

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonegroup.com
3 **COUNSELONE, PC**
9301 Wilshire Boulevard, Suite 650
4 Beverly Hills, California 90210
Telephone: (310) 277-9945
5 Facsimile: (424) 277-3727

6 Attorneys for Plaintiff
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF STANISLAUS**
11

12 ANGELINA VASQUEZ, on behalf of herself
and all others similarly situated,

13
14 Plaintiff,

15 v.

16 CP RETAIL, LLC, a California limited liability
corporation; WINMARK CORPORATION, a
17 Minnesota corporation; and DOES 1 through
18 100, inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No.: 21-CV-000723

Assigned for all purposes to:
Hon. Sonny S. Sandhu
Dept. 24

**NOTICE OF MOTION AND
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT, ATTORNEYS' FEES
AND COSTS, AND CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declarations of Jennifer L. Connor and
Angelina Vasquez, Declaration of Emilio
Confico Regarding Notice and Settlement
Administration, and Proposed Final Approval
Order and Judgment submitted concurrently
herewith]

Final Approval Hearing:

Date: February 28, 2023
Time: 8:30 a.m.
Dept.: 24

Complaint Filed: February 11, 2021
Jury Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on February 28, 2023 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 24 of the above-entitled Superior Court of California, County of Stanislaus, located at 801 10th Street, Modesto, California 95354 before the Honorable Sonny S. Sandhu, plaintiff Angelina Vasquez (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated, will and hereby does move this Court for entry of an order pursuant to California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769:

1. Confirming certification of the conditionally certified Class for settlement purposes under Code of Civil Procedure section 382;

2. Confirming the appointment of Plaintiff Angelina Vasquez as the Class Representatives for settlement purposes;

3. Confirming the appointment of CounselOne, P.C. as Class Counsel for settlement purposes;

4. Granting final approval of the settlement as fair, adequate, and reasonable based upon the terms set forth in Stipulation of Class and Representative Action Settlement (“Settlement” or “Settlement Agreement”) including payment by Defendant CP Retail, LLC (“Defendant” or “CP Retail”) of the non-reversionary Total Settlement Amount totaling \$425,000 for a putative class of approximately 278 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 January 16, 2022;

5. Approving an award of \$170,000 in attorneys’ fees to Class Counsel;

6. Approving an award of \$6,991.31 in actual litigation costs to Class Counsel;

7. Approving an award of \$14,500 to CPT Group, Inc. for its settlement administration services;

8. Approving an enhancement payment in the amount of \$7,500 to Plaintiff as Class Representative;

9. Approving an award of \$30,000 for PAGA penalties, \$22,500 of which will be paid to the California Labor & Workforce Development Agency; and

///

1 10. Entering final judgment in the form of the Proposed Final Order and Judgment
2 Granting Plaintiff's Motion for Final Approval of Class and Representative Action Settlement,
3 Attorneys' Fees and Costs, and Class Representative's Enhancement Payment, submitted
4 concurrently with this Motion.

5 This motion is made on the following grounds: (1) the conditionally certified Class continues
6 to meet the requirements for class certification for settlement purposes only under Code of Civil
7 Procedure section 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of
8 the Class; (3) the settlement is a fair, adequate, and reasonable compromise of disputed wage and
9 hour claims; (4) the requested awards of attorneys' fees and costs, enhancement payment, and
10 settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the
11 foregoing, the Proposed Final Order and Judgment Granting Plaintiff's Motion for Final Approval
12 of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class
13 Representative's Enhancement Payment submitted concurrently herewith should be entered to give
14 finality to, and allow for disbursements from, the Settlement.

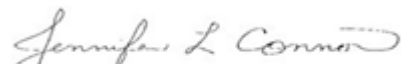
15 This motion is based on this Notice of Motion; the attached Memorandum of Points and
16 Authorities; the supporting declarations of Jennifer L. Connor, Angelina Vasquez, and Emilio
17 Cofinco, along with the exhibits attached thereto; the Settlement Agreement dated January 14, 2022;
18 all other pleadings and papers on file in this action; and on any further oral or documentary evidence
19 or argument presented at the time of hearing. Finally, given the multiplicity of issues addressed in
20 this motion, Plaintiff believes that there is good cause to exceed the 20-page limit set forth in
21 California Rules of Court, Rule 3.764(c)(2), and respectfully request that the Court consider
22 Plaintiff's Memorandum of Points and Authorities, which is 35-pages in length.

23 Dated: January 27, 2023

Respectfully submitted,

24 COUNSELONE, PC

25 By:



26 Jennifer L. Connor

27 Anthony J. Orshansky

Attorneys for Plaintiff, putative Class

28 Members, and aggrieved employees

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	2
A.	Discovery and Investigation.....	3
B.	Mediation and Settlement.....	4
III.	SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS.....	6
A.	The Class Definition.....	6
B.	Monetary Terms	6
C.	Summary of Notice Process.	8
D.	Timing of Payments	8
E.	Posting of Final Order and Judgment Upon Final Approval	9
IV.	ARGUMENT	9
A.	This Court Should Confirm Its Conditional Certification of the Settlement Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification under Code of Civil Procedure § 382	9
B.	This Court Should Finally Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims.....	10
1.	The Settlement Was Reached at Arm’s Length, through Experienced Counsel and a Respected Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation.....	10
2.	The Settlement Fairly, Reasonably, and Adequately Compensates Settlement Class Members and PAGA Group Members Because Each Settlement Class Member and PAGA Group Member Will Be Paid Based on the Extent of His or Her Injury	22
3.	The 100% Participation Rate and Absence of Any Objections Confirms That the Settlement Is Fair, Adequate, and Reasonable	23
C.	The Requested Award of Attorneys’ Fees Is Reasonable as a Percentage of the Common-Fund Total Settlement Amount.....	23
D.	The Requested Award of Attorneys’ Fees Is Reasonable as Evidenced by the Lodestar Cross-Check Method.....	27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E.	The Requested Costs Reimbursement Warrants Final Approval as Fair, Adequate, and Reasonable	31
F.	The Court Should Finally Approve the Requested Settlement Administrator Expenses	32
G.	The Court Should Finally Approve Plaintiff’s Requested Enhancement Payment Because the Amount Is Fair, Adequate, and Reasonable in Light of Plaintiff’s Efforts and Risks Assumed on Behalf of the Class	33
V.	CONCLUSION	35

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	23
<i>Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.</i> (7th Cir. 1972) 455 F.2d 101	11
<i>Amaral v. Cintas Corp.</i> (2008) 163 Cal.4th 1157	21
<i>In re Ampicillin Antitrust Litig.</i> (D.D.C. 1981) 526 F.Supp. 494	25
<i>Ashker v. Sayre</i> (N.D.Cal. 2011, No. 05-03759-CW) 2011 WL 825713	32
<i>Augustus v. ABM Security Service, Inc.</i> (2016) 2 Cal.5th 257	16
<i>Beech Cinema, Inc. v. Twentieth- Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	25
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	33
<i>Bihun v. AT&T Information Systems, Inc.</i> (1993) 13 Cal.App.4th 976	28
<i>Boothby v. Atlas Mechanical, Inc.</i> (1992) 6 Cal.App.4th 1595	19
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	15
<i>Brum v. MarketSource, Inc.</i> (E.D.Cal. 2018) 2018 WL 3861558	4
<i>Buccellato v. AT & T Operations, Inc.</i> (N.D.Cal. Jun. 30, 2011, No. C10-00463- LHK) 2011 WL 3348055	31
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	24, 25
<i>Cicero v. DirectTV, Inc.</i> (C.D.Cal. July 27, 2010, No. EDCV07-1182) 2010 WL 2991486	25

1	<i>Clark v. American Residential Services, LLC</i> (2009)	
2	175 Cal.App.4th 785	13
3	<i>Dunk v. Ford Motor Co.</i> (1996)	
4	48 Cal.App.4th 1794	10, 11, 23
5	<i>Duran v. U.S. Bank National Association</i> (2014)	
6	59 Cal.4th 1	15
7	<i>Dynamex Operations West, Inc. v. Superior Court</i> (2018)	
8	4 Cal.5th 903	12
9	<i>Frlekin v. Apple Inc.</i> (2020)	
10	8 Cal.5th 1038 [258 Cal.Rptr.3d 392, 457 P.3d 526].....	13
11	<i>Glendora Comm. Redev. Agency v. Demeter</i> (1984)	
12	155 Cal.App.3d 456	30
13	<i>Gutierrez v. Wells Fargo Bank, N.A.</i> (N.D.Cal. May 21, 2015, No. C07-05923- WHA)	
14	2015 WL 2438274.....	30
15	<i>Harris v. Marhoefer</i> (9th Cir. 1994)	
16	24 F.3d 16.....	32
17	<i>Holleran v. Rita Medical Systems, Inc.</i> (Cal. Super. Ct. Oct. 04, 2007, No. RG06302394)	
18	2007 WL 7759253.....	30
19	<i>In re Immune Response Securities Litigation</i> (S.D.Cal. 2007)	
20	497 F.Supp.2d 1166	32
21	<i>J.P. Morgan & Co., Inc. v. Sup. Ct. (Heliotrope General, Inc.)</i> (2003)	
22	113 Cal.App.4th 195	33
23	<i>Johnson v. Fujitsu Tech. & Bus. of Am., Inc.</i> (N.D.Cal. May 11, 2018, No. 16-CV- 03698-NC)	
24	2018 WL 2183253.....	30
25	<i>Kaminske v. JP Morgan Chase Bank N.A.</i> (C.D.Cal. 2010)	
26	2010 WL 5782995.....	4
27	<i>Kilby v. CVS Pharmacy, Inc.</i> (2016)	
28	63 Cal.4th 1	20
	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008)	
	168 Cal.App.4th 116	13
	<i>Laffitte v. Robert Half Int’l. Inc.</i> (2016)	
	1 Cal.5th 480	23, 24, 27

1	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> (1980)	
2	103 Cal.App.3d 573	10
3	<i>Mallick v. Superior Court</i> (1979)	
4	89 Cal.App.3d 434	10
5	<i>Maria P. v. Riles</i> (1987)	
6	43 Cal.3d 1281	23
7	<i>McGhee v. Crocker-Citizens Nat. Bank</i> (1976)	
8	60 Cal.App.3d 442	33
9	<i>Naranjo v. Spectrum Services, Inc.</i>	
10	(2019) 40 Cal.App.5th 444.....	18, 19
11	<i>Rawlings v. Prudential-Bache Properties, Inc.</i> (6th Cir. 1993)	
12	9 F.3d 513.....	24
13	<i>Richmond v. Dart Industries, Inc.</i> (1981)	
14	29 Cal.3d 462	9
15	<i>In re Rite Aid Corp. Securities Litigation</i> (3d Cir. 2005)	
16	396 F.3d 294.....	24
17	<i>Schiller v. David's Bridal, Inc.</i> (E.D.Cal. June 11, 2012, No. 1:10-cv-00616-AWI- SKO)	
18	2012 WL 2117001.....	26
19	<i>Serrano v. Priest</i> (1977)	
20	20 Cal.3d 25	24, 28
21	<i>Serrano v. Unruh</i> (1982)	
22	32 Cal.3d 621	24
23	<i>Stambaugh v. Superior Court</i> (1976)	
24	62 Cal.App.3d 231	10
25	<i>Suastez v. Plastic Dress-Up Co.</i> (1982)	
26	31 Cal. 3d 774	19
27	<i>Talavera v. Sun Maid Growers of California</i> (E.D.Cal. 2017)	
28	2017 WL 495635.....	4
	<i>Troester v. Starbucks Corp.</i> (2018)	
	5 Cal.5th 829	14
	<i>Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins.</i> <i>Co.</i> (9th Cir. 2006)	
	460 F.3d 1253.....	32

1	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D.Cal. 1995)	
2	901 F.Supp. 294	25, 30, 33
3	<i>Vasquez v. Jan-Pro Franchising International, Inc.</i> (Cal. Super. Ct. Jan. 14, 2021)	
4	2021 WL 1227201	12
5	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002)	
6	290 F.3d 1043	26, 30
7	<i>Wershba v. Apple Computer, Inc.</i> (2001)	
8	91 Cal.App.4th 224	11, 23, 30
9	<i>Westside Community for Independent Living, Inc. v. Obledo</i> (1983)	
10	33 Cal.3d 348	23
11	<i>Williams v. Centerplate, Inc.</i> (S.D.Cal. 2013)	
12	2013 WL 4525428	26
13	<i>Williams v. Costco Wholesale Corp.</i> (S.D.Cal. July 7, 2010, No. 02-cv-2003-IEG-AJB)	
14	2010 WL 2721452	25
15	Statutes	
16	Bus. & Prof. Code §§ 17200, <i>et seq.</i>	3, 20
17	Civil Code § 1542	34
18	Code Civ. Proc. § 382	2, 9
19	Code Civ. Proc. § 384	9
20	Code Civ. Proc. § 384.2	9
21	Labor Code § 201	3, 19
22	Labor Code § 202	3, 19
23	Labor Code § 203	3, 18, 19
24	Labor Code § 204	3
25	Labor Code § 210	3
26	Labor Code § 226	3, 18
27	Labor Code § 226(a)	18
28	Labor Code § 226(a)(8)	2, 21

1	Labor Code § 226(e)	18
2	Labor Code § 226.3	3
3	Labor Code § 226.7	2, 3, 15, 17, 18
4	Labor Code § 227.3	3, 19
5	Labor Code § 510	2, 13
6	Labor Code § 1174	3
7	Labor Code § 1194	2
8	Labor Code § 1194.2	2
9	Labor Code § 1197	2
10	Labor Code § 1197.1	2
11	Labor Code § 1198	2, 3, 13, 20
12	Labor Code § 2699(f)(2)	21
13	Labor Code § 2699.3(c)(2)(A)	12
14	Labor Code § 2800	3
15	Labor Code § 2802	3
16	Labor Code § 2802(a)	17
17	Private Attorneys General Act of 2004, Labor Code §§ 2698, <i>et seq</i>	2, 3, 7

19

20 **Other Authorities**

21	California Rules of Court, Rule 3.771(b)	9
----	--	---

22

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Angelina Vasquez¹ (“Plaintiff” or “Class Representative”) hereby submits this
4 Memorandum of Points and Authorities in support of her Motion for Final Approval of this class
5 and representative action settlement on behalf of all current and former non-exempt, hourly
6 employees in California who are or were employed by CP Retail, LLC (“Defendant” or “CP Retail”)
7 stores in California at any time beginning on February 11, 2017 and ending on January 16, 2022.
8 (the “Class” or “Class Members.”)²

9 The Stipulation of Class Action and Representative Action Settlement (“Settlement” or
10 “Settlement Agreement”), entered between Plaintiff and Defendant (together, the “Parties”), if
11 approved, will resolve specific claims of Plaintiff, Settlement Class Members,³ and PAGA Group
12 Members⁴ in exchange for Defendant’s agreement to pay ***Four Hundred Twenty-Five Thousand***
13 ***Dollars (\$425,000) into a non-reversionary common settlement fund.*** In this non-reversionary
14 settlement, all Settlement Class Members will ***automatically receive*** payments without the need to
15 submit a claim form, ***resulting in an average individual settlement award payment of***
16 ***approximately \$676.26.*** (See Declaration of Emilio Cofinco Regarding Class Notification and
17 Settlement Administration (“Cofinco Decl.”), filed concurrently herewith, ¶ 15.) This is a very
18 favorable resolution of the disputed wage and hour claims in this case. Moreover, after receiving
19 notice of the proposed Settlement and projected estimated settlement amounts, CPT reports that ***no***
20 ***objections*** were made to the Settlement and ***no requests for exclusion resulting in a 100%***
21 ***participation rate.*** (Cofinco Decl. ¶¶ 11, 13, 15.)

22
23
24 ¹ Plaintiff Angelina Vasquez recently married with the result that her surname changed and her legal
name is now Angelina Rich. For consistency with the case docket and caption at the time of filing,
however, Plaintiff is still referred to as Angelina Vasquez.

25 ² “Class Period” is defined as the period beginning on February 11, 2017 and ending on January 16,
2022. (Settlement Agreement ¶ 7.)

26 ³ “Settlement Class Members” are Class Members who have not submitted a timely and valid request
for exclusion from the Settlement. (Settlement Agreement ¶ 31.)

27 ⁴ “PAGA Group Members” are defined as all Class Members, whether or not they submit a request
28 for exclusion from the Settlement Class, employed by Defendant during the PAGA Period (which
is October 13, 2019 through January 16, 2022.) (Settlement Agreement ¶¶ 21, 23.)

As explained below, the Court should grant Plaintiff's motion because: (1) the conditionally certified Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure section 382; (2) the settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel's attorneys' fees and costs, Plaintiff's enhancement payment, and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the Proposed Final Order and Judgment Granting Plaintiff's Motion for Final Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class Representative's Enhancement Payment, submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

On October 13, 2020, Plaintiff submitted her pre-filing written notice with the California Labor & Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants CP Retail, LLC and Winmark Corporation, setting forth the facts and theories of the violations alleged against Defendants, on behalf of herself and similarly situated aggrieved employees in accord with the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq* ("PAGA"). (Declaration of Jennifer L. Connor ("Connor Decl."), submitted concurrently herewith, at ¶ 10.) The LWDA did not provide notice of its intent to investigate the alleged violations within 65 calendar days of the submission, thereby, entitling Plaintiff to commence a representative action under PAGA. (*Ibid.*) On November 12, 2020, however, Defendant CP Retail, LLC submitted a cure letter stating that it reissued itemized wage statements to former and current employees with the corrected "CP Retail, LLC"; however, no additional monies were paid. On February 19, 2021, the LWDA determined that Defendant's reissuance cured the misidentified name and address of the employer defect of Labor Code section 226(a)(8), but that its finding did not pertain to other allegations. (Settlement Agreement ¶ 37; Connor Decl. ¶ 11.)

On February 11, 2021, Plaintiff filed her Complaint in the Stanislaus County Superior Court, on behalf of herself and other similarly situated employees, alleging: (1) failure to pay minimum and overtime wages pursuant to Labor Code sections 510, 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to provide meal period premiums in violation of Labor Code sections 226.7, 512, and

1 Wage Order 7-2001; (3) failure to provide rest period premiums in violation of Labor Code section
2 226.7 and Wage Order 7-2001; (4) forfeiture of vested vacation in violation of Labor Code section
3 227.3; (5) failure to provide suitable seating in violation of Labor Code section 1198 and Wage
4 Order 7-2001; (6) failure to reimburse business expenses in violation of Labor Code sections 2800
5 and 2802; (7) failure to maintain and provide accurate itemized wage statements in violation of
6 Labor Code sections 226, 226.3, and 1174; (8) failure to pay timely wages timely during
7 employment and upon termination in violation of Labor Code sections 201-204, and 210; (9)
8 violations of Business and Professions Code sections 17200, *et seq.*, and (10) violation of the PAGA,
9 Labor Code sections 2698 *et seq.* (Connor Decl. ¶¶ 12-13.)

10 On June 15, 2021, Defendants CP Retail, LLC and Winmark Corporation filed their Answer,
11 entering a general denial as to all claims and asserting multiple affirmative defenses to each cause
12 of action. (Connor Decl. ¶ 14.) Notwithstanding the Settlement, Defendant CP Retail denied and
13 continues to deny Plaintiff's allegations of wrongdoing. Defendant does not believe that any liability
14 to Plaintiff or other Class Members exist, or that Plaintiff or Class Members are entitled to any
15 recovery. (Settlement Agreement ¶ 42; Connor Decl. ¶ 23.) In settling, Defendant does not admit
16 liability with respect to the alleged claims made by Plaintiff and makes no admission regarding any
17 facts or law related to the lawsuit. (Settlement Agreement ¶ 41; Connor Decl. ¶ 23.)

18 **A. Discovery and Investigation.**

19 The Parties engaged in extensive informal discovery, exchanging information and
20 documents, and analyzing extensive data made available by Defendant which enabled the Parties to
21 thoroughly evaluate Plaintiff's claims, the claims of the putative class members, and the aggrieved
22 employees' PAGA claim, along with Defendant's affirmative defenses, and the likely outcomes,
23 risks and expense of pursuing litigation.

24 Prior to initiating this Lawsuit, counsel for Plaintiff, CounselOne, P.C., thoroughly
25 investigated the claims and considered the facts and circumstance underlying the pertinent issues
26 and applicable law. (Connor Decl. ¶ 9.) This required thorough discussions and interviews with
27 Plaintiff as well as research into the various legal issues—including the evolving legal landscape of
28 whether franchisor and franchisee relationships share liability for labor and employment—involved

1 in this case. (Connor Decl. ¶ 9.) After conducting their initial investigation, Class Counsel
2 determined that the claims were well suited for class action adjudication owing to what appeared to
3 be a common course of conduct affecting a similarly situated group of employees. (*Ibid.*)

4 Given the small putative class size and the reduction of Defendant's ownership to a single
5 retail store, the Parties agreed to explore the possibility of early resolution before investing in costly
6 litigation. Nonetheless, Class Counsel conducted a thorough investigation in advance of mediation.
7 (Connor Decl. ¶ 15.) Specifically, Class Counsel conducted informal discovery which yielded
8 information and substantial documentation concerning the claims, including, but not limited to:
9 Defendant's employee handbooks; relevant memoranda, policies, and procedures; franchise
10 agreements; operational policies and procedures (*i.e.*, bag searches, accrual of paid time
11 off/vacation, reimbursement of business expenses, etc.); the payment of wages; the provision of
12 meal and rest breaks; time keeping policies and records of hours; and issuance of wage statements
13 and providing all wages at separation. (Settlement Agreement ¶ 39; Connor Decl. ¶ 15.) Defendant
14 also provided composite data for the Class including total number of putative class members; mix
15 of current versus former non-exempt employees; total number of workweeks by year; total number
16 of pay periods by year; counts of meal and rest period premiums paid; and average hourly rate in
17 effect. (Connor Decl. ¶ 16.) Specifically, Defendant produced a *random sampling of time and wage*
18 *records for 20% (i.e., 54 out of 274 employees) putative class members,⁵ which consisted of*
19 *approximately 2,234 workweeks.* (Connor Decl. ¶ 16.) Class Counsel analyzed the documents and
20 data produced to determine Defendant's degree of liability and potential amounts due in damages.
21 (Connor Decl. ¶ 17.)

22 **B. Mediation and Settlement**

23 After having performed extensive investigation and analysis of the legal and factual issues
24 and risks, the Parties participated in a private mediation where they debated and discussed their
25

26 ⁵ Such constitutes a statistically significant sample as courts have found the use of similar percentage
27 samples appropriate. (*See, e.g., Brum v. MarketSource, Inc.* (E.D.Cal. 2018) 2018 WL 3861558, at
28 *5 [10% sample]; *Talavera v. Sun Maid Growers of California* (E.D.Cal. 2017) 2017 WL 495635,
at *4 [10% sample]; *Kaminske v. JP Morgan Chase Bank N.A.* (C.D.Cal. 2010) 2010 WL 5782995,
at *5 [10% sample].)

1 respective positions. (Connor Decl. ¶ 18.) The Parties’ mediation session was facilitated by Justice
2 Steven M. Vartabedian (Ret.) of Fennemore Dowling Aaron. Justice Vartabedian has a legal and
3 judicial career spanning over forty (40) years, including twenty-nine years of judicial experience at
4 trial and appellate levels, is the author 180 published appellate opinions, and is well-experienced in
5 mediating complex general litigation, labor and employment claims, class actions, and PAGA cases,
6 among others. (*Ibid.*) During the mediation, the Parties exchanged further information and discussed
7 all aspects of the case, including the risks and delays of litigation and the risk to both Parties of
8 proceeding with a motion for class certification and liability under the claims asserted, along with
9 the potential for PAGA penalties to be asserted. (Connor Decl. ¶ 19.) These were contentious issues
10 because of the factual and legal complexity of the case. (*Ibid.*)

11 With the assistance of the Justice Vartabedian and pursuant to a mediator’s proposal, the
12 Parties agreed to resolve the matter and reached the terms of this proposed arm’s-length Settlement.
13 (Settlement Agreement ¶ 40; Connor Decl. ¶ 20.) The Parties subsequently memorialized these
14 terms in the long-form Settlement Agreement dated January 14, 2022, previously submitted as part
15 of Plaintiff’s preliminary approval briefing and considered at the September 7, 2022 preliminary
16 approval hearing. (*Ibid.*)

17 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
18 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
19 Counsel believe that the recovery being made available to Class Members is fair, reasonable, and
20 adequate taking into consideration the amounts received in other wage and hour class and
21 representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of
22 each Class Members’ claim to the settlement award he or she will receive. (Connor Decl. ¶ 22.)
23 Class Counsel believe that the Settlement serves the best interests of Class Members. (*Ibid.*) Further,
24 and based on the settlement negotiations, which were hard fought and conducted in good faith and
25 at arm’s length between attorneys with substantial experience litigating class actions, representative
26 actions, and wage and hour cases, the Settlement was the product of a non-collusive settlement
27 process in which the Parties were forced to make significant compromises in the interest of reaching
28 a full and complete settlement of the action. (Connor Decl. ¶ 24.) Accordingly, the Parties have

1 concluded that it is in their best interests to compromise, settle, and accept the terms of the
2 Settlement Agreement. (Settlement Agreement ¶¶ 41-43; Connor Decl. ¶¶ 22-24.)

3 On September 20, 2022, after reviewing Plaintiff's submission of the Settlement Agreement
4 dated January 14, 2022, and after the hearing on September 7, 2022, the Court granted preliminary
5 approval. (Connor Decl. ¶ 21; *see also* Order Granting Plaintiff's Motion for Preliminary Approval
6 of Class and Representative Action Settlement ("Preliminary Approval Order"), entered September
7 20, 2022.) A true and correct copy of the fully executed Settlement Agreement dated January 14,
8 2022 is attached as **Exhibit 1** to the Connor Decl. filed concurrently herewith.

9 On October 14, 2022, after performing a National Change of Address (NCOA) search to
10 update and verify addresses, the Settlement Administrator, CPT Group, Inc. ("CPT"), mailed via
11 U.S. first class mail the Notice of Proposed Class Action and PAGA Settlement and Hearing Date
12 for Court Approval ("Class Notice"), along with the individualized Share Form (collectively,
13 "Notice Packets"), to all Class Members and PAGA Group Members. (Cofinco Decl. ¶¶ 2-7 and
14 internal Exhibit A [Notice Packet].) Class Members had until November 30, 2022 to submit
15 disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) As of the date of this filing, CPT received
16 *no objections* and *no requests for exclusion* rendering an overall *settlement participation rate of*
17 *100%*. (*Id.* at ¶¶ 11-13, 15.) Given the participation rate and assuming the estimated deductions from
18 the Total Settlement Amount, the highest individual settlement payment is approximately \$4,370.80
19 and the average individual settlement payment is approximately \$676.26. (*Id.* at ¶ 15.) Plaintiff now
20 respectfully submits the Settlement for this Court's final approval.

21 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

22 **A. The Class Definition**

23 The Class is defined as all current and former non-exempt, hourly employees in California
24 who are or were employed by Defendant CP Retail, LLC stores in California at any time from
25 February 11, 2017 through January 16, 2022. (Settlement Agreement ¶¶ 5, 7.)

26 **B. Monetary Terms**

27 Under the terms of the Settlement Agreement, Defendant agreed to pay a non-reversionary
28 amount of Four Hundred Twenty-Five Thousand Dollars (\$425,000) into a common fund to settle

1 the specific wage and hour claims of the Settlement Class Members and PAGA Group Members;
2 this amount is called the “Total Settlement Amount.” (Settlement Agreement ¶¶ 34, 47.) This
3 amount shall be inclusive of all Individual Settlement Payments to all Settlement Class Members
4 who do not request exclusion/opt-out, Attorneys’ Fees and Costs to Class Counsel, Administration
5 Costs to the Settlement Administrator, the Enhancement Payment to Plaintiff, and the LWDA
6 Payment allocated from the PAGA Payment amount, but exclusive of employer federal and state
7 payroll taxes. (*Ibid.*)

8 The amount available for distribution to Settlement Class Members is determined by
9 deducting the following from the Total Settlement Amount:

- 10 • Up to forty (40%) of the Total Settlement Amount in attorneys’ fees (*i.e.*, \$170,000) and
11 litigation expenses up to \$15,000 (the actual amount sought is less, *i.e.*, \$6,991.31) to Class
12 Counsel (“Attorneys’ Fees and Costs”);
- 13 • Up to \$7,500 to Plaintiff as an Enhancement Payment for her efforts in prosecuting this
14 Lawsuit as a Class Representative and in exchange for a general release of claims
15 (“Enhancement Payment”);
- 16 • Up to \$15,000 (the actual amount sought is less, *i.e.*, \$14,500) to the Settlement
17 Administrator, CPT Group, Inc., to notify members of the Class and administer the
18 Settlement (“Administration Costs”); and
- 19 • \$22,500 to the LWDA (“LWDA Payment”), which is 75% of the \$30,000 allocated to the
20 civil penalties pursuant to Labor Code sections 2698 *et seq.* (“PAGA Payment”).

21 The amount remaining after the foregoing deductions, approximately \$188,000,⁶ is called the “Net
22 Settlement Amount.” (Settlement Agreement ¶ 19; Connor Decl. ¶ 28.) The entire Net Settlement
23 Amount shall be paid out to Settlement Class Members. Settlement Class Members shall

24 ⁶ Plaintiff originally estimated the Net Settlement Amount at \$195,000, but that figure erroneously
25 included the \$7,500 penalties to PAGA Group Members (*i.e.*, 25% PAGA Settlement Amount),
26 which is payable separate from Net Settlement Amount payments to Settlement Class Members.
27 Nonetheless, the Net Settlement Amount will still exceed that original estimate because the actual
28 litigation costs are only \$6,991.31 (instead of the allocated \$15,000) and the actual settlement
administration costs are \$14,500 (instead of the allocated \$15,000). However, for consistency
purposes, Plaintiff relies on the \$188,000 dollar amount calculated by the Settlement Administrator.
(*See* Cofinco Decl. ¶ 14.)

1 automatically receive payments without the need to submit a claim form, and PAGA Group
2 Members shall receive PAGA payments irrespective of whether they opt out of the class settlement.
3 (Settlement Agreement ¶ 21, 47(d); Connor Decl. ¶ 28.)

4 **C. Summary of Notice Process.**

5 On October 3, 2022, counsel for Defendant provided CPT Group, Inc., the Court-approved
6 Settlement Administrator, with a list of Class Members containing the full names, last-known
7 mailing addresses, last-known telephone numbers; Social Security numbers, start and end dates of
8 employment; respective individual number of Workweeks during the Class Period and PAGA Period
9 (if applicable); and total number of compensable Workweeks for all Class Members during the Class
10 Period. (Cofinco Decl. ¶ 5.)

11 The Class List contained 278 Class Members.⁷ (Cofinco Decl. ¶ 5.) After performing a
12 NCOA search to update and verify addresses, on October 14, 2022, CPT mailed the Notice Packets
13 via first class U.S. mail to all Class Members and PAGA Group Members. (*Id.* at ¶¶ 6-7.) As a result
14 of either a skip trace, request from counsel, or request from the Class Member, the Settlement
15 Administrator re-mailed six (6) Notice Packets, and ultimately, only one (1) Notice Packet remained
16 undeliverable.⁸ (*Id.* at ¶ 10.) Class Members had until November 30, 2022 to submit disputes,
17 requests for exclusion, or objections. (*Id.* at ¶ 7.) After the close of the response period and the date
18 of this filing, not a single Class Member has submitted a dispute as to workweeks listed in the Notice
19 Packets or objected to the settlement, nor has any Class Member opted out of the settlement;
20 accordingly, this results in a **100% settlement participation rate**. (*Id.* at ¶¶ 11-13, 15.) The average
21 individual settlement payment is **\$676.26**. (*Id.* at ¶ 15.)

22 **D. Timing of Payments**

23 The settlement calls for the Total Settlement Amount, along with the Defendant's share of
24 the payroll and employment taxes, to be funded within sixty (60) calendar days of the Effective

25 ⁷ The original estimate of the class size was 274 individuals; however, after Defendant culled its
26 records for purposes of notice, an additional four (4) individuals were located, making the total 278
27 individuals. (Cofinco Decl. ¶ 5).

28 ⁸ If the Court should so desire, the Parties conferred and are amenable to transmitting the funds for
the single undeliverable Notice Packet to the State Controller's Unclaimed Property Fund. (Connor
Decl. ¶ 44.)

1 Date. (Settlement Agreement ¶ 57(a).) The Settlement Administrator shall distribute settlement
2 payments within ten (10) calendar days after receipt of the Total Settlement Amount. (*Id.* at ¶ 57(c).)

3 In the event any settlement checks are not cashed, deposited, or negotiated within one
4 hundred and eighty (180) calendar days from the date of mailing, then the check(s) will be cancelled
5 and the funds associated with the cancelled check(s) will be transmitted by the Settlement
6 Administrator to the Center for Workers' Rights as the designated cy pres beneficiary in conformity
7 with the requirements of California Code of Civil Procedure section 384. (Settlement Agreement ¶
8 57(d); Connor Decl. ¶ 38.) Furthermore, pursuant to Code of Civil Procedure section 384.2, no
9 attorney or counsel of record in this matter has any connection with the proposed nonparty recipient
10 beneficiary, *i.e.*, the Center for Workers' Rights, that could reasonably create the appearance of
11 impropriety as between the selection of that recipient of money and the interests of the Class.
12 (Connor Decl. ¶ 39 [disclosing details of a substantially removed in time and tenure defense counsel
13 member who has had no involvement in this case].)

14 **E. Posting of Final Order and Judgment Upon Final Approval**

15 The Court's Final Approval Order and Judgment will be posted on the Settlement
16 Administrator's website pursuant to California Rules of Court, Rule 3.771(b). (Cofinco Decl. ¶ 8;
17 Connor Decl. ¶ 167.)

18 **IV. ARGUMENT**

19 **A. This Court Should Confirm Its Conditional Certification of the Settlement Class**
20 **for Settlement Purposes Because It Meets All of the Requirements for Class**
21 **Certification under Code of Civil Procedure § 382**

22 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable
23 and its members are too numerous for joinder to be practical; (2) the representative and absent class
24 members share a community of interest, and questions of law and fact common to the class
25 predominate over questions unique to individual class members; (3) the representative's claims are
26 typical of the class's claims; and (4) the representative will fairly and adequately represent the
27 class's interests. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court
28 found that the proposed Class meets all the requirements for class certification for settlement

1 purposes when it granted preliminary approval of the Settlement Agreement on October 20, 2022.
2 (See Connor Decl. ¶¶ 40, 119-125.) Since then, no events have cast doubt on the propriety of this
3 determination, and in fact, the reaction of the Class Members has been overwhelmingly supportive
4 of the settlement, with no Class Member objecting to the settlement and no Class Member opting
5 out of the settlement, for a 100% settlement participation rate. (Cofinco Decl. ¶¶ 11-13, 15.) This
6 Court should therefore confirm its conditional certification of the Class.

7 **B. This Court Should Finally Approve the Settlement Because It Is a Fair,**
8 **Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims**

9 California courts have a strong policy in favor of settlement. (See, e.g., *Stambaugh v.*
10 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action
11 settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness
12 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
13 573, 578-79.) This approval process consists of preliminary settlement approval, notice given to
14 class members, and a final fairness and approval hearing at which class members have the
15 opportunity to be heard with respect to the settlement. (*Ibid.*) Now that notice has been provided to
16 Class Members, Plaintiff respectfully requests that the Court finally approve the Settlement as fair,
17 adequate, and reasonable.

18 **1. The Settlement Was Reached at Arm’s Length, through Experienced**
19 **Counsel and a Respected Mediator, and Was Based on Sufficient**
20 **Information to Intelligently Negotiate a Fair Settlement in Light of the**
21 **Claims Asserted and Risks of Continued Litigation**

22 A settlement is presumptively fair where it is reached through arm’s-length bargaining, it is
23 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
24 counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small.
25 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) In deciding whether to approve a
26 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
27 under the circumstances of the case. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In
28 exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair,

adequate, and reasonable.” (*Dunk, supra*, 48 Cal.App.4th at p. 1801 [internal quotations omitted].)

Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Ibid.*) These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement between the parties.” (*Ibid.*)

“In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than what may be obtained if the suit were successfully litigated can be reasonable because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” (*Ibid.* [quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

Here, the settlement resulted from extensive arm’s-length settlement negotiations between qualified and experienced counsel with the assistance of a well-respected mediator. (Connor Decl. ¶¶ 18-24.) While Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges the substantial risks and uncertainty in proceeding with class certification and eventually trial, which justify a downward departure from the maximum exposure that Plaintiff calculated that each claim carried. (*Id.* at ¶ 48.) For the reasons discussed herein, Class Counsel believe that the Settlement is fair, adequate, and reasonable for all Class Members.

As detailed in Plaintiff’s Motion for Preliminary Approval, Defendant presented numerous defenses to Plaintiff’s claims, both procedurally and on the merits. (Connor Decl. ¶ 49.) On the one hand, Plaintiff and her counsel believe that the alleged claims asserted have merit. On the other hand, Plaintiff and her counsel recognize and acknowledge the uncertainty of litigation through trial and appeals, the question of certification, and the possible defenses. (*Ibid.*)

1 Legally, this case was exceptionally complex because, in addition to its class and
2 representative nature, it involves the legally evolving landscape as to the applicability of the ‘ABC
3 test’ in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 to franchise
4 agreements. Defendants defended against liability by citing federal cases (*i.e.*, *Cruz v. Merry Maids,*
5 *LLP, et al.* (E.D. Cal. Jan. 30, 2020) Case No. 1:15-cv-01563-TLN-EPG, among others) for the
6 proposition that franchisors cannot be held liable for the employment practices of franchisees. But
7 Plaintiff argues that application of the ‘ABC test’ to the franchisor-franchisee context is a high-
8 stakes evolving legal question across a variety of judicial forums. (*See, e.g., Vasquez v. Jan-Pro*
9 *Franchising International, Inc.* (Cal. Super. Ct. Jan. 14, 2021) 2021 WL 1227201, at *1 fn. 1;
10 *International Franchise Association, et al. v. State of California, et al.* (S.D. Cal., November 17,
11 2020) Case No. 20CV2243 [seeking pre-enforcement determination that the ‘ABC test’ applied to
12 franchises violates the Dormant Commerce Clause, but dismissed without prejudice on January 12,
13 2022 for lack of ripeness and thus subject matter jurisdiction]; *see also* Connor Decl. ¶ 50.)

14 Factually, there were contentious issues because of the evidentiary complexity of the case
15 (*i.e.*, difficulty of proving off-the-clock claims and degree of control exercised during mandatory
16 bag searches) as well as the legal uncertainty regarding many of the central issues of the litigation
17 (*i.e.*, certification, liability, and devising a theory that properly measures monetary recover,
18 especially given overlap of penalties and arguments against stacking). (Connor Decl. ¶ 51.) Further,
19 Defendant pointed to its ameliorative efforts such as making hundreds of meal and rest premium
20 payments in 2018 and 2019, plus availing itself of the cure provision in Labor Code section
21 2699.3(c)(2)(A). (Connor Decl. ¶ 52.)

22 Defendant also argued that Class Members worked in different job positions at different
23 stores, and that, as a result, Defendant contended there was variation to the circumstances that raises
24 highly individualized questions of fact. Defendant contended that such variation in circumstances
25 raised highly individualized questions of fact. (Connor Decl. ¶¶ 54-55.) Thus, even if Plaintiff
26 prevailed and certified a class action, there is no guarantee Defendant would not later move for and
27 obtain decertification. (*Id.* at ¶ 55.) If the Court either denied class certification or later decertified
28

1 it, the Class would recover nothing and Class Members would be forced to retain their own counsel
2 and proceed on the basis of individual claims only. (Connor Decl. ¶ 55.)

3 Although Plaintiff was prepared to litigate these claims through class certification and,
4 ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted
5 that it was far from certain that Plaintiff would be able to recover a greater amount at trial,
6 particularly after considering the increased litigation costs that would accrue. (Connor Decl. ¶ 56.)
7 Thus, this factor supports preliminary approval of the settlement.

8 Applying a *Clark* and *Kullar* analysis,⁹ Class Counsel's valuation is that the Total Settlement
9 Amount recovery reflects an estimated 43% to 59% of the maximum-to-realistic possible damages
10 recoverable at trial. (Connor Decl. ¶¶ 57, 109-111.) Specifically, the Parties posited as follows:

11 **Unpaid Minimum and Overtime Wages.** Plaintiff alleges that she and other employees
12 were subjected to uncompensated time arising from pre- and post- shift duties, along with
13 interrupted meal periods, that were worked off-the-clock. First, Plaintiff contends that she and other
14 employees were subject to mandatory bag searches when leaving the premises for lunch, rest breaks,
15 and at the end of their daily shifts. (Connor Decl. ¶ 59.) Given that Defendant's bag searches involve
16 a significant degree of control and are imposed primarily for Defendants' benefit, Plaintiff and
17 employees must thus be paid for that time as hours worked. (*Ibid.*; see *Frlekin v. Apple Inc.* (2020)
18 8 Cal.5th 1038, 1042 [258 Cal.Rptr.3d 392, 457 P.3d 526] (holding that "because Apple's business
19 interests and level of control are greater in the context of an onsite search, the mandatory/voluntary
20 distinction applied in *Morillion* is not dispositive here."].)

21 Second, Plaintiff alleges that she was required to engage in off-the-clock pre-shift duties; for
22 example, being required to answer telephone calls before the store opened. Third, Plaintiff
23 experienced interrupted meal breaks on a weekly basis, often due to technology/passcode or
24 customer service issues. Finally, given an extrapolation that over 1,800 shifts worked by Class
25 Members are greater than 8 hours in length, it is inevitable that some of portion of the off-the-clock
26 hours will result in unpaid overtime under Labor Code sections 510 and 1198. (Connor Decl. ¶ 60.)

27 _____
28 ⁹ (See, i.e., *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785 [hereinafter, "*Clark*"] and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 [hereinafter, "*Kullar*"].)

1 Based on time records and anecdotal evidence, Plaintiff estimates that Defendant is liable
2 for approximately seven (7) minutes of unpaid straight and overtime pay per workday attributed to
3 pre-shift/post-shift duties. (Connor Decl. ¶¶ 61-62.) After extrapolating to the Class for the statutory
4 period, 3,931 hours are deemed off-the-clock at the average hourly rate of \$11.20; adding the
5 additional overtime premium for those shifts greater than eight hours, interest, and liquidated
6 damages yields an estimated damages amount of \$115,558. (*Ibid.*) Thus, the estimated total of owed
7 minimum and overtime wages is \$115,558, without discounting for risks associated with
8 certification or merits. (Connor Decl. ¶ 62.)

9 In opposition, however, Defendant contended that Plaintiff's claim for off-the-clock work is
10 not amenable to class treatment, because employees worked in a variety of job positions with
11 different requirements across various store locations, and it would require an unmanageable series
12 of mini-trials to determine how much time was spent without pay. (Connor Decl. ¶ 63.) Further, in
13 terms of merit defenses, Defendant vigorously disagreed with Plaintiff's theories regarding how
14 much off-the-clock work occurred in reality and the credibility of those claimed hours given
15 Defendant's express written policies to the contrary. (*Id.* at ¶ 64.) Here, for Plaintiff to establish the
16 quantity of specific disputed and unrecorded work activities—especially over multiple store
17 locations working various job titles at differing pay rates—would have been costly, time-consuming,
18 and daunting. (*Id.* at ¶ 65.) Defendant further responded that any pre-shift/post-shift incidences off-
19 the-clock time is *de minimis*. Plaintiff countered that such defense lacks viability in light of *Troester*
20 *v. Starbucks Corp.* (2018) 5 Cal.5th 829, given that the California Supreme Court refused to allow
21 the *de minimis* defense to insulate Starbucks from having to pay employees for small amounts of
22 work regularly performed off-the-clock. What is not clear, however, is to what extent the *de minimis*
23 defense would apply where the uncaptured hours were associated with an occasionally recurring
24 activity. (Connor Decl. ¶ 66.)

25 In light of these considerations, especially the evidentiary difficulties of demonstrating off-
26 the-clock work on a class-wide basis, Class Counsel acknowledged a twenty-five percent discount—
27 yielding **\$86,669** in unpaid minimum and overtime wages—that incorporated the risks of non-
28 certification and being unsuccessful on the merits. (Connor Decl. ¶ 67.)

1 **Meal and Rest Period Violations.** Defendant contends that it maintained compliant meal
2 and rest period policies and provided timely meal periods and rest breaks to employees. Plaintiff
3 disagrees and argues that its written meal and rest break policies are facially invalid. For example,
4 the written meal policies fail to mention any timing requirements for when a meal period is to be
5 taken and omit reference to second meal periods altogether. (Connor Decl. ¶ 68.) Further, in actual
6 practice, Plaintiff’s review of the data of employee time-punches demonstrates Defendant’s non-
7 compliance. Records indicate that meal periods were often “missed,” “short,” or “late” and there is
8 no evidence that there was mutual consent to waive meal periods for those employees working
9 between five- and six-hour shifts, usually documented by most employers *vis-a-vis* written meal
10 period waivers. (Connor Decl. ¶ 69.) Significantly, there is no indication that Defendants made
11 anywhere close to a corresponding equivalent of payments of meal period premiums for “missed,”
12 “short,” or “late” meal periods to Plaintiff and employees during the Class Period. (Connor Decl. ¶
13 70; *c.f.* Wage Order 7-2001, § 11(b).)

14 In opposition, Defendant vehemently argued that it complied with the requirements
15 articulated by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012)
16 53 Cal.4th 1004. (Connor Decl. ¶ 71.) Specifically, Defendant maintained that it provided
17 employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieved
18 employees of all duties during meal periods, and relinquished control over employees’ activities,
19 including the ability to leave the premises during meal periods. (*Ibid.*)

20 Plaintiff faced significant challenges to her Labor Code section 226.7 meal period claims for
21 two reasons. *First*, a majority of the records for Class Members showed lunch breaks, even if
22 untimely and short. *Second*, like most employers facing meal period litigation, Defendant argued
23 that where time records show a deficiency, employees were apprised of their right to take meal
24 periods but chose to voluntarily waive them. (Connor Decl. ¶ 72.) Defendant contended that the
25 issue of voluntary waiver would necessarily devolve into a series of individualized mini-trials,
26 precluding class certification. (*See Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1,
27 25 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even
28 when they turn on individual questions].) Thus, although Plaintiff argues that Defendant had an

1 impermissible top-down practice of requiring Class Members to work during meal breaks, in light
2 of its written policies and other evidence suggesting an intent to follow those policies, establishing
3 the alleged unlawful business practice as a rule rather than exception might prove daunting. (Connor
4 Decl. ¶ 73.)

5 Based upon analysis of Class Member time and payroll records, and taking into account
6 Plaintiff's assessment that 27.1% of eligible shifts, or 6,691 shifts, were the subject of unique
7 violations for missed, short, or late meal periods, Plaintiff calculated the potential maximum
8 exposure of this claim to be \$74,939. It is important to note that Defendant did make about \$2,038
9 in meal period premium payments for offset, such that the readjusted maximum exposure is \$72,901.
10 Finally, to account for the above-described certification and liability risks, Plaintiff took a twenty-
11 five percent discount for the associated risks, yielding **\$54,676** as the realistic exposure value.
12 (Connor Decl. ¶ 74.)

13 Plaintiff also alleges that hourly employees did not receive timely and compliant rest breaks,
14 nor did Defendant relinquish control over how employees spent their 10-minute rest periods. (*See*
15 *Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260.) As with the meal period policy,
16 Plaintiff alleged that Defendant's rest break policies in at least two versions of employee handbooks
17 were facially unlawful. Employees are told that they are entitled to a singular rest break of ten (10)
18 minutes and two ten (10) minute rest breaks if working a full eight (8) hours. This is incompatible
19 with the legal standard of providing ten-minute break for every four hours of work or major fraction
20 thereof language. (Connor Decl. ¶ 75; *see* Wage Order 7-2001, § 12.) But when Defendant issued a
21 written corrective policy, it still required employees to remain on premises. Not only is this a
22 theoretical restraint but, coupled with mandatory bag searches which themselves are capable of
23 taking up the vast majority of any 10-minutes rest break, Plaintiff and Class Members are effectively
24 mandated to remain on-premises. (Connor Decl. ¶ 76.) Further, Plaintiff alleges that she and co-
25 workers experienced interrupted rest breaks whereby she was called back to help co-workers and/or
26 service customers. (*Id.* at ¶ 77.) In the absence of recorded rest breaks and based on narrative
27 experiences, Class Counsel applied a 50% violation rate, thus having identified 16,046 unique
28 violations for a potential maximum exposure of this claim to be \$179,715. (*Id.* at ¶¶ 80-81.) It is

1 important to note, however, that Defendant did make about \$3,405 in rest break premium payments
2 which likely requires offset such that the readjusted maximum exposure is \$176,310. (*Ibid.*)

3 For its part, Defendant maintained that it authorized and permitted duty-free rest breaks of
4 not less than ten minutes for every major fraction of four hours worked as required by Labor Code
5 section 226.7. (Connor Decl. ¶ 79.) Defendant explained that Class Members had ample opportunity
6 to take, and did take, regular rest breaks. (*Ibid.*) As with meal breaks, Defendant argued that any
7 Class Member who failed to take a rest break, or took a short or late rest period, did so voluntarily
8 and that all applicable rest periods were still authorized and provided. (*Ibid.*)

9 Notwithstanding the divergent contentions, Class Counsel recognizes that, unlike meal
10 periods, rest breaks need not be recorded and thus establishing Defendant's exertion of pressure,
11 control, and resulting violations is likely to be more difficult. (Connor Decl. ¶ 81.) For settlement
12 purposes and to account for the difficulties of certifying and proving unrecorded rest break
13 violations, however, a fifty percent reduction from that maximum exposure was and is warranted
14 for a realistic recovery amount of **\$88,155**. (*Ibid.*)

15 **Unreimbursed Business Expenses.** Plaintiff also alleges a cause of action under Labor
16 Code section 2802(a) for unreimbursed business expenses incurred. Specifically, Plaintiff alleges
17 that Defendant required employees to incur business expenses resulting from cell phone usage for
18 talk time with supervisors and co-workers, along with download and data usage to participate in
19 work-related communications (including access to postings of work schedules). (Connor Decl. ¶
20 82.) Additionally, Plaintiff and all key holders engaged in travel trips to and from their store and the
21 local bank branch and incurred mileage on their personal vehicles that was not reimbursed. (*Ibid.*)
22 In contrast, Defendant contends that it did reimburse for business expenses incurred, and to the
23 extent it did not, Defendant asserts that this claim is not suitable for class treatment as it would
24 require individualized determinations as to whether each employee incurred such expenses and, if
25 so, how much. With recognition that this claim is difficult to certify class-wide and quantify in terms
26 of damages, Plaintiff simply assigns a relatively nominal flat \$75 per Class Member; which results
27 in a nominal **\$20,550** attributed to this claim. (*Id.* at ¶ 83.)

28 ///

1 **Wage Statement Violations.** Plaintiff alleges a cause of action under Labor Code section
2 226(a) for Defendant’s failure to provide accurate itemized wage statements. (Connor Decl. ¶ 84.)
3 Failure to comply with the statute entitles employees to recover the greater of all actual damages or
4 fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
5 (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
6 thousand dollars (\$4,000). (*See* Labor Code § 226(e).) This cause of action is derivative of the
7 foregoing causes of action because if Defendant did not provide minimum and overtime wages for
8 all hours worked, owed premiums for non-compliant meal and rest breaks, and so forth, then the
9 wage statements were inevitably inaccurate. Plaintiff estimates there are approximately 50
10 employees with 578 pay periods during the period between February 11, 2020 and November 17,
11 2021 (date of mediation). (Connor Decl. ¶ 87.) As a result, based on the \$50 initial violation plus
12 the \$100 per pay period subsequent violation rates, the maximum wage statement exposure is
13 \$55,300. (*Ibid.*)

14 Defendant contended, however, that Labor Code section 226(e) penalties are not automatic.
15 Rather, the employee must show that Defendant’s non-compliance was “knowing and intentional,”
16 which Defendant alleges it was not. (Connor Decl. ¶ 85.) Defendant also raised *Naranjo v. Spectrum*
17 *Services, Inc.* (2019) 40 Cal.App.5th 444 (review granted, Supreme Court Case No. S258966, 455
18 P.3d 704 (January 02, 2020)), to argue that meal and rest break violations do not trigger wage
19 statement penalties, but at the time of mediation the California Supreme Court’s *Naranjo* decision
20 was still yet to issue.¹⁰ (Connor Decl. ¶ 86.) Considering the risk of loss on the merits of the
21 underlying derivative claim(s) and/or an adverse Supreme Court ruling in *Naranjo*, Class Counsel
22 thus utilized the more conservative \$50 initial violation penalty rate across the estimated 578 pay
23 periods, which yields a realistic recovery amount of **\$28,900**. (Connor Decl. ¶ 87.)

24
25 ¹⁰ The “Issues Presented” in the Case Summary of the Appellate Courts Case Information webpage
26 (<https://appellatecases.courtinfo.ca.gov/>) reads: “This case presents the following issues: (1) Does a
27 violation of Labor Code section 226.7, which requires payment of premium wages for meal and rest
28 period violations, give rise to claims under Labor Code sections 203 and 226 when the employer
does not include the premium wages in the employee's wage statements but does include the wages
earned for meal breaks? (2) What is the applicable prejudgment interest rate for unpaid premium
wages owed under Labor Code section 226.7?”

1 **Unpaid Vested Vacation.** Defendant’s written policies refer to the accrual of vacation time,
2 along with a separate designation for sick leave, and states that unused accrued vacation will be paid
3 upon separation. (Connor Decl. ¶ 88.) As a full-time employee, Plaintiff understood that she accrued
4 forty-eight (48) hours of vacation per year, which she never entirely used, yet nothing was paid
5 attributable to vacation on her final wage statement. To the extent Plato’s Closet® offered vacation
6 benefits, Defendants were obligated to pay but never paid all wages due, because Plaintiff and
7 employees were never paid all their earned and unused vacation time. (*Id.* at ¶ 89; *see* Labor Code
8 § 227.3; *Boothby v. Atlas Mechanical, Inc.* (1992) 6 Cal.App.4th 1595, 1602 [stating that the “right
9 to a paid vacation, when offered in an employer’s policy or contract of employment, constitutes
10 deferred wages for services rendered”]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal. 3d 774.)

11 Defendant replied that its policies refer to paid sick leave which, as a time-off benefit that is
12 contingent upon the happening of a specific event, is an unvested benefit that does not have to be
13 paid out at termination. Plaintiff responded that Defendant appears to have lumped descriptors of
14 sick and vacation time together and should bear the burden of payment upon separation. (Connor
15 Decl. ¶ 90.) Given the dispute over the reference to a vacation policy in theory, but which appears
16 to be non-existent in fact based on a sampling of wage statements, Plaintiff assigns a *de minimis*
17 value to this standalone claim. (*Id.* at ¶ 91.)

18 **Waiting Time Violations.** Plaintiff further asserted a cause of action against Defendant for
19 failure to timely pay all wages due employees at separation. (Connor Decl. ¶ 92; *see* Labor Code §§
20 201-203.) As with other claims, Defendant vigorously disagreed that it engaged in any conduct
21 giving rise to liability or entitlement to recovery of penalties. (Connor Decl. ¶ 93.) Defendant argued
22 that waiting time penalties are not appropriate because it attempted to pay employees all final wages
23 owed in good faith upon their separation, thereby precluding a finding of willfulness necessary to
24 obtain waiting time penalties. (*Ibid.*) Here too, under *Naranjo, supra*, Defendant maintained that no
25 waiting time penalties were recoverable for alleged meal and rest period violations. Again, at the
26 time of mediation, *Naranjo* was still undecided. (Connor Decl. ¶ 94.) Based on a count of 225 former
27 employees from February 11, 2018 to November 17, 2021 (date of mediation), Class Counsel
28 appraised the maximum value of the waiting time claim to be \$440,460. (*Id.* at ¶ 95.) But after the

Parties discussed the above risks, Class Counsel factored in a reduction of twenty-five percent (given Plaintiff believes that the combined potential derivative liability makes the claim relatively recoverable) and posits **\$330,345** as a more realistic exposure value. (*Ibid.*)

Suitable Seating. Plaintiff alleged that Defendant violated Labor Code section 1198 by failing to provide suitable seating when the nature of the work reasonably permits under section 14 of Wage Order No. 7-2001. (Connor Decl. ¶¶ 96-97; *see also Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8.) Specifically, Plaintiff alleged that employees were required to work at cash registers without suitable seating even though the provision of such seats would not interfere with the performance of other tasks requiring standing. (Connor Decl. ¶¶ 96-97.) Due to the layout of the stores, Defendant disputed that putting seats at cash registers was reasonable and noted that cash registers are used for multiple job positions with differing duties. (*Ibid.*) In any event, a violation of these working conditions in the Wage Order is recoverable as a penalty under PAGA, thus, it is discussed *infra*. (Connor Decl. ¶ 98.)

Derivative Unfair Business Practices and PAGA Penalties. As a derivative cause of action arising from Defendant’s wage and hour practices, Plaintiff also alleged that Defendant engaged in unfair, unlawful, and fraudulent business acts and practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* (Connor Decl. ¶ 99.) Further, Plaintiff alleged and sought penalties under the PAGA, which not only adds the threat of civil penalties, but also offers a procedural mechanism for representation of employees outside the class certification mechanism. (*Id.* at ¶ 100.) As with other claims, Defendant vigorously disagreed that it engaged in any conduct giving rise to liability or entitlement to recovery of penalties or equitable relief.

Plaintiff notified Defendant and the LWDA of the alleged violations on October 13, 2020, and having waited the requisite administrative exhaustion timeframe, Plaintiff included a representative PAGA claim in the operative Complaint. On November 12, 2020, Defendant CP Retail, LLC submitted a cure letter stating that it reissued itemized wage statements to former and current employees with the corrected “CP Retail, LLC”; however, no additional money was paid. On February 19, 2021, the LWDA determined that Defendant’s reissuance cured the misidentified

1 name and address of the employer defect of Labor Code section 226(a)(8), but that its finding did
2 not pertain to other allegations which remain at issue. (Settlement Agreement ¶ 37; Connor Decl. ¶
3 101.)

4 The success of Plaintiff's PAGA claim is heavily dependent upon the success of the
5 underlying claims occurring within the one-year statute of limitations applicable to the PAGA.
6 (Connor Decl. ¶ 102.) Defendant contended that these penalties are derived from the underlying
7 wage and hour violations discussed above, which Defendant disputes. (*Ibid.*) Defendant maintained
8 and continues to maintain that it had legally compliant employment policies and practices
9 throughout the statutory period. (*Id.* at ¶ 103.) But even assuming *arguendo* that such violations
10 occurred, Defendant contends that it will not be treated as having engaged in subsequent violations
11 giving rise to heightened penalties. (*Ibid.*) In other words, Defendant argued that heightened civil
12 penalties for subsequent violations would not be assessed unless it could be shown that Defendant
13 had notice that it was violating the law, *e.g.*, it had been cited by a labor agency or adjudged by a
14 court to have done so. (*Ibid.*; *See, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.)
15 Thus, Defendant contended that, at best, even if a violation giving rise to a penalty was shown for
16 each pay period, only the lower civil penalty associated with initial violations would apply. (Connor
17 Decl. ¶ 103.)

18 Under Labor Code section 2699(f)(2), Defendant is subject to a civil penalty of \$100 for the
19 initial violation of the underlying Labor Code violations, and \$200 for each subsequent pay period
20 where the violation occurred. Extrapolating the one-year statutory PAGA period from the date of
21 filing through mediation, Plaintiff estimated 50 aggrieved employees with approximately 578 pay
22 periods at issue. (Connor Decl. ¶ 104.) Thus, Class Counsel applied discounts for the risks in
23 establishing manageability and possible bifurcation of discovery and/or trial, the risks regarding
24 success on the merits and establishing liability, and the risks associated with proving the extent of
25 penalties that are warranted and possible discretionary reduction of penalties by the Court. (*Id.* at ¶¶
26 105-106.) As a result, Plaintiffs used the "initial" \$100 per pay period violation (as opposed to the
27 \$200 subsequent per violation rate) to calculate a realistic estimate of **\$110,600** in potential PAGA

1 penalty exposure—of which, by statute, only 25%, or **\$27,650**, would be recoverable by aggrieved
2 employees. (Connor Decl. ¶ 107.)

3 **Summary.** The foregoing considerations not only bore heavily on the negotiations leading
4 to the Settlement, but also confirm that the Settlement is a fair, adequate, and reasonable
5 compromise in view of the risks of further litigation. Plaintiff and Class Counsel carefully vetted
6 the claims at issue and conducted a detailed analysis of Defendant’s produced data to arrive at the
7 calculated damages. Using the estimated figures for each of the claims described above, Plaintiff
8 predicted that approximately \$991,679 would be the maximum possible recovery in damages
9 available to Class Members, and that approximately \$719,895 was the realistic value of Class
10 Members’ claims. (Connor Decl. ¶¶ 108-110.) In the end, it was determined that the \$425,000 Total
11 Settlement Amount represents an approximate estimated range of **43%-59% of the potential**
12 **maximum/realistic damages** recoverable at trial. (*Id.* at ¶ 111.) Plaintiff presented a detailed *Clark*
13 and *Kullar* analysis in connection with her motion for preliminary approval (*see* Plaintiff’s MPA at
14 pp. 21-33). For reasons of economy and space, Plaintiff refers the Court to her prior preliminary
15 approval filing and to the concurrently filed Connor Decl., for detailed claim valuation estimates.
16 While the above-described risks are far from exhaustive, they demonstrate that the Settlement is
17 fair, adequate, and reasonable in light of them.

18 **2. The Settlement Fairly, Reasonably, and Adequately Compensates**
19 **Settlement Class Members and PAGA Group Members Because Each**
20 **Settlement Class Member and PAGA Group Member Will Be Paid**
21 **Based on the Extent of His or Her Injury**

22 Individual settlement payments will be calculated *pro rata* based on the number of
23 Workweeks worked by each Settlement Class Member during the Class Period, and the Workweeks
24 worked by each PAGA Group Member during the PAGA Period. This method of distribution
25 compensates Settlement Class Members and PAGA Group Members based on the estimated extent
26 of their injuries, as individuals employed for a longer period would have been subject to more of the
27 alleged wage and hour violations than those who employed for a shorter period. Thus, the formulas
28 for compensating Settlement Class Members and PAGA Group Members are fair, adequate, and

1 reasonable, as they are tethered to the damages and penalties that could be recovered by them. (See
2 discussion in section III.B, *supra*.)

3 **3. The 100% Participation Rate and Absence of Any Objections Confirms**
4 **That the Settlement Is Fair, Adequate, and Reasonable**

5 The Class Members’ response to the settlement is relevant in evaluating whether it merits
6 final approval. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) Further, the absence of objections and
7 requests for exclusion support a fairness presumption. (See *7-Eleven Owners for Fair Franchising*
8 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 [finding 9 objections and 80 opt-outs
9 showed a “particularly impressive” response from class members].) Here, ***not a single Class***
10 ***Member objected*** to the settlement and ***not a single Class Member opted out*** of the settlement,
11 resulting in a ***100% settlement participation rate***. (Cofinco Decl. ¶¶ 11-13, 15.) This extremely
12 positive reaction from the Class further confirms that the settlement is fair, adequate, and reasonable.

13 **C. The Requested Award of Attorneys’ Fees Is Reasonable as a Percentage of the**
14 **Common-Fund Total Settlement Amount**

15 A percentage method may be used to calculate a reasonable fee in a common fund case such
16 as this. (*Laffitte v. Robert Half Int’l. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is justified where
17 the legal action has produced its benefits by way of a voluntary settlement. (See, e.g., *Maria P. v.*
18 *Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo*
19 *(1983)* 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a
20 class, class counsel may be awarded fees as a percentage of the common fund. (See *Wershba, supra*,
21 91 Cal.App.4th at p. 254 [recognizing the “percentage of recovery” method].) The California
22 Supreme Court confirmed in *Laffitte* that “[t]he percentage of fund method survives in California
23 class action cases.” (*Laffitte, supra*, 1 Cal.5th at p. 506.) Specifically, the *Laffitte* Court held:

24 The recognized advantages of the percentage method - including relative ease of
25 calculation, alignment of incentives between counsel and the class, a better
26 approximation of market conditions in a contingency case, and the encouragement it
27 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
28 litigation - convince us the percentage method is a valuable tool that should not be
denied our trial courts.

(*Id.* at p. 503 [internal citation omitted]; *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”]; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 [in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment]; *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 [the percentage of the fund method for calculating attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”]; *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005) 396 F.3d 294, 300 [“The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”].)

The Settlement calls for the payment to Class Counsel of up to \$170,000, which is effectively 40% of the Total Settlement Amount. (Settlement Agreement ¶ 47(a).) Such a request is fair, reasonable, and adequate to compensate Class Counsel for the commendable results achieved in a wage-and-hour case with **automatic** average settlement payments of **\$676.26** per Settlement Class Member, **no objectors**, and a **100% participation rate**. (Cofinco Decl. ¶¶ 11, 13, 15.) Class Counsel’s fee request of \$170,000—constituting a forty percent recovery, which is only 7% above the 33.33% sought by class counsel in *Laffitte*—is fair and reasonable based on the percentage of the recovery method. For example, “regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11.) That Class Counsel achieved these results in the face of serious defense challenges (*e.g.*, evidentiary hurdles to quantifying off-the-clock work, and that a majority of lunch breaks were provided, albeit untimely and/or short), and in the face of an uncertain legal landscape (*e.g.*, application of the ‘ABC test’ in the franchisor-franchisee context and the then-pending *Naranjo* decision), confirms the strength of the results achieved. (Connor Decl. ¶ 133.)

1 The attorneys' fees award requested is consistent with Class Counsel's experience in similar
2 wage and hour class action matters. (Connor Decl. ¶ 134.) Further, the attorneys' fees award
3 requested is also consistent with what courts have awarded in other class and representative action
4 cases. (See *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct. Case No.
5 RG05198014 [awarded 43.8%]; *Zelada v. Majestic Terminal Services*, San Bernardino County
6 Super. Ct. Case No. CIVDS1916968 [38% fee awarded on \$1,800,000 settlement]; *In re California*
7 *Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco County Super. Ct. [citing *Abzug*
8 *v. Kerkorian*, Los Angeles County Super. Ct. Case No. CA-00981 [45%] and *Haitz v. Meyer*,
9 Alameda County Sup. Ct. Case No. 5729683 [45%]]; *Banda v. Verizon California, Inc.*, Los Angeles
10 County Super. Ct. Case No. BC434587 [35% fee on \$15,000,000 settlement]; *Hall v. Cinema 7,*
11 *Inc.*, San Francisco County Super. Ct. Case No. CGC-01-409105 [53%]; *Birch v. Office Depot*, U.S.
12 District Court, Southern District of California Case No. 06cv1690 DMS [40% fee awarded on
13 \$16,000,000 settlement]; and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Super. Ct. Case
14 No. 26-56886 [40%].)

15 In light of the facts and circumstances surrounding the case, Class Counsel's application for
16 attorneys' fees is well within the range of reasonableness. In fact, courts have historically awarded
17 fees as high as fifty percent (50%) of the settlement in complex actions. (See *In re Ampicillin*
18 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [**awarding attorneys' fees in the amount of 45%**
19 **of the \$7.3 million total settlement amount**]; *Beech Cinema, Inc. v. Twentieth- Century Fox Film*
20 *Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately **53% of the settlement as**
21 **attorneys' fees**]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11 [lower court found
22 the range of contingency fees in marketplace to be **up to 40 percent** and determined such a
23 percentage fee was appropriate]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp.
24 294, 297-298 [observing that "[m]ost of the cases Class Counsel have cited in which high
25 percentages such as **30-50 percent of the fund** were awarded involved relatively smaller funds of
26 less than \$10 million"]; *Cicero v. DirectTV, Inc.* (C.D.Cal. July 27, 2010, No. EDCV07-1182) 2010
27 WL 2991486, at *7 [observing that in California, "courts usually award attorneys' fees in the **30-**
28 **40% range in wage and hour class actions...**"]; *Williams v. Costco Wholesale Corp.* (S.D.Cal.

July 7, 2010, No. 02-cv-2003-IEG-AJB) 2010 WL 2721452, at * 6 [collecting cases where courts awarded between **33.33% and 40%** in attorneys’ fees in wage and hour class actions].)

The fee award requested here is also justified because Class Counsel achieved a significant monetary recovery for Settlement Class Members and PAGA Group Members in an uncertain and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. (Connor Decl. ¶ 132; *see Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1051 [finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees].) Class Counsel negotiated a substantial recovery for the Class Members, resulting in a settlement participation rate of 100%. (Cofinco Decl. ¶ 15.) Moreover, no Class Member objected to the settlement or to Class Counsel’s requested fees. (*Id.* at ¶ 11.) Further, the average individual settlement payment of \$676.26 (*see* Cofinco Decl. ¶ 15) far exceeds average settlement payments in similar wage and hour class action settlements.¹¹ Class Counsel achieved these results in the face of serious defense challenges and in the face of an uncertain legal landscape. (Connor Decl. ¶ 129.) Finally, the fee request is also consistent with the contingency-fee agreement entered into by Plaintiff. (*Id.* at ¶ 131.)

As discussed above, this case presented significant risks of both non-certification as well as potential challenges on the merits of Plaintiff’s claims. (Connor Decl., *passim.*) Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. (Connor Decl. ¶¶ 136-139.) Since undertaking

¹¹ (*See, e.g., Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) Case No. BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County Super. Ct.) Case No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria’s Secret Stores, Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 [average recovery of \$35]; *Gomez v. Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 [average recovery of \$20]; *Sorenson v. PetSmart, Inc.* (E.D.Cal. 2008) Case No. 2:06-CV-02674-JAM-DAD [wage and hour class action settlement approved where average class member recovery was approximately \$60]; *Williams v. Centerplate, Inc.* (S.D.Cal. 2013) 2013 WL 4525428, at *4 [granting final approval of class action settlement where average recovery for each class member was approximately \$108]; *Schiller v. David’s Bridal, Inc.* (E.D.Cal. June 11, 2012, No. 1:10-cv-00616-AWI-SKO) 2012 WL 2117001, at *17 [finding that average payment to class members of less than \$200 was a “good” result].)

1 representation of Plaintiff, Class Counsel expended costs and devoted substantial time to this
2 litigation. (Connor Decl. ¶¶ 136, 145.) Given the considerable potential for adverse outcomes in this
3 case, including, but not limited to, being unable to proceed on a class-wide basis and/or risking
4 unfavorable adjudication on the merits, the contingent risk borne by Class Counsel was great. (*Id.*
5 at ¶ 139.)

6 Class Counsel’s previous experience litigating wage and hour class actions also supports the
7 reasonableness of the fee request. (Connor Decl. ¶¶ 113-118, 134.) Class Counsel are well-versed
8 in plaintiff-side wage and hour class and representative action litigation, with substantial experience
9 litigating claims for unpaid wages, meal and rest period violations, unreimbursed business expenses,
10 wage statement, waiting time, and related penalties, and have been certified as class counsel in
11 numerous other cases. (*Ibid.*) Class Counsel’s experience in similar matters was integral to
12 evaluating the strengths and weaknesses of this case and the reasonableness of the settlement. (*Id.*
13 at ¶ 135.) Practice in the narrow field of wage and hour litigation requires skill and knowledge
14 concerning the rapidly evolving substantive state and federal law, as well as the procedural law of
15 class and representative action litigation. (*Ibid.*)

16 Because it is reasonable to compensate Class Counsel commensurate with their skill,
17 reputation, and experience, the requested fee award is fair and reasonable, in accord with the
18 principles outlined by the California Supreme Court in *Laffitte* and should therefore be approved.

19 **D. The Requested Award of Attorneys’ Fees Is Reasonable as Evidenced by the**
20 **Lodestar Cross-Check Method**

21 Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness of
22 fee awards with tools such as the lodestar cross-check, though they need not do so. (*Laffitte, supra*,
23 1 Cal.5th at p. 506 [“We hold further that trial courts have discretion to conduct a lodestar cross-
24 check on a percentage fee...they also retain the discretion to forego a lodestar cross-check and use
25 other means to evaluate the reasonableness of a requested percentage fee.”].) This Court can and
26 should award attorneys’ fees and costs based on the percentage fee alone in light of the excellent
27 results achieved and for the reasons stated herein. Nevertheless, the lodestar “cross-check” here also
28 supports the requested contingency-fee percentage.

1 A lodestar cross-check analysis typically happens in three steps. First, a trial court must
2 determine a baseline guide or “lodestar” figure based on the time spent and reasonable hourly
3 compensation for each attorney involved in the case. (*Serrano, supra*, 20 Cal.3d at p. 48.) The court
4 then sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing rates
5 in the geographical area in which the action is pending. (*Bihun v. AT&T Information Systems, Inc.*
6 (1993) 13 Cal.App.4th 976, 997.) Finally, a “multiplier” is selected with reference to factors
7 substantially similar to those applied to the common-fund analysis: (1) the novelty and difficulty of
8 issues involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the
9 litigation precluded other employment by the attorneys, and (4) the contingent nature of the fee
10 award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the
11 award. (*Serrano, supra*, 20 Cal.3d at 49.)

12 The *Serrano* factors militate strongly in favor of the requested fee award. (Connor Decl. ¶
13 142.) Chief among these are the substantial risks faced given the evidentiary challenges of
14 quantifying off-the-clock work class-wide and legal challenges in the franchisor-franchisee context
15 and the then-pending *Naranjo* decision. Procedural uncertainty loomed ahead with the anticipated
16 motion for class certification, any motions for adjudication on the merits, trial, and possible appeal.
17 For example, class certification was by no means a foregone conclusion. Defendant argued that
18 Plaintiff would be unable to certify a class outside of the settlement context because Plaintiff’s
19 claims on the merits would require a series of individualized mini-trials. (Connor Decl. ¶ 142.)
20 Moreover, Plaintiff would face significant hurdles to certification given that Defendant raised
21 individualized affirmative defenses. (*Ibid.*) If Plaintiff prevailed and certified a class action, there is
22 no guarantee that Defendant would not later move for and obtain decertification. (*Ibid.*) If the Court
23 either denied class certification or later decertified it, the Class would recover nothing and Class
24 Members would be forced to retain their own counsel and proceed on the basis of individual claims
25 only. (*Ibid.*)

26 The attorneys’ fees award is intended to reimburse Class Counsel for all uncompensated
27 work that they have already done and for all the work they will continue to do. To investigate,
28 litigate, and ultimately negotiate and craft the Settlement, Class Counsel expended a significant

1 amount of time on the following activities, including, but not limited to: (1) pre-filing investigation;
2 (2) interviewing Plaintiff and analyzing Plaintiff's and putative class members' claims; (3) preparing
3 and submitting the pre-filing notice to the LWDA; (4) drafting and filing the operative Complaint;
4 (5) requesting and meeting and conferring over informal discovery; (6) reviewing Defendant's
5 written policies concerning the claims set forth in the action, including franchise agreements,
6 applicable employee handbooks, policies and procedures regarding CP Retail's off-the-clock and
7 timekeeping protocol, security and bag search protocol, provision of meal and rest breaks, paid time
8 off and vacation accrual, reimbursement of business expenses, time keeping and payroll systems,
9 such as recording hours, issuance of wage statements, and providing all wages at separation; (7)
10 examining pages of pre-mediation information and data (*to wit*, over 3,100 pages of pre-mediation
11 information and policy-related documents, along with a 20% random sample of employees' time
12 and pay records for 54 of 274 individuals consisting of approximately 2,234 workweeks out of an
13 estimated 9,978 workweeks); (8) retaining and conferring with a consultant to create damages
14 model(s); (9) preparing, briefing, and attending a full-day mediation; (10) negotiating, preparing,
15 and/or revising the long-form Settlement Agreement, along with the Class Notice and Share Form
16 exhibits; (11) making submissions to the LWDA and reviewing agency decisions; (12) preparing
17 the motion for preliminary approval; (13) overseeing the class notice process; (14) responding to
18 questions from Class Members; and (15) preparing this Motion for Final Approval and supporting
19 documents, along with future anticipated case and settlement related activities. (Connor Decl. ¶
20 143.)

21 The work performed by Class Counsel performed was meaningful, and Class Counsel's
22 hourly rate is commensurate with experience and the prevailing rates among defense and plaintiffs'
23 firms that regularly litigate wage-and-hour class actions (Connor Decl. ¶ 144.) Class Counsel's rate
24 is commensurate with the prevailing market rates in California for attorneys of comparable
25 experience and skill handling complex litigation. (*Ibid.*) Class Counsel's rate is based on prevailing
26 fees in the relevant geographical area and has been approved in California and Ninth Circuit courts.
27 (*Ibid.*)

28 ///

1 As set forth in detail in the accompanying Declaration of Jennifer L. Connor, Class Counsel
2 spent a substantial amount of time during the course of its representation of Plaintiff and the
3 prosecution of this action. With an aggregated lodestar amount of \$87,748, a multiplier of 1.94 is
4 necessary to yield the requested fees. (Connor Decl. ¶¶ 145-147 [attesting to an aggregate 128.4
5 hours (comprised of 121.4 worked plus 7.0 future estimated hours) by CounselOne, P.C.] and
6 **Exhibit 2** [Attorney Task and Time Chart].) When cross-checked with the requested attorneys' fees
7 of \$170,000, the result is a multiplier of 1.94. (Connor Decl. ¶ 149.) This multiplier is fair and
8 reasonable based on the contingent nature of the case, the unique legal and factual complexities,
9 heightened risks and difficulties presented, and the result achieved.

10 As previously stated in the preliminary approval filings, Class Counsel further discloses the
11 existence of a written fee-split agreement for referral only, signed by Plaintiff, between the Davtayan
12 Law Firm and CounselOne, P.C. in the amounts of 33 1/3% and 66 2/3%, respectively. (Connor
13 Decl. ¶ 148.) This is a pure referral fee; the Davtayan Law Firm has not sought to represent Plaintiff
14 or Class Members, or in any other way sought to undertake to the role of Class Counsel, in this
15 matter. (*Ibid.*)

16 The requested multiplier in this case is within even the range of multipliers that are awarded
17 by California courts. (*See Vizcaino, supra*, 290 F.3d at pp. 1050-1051 [looking to multipliers
18 awarded in comparable cases as evidence of reasonableness; affirming 3.65 multiplier].) Multipliers
19 routinely range from 3 to 5, and it is not uncommon that multipliers of between 5 and 10, or higher,
20 are applied. (*See, e.g., Wilson v. Bank of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16,
21 1982) Case No. 643872 [multiplier of 10]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155
22 Cal.App.3d 456, 465 [affirming multiplier of 12, and expressly rejecting argument that fee was
23 either exorbitant or unconscionable]; *Wershba, supra*, 91 Cal.App.4th at p. 255 [noting that
24 “[m]ultipliers can range from 2 to 4 or even higher”]; *Van Vranken, supra*, 901 F.Supp. at p. 298
25 [multipliers of 3-4 are in the “range [of] common” multipliers for class actions]; *Holleran v. Rita*
26 *Medical Systems, Inc.* (Cal. Super. Ct. Oct. 04, 2007, No. RG06302394) 2007 WL 7759253
27 [multiplier of 4.57]; *Gutierrez v. Wells Fargo Bank, N.A.* (N.D.Cal. May 21, 2015, No. C07-05923-
28 WHA) 2015 WL 2438274, at *7 & 8 fn. 3 [multiplier of 4.53]; *Johnson v. Fujitsu Tech. & Bus. of*

1 *Am., Inc.* (N.D.Cal. May 11, 2018, No. 16-CV-03698-NC) 2018 WL 2183253, at *7 [multiplier of
2 4.375]; *Buccellato v. AT & T Operations, Inc.* (N.D.Cal. Jun. 30, 2011, No. C10-00463-LHK) 2011
3 WL 3348055, at *2 [multiplier of 4.3]; *Chau, et al v. CVS RX Services, Inc.*, Los Angeles County
4 Superior Court No. BC349224, Order Granting Final Approval of Class Action Settlement,
5 Reasonable Attorneys’ Fees and Costs and Service Payments to the Class Representatives [a 3.8
6 multiplier was applied based primarily on contingent risk and the “excellent results [] obtained []
7 with relative efficiency”].)

8 As described above, Class Counsel performed this work in an uncertain legal landscape
9 against a corporation represented by experienced labor law attorneys with no guarantee of recovery,
10 and their work on this case prevented them from taking on other matters, including hourly and flat-
11 fee work. (Connor Decl. ¶ 151.) Despite these considerations, Class Counsel zealously represented
12 Plaintiff and Class Members and negotiated a settlement providing for significant recovery. That
13 Class Counsel achieved these results without engaging in a protracted legal battle and in the face of
14 serious defense challenges confirms the strength of the results achieved. (Connor Decl. ¶ 151.)
15 Furthermore, not a single Class Member has objected to the request for attorneys’ fees. (*See* Cofinco
16 Decl. ¶ 11.)

17 For the reasons stated herein, Class Counsel firmly believe that the settlement in this case
18 strongly supports the request for a 40% fee award. The settlement provides substantial relief to the
19 Class Members and is an all-in resolution where all the funds will be paid out. As with all wage and
20 hour cases, this one presented real issues as to the viability of both certification and liability, was
21 litigated in an effective manner so as to drive a fair settlement, and the result merits the requested
22 fee award. Thus, the lodestar cross-check affirms that the fee award requested does in fact fall within
23 the range of reasonableness.

24 **E. The Requested Costs Reimbursement Warrants Final Approval as Fair,**
25 **Adequate, and Reasonable**

26 Class Counsel incurred and respectfully request reimbursement of \$6,991.31 in litigation
27 costs (*see* Connor Decl. ¶¶ 152-153 and **Exhibit 3** [Cost Breakdown]). This amount is less than the
28 \$15,000.00 maximum that was agreed to in the Settlement. The cost breakdown does not include

Westlaw fees, copy charges, and additional fees associated with filing the final approval motion. (*Id.* at ¶ 152.) Class Counsel’s request is fair, adequate, and reasonable, as all these costs are documented and reasonably incurred. (*Id.* at ¶¶ 152-153 and Exhibit 3.) Moreover, the costs for which Plaintiff seeks reimbursement are the types of costs routinely approved by courts. (*See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”]; *Ashker v. Sayre* (N.D.Cal. 2011, No. 05-03759-CW) 2011 WL 825713, at * 3 [“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable]; *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-1259 [legal research costs are reimbursable]; *In re Immune Response Securities Litigation* (S.D.Cal. 2007) 497 F.Supp.2d 1166, 1177-78 [mediation expenses, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable].) The requested reimbursement of costs of up to \$15,000 was fully disclosed to Class Members and there have been no objections. (Cofinco Decl. ¶ 11.) Because the expenses by Class Counsel were reasonably incurred, and no Class Member has objected to them, the Court should grant the request for reimbursement of \$6,991.31 for actual litigation costs.

F. The Court Should Finally Approve the Requested Settlement Administrator Expenses

Plaintiff also requests that the Court approve \$14,500 in administration costs to the Settlement Administrator. (*See* Settlement Agreement ¶ 47(b) [agreeing to an amount up to \$15,000]; Cofinco Decl. ¶ 15.) As detailed in the Emilio Cofinco submitted concurrently with this Motion, CPT performed duties in connection with this settlement that were instrumental in effectuating the settlement and the notice process. Among other things, CPT calculated each Class Member’s individual settlement payment, updated addresses contained in the class data supplied by Defendant (*e.g.*, NCOA and skip-traces), formatted the Class Notice and Notice Packet materials for mailing, mailed the Notice Packets to all Class Members and PAGA Group Members, kept the Parties informed of any communications received from the Class Members and PAGA Group Members, and otherwise administered the Settlement. (Cofinco Decl., *passim*.) For these reasons,

1 CPT's requested administration costs in the amount of \$14,500 is fair, reasonable, and adequate,
2 and should be finally approved.

3 **G. The Court Should Finally Approve Plaintiff's Requested Enhancement**
4 **Payment Because the Amount Is Fair, Adequate, and Reasonable in Light of**
5 **Plaintiff's Efforts and Risks Assumed on Behalf of the Class**

6 A class representative must possess the same interest and suffer the same injury as the class
7 members. "To assure 'adequate' representation, the class representative's personal claim must not
8 be inconsistent with the claims of other members of the class." (*J.P. Morgan & Co., Inc. v. Sup. Ct.*
9 (*Heliotrope General, Inc.*) (2003) 113 Cal.App.4th 195, 212.) Thus, the adequacy requirement is
10 satisfied when the class representative's interests are not antagonistic to those of the class. (*McGhee*
11 *v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.) Here, Plaintiff has no conflicts with
12 the Class and in fact her interests are aligned with those of the Class Members. (Connor Decl. ¶ 155;
13 Declaration of Angelina Vasquez ("Vasquez Decl."), filed concurrently herewith, at ¶¶ 3-9 17.)
14 Because Plaintiff's claims are the same as those that would be asserted by unnamed class members
15 were they before the Court, Plaintiff has every interest in zealously representing the unnamed class
16 members. (Vasquez Decl., *passim*.) Plaintiff has not shirked from this responsibility; on the
17 contrary, Plaintiff, along with her counsel, prosecuted this case with allegiance and dedication.
18 (Vasquez Decl. ¶¶ 1-19; Connor Decl. ¶ 156.)

19 Courts routinely approve enhancement payments to compensate named plaintiffs for the
20 services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v.*
21 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding "service payments" to named
22 plaintiffs for their efforts in bringing the case]; *Van Vranken, supra*, 901 F.Supp. at p. 294
23 [approving \$50,000 service payment].) Generally, the "criteria courts may consider in determining
24 whether to make an incentive award include: (1) the risk to the class representative in commencing
25 suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
26 representative; (3) the amount of time and effort spent by the class representative; (4) the duration
27 of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as
28 a result of the litigation." (*Id.* at p. 299.)

1 Here, Plaintiff seeks a service award of \$7,500, and believes that this request is reasonable
2 given her time and efforts in this case, the positive response by Class Members, that the average
3 gross individual settlement payment is \$676.26, the risks she undertook on behalf of Class Members,
4 the potential of being assessed Defendant's costs of suit, prosecuting the action during economically
5 uncertain times engendered by a public health crises, and her general release of all claims against
6 CP Retail, LLC subject to a waiver of Civil Code section 1542. (*See* Settlement Agreement ¶47(c);
7 Connor Decl. ¶ 157; Vasquez Decl. ¶¶ 1-19.) Among other things, Plaintiff participated in lengthy
8 in-person and telephonic communication with her attorneys; reviewed relevant documents and
9 information; provided guidance regarding the duties of other hourly employees; identified potential
10 witnesses; strategized as to what documents and/or information about CP Retail, LLC's policies,
11 practices, and procedures would be helpful to obtain in support of her claims; engaged in lengthy
12 discussions with her attorneys in advance of mediation and discussed damage models; made herself
13 available for full day of settlement negotiations on November 17, 2021; discussed the terms of the
14 Settlement with her counsel, reviewed and signed the original Settlement Agreement, along with
15 the supporting documents; and regularly communicated with her attorneys and their staff about the
16 status of the litigation. (Connor Decl. ¶ 158; Vasquez Decl. ¶¶ 13-16.) Plaintiff invested significant
17 time and effort into seeing this litigation through resolution. (*Ibid.* [detailing between 40 to 50
18 hours]; Connor Decl. ¶ 159.) It also bears mention that the award of \$7,500 is reasonable relative to
19 having secured an average recovery of \$676.26 per Class Member. (Cofinco Decl. ¶ 15.) Moreover,
20 the 278 Class Members, who would not be receiving anything if it were not for Plaintiff's decision
21 to pursue these claims, have benefitted greatly from her participation. (Connor Decl. ¶ 160; Vasquez
22 Decl. ¶¶ 9-12, 17-18.)

23 Plaintiff has diligently, adequately, and fairly represented Class Members, is a member of
24 the Class, has no conflicts, and has not placed her interests above those of any member of the Class.
25 (Vasquez Decl. ¶¶ 3-8, 17-19.) Plaintiff Vasquez is not receiving any compensation beyond what is
26 provided by the Settlement. (*Id.* at ¶ 19; Connor Decl. ¶ 161.) In fact, as part of the Settlement,
27 Plaintiff entered into a general release of claims which is broader than the release that applies to
28 unnamed Class Members. (Settlement Agreement ¶ 46.) Moreover, after receiving notice of the

1 proposed amount for the Class Representative enhancement payment, no Class Member objected.
2 (Cofinco Decl. ¶ 11; Connor Decl. ¶ 163.) Thus, Plaintiff's request for service award in the amount
3 of \$7,500 is appropriate and justified as part of the Settlement and should be finally approved.

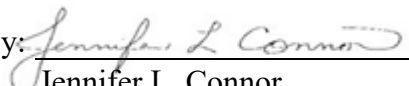
4 **V. CONCLUSION**

5 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's
6 Motion and enter the Proposed Final Order and Judgment Granting Plaintiff's Motion for Final
7 Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class
8 Representative Enhancement Payment, submitted concurrently herewith.

9
10 Dated: January 27, 2023

Respectfully submitted,

11 COUNSELONE, PC

12 By: 
13 Jennifer L. Connor
14 Anthony J. Orshansky
15 Attorneys for Plaintiff, putative Class
16 Members, and aggrieved employees
17
18
19
20
21
22
23
24
25
26
27
28