

1 Kevin R. Allen, SBN 237994  
2 **ALLEN ATTORNEY GROUP PC**  
3 2121 North California Avenue, Suite 290  
4 Walnut Creek, California 94596  
5 Tel. (925) 695-4913  
6 Fax (925) 334-7477  
7 [kevin@allenattorneygroup.com](mailto:kevin@allenattorneygroup.com)

8 Attorneys for Representative Plaintiff Rose Provencio  
9 and the Certified Class

10 *Additional Counsel Listed on Next Page*

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**03/14/2022**  
**Clerk of the Court**  
BY: JUDITH NUNEZ  
Deputy Clerk

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

13 **(UNLIMITED JURISDICTION)**

14 COORDINATED PROCEEDINGS SPECIAL  
15 TITLE [RULE 3.550]

Judicial Counsel Coordinated Proceeding  
No. 4911

16 SEPHORA WAGE AND HOUR CASES

**CLASS ACTION**

17 Included actions:

18 *Burnthorne-Martinez v. SEPHORA USA, Inc.*  
19 (San Francisco OGC-16-55-894)

20 *Provencio v. SEPHORA USA, Inc.*  
21 (Santa Clara 16CV294112)

22 *Hernandez et al. v. SEPHORA USA, Inc.*  
23 (San Francisco OGC-17-557031)

24 *Duran v. Sephora USA, Inc.*  
25 (San Francisco CGC-17-561452)

**COORDINATED PLAINTIFFS' NOTICE  
OF MOTION AND MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date: April 6, 2022

Time: 2:00 p.m.

Judge: Hon. Andrew Y.S. Chang

Dept.: 613

1 Shaun Setareh, SBN 204514  
2 Thomas Segal, SBN 222791  
3 Jose Maria D. Patino, Jr., SBN 270194  
4 **SETAREH LAW GROUP**  
5 9454 Wilshire Boulevard, Suite 907  
6 Beverly Hills, California 90212  
7 Telephone: (310) 888-7771  
8 Facsimile: (310) 888-0109  
9 shaun@setarehlaw.com  
10 thomas@setarehlaw.com

11 Attorneys for Representative Plaintiff Alyssa Burnthorne-Martinez  
12 and the Plaintiff Class

13 Alejandro P. Gutierrez, SBN 107688  
14 **THE HATHAWAY LAW FIRM, LLP**  
15 200 Hathaway Building  
16 5450 Telegraph Road, Suite 200  
17 Post Office Box 3577  
18 Ventura, CA 93006-3577  
19 Telephone: (805) 644-7111  
20 Facsimile: (805) 644-8296  
21 E-mail: [agutierrez@hathawaylawfirm.com](mailto:agutierrez@hathawaylawfirm.com)

22 Daniel J. Palay, SBN 159348  
23 Brian D. Hefelfinger, SBN 253054  
24 **PALAY HEFELFINGER, APC**  
25 1484 E. Main Street  
26 Suite 105-B  
27 Ventura, CA 93001  
28 Telephone: (805) 628-8220  
Facsimile: (805) 765-8600  
E-mail: [djp@calemploymentcounsel.com](mailto:djp@calemploymentcounsel.com)

Attorneys for Plaintiff JESSICA DURAN, the Plaintiff Class and the Certified Subclasses

John Matthew Norton (SBN 158937)  
**MATTHEW NORTON & ASSOCIATES, P.C.**  
12839 S. Wakial Loop  
Phoenix, Az 85044  
Telephone: (562) 433-3208  
E-mail: [Matt@Matthew-Norton.com](mailto:Matt@Matthew-Norton.com)

Matthew F. Archbold (CA SBN 210369)  
e-mail: [matthew@yourlaborlawyers.com](mailto:matthew@yourlaborlawyers.com)  
David D. Deason (SBN 207733)  
e-mail: [david@yourlaborlawyers.com](mailto:david@yourlaborlawyers.com)  
**DEASON & ARCHBOLD**  
17011 Beach Blvd., Suite 900  
Huntington Beach, CA 92647  
Telephone: (949) 794-9560

Attorneys for Representative Plaintiffs Lacey Hernandez, Brenda Morales  
and the Plaintiff Class

**TABLE OF CONTENTS**

1

2 **INTRODUCTION..... 2**

3

4 **I. BACKGROUND..... 3**

5 **II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS..... 5**

6 **III. SUMMARY OF SETTLEMENT ..... 9**

7     A. THE SETTLEMENT CLASS.....9

8     B. THE SETTLEMENT TERMS.....10

9     C. THE RELEASE..... 12

10     D. SUMMARY OF SETTLEMENT ADMINISTRATON..... 12

11 **IV. FINAL APPROVAL OF THE CLASS SETTLEMENT IS WARRANTED ..... 13**

12     A. STANDARD FOR FINAL SETTLEMENT APPROVAL.....13

13     B. THE SETTLEMENT IS WITHIN THE RANGE OF REASONABLENESS.....14

14     C. THE SETTLEMENT'S RELEASE IS APPROPRIATELY LIMITED..... 16

15 **V. THE CLAIMS ADMINISTRATION COSTS ARE REASONABLE..... 16**

16 **VI. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE..... 17**

17 **VII. CONCLUSION..... 17**

18

19

20

21

22

23

24

25

26

27

28

**TABLE OF AUTHORITIES**

**Cases**

*Alberto v. GMRJ Inc.* (E.D.Cal. 2008) 252 F.R.D. 652 ..... 14

*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794..... 13, 14

*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011 ..... 14

*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 ..... 8, 15

*Officers for Justice v. Civ. Serv. Comm'n of SF* (9th Cir. 1982) 688 F.2d 615..... 14

*Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134..... 15

*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224 ..... 13, 14

**Statutes**

Cal. Bus. & Prof. Code § 17200 et seq.....6

Cal. Civ. Code § 1781(f) ..... 13

Cal. Code of Civ. Proc. § 384 ..... 11

Cal. Lab. Code § 212..... 6

Cal. Lab. Code 213..... 6

Cal. Lab. Code § 226..... 6

Cal. Labor Code § 226.7 ..... 6

Cal. Lab. Code § 510..... 6

Cal. Lab. Code 512..... 6

Cal. Lab. Code § 1194..... 6

Cal. Lab. Code § 1197..... 6

Cal. Lab. Code § 2698..... 6, 16

Cal. Lab. Code § 2802..... 6

Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 216 *et seq.* ..... 16

**Rules**

Cal. Rules of Ct. [hereinafter C.R.C.] Rule 3.769(a) ..... 13

///

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

**Treatises**

5 James Wm. Moore, *et al.*, *Moore's Federal Practice*, § 23.85(3) (3d ed. 1997) ..... 14

*Manual for Complex Litigation, Fourth*, § 21.63, 447, 447-50 (4th ed. 2004)..... 14

///


1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 6, 2022 at 2:00 p.m. in Department 613 of the  
3 above-entitled court, located at 400 McAllister Street, San Francisco, CA 94102, Plaintiffs Alyssa  
4 Burthorne-Martinez, Jessica Duran, Lacey Hernandez, Brenda Morales, and Rose Provencio,  
5 (“Plaintiffs”) for themselves and the certified Settlement class they represent, by and through their  
6 attorneys of record, will and hereby do, move the Court for an Order granting their Motion for  
7 Final Approval of Class Action Settlement.

8 The motion will be based upon this Notice of Motion, the Memorandum of Points and  
9 Authorities; the Declaration of Kevin R. Allen; the Coordinated Plaintiffs’ Motion for Fees, Costs,  
10 and Service Awards (filed February 14, 2022); and all pleadings, files and records herein; and upon  
11 such other matters as may be presented to the Court at the time of the hearing.

12 Dated: March 14, 2022

**ALLEN ATTORNEY GROUP PC**

13  
14 By   
15 KEVIN R. ALLEN  
16 Attorneys for Plaintiff Rose Provencio and the Certified Class  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **INTRODUCTION**

2 Representative Plaintiffs Alyssa Burthorne-Martinez, Jessica Duran, Lacey Hernandez,  
3 Brenda Morales, and Rose Provencio (collectively “Plaintiffs”) respectfully request that the Court  
4 grant final approval to their proposed class action Settlement Agreement<sup>1</sup> with Defendant Sephora  
5 USA, Inc. (“Defendant” or “Sephora”) on behalf of a settlement class of all non-exempt current  
6 and former employees of Sephora who worked at any California retail location between May 23,  
7 2013 and May 14, 2021, inclusive.

8 The class claims arise from Defendant’s policies relating to off-the-clock security  
9 inspections and costume/uniform maintenance, mandated makeup/appearance requirements,  
10 Sephora’s alleged failure to pay overtime premiums on certain non-discretionary bonuses, its  
11 issuance of wages via payroll debit cards, and allegations regarding non-compliant wage  
12 statements. Through the lawsuit, Plaintiffs sought damages for unpaid wages, derivative penalties  
13 including inaccurate wage statement penalties and late payment penalties, and penalties under the  
14 Private Attorneys General Act (“PAGA”). Plaintiffs also sought associated interest, as well as  
15 attorneys’ fees and costs.

16 The proposed settlement provides for a **non-reversionary** payment of Twelve Million  
17 Seven Hundred and Fifty Thousand Dollars and No Cents (\$12,750,000.00) that will be used to  
18 pay settlement awards to the Class Members, attorney’s fees and costs, settlement administration  
19 costs, a service award to each named Plaintiff, and to pay the Labor and Workforce Development  
20 Agency under PAGA.

21 In exchange for this settlement payment, Plaintiffs and Class Members who did not request  
22 exclusion from the Settlement will release Defendant from all wage and hour class claims which  
23 were brought or could have been brought based on the factual allegations contained in the  
24 Complaint(s) filed in the Lawsuit.

25  
26  
27 <sup>1</sup> See **Exhibit “1”** [*First Amended Class Action Settlement and Agreement*] (the “Settlement”). Unless  
28 otherwise noted all numerical exhibits cited herein are attached to the accompanying Declaration of Kevin R. Allen in  
Support of Coordinated Plaintiffs’ Motion for Final Approval of Class Action Settlement (hereinafter “Allen Decl.”).

1 This Court granted preliminary approval of the Settlement on December 16, 2021<sup>2</sup> and, on  
2 January 20, 2022, the Settlement Administrator CPT Group, Inc. (“CPT”) mailed the Court-  
3 approved notice to 13,908 Class Members.<sup>3</sup>

4 The Class has now voiced its opinion of the Settlement and their response fully supports  
5 final approval. **There were no objections and 99.86% of the Class Members decided to**  
6 **participate in the Settlement.**<sup>4</sup> If approved, the Settlement will provide for an average estimated  
7 settlement payment of \$542.01 to each Class Member, with the highest payment to a participating  
8 Class Member estimated to be \$3,693.56.<sup>5</sup>

9 In light of the significant monetary benefits being paid to Class Members, the limited scope  
10 of the release covering only wage and hour claims that were plead or could have been plead in the  
11 lawsuit, the myriad risks and uncertainties associated with continuing this litigation, and the  
12 overwhelming Class Member support of the Settlement, final approval is appropriate.

13 **I. BACKGROUND**<sup>6</sup>

14  
15 Sephora is owned by LVMH Moët Hennessy Louis Vuitton, the world’s leading luxury  
16 goods group. According to its website, Sephora is a “leader in prestige omni-retail” and bills itself  
17 as a “powerful beauty presence... around the world thanks to our unparalleled assortment of  
18 prestige products in every category, unbiased service from beauty experts, interactive shopping  
19 environment, and relentless innovation.”<sup>7</sup>

20 Plaintiffs worked at one or more of Sephora’s retail store locations in California. Each retail  
21 Sephora location is staffed with between 20 and 100 nonexempt employees, which Sephora refers  
22 to as “Cast Members.” Cast Members could access the Sephora intranet which is where Sephora

23  
24 <sup>2</sup> See Order Granting Unopposed Coordinated Plaintiffs Motion for Preliminary Approval of Class Action  
Settlement (filed December 16, 2021).

25 <sup>3</sup> See **Exhibit “2”** [Declaration of Jeremy Talavera on Behalf of CPT Group, Inc.][hereinafter “CPT Decl.”],  
¶¶5, 7.

26 <sup>4</sup> There were just 19 valid requests to be excluded from the Settlement. **Ex. “2”** [“CPT Decl.”], ¶ 13. These 19  
Class Members will still receive a share of the PAGA allocation provided for by the Settlement. See Settlement, § 9.6.

27 <sup>5</sup> **Ex. “2”** [“CPT Decl.”], ¶ 10. Class Members who worked during the PAGA period will also receive an  
average of \$12.69 each. *Id.*, ¶ 11.

28 <sup>6</sup> Sephora does not agree with or adopt Plaintiffs’ representations of the facts.

<sup>7</sup> See <https://www.sephora.com/beauty/about-us> (last visited March 14, 2022).



1 houses its time keeping system and policy memorandums including, its employee handbook. The  
2 employee handbook is the primary source of company policy. Allen Decl., ¶ 4.

3 Plaintiffs' unpaid wage claim arises from three of Sephora's employment policies. Allen  
4 Decl., ¶ 5. First, Sephora's security inspection policy required employees who left the store for a  
5 break or at the end of their shift to submit to a security inspection by the manager on duty. The  
6 security inspection occurred after the Cast Member clocked out of Sephora's time keeping system.  
7 Prior to July 2015 Sephora did not compensate employees for the time spent being subjected to the  
8 security inspection. In July 2015 Sephora started automatically paying Cast Members an additional  
9 three minutes through its payroll system for each shift. Plaintiffs allege that members of the  
10 certified Class(es) were not properly compensated for all time spent in off the clock security  
11 inspections, even during the period when they were receiving the additional three minutes per  
12 shift.<sup>8</sup> Allen Decl., ¶ 6.

13 Second, Plaintiffs allege that Sephora's appearance policy required female class members  
14 to apply makeup prior to their shift without compensating them for the time spent doing so. [In  
15 July 2016 the appearance/makeup policy was revised so that compliance with the policy was no  
16 longer mandatory and worded more as a suggestion.] Plaintiffs allege that Sephora violated  
17 California law by not compensating Class Members for time spent complying with this policy.  
18 Allen Decl., ¶ 7.

19 Third, Sephora provided putative class members with a solid black uniform, which Sephora  
20 referred to as the "costume." Sephora required employees to wash and maintain the costumes but  
21 did not compensate them for the time spent cleaning or maintaining the costumes. Plaintiffs allege  
22 that this was compensable time since the costume required specialized care due to its color and the  
23 material used. Allen Decl., ¶ 8.

24 Sephora compensated some employees via pay cards. Plaintiffs allege that Class Members  
25 were charged fees in order to access the funds held on the card in violation of California law. Allen  
26

---

27 <sup>8</sup> On January 29, 2019, the Court signed an Order certifying two Classes and ten subclasses. To address the  
28 change in policy, and the additional three minutes pay, the Court certified a subclass of employees who worked before  
July 2015 and a subclass of employees who worked after that date. Allen Decl., ¶ 6.

1 Decl., ¶ 9.

2 Plaintiffs also allege that Sephora failed to pay overtime on certain nondiscretionary  
3 bonuses. Under the Bonus Plans, class members were eligible for a percentage of their monthly  
4 base earnings paid in the bonus period. Prior to July 2014, Sephora paid the bonuses out on a  
5 monthly and quarterly basis without paying overtime premiums on the bonus payments as required  
6 by law.<sup>9</sup> Plaintiffs also allege that Class Members were provided inaccurate wage statement since  
7 the statements did not reflect the additional bonus related overtime premiums that were owed.  
8 Allen Decl., ¶ 10.

9 **II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS**<sup>10</sup>

10  
11 On March 10, 2016, Plaintiff Alyssa Burnthorne-Martinez filed her complaint in San  
12 Francisco County Superior Court (“Burnthorne-Martinez matter”). On April 14, 2016, she filed a  
13 First Amended Complaint adding a claim for penalties under PAGA. Allen Decl., ¶ 11.

14 On April 20, 2016 Plaintiff Rose Provencio filed her complaint in Santa Clara County  
15 Superior Court (“Provencio matter”). Allen Decl., ¶ 12.

16 On September 20, 2016, Plaintiffs Lacey-Hernandez and Brenda Morales filed their  
17 complaint (“Hernandez/Morales matter”) in U.S. District Court for the Northern District of  
18 California. The Hernandez/Morales plaintiffs dismissed their state court claims from the federal  
19 complaint, and refiled those state court claims in the San Francisco County Superior Court on  
20 February 9, 2017. Allen Decl., ¶ 13.

21 Plaintiff Jessica Duran filed her original complaint in the U.S. District Court, for the  
22 Northern District of California on March 9, 2017. The Complaint was dismissed on September 18,  
23 2017, the Court finding that “state law claims predominated over the federal claim.” Duran  
24 proceeded to file her class action complaint in the San Francisco County Superior Court on  
25 September 22, 2017 (“Duran matter”). Allen Decl., ¶ 14.

26  
27 <sup>9</sup> After July 2014, Sephora started performing the recalculation described above and started paying the  
28 additional sum, which is now referred to as “WHOT” or “Wage and Hour” entry on the pay stub. Allen Decl., ¶ 10.

<sup>10</sup> See Allen Decl., ¶¶ 11-37.

1           The four separate matters were subsequently coordinated in front of the San Francisco  
2 County Superior Court who presided over the earliest filed *Burthorne-Martinez* matter. The  
3 coordinated proceeding was assigned JCCP Case No. JCCP04911. Allen Decl., ¶ 15.

4           Through their operative complaints Plaintiffs collectively sought unpaid wages, statutory  
5 penalties, interest, attorneys' fees and costs arising from Defendant's (1) Failure to Pay Wages;  
6 (Labor Code §§ 510, 1194, 1197); (2) Failure to Provide Lawful Meal and Rest Periods (Labor  
7 Code §§ 226.7 and 512); (3) Failure to Pay Wages On Termination (Labor Code § 203); (4) Failure  
8 to Provide Accurate Itemized Wage Statements (Labor Code § 226); (5) Failure to Reimburse  
9 Business Expenses (Labor Code § 2802); (6) Failure to Keep and Provide Accurate Records; (7)  
10 Failure to Pay Sick Pay; (8) Reporting Time Violations; (8) Violation of Labor Code §§ 212 and  
11 213; (7) Unfair Business Practices Under the Unfair Competition Law (Business & Professions  
12 Code §§ 17200 *et seq.*); and, (8) Recovery Under the Private Attorney General Act (“PAGA”)  
13 (Labor Code §§ 2698 *et seq.*). Allen Decl., ¶ 16.

14           In 2017 and 2018, the Parties conducted exhaustive pre-certification discovery that  
15 included multiple sets of written discovery (some of which had been propounded and even  
16 responded to prior to the four matters being coordinated). Defendant eventually deposed each of  
17 the named Plaintiffs. Plaintiffs deposed two of Defendant’s persons most knowledgeable who  
18 covered sixty-three topics germane to the claims in the coordinated proceeding. Plaintiffs received  
19 a class list in early 2018 and conducted dozens of class member interviews thereafter. Allen Decl.,  
20 ¶ 17.

21           On April 5, 2018, Plaintiffs filed a Motion for Class Certification covering claims in all  
22 four of the coordinated actions. There was extensive briefing over six months which included  
23 opposition briefs, reply briefs, trial plans, and multiple supplemental filings. The Parties also  
24 deposed at least a dozen Class Members and, on June 14, 2018, Plaintiffs’ counsel deposed  
25 Defendant’s expert Robert Crandall. Allen Decl., ¶ 18.

26           On October 11, 2018, the Court indicated it was granting in part Plaintiffs' motion for class  
27 certification. Following additional supplemental briefing, on January 29, 2019, the Court signed an  
28

1 Order certifying two Classes and ten subclasses. Allen Decl., ¶ 19.

2 Following certification, the Parties conducted merits-based discovery. This included written  
3 discovery as well as an additional person most knowledgeable deposition. As part of merits  
4 discovery, Defendant was required to produce time and payroll data for the entire class. Allen  
5 Decl., ¶ 20.

6 In late 2019, Plaintiffs retained expert witnesses<sup>11</sup> in order to perform a survey and calculate  
7 damages on the certified claims. The survey included the following topics: (1) The amount of time  
8 spent in security checks; (2) The amount of time spent handwashing, ironing and dry-cleaning  
9 Sephora provided work clothes; and (3) The amount of time spent applying makeup prior to the  
10 start of a work shift and during work shifts. The survey was designed to ensure it was scientific  
11 reliable. The experts prepared the survey analyzed the survey results, and calculated damages.  
12 Allen Decl., ¶ 21.

13 In June and July 2020, Defendant deposed Plaintiff's expert survey witnesses who designed  
14 the survey (Jeffrey Petersen) and oversaw its implementation (Dwight Steward of Employstats).  
15 Allen Decl., ¶ 22.

16 On August 7, 2020, Plaintiffs filed a Motion for Summary Adjudication covering eleven  
17 issues/claims/defenses. On that same date, Defendant filed a Motion for Summary  
18 Judgment/Adjudication, a Motion for Decertification, and a Motion in Limine Regarding Plaintiffs'  
19 PAGA claims (and/or Pretrial Motion to Strike). Allen Decl., ¶ 23.

20 On August 24, 2020, the Court granted the Parties' stipulation to extend the briefing  
21 schedule on the dispositive motions so as to accommodate a private mediation session with David  
22 A. Rotman of Mediated Negotiations.<sup>12</sup> Allen Decl., ¶ 24.

23 On November 11, 2020, the parties participated in a full day session with Mr. Rotman. The  
24 matter did not resolve at the initial mediation session, but the Parties continued to work through  
25 Mr. Rotman in an attempt to reach a class wide resolution of the Lawsuit. Allen Decl., ¶ 25.

---

26  
27 <sup>11</sup> Jeffrey Petersen (Allman & Petersen Economics, LLC) designed the survey. Bill Davis and Davis Research  
28 LLC administered the survey to 537 Class Members. Dr. Dwight Steward (EmployStats) calculated the amount of  
damages owed on each claim.

<sup>12</sup> See <http://davidrotman.net/html/mediators-david-rotman.html> [last visited July 14, 2021].

1 Following the initial mediation, the Court granted a series of stipulations extending the  
2 deadlines for responding to the pending motions and to continue the trial date so as to provide the  
3 Parties additional time to continue their negotiations.<sup>13</sup> Allen Decl., ¶ 26.

4 Finally, on May 7, 2021, the Parties agreed in principle to certain key terms of a proposed  
5 settlement of the Class and PAGA representative claims asserted in the Lawsuit. These essential  
6 terms were memorialized in a Memorandum of Understanding (“MOU”) executed by the Parties  
7 on May 28, 2021. Allen Decl., ¶ 27.

8 The Parties thereafter spent almost two months negotiating a long form settlement  
9 agreement which was thereafter submitted to the Court for preliminary approval via motion filed  
10 July 23, 2021. Allen Decl., ¶ 28.

11 On August 26, 2021 the Court issued a nine-page tentative ruling<sup>14</sup> asking the Parties to  
12 address certain concerns the Court had regarding the settlement. These included the scope of the  
13 release, the distribution formula, how funds from uncashed settlement checks would be handled,  
14 and how class member settlement awards would be treated for tax purposes. The tentative ruling  
15 asked the Parties to modify and reorganize the proposed Notice of Settlement, the procedures for  
16 filing objections and requesting exclusion and asked for a more robust *Kullar* Analysis than had  
17 been submitted with the initial preliminary approval motion. Allen Decl., ¶ 29.

18 In an effort to address the Court’s concerns, on or around November 11, 2021, the Parties  
19 executed a First Amended Class Action Settlement and Agreement which included a newly revised  
20 proposed notice and a redistribution of funds to Class Members prior to turning money over to the  
21 cy pres. *See* Allen Decl., ¶ 30; **Exhibit 1 [Settlement]**. In addition, Plaintiffs’ counsel re-engaged  
22 Dwight Steward of EmployStats to update and expand on the damages analysis previously  
23 performed in the case. Allen Decl., ¶ 31.<sup>15</sup>

---

25 <sup>13</sup> The negotiations were also prolonged due to the mediator falling ill and not being available for over a month.

26 <sup>14</sup> *See* Tentative Ruling Re: Unopposed Coordinated Plaintiffs Motion for Preliminary Approval of Class Action  
Settlement [entered August 26, 2021].

27 <sup>15</sup> Additionally, on December 2, 2021, the Court issued an Order granting Plaintiffs Burthorne-Martinez leave to  
28 file a Second Amended Complaint so that the pleading was congruent with the scope of the amended Settlement. The  
SAC was subsequently filed and answered by Defendant. Allen Decl. ¶ 32.

1 On November 16, 2021, Plaintiffs filed a robust Supplemental Brief in Support of  
2 Coordinated Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement along with  
3 supporting documents. Allen Decl., ¶ 33.

4 On December 16, 2021, the Court issued an Order granting Plaintiffs’ Motion for  
5 Preliminary Approval of the amended Settlement and directing that notice be issued to the Class  
6 Members consistent therewith. The Order set a Final Approval Hearing for April 6, 2022 at 2:00  
7 p.m. Allen Decl., ¶ 34.

8 On January 6 2022, Defendant provided the settlement administrator, CPT Group Class  
9 Action Administrators (“CPT Group”) with the class data needed to calculate individual settlement  
10 award amounts and issue the settlement notice. Allen Decl., ¶ 35.

11 On January 20, 2022, CPT Group caused the Court-approved notice of settlement to be  
12 mailed to 13,908 Class Members. Class Members had until March 6, 2022 by which to request  
13 exclusion, lodge an objection, and/or dispute their number of workweeks. Allen Decl., ¶ 36.

14 On February 18, 2022 (i.e., 14 days prior to close of the response period on the class notice)  
15 Plaintiffs filed their Motion for Attorneys’ Fees, Costs and Service Awards for the named  
16 Plaintiffs. Allen Decl., ¶ 37.

17 **III. SUMMARY OF SETTLEMENT**

18  
19 The proposed Settlement is within the range of reasonableness and in the best interest of the  
20 Class Members in light of all facts and circumstances, including the risk of significant delay and  
21 Defendant’s substantive and procedural defenses. Allen Decl., ¶ 3.

22 **A. THE SETTLEMENT CLASS**

23 On December 16, 2021, the Court granted conditional certification of the proposed  
24 settlement Class<sup>16</sup> which is defined as all non-exempt current and former employees of Sephora  
25 who worked at any California retail location in California between May 23, 2013 and May 14,  
26

27  
28 <sup>16</sup> Settlement, § 3.6. The Class as defined is broad enough to encompass all classes and subclasses that were certified in the Court’s January 30, 2019 Order. *Id.*

2021, inclusive.<sup>17</sup> There are 13,908 individuals who fall within this Class definition.<sup>18</sup>

**B. THE SETTLEMENT TERMS**

The proposed settlement provides Defendants shall pay a non-reversionary \$12,750,000.00 (referred to as the “Gross Settlement Amount”) to compensate Plaintiffs and Class Members. *See* Settlement, § 3.17.

The settlement fund will be used to pay an incentive award to each of the named Plaintiffs for their extensive service to the Class (up to \$20,000.00 each); Plaintiffs’ attorneys’ fees (up to one third of the Gross Settlement Amount, i.e., \$4,250,000.00) and actual litigation expenses (\$297,289.02); a PAGA payment to the California Labor and Workforce Development Agency (75% of \$500,000, i.e., \$375,000.00); half of the employer payroll taxes related to Class Member Settlement Payments;<sup>19</sup> and actual administration expenses to CPT Group, Inc. (\$70,000.00). *Settlement*, § 8.1-8.8. The amount remaining from the Gross Settlement Amount after paying for these items, referred to as the Net Settlement Amount, will be distributed in its entirety to the Class Members. *Id.*, § 3.23

Each Class Member’s individual Settlement Payment amount will be calculated *pro rata* based upon each Class Members’ individual number of workweeks worked during the Class Period relative to the workweeks worked by all participating Class Members. Settlement, § 8.7.1.

Class Members will also be eligible to receive a pro rata portion of the amount allocated to PAGA based on the number of workweeks worked during the period covered by the PAGA claims, i.e., March 7, 2015 through May 14, 2021. Settlement, § 8.7.1.

Class Members do not need to submit a claim form or do anything else in order to receive their individual Settlement Payment or PAGA payment. Class Members who did not wish to receive their individual Settlement Payment and wished to retain their claims were permitted to

---

<sup>17</sup> See Order Granting Unopposed Coordinated Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (entered December 16, 2021).

<sup>18</sup> This is consistent with the Settlement which estimated there were approximately 13,775 such Class Members. Settlement, § 13.2

<sup>19</sup> Sephora is being required to pay half of the employer’s payroll tax burden outside of and in addition to the Gross Settlement Amount. Settlement §§ 3.17, 8.6.

1 submit a Request for Exclusion form. *See* Settlement, § 9.6, Exhibit “B”.<sup>20</sup>

2 If approved, Defendant will be required to fund the Settlement within ten business days of  
3 the date that the Court’s Final Approval Order becomes final, referred to as the “Effective Date”.<sup>21</sup>  
4 Settlement, § 10.3. CPT will distribute the settlement funds no later than twenty-five (25) business  
5 days after the Effective Date. Settlement, §§ 10.4-10.5.

6 Inevitably, some Class Members will not cash their individual Settlement Payment or  
7 PAGA payment checks. Checks not cashed within 180 days of mailing will be voided and those  
8 funds will be redistributed to the Settlement Class Members who cashed their first check (referred  
9 to as the “redistribution”). Settlement, § 10.6. The checks from the redistribution which are not  
10 cashed within 180 days from mailing will be voided and, within 200 days of the redistribution  
11 mailing date, be paid to the Court-approved nonprofit organization as *cy pres*, proposed to be Legal  
12 Aid at Work.<sup>22</sup> Settlement, § 10.6. The organization is a non-profit and fulfills the requirements of  
13 Code of Civil Procedure Section 384.<sup>23</sup> Allen Decl., ¶ 34; *see* **Exhibit “3”** [Declaration of Joan  
14 Graff]. Plaintiffs and their counsel have no relationship with the proposed *cy pres* recipient. Allen  
15 Decl., ¶ 43.

16 For tax purposes, one-third of each Class Member’s Individual Settlement Payment shall be  
17 treated as wages (and reported on a W-2 Form) and two-thirds shall be treated as expense  
18 reimbursement, penalties and interest (reported on a 1099-MISC Form). Settlement, § 8.8. The  
19 Settlement Administrator shall deduct employee side payroll taxes from the portion of the  
20 settlement check allocated to wages. *Id.* Half of the Employer’s payroll taxes are to be paid from  
21 the Gross Settlement Amount and half are to be paid by Sephora in addition to the Gross

---

22  
23 <sup>20</sup> Class Members could not opt out of the receiving the PAGA payment or the release of PAGA claims set forth  
in the Settlement. Settlement, § 9.6.

24 <sup>21</sup> Settlement, § 3.14 (“The Court’s Final Approval Order ‘becomes final’ upon the last to occur of the  
25 following: (a) the date of final affirmance on appeal of the Judgment; (b) the date of final dismissal of any appeal from  
the Judgment or the final dismissal of any proceeding to review the Judgment; or (c) if no appeal is filed, the expiration  
date of the time for the filing or noticing of any appeal from the Court’s Judgment.”).

26 <sup>22</sup> Settlement, § 10.6. *See* e.g. <https://legalaidatwork.org/our-programs/combating-wage-theft/> [last visited  
March 14, 2022].

27 <sup>23</sup> *See* Cal. Code of Civ. Proc. § 384 [Requiring funds from uncashed checks to be paid as *cy pres* to “nonprofit  
28 organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote  
the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to  
nonprofit organizations providing civil legal services to the indigent.”].



1 Settlement Amount. Settlement, § 8.6.

2 The settlement provides that the Court shall retain jurisdiction over the matter following  
3 final approval to enforce the settlement terms. Settlement, § 15.7.

4 **C. THE RELEASE**

5 The Settlement provides Defendants with an appropriately tailored limited release of claims  
6 from Plaintiffs and those Class Members who did not opt out (referred to as “Settlement Class  
7 Members”). Such will release “all wage and hour class claims which were or could have been  
8 brought based on the factual allegations contained in the Complaint(s) filed in the Lawsuit.”  
9 *Settlement*, § 11.1 [“Settlement Class Member Released Claims”], § 11.2 [“Class Representatives  
10 Released Claims”].

11 **D. SUMMARY OF SETTLEMENT ADMINISTRATION**

12 The comprehensive notice program described in the Settlement has now been completed.  
13 On January 6, 2022, CPT received a class data file from Defense Counsel that contained names,  
14 last known mailing addresses, phone numbers, Social Security numbers and each employee’s  
15 number of workweeks. The finalized class list contained 13,908 Class Members. *See Exhibit “2”*  
16 [CPT Decl.], ¶ 5.

17 On January 17, 2022, CPT conducted a National Change of Address (NCOA) search in an  
18 attempt to update the class list of addresses for all Settlement Class Members who moved in the  
19 previous four years and notified the U.S. Postal Service of a change of address. As a result search,  
20 CPT was able to locate 2,118 updated addresses for Class Members. CPT Decl., ¶ 6.

21 On January 20, 2022, CPT mailed Notice Packets to all 13,908 Class Members. CPT Decl.,  
22 ¶ 7. Following the mailing, 1,228 Notice Packets were returned undeliverable by the Post Office,  
23 of which 55 included a forwarding address. For those Notice Packets with a forwarding address,  
24 CPT immediately re-mailed those Notice Packets to the forwarding address upon receipt. CPT  
25 performed a Skip Trace on all returned mail with no forwarding addresses in an effort to locate a  
26 better address using Accurint, one of the most comprehensive address databases available. CPT  
27 Decl., ¶ 7. CPT Group was received updated addresses directly from Class Members or through  
28

1 Class Counsel.

2 These efforts were successful. A total of 1,149 of the returned Notice Packets were re-  
3 mailed and, as of March 11, 2022, there were only 123 Notice Packets still undeliverable. CPT  
4 Decl., ¶ 9.

5 Pursuant to the Settlement, and as explained in the Notice Packet and on the settlement  
6 website, Class Members had until March 6, 2022 to submit objections, disputes and/or requests for  
7 exclusion. CPT Decl., ¶ 10.<sup>24</sup>

8 The Class Members' response overwhelming supports final approval of the Settlement.  
9 **There were no written objections to the settlement, no disputes from a Class Member**  
10 **regarding their workweeks, and just 19 timely and valid written requests for exclusions.**<sup>25</sup>

11 This represents a 99.86% participation rate (13,889/13,908). Allen Decl., ¶ 34.

12 If the Settlement receives final approval, the Class Members will split \$7,527,994.63, with  
13 an average payment of approximately \$542.01 and a maximum payment of approximately  
14 \$3,693.56.

#### 15 **IV. FINAL APPROVAL OF THE CLASS SETTLEMENT IS WARRANTED**

##### 16 **A. STANDARD FOR FINAL SETTLEMENT APPROVAL**

17 A class action may not be dismissed, compromised or settled without Court approval. Cal.  
18 Civ. Code § 1781(f); Cal. Rules of Ct. [hereinafter C.R.C.] Rule 3.769(a). This requirement is  
19 intended to prevent fraud, collusion, and/or unfairness to the class. *Dunk v. Ford Motor Co.* (1996)  
20 48 Cal.App.4th 1794, 1800-01. The decision to approve or reject a proposed settlement is  
21 committed to the Court's sound discretion. Therefore, judicial review is "limited to a determination  
22 whether the record shows 'a clear abuse of discretion.'" *Wershba v. Apple Computer, Inc.* (2001)  
23 91 Cal.App.4th 224, 234-35. In general, courts have discretion to determine whether a settlement is  
24

---

25 <sup>24</sup> Class Members who had questions not otherwise answered by the Notice paperwork could call a toll-free  
26 phone number or review the information and documents available on the dedicated website established by CPT, i.e.  
[www.cptgroupcaseinfo.com/SephoraWageandHourClassAction](http://www.cptgroupcaseinfo.com/SephoraWageandHourClassAction) (last visited March 14, 2022). CPT Decl., ¶ 16. Class  
27 Members could also contact Class Counsel with questions, and many did.

28 <sup>25</sup> There was 1 request for exclusion that was deficient. A cure of deficiency letter was sent to the class member  
and they had until January 10, 2022 to cure the deficiency. The Class Member did not cure the deficiency so the  
request for exclusion was deemed invalid. CPT Decl., ¶ 13.

1 within the range of reasonableness, whether notice to the class is adequate, whether class  
2 certification is proper, and whether the attorney fee award is proper. *Id.*; *see also, Dunk, supra*, 48  
3 Cal.App.4th at 1802. “Commonly accepted procedure calls for (1) preliminary approval of the  
4 proposed settlement at an informal hearing, (2) notice to class members of the proposed settlement  
5 and of their rights with respect thereto, and (3) a formal hearing on the fairness of the proposed  
6 settlement, where class members voice their support for or objection to the settlement, also known  
7 as a final approval hearing or ‘final fairness’ hearing.” *Manual for Complex Litigation, Fourth*, §  
8 21.63, 447, 447-50 (4th ed. 2004) [hereinafter “MCL”].

9 **B. THE SETTLEMENT IS WITHIN THE RANGE OF REASONABLENESS**

10 In determining whether the Settlement is within the “range of reasonableness” the Court  
11 must consider several factors including: (1) the strengths of plaintiff’s case, (2) the risks, expenses,  
12 complexity, and likely duration of further litigation, (3) the risk of maintaining class action status  
13 throughout trial, (4) the Settlement amount, (5) the extent of completed discovery, (6) the stage of  
14 the proceedings, (7) counsel’s experience and views of the Settlement, and (8) the reaction of the  
15 class members to the Settlement. *Alberto v. GMRJ Inc.* (E.D.Cal. 2008) 252 F.R.D. 652, 664-65  
16 (quoting *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026); *see also* 5 James Wm.  
17 Moore, *et al.*, *Moore’s Federal Practice*, § 23.85(3) (3d ed. 1997) 23.353-4. “It is the settlement  
18 taken as a whole, rather than the individual component parts, that must be examined for overall  
19 fairness.” *Hanlon*, 150 F.3d at 1026 (citing *Officers for Justice v. Civ. Serv. Comm’n of SF* (9th Cir.  
20 1982) 688 F.2d 615, 682).

21 A court is permitted to presume that a Settlement is fair where (1) the settlement is  
22 reached through arm’s-length bargaining, (2) investigation and discovery are sufficient to allow  
23 counsel and the Court to act intelligently, (3) counsel is experienced in similar litigation, and (4)  
24 the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802; *see also Wershba*, 91  
25 Cal.App.4th at 245.

26 Prior to granting preliminary approval, the Court was provided with sufficient information  
27  
28

1 to satisfy three of the four so-called *Dunk* factors,<sup>26</sup> leaving the fourth factor, the number of  
2 objectors, unknown until after the Class had an opportunity to respond to the Settlement as  
3 explained in the Class Notice. Subject only to the Class’s reaction to the Settlement, the Court  
4 preliminarily presumed the Settlement was fair, adequate, and reasonable.

5 Following dissemination of the Class Notice (which disclosed the fees, costs and awards  
6 being requested by Counsel, Plaintiffs, and the Administrator) and adequate time provided to the  
7 Class to object to the Settlement, no Class Members objected to the Settlement and just 19 of the  
8 Class Members requested exclusion. CPT Decl., ¶¶ 11, 13. Accordingly, the proposed Settlement is  
9 entitled to the presumption it is fair and in all other respects proper and should be finally approved

10 “[T]he court bears the ultimate responsibility to ensure the reasonableness of the settlement  
11 terms. Although many factors must be considered in making this determination, and the court is  
12 not required to decide the ultimate merits of the class members’ claims before approving a  
13 proposed settlement, an informed evaluation cannot be made without an understanding of the  
14 amount that is in controversy and the realistic range of outcomes of the litigation.” *Kullar v. Foot  
15 Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.

16 Class Counsel has satisfied the so called “*Kullar* standard” through providing the Court  
17 with a detailed exposure analysis describing the maximum potential exposure on each cause of  
18 action being released by the proposed Settlement, the associated various risks and discounts being  
19 applied thereto, as well as the underlying legal and factual support for each contention.<sup>27</sup>

20 When weighed against these risks, the Settlement’s ability to secure a guaranteed money  
21 payment to 13,908 Class Members for a limited release of wage and hour claims strongly supports  
22 final approval. Based on the totality of the circumstances, Class Counsel believe that the settlement  
23 is a fair, adequate, and reasonable resolution of Plaintiffs’ claims on behalf of the Settlement Class.  
24 Allen Decl., ¶ 42.

25  
26  
27 <sup>26</sup> See Coordinated Plaintiffs’ Notice of Motion for Preliminary Approval of Class Action Settlement [filed July  
23, 2021], pp. 21-22.

28 <sup>27</sup> See *Supplemental* Brief in Support of Coordinated Plaintiffs’ Motion for Preliminary Approval of Class  
Action Settlement [filed November 15, 2021].

1           **C. THE SETTLEMENT’S RELEASE IS APPROPRIATELY LIMITED**

2           The released claims share a reasonable nexus with the alleged violations in both substance  
3 and time. “Any attempt to include in a class settlement terms which are outside the scope of the  
4 operative complaint should be closely scrutinized by the trial court to determine if the plaintiff  
5 genuinely contests those issues and adequately represents the class.” *Trotsky v. Los Angeles Fed.*  
6 *Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.

7           Here, the class-wide release is anchored in the operative complaint and narrowly tailored in  
8 scope, both in terms of the governed claims and time period. It purports to release “all wage and  
9 hour class claims which were or could have been brought based on the factual allegations contained  
10 in the Complaint(s) filed in the Lawsuit” *See* Settlement, § 11.1.<sup>28</sup> The Released Claims “expressly  
11 exclude all unrelated claims including but not limited to claims for retaliation, discrimination,  
12 unemployment insurance, disability, workers’ compensation, and claims outside the Class Period.”  
13 *Id.*

14           **V. THE CLAIMS ADMINISTRATION COSTS ARE REASONABLE**

15           Class Counsel asks the Court approve a \$70,000.00 payment from the Settlement Amount  
16 to CPT Group, Inc. (“CPT”) for its fees and costs administering the Settlement.<sup>29</sup> This is  
17 reasonable for the services provided by CPT administering the Settlement which included  
18 providing written notice to 13,908 Class Members, gathering and processing their responses,  
19 collecting payments from Defendant, establishing a website where Class Members could view  
20 settlement related documents and important dates in the case,<sup>30</sup> establishing a toll free number for  
21 Class Members who had questions, making all distributions as set forth in the Settlement  
22 (including a “redistribution” of unclaimed funds prior to turning money over to the Court approved  
23 *cy pres*) and filing multiple years of tax returns. The services provided by the Claims Administrator  
24 are set forth fully in Declaration of Jeremy Talavera on Behalf of CPT Group, Inc., attached as  
25 **Exhibit “2”** to the Allen Decl.

26 \_\_\_\_\_  
27 <sup>28</sup> Class Members that do not negotiate their Settlement Payment checks do not release any claims under the  
28 federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 216 *et seq.* Settlement, § 11.1.1.

<sup>29</sup> Settlement, § 3.5.

<sup>30</sup> [www.cptgroupcaseinfo.com/sephorawageandhourclassaction.com](http://www.cptgroupcaseinfo.com/sephorawageandhourclassaction.com)

1           **VI. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

2           The payment of \$375,000 (i.e., 75% of \$500,000) to the LWDA for its share of the  
3 applicable penalties claimed under the California Labor Code’s Private Attorney General Act of  
4 2004, as amended (“PAGA”), is reasonable under the circumstances. *See* Cal. Lab. Code §§ 2698  
5 *et seq.* The Parties negotiated a good faith amount to the LWDA. The sum to be paid to the LWDA  
6 was not the result of self-interest at the expense of other Class Members. The LWDA was provided  
7 notice of the Settlement and has not responded or otherwise objected to the Settlement. *See* Decl.  
8 of Jose Patino iso of Plaintiffs’ Motion for Preliminary Approval (filed November 16, 2021), ¶¶ 7-  
9 11; Allen Decl., ¶¶ 44-45. Plaintiffs respectfully request that the Court finally approve the  
10 \$500,000.00 allocation towards the PAGA release.


11           **VII. CONCLUSION**

12           For all of the foregoing reasons, Plaintiffs respectfully requests that this Court enter an  
13 Order granting Plaintiff’s Motion for Final Approval of the Settlement and Plaintiffs’ Motion for  
14 Fees, Costs, and Service Awards (filed February 14, 2022).

15           Plaintiffs further request that the Court set a final accounting hearing for on or after May  
16 11, 2023 by which time the funds from uncashed Class Member settlement checks issued via the  
17 redistribution (*see* Settlement, § 10.6) shall have been voided and those funds turned over to the  
18 Court approved *cy pres*.<sup>31</sup>

19 Dated: March 14, 2022

**ALLEN ATTORNEY GROUP PC**

20  
21           By   
22           \_\_\_\_\_  
23           KEVIN R. ALLEN  
24           Attorneys for Plaintiff Rose Provencio and the Certified Class  
25  
26  
27

28           <sup>31</sup> *See* Allen Decl., ¶ 46.