

STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

IT IS HEREBY STIPULATED by and between Plaintiff Angelina Vasquez, on behalf of herself and others similarly situated, on the one hand, and Defendants CP Retail, LLC (“CP Retail”) and Winmark Corporation (“Winmark Corporation”) on the other hand, and subject to the approval of the Court, that the Lawsuit is hereby being compromised and settled pursuant to the terms and conditions set forth in this Stipulation of Class and Representative Action Settlement (“Settlement Agreement”) and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, subject to the definitions, recitals and terms set forth herein which by reference become an integral part of this Settlement Agreement.

DEFINITIONS

1. “Administration Costs” means fees and costs of settlement administration services rendered in administering the settlement.
2. “Attorneys’ Fees and Costs” means the amount the Court authorizes to be paid to Class Counsel for attorneys’ fees, not to exceed 40% of the Total Settlement Amount (*i.e.*, \$170,000.00), and litigation costs incurred in connection with the Lawsuit, not to exceed \$15,000.00, paid from the Total Settlement Amount.
3. “Class Counsel” means CounselOne, P.C.
4. “Class” or “Class Member(s)” means all current and former non-exempt, hourly employees in California who are or were employed by CP Retail, LLC stores in California during the Class Period. Defendant represents that there are approximately 274 Class Members across five retail stores (*i.e.*, Fresno, Santa Rosa, Modesto, Visalia, and Bakersfield) located in California during the Class Period.
5. “Class List” means a list of contact information, compiled by Defendant based on its records, containing the following information for each Class Member: full name; last-known mailing address; last known telephone number(s); social security number; start date of employment; end date of employment; respective individual number of compensable Workweeks during the Class Period and PAGA Period (if applicable); and the total number of compensable Workweeks for all Class Members during the Class Period.

6. “Class Notice” or “Notice of Pendency of Class and Representative Action Settlement” means the document to be sent via first class U.S. mail to the Class following Preliminary Approval, in substantially the form that is attached hereto as “**EXHIBIT 1**,” or otherwise approved by the Court, which will notify Class Members of the settlement, explain the basic terms of this Settlement Agreement, and inform Class Members of their options with regard to the settlement.

7. “Class Period” means the period beginning on February 11, 2017 and ending on the date that preliminary approval is granted, or 60 days after execution of the Memorandum of Understanding dated November 17, 2021, whichever occurs first.

8. “Court” means the Superior Court for the State of California, County of Stanislaus.

9. “Defendant” means CP Retail, LLC.

10. “Defendant’s Counsel” means Duggan McHugh Law Corporation.

11. “Effective Date” means the date upon which the Court grants final approval of the Settlement if (a) no Settlement Class Members file objections to the Settlement, or (b) any Settlement Class Member files an objection but it is subsequently withdrawn. However, if an objection is filed and an appeal or other appellate proceeding is initiated, then the Effective Date will be sooner of (a) sixty (60) days after the Court grants final approval of the Settlement or (b) the date of termination of such appellate proceedings.

12. “Enhancement Payment” means the amount, not to exceed \$7,500.00, that the Court authorizes to be paid to Plaintiff, in addition to her Individual Settlement Payment, in recognition of her efforts and risks in assisting with the prosecution of the Lawsuit and in exchange for her executing a General Release of Defendant, and paid from the Total Settlement Amount.

13. “Final Approval Hearing” means the hearing following Preliminary Approval and distribution of the Class Notice to the Class, at which the Court will determine whether to fully and finally approve the fairness and reasonableness of the settlement, and at which Plaintiff will request that the Court enter the Final Approval Order and Judgment, approve and award Attorneys’ Fees and Costs, Enhancement Payment, Administration Costs, and PAGA Payment, and take other appropriate or necessary action as described herein.

14. “Final Approval Hearing Date” means the date of the Final Approval Hearing.

15. “Final Approval Order and Judgment” means the order or orders entered by the Court that, *inter alia*, finally approve(s) this Settlement Agreement, disposes of all issues raised in the Lawsuit by way of judgment in conformity with California Rules of Court 3.769, and awards and orders the payment of all required amounts pursuant to the terms of this Settlement Agreement.

16. “Individual Settlement Share(s)” means a Settlement Class Member’s *pro rata* share of the Net Settlement Amount, which is to be determined in conformity with Paragraph 47, which is inclusive of the employee-side payroll taxes, contributions, and withholdings with respect to the wages portion of the Individual Settlement Shares (“Employee Taxes”). The net payment of each Settlement Class Member’s Individual Settlement Shares (after reduction for Employee Taxes), and plus the PAGA Group Member’s individual PAGA payment (if applicable), is referred to as his or her “Individual Settlement Payment.”

17. “Lawsuit” means the action entitled *Angelina Vasquez v. CP Retail, LLC, et al.*, filed in the Stanislaus County Superior Court and assigned case number 21CV000723.

18. “LWDA Payment” means that portion approved by the Court pursuant to Labor Code section 2699 and distributed to the California Labor and Workforce Development Agency (“LWDA”) as seventy-five (75%) of the PAGA Payment (*i.e.*, \$22,500.00). The remaining twenty-five (25%) of the PAGA Payment (*i.e.*, \$7,500.00) will, subject to Court approval and pursuant to Labor Code section 2699, be paid to the PAGA Group Members employed during the PAGA Period on *pro rata* basis in conformity with Paragraph 47.

19. “Net Settlement Amount” or “NSA” means the portion of the Total Settlement Amount that is available for distribution to Settlement Class Members, which will be the Total Settlement Amount less the amounts awarded for Attorneys’ Fees and Costs, Enhancement Payment, PAGA Payment, and Administration Costs.

20. “Notice Plan” means the plan for the provision of notice to all Class Members under this Settlement Agreement.

21. “PAGA Group” or “PAGA Group Members” mean all Class Members, whether or not they submit a request for exclusion from the Settlement Class, employed by Defendant during the PAGA Period.

22. “PAGA Payment” means the \$30,000.00 allocated as penalties pursuant to California

Private Attorneys General Act (“PAGA”), Labor Code §§ 2698, *et seq.*, approved by the Court, and to be paid from the Total Settlement Amount. Distribution shall entail seventy-five percent (75%) of the PAGA Payment to the California Labor Workforce Development Agency (“LWDA”) and twenty-five percent (25%) of the PAGA Payment to the PAGA Group Members. Class Counsel shall give timely notice of the settlement to the LWDA under Labor Code section 2699(l)(2).

23. “PAGA Period” means the period beginning on October 13, 2019 and ending on the date that preliminary approval is granted, or 60 days after execution of the Memorandum of Understanding dated November 17, 2021, whichever occurs first.

24. “Parties” means Plaintiff, individually and on behalf of all Class Members and PAGA Group Members, and Defendant, who are individually referred to as “Party.”

25. “Plaintiff” or “Class Representative” means Angelina Vasquez.

26. “Plaintiff’s Released Claims” means that, in addition to the Settlement Class Members’ Released Claims, in exchange for the consideration recited in this Settlement Agreement, including but not limited to the Enhancement Payment, Plaintiff, individually, releases, acquits, discharges, and covenants not to sue Defendant and any of the Released Parties for any claim, whether known or unknown, which she has ever had, or hereafter may claim to have, arising during the Class Period, relating to or arising out of any aspect of her relationship with Defendant. The release by Plaintiff includes a waiver of her individual rights under Section 1542 of the Civil Code of the State of California. The specific terms and details of which are set forth in Paragraph 46.

27. “Preliminary Approval Order” means the order to be entered by the Court that preliminarily approves the terms and conditions of this Settlement Agreement, including the content of the Class Notice and Notice Plan, and sets a Final Approval Hearing.

28. “Released Parties” means Defendant CP Retail, LLC, Capital Partners Plato’s Closet, LLC, Winmark Corporation, Team Belleci, Inc., and each of their current and former partners, shareholders, directors, employees, owners, officers, agents, attorneys, insurers, successors, affiliates, subsidiaries, and assigns.

29. “Response Deadline” means the date forty-five (45) days after the Settlement Administrator mails the Class Notice to Class Members and the last date on which Class Members may submit an opt-out/request for exclusion or object to the settlement.

30. “Settlement Administrator” means CPT Group, Inc., the neutral third-party administrator mutually agreed upon by the Parties, subject to approval by the Court.

31. “Settlement Class” or “Settlement Class Members” means Class Members who have not submitted a timely and valid Request for Exclusion/Opt-Out pursuant to Paragraph 54.

32. “Settlement Class Members’ Released Claims” means the release of claims by Settlement Class Members, including Plaintiff, pled in the operative complaint of this Lawsuit filed in the Stanislaus County Superior Court Case No. CV-21-000723, or claims that could have been pled based on the facts pled, or claims that could have been pled for: unpaid minimum and overtime wages, non-compliant meal and rest break and/or failure to pay premiums owed thereon, forfeited vested vacation, failure to provide suitable seating, unreimbursed business expenses, maintenance and issuance of inaccurate wage statements, untimely wages during employment and upon separation, and violations of the Private Attorneys General Act of 2004 and California Business and Professions Code. The specific terms and details of which are set forth in Paragraph 45.

33. “Settlement Class Members’ Taxes” means that amount to be paid to individual Settlement Class Members that is to be reported on IRS Form 1099s and IRS Form W-2s where required by law. Of the amounts paid to individual Settlement Class Members, two-thirds (66.67%) shall be designated as penalties and interest for which an IRS Form 1099 shall issue and one-third (33.33%) shall be designated as wages for which an IRS Form W-2 shall issue.

34. “Total Settlement Amount” or “TSA” means the maximum total payment of Four Hundred Twenty-Five Thousand dollars (\$425,000.00) payable by Defendant under this Settlement Agreement, inclusive of all Individual Settlement Payments, Attorneys’ Fees and Costs, Administration Costs, Enhancement Payment to Plaintiff, and the LWDA Payment. The Total Settlement Amount is non-reversionary, subject to modification pursuant to Paragraph 53, and exclusive of employer-side payroll taxes which shall be paid separately.

35. “Workweek(s)” means a seven-day work week during the Class Period during which, based on Defendant’s records, Class Members were actively employed by Defendant and worked, at least a portion thereof, in a non-exempt, hourly position in California.

RECITALS

36. **Procedural History.** Plaintiff filed her complaint on February 11, 2021 in the Stanislaus County Superior Court against Defendant CP Retail, LLC as the franchisee of Plato's Closet® retail stores, along with the franchisor, Winmark Corporation, alleging: (1) failure to pay minimum and overtime wages pursuant to Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to provide meal period premiums in violation of Labor Code §§ 226.7, 512, and Wage Order 7-2001; (3) failure to provide rest period premiums in violation of Labor Code § 226.7 and Wage Order 7-2001; (4) forfeiture of vested vacation in violation of Labor Code § 227.3; (5) failure to provide suitable seating in violation of Labor Code § 1198 and Wage Order 7-2001; (6) failure to reimburse business expenses in violation of Labor Code §§ 2800 and 2802; (7) failure to maintain and provide accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and 1174; (8) failure to pay timely wages timely during employment and upon termination in violation of Labor Code §§ 201-204, and 210; (9) violations of California Business and Professions Code § 17200, *et seq.*, and (10) violation of the California Private Attorneys' General Act of 2004, Labor Code §§ 2698 *et seq.* CP Retail, LLC and Winmark Corporation filed their Answer of a general denial and asserting multiple affirmative defenses to each cause of action on June 15, 2021.

37. **Pre-Filing PAGA Notice.** On October 13, 2020, Plaintiff's counsel provided pre-filing written notice to the LWDA and by certified mail to Defendant of the above-identified allegations on behalf of Plaintiff and similarly situated aggrieved employees in accord with the PAGA, California Labor Code §§ 2698, *et seq.* On November 12, 2020, Defendant submitted a cure letter stating that it had reissued to former and current employees itemized wage statement with corrected employer identification (*i.e.*, CP Retail, LLC) and, thus, cured violation of Labor Code § 226(a)(8). On February 10, 2021, Plaintiff submitted a cure letter dispute stating that she only recognized purported cure of subpart (a)(8) only of Labor Code § 226, no other subparts. On February 19, 2021, the LWDA determined that CP Retail, LLC cured alleged violations of Labor Code § 226(a)(8) and that said cure does not pertain to any other allegation.

38. **Amended Pleading and Request Dismissal.** The Parties agree that, Defendant and Plaintiff will jointly stipulate that Plaintiff seeks leave to amend the operative complaint to: 1) modify the putative class definition to consist of "all current and former non-exempt, hourly employees in

California who are or were employed by CP Retail, LLC stores in California from February 11, 2017 through the date that preliminary approval is granted, or 60 days after execution of the Memorandum of Understanding dated November 17, 2021, whichever occurs first”; and 2) request dismissal without prejudice of further named defendant, Winmark Corporation, which shall comply with Rules of Court, Rule, 3.770, from the Lawsuit.

39. **Discovery and Investigation.** Plaintiff’s attorneys began their investigation into the at-issue allegations well in advance of filing the complaint and engaged in extensive informal discovery and investigation, and such was sufficient to allow the Parties to evaluate the case prior to settlement. In advance of mediation, the Parties agreed to an informal exchange of information and documents. For example, Class Counsel requested production of and reviewed key information and documents such as the number of putative class members and aggrieved employees, relevant wage and hour policies, time and payroll records, rates of pay, among other things. Class Counsel analyzed time and payroll records and retained a consultant to determine violation rates. The Parties met and conferred at length regarding the information and documents produced.

40. **Mediation.** After having performed extensive investigation and analysis of the legal and factual issues and risks, the Parties participated in a full-day mediation before mediator, Justice Steven M. Vartabedian (Ret.), in an attempt to resolve the Lawsuit. The settlement discussions were conducted at arm’s-length. With mediator Hon. Steven Vartabedian’s assistance, the Parties came to agreement on all material terms of this settlement.

41. **Benefits of Settlement.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risks of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both generally and in response to Defendant’s defenses thereto, and the difficulties in establishing damages for Class Members. Plaintiff and Class Counsel have also taken into account the extensive settlement negotiations conducted. Based on the foregoing, Plaintiff and Class Counsel have determined that the settlement set forth herein is a fair, adequate and reasonable settlement, and is in the best interests of Class Members and PAGA Group Members.

42. **Defendant's Reasons for Settlement and Non-Admission.** Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time and resources of Defendant have and, unless this settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff, Class Members, and PAGA Group Members. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement Agreement. Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in this Settlement Agreement to put to rest the claims as set forth in the Lawsuit. Defendant has claimed and continues to claim that the Plaintiff's Released Claims and Settlement Class Members' Released Claims have no merit and do not give rise to liability. This settlement is a compromise of disputed claims.

43. **This Settlement Is Fair, Adequate and Reasonable.** The Parties believe this settlement is a fair, adequate and reasonable settlement of this Lawsuit and have arrived at this settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential. In addition, the mediator may, at his discretion, execute a declaration supporting the settlement and the reasonableness of this settlement, and the Court, may in its discretion, contact the mediator to discuss the settlement and whether or not the settlement is fair and reasonable.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the Recitals listed above and the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set herein, the Plaintiff, individually and on behalf of others similarly situated, on the one hand, and Defendant, on the other hand, agree that the Lawsuit shall be, and is finally and fully compromised and settled on the following terms and conditions, subject to Court approval:

44. **Non-Admission of Liability.** This Settlement Agreement represents a compromise and settlement of highly disputed claims. Defendant denies each and all of the claims alleged by Plaintiff in the Lawsuit. The Parties enter into this Settlement Agreement to resolve the Lawsuit and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and generally and specifically denies, that it has: violated any federal, state,

or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees, the Class, and/or PAGA Group Members. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a noncompliance with, federal, state, local or other applicable law. In addition, as set forth herein, the Parties intend this settlement to be contingent upon the Preliminary Approval and Final Approval of this Settlement Agreement; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend the Lawsuit as if this Settlement Agreement never existed in the event the settlement is not finally approved as set forth herein.

45. Settlement Class Members' Released Claims.

As of the Effective Date, Plaintiff and all Class Members who did not submit timely and valid requests for exclusion from the Settlement (again, the "Settlement Class Members"), will release and forever discharge Defendant CP Retail, LLC, Capital Partners Plato's Closet, LLC, Winmark Corporation, Team Belleci, Inc., and each of their current and former partners, shareholders, directors, employees, owners, officers, agents, attorneys, insurers, successors, affiliates, subsidiaries, and assigns (again, the "Released Parties"), from Settlement Class Members' Released Claims during the Class Period.

The Settlement Class Members' Released Claims means the release of claims by Settlement Class Members, including Plaintiff, pled in the operative complaint of this Lawsuit filed in the Stanislaus County Superior Court Case No. CV-21-000723, or claims that could have been pled based on the facts pled, or claims that could have been pled for: unpaid minimum and overtime wages, non-compliant meal and rest break and/or failure to pay premiums owed thereon, forfeited vested vacation, failure to provide suitable seating, unreimbursed business expenses, maintenance and issuance of

inaccurate wage statements, untimely wages during employment and upon separation, and violations of the Private Attorneys General Act of 2004 and California Business and Professions Code. Settlement Class Members' Released Claims excludes the release of claims not permitted by law.

46. **General Release by Plaintiff Only.** As of the Effective Date, in addition to the Settlement Class Members' Released Claims, in exchange for the consideration recited in this Settlement Agreement, including but not limited to the Enhancement Payment, Plaintiff, individually, releases, acquits, discharges, and covenants not to sue Defendant and any of the Released Parties for any claim, whether known or unknown, which she has ever had, or hereafter may claim to have, arising during the Class Period, relating to or arising out of any aspect of her relationship with Defendant. The release by Plaintiff includes a waiver of her individual rights under Section 1542 of the Civil Code of the State of California which states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Accordingly, if the facts relating in any manner to this Settlement Agreement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims (again, "Plaintiff's Released Claims"). Plaintiff's Released Claims exclude the release of claims not permitted by law.

47. **Payments under the Settlement.** In consideration of the mutual covenants and promises set forth herein, Defendant agrees to make a total payment under this Settlement Agreement in an amount up to, but not to exceed the Total Settlement Amount of Four Hundred Twenty-Five Thousand Dollars (\$425,000.00). In no event shall Defendant be required to pay any amount above the Total Settlement Amount under this Settlement Agreement, except as otherwise agreed upon pursuant to Paragraph 53, and that the payment of employer's share of payroll taxes and contributions in connection with the wages portion of the payouts to Settlement Class Members will be in addition to the Total Settlement Amount. The Parties agree that the Total Settlement Amount will be paid by Defendant on a non-reversionary basis and no portion of the Total Settlement Amount will revert to Defendant. The Parties further agree, subject to Court approval, that the Total Settlement Amount shall be apportioned as follows:

a. Plaintiff will apply to the Court for an award of attorneys' fees of no more than forty percent (40%) of the Total Settlement Amount (*i.e.*, no more than \$170,000.00) to Class Counsel and for an award of reimbursement of actual litigation costs and expenses up to Fifteen Thousand Dollars (\$15,000.00) to Class Counsel (again, in the aggregate, "Attorneys' Fees and Costs"). The Attorneys' Fees and Costs are included in, and will be paid from, the Total Settlement Amount. Defendant will not oppose such application.

b. Plaintiff will also apply to the Court for payment to the Settlement Administrator for the costs of notice and settlement administration, estimated at Fifteen Thousand Dollars (\$15,000.00) (again, "Administration Costs"). The Administration Costs are included in, and will be paid from, the Total Settlement Amount. Defendant will not oppose such application.

c. Plaintiff will apply to the Court for payment in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) to Plaintiff (again, "Enhancement Payment"), for her services and responsibilities in prosecuting the Lawsuit. The Enhancement Payment is included in, and will be paid from, the Total Settlement Amount. Defendant will not oppose such application.

d. The amount of Thirty Thousand Dollars (\$30,000.00) is allocated towards penalties pursuant to California Labor Code sections 2698, *et seq.* (again, "PAGA Payment"), of which the LWDA will be paid in the amount of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) ("LWDA Payment") and the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) will remain available for distribution on a *pro rata* basis to all PAGA Group Members who worked during the PAGA Period, and irrespective of whether he or she is a Settlement Class Member. The PAGA Payment will be included in, and will be paid from, the Total Settlement Amount. Further, all Class Members, whether or not they submit a request for exclusion, employed by Defendant during the PAGA Period will no longer be able to seek penalties pursuant to the PAGA, for the PAGA Period, arising from Settlement Class Members' Released Claims.

e. The Net Settlement Amount will be the remaining amount that is available for distribution to Settlement Class Members on a *pro rata* basis based on Workweeks. The Settlement Administrator will determine each Settlement Class Member's individual Workweeks in accordance with Paragraph 35. The sum of all Settlement Class Members' individual Workweeks will be the "Total Workweeks." The Net Settlement Amount will be divided by the Total Workweeks to yield the

“Workweek Value.” Each Settlement Class Member’s Individual Settlement Share will be determined by multiplying his or her individual Workweeks by the Workweek Value.

f. The net payment of each Settlement Class Member’s Individual Settlement Share (after reduction of Employee Taxes), and plus individual PAGA payment (if applicable), is referred to as his or her Individual Settlement Payment.

48. **No Credit Toward Benefit Plans.** Payments made to Plaintiff, Settlement Class Members, and PAGA Group Members under this Settlement Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which they may be eligible, including, but not limited to, under profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which Plaintiff, Settlement Class Members, and PAGA Group Members, may be entitled under any benefit plans.

49. **Taxation of Settlement Proceeds.**

a. The Parties agree that one-third (33.33%) of each Individual Settlement Share will be considered taxable wages and will be reported as such to each Settlement Class Member on a W-2 Form. The Parties further agree that one-third (33.33%) of each Individual Settlement Share will be considered interest and that one-third (33.33%) will be considered penalties and will be reported as such to each Settlement Class Member on an IRS Form 1099 (if required).

b. The Settlement Administrator shall calculate and remit to applicable taxing authorities sufficient amounts for the Employee and Employer Taxes. Any funds returned by taxing authorities due to cancellation of any Individual Settlement Payment checks will be transmitted in accordance with Paragraph 57(d), the same as all other residual funds associated with Individual Settlement Payment checks.

c. The Settlement Administrator will issue appropriate tax forms to each Settlement Class Member consistent with the foregoing breakdown.

d. All Parties represent that they have not received, and shall not rely on, advice or representations from Class Counsel or Defendant’s Counsel regarding the tax treatment of payments under federal, state, or local law, and that no representations have been made to them regarding the taxability of any payments under this Settlement Agreement.

e. Class Counsel will be issued an IRS Form 1099 for Attorneys' Fees and Costs awarded by the Court. Except as provided herein, each of the Parties shall bear his, her, their, or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Lawsuit.

f. Plaintiff will be issued an IRS Form 1099 for any Enhancement Payment. The Enhancement Payment payable to Plaintiff shall be in addition to the Individual Settlement Payment she is contemplated to receive under this Settlement Agreement.

50. **Notice Procedure.**

a. The Parties shall use CPT Group, Inc. as the Settlement Administrator to distribute the Class Notice, distribute payments under this Settlement Agreement, handle tax reporting, establish and host a dedicated case settlement website, and field questions with a telephonic hotline.

b. Defendant will provide the Settlement Administrator with the Class List within fourteen (14) calendar days following the date of Preliminary Approval. The Class List shall include: the full name; last-known mailing address; last known telephone number(s); social security number; start date of employment; end date of employment; respective individual number of compensable Workweeks during the Class Period and PAGA Period (if applicable); and the total number of compensable Workweeks for all Class Members during the Class Period. The Class List and any other data provided by Defendant to the Settlement Administrator shall be treated as confidential and shall not be used by the Settlement Administrator for any purpose other than as permitted by this Settlement Agreement. The Settlement Administrator will keep the list confidential, use it only for the purposes described herein, and ensure that any other communications with Class Members shall not include the Class Members' Social Security number except for the last four digits.

c. The Settlement Administrator shall be responsible for:

- i. Mailing the Class Notice to the Class Members as directed by the Court;
- ii. Consulting with counsel for the Parties concerning any relevant issue(s), including (without limitation) the estimated amounts of Individual Settlement Shares and Individual Settlement Payments;
- iii. Receiving and processing Workweek disputes and rejecting timely or improper Workweek disputes;

iv. Keeping track of Requests for Exclusion/Opt-Outs, and rejecting untimely or improper Requests for Exclusion/Opt-Outs;

v. Keeping track of Objections that it receives;

vi. Calculation and distribution of payments in accordance with this Settlement Agreement and the Court's orders;

vii. Providing weekly status reports to counsel for the Parties, including: (a) the number of Class Notices mailed; (b) the number of Workweek disputes received; (c) the number of Objections received; and (d) the number of Requests for Exclusion/Opt-Outs received;

viii. No later than twenty-one (21) calendar days before the Final Approval Hearing, preparing and providing to Class Counsel and Defendant's Counsel, for filing with the Court in support of Plaintiff's motion for final approval of the settlement, a declaration of due diligence setting forth its compliance with its obligations under this Settlement Agreement;

ix. Notifying Defendant's Counsel, within three (3) business days after the Effective Date, of the wiring instructions to fund the Total Settlement Amount, which must be paid by Defendant in the amounts and in accordance with the deadlines set forth in Paragraph 57;

x. Distributing payments due under this Settlement Agreement;

xi. Issuing a W-2 Form to each Settlement Class Member for the wage portion of each Individual Settlement Share, a 1099 Form (if required) to each Settlement Class Member for the non-wage portion of each Individual Settlement Share, a 1099 Form (if required) to each PAGA Group Member, a 1099 Form to Plaintiff for the Enhancement Award, a 1099 Form to Class Counsel for the Attorneys' Fees and Costs award, and a 1099 Form to the Settlement Administrator for all Administration Costs; and,

xii. Such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform, including responding to questions from Class Members.

d. Within twenty (20) calendar days after Preliminary Approval, the Settlement Administrator shall mail the Class Notice to all persons shown by Defendant's records to be Class Members, as reflected in the Class List, via first class U.S. mail, using the most current mailing address available after a National Change of Address search. The Class Notice shall state an estimate of each Class Member's respective Individual Settlement Share and the number of Workweeks credited to him

or her.

e. Any Class Notice(s) returned to the Settlement Administrator as undelivered within fifteen (15) calendar days of initial mailing and bearing a forwarding address shall be re-mailed by the Settlement Administrator within three (3) business days following receipt of the returned mail. For any such Class Notice returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall first conduct a National Change of Address search as required for undeliverable notices, followed by a “skip trace” search to obtain an updated address, and shall promptly re-mail the Class Notice to any newly-found address or addresses. The Settlement Administrator shall also re-mail by first class U.S. mail any such Class Notice returned by the Post Office with a forwarding address. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within five (5) calendar days after re-mailing, received the Class Notice.

f. Class Counsel shall provide the Court with a declaration from the Settlement Administrator confirming that the Class Notice was mailed to all Class Members as required by this Settlement Agreement, as well as any additional information Class Counsel deems appropriate to provide to the Court, before the Final Approval Hearing.

51. **Settlement Payments.** Class Members and PAGA Group Members are not required to submit a claim form to receive a settlement payment.

52. **Submission of Pay Period Disputes.**

a. If any Class Member disputes the Workweeks set forth on the Class Notice during the Class Period (“Workweek Dispute”), the Class Member may submit documentation supporting his or her position by mail to the Settlement Administrator no later than forty-five (45) calendar days from the date the Class Notice is originally mailed by the Settlement Administrator, (“Response Deadline”). Workweek Disputes not postmarked or confirmed received by the Settlement Administrator on or before the Response Deadline will be considered late and may be summarily rejected by the Settlement Administrator, in consultation with Class Counsel and Defendant’s Counsel.

b. The Settlement Administrator will notify counsel for the Parties via email. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an

adjustment is warranted. The Parties and the Settlement Administrator will evaluate the evidence and discuss in good faith how many Workweeks to be credited and in conformity with Paragraph 47(e). If the Parties and the Settlement Administrator do not reach agreement, the Court will make the final determination as to how many Workweeks should be credited.

53. **Material Representations Regarding Total Settlement Amount.** Defendant has represented that there are approximately 274 Class Members who worked 9,978 Workweeks during the Class Period as of November 12, 2021. Plaintiff is entering into this Settlement Agreement based on such representations. In the event it is determined that the actual number of Workweeks exceeds 9,978 by more than 10 percent, Class Counsel and Defendant's Counsel shall informally attempt to renegotiate the Total Settlement Amount based on the actual number of Workweeks. If informal renegotiation is unsuccessful, Plaintiff has the right to ask the Court to order the Parties for a mandatory settlement conference.

54. **Opt-Out Procedure.**

a. Class Members will have forty-five (45) days until the Response Deadline to mail by first class U.S. mail, with proof of date of submission to be the postmark date, a written request to opt out of the settlement ("Request for Exclusion"). Unless a Class Member submits a timely and valid Request for Exclusion, he or she shall be bound by the terms and conditions of this Settlement Agreement, including the release of claims as set forth herein.

b. A Request for Exclusion, in order to be deemed valid, must: (1) be signed by the Class Member; (2) contain the case name and number of the Lawsuit; (3) contain the Class Member's full name, telephone number, mailing address and last four digits of the Class Member's Social Security Number; (4) clearly state that the Class Member wants to opt out of the settlement.; and (5) be postmarked no later than the Response Deadline.

c. Upon receipt of any timely Request for Exclusion, the Settlement Administrator shall review the request to verify the information contained therein and confirm that the request complies with the requirements of this Settlement Agreement.

d. Any Class Member who fails to submit via first class U.S. mail a timely, complete, and valid Request for Exclusion shall be barred from opting out of the settlement. The Settlement Administrator shall not review or consider any Request for Exclusion postmarked after the

Response Deadline. Under no circumstances shall the Settlement Administrator have the authority to extend the Response Deadline for Class Members to file a Request for Exclusion, except as ordered by the Court or mutually agreed by the Parties.

- e. Plaintiff agrees not to request to be excluded from the settlement.

55. **Defendant's Right To Cancel.**

If more than fifteen percent of the Class Members submit a timely and valid Request for Exclusion, Defendant shall have the sole and absolute discretion to withdraw from this Settlement Agreement within ten (10) calendar days after the Response Deadline by providing written notice of such withdrawal to Class Counsel. In the event that Defendant elects to withdraw as set forth in this provision, the withdrawal shall have the same effect as a termination of this Settlement Agreement; the settlement shall become null and void and have no further force or effect. If Defendant exercises its option to terminate this settlement pursuant to this section, it shall pay all Administration Costs incurred up to the date and as a result of the termination.

56. **Objections to Settlement.**

- a. Any Settlement Class Member may object to the settlement by mailing a written objection ("Objection") to the Settlement Administrator. To be timely, Objections must be mailed to the Settlement Administrator, postmarked on or before the Response Deadline.

- b. An Objection must: (1) be signed by the Class Member; (2) contain the case name and number of the Lawsuit; (3) contain the Class Member's full name, telephone number, and mailing address; (4) clearly state the factual and legal basis for objecting to the settlement; (5) indicate whether the Class Member is represented by counsel and identify said counsel; and (6) indicate whether the Class Member intends to appear at the Final Approval Hearing and seeks to be heard at the Final Approval Hearing. The Settlement Administrator will provide the Parties' counsel with any objections received and also attach the objections as exhibits to its declaration regarding due diligence that will be filed with the Court in advance of the Final Approval Hearing.

- c. Settlement Class Members have the right to appear and have their Objections heard or offer comments at the Final Approval Hearing, either in person or through a lawyer retained at their own expense. Class Counsel will not represent any Settlement Class Members with respect to such Objections.

57. **Settlement Proceeds Distribution Deadlines.**

a. Defendant shall fund the Total Settlement Amount within sixty (60) calendar days after the Effective Date.

b. Prior to disbursement of any funds, the Settlement Administrator will provide a disbursement summary of the calculations for the Enhancement Payment to Plaintiff, payment of Attorneys' Fees and Costs to Class Counsel, LWDA Payment, Administration Costs payment, and payment of Individual Settlement Payments to Settlement Class Members and PAGA Group Members for review and approval by Class Counsel and Defendant's Counsel.

c. No later than ten (10) calendar days after Defendant fully funds the Total Settlement Amount, the Settlement Administrator shall distribute payments in accordance with this Settlement Agreement and the Court's orders, as follows: (i) payment of the Enhancement Payment to Plaintiff; (ii) payment of the LWDA Payment to the Labor and Workforce Development Agency ("LWDA"); (iii) payment of Individual Settlement Payments to Settlement Class Members and PAGA Group Members; (iv) payment of Attorneys' Fees and Costs to Class Counsel; and (v) payment of Administration Costs to the Settlement Administrator.

d. Settlement checks will be valid for a period of one hundred and eighty (180) calendar days from the date of issuance, and after this time period, any uncashed check(s) will be cancelled and the funds associated with such cancelled checks will be transmitted to the Center for Workers' Rights as the designated *cy pres* beneficiary in conformity with the requirements of California Code of Civil Procedure section 384.

e. The remittance of all Court ordered and approved payments, under this Settlement Agreement, to the Settlement Administrator shall constitute the full and complete discharge of the entire obligation of Defendant under this Settlement Agreement.

f. No person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, Defendant's Counsel, or any other agent designated by Plaintiff or Defendant based upon the distribution of payments made in accordance with this Settlement Agreement or further orders of the Court.

g. Defendant shall not be obligated to make any payments contemplated by this Settlement Agreement prior to the Effective Date.

58. **Binding Effect.**

a. Subject to Final Approval, all Settlement Class Members shall be bound by this Settlement Agreement, the contemplated Final Approval Order and Judgment, the release of Settlement Class Members' Released Claims, and shall be enjoined from pursuing, or seeking to reopen, Settlement Class Members' Released Claims against the Released Parties.

b. Subject to Final Approval, all Class Members, whether or not they submit a request for exclusion from the settlement, employed by Defendant during the PAGA Period (the "PAGA Group Members"), shall be bound by this Settlement Agreement and the contemplated Final Approval Order and Judgment.

59. **Provisional Approval of Settlement.** Plaintiff shall endeavor to file within seventy-five (75) days after execution of the Memorandum of Understanding dated November 17, 2021, a motion in the Lawsuit requesting Preliminary Approval of the settlement consistent with the terms of this Settlement Agreement. Defendant shall not oppose the Motion for Preliminary Approval of the settlement so long as the motion and supporting papers are consistent with the terms of this Settlement Agreement. By way of the motion, the Court will be requested to enter a Preliminary Approval Order that:

- a. Preliminarily approves this Settlement Agreement;
- b. Conditionally certifies the Class, for purposes of settlement;
- c. Preliminarily appoints Plaintiff as representative of the Class for settlement purposes;
- d. Preliminarily appoints CounselOne, P.C. as Class Counsel for the Class for settlement purposes;
- e. Approves and appoints CPT Group, Inc. as the Settlement Administrator to administer the settlement as required by this Settlement Agreement;
- f. Approves the form of the Class Notice and requires that it be sent to Class Members by first class U.S. mail;
- g. Approves the Notice Plan;
- h. Schedules the Final Approval Hearing; and

i. Approves the procedure and deadlines (including the Response Deadline) for Class Members to submit Requests for Exclusion, Objections, and Workweek Disputes.

60. **Non-Interference with Settlement Administration.** The Parties and their counsel agree that they shall not seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion or Objections to the settlement or to appeal from the Final Approval Order and Judgment.

61. **Final Approval Order and Judgment.** Plaintiff will request, and Defendant will concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order and Judgment drafted by Plaintiff in the form that is consistent with this Settlement Agreement and subject to prior review and approval by Defendant. Plaintiff will request that the Final Approval Order and Judgment find that this settlement is fair, just, equitable, reasonable, adequate and in the best interests of the Class, enter judgment in accordance with California Rules of Court 3.769, and require the Parties to carry out the provisions of this Settlement Agreement.

62. **Voiding of Settlement Agreement if Settlement Not Finalized or for Failure to Satisfy Conditions.**

a. The Court may award less to Plaintiff, Class Counsel, Settlement Administrator, and/or the LWDA than is provided for herein, without impacting the validity and enforceability of this Settlement Agreement.

b. If for any reason the settlement set forth in this Settlement Agreement is terminated as provided under this Paragraph or Paragraph 55 or does not otherwise become final:

i. The settlement shall be null and void and the orders and judgment to be entered pursuant to this Settlement Agreement shall be vacated; and the Parties will be returned to the status quo as of November 17, 2021, with respect to the Lawsuit and Plaintiff's class and representative claims, as if the Parties had never entered into this Settlement Agreement.

ii. This Settlement Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto and Class Members, whom shall be restored to their respective positions existing prior to the execution of this Settlement Agreement, and evidence relating to this Settlement Agreement and all negotiations shall not be admissible or discoverable in the litigation and/or Lawsuit or otherwise.

iii. Defendant will not have waived, and instead expressly reserves, its rights to challenge the continuing propriety of class certification or representative adjudication for any purpose.

iv. Plaintiff and Class Counsel will not have waived, and instead expressly reserve, their rights to move for collective and/or class certification and seek representative adjudication.

v. To the extent one exists, the Preliminary Approval Order shall be vacated in its entirety and neither this Settlement Agreement, the Preliminary Approval Order, nor any other document in any way relating to any of the foregoing, shall be relied upon, referred to, or used in any way for any purpose in connection with any further proceedings in this or any related action, including class certification proceedings.

63. **No Publicity.** The Parties and their counsel will not initiate nor respond to public relations or media inquiries about the settlement except as required by the settlement approval process. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the settlement of the Lawsuit in any manner that identifies Defendant, including but not limited to any postings on any websites maintained by Class Counsel.

64. **Notices.** All notices, requests, demands, and other communications required or permitted to be given pursuant to this Settlement Agreement to the Parties shall be in writing, and shall be delivered by first class U.S. mail through counsel, as follows:

For Plaintiff and the Class:

Anthony J. Orshansky
Jennifer L. Connor
CounselOne, P.C.
9301 Wilshire Boulevard, Suite 650
Beverly Hills, California 90210

For Defendant:

Jennifer Duggan
Christina Bucci Hamilton
Duggan McHugh Law Corporation
641 Fulton Avenue, Suite 100
Sacramento, CA 95825

64. **Modification in Writing.** This Settlement Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by counsel for the Parties and approved by the Court. This Settlement Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

65. **Ongoing Cooperation.** Plaintiff and Defendant and each respective counsel shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Settlement Agreement. The executing of documents must take place prior to the Final Approval Hearing.

66. **Binding on Successors.** This Settlement Agreement shall be binding and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

67. **Entire Agreement.** This Settlement Agreement constitutes the full, complete, and entire understanding, agreement, and arrangement between the Parties with respect to the settlement of the Lawsuit and Release of Claims. This Settlement Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the settlement of the Lawsuit and Release of Claims. Except as to those set forth and included expressly in this Settlement Agreement, there are no other agreements, covenants, promises, representations, or arrangements between the Parties with respect to the settlement of the Lawsuit.

68. **Execution in Counterparts.** This Settlement Agreement may be signed in one or more counterparts and electronic signatures are acceptable. All executed copies of this Settlement Agreement, and photocopies thereof (including facsimile copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

69. **Captions.** The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience and in no way define, limit, construe, or describe the scope or intent of the provisions of this Settlement Agreement.

70. **Governing Law.** This Settlement Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the State of California, without regard to conflict of law rules.

71. **Reservation of Jurisdiction.** Notwithstanding entry and filing of the Final Approval Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this Settlement Agreement.

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

73. **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, to their knowledge, that there are no liens on this settlement.

74. **Warranties and Representations.** With respect to themselves, each of the Parties to this Settlement Agreement and/or their agents or counsel represent, covenant, and warrant that (a) they have full power and authority to enter into and consummate all transactions contemplated by this Settlement Agreement and have duly authorized the execution, delivery, and performance of this Settlement Agreement and (b) the person executing this Settlement Agreement has the full right, power, and authority to enter into this Settlement Agreement on behalf of the Party for whom he/she/it has executed this Settlement Agreement, and the full right, power, and authority to execute any and all necessary instruments in connection herewith, and to fully bind such Party to the terms and obligations of this Settlement Agreement.

IT IS SO AGREED:

Dated: 01 / 11 / 2022
_____, 2022

Angelina Vasquez

Plaintiff Angelina Vasquez

Dated: 01 / 14 / 2022, 2022

Rod Johnson

Name: Rod Johnskn

Title: Member

On Behalf of Defendant CP Retail, LLC

APPROVED AS TO FORM

Dated: 1-13, 2022

Jennifer L. Connor

Anthony J. Orshansky, Esq.

Jennifer L. Connor, Esq.

CounselOne, P.C.

Attorneys for Plaintiff Angelina Vasquez

Dated: _____, 2022

Jennifer Duggan, Esq.

Christina Bucci Hamilton, Esq.

DugganMcHugh Law Corporation

Attorneys for Defendant CP Retail, LLC

Dated: _____, 2022

Name: _____

Title: _____

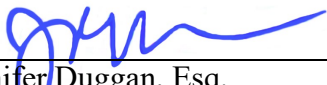
On Behalf of Defendant CP Retail, LLC

APPROVED AS TO FORM

Dated: _____, 2022

Anthony J. Orshansky, Esq.
Jennifer L. Connor, Esq.
CounselOne, P.C.
Attorneys for Plaintiff Angelina Vasquez

Dated: January 14, 2022



Jennifer Duggan, Esq.
Christina Bucci Hamilton, Esq.
DugganMcHugh Law Corporation

Attorneys for Defendant CP Retail, LLC