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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

GIANA BENSON, an individual; and  
MONICA FOWLER, an individual, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a  
Delaware Corporation; and DOES 1-10,  
inclusive,

Defendants.

GIANA BENSON, and on behalf of the  
general public as private attorneys general,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a  
Delaware Corporation; and DOES 1-10,  
inclusive,

Defendants.

Lead Case No.:

37-2021-00024619-CU-OE-CTL

Consolidated with:

*Benson v. F21 OPCO, LLC*, San Diego County,  
37-2021-00037256-CU-OE-CTL

Assigned for All Purposes To:

Judge: Eddie C. Sturgeon

Dept.: C-67

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION AND PAGA  
SETTLEMENT**

Date: October 6, 2023

Time: 9:00 a.m.

Dept: C-67

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1       **I.       INTRODUCTION**

2           This motion seeks final approval of a common fund, non-reversionary wage and hour  
3 class action and PAGA settlement of \$4,700,000.00 by and between Plaintiffs Giana Benson and  
4 Monica Fowler (“Plaintiffs”), on behalf of themselves and the conditionally certified, for  
5 settlement purposes only, Class and the PAGA Employees, and Defendant F21 Opco, LLC dba  
6 Forever 21 (“Defendant”).

7           The Class Action and PAGA Settlement Agreement (“Settlement”) was preliminarily  
8 approved on April 21, 2023. (Declaration of James R. Hawkins (“Hawkins Final Decl.”), Ex. 4.)  
9 The Parties and the Settlement Administrator carried out the notice and other procedures ordered  
10 by this Court. The settlement notice was mailed on June 12, 2023. The Class Members had until  
11 July 27, 2023 to submit a request for exclusion, object to the Settlement or dispute their  
12 settlement share. The results of the notice procedures indicate that there has been no opposition to  
13 the Settlement and that the Class Members overwhelmingly approve the Settlement. To date, CPT  
14 Group, Inc. has received zero (0) objections and only two (2) requests for exclusion from the  
15 Settlement. (See, Declaration of Jennifer Forst (“Forst Decl.”), generally.). Accordingly, Plaintiffs  
16 now seek final approval of the Settlement.

17           The proposed Settlement is both fair and reasonable, particularly in light of Defendant’s  
18 asserted legal and factual defenses both on certification and the merits. Both Class Counsel and  
19 Defendant’s Counsel are experienced in wage and hour class action litigation, and both Parties’  
20 counsel agree the Settlement reached by the Parties is fair, reasonable, and adequate. The  
21 meaningful monetary recovery provided for the Class Members in the Settlement Agreement  
22 supports a finding that the settlement is adequate and reasonable particularly in light of the  
23 material and substantial risks maintaining class action status through trial, the complexity of the  
24 case, the time spent by the Parties in investigation, discovery, mediation, preliminary approval,  
25 notice procedures, and final approval.

26           Thus, the Settlement meets the criteria for final approval and Plaintiffs respectfully  
27 request this Court grant final approval of the Settlement and enter the proposed Order and  
28 Judgment filed concurrently herewith.

## II. SUMMARY OF SETTLEMENT TERMS

The following is a summary of the key financial terms of the settlement and number of participating class members:

|                                         |                           |
|-----------------------------------------|---------------------------|
| <b>Gross Settlement Amount</b>          | <b>\$4,700,000.00</b>     |
| Class Counsel Fees                      | \$1,566,666.66            |
| Class Counsel Costs and Expenses        | \$22,319.37               |
| Class Representative Enhancement Awards |                           |
| Giana Benson                            | \$10,000.00               |
| Monica Fowler                           | \$10,000.00               |
| Settlement Administrator Costs          | \$53,000.00               |
| Estimated Net Settlement Amount         | <b>\$3,038,014.63</b>     |
| LWDA Payment                            | \$303,801.40 <sup>1</sup> |
| Remaining NSA after PAGA Penalties      | \$2,734,212.57            |
| <b>Total Class Members</b>              | 9,652                     |
| Opt Outs                                | 2                         |
| Objections                              | 0                         |
| Participating Class Members             | <b>9,650</b>              |

## III. THE SETTLEMENT ADMINISTRATOR MAILED THE NOTICE AND THE CLASS WAS GIVEN THE BEST POSSIBLE NOTICE OF THE SETTLEMENT

In approving a class action settlement, due process requires “notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel. The notice must be the best practicable, ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’”

*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812. Notably, while an absent class

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<sup>1</sup> Pursuant to the Settlement Agreement, 10% of the Net Settlement Amount will be allocated as the PAGA Payment, 75% (\$227,851.05) shall be allocated to the LWDA and 25% (\$75,950.35) shall be allocated to Aggrieved Employees regardless of whether they opt out of the Class Settlement; Aggrieved Employees cannot opt out of the PAGA Settlement.

1 member must be provided notice, it is elementary that any failure to *receive* notice, in and of  
2 itself, is insufficient to show a due process violation. *Dagher v. Ford Motor Co.*, No. D072436,  
3 2018 WL 4057400, at \*6 (Cal. Ct. App. Aug. 27, 2018) [citing *Juris v. Inamed Corp.* (11th Cir.  
4 2012) 685 F.3d 1294, 1321 (“Courts have consistently recognized that ... due process does not  
5 require that class members actually receive notice”)].

6 This Court appointed CPT Group, Inc., Inc. as the Settlement Administrator to provide  
7 notification services and settlement administration pursuant to the terms of the Settlement. (Forst  
8 Decl. ¶ 1). On May 12, 2023 CPT Group, Inc. received the class data from Defendant’s counsel  
9 including name, most recent mailing address, social security number, and the dates of  
10 employment for each Class Member. (Id. ¶ 5).

11 On June 12, 2023 CPT Group, Inc. mailed the Notice to 9,652 Class Members. (Id. ¶ 7).  
12 The Notices advised Class Members of their right to request exclusion from the Settlement, object  
13 to the Settlement, dispute their pay periods, or do nothing, and the implications of each such  
14 action. The Notice advised Class Members of applicable deadlines and other events, including the  
15 Final Approval Hearing, and how Class Members could obtain additional information, including  
16 a toll-free telephone number. (Id. ¶ 4, Ex. A). The Notice also disclosed the claims that would be  
17 released upon final approval and each Settlement Class Member’s total pay periods worked  
18 during the Class Period and estimated individual settlement payment based thereon. (Id., Ex. A).

19 As of the initial mailing date, a total of 614 Notices were returned to CPT Group, Inc. by  
20 the U.S. Postal Service. (Id. ¶ 8). CPT Group, Inc. promptly re-mailed 396 of these notices either  
21 using a provided forwarding address or after performing a computerized skip-trace using  
22 Accurint. Ultimately only 228 notices remained undelivered following a skip-trace or other  
23 search using the name, address, and/or social security number of the class member (Id. ¶ 8). CPT  
24 Group, Inc. successfully reached and delivered Notice to 9,424 of the 9,652 Class Members,  
25 which represents 97.6% of the Settlement Class. (Id. ¶ 8).

26 The deadline to object or request exclusion from the Settlement was July 27, 2023, except  
27 for those remailed notices. (Id. ¶ 9-11; Settlement ¶ 5.4.1). Only two Settlement Class Members  
28 have requested exclusion, and none have objected to the Settlement. (Id., ¶¶ 10-12).

1 Further, the terms of the Class Notice, which were approved by the Court, fully complied  
2 with the requirements of California Rules of Court, Rule 3.769(f). It provided Class Members  
3 with all relevant information needed to make an informed decision whether to participate in, to  
4 opt-out of, or to object to the Settlement. It provided an explanation of the litigation and proposed  
5 Settlement terms, and procedures on how to opt out, object to, and/or appear at the final fairness  
6 hearing. The documentation provided an explanation of the case, the exclusion date and  
7 procedure for exclusion, the proposed attorneys' fees, litigation costs, administration costs,  
8 PAGA penalty allocation to the LWDA, the proposed service awards, and the individual Class  
9 Members' estimated recoveries, which were all included in the class notice packets. It also stated  
10 that those who do not opt out will be bound by the Settlement and Class release. Moreover, the  
11 Court diligently approved the Notice Packet as to form and content in its PA Order. Therefore,  
12 the Court may proceed to determine the fairness and adequacy of the Parties' class action  
13 settlement and order its approval, secure in the knowledge that all Class Members have been  
14 given the opportunity to participate fully in the notice process, and have been fully apprised of  
15 their rights and options, including their rights to object or request exclusion from the Settlement.

16 CPT Group, Inc. followed the notice procedures delineated in the Preliminary Approval  
17 Order and Settlement. Thus, notice to the Class of the proposed Settlement was reasonably  
18 calculated, under all the circumstances, to apprise the Class Members of the pendency of the  
19 action and afforded them an opportunity to opt out of, object to, or dispute the settlement.

#### 20 **IV. FINAL APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED.**

##### 21 **G. Legal Standard for Final Approval of Class Action Settlements.**

22 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.  
23 This is especially true in complex class action litigation . . . .” *7-Eleven Owners for Fair*  
24 *Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1140, 1151 (quoting *Officers for Justice*  
25 *v. Civil Serv. Comm. of the City and Cnty. & S.F.* (9th Cir. 1982) 688 F.2d 615, 625). A class  
26 action may not be dismissed, compromised, or settled without the Court's approval. Cal. Rules of  
27 Court (“CRC”) 3.769 and 3.770. The decision to approve or reject a proposed settlement is  
28 committed to the trial court's sound discretion. *Wershba v. Apple Comp., Inc.* (2001) 91 Cal. App.

1 4th 224, 234-35. Accordingly, when evaluating a class action settlement for final approval, the  
2 Court should give “[due] regard to what is otherwise a private consensual agreement between the  
3 parties.” Id. at 245. The Court’s inquiry thus is limited to whether the proposed settlement is “fair,  
4 adequate, and reasonable.” Id. at 244-45; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,  
5 1801. A settlement is “fair, adequate and reasonable” warranting final approval when “the  
6 interests of the class are better served by the settlement than by further litigation.” Manual for  
7 Complex Litigation (4th ed. 2008) § 21.61.

8 CRC 3.769 explains the procedure for final approval of a class action settlement, which  
9 involves three distinct steps: (1) Preliminary approval of the proposed settlement at an informal  
10 hearing; (2) Dissemination of mailed and/or published notice of the settlement to all affected  
11 Class Members; and (3) A “formal fairness hearing,” or final settlement approval hearing, at  
12 which Class Members may be heard regarding the settlement, and at which matters concerning  
13 the fairness, adequacy, and reasonableness of the settlement may be presented.

14 In this case, the first step is complete. The first step was completed on April 21, 2023,  
15 when the Court preliminarily approved the Settlement and determined that it was within the range  
16 of possible final approval. (Hawkins Final Decl., Ex. 4). The second step, dissemination of Notice  
17 to the Settlement Class, was completed on June 12, 2023. (Forst Decl., ¶ 8, Ex. A).

18 The third and final step in the settlement approval process is the Final Approval Hearing,  
19 at which the Court determines whether the Settlement is fair, adequate, and reasonable. A  
20 settlement agreement is presumptively fair when it is (1) the product of arm’s-length bargaining;  
21 (2) supported by sufficient investigation and/or discovery to allow assessment of Plaintiffs’  
22 claims; (3) supported by experienced counsel; and (4) subject to only a small percentage of  
23 objections. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1389 quoting  
24 *Dunk*, 48 Cal. App. 4th at 1802); *Chavez v. Netflix, Inc.* (2018) 162 Cal. App. 4th 43, 52 (2008).

25 Following the final approval hearing, the Court will decide whether to enter a final order  
26 approving the Settlement and enter judgment thereon. CRC 3.769(h). To do so, California courts  
27 consider several factors, including the strength of the Plaintiffs’ case; the risk, expense,  
28 complexity, and likely duration of further litigation; the risk of maintaining class action status

1 through trial; the value of the settlement; the extent of discovery completed and the stage of the  
2 proceedings; the experience and views of counsel; and the reaction of the class members to the  
3 proposed settlement. *Wershba*, 91 Cal. App. 4th at 244-45. “The list of factors is not exclusive  
4 and the court is free to engage in a balancing and weighing of factors depending on the  
5 circumstances of each case.” *Id.* at 245. Courts must also give:

6 proper deference to the private consensual decision of the parties, [since] the court’s  
7 intrusion upon what is otherwise a private consensual agreement negotiated  
8 between the parties to a lawsuit must be limited to the extent necessary to reach a  
9 reasoned judgment that the agreement is not the product of fraud or overreaching  
by, or collusion between, the negotiating parties, and the settlement, taken as a  
whole, is fair, reasonable and adequate to all concerned.

10 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027. For the reasons set forth below,  
11 the Court should complete the third step, and grant final approval of the Settlement.

12 **H. The Settlement is the Product of Arm’s Length Bargaining and the Strength**  
13 **of Plaintiffs’ Case, the Risks of Class Certification, and the Expense of**  
14 **Further Litigation Favor the Court’s Final Approval.**

15 Every case involves some level of uncertainty with respect to the outcome of the merits.  
16 Settlement resolves that inherent uncertainty and is therefore strongly favored by the courts,  
17 particularly in class actions. See *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,  
18 950. So too here. Plaintiffs recognized several significant risks inherent in litigating this case  
19 including the probability of certifying the action as a class action, the probability of maintaining  
20 the class action status through trial and any appeals, the likelihood of class action recovery at trial  
21 after analyzing the merits of Defendant’s legal defenses, and the current state of the law regarding  
22 certification and establishing common questions of fact. While Class Counsel believes Plaintiffs’  
23 claims are meritorious, Defendant has denied liability, disputed damages and penalties, and raised  
24 factual and legal arguments which could render the Class Members’ claims worthless at either  
25 class certification or trial. (Hawkins Final Decl. ¶¶ 26-28; see also Exs. 2 and 3 to Hawkins Final  
26 Decl. generally; see also Ackermann Declaration submitted in Support of Preliminary Approval  
27 (“Ackermann Prelim. Decl.”), attached as Ex. 8 to Hawkins Final Decl. for reference (exhibits  
28 omitted), ¶¶ 27-36, 41-46). Broadly, Defendant’s defenses included, *inter alia*, (1) that many

1 Class Members signed individual arbitration agreements with enforceable class action waivers;  
2 (2) that this could Court significantly reduce the civil penalties specified under PAGA; (3) that  
3 Plaintiffs' PAGA claim is unmanageable; (4) that a Court could rule that Defendant's on-premises  
4 rest period policy is lawful or that the alleged on-premises rest period claim is not certifiable or  
5 without merit in light of recent case law; (5) that Plaintiffs would have difficult certifying their  
6 meal period, minimum wage, overtime, and reimbursement claims; and (6) that Plaintiffs'  
7 derivative wage statement and final pay claims are meritless and Plaintiffs would fail to meet the  
8 requisite standards for such penalties. (Ackermann Preliminary Decl. ¶¶ 27-36).

9 While the proposed Settlement may be less than the amount that the Class could  
10 potentially recover following trial, it is highly unlikely that Plaintiffs and the Class would receive  
11 the full amount to which they believe they are entitled for the reasons discussed above. As such,  
12 the Gross Settlement Amount, even if only a fraction of a total potential recovery, is a fair and  
13 adequate real recovery for Class Members. *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213  
14 F.3d 454, 459. ("It is well-settled law that a cash settlement amounting to only a fraction of the  
15 potential recovery does not per se render the settlement inadequate or unfair.") (internal  
16 quotations omitted). The Settlement achieved was reached through arm's length bargaining and  
17 with the assistance of a well-respected wage and hour mediator, Michael Dickstein. (Hawkins  
18 Final Decl. ¶ 23.)

19 **I. The Value and Fairness of the Settlement Favors the Court's Final**  
20 **Approval.**

21 In evaluating the fairness of consideration offered in settlement, it is not the role of the  
22 courts to second guess the negotiated resolution of the litigants. "[T]he court's intrusion upon  
23 what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must  
24 be limited to the extent necessary to reach a reasoned judgment that the agreement is not the  
25 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the  
26 settlement, taken as a whole, is fair, reasonable, and adequate to all concerned." *Hanlon*, 150 F.  
27 3d 1027. The issue is not whether the settlement could have been better in some fashion, but  
28 whether it is fair. *Id.*

1 In this case, Defendant has consistently denied liability, disputed Plaintiffs' claimed  
2 damages, and raised formidable factual and legal arguments which could potentially defeat Class  
3 Members' claims at either class certification or trial. Given these available grounds for defending  
4 against the asserted class claims and the risks of maintaining class certification through the trial of  
5 the action and throughout any appeals, the Settlement is fair, reasonable, and adequate. (Hawkins  
6 Final Decl. ¶¶ 27-30, 44; Exs. 3, 8, Ackermann Prelim. Decl. ¶¶ 27-47).

7 Plaintiffs, through Class Counsel, secured a common fund of \$4,700,000.00 for the  
8 Settlement of the claims alleged in the class action. Indeed, the monetary relief provided by the  
9 Settlement is a meaningful recovery to the Class warranting final approval. The sum is well within  
10 the ballpark of reasonableness. The 6,950 Participating Class Members will be paid a pro-rata  
11 portion of the Net Settlement Amount. As of the filing of this motion, the highest Individual  
12 Settlement Share to a Settlement Class Member was estimated to be approximately \$1,355.07, the  
13 average Individual Settlement Share is currently estimated to be approximately \$283.34. (Forst  
14 Decl. ¶ 14). Further, the amount obtained per Participating Class Member on a gross basis, \$487  
15 per participating Class Members (\$4,700,000 / 9,650 participating Class Members) compares  
16 favorably to other class action settlements where the primary claim resolved was a challenge to  
17 employers' on-premises rest period policy, including the following cases:

- 18 • *El Pollo Loco Wage and Hour Cases*, Case No. JCCP 4957 (Orange County  
19 Superior Court)<sup>2</sup> – \$16 million class action settlement for 31,667 Class Members  
20 (between the two consolidated classes in the global settlement) where the average  
21 gross settlement payment per class member was \$505; and
- 22 • *Liggins v. ESA Management, LLC*, Case No. 30-2018-01005614-CU-OE-CXC  
23 (Orange County Superior Court) - \$4.45 million settlement for 5,473 Class  
24

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25 <sup>2</sup> Information about the *El Pollo Loco* on premises rest break class action settlement case be found here:  
26 <http://elpollolocosettlement.com/frequently-asked-questions.aspx>. The attorneys' fees in *El Pollo Loco* were approved  
27 at 1/3 of the \$16 million common fund obtained. Id. The class settlement in *El Pollo Loco* followed the Superior  
28 Court's decision to certify the on-premises rest break claim as a class action. See Order Granting Plaintiff's motion for  
class certification, dated July 20, 2018, from Orange County Complex, the Honorable Judge William Claster which  
can be found here: [https://view.flipdocs.com/?ID=10004307\\_589718&P=0#0](https://view.flipdocs.com/?ID=10004307_589718&P=0#0) ("Given the relatively straightforward  
nature of plaintiffs theory, it is difficult to imagine what type of investigation or discovery would render Defendant's  
undisputed [on premises rest] policy unsuitable for class treatment").

1           Members where the average gross settlement payment per class member was \$813<sup>3</sup>.  
2           Notably, Defendants have also prevailed in some on-premises rest break cases.<sup>4</sup>  
3           In conjunction with Plaintiffs’ Motion for Preliminary Approval, Class Counsel provided  
4 the Court with a detailed description of the claims, defenses and Defendant’s potential exposure  
5 on those claims, thereby providing the Court with a sufficient understanding of the amount in  
6 controversy and potential outcomes of the case, so that it can properly evaluate the sufficiency of  
7 the Settlement, as required in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-30  
8 (2008) (trial court needs sufficient information about the potential value of the case and issues to  
9 review the reasonableness of the settlement). (See, Ackermann Prelim. Decl. generally.) At the  
10 time of preliminary approval, the Court determined that the Settlement appeared to be fair,  
11 adequate and reasonable and favored approval. After the completion of the notice process, only  
12 two Class Members have opted out of the Settlement and no Class Members have objected to the  
13 Settlement as unfair or inadequate. (Forst Decl. ¶¶ 11-13). Thus, nothing has changed since the  
14 time of preliminary approval to undermine the reasonableness of the Settlement. The Settlement  
15 should be granted final approval.

#### 16           **J. The Parties’ Investigation Favors the Court’s Final Approval**

17           “[T]he extent of discovery completed and the stage of proceedings” are factors considered  
18 in assessing the fairness, adequacy, and reasonableness of a class action Settlement. *Dunk*, 48 Cal.  
19 App. 4th at 1801. “This factor evaluates whether the parties have sufficient information to make

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20           <sup>3</sup> The Orange County Complex Superior Court’s Order from the Hon. James Di Cesare granting final approval was  
21 entered on January 3, 2022, and *inter alia* approved fees at \$1,483,333.33, amounting to 1/3 of the gross settlement  
amount obtained for the class in that case.

22           <sup>4</sup> See, *Ritenour v. Carrington Mortg. Servs., LLC*, No. SACV1602011CJCDFMX, 2018 WL 5858658, at \*7 (C.D. Cal.  
23 Sept. 12, 2018) (“The California Supreme Court never stated that an employer cannot require an employee to remain  
24 on the premises during a rest period”); *Hubbs v. Big Lots Stores, Inc.*, No. LACV1501601JAKASX, 2018 WL 5264141,  
25 at \*4-5 (C.D. Cal. Mar. 16, 2018) (“*Augustus* nevertheless recognized that an employer may require an employee to  
26 remain “on premises” during such rest periods. . . For these reasons, requiring that an employee remain on premises  
27 during a ten-minute rest period does not create a claim under PAGA.”); and *Bell v. Home Depot U.S.A., Inc.*, No.  
28 212CV02499JAMCKD, 2017 WL 1353779, at \*1-2 (E.D. Cal. Apr. 11, 2017) (“a policy requiring employees to remain  
on the premises during their rest breaks does not violate the applicable California wage order and statute.”); *cf.* *Diaz v.*  
*Medline Industries, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-5651, Order Denying in  
Part and Granting in Part Defendant’s Motion for Judgment on the Pleadings. Further, Courts are also split on whether  
on-premises rest period cases can be certified (see footnote 8). Lastly, this area of law is potentially worsening as  
evidenced by the dicta in *Estrada v. Royalty Carpet Mills, Inc.*, 76, Cal.App.5th 685, 706 (2022), which suggests that  
on-premises rest periods are legal, an argument that would kill Plaintiffs’ primary claim, in this case, for on-premises  
rest periods alleged to be non-compliant.

1 an informed decision about settlement.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588  
2 (N.D. Cal. 2015) (citation omitted).

3 Plaintiffs and Defendant entered into the Settlement only after conducting an extensive  
4 investigation, which enabled Class Counsel and Defense Counsel to thoroughly evaluate the  
5 strengths and weaknesses of the claims. Class Counsel previously provided the Court with a  
6 detailed description of the investigation conducted in this action in conjunction with the Motion  
7 for Preliminary Approval. In addition, the settlement negotiations between the Parties were  
8 extensive and occurred at arm’s length. The Parties attended a full-day mediation with Michael  
9 Dickstein, an experienced wage and hour mediator. The Parties did not reach an agreement at  
10 mediation, but continued negotiations over the following weeks and ultimately accepted a  
11 mediator’s proposal. Thus, the Parties’ investigation and discovery are sufficient to allow Class  
12 Counsel and the Court to act intelligently. (Hawkins Final Decl. ¶¶ 22-26; Exs. 2, 3, 8,  
13 Ackermann Prelim. Decl. ¶¶ 9, 10, 12, 44.).

#### 14 **K. The Endorsement of the Parties’ Counsel Favors Final Approval**

15 The endorsement of experienced and well-informed counsel of a settlement as fair,  
16 reasonable, and adequate is entitled to significant weight. *Dunk*, 48 Cal. App. 4th at 1801-02; *see*  
17 *also Larsen v. Trader Joe’s Company* (N.D. Cal. July 11, 2014) No. 11cv05188-WHO, 2014 WL  
18 3404531 (“A [trial] court is entitled to give consideration to the opinion of competent counsel that  
19 the settlement is fair, reasonable, and adequate.”). Here, counsel for both Parties have significant  
20 experience litigating wage and hour class actions and endorse the Settlement as being fair,  
21 adequate and reasonable. Class Counsel believes that the Settlement is the best interest of the  
22 Class, and an excellent result for the Class. (Hawkins Final Decl. ¶ 25-30, *see* Exs. 2, 3, 8,  
23 Ackermann Prelim. Decl., generally). This endorsement of counsel is entitled to significant  
24 weight in favor of final approval. *Boyd v. Bechtel Corp.* (N.D. Cal. Aug. 22, 1979) 485 F. Supp.  
25 610, 622 (“The recommendations of Plaintiffs’ counsel should be given a presumption of  
26 reasonableness.”).

1                   **L. The Reaction of the Class Favors Final Approval**

2           As explained above, there was not a single objection and only two opt outs to the  
3 Settlement, both of which demonstrate that the Class Members overwhelmingly approve of the  
4 terms of the Settlement. (Forst Decl., ¶¶ 10-11). Therefore, the Net Settlement Amount will be  
5 distributed *pro rata* to each of the participating Class Members based on their pay periods worked  
6 during the Class Period as a percentage of all Class Members' pay periods worked within the  
7 Class Period. This is a very favorable result, with 99.98% of the Class Members participating (*id.*  
8 at ¶ 12), and class settlements with far lower participation rates have been approved by Courts.  
9 *See, e.g., Anderson v. Nextel Retail Stores, LLC*, Nos. CV 07-4480-SVW (FFMx), 2010 WL  
10 8591002, at \*17 (C.D. Cal. Apr. 12, 2010) (commenting favorable, as indicia of class member  
11 approval of settlement, on claim-filing rate of 27%); *Stuart v. Radioshack Corp.*, No. C-07-4499  
12 EMC, 2010 WL 3155645, at \*4 (N.D. Cal. Aug. 9, 2010) (granting final approval to wage-hour  
13 settlement where 12.54% of class claimed 31.88% of the net settlement fund).

14           **V. THE PROPOSED PAGA ALLOCATIONS SHOULD BE FINALLY APPROVED**

15           When PAGA claims are settled, the trial court must “review and approve” the settlement.  
16 Labor Code § 2699(l). In so doing, the court must consider whether the proposed “PAGA settlement  
17 is fair and adequate in view of the purposes and policies of the statute.” *O'Connor v. Uber Techs.,*  
18 *Inc.*, 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016). The parties have agreed to, and the Court has  
19 approved, an allocation of ten percent of the gross settlement amount as PAGA penalties, and the  
20 Court has granted preliminary approval of this allocation. (PA Order). Of this amount, 75% (i.e.,  
21 approximately \$227,851.05) shall be sent to the Labor and Workforce Development Agency  
22 (LWDA), and the remaining 25% (i.e., \$75,950.35) shall be distributed to the Aggrieved  
23 Employees.

24           This allocation is fair and reasonable given the nature of the PAGA claims, which has a  
25 limited 1-year statute of limitations. Furthermore, courts “repeatedly approve[] PAGA allocations  
26 of both smaller amounts and that comprised a smaller portion of the total settlement consideration  
27 in the agreements at issue.” (*See Davis v. Cox Commc'ns California, LLC*, No. 16cv989 BAS  
28

(BLM), 2017 WL 1496407, at \*1 (S.D. Cal. Apr. 26, 2017) (preliminarily approving \$4,000 PAGA allocation in \$2710,000 settlement); *Moore v. Fitness Int'l, LLC*, No. 12cv1551 LAB (NLS), 2014 WL 12571448, at \*5 (S.D. Cal. Jan. 22, 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at \*6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL 2196104, at \*2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at \*9 (N.D. Cal. Apr. 3, 2009) (approving \$11,250 PAGA allocation in \$1,026,000 settlement); *In re Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]he trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims."))

Thus, the PAGA allocation of approximately \$303,801.40 (i.e., 10% of the Net Settlement Amount) is well above a fair and reasonable range for the PAGA penalties and should now be finally approved.

**VI. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE REASONABLE AND APPROPRIATE.**

In accordance with the Court's Preliminary Approval Order, the parties retained a neutral third-party administrator, CPT Group, Inc., to administer the notice process. CPT Group's duties include: a) preparing, printing and providing to Class Members the Notice of Class Action and PAGA Settlement, hereinafter collectively referred to as "Notice"; b) processing undeliverable mail and locating updated addresses for Class Members; c) establishing a toll-free number at 1-833-816-0712 to assist and address any questions from members of the settlement class; d) receiving and reporting any Requests for Exclusion and Objections submitted by Class Members; e) administering disputes by Class Members; f) providing weekly reports to the parties; g) establishing and administering a qualified settlement fund to disburse all settlement payments; h) calculating Individual Settlement Payments for each Class Member; i) issuing and distributing Class Counsel's fees and costs, the Named Plaintiff's enhancement award, the LWDA payment

1 and Settlement Payments to Class Members; j) calculating and remitting all amounts due to the  
2 appropriate federal, state, and local tax authorities; k) receiving and reviewing other  
3 communications about the Settlement; l) filing any required reports with the Court; m)  
4 establishing and maintaining case specific email address (F21Settlement@cptgroup.com) and  
5 static website (www.cptgroupcaseinfo.com/F21Settlement); and n) performing any additional  
6 tasks requested by the parties. (Forst Decl. ¶ 2). The Court preliminarily approved up to  
7 \$55,000.00 for settlement administration costs based on the Parties' original estimate of 10,491  
8 Class Members. CPT has modified the bid because of a change in class size and will charge a  
9 total of \$53,000.00 in costs associated with the administration of the Settlement with the balance  
10 added to the Net Settlement Amount. This includes all costs incurred to date, as well as estimated  
11 costs involved in completing the Settlement. (Forst Decl. ¶16). Plaintiffs believe this is an  
12 appropriate amount for the settlement administration services provided and respectfully requests  
13 the Court award this amount to CPT Group, Inc. (Hawkins Final Decl. ¶¶ 18-19).

## 14 VII. CONCLUSION

15 The preliminarily approved Settlement is the product of arm's length negotiations after  
16 significant investigation and discovery, mediation, and negotiation. It provides meaningful  
17 benefits to the Class Members that are discernibly fair when weighed against the significant  
18 potential risks, delays, and costs of further litigation. The Class Members have overwhelmingly  
19 accepted the Settlement as fair, reasonable, and adequate. Accordingly, Plaintiffs, as Class  
20 Representatives, respectfully request that the Court grant final approval to the Settlement.

21  
22 Dated: September 13, 2023

Respectfully Submitted:

23  
24 **JAMES HAWKINS, APLC**  
25 **MELMED LAW GROUP, P.C.**  
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26  
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