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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF STANISLAUS**
10

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

13 Plaintiff,

14 v.

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

18 Defendants.
19

Case No.: 21-CV-000723

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

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declarations of Jennifer L. Connor and
Angelina Vasquez, and Proposed Order
submitted concurrently herewith]

Preliminary Approval Hearing:

Date: August 16, 2022
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:

NOTICE IS HEREBY GIVEN that on August 16, 2022 at 8:30 a.m., or as soon thereafter as the matter may be heard in before the Honorable Sonny S. Sandhu in Department 24 of the above-entitled court located at 801 10th Street, Modesto, California 95354, Plaintiff Angelina Vasquez (“Plaintiff”) individually, and on behalf of all others similarly situated, will and hereby does move this Court, pursuant to Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769(c), for entry of an order preliminary approving the settlement, specifically:

1. Preliminarily certifying the Class for purposes of settlement;
2. Preliminarily approving Plaintiff Angelina Vasquez as Class Representative for purposes of settlement;
3. Preliminarily appointing Counsel One, PC as Class Counsel for purposes of settlement;
4. Preliminarily approving the settlement as fair, adequate, and reasonable based upon the terms set forth in the Stipulation of Class and Representative Action Settlement (“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 274 current and former non-exempt, hourly employees who are or were employed by Defendant in California from February 11, 2017 to January 16, 2022 (“Class Period”);
5. Preliminarily approving Class Counsel’s request for up to forty percent (40%) of the Total Settlement Amount as attorneys’ fees (i.e., up to \$170,000), plus reimbursement of actual litigation costs up to \$15,000;
6. Appointing CPT Group, Inc. as the third-party Settlement Administrator for mailing notices and for settlement administration, and approving up to \$15,000 be deducted from the Total Settlement Amount for the costs of settlement administration;
7. Approving the proposed Notice of Proposed Class Action and PAGA Settlement and Hearing Date for Court Approval (“Class Notice”), including individualized settlement share estimates and credited workweeks, and ordering they be distributed to Class Members; and

1 8. Scheduling a hearing to consider whether the Settlement should be finally approved
2 and award amounts for the Individual Settlement Payments, Attorneys' Fees and Costs,
3 Administration Costs, Enhancement Payment to Plaintiff, and payment to the California Labor and
4 Workforce Development Agency ("LWDA") as part of the allocated Private Attorneys General Act
5 of 2004 ("PAGA") Payment.

6 This Motion is based upon the attached Memorandum of Points and Authorities, the
7 Declarations of Jennifer L. Connor and Angelina Vasquez, the long-form Settlement Agreement,
8 along with the proposed Class Notice, and the Proposed Order submitted concurrently herewith,
9 along with such supplemental filings and exhibits as are required and described *infra*, evidence and
10 argument of counsel may be presented at the hearing, and such additional matters as the Court may
11 consider at the time of hearing. Finally, given the multiplicity of issues addressed in this motion,
12 Plaintiff respectfully believes that there is good cause to exceed the 20-page limit set forth in
13 California Rule of Court 3.764(c)(2), and respectfully requests that the Court consider Plaintiff's
14 memorandum of points and authorities, which is 35 pages in length.

15
16 Dated: July 8, 2022

Respectfully submitted,

COUNSELONE, PC

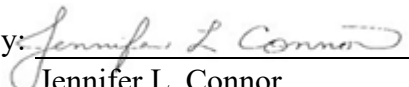
18 By: 
19 Jennifer L. Connor
20 Anthony J. Orshansky
21 Attorneys for Plaintiff, putative Class
22 Members, and aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Angelina Vasquez (“Plaintiff” or “Class Representative”), on behalf of herself and
4 on behalf of a putative state class of current and former non-exempt, hourly employees,¹ seeks
5 preliminary approval of the settlement agreement entered with Defendant CP Retail, LLC
6 (“Defendant” or “CP Retail”). The contemplated Stipulation of Class and Representative Action
7 Settlement (“Stipulation,” “Settlement,” or “Settlement Agreement”) between Plaintiff and
8 Defendant (collectively, the “Parties”), if approved, will resolve all claims of the Plaintiff and
9 Settlement Class Members in exchange for Defendant’s agreement to pay a total settlement amount
10 of *Four Hundred Twenty-Five Thousand Dollars (\$425,000)* into a *non-reversionary* common
11 settlement fund that will be available for distribution to Settlement Class Members. Based upon the
12 information received from Defendant, there are approximately 274 Class Members who worked as
13 non-exempt, hourly employees in Defendant’s stores in California, consisting of approximately
14 9,878 workweeks, during the Class Period.

15 This wage and hour class action alleges that CP Retail failed to pay employees all minimum
16 and overtime wages due, off-duty rest and meal breaks and/or pay missed rest and meal break
17 premiums, failed to reimburse all necessary business expenses incurred, causing forfeiture of vested
18 vacation, failed to provide suitable seating, failed to provide accurate itemized wage statements, and
19 failed to pay wages owed in a timely manner and upon separation, and thereby engaged in unfair
20 business practices under California Bus. & Prof. Code Section 17200, and accrued penalties under
21 California Labor Code provisions forming the basis for a PAGA claim for derivative civil penalties.
22 Plaintiff’s lawsuit sought to recover unpaid minimum wages, overtime wages, meal and rest break
23 premium payments for missed breaks, reimbursement of business expenses, unpaid accrued paid-
24 time off and/or vacation, along with final wage payments, restitution, compensatory and liquidated

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26
27 ¹ “Class” or “Class Members” is defined as: all current and former non-exempt, hourly employees
28 in California who are or were employed by CP Retail, LLC stores in California during the Class
Period. Further, the “Class Period” is defined as the period beginning on February 11, 2017 and
ending on January 16, 2022. (Settlement Agreement ¶¶ 4, 7.)

1 damages, injunctive relief, penalties, attorneys' fees and costs, on behalf of herself and other
2 similarly situated non-exempt, hourly-paid employees.

3 After engaging in substantial informal exchange of information, records, and investigation
4 and after a private mediation with Justice Steven M. Vartabedian (Ret.), a highly experienced
5 mediator in complex litigation, including wage and hour class actions, the Parties agreed to settle
6 Plaintiff's and Class Members' claims alleged in the action for the *non-reversionary* sum of ***Four***
7 ***Hundred Twenty-Five Thousand Dollars (\$425,000)*** ("Total Settlement Amount"). After
8 deducting for Court-approved attorneys' fees and costs to Class Counsel, an enhancement payment
9 to the Class Representative, administration costs to the Settlement Administrator, and penalties
10 recoverable pursuant to PAGA, the remaining Net Settlement Amount ("Net Settlement Amount")
11 of an estimated ***\$195,000*** will be distributed to Settlement Class Members and/or PAGA Group
12 Members. The entire Net Settlement Amount must be paid out as this is a non-reversionary
13 settlement.

14 The Settlement is fair, reasonable, and adequate, and in the best interests of the Class
15 Members. Consequently, Plaintiff, with the consent of Defendant, hereby moves for an order: (1)
16 conditionally certifying the Class for settlement purposes; (2) granting preliminary approval of the
17 Settlement Agreement; (3) approving the proposed Notice of Proposed Class Action and PAGA
18 Settlement and Hearing Date for Court Approval ("Class Notice"), including individualized
19 settlement share estimates and credited workweeks, to be sent to Class Members; and (4) setting a
20 hearing for final approval of the Settlement.

21 **II. STATUS OF THE LITIGATION**

22 This litigation arises out of Plaintiff's allegations that Defendant CP Retail failed to comply
23 with numerous California wage and hour laws and protections applicable to her and other similarly
24 situated non-exempt, hourly employees. Established in 1999 with about 450 U.S. franchise store
25 locations, Plato's Closet®, a registered trademark of Defendant Winmark Corporation, sells gently
26 used, name-brand adolescent and young adult fashions, along with other used accessories, books,
27 CDs, games, picture frames and other items. Since April 2015, Defendant CP Retail, LLC has been
28 a franchisee of Winmark Corporation's Plato's Closet® brand and operator of approximately five

1 retail stores (i.e., Fresno, Santa Rosa, Modesto, Visalia, and Bakersfield) in California during the
2 Class Period. Plaintiff Angelina Vasquez worked as a Retail Sales Associate from December 28,
3 2015 to 2019 and then a Key Holder from 2019 to June 23, 2020 at the CP Retail Plato's Closet®
4 Modesto, California store location. (See Declaration of Angelina Vasquez ("Vasquez Decl."), filed
5 concurrently herewith, at ¶ 3.) During Plaintiff's employment, she was subject to Defendant's wage
6 and hour policies and business practices whereby Defendant failed to pay all minimum and overtime
7 wages, meal and rest break premiums, unreimbursed business expenses, final wages owed, along
8 with other alleged violations and penalties owed under California laws.

9 Specifically, Plaintiff alleges that she was not paid all minimum and overtime wages because
10 Defendant did not pay for certain off-the-clock activities, including, but not limited to, waiting time
11 for undergoing mandatory bag check searches and work-related interruptions during meal periods.
12 Given that many of the shifts were greater than eight hours in length, at least some of these off-the-
13 clock hours also constituted overtime. Further, Plaintiff did not receive compliant meal periods,
14 which were often late, interrupted, short, and/or missed. Rest breaks were also violative in that
15 second rest breaks were not authorized during most of her tenure, Plaintiff was frequently called
16 back to help co-workers and/or service customers, and any rest breaks that she received were
17 functionally required to be on-premises due to the bag checks. Defendant did not pay Plaintiff and
18 the other non-exempt employees' meal or rest period premiums on all of those days of non-
19 compliant meal and rest breaks. Plaintiff also incurred out-of-pocket expenses for cell phone usage
20 for talk time with supervisors and co-workers, along with data usage. Additionally, as a key holder,
21 Plaintiff engaged in travel trips to and from the retail store and the local bank branch incurring
22 unreimbursed vehicle mileage. Further, Plaintiff was required to work at cash registers without
23 suitable seating even though the provision of such seats would not interfere with the performance
24 of other tasks. Finally, such alleged non-compliance also gives rise to derivative claims for
25 inaccurate wage statements, untimely wages upon separation, unfair business practices, along with
26 assessments of statutory and civil penalties, liquidated damages, and restitution. (See Vasquez Decl.
27 ¶¶ 4, 6-7.)

28 ///

1 **A. Procedural History.**

2 On February 11, 2020, Plaintiff filed her Complaint in the Stanislaus County Superior Court
3 on behalf of herself and other similarly situated employees, alleging: (1) failure to pay minimum
4 and overtime wages pursuant to Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, and 1198; (2)
5 failure to provide meal period premiums in violation of Labor Code §§ 226.7, 512, and Wage Order
6 7-2001; (3) failure to provide rest period premiums in violation of Labor Code § 226.7 and Wage
7 Order 7-2001; (4) forfeiture of vested vacation in violation of Labor Code § 227.3; (5) failure to
8 provide suitable seating in violation of Labor Code § 1198 and Wage Order 7-2001; (6) failure to
9 reimburse business expenses in violation of Labor Code §§ 2800 and 2802; (7) failure to maintain
10 and provide accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and 1174;
11 (8) failure to pay timely wages timely during employment and upon termination in violation of
12 Labor Code §§ 201-204, and 210; (9) violations of California Business and Professions Code §
13 17200, *et seq.*, and (10) violation of the California Private Attorneys’ General Act of 2004, Labor
14 Code §§ 2698 *et seq.* (*See* Declaration of Jennifer L. Connor (“Connor Decl.”), filed concurrently
15 herewith, at ¶ 29.) Plaintiff’s lawsuit seeks to recover unpaid wages and overtime compensation,
16 wages and premiums for non-compliant meal and rest breaks, unreimbursed business expenses,
17 restitution, damages, liquidated damages, statutory penalties, civil penalties, injunctive and other
18 equitable relief, prejudgment interest, and attorneys’ fees and costs. (Connor Decl. ¶ 30.)

19 In advance of filing the operative Complaint, on October 13, 2020, through her attorneys,
20 Plaintiff submitted notice to the California Labor & Workforce Development Agency (“LWDA”)
21 seeking authority to pursue penalties under the Private Attorneys General Act (“PAGA”) for the
22 above-identified alleged violations of California law. The LWDA did not provide notice of its intent
23 to investigate the alleged violations within 65 calendar days of the submission, thereby, entitling
24 Plaintiff to commence a representative action under PAGA. (*See* Settlement Agreement ¶ 37;
25 Connor Decl. ¶ 31.) On November 12, 2020, however, Defendant CP Retail submitted a cure letter
26 stating that it reissued itemized wage statements to former and current employees with the corrected
27 “CP Retail, LLC”; however, no additional monies were paid. On February 19, 2021, the LWDA
28 determined that Defendant’s reissuance cured the misidentified name and address of the employer

1 defect of Labor Code § 226(a)(8), but that its finding did not pertain to other allegations. (*See*
2 Settlement Agreement ¶ 37; Connor Decl. ¶ 32.)

3 On June 15, 2021, Defendants CP Retail and Winmark Corporation filed their Answer of a
4 general denial and asserting multiple affirmative defenses to each cause of action. (Connor Decl. ¶
5 33.) Notwithstanding the Settlement, Defendant CP Retail denied and continues to deny Plaintiff's
6 allegations of wrongdoing. Defendant does not believe that any liability to Plaintiff or other Class
7 Members exist, or that Plaintiff or Class Members are entitled to any recovery. (*See* Settlement
8 Agreement ¶ 42; Connor Decl. ¶ 41.) In settling, Defendant does not admit liability with respect to
9 the alleged claims made by Plaintiff and makes no admission regarding any facts or law related to
10 the lawsuit. *See*, (Settlement Agreement ¶ 41; Connor Decl. ¶ 41.)

11 **B. Discovery and Investigation.**

12 Prior to initiating this Lawsuit, counsel for Plaintiff, CounselOne, P.C., thoroughly
13 investigated the claims and considered the facts and circumstance underlying the pertinent issues
14 and applicable law. (*See* Connor Decl. ¶ 28.) This required thorough discussions and interviews with
15 Plaintiff as well as research into the various legal issues—including the evolving legal landscape of
16 whether franchisor and franchisee relationships share liability for labor and employment—involved
17 in this case. (Connor Decl. ¶ 28.) After conducting their initial investigation, Class Counsel
18 determined that the claims were well suited for class action adjudication owing to what appeared to
19 be a common course of conduct affecting a similarly situated group of employees. (Connor Decl. ¶
20 28.)

21 Given the small putative class size and the reduction of Defendant's ownership to a single
22 retail store, the Parties agreed to explore the possibility of early resolution before investing in costly
23 litigation. Nonetheless, Class Counsel conducted a thorough investigation in advance of mediation.
24 (Connor Decl. ¶ 34.) Specifically, Class Counsel conducted informal discovery which yielded
25 information and substantial documentation concerning the claims, including, but not limited to:
26 Defendant's employee handbooks; relevant memoranda, policies, and procedures; franchise
27 agreements; operational policies and procedures (*i.e.*, bag searches, accrual of paid time
28 off/vacation, reimbursement of business expenses, etc.); the payment of wages; the provision of

1 meal and rest breaks; time keeping policies and records of hours; and issuance of wage statements
2 and providing all wages at separation. (See Settlement Agreement ¶ 39; Connor Decl. ¶ 34.)
3 Defendant also provided composite data for the Class including: total number of putative class
4 members; mix of current versus former non-exempt employees; total number of workweeks by year;
5 total number of pay periods by year; counts of meal and rest period premiums paid; and average
6 hourly rate in effect. (Connor Decl. ¶ 35.) Specifically, Defendant produced a *random sampling of*
7 *time and wage records for 20% (i.e., 54 out of 274 employees) putative class members,² which*
8 *consisted of approximately 2,234 workweeks.* (Connor Decl. ¶ 35.) Class Counsel analyzed the
9 documents and data produced to determine Defendant's degree of liability and potential amounts
10 due in damages. (Connor Decl. ¶ 36.)

11 C. Mediation and Settlement.

12 Thereafter, the Parties participated in a private mediation where they debated and discussed
13 their respective positions. (Connor Decl. ¶ 37.) The Parties' full-day mediation session was
14 facilitated by Justice Steven M. Vartabedian (Ret.) of Fennemore Dowling Aaron. Justice
15 Vartabedian has a legal and judicial career spanning over forty (40) years, including twenty-nine
16 years of judicial experience at trial and appellate levels, is the author 180 published appellate
17 opinions, and is well-experienced in mediating complex general litigation, labor and employment
18 claims, class actions, and PAGA cases, among others. (Connor Decl. ¶ 37.) During the mediation,
19 the Parties exchanged further information and discussed all aspects of the case, including the risks
20 and delays of litigation and the risk to both Parties of proceeding with a motion for class certification
21 and liability under the claims asserted, along with the potential for PAGA penalties to be asserted.
22 (Connor Decl. ¶ 38.) These were contentious issues because of the factual and legal complexity of
23 the case. (Connor Decl. ¶ 38.)

24 ///

25
26 ² Such constitutes a statistically significant sample as courts have found the use of similar
27 percentage samples appropriate. (See e.g., *Brum v. MarketSource, Inc.* (E.D. Cal. 2018) 2018 WL
28 3861558, at *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 With the assistance of the Justice Vartabedian and pursuant to a mediator's proposal, the
2 Parties agreed to resolve the matter and reached the terms of this proposed arm's-length Settlement.
3 (Connor Decl. ¶ 39; Settlement Agreement ¶ 40.) On November 17, 2021, the Parties executed a
4 short-form Memorandum of Understanding ("MOU") and, thereafter, the Parties memorialized
5 these terms in the long-form Settlement Agreement as set forth in the Stipulation of Class Action
6 and Representative Action Settlement dated January 14, 2022 (along with the internal exhibits),
7 attached at **Exhibit "1"** to the Connor Decl. filed concurrently herewith.

8 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
9 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
10 Counsel believe that the recovery being made available to Class Members is fair, reasonable, and
11 adequate taking into consideration the amounts received in other wage and hour class and
12 representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of
13 each Class Members' claim to the settlement award he or she will receive. (Connor Decl. ¶ 42.)
14 Class Counsel believe that the Settlement serves the best interests of Class Members. (*Ibid.*) Further,
15 and based on the settlement negotiations, which were hard fought and conducted in good faith and
16 at arm's length between attorneys with substantial experience litigating class actions, representative
17 actions, and wage and hour cases, the Settlement was the product of a non-collusive settlement
18 process in which the Parties were forced to make significant compromises in the interest of reaching
19 a full and complete settlement of the action. (Connor Decl. ¶ 40.) Accordingly, the Parties have
20 concluded that it is in their best interests to compromise, settle, and accept the terms of the
21 Settlement Agreement. (Settlement Agreement ¶¶ 41-43.)

22 **III. SUMMARY OF THE SETTLEMENT TERMS**

23 Under the terms of the settlement, Defendant agrees to pay a non-reversionary amount of
24 ***Four Hundred Twenty-Five Thousand (\$425,000)*** to settle the claims asserted in the Lawsuit.
25 (See Settlement Agreement ¶¶ 34, 47.) This amount shall be inclusive of all Individual Settlement
26 Payments to all Settlement Class Members who do not request exclusion/opt-out, Attorneys' Fees
27 and Costs to Class Counsel, Administration Costs to the Settlement Administrator, the
28 Enhancement Payment to Plaintiff, and the LWDA Payment allocated from the PAGA Payment

1 amount, but exclusive of employer federal and state payroll taxes. The amount available for
2 distribution to Settlement Class Members is determined by deducting the following from the Total
3 Settlement Amount:

- 4 • Up to forty (40%) of the Total Settlement Amount in attorneys' fees (*i.e.*, \$170,000) and
5 litigation expenses up to \$15,000 to Class Counsel ("Attorneys' Fees and Costs");
- 6 • Up to \$7,500 to Plaintiff as an Enhancement Payment for her efforts in prosecuting this
7 Lawsuit as a Class Representative and in exchange for a general release of claims
8 ("Enhancement Payment");
- 9 • Up to \$15,000 to the Settlement Administrator, CPT Group, Inc., to notify members of the
10 Class and administer the Settlement ("Administration Costs"); and
- 11 • \$22,500 to the LWDA ("LWDA Payment") – which is 75% of the \$30,000 allocated to the
12 civil penalties pursuant to Labor Code §§ 2698 *et seq.* ("PAGA Payment").

13 The amount remaining after the foregoing deductions, approximately \$195,000, is called the "Net
14 Settlement Amount" or "NSA." (Settlement Agreement ¶ 19.) As non-reversionary, the entire Net
15 Settlement Amount will be paid out. Settlement Class Members will automatically receive
16 payments *without the need to submit a claim form*, and PAGA Group Members shall receive their
17 individual pro rata share of the PAGA Payment irrespective of whether or not they opt-out.
18 (Settlement Agreement ¶¶ 21, 47(d).)

19 **A. The Settlement Provides for Reasonable Monetary Payments.**

20 If all of the approximately 274 Class Members participate (*i.e.*, do not request exclusion/opt-
21 out), and assuming hypothetically that distribution was on and individual *pro rata* basis then each
22 individual settlement payment would be an estimated \$711.68 per Settlement Class Member.
23 (Connor Decl. ¶ 13.) In actuality, each Settlement Class Member will receive a proportional share
24 of the Net Settlement Amount based on his or her individual Workweeks during the Class Period.
25 (Settlement Agreement ¶ 47(e).) The Settlement Administrator will determine each Settlement Class
26 Member's Individual Settlement Share as follows: first, dividing the Net Settlement Amount by the
27 Total Workweeks of all Settlement Class Members to obtain the "Workweek Value"; and then,
28 Second, multiplying each Settlement Class Member's number of individual Workweeks by the

1 Workweek Value to obtain the amount of each Settlement Class Member's Individual Settlement
2 Share. (Settlement Agreement ¶¶ 35, 47(e).) Finally, in addition, all PAGA Group Members will
3 receive a *pro rata* share of the 25% of the PAGA Payment based all PAGA Group Members during
4 the PAGA Period, defined as the period beginning from October 13, 2019 through January 16, 2022.
5 (Settlement Agreement ¶¶ 21-23, 47(d).)

6 After reduction for the employee's share of taxes on the wage portion,³ the net payment to
7 each Settlement Class Member will be the sum of his or her Individual Settlement Share, plus his
8 or her share of the eligible PAGA Payment, if applicable, which is together is called the Individual
9 Settlement Payment. (Settlement Agreement ¶¶ 16, 47(f).) As a result of the distribution formula,
10 the consideration paid to each Settlement Class Member is tailored to the impact of Defendant's
11 alleged violations as well as to the claims he or she is releasing. (Connor Decl. ¶ 12; Settlement
12 Agreement ¶¶ 45, 47.) Finally, any Class Member who prefers to preserve his or her right to pursue
13 relief or seek an alternative recovery may request exclusion. (Settlement Agreement ¶ 54.)⁴
14 Settlement checks will remain valid for 180-days from the mailing. (Settlement Agreement ¶ 57(d).)
15 Thereafter, any uncashed checks will be cancelled and funds transfer to the Center for Workers'
16 Rights as a *cy pres* beneficiary and consistent with Code of Civil Procedure section 384. (Settlement
17 Agreement ¶ 56(d).)

18 **B. Class Representative Enhancement Award, Attorneys' Fees, and Expenses.**

19 As part of the Settlement, Plaintiff will apply for an enhancement payment at the time of
20 seeking final approval in the amount of \$7,500 for services to the Class and a general release of all
21 claims against Defendant. (Settlement Agreement ¶¶ 12, 47(c); Connor Decl. ¶ 14.) "[I]ncentive
22 awards are fairly typical in class action cases...and are intended to compensate class representatives
23 for work done on behalf of the class [and] to make up for financial or reputational risk undertaken
24 in bringing the action." (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
25

26 ³ The Parties agreed to allocate one-third (33.33%) of each Individual Settlement Share to wages
27 to be reported on a W-2 Form, along with one-third (33.33%) as non-wage penalties and one-third
(33.33%) non-wage interest to be reported on IRS Form 1099. (Settlement Agreement ¶ 49(a).)

28 ⁴ Again, if approved, all Class Members will receive their individual *pro rata* PAGA Payment
irrespective of whether they opt-out of the Class. (Settlement Agreement ¶ 47(d).)

1 1393-1394.) Plaintiff's requested enhancement award payment is intended to recognize the
2 significant benefits conferred upon the Class and be proportional to the respective time and effort
3 that Plaintiff expended on behalf of the Class and the PAGA aggrieved employees including,
4 providing factual information and describing policies, practices, and procedures of CP Retail,
5 providing documents to Class Counsel, discussing the claims and theories at issue in the case with
6 Class Counsel, identifying potential witnesses and reviewing documents, making herself available
7 during the full day of mediation, reviewing the Settlement Agreement, as well as the significant
8 risks Plaintiff undertook by agreeing to serve as named plaintiff, and the fact that Plaintiff agreed to
9 a general release of all claims subject to a waiver of Civil Code section 1542. (See Settlement
10 Agreement ¶¶ 12, 47(c); Connor Decl. ¶ 15; Vasquez Decl. ¶¶ 13-17.)

11 Class Counsel will apply for an attorneys' fees award of forty percent (40%) of the Total
12 Settlement Amount: *to wit*, \$170,000, and reimbursement of litigation costs in an amount up to
13 \$15,000. (Settlement Agreement ¶¶ 2, 47(a); Connor Decl. ¶ 16.) Plaintiff submits that the requested
14 fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation
15 on a purely contingent fee basis. (Connor Decl. ¶ 16.) Class Counsel has devoted substantial attorney
16 time to: pre-filing investigation; analyzing Plaintiff's claims; conducting legal research and analysis;
17 preparing and submitting notice to the LWDA; drafting and filing the operative complaint;
18 requesting and meeting and conferring over informal discovery; examining over 3,100 pages of pre-
19 mediation information and data; reviewing employee handbooks, policies, and procedures regarding
20 CP Retail's off-the-clock and timekeeping protocol, security and bag search protocol, provision and
21 tracking of meal and rest breaks, paid time off and vacation accrual, reimbursement of business
22 expenses, payment of wages and review of wage statements, along with examining a 20% random
23 sample of actual employees' time and pay records comprising 54 of 274 individuals (consisting of
24 approximately 2,234 workweeks out of an estimated 9,978 workweeks as of November 12, 2021);
25 engaging a consultant; building a damages model; preparing, briefing, and attending mediation on
26 November 17, 2021 before Justice Steven Vartabedian (Ret.); negotiating and preparing the long-
27 form Settlement Agreement and Class Notice; preparing this motion for preliminary approval; and
28 otherwise litigating the case. (Connor Decl. ¶ 16). Class Counsel will also expend future attorney

1 time in attending the hearing on this Motion, overseeing the notice and administration process,
2 drafting the Final Approval Motion and supporting documents, and attending the Final Approval
3 hearing, among other tasks, such as addressing questions from Class Members. (Connor Decl. ¶ 17.)

4 Both California and federal courts have recognized that an appropriate method for awarding
5 attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of
6 the settlement. (*See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 506 ["the
7 percentage of fund method survives in California class action cases..."]; *Wershba v. Apple*
8 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [recognizing both the "percentage of recovery" and
9 "lodestar/multiplier" methods].) Historically, courts have awarded percentage fees in the range of
10 20% to 50%, depending on the circumstances of the case. (*See* 4 Newberg on Class Actions § 14.6
11 (4th Ed. 2013) ["No general rule can be articulated on what is a reasonable percentage of a common
12 fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in
13 order to assure that the fees do not consume a disproportionate part of the recovery obtained for the
14 class, although somewhat larger percentages are not unprecedented."].)

15 Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an
16 overall percentage of the settlement amount in light of the substantial risks and significant work
17 undertaken, the excellent results obtained for the Class Members, and the efficiency with which the
18 Parties have conducted the litigation. (Connor Decl. ¶ 19.) Class Counsel also discloses the existence
19 of a written fee-split agreement for referral, signed by Plaintiff, between the Davtyan Law Firm and
20 CounselOne, P.C. in the amounts of 33 1/3% and 66 2/3%, respectively. (Connor Decl. ¶ 18.)
21 Assuming that the Court grants preliminary approval, Class Counsel will seek an award of attorneys'
22 fees and litigation costs at the time of seeking final approval of the Settlement.

23 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

24 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
25 *v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richard v. Dart Industries, Inc.* (1981) 29
26 Cal.3d 462 [finding that California public policy "encourages the use of the class action device"].)
27 Any doubt as to the appropriateness of class treatment should be resolved in favor of class
28 certification, subject to later modification if necessary. (*Id.* at pp. 473-475.) The decision to certify

1 a class is purely a procedural one, and should be based on the allegations in the operative complaint,
2 and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000)
3 23 Cal.4th 429, 439-441.)

4 To certify a settlement class, the trial court must find the two primary requirements for
5 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a well-
6 defined community of interest in the questions of law and fact involving the parties to be
7 represented. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow Cab*
8 *Company* (1967) 67 Cal.2d 695, 704; *Daniels v. Centennial Capital Group* (1993) 16 Cal.App.4th
9 467, 471; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341.) These
10 criteria are met here for the reasons set forth below.

11 **A. There Is an Ascertainable and Sufficiently Numerous Class.**

12 Whether a class is ascertainable is determined by examining the class definition, the size of
13 the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal.3d at
14 pp. 821-822; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263,
15 1271; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Class members are “ascertainable” where
16 they may be readily identified without unreasonable expense or time.

17 Here, the class definition is “precise, objective and presently ascertainable.” (*Sevidal v.*
18 *Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are comprised of: “All current
19 and former non-exempt, hourly employees in California who are or were employed by CP Retail,
20 LLC stores in California during the Class Period”—which is defined as the timeframe from
21 February 11, 2017 through January 16, 2022. (Settlement Agreement ¶¶ 4, 7.) Defendant is required
22 to and does maintain employment records of such persons, including contact information and social
23 security numbers. Pre-mediation documents and information exchanged resulted in Defendant’s
24 estimate that between February 11, 2017 and January 16, 2022, the Parties understood the Class
25 Member count to be 274 individuals comprising no more than 9,978 Workweeks. (Settlement
26 Agreement ¶¶ 4, 53.)

27 As a result, the proposed Class satisfies the ascertain ability and numerosity requirements.
28 (*See, e.g., Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 [stating that “[n]o set number

1 is required as a matter of law for the maintenance of a class action” and citing examples where
2 classes as little as 10 (*Bowles v. Superior Court* (1955) 44 Cal.2d 574) and 28 (*Hebbard v. Colgrove*
3 (1972) 28 Cal.App.3d 1017) were upheld]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [finding
4 a class of 44 farm workers sufficiently numerous].)

5 **B. There Is a Well-Defined Community of Interest.**

6 A community of interest is established by the preponderance of common issues of law and
7 fact. (*See Vasquez, supra*, 4 Cal.3d at 811.) “The community of interest requirement involves three
8 factors: (1) predominant common questions of law or fact; (2) class representatives with claim or
9 defenses typical of the class; and (3) class representatives who can adequately represent the class.”
10 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

11 **1. Common Issues of Law and Fact Predominate.**

12 The Court should grant class certification when questions of law and fact common to all
13 Class Member predominate over any questions affecting only individual Class Members. The
14 predominant inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication
15 by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605; *Lazar v.*
16 *Hertz Corp.* (1983) 143 Cal.App.3d 128.)

17 In the matter *sub judice*, common issues of fact and law predominate as to each of the claims
18 alleged by Plaintiff and Class Members. Here, litigation is predicated on uniform company policies
19 and systemic top-down business practices revolving principally around Defendant’s timekeeping
20 and pay practices—*e.g.*, off-the-clock work attributed to common pre-shift and post-shift job duties,
21 waiting time for mandatory bag checks and searches, interrupted meal breaks, demands, failure to
22 pay all meal and rest break premiums owed despite records depicting non-compliance, unreimbursed
23 business expenses, failure to provide suitable seating, forfeiture of vested paid time-off/vacation,
24 etc.—as well as derivative inaccurate wage statements and pay owed upon separation. These
25 allegations have given rise to the following claims: failure to pay minimum and overtime wages;
26 meal period liability; rest break liability; forfeiture of vested vacation, failure to provide suitable
27 seating, unreimbursed business expenses; failure to maintain and provide accurate itemized wage
28 statements; failure to pay wages timely and all final wages at termination of employment; and

1 derivative UCL and PAGA claims arising therefrom. (Settlement Agreement ¶ 36; Connor Decl. ¶
2 120.)

3 Because Plaintiff has alleged a single top-down compensation scheme, “the relevant proof
4 [does] not vary among class members” and “clearly presents a common question fundamental to all
5 class members.” (*See In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 172
6 F.R.D. 119, 123 [citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 169
7 F.R.D. 493, 518].) California courts show “no hesitancy” in inferring class-wide causation, class-
8 wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I.*
9 *Custom Kitchens, supra*, 191 Cal.App.3d at p. 1350 [granting class certification in a manufacturing
10 defect case when a common course of action had been proven].) This inference “*eliminates* the need
11 for each class member to prove individually the consequences of the defendants’ actions to him or
12 her.” (*Id.* at p. 1351.) Thus, the outcome of this matter depends upon questions that are common to
13 members of the Class. These types of claims are commonly held to be proper for class certification.
14 (*See, e.g., Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th 864, 871 [reversing denial of rest period
15 claim]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 [certifying
16 meal period claim]; Connor Decl. ¶ 121.)

17 **2. Plaintiff’s Claims are Typical of the Claims of the Class Members.**

18 The typicality requirement is satisfied where class representatives have claims that are
19 typical of the rest of the class. (*B.W.I. Custom Kitchens, supra*, 191 Cal.App.3d at p. 1347.) Here,
20 Plaintiff’s claims are typical of those held by members of the proposed Class. Like all other Class
21 Members, Plaintiff was a non-exempt and hourly-paid employee working for CP Retail in California
22 during the Class Period. (Vasquez Decl. ¶¶ 3, 9.) Like Class Members, Plaintiff was not paid for all
23 hours worked due to off-the-clock work (*i.e.*, pre-/post-shift duties, interrupted meals, and waiting
24 time during mandatory bag searches), neither received timely and duty-free meal and rest breaks,
25 nor was paid premiums for all such non-compliant breaks, incurred necessary unreimbursed
26 business expenses (including cell phone usage and vehicle mileage), was not provided suitable
27 seating despite that such would not interfere with performance, did not receive accurate and
28 complete itemized wage statements, and did not receive all wages and premiums, including vested

1 vacation time, owed upon termination of the employment relationship. (Vasquez Decl. ¶¶ 3-9;
2 Connor Decl. ¶ 122.) Plaintiff was therefore impacted by the same challenged policies and practices
3 that allegedly injured the Class as a whole and subject to the same defenses raised by Defendant as
4 to the Class and is therefore typical.

5 **3. Plaintiff and Her Counsel Meet the Adequacy Requirements.**

6 The adequacy of representation requirement examines conflicts of interest between named
7 parties and the class(es) they seek to represent. (*Capital People First v. Department of*
8 *Developmental Services* (2007) 155 Cal.App.4th 676, 697.) Here, Plaintiff and Class Counsel will
9 adequately represent the Settlement Class, as there are no conflicts between the Plaintiff and the
10 Class she seeks to represent. (Vasquez Decl. ¶ 8; Connor Decl. ¶ 123; *see McGhee v. Bank of Bank*
11 *of America* (1976) 60 Cal.App.3d 442, 450 [finding adequacy satisfied where there was no
12 indication that plaintiff's counsel were not qualified and the named plaintiff had no interests
13 antagonistic to those of the proposed class].) Class Counsel also have extensive experience in wage
14 and hour litigation. (Connor Decl. ¶¶ 103-107, 123.)

15 **C. A Class Action Is Superior to A Multiplicity of Litigation.**

16 In making its class certification decision, the court must determine that a class action would
17 be superior to alternative means for the fair and efficient adjudication of the litigation. By
18 consolidating possibly over two hundred individual actions into a single proceeding, this Court's
19 use of the class action device enables it to manage this litigation in a manner that serves the
20 efficiency interests of the litigants and the judicial system. Absent class treatment, the only
21 alternative would be to force numerous employees to file individual actions. (*Sav-On Drug Stores,*
22 *Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339 fn. 10. [stating "[t]he relevant comparison lies
23 between the costs and benefits of adjudicating plaintiffs' claims in a class action and the costs and
24 benefits of proceeding by numerous separate actions – not between the complexity of a class suit
25 that must accommodate some individualized inquires and the absence of any remedial proceeding
26 whatsoever."].) Finally, in the context of settlement, the superiority concerns are essentially non-
27 existent. (Connor Decl. ¶ 124.)

28 ///

1 **V. THE TWO-STEP APPROVAL PROCESS**

2 Any settlement of class action litigation must be reviewed and approved by a court. This is
3 accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed
4 review after the notice has been distributed to the class members for their comments or objections.

5 In this regard, the Manual for Complex Litigation (Second) explains:

6 A two-step process is followed when considering class settlements...If the proposed
7 settlement appears to be the product of serious, informed, non-collusive negotiations,
8 has no obvious deficiencies, does not improperly grant preferential treatment to class
9 representatives or segments of the class, and falls within the range of possible
approval, then the court should direct that notice be given to the class members of a
formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

10 (*See* Federal Manual for Complex Litigation (Second) (1985) § 30.44.) The preliminary approval of
11 the class action settlement by the trial court is simply a conditional finding that the settlement
12 appears to be within the range of acceptable settlements. (*See, e.g.,* 4 Newberg on Class Actions §
13 11.25 (4th Ed. 2013): *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27
14 Cal.App.4th 1085, 1094-1095; Federal Manual for Complex Litigation (Second) § 30.44
15 ["Preliminary approval is appropriate if the agreement is 'fair, reasonable, and adequate under the
16 circumstances'"].) Thus, the preliminary approval of the class action settlement by the Court is
17 simply a conditional finding that the Settlement appears to be within the range of acceptable
18 settlements. A review of the preliminary approval criteria demonstrates a substantial basis for
19 granting the preliminary approval requested by this Motion and proceeding to a full settlement
20 hearing.

21 **VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

22 As a matter of public policy, courts both encourage the use of the class action device and
23 favor settlement over continued litigation. (*See, e.g. Linder v. Thrifty Oil Co., supra*, 23 Cal.4th at
24 p. 434 ["Courts have long acknowledged the importance of class actions as a means to prevent a
25 failure of justice in our judicial system."]; *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471;
26 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276 ["[S]trong judicial
27 policy...favors settlements, particularly where complex class action litigation is concerned."]; 4
28 Newberg on Class Actions § 11.41 (4th Ed. 2013).) Settlement is favored, and settlement agreements

1 are realistically assessed. (*Stamburgh v. Superior Court* (1976) 62 Cal.App.3d 231, 236; *Priddy v.*
2 *Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that plaintiff might have received more if the
3 case had been fully litigated is no reason not to approve the settlement.”].)

4 To summarize, the Settlement here is fair because it offers payment to each Class Member
5 for releasing his or her claims, extinguishes the risk of litigation, and provides a fair and adequate
6 distribution of the Settlement proceeds whereby the Net Settlement Amount is allocated to
7 Settlement Class Members proportionally based on his or her respective number of eligible weeks
8 worked during the Class Period. (Connor Decl. ¶¶ 8, 42, 48, 102.)

9 **A. The Settlement Is Entitled to a Presumption of Fairness.**

10 Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement
11 unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were
12 conducted in good faith. (See 4 Newberg on Class Actions § 11.51 (4th Ed. 2013); *Rodriguez v. West*
13 *Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, *24-25; *In re Chicken*
14 *Antitrust Litigation* (N.D. Ga. 1980) 560 F.Supp. 957, 962; *Priddy v. Edelman* (6th Cir. 1989) 883
15 F.2d 438, 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987)
16 834 F.2d 677, 681.) Courts do not substitute their judgment for that of the proponents, particularly
17 when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez,*
18 *supra*, 2007 U.S. Dist. LEXIS 74767 at *24.) As detailed at length in the accompanying Declaration
19 of Jennifer L. Connor, the settlement is the result of extensive settlement negotiations between the
20 Parties, conducted at arm’s length, and informed by substantial factual and legal investigations.
21 (Connor Decl. ¶ 40 and *passim*.)

22 **1. Negotiations Were at Arm’s-Length Before a Respected Mediator.**

23 Here, the settlement is the result of extensive settlement negotiations between the Parties,
24 conducted at arm’s-length, and informed by substantial factual and legal investigations. (Connor
25 Decl. ¶¶ 28-40.) The Parties participated in private mediation before Justice Steven M. Vartabedian
26 (Ret.) of Fennemore Dowling Aaron. (Connor Decl. ¶ 37.) Justice Vartabedian is a well-respected
27 and experienced mediator in complex litigation, including employment and wage and hour class
28 action matters, and with whose help the Parties agreed to resolve this case according to the terms

1 set forth in the Settlement Agreement. (Connor Decl. ¶¶ 37-39.) On the one hand, Plaintiff and her
2 counsel believe that the alleged claims asserted have merit. On the other hand, Plaintiff and her
3 counsel recognize and acknowledge the uncertainty of litigation through trial and appeals, the
4 question of certification, and the possible defenses. (Connor Decl. ¶ 43.) This case is exceptionally
5 complex because, in addition to its class and representative nature, it involves the legally evolving
6 landscape as to the applicability of the ‘ABC test’ in *Dynamex Operations West, Inc. v. Superior*
7 *Court* (2018) 4 Cal.5th 903, to franchise agreements. (See, e.g., *Vasquez v. Jan-Pro Franchising*
8 *International, Inc.* (Jan. 14, 2021) 2021 WL 1227201, at *1 fn. 1.) There were also contentious
9 issues because of the factual complexity of the case (*i.e.*, evidentiary difficulty of proving off-the-
10 clock claims and degree of control exercised during mandatory bag searches) as well as the legal
11 uncertainty regarding many of the central issues of the litigation (*i.e.*, certification, liability, and
12 devising a theory that properly measures monetary recover, especially given overlap of penalties
13 and arguments against stacking). (Connor Decl. ¶ 43.)

14 **2. Investigation Was Sufficient to Allow Counsel to Act Intelligently.**

15 Prior to filing the lawsuit, Class Counsel investigated the claims by interviewing Plaintiff at
16 length and on repeated occasions, researching California law, and upon finding it suitable for class
17 treatment, filing a wage and hour putative class action. (Connor Decl. ¶ 28). Class Counsel thereafter
18 devoted a considerable amount of time to the prosecution of this case, including, but not limited to,
19 interviewing Plaintiff, pre-filing investigation, conducting legal research and analysis, preparing and
20 submitting notice to the LWDA, reviewing Defendant’s written policies concerning the claims set
21 forth in the action, including franchise agreements, applicable employee handbooks, policies and
22 procedures regarding CP Retail’s off-the-clock and timekeeping protocol, security and bag search
23 protocol, provision of meal and rest breaks, paid time off and vacation accrual, reimbursement of
24 business expenses, time keeping and payroll systems, such as recording hours, issuance of wage
25 statements, and providing all wages at separation; reviewing and analyzing Class Members’ time
26 and pay records, meeting and conferring regarding the information and documents produced,
27 preparing for and attending a full-day mediation, negotiating, and finalizing the settlement
28 documents. (Connor Decl. ¶¶ 16, 34-37.) Class Counsel reviewed over 3,100 pages of pre-mediation

1 information and policy-related documents, along with a 20% random sample of employees' time
2 and pay records comprising 54 of 274 individuals (consisting of approximately 2,234 workweeks
3 out of an estimated 9,978 workweeks. (Settlement Agreement ¶ 39; Connor Decl. ¶¶ 16, 35.)

4 **3. Class Counsel are Experienced in Similar Litigation.**

5 Class Counsel believe that the settlement is fair and reasonable and serves the best interests
6 of the Class Members. (Connor Decl. ¶ 42.) Although the recommendations of counsel proposing
7 the class settlement are not conclusive, the Court can properly take the recommendations into
8 account, particularly if counsel have been involved in litigation for some period of time, appear to
9 be competent, have experience with this type of litigation, and significant discovery has been
10 completed. (*See* 4 Newberg on Class Actions § 11.47 (4th Ed. 2013).) Here, Plaintiff is represented
11 by competent and experienced counsel who possess extensive experience litigating wage and hour
12 class actions and have been appointed as class counsel in numerous cases alleging similar claims.
13 (Connor Decl. ¶¶ 103-107.)

14 **B. The Settlement is Fair, Reasonable, and Adequate.**

15 To make a fairness determination, the Court should consider several factors, including “the
16 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the
17 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
18 discovery and the stage of proceedings, [and] the experience and views of counsel.” (*Dunk v. Ford*
19 *Motor Co.* (1986) 48 Cal.App.4th 1794, 1801.) “The list of factors is not exclusive and the court is
20 free to engage in a balancing and weighing of factors depending on the circumstance of each case.”
21 (*Wershba, supra*, 91 Cal.App.4th at pp. 224, 245.) As discussed below, the proposed Settlement is
22 fair, adequate, and reasonable in light of the overall factors in this case.

23 **1. The Strength of Plaintiff’s Case.**

24 Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages
25 model for Defendant’s liability. (Connor Decl. ¶ 43.) Although Plaintiff steadfastly maintains that
26 her claims are meritorious, she acknowledges that there are substantial risks and uncertainty in
27 proceeding with class certification and trial. (*Ibid.*) As explained in further detail in Section VII.B.4
28 *infra*, Defendants presented numerous defenses to Plaintiff’s claims, both on the merits and with

1 respect to class certification. (Connor Decl. ¶ 43.) Legally, for example, Defendants defended
2 against liability by citing cases (*i.e.*, *Cruz v. Merry Maids, LLP, et al.* (E.D. Cal. Jan. 30, 2020) Case
3 No. 1:15-cv-01563-TLN-EPG, among others) for the proposition that franchisors cannot be held
4 liable for the employment practices of franchisees. Factually, Defendant CP Retail defended against
5 minimum and overtime wage claims by pointing that bag searches were not required to occur off-
6 the-clock, but rather employees could have remained clock-in while having the mandatory bag
7 search performed. Further, Defendant pointed to its ameliorative efforts such as making hundreds
8 of meal and rest premium payments in 2018 and 2019, plus availing itself of the cure provision in
9 Labor Code § 2699.3(c)(2)(A). (Connor Decl. ¶ 44.) Defendant also argued that Class Members
10 worked in different job positions at different stores, and that, as a result, Defendant contended there
11 was variation to the circumstances that raises highly individualized questions of fact. (Connor Decl.
12 ¶ 46.)

13 Although Plaintiff was prepared to litigate these claims through class certification and,
14 ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted
15 that it was far from certain that Plaintiff would be able to recover a greater amount at trial,
16 particularly after considering the increased litigation costs that would accrue. (Connor Decl. ¶ 48.)
17 Thus, this factor supports preliminary approval of the Settlement.

18 **2. Risk, Expense, Complexity, and Duration of Further Litigation.**

19 While Plaintiff conducted extensive formal and informal discovery prior to mediation, the
20 Parties agreed to explore early settlement efforts at mediation before launching into full-fledged and
21 hotly contested litigation. (Connor Decl. ¶ 45.) Therefore, absent settlement, the Parties would have
22 needed to conduct substantial additional discovery, such as the production of voluminous records
23 and numerous depositions of experts and percipient witnesses, and prepare the case for class
24 certification and trial. (*Ibid.*) The Parties would have had to depose a number of people such as
25 managers, supervisors, human resource representatives, and employees in order to establish liability.
26 (Connor Decl. ¶ 45.) Discovery disputes would have been in the offing and liability likely would
27 have entailed a battle of experts. This settlement avoids the considerable time, attorneys' fees and
28 costs, and party resources associated with conducting additional discovery, moving for class

1 certification and potentially summary judgment or adjudication, and ultimately, trial, as well as the
2 risks and the accompanying burden of continued litigation on the Court. (Connor Decl. ¶ 45.) Thus,
3 this factor supports preliminary approval of the Settlement.

4 **3. Risk of Maintaining Class Action Status.**

5 Here, settlement was reached prior to class certification and the result was a successful
6 outcome for the Class. (Connor Decl. ¶ 46.) Yet, class certification was by no means a foregone
7 conclusion. (*Ibid.*) For example, Class Members worked in different job positions and had different
8 supervisors, and that, as a result, Defendant contended there was variation to the circumstances that
9 could allegedly cause the employees to work off-the-clock and/or be deprived of the opportunity to
10 take legally compliant, duty-free meal and rest periods, and this variation in circumstances raised
11 highly individualized questions of fact. (Connor Decl. ¶ 46.) Defendant further disputed Plaintiff's
12 characterization of working conditions, liability, and damages, and possessed documentary and
13 testimonial evidence rebutting Plaintiff's allegations. If the Court either denied class certification or
14 later decertified it, the Class would recover nothing, and Class Members would be forced to retain
15 their own counsel and proceed on the basis of individual claims only. (Connor Decl. ¶ 47.) Here,
16 Class Members may avoid each of the risks described and receive substantial monetary benefits,
17 which also weighs in favor of preliminary approval.

18 **4. Amount Offered in Settlement Given Realistic Value of Claims.**

19 A settlement is not judged against what might have been recovered had a plaintiff prevailed
20 at trial, nor does the settlement have to provide 100% of the damages to be fair and reasonable.
21 (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 [acknowledging that "Compromise is inherent and
22 necessary in the settlement process...even if the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were successfully litigated, this is no bar to a
24 class settlement because the public interest may indeed be served by a voluntary settlement in which
25 each side gives in the interest of avoiding litigation."].) The proposed Settlement provides a fair and
26 reasonable monetary recovery for the Settlement Class in the face of disputed claims.

27 Plaintiff carefully estimated the settlement recovery as a reasonable percentage of possible
28 damages recoverable at trial. Based on data received in mediation efforts, Plaintiff's damages

1 analysis shows that the Settlement reflects an estimated **43%** to **59%** of the maximum-to-realistic
2 possible damages recoverable at trial. (Connor Decl. ¶ 49.) Utilizing a class-wide damages study to
3 assess the nature and magnitude of the claims in question, *see Kullar v. Foot Locker Retail, Inc.*
4 (2008) 168 Cal.App.4th 116, 123, this case clearly meets the requirements that the class settlement
5 is within the “ballpark” of reasonableness.

6 **Unpaid Minimum and Overtime Wages**

7 Plaintiff alleges that she and other employees were subjected to uncompensated time arising
8 from pre- and post- shift duties, along with interrupted meal periods, that were worked off-the-clock.
9 First, Plaintiff contends that she and other employees were subject to mandatory bag searches when
10 leaving the premises for lunch, rest breaks, and at the end of his or her daily shift. Because
11 Defendant’s bag searches are required as a practical matter, occur at the workplace, involve a
12 significant degree of control, are imposed primarily for Defendants’ benefit, Plaintiff and employees
13 must be paid for that time as hours worked. (*See Frlekin v. Apple, Inc.* (Cal. 2020) 457 P. 3d 526,
14 529 [holding that “because Apple’s business interests and level of control are greater in the context
15 of an onsite search, the mandatory/voluntary distinction applied in *Morillion* is not dispositive
16 here.”].) Thus, the time spent undergoing bag searches when off-the-clock for their shifts are hours
17 for which employees were not compensated. Second, Plaintiff also alleges that she was required to
18 engage in off-the-clock pre-shift duties, for example, being required to answer telephone calls before
19 the store opened. Third, Plaintiff experienced interrupted meal breaks on a weekly basis, often due
20 to technology/passcode or customer service issues. Finally, given an extrapolation that over 1,800
21 shifts worked by Class Members are greater than 8 hours in length, it is inevitable that some of
22 portion of the off-the-clock hours will result in unpaid overtime under Labor Code sections 510 and
23 1198. (Connor Decl. ¶¶ 51-52.)

24 Class Counsel analyzed the documents and data produced by Defendant and, in consultation
25 with Plaintiff, determined Defendant’s degree of liability and amounts due in damages—
26 specifically, the incidence and amount of purported off-the-clock activity. (Connor Decl. ¶ 53.)
27 Notwithstanding the obvious evidentiary challenge of quantifying unrecorded off-the-clock hours,
28 Plaintiff estimates that Defendant is liable for approximately seven minutes of unpaid straight and

1 overtime pay per workday attributed to pre-shift/post-shift duties. (Connor Decl. ¶ 54.) After
2 extrapolating to the Class for the statutory period, 3,931 hours are deemed off-the-clock at the
3 average hourly rate of \$11.20, plus the additional overtime premium for those shifts greater than
4 eight hours, interest, and liquidated damages, yields an estimated damages amount of \$115,558.
5 (*Ibid.*) The estimated total of owed minimum and overtime wages is \$115,558, without discounting
6 for risks associated with certification or merits. (Connor Decl. ¶ 54.)

7 In opposition, however, Defendant contended that Plaintiff's claim for off-the-clock work is
8 not amenable to class treatment, because employees worked in a variety of job positions with
9 different requirements across various store locations, and it would require an unmanageable series
10 of mini-trials to determine how much time was spent without pay. (Connor Decl. ¶ 55.) Further, in
11 terms of merit defenses, Defendant vigorously disagreed with Plaintiff's theories regarding how
12 much off-the-clock work occurred in reality and the credibility of those claimed hours given
13 Defendant's express written policies to the contrary. (Connor Decl. ¶ 56.) Here, the failure to track
14 all hours poses evidentiary difficulties because it is hotly contested how much off-the-clock work
15 actually occurred. (Connor Decl. ¶ 57.) For Plaintiff to establish the quantity of specific disputed
16 and unrecorded work activities – especially over multiple store locations working various job titles
17 at differing pay rates - would have been costly, time-consuming, and daunting. (Connor Decl. ¶ 57.)

18 Defendant further responded that any off-the-clock time is de minimis. Plaintiff countered
19 that such defense lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829 given
20 that the California Supreme Court refused to allow the de minimis defense to insulate Starbucks
21 from having to pay employees for small amounts of work regularly performed off-the-clock. What
22 is not clear, however, is to what extent the de minimis defense would apply where the uncaptured
23 hours were associated with an occasionally recurring activity. (Connor Decl. ¶ 58.) In light of these
24 considerations—especially the evidentiary difficulties of demonstrating off-the-clock work on a
25 class wide basis—Class Counsel acknowledged a twenty-five percent discount – yielding **\$86,669**
26 in unpaid minimum and overtime wages - that incorporated the risks of non-certification and being
27 unsuccessful on the merits. (Connor Decl. ¶ 59.)

28 ///

Meal and Rest Period Violations

Plaintiff argues that Defendant's written meal policies are facially invalid and fail to mention any timing requirements for when a meal period is to be taken and omit any reference to second meal periods altogether. (Connor Decl. ¶ 60.) Further, in actual practice, Plaintiff's review of the data of employee time-punches demonstrates Defendant's non-compliance. Records indicate that meal periods were often "missed," "short," or "late" and no evidence that there was mutual consent to waive meal periods for those employees working between five- and six-hour shifts; usually documented by most employers *vis-a-vis* written meal period waivers. (Connor Decl. ¶ 61.) Significantly, there is no indication that Defendants made anywhere close to a corresponding equivalent of payments of meal period premiums for "missed," "short," or "late" meal periods to Plaintiff and employees during the Class Period. (*C.f.* Wage Order 7-2001, § 11(b).) Consequently, Plaintiff alleges that Defendant violated Labor Code sections 226.7, 512, and applicable Wage Orders by failing to compensate Plaintiff and Class Members for short, late, interrupted, and missed meal periods. (Connor Decl. ¶ 62.)

Defendant, however, contended that it had practices, policies, and procedures to provide meal and rest breaks every work shift to their employees that fully complied with the law. (Connor Decl. ¶ 63.) Significantly, Defendant vehemently argued that it complied with the requirements articulated by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (Connor Decl. ¶ 63.) Specifically, Defendant maintained that it provided employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieved employees of all duties during meal periods, and relinquished control over employees' activities, including the ability to leave the premises during meal periods. (*Ibid.*)

Plaintiff faced significant challenges to her Labor Code section 226.7 meal period claims for two reasons. *First*, a majority of the records for Class Members showed lunch breaks, even if untimely and short. *Second*, like most employers facing meal period litigation, Defendant argued that where time records show a deficiency, employees were apprised of their right to take meal periods but chose to voluntarily waive them. (Connor Decl. ¶ 64.) Defendant contended that the issue of voluntary waiver would necessarily devolve into a series of individualized mini-trials,

precluding class certification. (*See Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions].) Thus, although Plaintiff argues that Defendant had an impermissible top-down practice of requiring Class Members to work during meal breaks, in light of its written policies and other evidence suggesting an intent to follow those policies, establishing the alleged unlawful business practice as a rule rather than exception might prove daunting. (Connor Decl. ¶ 65.)

Based upon analysis of Class Member time and payroll records, and taking into account Plaintiff's assessment that 27.1% of eligible shifts, or 6,691 shifts, were the subject of unique violations for missed, short, or late meal periods, Plaintiff calculated the potential maximum exposure of this claim to be \$74,939. It is important to note that Defendant did make about \$2,038 in meal period premium payments for offset such that the readjusted maximum exposure is \$72,901. To account for the above-described certification and liability risks, however, Plaintiff took a twenty-five percent discount for associated risks to yield **\$54,676** as the realistic exposure. (Connor Decl. ¶ 66.)

Plaintiff also alleged that hourly employees did not receive authorized rest breaks as required whereby employers "relinquish control over how employees spend their time and relieve employees of all duties." (*Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260.) As with the meal period policy, Plaintiff alleged that Defendant's rest break policies in at least two versions of employee handbooks were facially unlawful. Employees are told that they are entitled to a singular rest break of ten (10) minutes and two ten (10) minute rest breaks if working a full eight (8) hours. This is incompatible with the legal standard of providing ten-minute break for every four hours of work or major fraction thereof language. (*See Wage Order 7-2001* § 12; Connor Decl. ¶ 67.) But when Defendant issued a written corrective policy, it still required employees to remain on premises. Not only is this a theoretical restraint but, coupled with mandatory bag searches which themselves are capable of taking up the vast majority of any 10-minutes rest break, Plaintiff and Class Members are effectively mandated to remain on-premises. (Connor Decl. ¶ 68.) Finally, Plaintiff alleges that she and co-workers experienced interrupted rest breaks whereby she was called back to help co-

1 workers and/or service customers. (Connor Decl. ¶ 69.) As with the meal periods, Defendant did
2 not make all of the requisite premium payment for non-compliant rest breaks to Plaintiff and Class
3 Members. Thus, Plaintiff alleges that Defendant did not provide premium pay for each non-
4 compliant rest break as required under Labor Code section 226.7. (Connor Decl. ¶ 70.)

5 Here again, Defendant disputes liability and damages. Defendant maintained that it
6 authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction
7 of four hours worked as required by Labor Code section 226.7. (Connor Decl. ¶ 71.) Defendant
8 explained that Class Members had ample opportunity to take, and did take, regular rest breaks.
9 (*Ibid.*) As with meal breaks, Defendant argued that any Class Member who failed to take a rest
10 break, or took a short or late rest period, did so voluntarily and that all applicable rest periods were
11 still authorized and provided. (Connor Decl. ¶ 71.) Thus, Defendant argued that it did not act
12 unlawfully to deprive Class Members of rest breaks. (*Ibid.*)

13 Class Counsel recognizes that, unlike meal periods, rest breaks need not be recorded and
14 thus establishing Defendant's exertion of pressure, control, and resulting violations is likely to be
15 more difficult. (Connor Decl. ¶ 72.) In the context where rest breaks are not recorded, Class Counsel
16 normally applies the same violation rate for Class Members' rest breaks as equals to those of meal
17 breaks. Here, based on the narrative of Plaintiff and Defendant's lack of a written policy for second
18 rest breaks for about two years, Class Counsel applied a slightly higher 50% violation rate. The
19 result is that Class Counsel identified 16,046 unique violations for a potential maximum exposure
20 of \$179,715. (Connor Decl. ¶ 73.) Again, it is important to note that Defendant did make about
21 \$3,405 in meal period premium payments which likely requires offset such that the readjusted
22 maximum exposure is \$176,310. For settlement purposes and to account for the difficulties of
23 certifying and proving unrecorded rest break violations, however, a fifty percent reduction from that
24 maximum exposure was and is warranted for a realistic recovery amount of **\$88,155**. (Connor Decl.
25 ¶ 73.)

26 **Unreimbursed Business Expenses**

27 Plaintiff also alleges a cause of action under Labor Code section 2802(a) which states that
28 an employer must reimburse employees for all necessary expenditures that employees incur in

1 discharging their duties. Here, Plaintiff alleges Defendant required employees to incur business
2 expenses resulting from cell phone usage for talk time with supervisors and co-workers, along with
3 download and data usage to participate in work-related communications (including access to
4 postings of work schedules). (Connor Decl. ¶ 74.) Additionally, Plaintiff and all key holders engaged
5 in travel trips to and from their store and the local bank branch and incurred mileage on their personal
6 vehicles that was not reimbursed. (Connor Decl. ¶ 74.) In contrast, Defendant contends that it did
7 reimburse for business expenses incurred, and to the extent it did not, Defendant asserts that this
8 claim is not suitable for class treatment as it would require individualized determinations as to
9 whether each employee incurred such expenses and, if so, how much. With recognition that this
10 claim is difficult to certify class-wide and quantify in terms of damages, Plaintiff simply assigns a
11 relatively nominal flat \$75 per Class Member; which results in a nominal **\$20,550** attributed to this
12 claim. (Connor Decl. ¶ 75.)

13 **Wage Statement Violations**

14 Plaintiff alleges a cause of action under Labor Code section 226(a) for Defendant's failure
15 to provide accurate itemized wage statements. (Connor Decl. ¶ 76.) Failure to comply with the
16 statute entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the
17 initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a
18 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). (*See*
19 Labor Code § 226(e).) This cause of action is derivative of the foregoing causes of action because
20 if Defendant did not provide minimum and overtime wages for all hours worked, owes premiums
21 for non-compliant meal and rest breaks, and so forth, then the wage statements were inevitably
22 inaccurate.

23 Defendant contended, however, that Labor Code section 226(e) penalties are not automatic.
24 (Connor Decl. ¶ 77.) Rather, the employee must show that Defendant's noncompliance was
25 "knowing and intentional." (*Ibid.*) Defendant suggested that any noncompliance was not knowing
26 and intentional. (*Ibid.*) Moreover, Defendant raised the Second Appellate District's decision in
27 *Naranjo v. Spectrum Services, Inc.* (2019) 40 Cal.App.5th 444 to argue that meal and rest break
28 violations trigger neither wage statement, nor waiting time penalties. Yet the *Naranjo* decision was

1 pending review before the California Supreme Court (*see Naranjo v. Spectrum Security Services,*
2 *Inc. (review granted* Cal. Jan. 02, 2020, Supreme Court Case No. S258966) 455 P.3d 704, 257
3 Cal.Rptr.3d 188) and although fully briefed at the time of mediation, the outcome of this important
4 case was yet to be seen. (Connor Decl. ¶ 78.)

5 Because the damages for this cause of action are penalties, the statute of limitations is only
6 one year prior to the filing of the original complaint. (*See* Code Civ. Proc. § 340.) The Parties
7 discussed these issues and Plaintiff estimates there are approximately 50 employees with 578 pay
8 periods during the period between February 11, 2020 and November 17, 2021 (date of mediation).
9 (Connor Decl. ¶ 79.) As a result, based on the \$50 initial violation plus the \$100 per pay period
10 subsequent violation rates, the maximum wage statement exposure is \$55,300. (Connor Decl. ¶ 79.)
11 However, if Plaintiff utilizes the more conservative \$50 initial violation penalty rate across the
12 estimated 578 pay periods, such yields the realistic recovery amount of **\$28,900**. (Connor Decl. ¶
13 79.)

14 **Unpaid Vested Vacation**

15 Defendant's written policies refer to the accrual of vacation time, along with a separate
16 designation for sick leave, and states that unused accrued vacation will be paid upon separation.
17 This is consistent with Labor Code section 227.3's requirement that accrued, but unused vacation
18 time constitutes "wages" that must be paid to the employee at the employee's regular rate of pay at
19 the time of separation. (Labor Code § 227.3; *Boothby v. Atlas Mechanical, Inc.* (1992) 6 Cal.App.4th
20 1595, 1602 [stating that the "right to a paid vacation, when offered in an employer's policy or
21 contract of employment, constitutes deferred wages for services rendered"]; *Suastez v. Plastic*
22 *Dress-Up Co.* (1982) 31 Cal.3d 774; Connor Decl. ¶ 80.) As a full-time employee, Plaintiff
23 understood that she accrued forty-eight (48) hours of vacation per year, which she never entirely
24 used, yet nothing was paid attributable to vacation on her final wage statement. The pattern of non-
25 payment for purportedly accrued yet unused vacation repeats itself in the sample of final wage
26 statements issued to other former employees. Thus, to the extent Plato's Closet® offered vacation
27 benefits, Defendants were obligated, but never paid all wages due because Plaintiff and other
28 employees were never paid all their earned and unused vacation time. Further, failure to pay said

1 wages after these employees' employment ended was willful within the meaning of Labor Code
2 section 203 and, thus, each of these employees is also entitled to 30 days' additional wages. (*See*,
3 Labor Code §§ 201, 202, and 227.3; Connor Decl. ¶ 81.)

4 Defendant replies that its policies refer to paid sick leave which, as a time-off benefit that is
5 contingent upon the happening of a specific event, it is an unvested benefit that does not have to be
6 paid out at termination. Plaintiff responds that Defendant appears to have lumped descriptors of sick
7 and vacation time together and should bear the burden of payment upon separation. (Connor Decl.
8 ¶ 82.) Given the dispute over the reference to a vacation policy in theory, but which appears based
9 on a sampling of wage statements to be non-existent in fact, Plaintiff assigns a *de minimis* value to
10 this standalone claim.⁵ (Connor Decl. ¶ 83.)

11 Waiting Time Violations

12 Plaintiff further asserts a cause of action against Defendant for failure to timely pay all wages
13 due employees at separation. (*See* Labor Code §§ 201-203.) As with other claims, Defendant
14 vigorously disagrees that it engaged in any conduct giving rise to liability or entitlement to recovery
15 of penalties. (Connor Decl. ¶ 84.)

16 Defendant argued that waiting time penalties are not appropriate because it attempted to pay
17 employees all final wages owed in good faith upon their separation, thereby precluding a finding of
18 willfulness necessary to obtain waiting time penalties. (Connor Decl. ¶ 85.) Moreover, Defendant
19 maintained that no waiting time penalties were recoverable from alleged meal or rest period
20 violations. (*Ibid.*) Moreover, Defendant argued that meal and rest period violations cannot support
21 derivative wage statement penalties. (*See Naranjo v. Spectrum Security Service, Inc.* (2019) 40
22 Cal.App.5th 444, 474 [holding that violations of Labor Code's meal break provisions do not entitle
23 employees to pursue the derivative wage statement penalties], but *review granted, Naranjo v.*
24 *Spectrum Security Services, Inc.* (Cal. Jan. 02, 2020) 455 P.3d 704, 257 Cal.Rptr.3d 188.) At the
25 time of mediation, *Naranjo* was pending before the California Supreme Court and still undecided.
26 (Connor Decl. ¶ 86.)

27
28 ⁵ As opposed to an underline basis for derivative wage statement or waiting time penalties.

1 Based on a count of 225 former employees from February 11, 2018 to November 17, 2021
2 (the date of mediation), Class Counsel appraised the maximum value of the waiting time claim as
3 \$440,460. (Connor Decl. ¶ 87.) But after the Parties discussed the above risks, Class Counsel
4 factored in a reduction of twenty-five percent—Plaintiff believes that the combined potential
5 derivative liability makes the claim relatively recoverable—and posits **\$330,345** as a more realistic
6 exposure value. (*Ibid.*)

7 **Suitable Seating**

8 Plaintiff alleges that Defendant violated Labor Code section 1198 by failing to provide
9 suitable seating under IWC Wage Order No. 7-2001. Specifically, Plaintiff alleges that employees
10 were required to work at cash registers without suitable seating even though the provision of such
11 seats would not interfere with the performance of other tasks requiring standing. (Connor Decl. ¶
12 88.) Defendant failed to provide “suitable seating when the nature of the work reasonably permits
13 the use of seats” as required by Labor Code section 1198 and section 14 of Wage Order No. 7-2001.
14 If the tasks being performed at given location reasonably permit sitting, and provision of a seat
15 would not interfere with performance of any other tasks that may require standing, a seat is called
16 for. (*Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8; Connor Decl. ¶ 89.) Due to the layout of
17 the stores, Defendant disputes that seats at cash registers is reasonable and notes that cash registers
18 are used for multiple job positions with differing duties. In any event, a violation of these working
19 conditions in the Wage Order is recoverable as a penalty under PAGA, thus, discussed *infra*.
20 (Connor Decl. ¶ 90.)

21 **Derivative Unfair Business Practices and PAGA Penalties**

22 As a derivative cause of action arising from Defendant’s wage and hour practices, Plaintiff
23 also alleges that Defendant engaged in unfair, unlawful, and fraudulent business acts and practices
24 in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code §
25 17200, *et seq.* She seeks restitution, disgorgement, injunctive, and other equitable relief as
26 applicable on behalf of herself and others similarly situated for the four-year statutory period.
27 (Connor Decl. ¶ 91.) Further, Plaintiff alleges and seeks penalties under the Private Attorneys
28 General Act (“PAGA”), which not only adds the threat of civil penalties, but also offers a procedural

1 mechanism for representation of employees outside the class certification mechanism. (Connor
2 Decl. ¶ 92.) As with other claims, Defendant vigorously disagrees that it engaged in any conduct
3 giving rise to liability or entitlement to recovery of penalties or equitable relief.

4 Plaintiff notified Defendant and the LWDA of the alleged violations on October 13, 2020,
5 and having waited the requisite administrative exhaustion timeframe, Plaintiff included a
6 representative PAGA claim in the operative Complaint. On November 12, 2020, Defendant CP
7 Retail, LLC submitted a cure letter stating that it reissued itemized wage statements to former and
8 current employees with the corrected “CP Retail, LLC”; however, no additional money was paid.
9 On February 19, 2021, the LWDA determined that Defendant’s reissuance cured the misidentified
10 name and address of the employer defect of Labor Code section 226(a)(8), but that its finding did
11 not pertain to other allegations which remain at issue. (*See* Settlement Agreement ¶ 37; Connor
12 Decl. ¶ 93.)

13 The success of Plaintiff’s PAGA claim is heavily dependent upon the success of the
14 underlying claims occurring within the one-year statute of limitations applicable to the PAGA.
15 (Connor Decl. ¶ 94.) Defendant contended that these penalties are derived from the underlying wage
16 and hour violations discussed above, which Defendant disputes. (*Ibid.*) Defendant maintained and
17 continues to maintain that it had legally compliant employment policies and practices throughout
18 the statutory period. (Connor Decl. ¶ 95.) Defendant denied and continues to deny that it ever
19 violated any provision of the California Labor Code and argued that, even assuming such violations
20 occurred, Defendant will not be treated as having engaged in subsequent violations giving rise to
21 heightened penalties. (*Ibid.*) In other words, Defendant argues that heightened civil penalties for
22 subsequent violations would not be assessed unless it could be shown that Defendant had notice that
23 it was violating the law, e.g., it had been cited by a labor agency or adjudged by a court to have done
24 so. (*Ibid.*; *see, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendant
25 contended that, at best, even if a violation giving rise to a penalty was shown for each pay period,
26 only the lower civil penalty associated with initial violations would apply. (Connor Decl. ¶ 95.)

27 Under Labor Code section 2699(f)(2), Defendant is subject to a civil penalty of \$100 for the
28 initial violation of the underlying Labor Code violations, and \$200 for each subsequent pay period

1 where the violation occurred. Extrapolating the one-year statutory PAGA period from the date of
2 filing through mediation, Plaintiff estimated 50 aggrieved employees with approximately 578 pay
3 periods at issue. (Connor Decl. ¶ 96.) Although, strictly speaking, class certification requirements
4 are not required to be satisfied in order to adjudicate a PAGA claim, the state of the law with respect
5 to the adjudication and valuation of a PAGA claim is uncertain. (Connor Decl. ¶ 97.) Thus, Class
6 Counsel applied discounts for the risks in establishing manageability and possible bifurcation of
7 discovery and/or trial, the risks regarding success on the merits and establishing liability, and the
8 risks with proving the extent of penalties that are warranted and possible discretionary reduction of
9 penalties by the Court. (Connor Decl. ¶ 98; *see Thurman v. Bayshore Transit Management, Inc.*
10 (2012) 203 Cal.App.4th 1112, 1135 [affirming reduction of PAGA penalties].) As a result, Plaintiff
11 valued the PAGA claim unstacked based on just one violation of the Labor Code using the default
12 “initial” \$100 and “subsequent” \$200 per pay period rates in calculating penalties. (Connor Decl. ¶
13 99.) Thus, a realistic estimate of **\$110,600** in potential PAGA penalty exposure—of which, by
14 statute, only 25%, or \$27,650 - would be recoverable by aggrieved employees. (Connor Decl. ¶ 99.)

15 Summary

16 In light of the foregoing, Class merits of these claims, the chances of prevailing on the
17 derivative causes of action, as well as the additional hurdles of prevailing under each standalone
18 cause of action light of the defenses raised, and applied the appropriate discounts. These factors
19 each indicated that the interests of Class Members are best served by a settlement of this action in
20 the manner and upon the terms set forth in the Settlement Agreement. (Connor Decl. ¶ 100.)

21 Using the estimated figures for each of the claims described above, Plaintiff predicted that
22 approximately \$991,679 would be the maximum possible recovery in damages available to Class
23 Members. Without any discount for risks for certification or liability, the proposed recovery to the
24 Class of \$425,000 thus represents **42.9% of the maximum possible exposure** to Defendant. (Connor
25 Decl. ¶ 101.) As described above, however, Plaintiff assumed multiple discounts tailored to the
26 various claims and, together, Plaintiff estimates approximately \$719,895 would be the realistic value
27 of Class Members’ claims for which \$425,000 therefore represents **59.0% of the realistic possible**
28 **exposure** to Defendant. (Connor Decl. ¶ 101.) In sum, the data coupled with factual and legal

1 analysis shows that the Settlement reflects an estimated range of **43%-59%** of the potential
2 ***maximum/realistic*** damages recoverable at trial. (Connor Decl. ¶ 101.)

3 The foregoing factors each indicate that the interests of Class Members are best served by a
4 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
5 Given the relatively small size of the Class as compared to, for example, larger nationwide
6 corporate, consumer, or securities class actions, coupled with the financial uncertainties faced by
7 businesses amidst the continuing effects of a public health crisis, this Settlement confers a
8 substantial benefit of \$425,000. (Connor Decl. ¶ 102.) Moreover, each Class Member will be given
9 the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
10 greater than the benefits they can receive under this Settlement, to pursue their own claims. (Connor
11 Decl. ¶ 102.) Finally, Settlement awards for each participating Class Member will be tailored to the
12 extent to which he or she was affect by Defendant’s alleged wage-and-hour violations based on his
13 or her eligible workweeks. (Connor Decl. ¶ 102.) After analyzing the claims in this matter, Plaintiff
14 and Class Counsel have concluded that the value of this Settlement is fair, reasonable, and adequate.

15 **VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE OF THE CLASS**

16 This Court should order distribution of the proposed Notice of Proposed Class Action and
17 PAGA Settlement and Hearing Date for Court of Approval (“Class Notice”) (attached as internal
18 Exhibit 1 to the Settlement Agreement (which itself is Exhibit 1 to the Connor Decl.)) to the current
19 and former employee Class Members by first class mail, postage prepaid, using the last known
20 mailing address information provided by Defendant. This manner of giving notice is the “best notice
21 practicable” under the circumstances because it provides “individual notice to all members who can
22 be identified though reasonable effort.” (*Eisen v. Carlisle and Jacqueline* (1974) 417 U.S. 156, 173.)
23 Here, the Parties propose that the settlement be administered by CPT Group, Inc. (“CPT”), an
24 experienced class action settlement administrator. (Settlement Agreement ¶¶ 30, 50.) Class
25 Members’ addresses will be ascertainable through Defendant’s personnel and payroll records, which
26 Defendant will provide to CPT within fourteen (14) calendar days after preliminary approval of the
27 settlement. (Settlement Agreement ¶ 50(b).) Under the Settlement, CPT will run all addresses
28 through the National Change of Address database and, to the extent that any notices are returned,

1 will conduct further skip traces to obtain current address information. (Settlement Agreement ¶
2 50(d).) CPT shall also maintain a static case-specific dedicated website for hosting final approval
3 hearing date and location information and relevant documents, including a copy of the Class Notice,
4 Settlement Agreement, and any Notice of Final Judgment. (Settlement Agreement ¶ 50(a).)

5 The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d) because
6 it advises Class Members of the nature of the claims, basic contentions and denials of the Parties,
7 the key terms of the settlement, the uniform 45-days deadline to submit a workweek dispute, request
8 for exclusion/opt-out, or object to the settlement and the procedure by which to do so, and explains
9 the recovery formula and credited number of workweeks for each Class Member and/or PAGA
10 Group Member, when applicable. The proposed notice will also notify Class Members of the final
11 approval hearing date, provide the contact information for Class Counsel, and advise Class Members
12 that they may enter an appearance through counsel if they wish. This manner of giving notice
13 satisfies California Rules of Court, Rule 3.766(e) as the “best notice practicable” under the
14 circumstances because it provides “individual notice to all members who can be identified through
15 reasonable effort.” (*Eisen, supra*, 417 U.S. at p. 173.) Thus, the proposed method of notice is
16 reasonably calculated to reach Class Members by the best means practicable and should be
17 approved.

18 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

19 Finally, this Court should set a hearing for final approval of the Settlement on a date
20 appropriately scheduled to follow the deadline by which Class Members must submit any request
21 for exclusions/opt-outs, workweek disputes, and/or object to the Settlement. (*See* California Rules
22 of Court, Rule 3.769.

23 **IX. CONCLUSION**

24 Based upon the foregoing, and because the proposed Settlement is fair, reasonable, and
25 advantageous to the Class Members, Plaintiff respectfully requests that the Court enter an Order:

26 1. Preliminarily approving the Settlement Agreement as fair, reasonable, and
27 adequate;

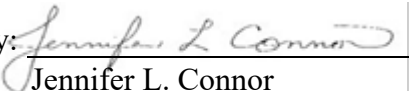
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- 1 2. Preliminarily approving the form and content of the Notice of Proposed Class
2 Action and PAGA Settlement and Hearing Date for Court of Approval (“Class Notice”), along
3 with individualized settlement payment estimates for Class Members and/or PAGA Group
4 Members, attached as an internal exhibit to the Settlement Agreement;
- 5 3. Provisionally certifying the Settlement Agreement’s proposed Class comprised of
6 the Class Members identified during the Class Period under Civil Code section 382 for settlement
7 purposes only;
- 8 4. Approving and appointing Plaintiff Angelina Vasquez as the Class Representative;
- 9 5. Approving and appointing the law firm of CounselOne, P.C. as Class Counsel;
- 10 6. Approving and appointing CPT Group, Inc. as the Settlement Administrator;
- 11 7. Setting a date for the Final Approval Hearing; and
- 12 8. Any further relief the Court deems just and proper.

13
14 Dated: July 8, 2022

Respectfully submitted,

COUNSELONE, PC

16 By: 
17 Jennifer L. Connor
18 Anthony J. Orshansky
19 Attorneys for Plaintiff, putative Class
20 Members, and aggrieved employees
21
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6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF STANISLAUS**
10

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

13 Plaintiff,

14 v.

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

18 Defendants.
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Case No.: 21-CV-000723

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

**DECLARATION OF JENNIFER L.
CONNOR IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Preliminary Approval Hearing:

Date: August 16, 2022

Time: 8:30 a.m.

Dept.: 24

Complaint Filed: February 11, 2021

Jury Trial Date: None Set

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1. I am attorney licensed to practice before all courts of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would competently testify to them.
2. I am an attorney at the law firm of CounselOne, P.C. and counsel of record for named plaintiff Angelina Vasquez (“Plaintiff” or “Class Representative”) and others similarly situated against Defendants CP Retail, LLC and Winmark Corporation (collectively, “Defendants”).
3. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class and Representative Action Settlement (“Motion for Preliminary Approval”), filed concurrently herewith. Plaintiff seeks approval of a settlement that resolves the claims of Plaintiff and a putative class defined as:

(Settlement Agreement ¶ 4.) The “Class Period” is defined as the time period beginning on February 11, 2017 and ending on January 16, 2022. (Settlement Agreement ¶ 7.)

PAGA Group Members – All Class Members, whether or not they submit a request for exclusion from the Settlement Class, employed by Defendant during the PAGA Period.

(Settlement Agreement ¶ 21.) The “PAGA Period” is defined as the time period beginning on October 13, 2019 and ending on January 16, 2022. (Settlement Agreement ¶ 23.)

5. The motion for which this Declaration is offered in support seeks preliminary approval of the Stipulation of Class Action and Representative Action Settlement (“Stipulation,” “Settlement” or “Settlement Agreement”) negotiated and entered into at arm’s length by the Parties

herein. Under the terms of the Settlement, Defendant CP Retail, LLC (“Defendant” or “CP Retail”) has agreed to pay a ***non-reversionary amount of Four Hundred Twenty-Five Thousand Dollars (\$425,000)*** into a common fund to settle the specific wage and hour claims of Class Members who do not request exclusion from the Settlement; the amount is called the “Total Settlement Amount” (“TSA”). A true and correct copy of the fully executed Settlement Agreement dated January 14, 2022 and signed by the Plaintiff and Defendant (collectively, Plaintiff and Defendant CP Retail are referred herein as the “Parties”) is attached at **Exhibit “1”** hereto.

6. This amount shall be inclusive of all Individual Settlement Payments to all Settlement Class Members who do not request exclusion/opt-out, Attorneys’ Fees and Costs to Class Counsel, Administration Costs to the Settlement Administrator, the Enhancement Payment to Plaintiff, and the LWDA Payment allocated from the PAGA Payment amount, but exclusive of employer federal and state payroll taxes.

7. The amount available for distribution to participating Class Members is determined by deducting the following from the Total Settlement Amount:

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

The amount remaining after the foregoing deduction, approximately \$195,000 is called the “Net Settlement Amount” or “NSA.” (Settlement Agreement ¶ 19.) As non-reversionary, the entire Net Settlement Amount will be paid out. Settlement Class Members will automatically receive payments ***without the need to submit a claim form***, and PAGA Group Members shall receive their individual

1 pro rata share of the PAGA Payment irrespective of whether or not they opt-out. (Settlement
2 Agreement ¶¶ 21, 47(d).)

3 8. Each Class Member will receive a proportional share of the Net Settlement Amount
4 based on his or her compensable workweeks during the Class Period, *to wit*, the time period between
5 February 11, 2017 and ending on January 16, 2022. The Settlement Administrator will determine
6 each Settlement Class Member's Individual Settlement Share as follows: First, dividing the Net
7 Settlement Amount by the Total Workweeks of all Settlement Class Members to obtain the
8 "Workweek Value"; and then, Second, multiplying each Settlement Class Member's number of
9 individual Workweeks by the Workweek Value to obtain the amount of each Settlement Class
10 Member's Individual Settlement Share.

11 9. In addition, all PAGA Group Members will receive a *pro rata* individual share of the
12 25% of the PAGA Payment based all PAGA Group Members during the PAGA Period, defined as
13 the period beginning from October 13, 2019 through January 16, 2022. The Individual Settlement
14 Share plus eligible PAGA Payment, if applicable, will be each Settlement Class Member's estimated
15 Individual Settlement Payment.

16 10. The Parties further agreed to allocate one-third (33.33%) of each Individual
17 Settlement Share to wages to be reported on a W-2 Form, along with one-third (33.33%) as non-
18 wage penalties and one-third (33.33%) non-wage interest to be reported on IRS Form 1099.

19 11. After the Response Deadline, the Settlement Administrator shall calculate the final
20 Individual Settlement Share based on the actual participation of each Class Member who did not
21 request for exclusion/opt-out. After reduction for the employee's share of taxes on the wage portion,
22 the net payment to each participating Class Member will be the sum of his or her Individual
23 Settlement Share, plus his or her share of the eligible PAGA Payment.

24 12. As a result, the consideration paid to Class Members is tailored to the impact of
25 Defendant's alleged violation as well as the claims he or she is releasing if he or she does not opt
26 out of the Settlement.

27 13. If all the approximately 274 Class Members participate (i.e., do not request
28 exclusion/opt-out), and assuming hypothetically that distribution was on and individual pro rata

1 basis then each individual settlement payment would be an estimated \$711.68 per Settlement Class
2 Member. In actuality, each Settlement Class Member will receive a proportional share of the Net
3 Settlement Amount based on his or her individual Workweeks during the Class Period.

4 14. As part of the Settlement, Plaintiff will apply for an enhancement award payment at
5 the time of seeking final approval of the Settlement in the amount of \$7,500 for services rendered
6 to the Class and as a general release of all claims against Defendant.

7 15. Plaintiff's requested enhancement award payment is intended to recognize the
8 significant benefits conferred upon the Class and be proportional to the respective time and effort
9 that Plaintiff expended on behalf of the Class and the PAGA aggrieved employees including,
10 providing factual information and describing policies, practices, and procedures of CP Retail, LLC,
11 providing documents to Class Counsel, discussing the claims and theories at issue in the case with
12 Class Counsel, identifying potential witnesses and reviewing documents, making herself available
13 during the full day of mediation, reviewing the Settlement Agreement, as well as the significant
14 risks Plaintiff undertook by agreeing to serve as named plaintiff, and the fact that Plaintiff agreed to
15 a general release of all claims subject to a waiver of Civil Code § 1542.

16 16. Class Counsel will apply for an attorneys' fees award of forty percent (40%) of the
17 Total Settlement Amount – in other words, up to \$170,000 - and reimbursement of litigation costs
18 in an amount up to \$15,000. Plaintiff submits that the requested fee is fair compensation for
19 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee
20 basis. Class Counsel has devoted substantial attorney time to: pre-filing investigation; analyzing
21 Plaintiff's claims; conducting legal research and analysis; preparing and submitting notice to the
22 LWDA; drafting and filing the operative complaint; requesting and meeting and conferring over
23 informal discovery; examining over 3,100 pages of pre-mediation information and data; reviewing
24 employee handbooks, policies, and procedures regarding CP Retail's off-the-clock and timekeeping
25 protocol, security and bag search protocol, provision and tracking of meal and rest breaks, paid time
26 off and vacation accrual, reimbursement of business expenses, payment of wages and review of
27 wage statements, along with examining a 20% random sample of actual employees' time and pay
28 records comprising 54 of 274 individuals (consisting of approximately 2,234 workweeks out of an

1 estimated 9,978 workweeks as of November 12, 2021); engaging a consultant; building a damages
2 model; preparing, briefing, and attending mediation on November 17, 2021 before Justice Steven
3 Vartabedian (Ret.); negotiating and preparing the long-form Settlement Agreement and Class
4 Notice; preparing this motion for preliminary approval; and otherwise litigating the case.

5 17. Class Counsel will also expend future attorney time in attending the hearing on this
6 Motion, overseeing the notice and administration process, drafting the Final Approval Motion and
7 supporting documents, and attending the Final Approval hearing, among other tasks, such as
8 addressing questions from Class Members.

9 18. Class Counsel also discloses the existence of a written fee-split agreement for
10 referral, signed by Plaintiff, between the Davtyan Law Firm and CounselOne, P.C. in the amounts
11 of 33 1/3% and 66 2/3%, respectively.

12 19. Class Counsel submit that their request for attorneys' fees is reasonable when viewed
13 as an overall percentage of the settlement amount in light of the substantial risks and work
14 undertaken, the extremely positive results obtained for the Class Members, and the efficiency with
15 which the Parties have conducted the litigation.

16 20. This Settlement is fair, reasonable, and adequate and should be approved pursuant to
17 California law. (*See Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785
18 (hereinafter, "*Clark*") and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116
19 (hereinafter, "*Kullar*").) After discussing these decisions, I will apply the pertinent factors to the
20 present case.

21 **THE CLARK AND KULLAR CASES**

22 21. In *Clark*, the two named plaintiffs filed a class-action lawsuit alleging causes of
23 action for unpaid wages, failure to provide meal periods and rest breaks, and other Labor Code
24 violations. (*Clark, supra*, 175 Cal.App.4th at p. 789.) The parties subsequently settled the case.
25 (*Ibid.*) Under the settlement each class member submitting a claim would receive approximately
26 \$6.43 per work week. (*Id.* at p. 791.) The settlement agreement further provided that each class
27 representative would receive \$25,000. (*Ibid.*) Twenty-three putative class members opted out of the
28 settlement, *id.* at p. 792, and 20 putative class members objected. (*Id.* at p. 793.) The objectors

1 challenged the settlement amount. (*Ibid.*) Class counsel defended the settlement amount by
2 explaining that defendant's overtime policy was legally compliant. (*Id.* at p. 795.) According to
3 class counsel the overtime claim had absolutely no value. (*Id.* at p. 802.) The objectors responded
4 that class counsel had made a "staggering mistake of law" because class counsel had misunderstood
5 how overtime compensation is calculated for commissioned employees. (*Id.* at p. 797.) Nonetheless
6 the court granted final approval.

7 22. The Court of Appeal reversed the trial court's grant of final approval. (*Clark, supra*,
8 175 Cal.App.4th at p. 798.) It did so because the trial court "made no independent assessment of the
9 strength of the plaintiffs' case, simply accepting class counsel's assessment of value, including his
10 assertion that the overtime claim...had 'absolutely no' value." (*Id.* at p. 802.) Because the trial court
11 never independently evaluated the legal strength of the overtime claim, it could have had no way of
12 assessing whether the settlement amount was adequate. (*Id.* at p. 803.)

13 23. In *Kullar*, plaintiff initially filed his lawsuit solely to recover work-related expenses
14 for which defendant had failed to reimburse him and others similarly situated. (*Kullar, supra*, 168
15 Cal.App.4th at p. 121.) Plaintiff propounded written discovery to defendant relating to expense
16 reimbursement. (*Id.* at p. 122.) Subsequently, plaintiff got wind that defendant's practices may have
17 violated additional wage-and-hour laws, particularly failure to provide meal periods, with regard to
18 a subclass of employees. (*Id.* at p. 121.) Plaintiff did not propound any discovery related to the new
19 claims. (*Id.* at p. 122.) Indeed, "[t]he only documents exchanged relating to the meal period claims
20 appear to be a two-page handwritten record of Kullar's personal meal period breaks and an employee
21 orientation brochure stating company policies and procedures which include the statement, 'Rest
22 breaks and meal periods are scheduled based on business levels, hours worked and applicable state
23 laws.'" (*Id.* at p. 122 fn. 1.)

24 24. The *Kullar* parties then settled at mediation. (*Kullar, supra*, 168 Cal.App.4th at p.
25 122.) Neither the parties' stipulation of settlement nor any other materials presented to the court at
26 preliminary approval discussed the materials reviewed, the conclusions drawn from them in
27 assessing damages and negotiating the settlement amount, or the problematic legal positions that
28 had been considered and analyzed. (*Id.* at pp. 122 fn. 2, 126.) Putative class members objected to

1 the settlement. The objectors averred that plaintiff “failed to conduct reasonable discovery or pre-
2 settlement investigation to determine facts necessary to ascertain the extent of class loss...including
3 facts regarding the extent and rate of Labor Code violations by defendant, the likely or probable
4 range of damages sustained by...class members arising from Labor Code violations by defendant,
5 or the existence and nature of records maintained by defendant regarding claimed Labor Code
6 violation.” (*Id.* at p. 125 fn. 7 [quoting objection].) Further:

7 [T]he objectors argued...[that] absolutely no discovery was conducted with respect
8 to the claim that class members were not provided meal periods to which they were
9 entitled. No declarations were filed in support of the settlement indicating the nature
10 of the investigation that had been conducted to determine the number of employees
11 that had allegedly been denied meal breaks, the frequency with which the denials had
12 occurred, or the circumstances surrounding those denials, and no analysis was
13 provided of the factual or legal issues that required resolution to determine the extent
of any one-hour-pay penalties to which class members may have been entitled. No
time records were produced in discovery nor was the court presented any estimated
quantification of the number of one-hour-pay penalties that might be due or any
explanation of the factors that were considered in discounting the potential recovery
for purposes of settlement.

14 (*Id.* at pp. 128-129.)

15 25. The *Kullar* court agreed with the objectors that plaintiff did not make an adequate
16 showing to enable the court to intelligently assess the settlement. “There was nothing before the
17 court to establish the sufficiency of class counsel’s investigation other than their assurance that they
18 had seen what they needed to see. The record fails to establish in any meaningful way what
19 investigation counsel conducted or what information they reviewed on which they based their
20 assessment of the strength of the class members’ claims, much less does the record contain
21 information sufficient for the court to intelligently evaluate the adequacy of the settlement.” (*Kullar*,
22 *supra*, 168 Cal.App.4th at p. 129.) The *Kullar* court required that plaintiff provide the trial court
23 with sufficient information about the nature and magnitude of the claims being settled and the
24 impediments to recovery to enable it to make an independent assessment of the reasonableness of
25 the settlement. (*Id.* at p. 133.)

26 26. As the foregoing discussion shows, the *Clark* and *Kullar* courts principally wanted
27 to ensure that trial courts, when deciding whether a class-action settlement is fair, adequate, and
28 reasonable, would independently evaluate the settlement amount in light of the strength of the

1 plaintiff's case, and that plaintiff should provide the court the information necessary to make that
2 evaluation. The *Clark* and *Kullar* courts cite the recognized factors set forth in cases like *Dunk v.*
3 *Ford Motors Co.* (1996) 48 Cal.App.4th 1794, 1801, that trial courts should examine during the
4 approval process, including: (1) the extent of discovery completed and the stage of the proceedings;
5 (2) the strength of plaintiff's case in light of the settlement amount; (3) the risk, expense, complexity,
6 and likely duration of further litigation, as well as the risk of maintaining class-action status through
7 trial; (4) the experience and views of counsel; and (5) the reaction of class members to the proposed
8 settlement. (*Id.* at p. 799.)

9 27. Having discussed the governing law on class action settlements, I will now discuss
10 the above-listed factors.

11 **THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS**

12 28. Prior to initiating this Lawsuit, Class Counsel, thoroughly investigated the claims
13 and considered the facts and circumstance underlying the pertinent issues and applicable law. This
14 required thorough discussions and interviews with Plaintiff as well as research into the various legal
15 issues—including the evolving legal landscape of whether franchisor and franchisee relationships
16 share liability for labor and employment—involved in this case. After conducting their initial
17 investigation, Class Counsel determined that the claims were well suited for class action
18 adjudication owing to what appeared to be a common course of conduct affecting a similarly situated
19 group of employees.

20 29. As a result, on February 11, 2020, through her attorneys, Plaintiff filed her Complaint
21 in the Stanislaus County Superior Court, on behalf of herself and other similarly situated employees,
22 alleging: (1) failure to pay minimum and overtime wages pursuant to Labor Code §§ 510, 1194,
23 1194.2, 1197, 1197.1, and 1198; (2) failure to provide meal period premiums in violation of Labor
24 Code §§ 226.7, 512, and Wage Order 7-2001; (3) failure to provide rest period premiums in violation
25 of Labor Code § 226.7 and Wage Order 7-2001; (4) forfeiture of vested vacation in violation of
26 Labor Code § 227.3; (5) failure to provide suitable seating in violation of Labor Code § 1198 and
27 Wage Order 7-2001; (6) failure to reimburse business expenses in violation of Labor Code §§ 2800
28 and 2802; (7) failure to maintain and provide accurate itemized wage statements in violation of

1 Labor Code §§ 226, 226.3, and 1174; (8) failure to pay timely wages timely during employment and
2 upon termination in violation of Labor Code §§ 201-204, and 210; (9) violations of California
3 Business and Professions Code § 17200, *et seq.*, and (10) violation of the California Private
4 Attorneys' General Act of 2004, Labor Code §§ 2698 *et seq.*

5 30. Plaintiff's lawsuit seeks to recover unpaid wages and overtime compensation, wages
6 and premiums for non-compliant meal and rest breaks, unreimbursed business expenses, restitution,
7 damages, liquidated damages, statutory penalties, civil penalties, injunctive and other equitable
8 relief, prejudgment interest, and attorneys' fees and costs.

9 31. In advance of filing the operative Complaint, on October 13, 2020, through her
10 attorneys, Plaintiff submitted notice to the California Labor & Workforce Development Agency
11 ("LWDA") seeking authority to pursue penalties under the Private Attorneys General Act
12 ("PAGA") for the above-identified alleged violations of California law. The LWDA did not provide
13 notice of its intent to investigate the alleged violations within 65 calendar days of the submission,
14 thereby, entitling Plaintiff to commence a representative action under PAGA.

15 32. On November 12, 2020, Defendant CP Retail, LLC submitted a cure letter stating
16 that it reissued itemized wage statements to former and current employees with the corrected "CP
17 Retail, LLC"; however, no additional monies were paid. On February 19, 2021, the LWDA
18 determined that Defendant's reissuance cured the misidentified name and address of the employer
19 defect of Labor Code section 226(a)(8), but that its finding did not pertain to other allegations.

20 33. Defendants deny Plaintiff's allegations of wrongdoing. On June 15, 2021,
21 Defendants CP Retail, LLC and Winmark Corporation filed their Answer consisting of a general
22 denial, asserting multiple affirmative defenses to each cause of action.

23 34. Given the small putative class size and the reduction of Defendant's ownership to a
24 single retail store, the Parties agreed to explore the possibility of early resolution before investing
25 in costly litigation. Nonetheless, Class Counsel conducted a thorough investigation in advance of
26 mediation. Specifically, Class Counsel conducted informal discovery which yielded information
27 and substantial documentation concerning the claims, including, but not limited to: Defendant's
28 employee handbooks; relevant memoranda, policies, and procedures; franchise agreements;

1 operational policies and procedures (*i.e.*, bag searches, accrual of paid time off/vacation,
2 reimbursement of business expenses, etc.); the payment of wages; the provision of meal and rest
3 breaks; time keeping policies and records of hours; and issuance of wage statements and providing
4 all wages at separation.

5 35. Defendant also provided composite data for the Class including: total number of
6 putative class members; mix of current versus former non-exempt employees; total number of
7 workweeks by year; total number of pay periods by year; counts of meal and rest period premiums
8 paid; and average hourly rate in effect. Specifically, Defendant produced a *random sampling of*
9 *time and wage records for 20% (i.e., 54 out of 274 employees) putative class members,¹ which*
10 *consisted of approximately 2,234 workweeks.*

11 36. Class Counsel analyzed the documents and data produced to determine Defendant's
12 degree of liability and potential amounts due in damages.

13 37. Thereafter, the Parties participated in a private mediation where they debated and
14 discussed their respective positions. The Parties' full-day mediation session was facilitated by
15 Justice Steven M. Vartabedian (Ret.) of Fennemore Dowling Aaron. Justice Vartabedian has a legal
16 and judicial career spanning over forty (40) years, including twenty-nine years of judicial experience
17 at trial and appellate levels, is the author 180 published appellate opinions, and is well-experienced
18 in mediating complex general litigation, labor and employment claims, class actions, and PAGA
19 cases, among others.

20 38. During the mediation, the Parties exchanged further information and discussed all
21 aspects of the case, including the risks and delays of litigation and the risk to both Parties of
22 proceeding with a motion for class certification and liability under the claims asserted, along with
23 the potential for PAGA penalties to be asserted. These were contentious issues because of the factual
24 and legal complexity of the case.

25
26 ¹ Such constitutes a statistically significant sample as courts have found the use of similar
27 percentage samples appropriate. (*See e.g., Brum v. MarketSource, Inc.* (E.D. Cal. 2018) 2018 WL
28 3861558, at *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 39. Nonetheless, with the assistance of the Justice Vartabedian and pursuant to a
2 mediator's proposal, the Parties agreed to resolve the matter and reached the terms of this proposed
3 arm's-length Settlement. On November 17, 2021, the Parties executed a short-form Memorandum
4 of Understanding ("MOU") and, thereafter, the Parties memorialized these terms in the long-form
5 Settlement Agreement as set forth in the Stipulation of Class Action and Representative Action
6 Settlement, dated January 14, 2022 (along with the internal exhibit), attached at **Exhibit "1"** hereto.

7 40. All settlement negotiations, which were hard fought and conducted in good faith and
8 at arm's length between attorneys with substantial experience litigating class actions, representative
9 actions, and wage and hour cases, the Settlement was the product of a non-collusive settlement
10 process in which the Parties were forced to make significant compromises in the interest of reaching
11 a full and complete settlement of the action.

12 41. Defendant CP Retail does not believe that any liability to Plaintiff or Class Members
13 or PAGA Group Members exists, or that Plaintiff or Class Members or PAGA Group Members are
14 entitled to any recovery. In settling, Defendant does not admit liability with respect to the alleged
15 claims made by Plaintiff and makes no admissions regarding any facts or law relate to the lawsuit.
16 Defendant also disputes that Plaintiff would be able to certify a class outside of the settlement
17 context because Plaintiff's claims on the merits would require a series of individualized mini-trials;
18 Defendant agreed to a class for settlement purposes only.

19 42. From Class Counsel's review of the facts, strengths, and weaknesses of the case, the
20 risks and delays posed by further litigation, and Class Counsel's own prior litigation experience,
21 Class Counsel believe that the recovery being made available to Class Members is fair, reasonable,
22 and adequate taking into consideration the amounts received in other wage and hour class and
23 representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of
24 each Class Members' claim to the settlement award he or she will receive. Class Counsel believe
25 that the Settlement serves the best interests of Class Members.

26 **THE STRENGTH OF THE CASE IN LIGHT OF THE SETTLEMENT AMOUNT**

27 43. Class Counsel carefully vetted the claims at issue to arrive at a comprehensive
28 damages model for Defendant's liability. Defendants presented numerous defenses to Plaintiff's

1 claims, both on the merits and with respect to class certification. Although Plaintiff steadfastly
2 maintains that her claims are meritorious, she acknowledges that there are substantial risks and
3 uncertainty in proceeding with class certification and trial. This case is exceptionally complex
4 because, in addition to its class and representative nature, it involves the legally evolving landscape
5 as to the applicability of the ‘ABC test’ in *Dynamex Operations West, Inc. v. Superior Court*, 4
6 Cal.5th 903 (2018) to franchise agreements. (See, e.g., *Vasquez v. Jan-Pro Franchising*
7 *International, Inc.* (Jan. 14, 2021) 2021 WL 1227201, *1 at fn. 1.) There were also contentious
8 issues because of the factual complexity of the case (*i.e.*, evidentiary difficulty of proving off-the-
9 clock claims and degree of control exercised during mandatory bag searches) as well as the legal
10 uncertainty regarding many of the central issues of the litigation (*i.e.*, certification, liability, and
11 devising a theory that properly measures monetary recover, especially given overlap of penalties
12 and arguments against stacking).

13 44. Legally, for example, Defendants defended against liability by citing cases (*i.e.*, *Cruz*
14 *v. Merry Maids, LLP, et al.* (E.D. Cal. Jan. 30, 2020) Case No. 1:15-cv-01563-TLN-EPG, among
15 others) for the proposition that franchisors cannot be held liable for the employment practices of
16 franchisees. Factually, Defendant CP Retail defended against minimum and overtime wage claims
17 by pointing that bag searches were not required to occur off-the-clock, but rather employees could
18 have remained clock-in while having the mandatory bag search performed. Further, Defendant
19 pointed to ameliorative efforts such as making hundreds of meal and rest premium payments in 2018
20 and 2019, plus availing itself of the cure provision in Labor Code section 2699.3(c)(2)(A). These
21 risks justify a downward departure from the maximum monetary exposure that each claim carries
22 and was applied as explained *infra*.

23 **RISK, EXPENSE, COMPLEXITY, AND DURATION OF FURTHER LITIGATION**

24 45. Although Plaintiff conducted substantial formal and informal discovery prior to
25 mediation, the Parties agreed to focus on exhausting early settlement efforts at mediation before
26 launching into full-fledged and hotly contested litigation. Therefore, absent settlement, the Parties
27 would have needed to conduct substantial additional discovery, such as the production of
28 voluminous records and numerous depositions of experts and percipient witnesses, and prepare the

1 case for class certification and trial. The Parties would have had to depose a number of people such
2 as managers, supervisors, human resource representatives, and employees in order to establish
3 liability. Discovery disputes would have been in the offing and liability likely would have entailed
4 a battle of experts. This settlement avoids the considerable time, attorneys' fees and costs, and party
5 resources associated with conducting additional discovery, moving for class certification and
6 potentially summary judgment or adjudication, and ultimately, trial, as well as the risks and the
7 accompanying burden of continued litigation on the Court.

8 **RISK OF MAINTAINING CLASS ACTION STATUS**

9 46. Here, settlement was reached prior to class certification and the result was a
10 successful outcome for the Class. Yet, class certification was by no means a foregone conclusion.
11 For example, Plaintiff would face significant hurdles to certification given that Defendant argued
12 that Class Members worked in different job positions at different stores, and that, as a result,
13 Defendant contended there was variation to the circumstances that raises highly individualized
14 questions of fact.

15 47. Defendant further disputes Plaintiff's characterization of working conditions,
16 liability, and damages, and possesses documentary and testimonial evidence rebutting Plaintiff's
17 allegations. If the Court either denied class certification or later decertified it, the Class would
18 recover nothing, and Class Members would be forced to retain their own counsel and proceed on
19 the basis of individual claims only.

20 48. Although Plaintiff was prepared to litigate these claims through class certification
21 and, ultimately, through trial, given the substantial amount offered in settlement relative to the size
22 of the Class and the anticipated individual Class Member recovery, Plaintiff predicted that it was
23 far from certain that Plaintiff would be able to recover a greater amount at trial, particularly after
24 considering the increased litigation costs that would accrue.

25 **AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS**

26 49. Plaintiff's estimate of the settlement recovery is a reasonable percentage of possible
27 recoverable damages at trial. Plaintiff's damages analysis shows that the Settlement reflects an
28 estimated **43%** to **59%** of the maximum-to-realistic possible damages recoverable at trial. Utilizing

1 a class-wide damages study to assess the nature and magnitude of the claims in question, *see, Kullar*
2 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 123, this case clearly meets the requirements
3 that the class settlement is within the “ballpark” of reasonableness.

4 50. Based on pre-mediation formal and informal discovery and their investigation, Class
5 Counsel determined Defendant’s degree of liability, prepared an exposure analysis and forecasted
6 the expected recovery for each claim as follows:

7 **Unpaid Minimum and Overtime Wages**

8 51. Plaintiff alleges that she and other employees were subjected to uncompensated time
9 arising from pre- and post- shift duties, along with interrupted meal periods, that were worked off-
10 the-clock. First, Plaintiff contends that she and other employees were subject to mandatory bag
11 searches when leaving the premises for lunch, rest breaks, and at the end of his or her daily shift.
12 Because Defendant’s bag searches are required as a practical matter, occur at the workplace, involve
13 a significant degree of control, are imposed primarily for Defendants’ benefit, Plaintiff and
14 employees must be paid for that time as hours worked. (*See Frlekin v. Apple, Inc.* (Cal. 2020) 457
15 P.3d 526, 529 [holding that “because Apple’s business interests and level of control are greater in
16 the context of an onsite search, the mandatory/voluntary distinction applied in *Morillion* is not
17 dispositive here.”].) Thus, the time spent undergoing bag searches when off-the-clock for their shifts
18 are hours for which employees were not compensated.

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

25 53. Class Counsel analyzed the documents and data produced by Defendant and, in
26 consultation with Plaintiff, determined Defendant’s degree of liability and amounts due in
27 damages—specifically, the incidence and amount of purported off-the-clock activity.

28 ///

1 54. Notwithstanding the obvious evidentiary challenge of quantifying unrecorded off-
2 the-clock hours, Plaintiff estimates that Defendant is liable for approximately seven minutes of
3 unpaid straight and overtime pay per workday attributed to pre-shift/post-shift duties. After
4 extrapolating to the Class for the statutory period, 3,931 hours are deemed off-the-clock at the
5 average hourly rate of \$11.20, plus the additional overtime premium for those shifts greater than
6 eight hours, interest, and liquidated damages, yields an estimated damages amount of \$115,558. The
7 estimated total of owed minimum and overtime wages is \$115,558, without discounting for risks
8 associated with certification or merits.

9 55. In opposition, however, Defendant contended that Plaintiff's claim for off-the-clock
10 work is not amenable to class treatment, because employees worked in a variety of job positions
11 with different requirements across various store locations, and it would require an unmanageable
12 series of mini-trials to determine how much time was spent without pay.

13 56. Further, in terms of merit defenses, Defendant vigorously disagreed with Plaintiff's
14 theories regarding how much off-the-clock work occurred in reality and the credibility of those
15 claimed hours given Defendant's express written policies to the contrary.

16 57. The failure to track all hours poses evidentiary difficulties because it is hotly
17 contested how much off-the-clock work actually occurred. For Plaintiff to establish the quantity of
18 specific disputed and unrecorded work activities – especially over multiple store locations working
19 various job titles at differing pay rates - would have been costly, time-consuming, and daunting.

20 58. Defendant responded that any off-the-clock time is de minimis. Plaintiff countered
21 that such defense lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829 given
22 that the California Supreme Court refused to allow the de minimis defense to insulate Starbucks
23 from having to pay employees for small amounts of work regularly performed off-the-clock. What
24 is not clear, however, is to what extent the de minimis defense would apply where the uncaptured
25 hours were associated with an occasionally recurring activity.

26 59. In light of these considerations—especially the evidentiary difficulties of
27 demonstrating off-the-clock work on a class wide basis—Class Counsel acknowledged a twenty-
28

1 five percent discount – yielding **\$86,669** in unpaid minimum and overtime wages - that incorporated
2 the risks of non-certification and being unsuccessful on the merits.

3 **Meal Period Violations**

4 60. With respect to Defendant’s written meal policies, Plaintiff argues that they are
5 facially invalid and fail to mention any timing requirements for when a meal period is to be taken
6 and omit any reference omit any reference to second meal periods altogether.

7 61. Further, in actual practice, Plaintiff’s review of the data of employee time-punches
8 demonstrates Defendant’s non-compliance. Records indicate that meal periods were often “missed,”
9 “short,” or “late” and no evidence that there was mutual consent to waive meal periods for those
10 employees working between five- and six-hour shifts; usually documented by most employers *vis-*
11 *a-vis* written meal period waivers.

12 62. Significantly, there is no indication that Defendants made anywhere close to a
13 corresponding equivalent of payments of meal period premiums for “missed,” “short,” or “late”
14 meal periods to Plaintiff and employees during the Class Period. (*C.f.* Wage Order 7-2001 § 11(b).)
15 Consequently, Plaintiff alleges that Defendant violated Labor Code sections 226.7, 512, and
16 applicable Wage Orders by failing to compensate Plaintiff and Class Members for short, late,
17 interrupted, and missed meal periods.

18 63. Defendant, however, contended that it had practices, policies, and procedures to
19 provide meal and rest breaks every work shift to their employees that fully complied with the law.
20 Significantly, Defendant vehemently argued that it complied with the requirements articulated by
21 the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
22 1004. Specifically, Defendant maintained that it provided employees with a reasonable opportunity
23 to take timely meal periods of at least 30 minutes, relieved employees of all duties during meal
24 periods, and relinquished control over employees’ activities, including the ability to leave the
25 premises during meal periods.

26 64. Plaintiff faced significant challenges to her Labor Code section 226.7 meal period
27 claims for two reasons. *First*, a majority of the records for Class Members showed lunch breaks,
28 even if untimely and short. *Second*, like most employers facing meal period litigation, Defendant

1 argued that where time records show a deficiency, employees were apprised of their right to take
2 meal periods but chose to voluntarily waive them. Defendant contended that the issue of voluntary
3 wavier would necessarily devolve into a series of individualized mini-trials, precluding class
4 certification. (*See, Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding that
5 the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn
6 on individual questions].)

7 65. Thus, although Plaintiff argues that Defendant had an impermissible top-down
8 practice of requiring Class Members to work during meal breaks, in light of its written policies and
9 other evidence suggesting an intent to follow those policies, establishing the alleged unlawful
10 business practice as a rule rather than exception might prove daunting.

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

18 **Rest Break Violations**

19 67. Plaintiff also alleged that hourly employees did not receive authorized rest breaks as
20 required whereby employers "relinquish control over how employees spend their time and relieve
21 employees of all duties." (*Augustus v. ABM Security Service, Inc.* (2016) 2 Cal. 5th 257, 260.) As
22 with the meal period policy, Plaintiff alleged that Defendant's rest break policies in at least two
23 versions of employee handbooks were facially unlawful. Employees are told that they are entitled
24 to a singular rest break of ten (10) minutes and two ten (10) minute rest breaks if working a full
25 eight (8) hours. This is incompatible with the legal standard of providing ten-minute break for every
26 four hours of work or major fraction thereof language. (*See Wage Order 7-2001 § 12.*)

27 68. But even when Defendant issued a written corrective, it still required employees to
28 remain on premises. Not only is this a theoretical restraint but, coupled with mandatory bag searches

1 which themselves are capable of taking up the vast majority of any 10-minute rest break, Plaintiff
2 and Class Members are effectively mandated to remain on-premises.

3 69. Plaintiff also alleges that she and co-workers experienced interrupted rest breaks
4 whereby she was called back to help co-workers and/or service customers.

5 70. As with the meal periods, Defendant did not make all of the requisite premium
6 payment for non-compliant rest breaks to Plaintiff and Class Members. Thus, Plaintiff alleges that
7 Defendant did not provide premium pay for each non-compliant rest break as required under Labor
8 Code section 226.7.

9 71. Defendant disputes liability and damages. Defendant maintained that it authorized
10 and permitted duty-free rest breaks of not less than ten minutes for every major fraction of four
11 hours worked as required by Labor Code section 226.7. Defendant explained that Class Members
12 had ample opportunity to take, and did take, regular rest breaks. Likewise, Defendant argued that
13 any Class Member who failed to take a rest break, or took a short or late rest period, did so
14 voluntarily and that all applicable rest periods were still authorized and provided. Thus, Defendant
15 argued that it did not act unlawfully to deprive Class Members of rest breaks.

16 72. Class Counsel recognizes that, unlike meal periods, rest breaks need not be recorded
17 and thus establishing Defendant's exertion of pressure, control, and resulting violations is likely to
18 be more difficult. In the context where rest breaks are not recorded, Class Counsel normally applies
19 the same violation rate for Class Members' rest breaks as equals to those of meal breaks. Here, based
20 on the narrative of Plaintiff and Defendant's lack of a written policy for second rest breaks for about
21 two years, Class Counsel applied a slightly higher 50% violation rate.

22 73. The result is that Class Counsel identified 16,046 unique violations for a potential
23 maximum exposure of this claim to be \$179,715. Again, it is important to note that Defendant did
24 make about \$3,405 in meal period premium payments which likely requires offset such that the
25 readjusted maximum exposure is \$176,310. For settlement purposes and to account for the
26 difficulties of certifying and proving unrecorded rest break violations, however, a fifty percent
27 reduction from that maximum exposure was and is warranted for a realistic recovery amount of
28 **\$88,155.**

Unreimbursed Business Expenses

74. Plaintiff also alleges a cause of action under Labor Code § 2802(a) which states that an employer must reimburse employees for all necessary expenditures that employees incur in discharging their duties. Here, Plaintiff alleges Defendant required employees to incur business expenses resulting from cell phone usage for talk time with supervisors and co-workers, along with download and data usage to participate in work-related communications (including access to postings of work schedules). Additionally, Plaintiff and all key holders engaged in travel trips to and from their store and the local bank branch and incurred mileage on their personal vehicles that was not reimbursed.

75. In contrast, Defendant contends that it did reimburse for business expenses incurred, and to the extent it did not, Defendant asserts that this claim is not suitable for class treatment as it would require individualized determinations as to whether each employee incurred such expenses and, if so, how much. With recognition that this claim is difficult to certify class-wide and quantify in terms of damages, Plaintiff simply assigns a relatively nominal flat \$75 per Class Member; which results in a nominal **\$20,550** attributed to this claim.

Wage Statement Violations

76. Plaintiff alleges a cause of action under Labor Code section 226(a) for Defendant's failure to provide accurate itemized wage statements. Failure to comply with the statute entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). *See*, Labor Code § 226(e). This cause of action is derivative of the foregoing causes of action because if Defendant did not provide minimum and overtime wages for all hours worked, owes premiums for non-compliant meal and rest breaks, and so forth, then the wage statements were inevitably inaccurate.

77. Defendant contended, however, that Labor Code section 226(e) penalties are not automatic. Rather, the employee must show that Defendant's noncompliance was "knowing and intentional." Defendant suggested that any noncompliance was not knowing and intentional.

/ / /

78. Moreover, Defendant raised the Second Appellate District's decision in *Naranjo et al. v. Spectrum Services, Inc.* (2019) 40 Cal.App.5th 444 to argue that meal and rest break violations trigger neither wage statement, nor waiting time penalties. Yet the Naranjo decision was pending before the California Supreme Court (*see Naranjo v. Spectrum Security Services, Inc. (review granted* Cal. Jan. 02, 2020, Supreme Court Case No. S258966) 455 P.3d 704, 257 Cal.Rptr.3d 188) and although fully briefed at the time of mediation, the outcome of this important case was yet to be seen.

79. Because the damages for this cause of action are penalties, the statute of limitations is only one year prior to the filing of the original complaint. (*See* Code Civ. Proc. § 340.) The Parties discussed these issues and Plaintiff estimates there are approximately 50 employees with 578 pay periods during the period between February 11, 2020 and November 17, 2021 (the date of mediation). As a result, based on the \$50 initial violation plus the \$100 per pay period subsequent violation rates, the maximum wage statement exposure is \$55,300. However, if Plaintiff utilizes the more conservative \$50 initial violation penalty rate across the estimated 578 pay periods, such yields the realistic recovery amount of **\$28,900**.

Unpaid Vested Vacation

80. Defendant's written policies refer to the accrual of vacation time, along with a separate designation for sick leave, and states that unused accrued vacation will be paid upon separation. This is consistent with Labor Code section 227.3's requirement that accrued, but unused vacation time constitutes "wages" that must be paid to the employee at the employee's regular rate of pay at the time of separation. (Labor Code § 227.3; *Boothby v. Atlas Mechanical, Inc.* (1992) 6 Cal.App.4th 1595, 1602 [stating that the "right to a paid vacation, when offered in an employer's policy or contract of employment, constitutes deferred wages for services rendered"]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774.)

81. As a full-time employee, Plaintiff understood that she accrued forty-eight (48) hours of vacation per year, which she never entirely used, yet nothing was paid attributable to vacation on her final wage statement. The pattern of non-payment for purportedly accrued yet unused vacation repeats itself in the sample of final wage statements issued to other former employees. Thus, to the

1 extent Plato's Closet® offered vacation benefits, Defendants were obligated, but never paid all
2 wages due because Plaintiff and employees were never paid all their earned and unused vacation
3 time. Further, failure to pay said wages after these employees' employment ended was willful within
4 the meaning of Labor Code section 203 and, thus, each of these employees is also entitled to 30
5 days' additional wages. (See Labor Code §§ 201, 202, and 227.3.)

6 82. Defendant replies that its policies refer to paid sick leave which, as a time-off benefit
7 that is contingent upon the happening of a specific event, it is an unvested benefit that does not have
8 to be paid out at termination. Plaintiff responds that Defendant appears to have lumped descriptors
9 of sick and vacation time together and should bear the burden of payment upon separation.

10 83. Given the dispute over the reference to a vacation policy in theory, but which appears
11 based on a sampling of wage statements to be non-existent in fact, Plaintiff assigns a *de minimis*
12 value to this standalone claim.

13 **Waiting Time Violations**

14 84. Plaintiff further asserts a cause of action against Defendant for failure to timely pay
15 all wages due employees at separation. (See Labor Code §§ 201-203.) As with other claims,
16 Defendant vigorously disagrees that it engaged in any conduct giving rise to liability or entitlement
17 to recovery of penalties.

18 85. Defendant argued that waiting time penalties are not appropriate because it attempted
19 to pay employees all final wages owed in good faith upon their separation, thereby precluding a
20 finding of willfulness necessary to obtain waiting time penalties. Moreover, Defendant maintained
21 that no waiting time penalties were recoverable from alleged meal or rest period violations.

22 86. Moreover, Defendant argued that meal and rest period violations cannot support
23 derivative wage statement penalties. (See, *Naranjo v. Spectrum Security Service, Inc.* (2019) 40
24 Cal.App.5th 444, 474 [holding that violations of Labor Code's meal break provisions do not entitle
25 employees to pursue the derivative wage statement penalties], but *review granted*, *Naranjo v.*
26 *Spectrum Security Services, Inc.* (Cal. Jan. 02, 2020) 455 P.3d 704, 257 Cal.Rptr.3d 188.) At the
27 time of mediation, *Naranjo* was pending before the California Supreme Court and still undecided.

1 87. Based on a count of 225 former employees from February 11, 2018 to November 17,
2 2021 (date of mediation), Class Counsel appraised the maximum value of the waiting time claim as
3 \$440,460. But after the Parties discussed the above risks, Class Counsel factored in a reduction of
4 twenty-five percent - Plaintiff believes that the combined potential derivative liability makes the
5 claim relatively recoverable - and posits **\$330,345** as a more realistic exposure value.

6 **Suitable Seating**

7 88. Plaintiff alleges that Defendant violated Labor Code section 1198 by failing to
8 provide suitable seating under IWC Wage Order No. 7-2001. Specifically, Plaintiff alleges that
9 employees were required to work at cash registers without suitable seating even though the provision
10 of such seats would not interfere with the performance of other tasks requiring standing.

11 89. Defendant failed to provide “suitable seating when the nature of the work reasonably
12 permits the use of seats” as required by Labor Code section 1198 and Section 14 in Wage Order No.
13 7-2001. If the tasks being performed at given location reasonably permit sitting, and provision of a
14 seat would not interfere with performance of any other tasks that may require standing, a seat is
15 called for. (*Kilbey v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8.)

16 90. Due to the layout of the stores, Defendant disputes that seats at cash registers is
17 reasonable and notes that cash registers are used for multiple job positions with differing duties. In
18 any event, a violation of these working conditions in the Wage Order is recoverable as a penalty
19 under PAGA, thus, discussed *infra*.

20 **Derivative Unfair Business Practices and PAGA Penalties**

21 91. As a derivative cause of action arising from Defendant’s wage and hour practices,
22 Plaintiff also alleges that Defendant engaged in unfair, unlawful, and fraudulent business acts and
23 practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions
24 Code § 17200 *et seq.* She seeks restitution, disgorgement, injunctive, and other equitable relief as
25 applicable on behalf of herself and others similarly situated for the four-year statutory period.

26 92. Plaintiff further alleges and seeks penalties under the Private Attorneys General Act
27 (“PAGA”), which not only adds the threat of civil penalties, but also offers a procedural mechanism
28 for representation of employees outside the class certification mechanism. As with other claims,

1 Defendant vigorously disagrees that it engaged in any conduct giving rise to liability or entitlement
2 to recovery of penalties or equitable relief.

3 93. Plaintiff notified Defendant and the LWDA of the alleged violations on October 13,
4 2020, and having waited the requisite administrative exhaustion timeframe, Plaintiff included a
5 representative PAGA claim in the operative Complaint. On November 12, 2020, Defendant CP
6 Retail, LLC submitted a cure letter stating that it reissued itemized wage statements to former and
7 current employees with the corrected “CP Retail, LLC”; however, no additional money was paid.
8 On February 19, 2021, the LWDA determined that Defendant’s reissuance cured the misidentified
9 name and address of the employer defect of Labor Code section 226(a)(8), but that its finding did
10 not pertain to other allegations which remain at issue.

11 94. The success of Plaintiff’s PAGA claim is heavily dependent upon the success of the
12 underlying claims occurring within the one-year statute of limitations applicable to the PAGA.
13 Defendant contended that these penalties are derived from the underlying wage and hour violations
14 discussed above, which Defendant disputes.

15 95. Defendant maintained and continues to maintain that it had legally compliant
16 employment policies and practices throughout the statutory period. Defendant denied and continues
17 to deny that it ever violated any provision of the California Labor Code and argued that, even
18 assuming such violations occurred, Defendant will not be treated as having engaged in subsequent
19 violations giving rise to heightened penalties. In other words, Defendant argues that heightened civil
20 penalties for subsequent violations would not be assessed unless it could be shown that Defendant
21 had notice that it was violating the law, e.g., it had been cited by a labor agency or adjudged by a
22 court to have done so. (*See, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus,
23 Defendant contended that, at best, even if a violation giving rise to a penalty was shown for each
24 pay period, only the lower civil penalty associated with initial violations would apply.

25 96. Under Labor Code section 2699(f)(2), Defendant is subject to a civil penalty of \$100
26 for the initial violation of the underlying Labor Code violations, and \$200 for each subsequent pay
27 period where the violation occurred. Extrapolating the one-year statutory PAGA period from the
28

1 date of filing through mediation, Plaintiff estimated 50 aggrieved employees with approximately
2 578 pay periods at issue.

3 97. Although, strictly speaking, class certification requirements are not required to be
4 satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication
5 and valuation of a PAGA claim is uncertain.

6 98. Thus, Class Counsel applied discounts for the risks in establishing manageability and
7 possible bifurcation of discovery and/or trial, the risks regarding success on the merits and
8 establishing liability, and the risks with proving the extent of penalties that are warranted and
9 possible discretionary reduction of penalties by the Court.

10 99. As a result, Plaintiff valued the PAGA claim unstacked based on just one violation
11 of the Labor Code using the default “initial” \$100 and “subsequent” \$200 per pay period rates in
12 calculating penalties. Thus, a realistic estimate of ***\$110,600*** in potential PAGA penalty exposure—
13 of which, by statute, only 25%, or \$27,650—would be recoverable by aggrieved employees.

14 Summary

15 100. In light of the foregoing, Class merits of these claims, the chances of prevailing on
16 the derivative causes of action, as well as the additional hurdles of prevailing under each standalone
17 cause of action light of the defenses raised, and applied the appropriate discounts. These factors
18 each indicated that the interests of Class Members are best served by a settlement of this action in
19 the manner and upon the terms set forth in the Settlement Agreement.

20 101. Using the estimated figures for each of the claims described above, Plaintiff predicted
21 that approximately \$991,679 would be the maximum possible recovery in damages available to
22 Class Members. Without any discount for risks for certification or liability, the proposed recovery
23 to the Class of \$425,000 thus represents ***42.9% of the maximum possible exposure*** to Defendant.
24 As described above, however, Plaintiff assumed multiple discounts tailored to the various claims
25 and, together, Plaintiff estimates approximately \$719,895 would be the realistic value of Class
26 Members’ claims for which \$425,000 therefore represents ***59.0% of the realistic possible exposure***
27 to Defendant. In sum, the data coupled with factual and legal analysis shows that the Settlement
28

1 reflects an estimated range of **43%-59%** of the potential *maximum/realistic* damages recoverable at
2 trial.

3 102. The foregoing factors each indicate that the interests of Class Members are best
4 served by a settlement of this action in the manner and upon the terms set forth in the Settlement
5 Agreement. Given the relatively small size of the Class as compared to, for example, larger
6 nationwide corporate, consumer, or securities class actions, coupled with the financial uncertainties
7 faced by businesses amidst the continuing effects of a public health crisis, this Settlement confers a
8 substantial benefit of \$425,000. Moreover, each Class Member will be given the opportunity to opt-
9 out of the Settlement, allowing those who feel they have claims that are greater than the benefits
10 they can receive under this Settlement, to pursue their own claims. Finally, Settlement awards for
11 each participating Class Member will be tailored to the extent to which he or she was affect by
12 Defendant's alleged wage-and-hour violations based on his or her eligible workweeks. After
13 analyzing the claims in this matter, Plaintiff and Class Counsel have concluded that the value of this
14 Settlement is fair, reasonable, and adequate.

15 **EXPERIENCE AND VIEWS OF COUNSEL**

16 103. CounselOne and its attorneys possess considerable expertise in litigating complex
17 litigation matters. CounselOne and its attorneys have represented millions of employees and
18 consumers and in numerous class actions asserting violations of the California Labor Code,
19 California's consumer protection statutes, and have litigated employment and false advertising and
20 unfair business practice cases throughout the nation. A substantial percentage of CounselOne's
21 practice is devoted to class action litigation, particularly in the areas of wage and hour, labor, and
22 employment rights, along with consumer protection, invasion of privacy, and false advertising.
23 CounselOne was recently certified as class counsel in a consumer-privacy action against Apple
24 involving almost one million Californians. (*See Deveroux v. Apple, Inc.*, Santa Clara Super. Ct. Case
25 No. 1-14-CV-271773, May 26, 2017.)

26 104. Anthony Orshansky, attorney and shareholder of CounselOne, was responsible for
27 ultimate oversight of this matter on behalf of the firm. Mr. Orshansky graduated from the University
28 of California, Los Angeles in 1994 with a degree in Economics and from Loyola Law School of Los

1 Angeles in 1998. Mr. Orshansky has extensive experience in the field of wage and hour litigation.
2 Over the past 15 years, Mr. Orshansky has represented employees in numerous class action lawsuits
3 involving wage-and-hour violations and has obtained favorable settlements against a range of
4 defendants, including Fortune 1000 companies.

5 105. Since joining CounselOne in March 2020, I was the attorney responsible for the day-
6 to-day litigation of this matter on behalf of the firm. I have approximately 16 years of experience
7 with litigating dozens of wage-and-hour and consumer class actions. I have been appointed as Class
8 Counsel in both contested motions for certification and preliminary/final approval stages of class
9 action settlements. I served as second chair in a wage-and-hour arbitration trial of employees'
10 misclassification case. I also authored the merit briefs on behalf of plaintiff-appellant in *Aryeh v.*
11 *Canon Business Solutions, Inc.*, California Supreme Court Case No. S184929, opinion published
12 January 24, 2013. The *Aryeh* case was a unanimous opinion where the Supreme Court held that
13 continuing accrual applies to calculating the statute of limitations in Unfair Competition Law claims.
14 I have also been invited as a lecturer for CLE courses on employment law issues.

15 106. CounselOne is currently class counsel for numerous pending class action lawsuits
16 throughout the State of California. There follows a list of some of CounselOne's class action
17 settlements that have received final approval:

- 18 a. *Hoffman v. Bank of America*, CASD Case No. 3:12-cv-539 JAH (DHB);
- 19 b. *Byanooni v. Merrill Lynch Pierce Fenner & Smith*, CAND Case No. 3:12-cv-05270-
20 RS;
- 21 c. *Knell v. FIA Card Services, Inc.*, CASD Case No. 3:12-cv-00426-AJB-WVG;
- 22 d. *Lewert v. Vendini, Inc.*, Santa Clara Super. Ct. Case No. 1-14-CV-259897;
- 23 e. *Klacko v. Diamond Foods, Inc.*, S.D. Fla. Case No. 9:14-cv-80005-BB;
- 24 f. *Romero v. Loacker*, Santa Clara Super. Ct. Case No. 1-14-CV-274434;
- 25 g. *Zadeh v. Ikon*, LASC Case No. BC470371;
- 26 h. *Fast v. Hilton Hotel Corporation*, LASC Case No. BC409467;
- 27 i. *Sink-Crilly v. Centex Homes*, CACD Case No. CV09-2476;
- 28 j. *Alexander v. DS Waters of America*, CACD Case No. CV09-03384;

- 1 k. *Collins v. Live Nation Worldwide, Inc.*, LASC Case No. BC436141;
- 2 l. *Callela v. Dolce Group*, LASC Case No. BC364711;
- 3 m. *Beal v. Activision, Inc.*, LASC Case No. BC348560;
- 4 n. *Vasquez v. The Hollywood Pig n Whistle LP*, LASC Case No. BC335075;
- 5 o. *Flores v. Loomis Armored*, LASC Case No. BC409899;
- 6 p. *Galavis v. Patina Restaurant Group, LLC*, LASC Case No. BC375225;
- 7 q. *Dupont v. Innovative Dining Group*, LASC Case No. BC391240;
- 8 r. *Fluke v. RFG Oil, Inc.*, LASC Case No. BC403354;
- 9 s. *Smith v. Rio Rancho Pontiac GMC Buick Inc.*, LASC BC391187;
- 10 t. *Urena v. Camachos Restaurant*, LASC Case No. BC365913;
- 11 u. *Milford v. ADT Security Services, Inc.*, CACD Case No. CV08-2236;
- 12 v. *Healy v. Siemens IT Solutions and Services, Inc.*, Santa Clara Super. Ct. Case No.
- 13 108CV113479;
- 14 w. *Gonzalez v. Calstar Motors, Inc.*, LASC Case No. BC479756;
- 15 x. *Garcia v. California Credits Group*, LASC Case No. BC353213;
- 16 y. *Rylko v. The Griddle Café, Inc.*, LASC No. BC386126;
- 17 z. *Morris v. Gymboree, Inc.*, LASC Case No. BC393270;
- 18 aa. *West v. Contemporary Services Corporation*, San Francisco Super. Ct. Case No.
- 19 CGC-10-502191;
- 20 bb. *Afanasyev v. Miller Infiniti, Inc.*, LASC Case No. BC350788;
- 21 cc. *Ortega v. AJC Sandblasting, Inc.*, LASC Case No. BC378806;
- 22 dd. *Goldman v. Aorta Restaurant Operating LP*, LASC Case No. BC379688;
- 23 ee. *In Re Walgreen Co. Wage And Hour Litigation*, CACD Case No. 11-cv 07664-PSG
- 24 (FFMx);
- 25 ff. *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.*, LASC Case No. BC398459;
- 26 gg. *White v. RBD Staffing, Inc., Sprint Communications Company*, CACD Case No.
- 27 2:15-cv-08519-GHK-KS;
- 28 hh. *Carreon v. Wolfgang Puck Catering and Events, LLC*, LASC Case No. BC398569;

- 1 ii. *Fikara v. Niemann Foods Inc.*, Case No. 3:16-cv-03285-TSH (Cent. Dist. Ill.);
2 jj. *Cooke v. TCAG, Inc.*, San Diego Super. Ct. Case No. 37-2019-00007778-CU-OE-
3 NC;
4 kk. *Bradley v. Mercedes-Benz*, LASC Case No. BC499494;
5 ll. *Davies v. Godiva Chocolatier, Inc.*, LASC Case No. BC429547;
6 mm. *Ederly v. Citibank*, San Francisco Super. Ct. Case No. CGC-14-538436; and
7 nn. *Huebner v. ManTech International Corporation*, CACD Case No. 2:15-cv-09889-
8 PA-SS.

9 107. As demonstrated, CounselOne has litigated, and successfully settled, a number of
10 wage-and-hour class actions against large and small employers. This experience has given us
11 familiarity with California's wage and hour protections (including minimum wage, overtime
12 premiums, wage statement itemizations, meal and rest breaks, reimbursement of business expenses,
13 PAGA, etc.) and the various ways employment policies and practices can violate employee rights.
14 This experience is helpful in assessing the reasonableness of settlements such as the one at issue
15 here; and from this experience Class Counsel has concluded that the Settlement herein is fair,
16 adequate, and reasonable under the facts and law applicable to this case.

17 108. Class Counsel have no conflicts of interest with the Class or with the Class
18 Representative. In sum, Class Counsel are well-suited to act as class counsel and have at all times
19 vigorously represented the interests of the Class.

20 **CLASS COUNSELS' REQUEST FOR ATTORNEYS' FEES AND COSTS**

21 109. As part of the Settlement, the Parties have agreed that Class Counsel will apply for
22 an attorneys' fees award of forty percent (40%) of the Total Settlement Amount, *to wit*, \$170,000,
23 and reimbursement of litigation costs in an amount up to \$15,000.

24 110. This request is fair, reasonable, and adequate to compensate Class Counsel for the
25 substantial work they have put into this case and the risk they assumed by taking it in the first place.
26 Additionally, it is consistent with the contingency-fee agreement entered into by named Plaintiff.
27 The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that
28 they have already done and for all the work they will continue to do in carrying out and overseeing

1 the notification to the Class, communicating with Class Members regarding their claims, and
2 communicating with the Settlement Administrator regarding the administration of the settlement if
3 it is preliminarily approved.

4 111. CounselOne took this case on a contingent-fee basis against a business represented
5 by a reputable defense firm. When we take contingent cases, we must pay careful attention to the
6 economics involved or one bad case can destroy years of work. Accordingly, when we take
7 contingent cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
8 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
9 number of hours in a day is limited. Because of this, when we take on one particular matter, we
10 are unable to take on other matters. When CounselOne became involved in this case, we realized
11 the time commitment that it would entail, and we were forced to turn down matters that we
12 otherwise should have been able to handle.

13 112. In sum, Class Counsel devoted significant amounts of time and energy to achieving
14 the benefits for the Class, and to that end exercised a tremendous amount of skill.

15 **CLASS REPRESENTATIVE SERVICE AWARD**

16 113. Class Counsel and named Plaintiff Angelina Vasquez have no conflicts of interest
17 with the Class. CounselOne, PC, as well as co-counsel, are well-suited to act as Class Counsel,
18 Plaintiff Vasquez is well-suited to act as a Class Representative, and at all times Class Counsel
19 and Plaintiff have vigorously represented the interests of the Class. (*See also* Declaration of
20 Angelina Vasquez (“Vasquez Decl.”) filed concurrently herewith.)

21 114. Specifically, Plaintiff Angelina Vasquez has spent a significant amount of time
22 with Class Counsel detailing her knowledge of Defendants’ practices and helping Class Counsel
23 with the prosecution of this case. She diligently, adequately, and fairly represented members of
24 the Class and has not placed her interests above that of any member of the putative class.

25 115. As part of the Settlement, the Parties have agreed that Plaintiff will request a class
26 representative enhancement award to Plaintiff Vasquez in the amount of \$7,500, subject to Court
27 approval. The service award amount is intended to compensate Plaintiff for her time and effort in
28 bringing the action, which she initiated over one year and half ago.

116. Further, the requested amount is still much less than the \$25,000 enhancement awards approved for each of the class representatives in the seminal Clark case outlining approval standards. (*See Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 807.)

117. In light of the foregoing, Class Counsel believe that the proposed enhancement award to Plaintiff in the amount of \$7,500.00 is fair and reasonable.

CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS

118. The proposed class satisfies the criteria for certification of a settlement under California law, as embodied in California Code of Civil Procedure section 382. Defendant has agreed to the certification of the class for settlement purposes. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19.) Indeed a “lesser standard” of scrutiny applies in certifying classes for settlement purposes. (*Ibid.*) Therefore, the Court should take into consideration the fact that the parties have settled their claims and stipulated to certification for settlement purposes when making its assessment.

119. **Numerosity and Ascertainability.** Class Members are comprised of: “All current and former non-exempt, hourly employees in California who are or were employed by CP Retail, LLC stores in California during the Class Period” – which is defined as the timeframe from February 11, 2017 through January 16, 2022. (Settlement Agreement ¶¶ 4, 7.) Defendant is required to and does maintain employment records of such persons, including contact information and social security numbers. Pre-mediation documents and information exchanged resulted in Defendant’s estimate that between February 11, 2017 and January 16, 2022, the Parties understood the Class Member count to be 274 individuals comprising no more than 9,978 Workweeks. (Settlement Agreement ¶¶ 4, 53.) As a result, the proposed Class satisfies the ascertainability and numerosity requirements. (*See, e.g. Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 [stating that “[n]o set number is required as a matter of law for the maintenance of a class action” and citing examples where classes as little as 10 (*Bowles v. Superior Court* (1955) 44 Cal.2d 574) and 28 (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017) were upheld]; *see also, Collins v. Rocha* (1972) 7 Cal.3d 232 [finding a class of 44 farm workers sufficiently numerous].)

1 120. **Commonality.** Here, litigation is predicated on uniform company policies and
2 systemic top-down business practices revolving principally around Defendant’s timekeeping and
3 pay practices—*e.g.*, off-the-clock work attributed to common pre-shift and post-shift job duties,
4 waiting time for mandatory bag checks and searches, interrupted meal breaks, demands, failure to
5 pay all meal and rest break premiums owed despite records depicting non-compliance, unreimbursed
6 business expenses, failure to provide suitable seating, forfeiture of vested paid time-off/vacation,
7 etc.—as well as derivative inaccurate wage statements and pay owed upon separation. These
8 allegations have given rise to the following claims: failure to pay minimum and overtime wages;
9 meal period liability; rest break liability; forfeiture of vested vacation, failure to provide suitable
10 seating, unreimbursed business expenses; failure to maintain and provide accurate itemized wage
11 statements; failure to pay wages timely and all final wages at termination of employment; and
12 derivative UCL and PAGA claims arising therefrom.

13 121. Because Plaintiff has alleged a single top-down compensation scheme, “the relevant
14 proof [does] not vary among class members” and “clearly presents a common question fundamental
15 to all class members.” (*See In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997)
16 172 F.R.D. 119, 123 [citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997)
17 169 F.R.D. 493, 518].) California courts show “no hesitancy” in inferring class-wide causation,
18 class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I.*
19 *Custom Kitchens, supra*, 191 Cal.App.3d at p. 1350 [granting class certification in a manufacturing
20 defect case when a common course of action had been proven].) This inference “*eliminates* the need
21 for each class member to prove individually the consequences of the defendants’ actions to him or
22 her.” (*Id.* at p. 1351.) Thus, the outcome of this matter depends upon questions that are common to
23 members of the Class. These types of claims are commonly held to be proper for class certification.

24 122. **Typicality.** Plaintiff’s claims are typical of those held by members of the proposed
25 Class. Like all other Class Members, Plaintiff was a non-exempt and hourly-paid employee working
26 for CP Retail, LLC in California during the Class Period. Like Class Members, Plaintiff was not
27 paid for all hours worked due to off-the-clock work (*i.e.*, pre-/post-shift duties, interrupted meals,
28 and waiting time during mandatory bag searches), neither received timely and duty-free meal and

1 rest breaks, nor was paid premiums for all such non-compliant breaks, incurred necessary
2 unreimbursed business expenses (including cell phone usage and vehicle mileage), was not provided
3 suitable seating despite that such would not interfere with performance, did not receive accurate and
4 complete itemized wage statements, and did not receive all wages and premiums, including vested
5 vacation time, owed upon termination of the employment relationship. Plaintiff was therefore
6 impacted by the same challenged policies and practices that allegedly injured the Class as a whole
7 and subject to the same defenses raised by Defendant as to the Class and is therefore typical.

8 123. **Adequacy.** Plaintiff and Class Counsel will adequately represent the Class, as there
9 are no conflicts between the Plaintiff and the Class he seeks to represent. (*McGhee v. Bank of Bank*
10 *of America* (1976) 60 Cal.App.3d 442, 450 [finding adequacy satisfied where there was no
11 indication that plaintiff's counsel were not qualified and the named plaintiff had no interests
12 antagonistic to those of the proposed class.] Class Counsel also have extensive experience in wage
13 and hour litigation; *see* "Experience and Views of Counsel," *supra*.

14 124. **Superiority.** By consolidating over two hundred potential individual actions into a
15 single proceeding, this Court's use of the class action device enables it to manage this litigation in
16 a manner that serves the efficiency interests of the litigants and the judicial system. Absent class
17 treatment, the only alternative would be to force numerous employees to file individual actions.
18 (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339 fn. 10 [stating "[t]he
19 relevant comparison lies between the costs and benefits of adjudicating plaintiffs' claims in a class
20 action and the costs and benefits of proceeding by numerous separate actions – not between the
21 complexity of a class suit that must accommodate some individualized inquires and the absence of
22 any remedial proceeding whatsoever."].) Finally, in the context of settlement, the superiority
23 concerns are essentially non-existent.

24 **PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS**

25 125. This Court should order distribution of the proposed Notice of Proposed Class Action
26 and PAGA Settlement and Hearing Date for Court of Approval ("Class Notice"), *see* internal Exhibit
27 1 to the Settlement Agreement attached as **Exhibit "1"** hereto., to the current and former employee
28

1 Class Members by first class mail, postage prepaid, using the last known mailing address
2 information provided by Defendant.

3 126. The Parties propose that the settlement be administered by CPT Group, Inc. (“CPT
4 Group”), an experienced class action settlement administrator. Class Members’ addresses will be
5 ascertainable through Defendant’s personnel and payroll records, which Defendant will provide to
6 CPT Group within fourteen (14) calendar days after preliminary approval of the settlement.
7 (Settlement Agreement ¶ 50(b).) Under the Settlement, CPT will run all addresses through the
8 National Change of Address database and, to the extent that any notices are returned, will conduct
9 further skip traces to obtain current address information. (Settlement Agreement ¶ 50(d).) CPT shall
10 also maintain a static case-specific dedicated website for hosting final approval hearing date and
11 location information and relevant documents, including a copy of the Class Notice, Settlement
12 Agreement, and any Notice of Final Judgment.

13 127. The content of the proposed notice satisfies California Rule of Court 3.766(d)
14 because it advises Class Members of the nature of the claims, basic contentions and denials of the
15 Parties, the key terms of the settlement, the uniform 45-days deadline to submit a workweek dispute,
16 request for exclusion/opt-out, or object to the settlement and the procedure by which to do so, and
17 explains the recovery formula and credited number of workweeks for each Class Member and/or
18 PAGA Group Member, when applicable. The proposed notice will also notify Class Members of
19 the final approval hearing date, provide the contact information for Class Counsel, and advise Class
20 Members that they may enter an appearance through counsel if they wish. This manner of giving
21 notice satisfies California Rules of Court, Rule 3.766(e) as the “best notice practicable” under the
22 circumstances because it provides “individual notice to all members who can be identified through
23 reasonable effort.” (*Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173.) Thus, the proposed
24 method of notice is reasonably calculated to reach Class Members by the best means practicable and
25 should be approved.

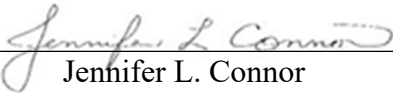
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1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America, that the foregoing is true and correct.

3 Executed this 8th day of July, 2022, at San Diego, California.

4
5 
6 Jennifer L. Connor

STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

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

DEFINITIONS

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

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

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

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

9. “Defendant” means CP Retail, LLC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECITALS

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

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

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

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

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

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

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

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

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

TERMS AND CONDITIONS

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

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

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

45. Settlement Class Members' Released Claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49. **Taxation of Settlement Proceeds.**

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

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

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

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

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

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

50. **Notice Procedure.**

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

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

c. The Settlement Administrator shall be responsible for:

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

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

v. Keeping track of Objections that it receives;

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

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

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

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

x. Distributing payments due under this Settlement Agreement;

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

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

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

or her.

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

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

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

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

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

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

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

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

54. **Opt-Out Procedure.**

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

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

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

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

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

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

55. Defendant's Right To Cancel.

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

56. Objections to Settlement.

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

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

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

57. **Settlement Proceeds Distribution Deadlines.**

- a. Defendant shall fund the Total Settlement Amount within sixty (60) calendar days after the Effective Date.
- b. Prior to disbursement of any funds, the Settlement Administrator will provide a disbursement summary of the calculations for the Enhancement Payment to Plaintiff, payment of Attorneys' Fees and Costs to Class Counsel, LWDA Payment, Administration Costs payment, and payment of Individual Settlement Payments to Settlement Class Members and PAGA Group Members for review and approval by Class Counsel and Defendant's Counsel.
- c. No later than ten (10) calendar days after Defendant fully funds the Total Settlement Amount, the Settlement Administrator shall distribute payments in accordance with this Settlement Agreement and the Court's orders, as follows: (i) payment of the Enhancement Payment to Plaintiff; (ii) payment of the LWDA Payment to the Labor and Workforce Development Agency ("LWDA"); (iii) payment of Individual Settlement Payments to Settlement Class Members and PAGA Group Members; (iv) payment of Attorneys' Fees and Costs to Class Counsel; and (v) payment of Administration Costs to the Settlement Administrator.
- d. Settlement checks will be valid for a period of one hundred and eighty (180) calendar days from the date of issuance, and after this time period, any uncashed check(s) will be cancelled and the funds associated with such cancelled checks will be transmitted to the Center for Workers' Rights as the designated *cy pres* beneficiary in conformity with the requirements of California Code of Civil Procedure section 384.
- e. The remittance of all Court ordered and approved payments, under this Settlement Agreement, to the Settlement Administrator shall constitute the full and complete discharge of the entire obligation of Defendant under this Settlement Agreement.
- f. No person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, Defendant's Counsel, or any other agent designated by Plaintiff or Defendant based upon the distribution of payments made in accordance with this Settlement Agreement or further orders of the Court.
- g. Defendant shall not be obligated to make any payments contemplated by this Settlement Agreement prior to the Effective Date.

58. **Binding Effect.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For Plaintiff and the Class:

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

For Defendant:

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO AGREED:

Dated: 01 / 11 / 2022
_____, 2022

Angelina Vasquez

Plaintiff Angelina Vasquez

Dated: 01 / 14 / 2022, 2022

Rod Johnson

Name: Rod Johnskn

Title: Member

On Behalf of Defendant CP Retail, LLC

APPROVED AS TO FORM

Dated: 1-13, 2022

Jennifer L. Connor

Anthony J. Orshansky, Esq.

Jennifer L. Connor, Esq.

CounselOne, P.C.

Attorneys for Plaintiff Angelina Vasquez

Dated: _____, 2022

Jennifer Duggan, Esq.

Christina Bucci Hamilton, Esq.

DugganMcHugh Law Corporation

Attorneys for Defendant CP Retail, LLC

Dated: _____, 2022

Name: _____

Title: _____

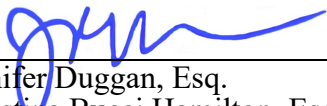
On Behalf of Defendant CP Retail, LLC

APPROVED AS TO FORM

Dated: _____, 2022

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

Dated: January 14, 2022



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

Attorneys for Defendant CP Retail, LLC

Exhibit 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

ANGELINA VASQUEZ, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

v.

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

Defendants.

Case No. CV-21-000723

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT AND
HEARING DATE FOR COURT
APPROVAL**

Complaint Filed: February 11, 2021

TO ALL CLASS MEMBERS DEFINED AS:

All current and former non-exempt, hourly employees who worked for Defendant CP RETAIL, LLC, within the State of California at any time from February 11, 2017 through [insert end of Class Period date].

**YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT. PLEASE READ
THIS NOTICE CAREFULLY.**

The settlement involves claims against CP Retail, LLC (“Defendant”) alleging claims for: (a) failure to pay minimum and overtime wages; (b) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon; (c) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon; (d) forfeiture of vested vacation; (e) failure to provide suitable seating mandates; (f) failure to reimburse business expenses; (g) failure to maintain and furnish accurate itemized wage statements; (h) failure to timely pay wages during employment and all final wages owed upon separation; (i) engaging in unfair and unlawful business practices; and (j) violation of California’s Private Attorneys’ General Act of 2004 (“PAGA”).

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a Class Member (as defined above) and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment. If you accept your settlement amount, you will release the claims described in Section V below.

I. INTRODUCTION

This “Notice of Proposed Class Action and PAGA Settlement And Hearing Date For Court Approval” (“Notice”) is to inform you that Defendant has agreed to settle a class and representative action lawsuit on behalf of all Class Members which claimed, among other things, that Defendant violated various wage-and-hour laws by failing to provide all minimum and overtime wages due, off-duty rest and meal breaks and/or pay missed rest and meal break premiums, failing to reimburse all necessary business expenses incurred, causing forfeiture of vested vacation, failure to provide suitable seating, failing to provide accurate itemized wage statements, and failing to pay wages owed in a timely manner and upon separation, and thereby engaging in unfair business practices under California Bus. & Prof. Code Section 17200, and accruing penalties under California Labor Code provisions forming the basis for a PAGA claim for derivative civil penalties.

The Court has granted preliminary approval of the Settlement and the Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

II. DESCRIPTION OF THE LAWSUIT

Plaintiff’s Claims. On February 11, 2021, Plaintiff Angelina Vasquez initiated this Lawsuit in the Superior Court of the State of California, County of Stanislaus on behalf of herself and a class of similarly-situated individuals against Defendant CP Retail, LLC as the franchisee of Plato’s Closet® retail stores, along with franchisor, Winmark Corporation, alleging: (1) failure to pay minimum and overtime wages pursuant to Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to provide meal period premiums in violation of Labor Code §§ 226.7, 512, and Wage Order 7-2001; (3) failure to provide rest period premiums in violation of Labor Code § 226.7 and Wage Order 7-2001; (4) forfeiture of vested vacation in violation of Labor Code § 227.3; (5) failure to provide suitable seating in violation of Labor Code § 1198 and Wage Order 7-2001; (6) failure to reimburse business expenses in violation of Labor Code §§ 2800 and 2802; (7) failure to maintain and provide accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and 1174; (8) failure to pay timely wages timely during employment and upon termination in violation of Labor Code §§ 201-204, and 210; (9) violations of California Business and Professions Code § 17200, *et seq.*, and (10) violation of the California Private Attorneys’ General Act of 2004, Labor Code §§ 2698 *et seq.* (collectively, “Claims”).

Defendant has denied liability, has denied the allegations in the operative Complaint, and has raised various defenses to these Claims. Defendant contends that it complied in good faith with California wage-and-hour laws and has dealt legally and fairly with Plaintiff and Class Members. Defendant further denies that, for any purpose other than settling this Lawsuit, these Claims are appropriate for class or representative treatment. Defendant wishes to settle this case, however, to avoid costly, disruptive, and time-consuming litigation and does not admit to any wrongdoing or liability.

The Court has not ruled on the merits of Plaintiff’s Claims. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial.

However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendant and Plaintiff have concluded that it is in their respective best interests and the interests of the Class Members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided extensive discovery and information to counsel for the Class Members, the Settlement was reached after arms-length non-collusive negotiations between the parties, including mediation with a highly respected mediator in California. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a fair, reasonable and adequate way to resolve the disputed Claims.

The Plaintiff and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

Under this Settlement, the following Class will be certified under California law for Settlement purposes only:

Class or Class Members: All current and former non-exempt, hourly employees who worked for Defendant CP RETAIL, LLC, within the State of California at any time from February 11, 2017 through [insert end of Class Period date] (the “Class Period”).

Plaintiff Angelina Vasquez, and her counsel, Jennifer Connor, Esq. and Anthony Orshansky, Esq. of CounselOne, P.C. (“Class Counsel”), believe that the settlement described below is fair, adequate, reasonable and in the best interests of Plaintiff and the Class.

On [REDACTED], the Court preliminarily approved the Settlement and conditionally certified the above Class for settlement purposes only. This Notice is being sent to you because Defendant’s records indicate that you are a Class Member.

IF YOU STILL WORK FOR DEFENDANT, PARTICIPATION IN THIS SETTLEMENT WILL NOT AFFECT, NOR DISRUPT YOUR WORK IN ANY MANNER.

California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement.

III. TERMS OF THE SETTLEMENT

Defendant has agreed to pay a non-reversionary \$425,000.00 (the “Total Settlement Amount”) to resolve claims in the operative Complaint, including all Class Members’ claims under Labor Code and Business & Professions Code for: (1) failure to pay minimum and overtime wages; (2) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon; (3) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon; (4) forfeiture of vested vacation; (5) failure to provide suitable seating mandates; (6) failure to reimburse business expenses; (7) failure to maintain and furnish accurate itemized wage statements; (8) failure to timely pay wages during employment and all final wages owed upon separation; (9)

engaging in unfair and unlawful business practices; and (10) violation of California's Private Attorneys' General Act of 2004.

In no event shall Defendant be required to pay any amount above the Total Settlement Amount, except that the payment of employer's share of payroll taxes and contributions in connection with the wages portion of the payouts to Settlement Class Members will be in addition to the Total Settlement Amount. The parties agreed to the following payments from the Total Settlement Amount:

Settlement Administration Costs. The Court has approved CPT Group, Inc., to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, up to \$15,000.00 will be paid from the Total Settlement Amount to pay the Settlement Administration Costs.

Class Counsel Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. To date, the parties have aggressively litigated many aspects of the case including settlement efforts and a full day mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Total Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or litigation expenses. Class Counsel will collectively ask for fees of forty percent (40%) - *i.e.*, \$170,000.00 - of the Total Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit. Class Counsel also will ask for reimbursement of up to \$15,000.00 for the costs Class Counsel incurred in connection with the Lawsuit.

Class Representative Service Award. Plaintiff Angelina Vasquez will seek an award of \$7,500.00, in addition to her Individual Settlement Payment, for her efforts and risks in assistance with the prosecution of the Lawsuit and in exchange for her execution of a general release.

PAGA Penalties. The parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Lawsuit, which is \$30,000.00. The PAGA Penalties is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (*i.e.*, \$22,500.00) to the Labor & Workforce Development Agency ("LWDA") and twenty-five percent (25%) (*i.e.*, \$7,500.00) to the Class Members. Class Counsel shall give timely notice of the Settlement to the LWDA under Labor Code section 2699(1)(2).

Net Settlement Amount. After deducting the amounts above, the balance of the Total Settlement Amount will form the Net Settlement Amount for distribution to the Class Members who do not timely request exclusion from the Settlement.

You can view the Settlement Agreement and other Court documents related to this case by visiting www.courtlistener.com.

IV. YOUR INDIVIDUAL SHARE OF THE SETTLEMENT AMOUNT

The individual settlement payment for each Settlement Class Member (Settlement Class Members are those individuals who do not timely request exclusion from the Settlement) will be paid from the Net Settlement Amount and will be calculated as follows: The Settlement Administrator determine each Settlement Class Member's individual Workweeks. The sum of all Settlement Class Members' individual Workweeks will be the "Total Workweeks." The Net Settlement Amount will be divided by the Total Workweeks to yield the "Workweek Value." Each Settlement Class Member's Individual Settlement Share will be determined by multiplying his or her individual Workweeks by the Workweek Value.

The net payment of each Settlement Class Member's Individual Settlement Share (after reduction of employee taxes) and plus individual PAGA payment (if applicable) is referred to as the "Individual Settlement Payment."

Workweeks Credited to You. The Workweeks you worked as a qualifying Class Member in California for Defendant during the Class Period – which is from February 11, 2017 through [insert end of Class Period date]- will be calculated based on Defendant's records. Class Members are paid biweekly.

According to Defendant's records:

From February 11, 2017 through [insert end of Class Period date], you were employed by Defendant as a non-exempt employee in California for [] Workweeks.

If you feel that you were not credited with the correct number of Workweeks, you may submit evidence to the Settlement Administrator postmarked or confirmed received on or before [Insert Response Deadline] with documentation to establish the number of Workweeks you claim to have actually worked during the Class Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The parties and Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many Workweeks should be credited. The Settlement Administrator will make the final decision as to how many Workweeks are credited, and report the outcome to you. If you are unsatisfied with the decision, you may submit an Objection, as discussed below.

Furthermore, **irrespective of whether or not you request exclusion from the Settlement**, as a qualifying Class Member you shall also receive your share of the PAGA Payment allocation to all Class Members who worked for Defendant during the PAGA Period as part of the individual settlement payment.] Further, all Class Members, whether or not they submit a request for exclusion, employed by Defendant during the PAGA Period, will no longer be able to seek penalties pursuant to the PAGA, for the PAGA Period, arising from Settlement Class Members' Released Claims. The PAGA Period is from October 13, 2019 through [insert end of PAGA Period date].

Tax Withholdings. Each Settlement Class Member's individual settlement payment will be reduced by any legally mandated tax withholdings for each Settlement Class Member. All individual settlement payments paid to Settlement Class Members are to be reported as income on IRS Form 1099 and IRS Form W-2s where required by law. Of the amounts paid to individual Settlement Class Members, one-third (33.33%) of each Individual Settlement Share will be considered taxable wages to be reported on a W-2 Form; while one-third (33.33%) will be considered interest and one-third (33.33%) will be considered penalties to be reported on an IRS Form 1099 (if required). Settlement Class Members are responsible for the proper income tax treatment of the individual settlement payments received. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

V. THE RELEASE OF CLAIMS

If the Court approves the Settlement, the Court will enter judgment and the Settlement Agreement will bind all Class Members who have not requested exclusion from the Settlement, and will bar all Settlement Class Members from bringing certain claims against Defendant as described below.

The Settlement includes a release by Settlement Class Members (defined as those Class Members who do not submit a timely request to be excluded) of Defendant CP Retail, LLC, Capital Partners Plato's Closet, LLC, Winmark Corporation, Team Belleci, Inc., and each of their current and former partners, shareholders, directors, employees, owners, officers, agents, attorneys, insurers, successors, affiliates, subsidiaries, and assigns ("Released Parties"), and each of them, of and from all Settlement Class Members' Released Claims during the Class Period as set forth below:

Settlement Class Members' Released Claims: means the release of claims by Settlement Class Members, including Plaintiff, pled in the operative complaint of this Lawsuit filed in the Stanislaus County Superior Court Case No. CV-21-000723, or claims that could have been pled based on the facts pled, or claims that could have been pled for: unpaid minimum and overtime wages, non-compliant meal and rest break and/or failure to pay premiums owed thereon, forfeited vested vacation, failure to provide suitable seating, unreimbursed business expenses, maintenance and issuance of inaccurate wage statements, untimely wages during employment and upon separation, and violations of the Private Attorneys General Act of 2004 and California Business and Professions Code (collectively, "Settlement Class Members' Released Claims"). Settlement Class Members' Released Claims excludes the release of claims not permitted by law.

The Class Representative further agrees to a general release of all claims against Defendant during the Class Period, and agrees to waive her rights under Civil Code Section 1542 ("Plaintiff's Released Claims").

VI. WHAT ARE YOUR OPTIONS?

A. Do Nothing and Receive Your Portion of the Settlement.

You are automatically included as a Class Member and will receive a settlement payment and do not have to take any further action to receive your settlement payment. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The estimated amount of your settlement payment if you do nothing is included on the attached Share Form.

B. Request To Be Excluded from the Class and the Settlement.

If you **do not** wish to take part in the Settlement, you may exclude yourself (*i.e.*, opt-out) by sending to the Settlement Administrator a written Request for Exclusion from the Settlement letter postmarked no later than **[Insert Response Deadline]**, with your name, address, telephone number, and signature. The written request should state:

“I WISH TO BE EXCLUDED FROM THE CLASS AND SETTLEMENT IN THE ANGELINA VASQUEZ v. CP RETAIL LLC, ET AL. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”

Send the Request for Exclusion letter directly to the Settlement Administrator at the following address by **no later than [Insert Response Deadline]**:

Vasquez v. CP Retail, LLC, et al., Settlement Administrator
c/o CPT Group, Inc.
[Insert ADDRESS]

Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. If you want confirmation of receipt of your Request for Exclusion letter, please send it by U.S. certified mail, return receipt requested and/or contact the Settlement Administrator.

C. Object to the Settlement.

You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must file with the Settlement Administrator a written objection stating: your name, address, and telephone number; dates of work as an hourly or non-exempt employee in California with Defendant; the case name and number; each specific reason in support of your objection; and any legal support for each objection. Objections must be in writing and must be mailed to the Settlement Administrator at: **Vasquez v. CP Retail, LLC, et al., Settlement Administrator, c/o CPT Group, Inc., [Insert Address]**, by **no later than [Response Deadline]** for

your objection to be considered. **OBJECTIONS THAT DO NOT INCLUDE ALL REQUIRED INFORMATION, OR THAT ARE NOT SUBMITTED TIMELY, MAY NOT BE CONSIDERED BY THE COURT.**

If you object to the Settlement, you will remain a member of the Class, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

D. Your Right to Appear at the Final Approval and Fairness Hearing Through an Attorney or In Person.

If you choose to object to the Settlement, you may also appear at the Final Approval and Fairness Hearing scheduled for [REDACTED], at [REDACTED] in Department 24 of the Stanislaus County Superior Court, located at 801 10th Street, Modesto, California 95354. You have the right to appear either in person or through your own attorney at this hearing. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [Response Deadline]. All objections or other correspondence must state the name and number of the case, which is *Vasquez v. CP Retail, et al.*, Case No. CV-21-000723.

You can also view the final approval order and final judgment and payment schedule at: [www.\[REDACTED\]](http://www.[REDACTED]).

VII. UPDATE FOR YOUR CHANGE OF ADDRESS?

If you move after receiving this Notice or if it was mis-addressed, you must provide your correct mailing address to the Settlement Administrator as soon as possible. Please send updated address information to the Settlement Administrator at: *Vasquez v. CP Retail, LLC, et al., Settlement Administrator, c/o CPT Group, Inc., [Insert Address]*. **THIS IS IMPORTANT SO THAT FUTURE NOTICES AND/OR THE SETTLEMENT PAYMENT REACH YOU.**

VIII. IF THE STIPULATION OF SETTLEMENT AND RELEASE OF CLASS ACTION IS NOT APPROVED

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the conditional Settlement will be voided, no money will be paid, and the case will return to litigation. If that happens, there is no assurance: (1) that the Class will be certified; (2) that any decision at trial would be in favor of Class Members; (3) that a trial decision, if any, would be as favorable to the Class Members as this Settlement; or (4) that any favorable trial decision would be upheld if an appeal was filed.

IX. QUESTIONS OR COMMENTS

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the Settlement, you may contact the Settlement Administrator at: Vasquez v. CP Retail, LLC, et al., Settlement Administrator, c/o CPT Group, Inc., [Insert Address] or by e-mail at [redacted]. You may also contact Class Counsel at the address or phone number listed below.

THE ATTORNEYS REPRESENTING THE CLASS MEMBERS ARE:

Anthony J. Orshansky, Esq.
anthony@counselonegroup.com
Jennifer L. Connor, Esq.
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5 Tel. (310) 277-9945/ Fax: (424) 277-3727
Attorneys for Plaintiff
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF STANISLAUS**

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

10 Plaintiff,

11 v.

12 CP RETAIL, LLC, a California limited
liability corporation; WINMARK
13 CORPORATION, a Minnesota corporation;
14 and DOES 1 through 100, inclusive,

15 Defendants.
16
17
18
19

Case No. 21-CV-000723

Honorable Sonny S. Sandhu
Dept. 24

**DECLARATION OF ANGELINA VASQUEZ IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Preliminary Approval Hearing:

Date: August 16, 2022

Time: 8:30 a.m.

Crtrm: Dept. 24

Complaint Filed: February 11, 2021

Jury Trial Date: None Set

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1 though the provision of such seats would not interfere with the performance of other tasks.
2 Finally, as a result of these violations, I believe that I did not receive accurate and complete
3 itemized wage statements and that I was not paid all wages owed, including vested vacation time,
4 at the end of my employment.

5 5. I am aware that on October 13, 2020, my attorneys gave written notice on behalf of
6 myself and other aggrieved employees, via certified mail to the California Labor & Workforce
7 Development Agency (“LWDA”) and Defendants CP Retail, LLC and Winmark Corporation,
8 outlining the facts and legal theories to support a Private Attorneys General Act (“PAGA”) claim.
9 I was informed that the LWDA did not respond to this notice. I am further aware that on
10 November 12, 2020, Defendant CP Retail, LLC submitted a cure letter stating that it reissued
11 itemized wage statements to former and current employees with the corrected “CP Retail, LLC”;
12 however, no additional money was paid. On February 19, 2021, the LWDA determined that this
13 reissuance cured the misidentified name and address of the employer defect (Labor Code
14 §226(a)(8)), but I believe and allege that the itemized wage statements had other deficiencies.

15 6. On February 11, 2021, through my attorneys, I filed this putative class action in
16 Stanislaus County Superior Court on behalf of myself and to vindicate the rights of other non-
17 exempt, hourly-paid employees in California against Defendants CP Retail, LLC and Winmark
18 Corporation, alleging claims for: (1) failure to pay minimum and overtime wages pursuant to
19 Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to provide meal period
20 premiums in violation of Labor Code §§ 226.7, 512, and Wage Order 7-2001; (3) failure to
21 provide rest period premiums in violation of Labor Code § 226.7 and Wage Order 7-2001; (4)
22 forfeiture of vested vacation in violation of Labor Code § 227.3; (5) failure to provide suitable
23 seating in violation of Labor Code § 1198 and Wage Order 7-2001; (6) failure to reimburse
24 business expenses in violation of Labor Code §§ 2800 and 2802; (7) failure to maintain and
25 provide accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and 1174;
26 (8) failure to pay timely wages timely during employment and upon termination in violation of
27 Labor Code §§ 201-204, and 210; (9) violations of California Business and Professions Code §
28 17200, et seq., and (10) violation of the California Private Attorneys’ General Act of 2004, Labor

1 Code §§ 2698 et seq. Defendants CP Retail, LLC and Winmark Corporation filed their Answer of
2 a general denial and asserting multiple affirmative defenses to each cause of action on June 15,
3 2021.

4 7. By way of this lawsuit, I sought to recover unpaid minimum wages, overtime
5 wages, meal and rest break premium payments for missed breaks, reimbursement of business
6 expenses, unpaid accrued paid-time off and/or vacation, along with final wage payments,
7 restitution, compensatory and liquidated damages, injunctive relief, penalties, attorneys' fees and
8 costs, on behalf of myself and other similarly situated non-exempt, hourly-paid employees.

9 8. As a named Plaintiff in this lawsuit, I am aware of my responsibilities and duties to
10 the Class as a class representative. When I decided to start a proposed class action lawsuit, I
11 understood that I was not only seeking compensation for myself, but also for all other similarly
12 situated employees who had experienced the same wage and hour violations that I did. I
13 understood that I could not put my interests above those of the putative class members. I am not
14 aware of any interest that I have that would be antagonistic to, conflict with, or otherwise be
15 adverse to the interests of Class Members. I am not related to anyone with Counsel One, P.C.

16 9. I am a member of the Class in that I am a person who was employed by Defendant
17 CP Retail, LLC as a non-exempt, hourly employee at stores in the State of California during the
18 time period from February 11, 2017 to January 16, 2022 – again, I was specifically employed
19 between December 28, 2015 to June 23, 2020. After reviewing the terms of the Settlement
20 Agreement and discussing them with my attorneys, I believe that the Settlement fairly and
21 adequately serves the best interests of all members of the Class.

22 10. I believe that the Settlement delivers real and tangible benefits to Class Members
23 especially since the Total Settlement Amount will make Four Hundred Twenty-Five Thousand
24 Dollars (\$425,000) to Settlement Class Members, without the need to submit a claim form and
25 without reversion to Defendant CP Retail, LLC. While I am aware that, if approved, certain
26 deductions will be made from the Total Settlement Amount (*e.g.*, attorneys' fees and costs, costs
27 of administration, enhancement award request, and penalties to the LWDA), I understand that the
28 Net Settlement Amount will be fully distributed to Settlement Class Members. I am aware that

1 every participating Settlement Class Member will be entitled to an individual settlement payment
2 distribution based on his or her total number of eligible workweeks relative to the entire
3 Settlement Class. I believe that this method of distribution is fair. I also believe that the Net
4 Settlement Amount, in the aggregate and in its individual recovery amounts, adequately serves the
5 interests of the Settlement Class.

6 11. Before filing this case, I had never sued anyone in a class action and was concerned
7 about the effects it might generate. Also, I was aware that, if unsuccessful, I could be liable to
8 Defendants for costs of suit. Nonetheless, I believe that compliance with California wage and hour
9 laws are important for preserving employee rights and to ensure that proper compensation is paid
10 for all hours worked by a diligent and devoted workforce, and that such is worthy of overriding
11 the associated risks.

12 12. I am also aware that I had a duty to stay informed of what was happening in the
13 case and could be asked to undertake a large amount of work as a class representative, and I
14 agreed to accept those obligations. Since the filing of this Lawsuit, I have kept and remained
15 informed of the status of the case and actively participated in the prosecution of this litigation.

16 13. Prior to filing this case, I spent time interviewing and meeting with my attorneys
17 regarding the case and discussing my responsibilities. Specifically, I reviewed documents sent by
18 my attorneys, answered questions from my attorneys, provided guidance regarding the duties of
19 other hourly employees, and strategized as to what documents and/or information would be
20 helpful to obtain from CP Retail, LLC. I routinely checked in with my attorneys and their staff to
21 make sure that they had all of my most current information and any additional information that I
22 had obtained.

23 14. Throughout this Lawsuit, I was available to answer any questions my attorneys
24 had, and available to speak and meet with my attorneys whenever they needed me. I responded to
25 them as quickly as possible and gave them as much information as I could. For example, I spent
26 additional hours describing policies, practices, and procedures of CP Retail, LLC and identifying
27 potential witnesses, along with lengthy discussions with my attorneys in advance of mediation and
28 time spent reviewing the mediation brief. Further, I made myself available for a full day of

1 settlement negotiations on November 17, 2021. I also reviewed the terms of the proposed and
2 actual settlement with my counsel and regularly communicated with my attorneys about the status
3 of the litigation.

4 15. I have spent a lot of time and effort prosecuting this lawsuit. During this litigation, I
5 estimate that I have invested approximately 40 to 50 hours working on the case acting in the
6 manner and engaged in the activities described above.

7 16. I believe that I have done everything my attorneys have asked of me and have tried,
8 to the best of my ability, to represent the Class. I think my efforts have helped to get the result
9 obtained in this case.

10 17. As part of the Settlement, and upon approval of the Court, the Parties agreed that I
11 should receive an individual payment of \$7,500 for my services as a class representative and for
12 providing a separate global release of my legal claims. I respectfully request that the Court award
13 me a separate enhancement award payment in that amount for my active participation in this case.
14 Taking into consideration the time that I have dedicated to this case, I believe that this amount is
15 reasonable.

16 18. I have not been promised any financial awards, incentives, fees, or any other
17 compensation in connection with the prosecution of this Lawsuit. I have not entered into any
18 undisclosed agreement, nor have I received any undisclosed compensation in this case. The only
19 compensation I will receive is whatever amount the Court awards as an enhancement payment, as
20 well as my share of the Settlement as a Settlement Class Member.

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

24
25 Executed this 06 / 27 / 2022, at Ceres, California.

26 *Angelina Vasquez*

27 _____
Angelina Vasquez

1 ANTHONY J. ORSHANSKY, Cal. Bar No. 199364
anthony@counselonelinegroup.com
2 JENNIFER L. CONNOR, Cal. Bar No. 241480
jennifer@counselonelinegroup.com
3 **COUNSELONE, P.C.**
4 9301 Wilshire Boulevard Suite 650
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5 Tel. (310) 277-9945/ Fax: (424) 277-3727

6 Attorneys for Plaintiff
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF STANISLAUS**

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

13 Plaintiff,

14 v.

15 CP RETAIL, LLC, a California limited
liability corporation; WINMARK
16 CORPORATION, a Minnesota corporation;
and DOES 1 through 100, inclusive,
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18 Defendants.
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Case No. 21-CV-000723

Honorable Sonny S. Sandhu
Dept. 24

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Preliminary Approval Hearing:

Date: August 16, 2022

Time: 8:30 a.m.

Crtrm: Dept. 24

Complaint Filed: February 11, 2021

Jury Trial Date: None Set

1 **WHEREAS**, this matter came on for hearing on August 16, 2022, at 8:30 a.m., before the
2 Honorable Sonny S. Sandhu in Department 24 of the Stanislaus County Superior Court of
3 California located at 801 10th Street, Modesto, California 95354, upon application of Plaintiff
4 Angelina Vasquez (“Plaintiff”) for preliminary approval of the proposed Stipulation of Class and
5 Representative Action Settlement (“Settlement” or “Settlement Agreement”) attached as Exhibit
6 “1” to the Declaration of Jennifer L. Connor filed concurrently with the Motion, and having
7 considered Plaintiff’s Motion For Preliminary Approval Of Class And Representative Action
8 Settlement, memorandum of points and authorities in support thereof, and supporting declarations
9 and exhibits filed therewith; and good cause appearing,

10 **WHEREAS**, defined terms contained herein have the same meanings as set forth in the
11 Settlement,

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

13 1. The Court preliminarily and conditionally certifies the following Class for purposes
14 of settlement which is comprised of: “All current and former non-exempt, hourly employees who
15 are or were employed by CP Retail, LLC stores in California during the Class.” (Settlement
16 Agreement ¶ 4). Further, the “Class Period” is defined as the time period between February 11,
17 2017 and ending on January 16, 2022). (Settlement Agreement ¶ 7.) Settlement Class Members
18 include all those who do not properly and timely opt out/request exclusion from the Settlement.

19 2. The Court preliminarily approves the Total Settlement Amount of \$425,000;

20 3. The Court preliminarily approves named Plaintiff, Angelina Vasquez, as Class
21 Representative for the purposes of settlement;

22 4. The Court preliminarily appoints CounselOne, P.C. as Class Counsel for purposes
23 of settlement;

24 5. The Court preliminarily approves the application for payment to Class Counsel of
25 reasonable attorneys’ fees of up to 40% of the Total Settlement Amount (*i.e.*, \$170,000) and
26 reasonable costs in an amount not to exceed \$15,000;

27 6. The Court preliminarily approves the payment of an enhancement award in the
28 amount of \$7,5000 to named Plaintiff/Class Representative;

1 7. The Court preliminarily approves the settlement administration services to be
2 provided by CPT Group, Inc., and the costs of distribution of notice and settlement administration
3 estimated at \$15,000;

4 8. The Court preliminarily approves a PAGA Payment of \$30,000 – of which 75%
5 (or, \$22,500) – will be allocated to the LWDA for civil penalties pursuant to statute and 25% (or,
6 \$7,500) will be allocated to all PAGA Group Members/aggrieved employees during the PAGA
7 Period, which is October 13, 2019 through January 16, 2022;

8 9. The Court preliminarily approves as to form and content the Notice of Proposed
9 Class Action and PAGA Settlement and Hearing Date for Court Approval (“Class Notice”), which
10 is attached at internal Exhibit “1” to the Settlement Agreement, attached to the Declaration of
11 Jennifer L. Connor, to be sent to Class Members;

12 10. The Court directs Defendant to provide, no later than fourteen (14) calendar days
13 after entry of the Order granting preliminary approval, to the Settlement Administrator the
14 following information about each Class Member (“Class List”): (1) Class Member’s full name; (2)
15 last known mailing address; (3) last known telephone number; (4) social security number; and (5)
16 start and end dates of employment; (5) respective individual number of Workweeks during the
17 Class Period and PAGA Period (if applicable); and (6) total number of compensable Workweeks
18 for all Class Members during the Class Period;

19 11. The Court further directs that within twenty (20) calendar days after entry of the
20 Order granting preliminary approval, the Settlement Administrator will mail via regular First-
21 Class U.S. Mail the Class Notice to all Class Members;

22 12. The Court orders that any and all submissions of Opt-Outs/Requests for Exclusion,
23 Objections, Workweek disputes, and/or notices of intent to appear at the Final Approval Hearing
24 be postmarked, and, where applicable, filed with the Court and served on counsel for the Parties,
25 no later than forty-five (45) days after the date of mailing of the Class Notice; and

26 13. A Final Approval Hearing on the question of whether the proposed class
27 settlement should be finally approved as fair, reasonable, and adequate as to the members
28

1 of the proposed class is hereby scheduled in this Department 24 for _____ at _____
2 a.m./p.m.

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4
5 **IT IS SO ORDERED.**

6
7 Dated: _____

8 HON. SONNY S. SANDHU
9 Judge of the Superior Court
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1 ANTHONY J. ORSHANSKY (SBN 199364)
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6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF STANISLAUS**
10

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

13 Plaintiff,

14 v.

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

18 Defendants.
19
20

Case No.: 21-CV-000723

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

PROOF OF SERVICE

Preliminary Approval Hearing:

Date: August 16, 2022

Time: 8:30 a.m.

Dept.: 24

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

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9301 Wilshire Boulevard, Suite 650, Beverly Hills, CA 90210.

- **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- **DECLARATION OF JENNIFER L. CONNOR IN SUPPORT**
- **DECLARATION OF ANGELINA VASQUEZ IN SUPPORT**
- **PROPOSED ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

Attorneys for Defendants

I declare under penalty of perjury that the above is true and correct.


Anthony J. Orshansky