

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

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

Plaintiff,

v.

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

Defendants.

Case No. CV-21-000723

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

Complaint Filed: February 11, 2021

TO ALL CLASS MEMBERS DEFINED AS:

All current and former non-exempt, hourly employees who worked for Defendant CP RETAIL, LLC, within the State of California at any time from February 11, 2017, through January 16, 2022.

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

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

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

I. INTRODUCTION

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

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

II. DESCRIPTION OF THE LAWSUIT

Plaintiff’s Claims. On February 11, 2021, Plaintiff Angelina Vasquez initiated this Lawsuit in the Superior Court of the State of California, County of Stanislaus on behalf of herself and a class of similarly-situated individuals against Defendant

CP Retail, LLC as the franchisee of Plato's Closet® retail stores, along with franchisor, Winmark Corporation, alleging: (1) failure to pay minimum and overtime wages pursuant to Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, and 1198; (2) failure to provide meal period premiums in violation of Labor Code §§ 226.7, 512, and Wage Order 7-2001; (3) failure to provide rest period premiums in violation of Labor Code § 226.7 and Wage Order 7-2001; (4) forfeiture of vested vacation in violation of Labor Code § 227.3; (5) failure to provide suitable seating in violation of Labor Code § 1198 and Wage Order 7-2001; (6) failure to reimburse business expenses in violation of Labor Code §§ 2800 and 2802; (7) failure to maintain and provide accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and 1174; (8) failure to pay timely wages timely during employment and upon termination in violation of Labor Code §§ 201-204, and 210; (9) violations of California Business and Professions Code § 17200, *et seq.*, and (10) violation of the California Private Attorneys' General Act of 2004, Labor Code §§ 2698 *et seq.* (collectively, "Claims").

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

The Court has not ruled on the merits of Plaintiff's Claims. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendant and Plaintiff have concluded that it is in their respective best interests and the interests of the Class Members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided extensive discovery and information to counsel for the Class Members, the Settlement was reached after arms-length non-collusive negotiations between the parties, including mediation with a highly respected mediator in California. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to resolve the disputed Claims.

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

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

Class or Class Members: All current and former non-exempt, hourly employees who worked for Defendant CP RETAIL, LLC, within the State of California at any time from February 11, 2017 through January 16, 2022. (the "Class Period").

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

On September 19, 2022, the Court preliminarily approved the Settlement and conditionally certified the above Class for settlement purposes only. This Notice is being sent to you because Defendant's records indicate that you are a Class Member.

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

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

III. TERMS OF THE SETTLEMENT

Defendant has agreed to pay a non-reversionary \$425,000.00 (the "Total Settlement Amount") to resolve claims in the operative Complaint, including all Class Members' claims under Labor Code and Business & Professions Code for: (1) failure to pay minimum and overtime wages; (2) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon; (3) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon; (4) forfeiture of vested vacation; (5) failure to provide suitable seating mandates; (6) failure to reimburse business expenses; (7) failure to maintain and furnish accurate itemized wage statements; (8) failure to timely pay wages during employment and all final wages owed upon separation; (9) engaging in unfair and unlawful business practices; and (10) violation of

California's Private Attorneys' General Act of 2004.

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

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

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

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

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

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

You can view the Settlement Agreement and other Court documents related to this case by visiting <http://www.cptgroupcaseinfo.com/cpretailsettlement>.

IV. YOUR INDIVIDUAL SHARE OF THE SETTLEMENT AMOUNT

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

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

Workweeks Credited to You. The Workweeks you worked as a qualifying Class Member in California for Defendant during the Class Period – which is from February 11, 2017, through January 16, 2022, will be calculated based on Defendant's records. Class Members are paid biweekly.

According to Defendant's records:

From February 11, 2017, through January 16, 2022, you were employed by Defendant as a non-exempt employee in California for <<workweeks>> Workweeks.

If you feel that you were not credited with the correct number of Workweeks, you may submit evidence to the Settlement Administrator postmarked or confirmed received on or before **November 30, 2022**, with documentation to establish the

number of Workweeks you claim to have actually worked during the Class Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The parties and Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many Workweeks should be credited. The Settlement Administrator will make the final decision as to how many Workweeks are credited, and report the outcome to you. If you are unsatisfied with the decision, you may submit an Objection, as discussed below.

Furthermore, **irrespective of whether or not you request exclusion from the Settlement**, as a qualifying Class Member you shall also receive your share of the PAGA Payment allocation to all Class Members who worked for Defendant during the PAGA Period as part of the individual settlement payment. Further, all Class Members, whether or not they submit a request for exclusion, employed by Defendant during the PAGA Period, will no longer be able to seek penalties pursuant to the PAGA, for the PAGA Period, arising from Settlement Class Members' Released Claims. The PAGA Period is from October 13, 2019, through January 16, 2022.

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

V. THE RELEASE OF CLAIMS

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

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

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

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

VI. WHAT ARE YOUR OPTIONS?

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

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

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

If you **do not** wish to take part in the Settlement, you may exclude yourself (*i.e.*, opt-out) by sending to the Settlement Administrator a written Request for Exclusion from the Settlement letter postmarked no later than **November 30, 2022**, with your name, address, telephone number, and signature. The written request should state:

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

Send the Request for Exclusion letter directly to the Settlement Administrator at the following address **by no later than November 30, 2022**:

Vasquez v. CP Retail, LLC, et al.
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Toll Free Number: 1-888-388-0341

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

C. Object to the Settlement.

You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must file with the Settlement Administrator a written objection stating: your name, address, and telephone number; dates of work as an hourly or non-exempt employee in California with Defendant; the case name and number; each specific reason in support of your objection; and any legal support for each objection. Objections must be in writing and must be mailed to the Settlement Administrator at: Vasquez v. CP Retail, LLC, et al., c/o CPT Group, Inc. 50 Corporate Park Irvine, CA 92606 **by no later than November 30, 2022**, for your objection to be considered. **OBJECTIONS THAT DO NOT INCLUDE ALL REQUIRED INFORMATION, OR THAT ARE NOT SUBMITTED TIMELY, MAY NOT BE CONSIDERED BY THE COURT.**

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

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

If you choose to object to the Settlement, you may also appear at the Final Approval and Fairness Hearing scheduled for **February 28, 2023, at 8:30 a.m.** in Department 24 of the Stanislaus County Superior Court, located at 801 10th Street, Modesto, CA 95354. You have the right to appear either in person or through your own attorney at this hearing. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before November 30, 2022. All objections or other correspondence must state the name and number of the case, which is *Vasquez v. CP Retail, LLC, et al.*, Case No. CV-21-000723.

You can also view the final approval order and final judgment and payment schedule at:
<http://www.cptgroupcaseinfo.com/cpretailsettlement>.

VII. UPDATE FOR YOUR CHANGE OF ADDRESS?

If you move after receiving this Notice or if it was mis-addressed, you must provide your correct mailing address to the Settlement Administrator as soon as possible. Please send updated address information to the Settlement Administrator at: Vasquez v. CP Retail, LLC, et al. c/o CPT Group, Inc. 50 Corporate Park Irvine, CA 92606. **THIS IS IMPORTANT SO**

THAT FUTURE NOTICES AND/OR THE SETTLEMENT PAYMENT REACH YOU.

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

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

IX. QUESTIONS OR COMMENTS

PLEASE DO NOT CALL OR CONTACT THE COURT. If you have any questions about the Settlement, you may contact the Settlement Administrator at: Vasquez v. CP Retail, LLC, et al., c/o CPT Group, Inc. 50 Corporate Park Irvine, CA 92606 or by e-mail at cpretailsettlement@cptgroup.com. You may also contact Class Counsel at the address or phone number listed below.

THE ATTORNEYS REPRESENTING THE CLASS MEMBERS ARE:

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