

FILED
LOS ANGELES SUPERIOR COURT

SEP 14 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY N. Navarro Deputy
NANCY NAVARRO

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ELIZABETH OCHOA, MONICA
VELAZQUEZ, and CRYSTAL FREGOSO,
on behalf of themselves and others similarly
Situating,

Plaintiffs,

v.

L BRANDS, INC.; LIMITED BRANDS,
INC.; THE LIMITED, INC.; VICTORIA'S
SECRET STORES, LLC; and DOES 1 to
100, Inclusive,

Defendants.

Case No.: BC661822

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

I. BACKGROUND

Plaintiffs Elizabeth Ochoa, Monica Velazquez, and Crystal Fregoso sue their former employer, Defendant Victoria's Secret Stores, LLC ("Defendant" or "VSS") for alleged wage and hour violations. Defendant retails apparel and accessories for

1 women. Plaintiffs seek to represent a class of Defendant's current and former non-
2 exempt employees.

3 The case has a lengthy history. On January 3, 2017, Plaintiff Ochoa filed her
4 initial class action complaint against Defendants VSS, L Brands, Inc. Limited Brands,
5 Inc. and The Limited, Inc. (the "*Ochoa Action*"). On March 14, 2017, Plaintiff Ochoa
6 filed a First Amended Complaint. On April 26, 2017, pursuant to the parties'
7 stipulation, the Court entered an order dismissing Defendants L Brands, Inc. Limited
8 Brands, Inc. and The Limited, Inc.

9 On May 30, 2018, the Parties attended a mediation session with Judge Carl J.
10 West (Ret.) but were unable to reach a resolution of the action.

11 On August 9, 2019, Defendant filed a Motion for Summary Judgment or In The
12 Alternative, Summary Adjudication. On March 16, 2020, the Court entered an order
13 granting in part and denying in part Defendant's Motion for Summary Judgment. The
14 Court found in Defendant's favor on Plaintiff's regular rate, wage statement, and
15 waiting time penalty claims, but found that disputed issues of material fact prevented
16 summary adjudication of Plaintiff's meal, rest, and PAGA claims.

17 On February 24, 2020, Plaintiffs Velazquez and Fregoso filed a separate action
18 against Defendants VSS, L Brands, Inc., Limited Brands, Inc., and The Limited, Inc.
19 (Case No. 20STCV07091) (the "*Velazquez Action*"). On March 3, 2020, Plaintiffs
20 Velazquez and Fregoso filed a First Amended Complaint in the *Velazquez Action*. On
21 April 16, 2020, Defendants removed the *Velasquez Action* to the United States District
22 Court, Central District of California. On June 5, 2020, the Court entered an order
23 staying the *Velasquez Action* in light of the *Ochoa Action* and other prior pending
24 actions asserting overlapping claims.

1 On February 18, 2021, the parties to the *Ochoa* and *Velasquez* Actions
2 participated in the second full-day mediation session in the case with Jeff Ross, which
3 resulted in settlement. The terms were finalized in a *Class Action Settlement*
4 *Agreement* (“Settlement Agreement”), a copy of which is attached to the Declaration of
5 Joseph Lavi (“Lavi Decl.”) filed December 30, 2021 as Exhibit 1.

6 On January 14, 2022, the Court issued a “checklist” to the parties pertaining to
7 deficiencies in the proposed settlement. In response, the parties filed further briefing.
8 In addition and in order to effectuate the terms of the settlement, Plaintiff Ochoa agreed
9 to amend the operative complaint to add Plaintiffs Velasquez and Fregoso and certain
10 additional claims.

11 On May 17, 2022, Plaintiffs filed the Second Amended Complaint, alleging
12 causes of action for: (1) failure to pay wages for all time worked at minimum wage
13 (Labor Code §§ 1194, 1197); (2) failure to pay proper overtime wages for daily
14 overtime worked, all hours worked, and failure to include bonus pay in calculating
15 overtime wages (Labor Code §§ 510, 1194, 1198); (3) failure to authorize or permit
16 meal periods (Labor Code §§ 226.7, 512); (4) failure to authorize or permit rest periods
17 (Labor Code § 226.7); (5) failure to provide complete and accurate wage statements
18 (Labor Code § 226); (6) failure to timely pay all earned wages and final paychecks due
19 at time of separation of employment (Labor Code §§ 201, 202, 203); (7) unfair business
20 practices (Bus. & Prof. Code § 17200, et seq.); and (8) civil penalties pursuant to the
21 Private Attorney General Act of 2004 (“PAGA”) (Labor Code § 2698, et seq.).

22 An Amended Settlement Agreement attached to the Declaration of Melissa A.
23 Huether as Exhibit 3 was filed June 10, 2022.
24
25

1 Plaintiff's motion for preliminary approval came on for hearing July 5, 2022 and
2 the Court and counsel discussed certain issues, set forth in the Court's minute order of
3 July 5, 2022.

4 The matter was continued to September 8, 2022, with plaintiffs' counsel filing
5 additional information by supplemental declaration on August 16, 2022 and a Second
6 Amended Settlement Agreement attached to the Declaration of Melissa A. Huether as
7 Exhibit 3. All references below are to that agreement. .

8 Oral argument was heard September 8, 2022. For the reasons set forth below the
9 motion for preliminary approval of the settlement attached to the Declaration of Melissa
10 A. Huether as Exhibit 3 and filed August 16, 2022 is granted.

11 **II. THE TERMS OF THE SETTLEMENT**

12 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

13 "Settlement Class" means: All non-exempt employees employed by Defendant
14 Victoria's Secret Stores, LLC in California at any time between January 3, 2013 and
15 May 26, 2021. (§7.a)

16 "PAGA Group" means: All non-exempt employees employed by Defendant
17 Victoria's Secret Stores, LLC in California at any time between January 3, 2016 and
18 May 26, 2021. (§7.b)

19 Persons Expressly Excluded From the Settlement Class: Any person who
20 previously settled or released all of the claims covered by this settlement, any person
21 who previously was paid or received awards through civil or administrative actions for
22 all of the claims covered by this settlement, and/or any person who excludes him or
23 herself from the Settlement Class pursuant to this Settlement Agreement, shall not be a
24 member of the Settlement Class. (§7.c)
25

1
2 **B. THE MONETARY TERMS OF SETTLEMENT**

3 The essential monetary terms are as follows:

4 The Maximum Settlement Amount is **\$5,000,000** (¶11.a). This includes payment
5 of a PAGA penalty of **\$500,000** to be paid 75% to the LWDA (\$375,000) and 25% to
6 PAGA Group Members (\$125,000) (¶11.d).

7 The Net Settlement Amount (“Net”) (**\$2,599,000**) is the GSA less:

- 8 ○ Up to **\$1,665,000** (33.3%) for attorney fees (¶11.b);
- 9 ○ Up to **\$41,000** for attorney costs (*Ibid.*);
- 10 ○ Up to **\$13,500 total** [\$7,500 to Plaintiff Ochoa; \$3,000 each to Plaintiffs
11 Velazquez and Fregoso] for service awards to Plaintiffs (¶11.c); and
- 12 ○ Up to **\$155,000** for settlement administration costs (¶11.a).
- 13 ● Employer-side payroll taxes will be paid by Defendant in addition to the
14 Maximum Settlement Amount (¶11.a.2).
- 15 ● Assuming the Court approves all maximum requested deductions, approximately
16 \$2,625,500 will be available for automatic distribution to participating class
17 members. Assuming full participation, the average settlement share will be
18 approximately \$53.62. ($\$2,625,500 \text{ Net} \div 48,957 \text{ class members} = \53.62). In
19 addition, each PAGA Group Member will receive a portion of the PAGA
20 penalty, estimated to be \$3.85 per PAGA Group Member. ($\$125,000 \text{ or } 25\% \text{ of}$
21 $\$500,000 \text{ PAGA penalty} \div 32,400 \text{ PAGA Group Members} = \3.85).
- 22 ● There is no Claim Requirement (¶11.a).
- 23 ● The settlement is not reversionary (¶11.a).
- 24 ● Individual Settlement Share Calculation: Each Settlement Class Member’s
25 “Individual Settlement Award” shall equal the Settlement Class Member’s

1 number of workweeks worked during the applicable class period divided by the
2 total workweeks worked by all Settlement Class Members during the applicable
3 class period, multiplied by the Settlement Class Member Allocation. (¶14.c.1)

4 The amounts representing the Individual Settlement Awards of Settlement Class
5 Members who opt out of participating in the settlement will remain a part of the
6 Settlement Class Member Allocation and be distributed to Settlement Class
7 Members who have not opted out. Thus, the total of all Individual Settlement
8 Awards necessarily will equal the Settlement Class Member Allocation.

9 (¶14.c.1.i)

- 10 ○ PAGA Group Member's Individual PAGA Payments: In addition to any
11 Individual Settlement Award, each PAGA Group Member's Individual
12 PAGA Payment shall equal the PAGA Group Member's number of
13 workweeks worked during the PAGA Group Period divided by the total
14 number of workweeks worked by all PAGA Group Members during the
15 PAGA Group Period, multiplied by the PAGA Group Share. (¶14.c.2)
- 16 ● Tax Withholdings: 33% as wages, 33% as interest, 34% as penalties (¶14.c.5).
- 17 ● Uncashed Settlement Payment Checks: All checks issued by the Claims
18 Administrator will be valid for a period of one hundred eighty (180) days
19 following issuance by the Claims Administrator, after which they will become
20 void. Should there remain uncashed checks thirty (30) days following issuance,
21 the Claims Administrator will mail a postcard to each holder of an uncashed
22 check to remind them to cash the funds before the void date. Following the void
23 date, and pursuant to California Code of Civil Procedure § 384, the Claims
24 Administrator will cause the aggregate sum represented by those uncashed
25

1 checks to be transmitted to the California State Controller's Office's Unclaimed
2 Property Division in the name of the Settlement Class Members. (§14.d)

- 3 • Funding and Distribution: Defendant will fund a qualified settlement fund
4 established by the Claims Administrator no later than fourteen (14) days after
5 Court grants final approval to the Settlement. (§21.b) Net payments to Settlement
6 Class Members (including any Court-approved incentive awards to Plaintiffs),
7 payment to Settlement Class Counsel for Court-approved attorneys' fees and
8 costs, payment to PAGA Group Members, and payment to the Claims
9 Administrator for all settlement administration expenses shall be made no later
10 than five (5) business days after the Effective Date. (§21.a)

11 12 **C. TERMS OF RELEASES**

- 13 • Released Claims by Settlement Class Members: As of the Effective Date, or at
14 the time that Defendant fully funds the Settlement Amount (including its share
15 of payroll taxes) whichever occurs later, all Settlement Class Members who did
16 not submit a valid request for exclusion release Defendant (i.e., Victoria's Secret
17 Stores, LLC) and each of its respective past, present and future owners,
18 stockholders, members, all present and former parent corporations, related or
19 affiliated companies and agents, including Victoria's Secret & Co., L Brands,
20 Inc. (now known as Bath & Body Works, Inc.), and their current and former
21 subsidiaries and affiliates (including the L Brands Defendants, Limited Brands
22 Sourcing, Inc., and Limited Brands Direct Holding, Inc.), officers, directors,
23 shareholders, exempt employees, agents, principals, heirs, representatives,
24 accountants, attorneys, auditors, consultants, insurers and re-insurers, and their
25 respective successors and predecessors in interest, each of their company-

1 sponsored employee benefit plans of any nature (including, without limitation,
2 profit-sharing plans, pension plans, 401(k) plans, and severance plans), and all of
3 their respective officers, directors, employees, administrators, fiduciaries,
4 trustees and agents, and any individual or entity that could be jointly liable with
5 Defendant (collectively, the “Releasees”) from the “Released Claims.” The
6 “Released Claims” shall consist of the “Released Class Claims” and the
7 “Released PAGA Claims,” as defined. (¶23.)

- 8 • For purposes of this Settlement Agreement, the “Released Class Claims” are
9 defined as: All claims, demands, rights, liabilities, and causes of action that were
10 asserted in the operative Second Amended Complaint on behalf of the
11 Settlement Class Members, or could have been asserted on behalf of the
12 Settlement Class Members because they reasonably arise out of the same set of
13 operative facts as alleged in the operative Second Amended Complaint, pursuant
14 California Labor Code §§ 201-204, 223, 226, 226.3, 226.7, 510, 512, 515, 558,
15 1174, 1194, 1197, 1198, 1199, IWC Wage Order 7-2001, Cal. Code Regs. Tit. 8,
16 § 11070, Cal. Bus. & Prof. Code § 17200, et seq. (“Section 17200”) as to the
17 Labor Code provisions and causes of action identified in this paragraph, and any
18 similar claims under the Fair Labor Standards Act (including under 29 U.S.
19 Code § 216(b)), whether for allegedly unpaid wages, damages, liquidated
20 damages, penalties, attorneys’ fees and costs as to the Labor Code provisions
21 and causes of action identified in this paragraph (including, but not limited to,
22 attorneys’ fees and costs pursuant to Labor Code §§ 218.5, 1193.6, Code of Civil
23 Procedure § 1021.5), or interest arising out of the claims at issue, including, but
24 not limited to: causes of action based on, or reasonably relating to, alleged
25 failures to provide uninterrupted and duty-free meal periods and rest breaks of

1 the requisite duration; alleged failures to provide “separate rest break” pay;
2 alleged failures to pay meal period and rest break premiums, including at the
3 proper rate; alleged failures to pay overtime wages, including by failing to
4 account for bonuses / incentives in the “regular rate” for overtime purposes;
5 alleged failures to pay for all hours worked (e.g., permitting off-the-clock work),
6 including during security checks and for pre-/post-shift work or time incurred;
7 alleged failures to pay associates the applicable minimum wage; alleged failures
8 to pay reporting time pay; alleged failures to provide accurate wage statements;
9 alleged failures to maintain accurate records, alleged failures to pay all wages
10 owing at termination; and alleged unlawful, unfair, and/or fraudulent business
11 acts or practices within the meaning of Section 17200. (*Ibid.*)

- 12 • PAGA Release: For purposes of this Settlement Agreement, the “Released
13 PAGA Claims” are defined as: All claims, demands, rights, liabilities, and
14 causes of action that were set forth in the operative LWDA notice letter dated
15 February 28, 2022, or reasonably arise out of the same set of operative facts as
16 set forth in that LWDA notice letter dated February 28, 2022, that were asserted,
17 or could have been asserted, pursuant to the California Labor Code Private
18 Attorneys General Act of 2004, Cal. Lab. Code § 2698, et seq. (“PAGA”) based
19 on alleged underlying California Labor Code violations of §§ 201-204, 223, 226,
20 226.3, 226.7, 510, 512, 515, 1174, 1194, 1197, 1197.1, 1198, IWC Wage Order
21 7-2001 (including Wage Order 7-2001(14)(A) and (B)), Cal. Code Regs. Tit. 8, §
22 11070, whether for civil penalties (including, but not limited to, claims for
23 penalties pursuant to Labor Code §§ 218, 225.5, 226, 210, 226.3, 256, 558, 515,
24 1174.5, 1197.1, 1199, 2699(f), 2699.3, 2699.5), attorneys’ fees, and/or costs
25 (including, but not limited to, attorneys’ fees and costs pursuant to Labor Code

1 §§ 218.5, 1193.6, 2699(g), Code of Civil Procedure § 1021.5), or interest arising
2 out of the claims at issue, including, but not limited to: causes of action based
3 on, or reasonably related to, alleged failures to provide uninterrupted and duty-
4 free meal periods and rest breaks of the requisite duration; alleged failures to
5 provide “separate rest break” pay; alleged failures to pay meal period and rest
6 break premiums, including at the proper rate; alleged failures to pay overtime
7 wages, including by failing to account for bonuses / incentives in the “regular
8 rate” for overtime purposes; alleged failures to pay for all hours worked (e.g.,
9 permitting off-the-clock work), including during security checks and for pre-
10 /post-shift work or time incurred; alleged failures to pay associates the applicable
11 minimum wage; alleged failures to pay reporting time pay; alleged failures to
12 provide accurate wage statements; alleged failures to maintain accurate records,
13 alleged failures to pay all wages owing at termination; and alleged failures to
14 provide suitable seating. (§23)

- 15 ○ In the event that a Settlement Class Member, who is also a member of the
16 PAGA Group, opts out of the Settlement, the Settlement Class Member
17 will remain a member of the PAGA Group, receive a share of the PAGA
18 settlement, and release the Released PAGA Claims. (*Ibid.*)
- 19 ● The releases are effective as of the Effective Date (§21.a), or at the time that
20 Defendant fully funds the Settlement Amount (including its share of payroll
21 taxes) whichever occurs later. Defendant will fund a qualified settlement fund
22 established by the Claims Administrator no later than fourteen (14) days after
23 Court grants final approval to the Settlement. (§21.b)

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1 **D. SETTLEMENT ADMINISTRATION**

2 • The proposed Settlement Administrator is CPT Group, Inc., which has provided
3 evidence that no counsel are affiliated with it and that it has adequate procedures
4 in place to safeguard the data and funds to be entrusted to it. (See Declaration of
5 Julie Green dated December 22, 2021, attached to Lavi Declaration filed
6 December 30, 2021.)

7 • Settlement administration costs are estimated to be \$155,000. (Huether Decl. of
8 June 10, 2022 ¶12.)

9 • Notice: The manner of giving notice is described below.

10 • Opt Out/Objection Dates: Class Members will have 45 days after the Notice is
11 mailed to submit requests for exclusion (¶9.a), written objections (¶18), or
12 workweek disputes (¶13.d) to the Settlement Administrator.

13 ○ Notwithstanding anything to the contrary in this Settlement Agreement,
14 PAGA Group Members shall have no right to exclude themselves from the
15 PAGA Group, because Plaintiffs are settling the PAGA claims as proxies
16 for the LWDA on behalf of the State of California. (¶9.b)

17 ○ If the total number of persons who opt-out of the Settlement Class on a
18 timely basis is equal to or in excess of ten percent (10%) of the number of
19 persons to whom Notices are mailed, Defendant shall have the option, in its
20 sole and absolute discretion to void the Settlement Agreement. (¶10)

21 • Notice of Final Judgment will be posted on the administrator’s website (Notice pg.
22 8).

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1 **E. OTHER MATERIAL SETTLEMENT TERMS**

2 As a material term of this settlement, Plaintiffs Velazquez and Fregoso shall
3 dismiss the *Velazquez/Fregoso* Lawsuit within five (5) days after filing the amended
4 complaint contemplated by Paragraph 3 of the Settlement Agreement. (¶4)

5
6 **III. SETTLEMENT STANDARDS AND PROCEDURE**

7 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
8 of an entire class action, or of a cause of action in a class action, or as to a party,
9 requires the approval of the court after hearing.” “Any party to a settlement agreement
10 may serve and file a written notice of motion for preliminary approval of the settlement.
11 The settlement agreement and proposed notice to class members must be filed with the
12 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
13 Court, rule 3.769(c).

14 “In a class action lawsuit, the court undertakes the responsibility to assess
15 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
16 dismissal of a class action. The purpose of the requirement [of court review] is the
17 protection of those class members, including the named plaintiffs, whose rights may not
18 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
19 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
20 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
21 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
22 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
23 agreement to the extent necessary to reach a reasoned judgment that the agreement is
24 not the product of fraud or overreaching by, or collusion between, the negotiating
25

1 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
2 concerned.”] [internal quotation marks omitted].

3 “The burden is on the proponent of the settlement to show that it is fair and
4 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
5 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
6 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
7 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
8 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

9 Notwithstanding an initial presumption of fairness, “the court should not give
10 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
11 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
12 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
13 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
14 members, the court must independently and objectively analyze the evidence and
15 circumstances before it in order to determine whether the settlement is in the best
16 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
17 In that determination, the court should consider factors such as “the strength of
18 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
19 the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and stage of the proceedings, the
21 experience and views of counsel, the presence of a governmental participant, and the
22 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
23 factors is not exclusive and the court is free to engage in a balancing and weighing of
24 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
25 245.

1 At the same time, “[a] settlement need not obtain 100 percent of the damages
2 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
3 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
4 substantially narrower than it would be if the suits were to be successfully litigated,’
5 this is no bar to a class settlement because ‘the public interest may indeed be served by
6 a voluntary settlement in which each side gives ground in the interest of avoiding
7 litigation.’” *Id.* at 250.

8 9 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

10 11 **A. THERE IS A PRESUMPTION OF FAIRNESS**

12 The settlement is entitled to a presumption of fairness for the following reasons:

13 14 **1. The settlement was reached through arm’s-length bargaining**

15 On May 30, 2018, the parties in the *Ochoa* Action attended a mediation session
16 with Judge Carl J. West (Ret.) but were unable to reach a resolution. (Declaration of
17 Joseph Lavi (“Lavi Decl.”) ¶7.) On February 18, 2021, the Parties to the *Ochoa* Action
18 and the *Velasquez* Action participated in the second full-day mediation session in the
19 case with Jeff Ross, which resulted in settlement. (*Id.* at ¶11.)

20 21 **2. The investigation and discovery were sufficient**

22 Class Counsel represents that prior to mediation, the parties engaged in formal
23 discovery, including party depositions, interrogatories, and the production of
24 documents, including Defendants’ written policies. In addition, the parties engaged in
25 an informal discovery exchange which included: (1) the number of current and former

1 putative class members up to that point in time; (2) a sampling of time and wage
2 records that consisted of such records for all putative class members for an entire
3 representative year (Plaintiffs chose 2017); (3) granular data regarding the total number
4 of shifts of varying lengths worked by putative class members; (4) the average rate of
5 pay; (5) meal and rest break certification data; (6) the number and dollar amount of
6 meal / rest break premiums paid to the putative class; and (7) the number of shifts
7 which qualified for a meal period or rest break, respectively. (*Id.* at ¶13.) Defendant
8 also provided metrics for the class members including how many class members there
9 were at varying months throughout the Class Period, the number of shifts worked for
10 varying lengths (such as shifts less than 3.5 hours, more than 5 hours, and between 6
11 and hour hours), and how many meal and rest period premiums and the amount of those
12 premiums were paid to employees in 2017. (*Id.* at ¶18.) Plaintiffs’ counsel analyzed
13 the data as well as Defendant’s relevant policies and procedures, employee handbooks,
14 California supplements to the employee handbook, discovery responses, and
15 information from other class members. (*Id.* at ¶13.)

16 Plaintiffs’ counsel asserts that Plaintiffs selected data from the year 2017 for the
17 purposes of analysis under the belief that it provided the “most optimal” representative
18 sample. (Huether Decl. dated June 10, 2022, ¶14.) Counsel represents that 2017: (1)
19 contained the largest amount of data for a single year, (2) was one of only three full
20 years in the class period that both pre-dated the COVID-19 pandemic, which caused
21 statewide store closures, and post-dated the *Casas v. Victoria’s Secret Stores, LLC, et*
22 *al.*, C.D. Cal. Case No. CV 14-6412-GW(VBKx) settlement, which resolved many of
23 the same claims at issue in this case, and (3) provided a sample of 13% of the individual
24 shifts from the Class Period. Plaintiffs believe 13% is a statistically significant data
25 sample for this volume of data and represents a margin of error of 5% with a 95%

1 confidence level. (*Id.* at ¶15; Huether Supp. Dec. dated August 16, 2022 at ¶9; Dec. of
2 Kirk Koenig dated August 16, 2022.)

3 The work done, together with the litigation in this matter, is sufficient to value
4 the case for settlement purposes.

5 6 **3. Counsel is experienced in similar litigation**

7 Class Counsel represent that they are experienced in class action litigation,
8 including wage and hour class actions. (*Id.* at ¶36; Declaration of David M. deRubertis
9 ¶18.)

10 **4. Percentage of the class objecting**

11 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
12 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
13 the court receive objections to the proposed settlement, it will consider and either sustain
14 or overrule them at the fairness hearing.”].

15 16 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 17 **FAIR, ADEQUATE, AND REASONABLE**

18 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
19 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
20 does when it approves a settlement as in good faith under Code of Civil Procedure
21 section 877.6, the court must at least satisfy itself that the class settlement is within the
22 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
23 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
24 consider and weigh the nature of the claim, the possible defenses, the situation of the
25 parties, and *the exercise of business judgment* in determining whether the proposed

1 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
2 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

3
4 **1. Amount Offered in Settlement**

5 The most important factor is the strength of the case for plaintiffs on the merits,
6 balanced against the amount offered in settlement.” (*Id.* at 130.)

7 Class Counsel estimated Defendant’s maximum exposure at \$9,484,824, based on
8 the following analysis:

9 Violation	Maximum Exposure
10 Unpaid Wages	\$3,889,470.00
11 Meal Period Violations	\$1,918,292.00
12 Rest Period Violations	\$677,062.00
13 Wage Statement Penalties 14 [disposed on Summary Adjudication]	None
15 Waiting Time Penalties 16 [disposed on Summary Adjudication]	None
17 PAGA Penalties	\$3,000,000.00
18 Total	\$9,484,824.00

19 (Lavi Decl. ¶¶ 18-34.)

20 Class Counsel obtained a gross settlement valued at \$5,000,000. This is
21 approximately 52.7% of Defendant’s maximum exposure and approximately 69% of the
22 value of the substantive claims for unpaid wages, meal period violations, and rest period
23 violations, after deducting the allocated PAGA payment. .

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2. The Risks of Future Litigation

1
2 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
3 motion practice and appeals) are also likely to prolong the litigation as well as any
4 recovery by the class members. Even if a class is certified, there is always a risk of
5 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
6 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
7 conducting class actions, which means, under suitable circumstances, entertaining
8 successive motions on certification if the court subsequently discovers that the propriety
9 of a class action is not appropriate.”].) Further, the settlement was negotiated and
10 endorsed by Class Counsel who, as indicated above, are experienced in class action
11 litigation. Based upon their investigation and analysis, the attorneys representing
12 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
13 adequate. (MPA at 5:13-15.)

14 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
15 which was sent a copy of the Amended Settlement Agreement on June 10, 2022 and has
16 not yet objected. (Huether Decl., Exhibit 10.) Any objection by it will be considered at
17 the final fairness hearing.

3. The Releases Are Limited

18
19
20 The Court has reviewed the Releases to be given by the absent class members and
21 the named plaintiffs. The releases, described above, are tailored to the pleadings and
22 release only those claims in the pleadings. There is no general release by the absent
23 class.

24 //

1 **4. Conclusion**

2 Class Counsel estimated Defendant’s maximum exposure at \$9,484,824. Class
3 Counsel obtained a gross settlement valued at \$5,000,000. This is approximately 69 % of
4 Defendant’s maximum exposure, excepting PAGA penalties which, given the uncertain
5 outcomes, including the potential that the class might not be certified, that liability is a
6 contested issue, and that the full amount of penalties would not necessarily be assessed
7 even if the class is certified and liability found, the settlement is within the “ballpark of
8 reasonableness.”

9
10 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

11 A detailed analysis of the elements required for class certification is not required,
12 but it is advisable to review each element when a class is being conditionally certified.

13 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
14 advocating class treatment must demonstrate the existence of an ascertainable and
15 sufficiently numerous class, a well-defined community of interest, and substantial
16 benefits from certification that render proceeding as a class superior to the alternatives.”
17 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

18 **1. The Proposed Class is Numerous**

19 There are 48,957 putative Class Members. (Declaration of Melissa A. Huether
20 (“Huether Decl.”) ¶12.) Numerosity is established. *Franchise Tax Bd. Limited*
21 *Liability Corp. Tax Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that the
22 “requirement that there be many parties to a class action is liberally construed,” and
23 citing examples wherein classes of as little as 10, *Bowles v. Superior Court* (1955) 44
24 Cal.2d 574, and 28, *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

1 **2. The Proposed Class Is Ascertainable**

2 “A class is ascertainable, as would support certification under statute
3 governing class actions generally, when it is defined in terms of objective
4 characteristics and common transactional facts that make the ultimate identification
5 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
6 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

7 The class is defined above. Class Members are ascertainable through
8 Defendant’s payroll records. (Lavi Decl. ¶18.)

9 **3. There Is A Community of Interest**

10 “The community of interest requirement involves three factors: ‘(1) predominant
11 common questions of law or fact; (2) class representatives with claims or defenses typical
12 of the class; and (3) class representatives who can adequately represent the class.’”
13 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

14 As to predominant questions of law or fact, Plaintiffs contend that common
15 questions of law and fact include, but are not limited to: (1) whether Defendant failed to
16 pay Class Members at the minimum wage; (2) whether Defendant failed to pay Class
17 Members at their overtime wage; (3) whether Defendant failed to provide the Class
18 Members meal period premium wages for missed meal periods; (4) whether Defendant
19 failed to provide the Class Members rest period premium wages for missed rest periods;
20 (5) whether Defendant failed to provide the Class Members complete and accurate wage
21 statements; (6) whether Class Members are entitled to waiting time penalties for
22 Defendant’s failure to pay all wages upon separation of employment; and (7) whether
23 Defendant violated Business and Professions Code section 17200. (MPA at 26:3-12.)

24 As to typicality, Plaintiffs contend that they suffered the same alleged violations
25 (e.g. failure to pay wages for all hours of work at the minimum and overtime wage rate,

1 failure to pay wages for all hours of work at the overtime wage rate, failure to include all
2 remuneration when calculating the overtime rate of pay and meal and rest period
3 premiums, failure to provide meal periods and meal period premium wages, failure to pay
4 rest period premium wages for missed and/or non-compliant rest periods, failure to
5 provide complete and accurate wage statements, and failure to pay all wages due upon
6 separation of employment) as the class as a whole. (MPA at 25:9-17.)

7 As to adequacy, each Plaintiff represents that she placed the interests of the class
8 before her own, has participated in the litigation, and is aware of the risks of serving as
9 class representative. (Declaration of Elizabeth Ochoa ¶¶ 6-8; Declaration of Monica
10 Velazquez ¶¶ 6-8; Declaration of Crystal Fregoso ¶¶ 6-8.) As previously stated, Class
11 Counsel have experience in class action litigation.

12 **4. Substantial Benefits Exist**

13
14 Given the relatively small size of the individual claims, a class action is superior to
15 separate actions by the class members.

16 17 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 18 **OF DUE PROCESS**

19 The purpose of notice is to provide due process to absent class members. A practical
20 approach is required, in which the circumstances of the case determine what forms of
21 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
22 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
23 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
24 stake of the individual class members; (4) the cost of notifying class members; (5) the
25

1 resources of the parties; (6) the possible prejudice to class members who do not receive
2 notice; and (7) the res judicata effect on class members.

3 **1. Method of class notice**

4 The parties agree that within fourteen (14) calendar days of execution of the
5 Court's order granting preliminary approval, Defendant will provide the Settlement
6 Class Members' and PAGA Group Members' information to the Claims Administrator
7 to the extent Defendant possesses such information and it has not already done so. Such
8 information shall include each Settlement Class Member's name, last known address,
9 last known home or mobile telephone number, dates of employment within the relevant
10 period, and Social Security Number. All such information and any other information
11 provided to the Claims Administrator by the Defendant regarding the Settlement Class
12 Members and the PAGA Group Members is confidential and shall not be disclosed to
13 anyone other than the Claims Administrator to protect those individuals' privacy rights.
14 Notwithstanding the foregoing, Settlement Class Counsel shall be entitled to
15 information sufficient to evaluate any Settlement Class Member workweek disputes.

16 (¶13.a)

17 Within forty-five (45) calendar days of preliminary approval of this Settlement
18 Agreement and Court approval of a settlement notice to the Settlement Class, the
19 Claims Administrator will mail the Notice to the Settlement Class Members via first
20 class United States Mail. (¶13.b)

21 Before the first mailing, the Claims Administrator will perform a National
22 Change of Address ("NCOA") search for the Settlement Class Members. The Claims
23 Administrator shall perform one skip trace as to any Notices that are returned by the
24 post office for invalid addresses within five (5) days of its receipt of such returned
25 Notice. Those Settlement Class Members who receive Notice pursuant to the one skip

1 trace shall be informed (via an insert in the Notice) that his or her time to submit a
2 request for exclusion to the Claims Administrator shall be forty-five (45) days after the
3 re-mailing. (¶13.c)

4 The Claims Administrator shall establish a website to be approved by both
5 parties that: (a) is operational from the date the Notice is mailed; (b) identifies
6 settlement-related deadlines; (c) and includes copies (available through hyperlink) of
7 this amended Settlement Agreement once filed; the revised Notice; Plaintiffs' motion
8 for attorneys' fees and costs; Plaintiffs' motion for service awards; motion for final
9 approval; and order of final approval and judgment. (¶13.c)

10 **2. Content of class notice.**

11 A copy of the proposed class notice is attached to the Settlement Agreement as
12 Exhibit A. The notice includes information such as: a summary of the litigation; the
13 nature of the settlement; the terms of the settlement agreement; the maximum
14 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
15 the enhancement award, and claims administration costs); the procedures and deadlines
16 for participating in, opting out of, or objecting to, the settlement; the consequences of
17 participating in, opting out of, or objecting to, the settlement; and the date, time, and
18 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). The parties
19 assert that English-only notice is sufficient because Class Members are required to
20 speak English as part of their job duties, which include interfacing with the public in a
21 retail environment. (Huether Decl. ¶5.)

22 **3. Settlement Administration Costs**

23 Settlement administration costs are estimated at **\$155,000**, including the cost of
24 notice (Huether Decl. ¶12). Prior to the time of the final fairness hearing, the settlement
25

1 administrator must submit a declaration attesting to the total costs incurred and
2 anticipated to be incurred to finalize the settlement for approval by the Court.

3
4 **E. ATTORNEY FEES AND COSTS**

5 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
6 implied, that has been entered into with respect to the payment of attorney fees or the
7 submission of an application for the approval of attorney fees must be set forth in full in
8 any application for approval of the dismissal or settlement of an action that has been
9 certified as a class action.”

10 Ultimately, the award of attorney fees is made by the court at the fairness
11 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
12 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
13 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
14 1132-1136. In common fund cases, the court may use the percentage method. If
15 sufficient information is provided a cross-check against the lodestar may be conducted.
16 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
17 agreement by the parties to the contrary, “the court ha[s] an independent right and
18 responsibility to review the attorney fee provision of the settlement agreement and
19 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
20 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

21 The question of class counsel’s entitlement to **\$1,665,000** (33.3%) in attorney
22 fees will be addressed at the final fairness hearing when class counsel brings a noticed
23 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
24 the court with current market tested hourly rate information and billing information so
25

1 that it can properly apply the lodestar method and must indicate what multiplier (if
2 applicable) is being sought.

3 Fee Split: Plaintiffs' counsel, Lavi & Ebrahimian LLP and the DeRubertis Law
4 Firm, assert that they entered into a fee split agreement in writing with Plaintiffs'
5 consent, though the percentage of the fee split was not disclosed to the Court. (Supp.
6 Brief at 15:20-23.)

7 Class counsel should also be prepared to justify the costs sought (capped at
8 **\$41,000**) by detailing how they were incurred.

9
10 **F. SERVICE AWARDS**

11 The Settlement Agreement provides for a service award of up to **\$7,500** for
12 Plaintiff Ochoa and **\$3,000 each** for Plaintiffs Velazquez and Fregoso (§11.c). Trial
13 courts should not sanction enhancement awards of thousands of dollars with "nothing
14 more than *pro forma* claims as to 'countless' hours expended, 'potential stigma' and
15 'potential risk.' Significantly more specificity, in the form of quantification of time and
16 effort expended on the litigation, and in the form of reasoned explanation of financial or
17 other risks incurred by the named plaintiffs, is required in order for the trial court to
18 conclude that an enhancement was 'necessary to induce [the named plaintiff] to
19 participate in the suit . . .'" *Clark v. American Residential Services LLC* (2009) 175
20 Cal.App.4th 785, 806-807, italics and ellipsis in original.

21 The Court will decide the issue of the enhancement award at the time of final
22 approval.

23 //

24 //

1 **V. CONCLUSION AND ORDER**

2 The Court hereby:

3 (1) Grants preliminary approval of the settlement as fair, adequate, and
4 reasonable;

5 (2) Grants conditional class certification;

6 (3) Appoints Elizabeth Ochoa, Monica Velazquez, and Crystal Fregoso as Class
7 Representatives;

8 (4) Appoints Lavi & Ebrahimian, LLP and The deRubertis Law Firm, APC as
9 Class Counsel;

10 (5) Appoints CPT Group, Inc. as Settlement Administrator;

11 (6) Approves the proposed notice plan; and

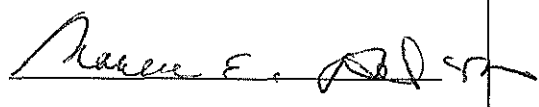
12 (7) Approves the proposed schedule of settlement proceedings as follows:

- 13 • Preliminary approval order date: September 13, 2022
 - 14 • Deadline for Defendant to provide class list to settlement administrator:
15 September 27, 2022 (within 14 calendar days from preliminary approval)
 - 16 • Deadline for settlement administrator to mail notices: October 28, 2022 (within
17 45 calendar days from preliminary approval)
 - 18 • Deadline for class members to opt out: December 12, 2022 (45 calendar days
19 from the initial mailing of the Notice Packets)
 - 20 • Deadline for class members to object: December 12, 2022 (45 calendar days
21 from the initial mailing of the Notice Packets)
 - 22 • Deadline for class counsel to file motion for final approval: December 28, 2022
23 (16 court days prior to final fairness hearing)
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- Final fairness hearing: January 23, 2022 at 9:00 a.m.

Dated: 9/13/2022



MAREN E. NELSON

Judge of the Superior Court