brandon Brouillette. Brandon Brouillette is an associate with Capstone Law, where his practice focuses on representing employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. Mr. Brouillette's entire legal career has been devoted to representing individual and class representative plaintiffs against large corporate entities. Prior to joining Capstone, he served as an associate at Boucher LLP where he managed the firm's wage-and-hour class actions. He earned his Juris Doctor from Loyola Law School, Los Angeles, where he spent a summer interning for the legal clearance and corporate legal departments at Warner Bros. He received his undergraduate degree from the University of Southern California, where he majored in Business Administration and spent a semester abroad in Budapest, Hungary. In 2016, Brandon was selected as one of Super Lawyers' "Rising Stars" in Southern California.

Joseph Hakakian. Joseph Hakakian is an associate with Capstone Law. His practice focuses on prosecuting wage-and-hour class and representative actions in state and federal court. Prior to joining Capstone Law, Mr. Hakakian served as a summer clerk for Mark Ozzello at Markun Zusman Freniere & Compton, LLP, working on various actions including wage-and-hour claims, unpaid overtime, false advertising, and unfair competition. He graduated from UCLA School of Law, with a business law specialization, where he served as a staff editor for the Journal of Environmental Law and Policy and worked as a law clerk with the Consumer Protection Division of the Los Angeles District Attorney's Office. Prior to attending law school, Mr. Hakakian received his undergraduate degree from University of California, Los Angeles, in 2013, where he graduated summa cum laude, Dean's Honor List, and College Honors, and received scholastic achievement awards from Golden Key Honor Society and Phi Alpha Theta Honor Society. Joseph is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), Consumer Attorneys of California (CAOC), and Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

Michelle Kennedy. Michelle Kennedy is an associate with Capstone Law. Her practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. She began her career as a contract attorney in the Utah Attorney General's Civil Litigation Division handling torts, civil rights, and employment law matters. She later founded her own firm handling business and intellectual property matters, where she settled a copyright infringement suit. Prior to moving to Southern California, Ms. Kennedy was recognized by Super Lawyers as a Mountain States Rising Star in 2017 and 2018. She also served as President of the Utah Minority Bar Association and as an Ex-Officio Member of the Utah State Bar Commission. Michelle graduated from the University of Utah S.J. Quinney College of Law in 2013, where she served as President of the Art Law Alliance and Vice President of the Minority Law Caucus. She earned her undergraduate degree from Brigham Young University in 2010, where she majored in Philosophy. Ms. Kennedy is an active member of the Consumer Attorneys Association of Los Angeles (CAALA) and the Los Angeles County Bar Association. Michelle is admitted to practice law in Utah and California.

Alexander Lima. Alexander Lima is an associate with Capstone Law. His practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Mr. Lima was an associate at a California civil litigation practice representing individuals and entities in real estate disputes. He graduated from Santa Clara University, School of Law in 2018, where he served as an Executive Board Member of the Honors Moot Court and was selected as a regional finalist for the American

Bar Association Negotiation Competition. He received his undergraduate degree from the University of California, Riverside in 2014.

Trisha Monesi. Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations.

Cody Padgett. An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

Julian Quattlebaum. Julian Quattlebaum is an associate with Capstone. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. He began his career at an entertainment law firm, handling intellectual property matters, copyright infringement disputes, and contract litigation. During his time at the firm, he authored an amicus brief that was quoted in oral argument before the Ninth Circuit Court of Appeals during en banc review. Later, he helped author an appellate brief regarding the rights to the storyline of a successful Disney film franchise. Mr. Quattlebaum graduated from Emory University School of Law in 2019. While there, he was a member of the Moot Court Society, representing the school at the NYU Immigration Law competition in his second year, and the National Competition in his third year. He was given the Society's Award for Excellence in Oral Advocacy and was inducted into the Order of Emory Advocates. He earned his undergraduate degree from the University of Colorado Boulder in 2015, where he majored in Evolutionary Biology.

OUTREACH AND EDUCATION

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal (www.impactlitigation.com). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

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8 Attorneys for Plaintiff Sherice Duncan

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11
12 SHERICE DUNCAN, individually, and on
13 behalf of other members of the general public
similarly situated,

14 Plaintiff,

15 vs.

16 CLAIRE'S BOUTIQUES, INC., a Colorado
17 corporation; and DOES 1 through 10, inclusive,

18 Defendants.
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Case No.: 20STCV15355

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: February 17, 2021
Time: 11:00 a.m.
Place: Department 10

1 **ORDER**

2 On February 17, 2021, this Court conducted a hearing on Plaintiff's Motion for Preliminary
3 Approval of the Class Action Settlement (the "Motion"). Having considered the Motion and the points
4 and authorities submitted in support of the Motion, including the Joint Stipulation of Class Action
5 Settlement and Release ("Settlement Agreement" or "Settlement"), and **GOOD CAUSE** appearing, **IT**
6 **IS HEREBY ORDERED** that the Motion is **GRANTED**, subject to the following findings and orders:

7 1. This Order incorporates by reference the Settlement Agreement, and unless indicated
8 otherwise, all capitalized terms used herein will have the same meaning as set forth in the Settlement
9 Agreement.

10 2. The Settlement Class shall be conditionally certified for settlement purposes only and
11 shall consist of all persons who worked for Defendants as non-exempt, hourly paid employees in
12 California at any time from March 1, 2018 to the date of Preliminary Approval.

13 3. The class action settlement set forth in the Settlement Agreement, entered into among
14 the Parties and their counsel, is preliminarily approved as it appears to be proper, to fall within the range
15 of reasonableness, to be the product of arm's-length and informed negotiations, to treat all Class
16 Members fairly, and to be presumptively valid, subject only to any objections that may be raised at or
17 before the final approval hearing.

18 4. The Court further finds that Plaintiff conducted sufficient investigation and research, and
19 that she was able to reasonably evaluate her position and the strengths and weaknesses of her claims and
20 her ability to certify them. Plaintiff has provided the Court with enough information about the nature and
21 magnitude of the claims being settled, as well as the impediments to recovery, to make an independent
22 assessment of the reasonableness of the terms to which the Parties have agreed.

23 5. The Court also finds that settlement now will avoid additional and potentially substantial
24 litigation costs, as well as delay and risks if the Parties were to continue to litigate the Action.

25 6. The Court preliminarily approves the Settlement Agreement, including all the terms and
26 conditions set forth therein and the Class Settlement Amount and allocation of payments.

27 7. The rights of any potential dissenters to the proposed Settlement are adequately
28 protected in that they may exclude themselves from the Settlement and proceed with any alleged claims

they may have against Defendant, or they may object to the Settlement and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Class Action Settlement.

8. The Court approves, as to form and content, the proposed Notice of Class Action Settlement (“Notice Packet”).

9. The Court directs the mailing, by First-Class U.S. mail, of the Notice Packets to Class Members in accordance with the schedule set forth below and the other procedures described in the Settlement Agreement. The Court finds that the method selected for communicating the preliminary approval of the Settlement Agreement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies due process.

10. The Court appoints Plaintiff Sherice Duncan as the representative for the Settlement Class conditionally certified by this Order.

11. The Court appoints Capstone Law APC as Class Counsel. The Court finds that counsel have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the Class conditionally certified by this Order.

12. The Court approves and appoints CPT Group, Inc. as the Settlement Administrator.

13. The following dates shall govern for purposes of this Settlement:

Date	Event
March 19, 2021 (or not later than 30 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendant to produce the Class List to the Settlement Administrator.
March 29, 2021 (or not later than 10 calendar days after Defendant produces the Class List, if later)	Last day for the Settlement Administrator to mail Notice Packets to all Class Members.
May 13, 2021 (or not later than 45 calendar days after the Settlement Administrator mails the Notice Packets, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement.
May 28, 2021	Last day for Plaintiff to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, Costs, and a Class Representative Enhancement Payment.
June 22, 2021 at 11:00 a.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, Costs, and a Class Representative Enhancement Payment.

1 14. The Court expressly reserves the right to continue or adjourn the final approval hearing
2 without further notice to the Class Members.

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4 **IT IS SO ORDERED.**

5 Dated: _____

6 Hon. William F. Highberger
7 Los Angeles County Superior Court Judge
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