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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 OMAR ZINE, individually, and on behalf of  
17 other members of the general public similarly  
situated,

18 Plaintiff,

19 vs.

20 NESPRESSO USA, INC., a Delaware  
corporation; and DOES 1 through 10, inclusive,

21 Defendants.

22 WILLIAM BABER, an individual, on behalf of  
23 himself and all others similarly situated and  
aggrieved,

24 Plaintiff,

25 vs.

26 NESPRESSO USA, INC., a Delaware  
corporation; NESTLE USA, INC., a Delaware  
corporation; and DOES 1 through 100, inclusive,

27 Defendants.  
28

Case No.: 3:20-cv-05144-SK  
Consolidated with 3:21-cv-00487-JSC

Assigned to the Hon. Sallie Kim

**NOTICE OF MOTION AND MOTION FOR  
ATTORNEYS' FEES, COSTS, AND CLASS  
REPRESENTATIVE ENHANCEMENT  
PAYMENTS; MEMORANDUM OF POINTS  
AND AUTHORITIES**

Date: May 8, 2023  
Time: 9:30 a.m.  
Place: Courtroom C

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 8, 2023 at 9:30 a.m., or as soon thereafter as counsel  
3 may be heard, in Courtroom C of the above-captioned court, located at 450 Golden Gate Avenue, San  
4 Francisco, California 94102, the Honorable Sallie Kim presiding, Plaintiffs Omar Zine and William  
5 Baber will, and hereby do, move this Court to award \$316,667 in attorneys' fees; \$12,198.82 in litigation  
6 costs and expenses; and Class Representative Enhancement Payments of \$5,000 to each Plaintiff.

7 This Motion should be granted because: (1) under the California and Ninth Circuit common  
8 fund doctrines, the fee request is reasonable when measured against the benefits conferred by the  
9 Settlement and non-reversionary common fund; (2) public policy recognizes that attracting competent  
10 counsel to litigate wage and hour cases on behalf of clients unable to pay hourly fees requires attorney  
11 fee awards commensurate with such risks; (3) no action would likely have been taken by Class Members  
12 individually, and no compensation would have been recovered for them, but for Plaintiffs' service on  
13 their behalf; and (4) the absence of objection to the settlement to date confirms that the requested  
14 attorneys' fees, costs, and Class Representative Enhancement Payments should be approved.

15 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of  
16 Points and Authorities in Support of the Motion for Attorneys' Fees, Costs and Expenses, and Class  
17 Representative Enhancement Payments; (3) the Declaration of Raul Perez; (4) the Declaration of Cheryl  
18 A. Kenner; (5) the Declaration of Omar Zine; (6) the Declaration of William Baber; (7) the records,  
19 pleadings, and papers filed in this action; and (8) upon such other documentary and oral evidence or  
20 argument as may be presented to the Court at or prior to the hearing of this Motion.

21 Dated: February 2, 2023

Respectfully submitted,

22 By: /s/ Raul Perez

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1 **I. INTRODUCTION**

2 Plaintiffs Omar Zine and William Baber brought their respective actions to secure important  
3 workplace protections—payment of minimum and overtime wages, and relief to take meal and rest  
4 breaks—for current and former employees of Defendant Nespresso USA, Inc. (“Defendant”)  
5 (collectively with Plaintiffs, the “Parties”). Despite the risk and uncertainty associated with litigating the  
6 claims, Plaintiffs secured a \$950,000 **non-reversionary settlement** that will provide timely monetary  
7 relief to over 570 workers.

8 Having obtained valuable relief for the Settlement Class, Plaintiffs seek an award of attorneys’  
9 fees in the amount of \$316,667, or one-third of the total non-reversionary settlement fund. The requested  
10 award is fair, reasonable, and appropriate under the California and Ninth Circuit common fund doctrines  
11 in light of the favorable results obtained by Plaintiffs’ Counsel, the complexities of the litigation, and the  
12 contingent risk that Plaintiffs’ Counsel assumed.

13 Under California law which governs this fee request, the percentage of the fund requested is  
14 entirely consistent with fee awards in similar cases, including recent decisions in comparable wage and  
15 hour class litigation that awarded fees ranging from 30 to 40 percent of the common fund. *See, e.g.,*  
16 *Laffitte v. Robert Half Int’l Inc.*, 231 Cal. App. 4th 860, 871 (2014) (“*Laffitte I*”) (“33 1/3 percent of the  
17 common fund is consistent with, and in the range of, awards in other class action lawsuits”); *Amaro v.*  
18 *Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (“fee awards in class actions average  
19 around one-third of the recovery” regardless of “whether the percentage method or the lodestar method  
20 is used.”); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“[e]mpirical studies show that,  
21 regardless whether the percentage method or the lodestar method is used, fee awards in class actions  
22 average around one-third of the recovery”); Conte & Newberg, *Newberg on Class Actions* (4th ed. 2002)  
23 (same).

24 Other factors support this fee request. As discussed in more detail in the Motion for Preliminary  
25

26 <sup>1</sup> The amended California Rule of Court 8.1115(e), subdivision (2) reinstates the intermediate  
27 court decision following a decision on review by the Supreme Court: “a published opinion of a Court of  
28 Appeal in the matter and any published opinion of a Court of Appeal in a matter in which the Supreme  
Court has ordered review and deferred action pending the decision, is citable and has binding or  
precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is  
disapproved by that court.”

1 Approval of the Class Action Settlement (*see* Dkt. No. 53), Plaintiffs' Counsel delivered significant  
2 results to the Class in the face of adverse conditions and assumed substantial risk in litigating this action  
3 on a contingency basis, having invested over 500 hours of their time toward the zealous prosecution of  
4 the class's claims. These hours were spent: (1) exchanging discovery; (2) analyzing a sample of Class  
5 Members' time and payroll records; (3) interviewing employees to gather evidence on the claims alleged  
6 in this case; (4) developing the theories of liability for the then upcoming certification motion; and (5)  
7 preparing for mediation and developing a realistic model of Defendant's exposure.

8 In addition to attorneys' fees, Plaintiffs' Counsel also seek reimbursement for their litigation  
9 costs in the amount of \$24,085.88. These costs were necessarily incurred in connection with the  
10 prosecution and settlement of the action, are of the kind that would typically be paid by a fee-paying  
11 client, and are thus reimbursable.

12 Lastly, Plaintiffs move for Class Representative Enhancement Payments of \$5,000, each, for  
13 their service on behalf of the Settlement Class.<sup>2</sup>

14 For these and the reasons set forth in greater detail below, Plaintiffs respectfully submit that the  
15 requested attorneys' fees, costs, and Class Representative Enhancement Payments are fair and  
16 reasonable, and should be approved.

## 17 **II. ARGUMENT**

### 18 **A. Plaintiffs' Request for Attorneys' Fees Should Be Evaluated Under a Deferential** 19 **Standard.**

20 Courts have encouraged litigants to resolve fee issues by agreement. *See Hanlon v. Chrysler*  
21 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). This is consistent with the strong public policy of  
22 encouraging and approving non-collusive settlements, including those in class actions, and avoiding a  
23 "second major litigation" arising from a request for attorneys' fees after the matter has been resolved.  
24 *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("Ideally, of course, litigants will settle the amount of a  
25 fee").

26 In light of the policy favoring settlement of fee disputes, district courts must account for the fact  
27

28 <sup>2</sup> In addition to the Class Representative Enhancement Payments, Defendant has agreed to pay Plaintiffs the sum of \$5,000, each, for a general release of all claims arising out of their employment.

1 that “the parties are compromising to avoid litigation.” *Laguna v. Coverall North America*, 753 F.3d 918,  
2 922 (9th Cir. 2014), *vac’d on other grounds*, 2014 U.S. App. LEXIS 21950 (9th Cir. 2014).

3 Accordingly, the Ninth Circuit holds that “the court need not inquire into the reasonableness of the fees  
4 even at the high end with precisely the same level of scrutiny as when the fee amount is litigated.” *Id.*  
5 (*quoting Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th Cir. 2003) (internal quotations omitted; emphasis  
6 added). Thus, while the Court must conduct an independent inquiry into the reasonableness of the fee  
7 request, it should give substantial weight to the parties’ agreement as to the reasonableness of the amount  
8 of attorneys’ fees.

9 These considerations are particularly appropriate where, as here, the parties negotiated the  
10 settlement at arm’s-length with the guidance of an experienced mediator. *In re Apple Computer, Inc.*  
11 *Derivative Litig.*, No. C 06-4128 JF (HRL), 2008LEXIS 108195 \*12 (N.D. Cal. Nov. 5, 2008)  
12 (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato*  
13 *v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement in . . . settlement  
14 negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).

15 The settlement negotiations were adversarial and non-collusive, and the resulting settlement of  
16 attorneys’ fees, as a function of the overall settlement’s value, is likewise fair, reasonable, and free of  
17 collusion.

18 **B. Plaintiffs’ Request for Attorneys’ Fees in the Amount of One-Third of the**  
19 **Common Fund Is Reasonable Under Controlling California Law.**

20 In diversity actions, federal courts must apply state law in determining whether a party has a  
21 right to attorneys’ fees and how to calculate those fees. *Mangold v. Calif. Public Utilities Comm’n*, 67  
22 F.3d 1470, 1478 (9th Cir. 1995) (“Ninth Circuit precedent has applied state law in determining not only  
23 the right to fees, but also in the method of calculating the fees”). The state law governing the underlying  
24 claims in a diversity action “also governs the award of fees.” *Vizcaino v. Microsoft Corp.*, 290 F.3d  
25 1043, 1047 (9th Cir. 2002).<sup>3</sup>

26  
27 <sup>3</sup> Class actions removed under the Class Action Fairness Act of 2005 (CAFA) are diversity  
28 actions. *See Bush v. Cheaptickets, Inc.*, 425 F.3d 683, 684 (9th Cir. 2005) (CAFA “broadens diversity  
jurisdiction for certain qualifying class actions and authorizes their removal . . .”). As the Ninth Circuit



1 As reinforced recently by the California Supreme Court, California law expressly authorizes the  
 2 percentage method for awarding attorneys' fees in common fund cases. *See Laffitte v. Robert Half Int'l*  
 3 *Inc.*, 1 Cal. 5th 480, 503 (2016) ("*Laffitte I*") (joining other jurisdictions in holding that the trial court  
 4 "may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund  
 5 created."). California—by choice—has no benchmark. *See Laffitte II*, 1 Cal. 5th at 495 (recognizing the  
 6 Ninth Circuit's benchmark of 25%, but not adopting a benchmark for California). Instead, California  
 7 courts have routinely awarded attorneys' fees equalling thirty percent or more of the common fund's  
 8 total potential value.<sup>4</sup> *See, e.g., Laffitte I*, 231 Cal. App. 4th at 871 ("33 1/3 percent of the common fund  
 9 is consistent with, and in the range of, awards in other class action lawsuits"); *Chavez v. Netflix, Inc.*, 162  
 10 Cal. App. 4th 43, 66 n.11 (2008) (accord); Eisenberg & Miller, *Attorney Fees in Class Action*  
 11 *Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35  
 12 (independent studies of class action litigation nationwide conclude that fees representing one-third of the  
 13 total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte II*,  
 14 affirmed a fee award representing one-third of a non-reversionary fund. *See id.* at 506.

15  
 16 observed, "even after CAFA's enactment, *Erie*-related doctrines ensure that, for the most part, removal  
 17 of a CAFA case from state to federal court produces a change of courtrooms and procedure rather than a  
 18 change of substantive law." *McAtee v. Capital One, F.S.B.*, 479 F.3d 1143, 1147 (9th Cir. 2007).

19 <sup>4</sup> *See also, Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award); *Weber*  
 20 *v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super. Ct.) (40% award);  
 21 *Kenemixay v. Nordstroms, Inc.*, No. BC318850 (L.A. Super. Ct.) (50% award); *Leal v. Wyndham*  
 22 *Worldwide Corp.*, No. 37-2009-00084708 (San Diego Super. Ct.) (38% award); *Gomez and LaGaisse v.*  
 23 *20 20 Communications*, No. RIC 528973 (Riverside Super. Ct.) (33% award); *Acheson v. Express LLC*,  
 24 No. 109CV135335 (Santa Clara Super. Ct.) (33% award); *Chin v. Countrywide Home Loans, Inc.*, No.:  
 25 39-2010-00252741-CU-OE-STK (San Joaquin Super. Ct.) (30% award); *Ethridge v. Universal Health*  
 26 *Servs.*, No. BC391958 (L.A. Super. Ct.) (33% award); *Magee v. Am. Residential Servs. LLC*, No.  
 27 BC423798 (L.A. Super. Ct.) (33% award); *Blue v. Coldwell Banker Residential Brokerage Co.*, No.  
 28 BC417335 (L.A. Super. Ct.) (33% award); *Silva v. Catholic Mortuary Servs., Inc.*, No. BC408054 (L.A.  
 Super. Ct.) (33% award); *Mares v. BFS Retail & Comm. Operations LLC*, No. BC375967 (L.A. Super.  
 Ct.) (33% award); *Blair et al. v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. Super. Ct.) (33% award);  
*Perez and Comeaux v. Standard Concrete*, No. 30-2008-00211820 (Orange County Super. Ct.) (33%  
 award); *Ward v. Doyon Sec. Servs., LLC*, No. BS 9000517 (San Bernardino Super. Ct.) (33% award);  
*Barrett v. The St. John Companies*, No. BC354278 (L.A. Super. Ct.) (33% award); *Clymer and Benton*  
*v. Candle Acquisition Co.*, No. BC328765 (L.A. Super. Ct.) (33% award); *Dunlap v. Bank of America,*  
*N.A.*, No. BC328934 (L.A. Super Ct.) (33% award); *Taylor v. Ross Stores, Inc.*, No. RCV 065453, JCCP  
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*Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award); *Boncore v. Four Points*  
*Hotel IIT Sheraton*, No. GIC807456 (San Diego Super. Ct.) (33% award); *Vivens v. Wackenhut Corp.*,  
 No. BC290071 (L.A. Super. Ct.) (31% award); *Crandall v. U-Haul Int'l, Inc.*, No. BC178775 (L.A.  
 Super. Ct.) (40% award).

1 A fee award in the amount of one-third of the common fund is also reasonable because it best  
2 reflects the market rate for contingency fees. *See Lealao v. Beneficial Cal. Inc.*, 82 Cal. App. 4th 19, 47  
3 (2000) (“attorneys providing the essential enforcement services must be provided incentives roughly  
4 comparable to those negotiated in the private bargaining that takes place in the legal marketplace”). This  
5 is because such a request reflects the rate negotiated in “typical contingency fee agreements [which]  
6 provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is  
7 tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 U.S. Dist. LEXIS 123546, \*55-57 (C.D. Cal. July  
8 21, 2008) (citing an academic study collecting contingency fee agreements and finding that a fee award  
9 constituting 34% of the fund is reasonable on that basis). Because the negotiated fee structure mimics the  
10 marketplace, it is reasonable and should be approved.

11 **C. Plaintiffs’ Request for Attorneys’ Fees in the Amount of One-Third of the**  
12 **Common Fund Is Reasonable Under Ninth Circuit Precedent.**

13 Although this motion is governed by California law, Plaintiffs’ fee request is also reasonable  
14 under federal law. The Supreme Court has consistently recognized that “a litigant or a lawyer who  
15 recovers a common fund for the benefit of persons other than himself or his client is entitled to a  
16 reasonable attorney’s fee from the fund as a whole.” *Boeing Company v. Van Gemert*, 444 U.S. 472, 478  
17 (1980). The purpose of this doctrine is that “those who benefit from the creation of the fund should share  
18 the wealth with the lawyers whose skill and effort helped create it.” *In re Washington Pub. Power Supply*  
19 *Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994).

20 The federal common fund doctrine applies when: (1) the class of beneficiaries is sufficiently  
21 identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude  
22 to those benefitting. *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). These  
23 criteria are “easily met” where—as here—each [class member] has an undisputed and mathematically  
24 ascertainable claim to part of a lump-sum settlement recovered on his behalf.” *Id.* (citing *Van Gemert*,  
25 444 U.S. at 479).

26 District courts presiding over common fund cases have the discretion to award attorneys’ fees  
27 based on either the lodestar method (essentially a modification of hourly billing) or the percentage  
28 method proposed here. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1296. Where, as here,

1 fees are requested from a certain and calculable common fund, the percentage-of-the-fund method is  
2 appropriate. *See In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

3 Courts recognize that the percentage method offers important advantages over the lodestar  
4 method, particularly when an ascertainable fund exists:

5 [I]n class action common fund cases the better practice is to set a percentage fee  
6 and that, absent extraordinary circumstances that suggest reasons to lower or  
7 increase the percentage, the rate should be set at 30%. This will encourage  
8 plaintiffs' attorneys to move for early settlement, provide predictability for the  
9 attorneys and the class members, and reduce the time consumed by counsel and  
10 court in dealing with voluminous fee petitions.

11 *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989). Indeed, in *Bluetooth*, the court  
12 recognized that one important advantage of the common fund method is that fees are "easily quantified,"  
13 making a fee determination simpler than the "often more time-consuming task of calculating the  
14 lodestar." *In re Bluetooth*, 654 F.3d at 942; *see also Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269  
(D.C. Cir. 1993) ("[A] percentage-of-the-fund approach is less demanding of judicial resources than the  
15 lodestar method.").

16 In non-diversity actions, the Ninth Circuit has established 25% of a common fund as a  
17 "benchmark" award for attorney fees. *Vizcaino*, 290 F.3d at 1047. However, the Ninth Circuit states that  
18 the benchmark is the "starting point for analysis" and notes that "it may be inappropriate in some cases."  
19 *Id.* at 1048. The "[s]election of the benchmark or any other rate must be supported by findings that take  
20 into account all of the circumstances of the case." *Id.* The district court's duty is to not presume  
21 benchmark percentage applies, but simply "whether in arriving at its percentage it considered all the  
22 circumstances of the case and reached a reasonable percentage." *Id.*

23 Thus, the "exact percentage [awarded] varies depending on the facts of the case, and **in most**  
24 **common fund cases, the award exceeds that benchmark.**" *Vasquez v. Coast Valley Roofing, Inc.*, 266  
25 F.R.D. 482, 491 (E.D. Cal. 2010) (emphasis added); *In re Activision Sec. Litig.*, 723 F. Supp. at 1377  
26 ("[a] review of recent reported cases discloses that nearly all common fund awards range around 30%");  
27 *In re Omnivision Techs.*, 559 F. Supp. 2d at 1047 (in "most common fund cases, the award exceeds that  
28 benchmark"); *Pokorny v. Quixtar, Inc.*, No. C 07-0201 SC, 2013 U.S. Dist. LEXIS 100791 \*4 (N.D.  
Cal. July 18, 2013) (the "Ninth Circuit uses a 25% baseline in common fund class actions, and in most

1 common fund cases, the award exceeds that benchmark, with a 30% award the norm absent  
2 extraordinary circumstances that suggest reasons to lower or increase the percentage”).

3 District courts within the Ninth Circuit routinely award attorneys’ fees of one-third or more of  
4 the common fund, particularly for wage and hour class action settlements.<sup>5</sup> Awards of one-third are  
5 likewise routinely upheld by the Ninth Circuit. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,  
6 463 (9th Cir. 2000) (affirming one-third of the common fund); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d  
7 373, 378-79 (9th Cir. 1995) (affirming one-third of a \$12 million common fund). A fee award  
8 representing one-third of the fund falls within the range of other comprehensive surveys of class action  
9 settlements and fee awards. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their*  
10 *Fee Award* (2010) 7 J. Empirical Leg. Stud. 811, 833 (analyzing 444 cases between 2006-2007 and  
11 concluding that “[m]ost fee awards were between 25 percent and 35 percent, with almost no awards  
12 more than 35 percent.”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical*  
13 *Study: 1993-2008* (2010) 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (finding a similar range of fee  
14 awards).

15 Accordingly, Plaintiffs’ request for attorneys’ fees in the amount of \$316,667, or one-third of the  
16

17  
18 <sup>5</sup> *See, e.g., Elliott v. Rolling Frito-Lay Sales, LP*, No. 11-01730 DOC, 2014 WL 2761316, at \*9  
19 (C.D. Cal. June 12, 2014) (awarding 30% of \$1.6 million fund in attorneys’ fees in a California Labor  
20 Code action and observing that 30% of the fund is “not uncommon for courts in this jurisdiction”); *Boyd*  
21 *v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at \*9 (C.D. Cal. Nov. 18, 2014)  
22 (awarding one-third in fees in a wage and hour class action); *Barbosa v. Cargill Meat Solutions Corp.*,  
23 297 F.R.D. 431, 450-51 (E.D. Cal. July 2, 2013) (awarding one-third of the settlement fund in a wage  
24 and hour class action because there were “sufficient reasons to exceed [the benchmark] considering  
25 the risk of the litigation, the contingent nature of the work, the favorable reaction of the class, and the fee  
26 awards in other wage-and-hour cases”); *Vasquez*, 266 F.R.D. at 491-92 (awarding one-third percent in  
27 wage and hour class action); *Gallegos v. Atria Management Company, LLC*, No. 5:16-cv-00888-JGB-  
28 SP (C.D. Cal. Jan. 28, 2019) (awarding one-third of common fund in fees in wage and hour class action);  
*Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal. July 11, 2016) (awarding  
one-third of common fund in fees in wage and hour class action); *Quintana v. Claire’s Boutiques, Inc.*,  
No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015), Dkt. No. 88 (awarding attorneys’ fees representing  
33% of the fund); *Hightower v. JPMorgan Chase Bank, N.A.*, Case No. 2:11-cv-01802-PSG-PLA (C.D.  
Cal. Oct. 5, 2015) (awarding attorneys’ fees representing 30% of the fund); *Bernal v. DaVita, Inc.*, No.  
5:12-cv-03255-PSG (N.D. Cal. Jan. 14, 2014) (same); *Singer v. Becton Dickinson & Co.*, 08-CV-821 -  
IEG (BLM), 2010 U.S. Dist. LEXIS 53416, at \*22-23 (S.D. Cal. Jun. 1, 2010) (noting that the amount of  
one-third of the common fund for a wage and hour class action settlement “falls within the typical range”  
of fee awards); *Stuart v. Radioshack Corp.*, C-07-4499 EMC, 2010 U.S. Dist. LEXIS 92067 \*18 (N.D.  
Cal. Aug. 9, 2010) (awarding one-third of settlement fund in wage and hour class action and noting that  
“[t]his is well within the range of percentages which courts have upheld as reasonable in other class  
action lawsuits”).

1 \$950,000 common fund, is consistent with established Ninth Circuit precedent.

2 **D. Other Factors Support Plaintiffs' Fee Request.**

3 In addition to the results achieved and awards in comparable cases, courts in this Circuit have  
4 also considered additional factors when evaluating the fairness of the award. These factors include: (1)  
5 the risks of further litigation; (2) the contingent nature of the fee; (3) the skill of the attorneys; and (4) a  
6 lodestar cross-check. *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). While no  
7 single factor is determinative of reasonableness, each factor supports Plaintiffs' request for attorneys'  
8 fees in the amount of one-third of the common fund.

9 **1. The Results of the Litigation Support the Requested Fees.**

10 By taking action to enforce state and federal labor laws, Plaintiffs and Plaintiffs' Counsel have  
11 vindicated the rights of over 570 workers and have secured \$950,000 in relief for their claims. The relief  
12 offered by the settlement is particularly valuable when viewed against the difficulties encountered by  
13 plaintiffs pursuing wage and hour cases (*see* Motion for Preliminary Approval). Indeed, the Ninth Circuit  
14 has recognized that complex litigation is often necessary to effectively enforce workplace protection  
15 legislation:

16 The California Labor Code protects all workers regardless of their immigration  
17 status or financial resources. In light of the small size of the putative class  
18 members' potential individual monetary recovery, class certification may be the  
only feasible means for them to adjudicate their claims.

19 *Leyva v. Medline Indus.*, 716 F.3d 510, 515 (9th Cir. 2013). By obtaining a significant recovery for the  
20 class, Plaintiffs' Counsel have vindicated the rights of workers and enforced compliance with important  
21 workplace regulations.

22 Additionally, the public interest served by the lawsuit likewise supports the requested award of  
23 attorneys' fees. In *Lealao*, 82 Cal. App. 4th 19, the court held that in determining the appropriate award  
24 of attorneys' fees, the trial court should consider the need to encourage the private enforcement necessary  
25 to vindicate many legal rights, as well as the role that representative actions play in relieving the courts of  
26 the need to separately adjudicate numerous claims.

27 Given the result, this action will undoubtedly deter other similarly situated employers from  
28 taking advantage of their employees. In a related vein, unless competent attorneys are fully compensated

1 when they take on large corporate defendants, unlawful practices at issue here will likely go unchecked.

2 **2. The Substantial Contingent Risk, Including the Risk of Further Litigation,**  
3 **Supports the Requested Fees.**

4 The contingent risk that Plaintiffs' Counsel assumed in prosecuting the action supports the  
5 requested attorneys' fees and costs. Plaintiffs' Counsel took this case on a pure contingency basis, and  
6 had no guarantee that they would receive any remuneration for the many hours they spent litigating the  
7 Class's claims, or for the out-of-pocket costs they reasonably incurred to date.

8 By undertaking representation of a large number of affected employees in wage and hour  
9 actions, attorneys like Plaintiffs' Counsel inevitably must be prepared to make a significant investment of  
10 time, energy, and resources. Courts have thus explained that a multiplier is needed because these kinds of  
11 high-stakes, publicly-beneficial litigation are "fraught with uncertainty and even the most scrupulous  
12 attorney will 'win some and lose some.'" *Horsford v. Bd. of Trustees of California State Univ.*, 132 Cal.  
13 App. 4th 359, 400 n. 11 (2005). Although they achieved a significant victory here, compensation is  
14 necessary to make up for cases where Plaintiff's Counsel took on a meritorious case, litigated the case  
15 expertly, but did not recover attorneys' fees, either because the defendant was insolvent or due to the  
16 pitfalls of litigation.

17 In summary, because attorneys pursuing claims on contingency will sometimes lose after  
18 expending hundreds of hours, and often advancing thousands of dollars in expenses, an enhancement  
19 ensures that the risks do not outstrip the incentives to pursue claims on behalf of employees. The high  
20 contingent risk borne by Plaintiffs' Counsel thus supports the fee request.

21 **3. The Skill of Counsel and Work Performed Support the Requested Fees.**

22 The skill and experience of counsel and nature of work performed, also militate in favor of  
23 Plaintiffs' fee request. *See City of Burlington v. Dague*, 505 U.S. 557, 562-563 (1992). Plaintiffs'  
24 Counsel are seasoned attorneys with considerable experience in wage and hour class actions. Plaintiffs'  
25 Counsel regularly litigate wage and hour claims through certification and on the merits, and have  
26 considerable experience settling wage and hour class actions. (Declaration of Raul Perez ["Perez Decl.,"]  
27 ¶¶ 15-23, Ex. 2; Declaration of Cheryl A. Kenner ["Kenner Decl.,"] ¶¶ 22-30.) Plaintiffs' Counsel  
28 thoroughly investigated Plaintiffs' claims and made skillful use of documents and data provided by

1 Defendant to assess its potential exposure as to the claims at issue and to bring the litigation to a  
2 successful resolution.

3 **E. The Lodestar Cross-Check Attests to the Reasonableness of the Negotiated Fee**  
4 **Request.**

5 The trial court may use an abbreviated lodestar “cross-check” for common fund awards if the  
6 court considers it useful. *Laffitte II*, 1 Cal. 5th at 504-05. However, under *Laffitte II*, this is not meant to  
7 displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly  
8 instructed that “the lodestar calculation, when used in this manner, does not override the trial court’s  
9 primary determination of the fee as a percentage of the common fund and thus does not impose an  
10 absolute maximum or minimum on the fee award.” *Laffitte II*, 1 Cal. 5th at 505. Critically, the Court in  
11 *Laffitte II* emphasized that only where the “multiplier calculated by means of a lodestar cross-check is  
12 **extraordinarily high or low**” should the court “consider whether the percentage should be adjusted so  
13 as to bring the imputed multiplier within a justifiable range.” *Id.* (emphasis added). Accordingly, when  
14 the cross-check multiplier is within a normal range, the lodestar-cross check does not provide a basis for  
15 a court to reduce the fee award. Furthermore, in conducting a lodestar cross-check, the court is not  
16 “required to closely scrutinize each claimed attorney-hour.” *Laffitte II*, 1 Cal. 5th at 505. An evaluation  
17 may be done by reviewing “counsel declarations summarizing overall time spent.” *Id.*

18 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by  
19 multiplying the time reasonably spent by plaintiffs’ counsel on the case by a reasonable hourly rate. *In re*  
20 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested  
21 rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region.  
22 *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community  
23 for comparable legal services even though party used in-house counsel). Here, Plaintiffs’ Counsel’s  
24 hourly rates are comparable to, or less than, those charged by other class action plaintiffs’ counsel and  
25 the firms defending class actions, and have been approved by numerous federal and state courts. (Perez  
26 Decl. ¶¶ 10-13, Ex. 1; Kenner Decl. ¶ 19.)

27 Likewise, the total attorney hours expended on this action are reasonable and in line with  
28 comparable cases. In determining the reasonableness of the hours expended, “the court should defer to

1 the winning lawyer’s professional judgment as to how much time he was required to spend on the case;  
2 after all, he won, and might not have, had he been more of a slacker.” *Kerkeles v. City of San Jose*, 243  
3 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir.  
4 2008)). Plaintiffs’ Counsel billed a total of approximately 500 hours. (Perez Decl. ¶¶ 10; Kenner Decl. ¶¶  
5 10-14, 17-18.) Plaintiffs’ Counsel will also expend further hours not accounted for here to draft the final  
6 approval motion and continue to serve the Class in wrapping up this settlement. (Perez Decl. ¶ 10;  
7 Kenner Decl. ¶ 15.)

8 Multiplying the total hours billed by Plaintiffs’ Counsel to the litigation by their reasonable  
9 hourly rates yields a lodestar of \$362,170.50. (Perez Decl. ¶ 10; Kenner Decl. ¶¶ 17-18.) When  
10 plaintiffs’ counsel seek an amount in fees that is less than what they actually billed, the requested fee  
11 amount is generally considered reasonable. *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp.  
12 2d 848, 854 (N.D. Cal. 2010) (finding that, if the court is asked to apply a negative multiplier, it  
13 “suggests the negotiated fee award is a reasonable and fair valuation of the services rendered to the class  
14 by Plaintiff’s Counsel.”).

15 Plaintiffs’ Counsel would otherwise be entitled to a **positive** multiplier based on factors most  
16 commonly cited by courts, including: (1) the results obtained; (2) the contingent nature of the fee award;  
17 and (3) the skill displayed by counsel. *See Serrano III*, 20 Cal. 3d at 49; *Thayer v. Wells Fargo Bank*, 92  
18 Cal. App. 4th 819, 835 (2001) (recognizing “results obtained” as a factor). Additionally, under California  
19 law, a 1.5 multiplier would be awarded **for the contingent risk factor alone**, and without the presence of  
20 other factors. *See Ctr. for Biological Diversity v. Cty. of San Bernardino*, 185 Cal. App. 4th 866, 900  
21 (2010) (affirming a 1.5 risk multiplier in a non-complex statutory case and expressly rejecting the  
22 application of other multiplier factors). *See also Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157,  
23 1174 (2008) (affirming a 1.65 contingent risk multiplier in a wage and hour class action, explaining that  
24 “counsel risked never receiving any compensation *at all*” (emphasis in original)); *Pellegrino v. Robert*  
25 *Half Int’l*, 182 Cal. App. 4th 278, 292 (2010) (affirming a 1.75 multiplier due, in part, to “Plaintiff’s  
26 Counsel not being paid for their work in the event that [defendant] prevailed on [an] affirmative  
27 defense.”).

28 The lodestar cross-check confirms that Plaintiffs’ fee request is fair and reasonable and should be



1 approved.

2 **F. Plaintiffs' Counsel's Out-of-Pocket Expenses Should Be Reimbursed.**

3 Defendant has agreed to pay Plaintiffs' Counsel's litigation expenses as part of the negotiated  
4 fees. For these expenses, the rule is that prevailing parties may recover, as part of statutory attorneys'  
5 fees, "litigation expenses...when it is 'the prevailing practice in the given community' for lawyers to bill  
6 those costs separately from their hourly rates." *Trs. of the Constr. Indus. and Laborers Health and*  
7 *Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258 (9th Cir. 2006) (citation omitted). In California,  
8 attorneys are reimbursed for out-of-pocket expenses "such as '1) meals, hotels, and transportation; 2)  
9 photocopies; 3) postage, telephone, and fax; 4) filing fees; 5) messenger and overnight delivery; 6) online  
10 legal research; 7) class action notices; 8) experts, consultants, and investigators; and 9) mediation fees.'" *Johnson v. General Mills, Inc.*, No. 10-00061-CJC, 2013 U.S. Dist. LEXIS 90338, \*20-\*21 (C.D. Cal.  
11 June 17, 2013) (quoting *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007)  
12 (both courts awarding the requested expenses, including for expert witnesses, mediation, photocopying  
13 and computerized research).

14  
15 Here, Plaintiffs' Counsel have expended costs of \$24,085.88 to date, which includes, e.g., court  
16 fees, consultant fees, Westlaw charges, and mediation fees. (Perez Decl. ¶ 14; Kenner Decl. ¶¶ 20-21.)  
17 These are costs of precisely the sort that are reimbursable because they are reasonable and were  
18 necessarily incurred during the case's pendency.

19 **G. The Proposed Class Representative Enhancement Payments Are Fair and**  
20 **Reasonable.**

21 "Incentive awards are fairly typical in class action cases . . . Such awards are discretionary and  
22 are intended to compensate class representatives for work done on behalf of the class . . ." *Rodriguez v.*  
23 *West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 *William B. Rubenstein et al., Newberg on*  
24 *Class Actions* § 11:38 (4th ed. 2008)). These payments work both as an inducement to participate in the  
25 suit and as compensation for time spent in litigation activities. *See In re Mego Fin. Corp. Sec. Litig.*, 213  
26 F.3d at 463 (describing the service award as an incentive to the class representatives).

27 So long as the incentive awards do not create a conflict of interest between the representatives  
28 and class members, modest payments to named plaintiffs for their services as class representatives are

1 customary and generally approved. *See Van Vranken*, 901 F. Supp. at 300. To determine whether the  
2 proposed incentive award is fair and reasonable, many courts in the Ninth Circuit apply the “five-factor  
3 test set forth in *Van Vranken*.” *Grant v. Capital Mgmt. Servs., L.P.*, 2014 U.S. Dist. LEXIS 29836 \*19  
4 (S.D. Cal. Mar. 5, 2014).

5 Under the *Van Vranken* test, courts consider: (1) the risk to the class representative in  
6 commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by  
7 the class representative; (3) the amount of time and effort spent by the class representative; (4) the  
8 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative  
9 as a result of the litigation.” *Van Vranken*, 901 F. Supp. at 299 (citations omitted). However, not all  
10 factors need to present. Rather, the Court may weigh the factors and, award fees that are “just and  
11 reasonable under the circumstances.” *See, e.g., In re Toys “R” Us-Del., Inc. Fair & Accurate Credit*  
12 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 472 (C.D. Cal. 2014) (citing *Van Vranken*, 901 F.  
13 Supp. at 299). Here, the proposed \$5,000 enhancement payments are just and reasonable.

14 First, the Class Representative Enhancement Payments are justified in light of the reputational  
15 risk that Plaintiffs have assumed by litigating claims against a former employer. *See Billingshausen v.*  
16 *Tractor Supply Co.*, 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding “personal detriment” upon  
17 testimony that future employers can easily learn that a prospective employee served as a plaintiff through  
18 the internet); *Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at  
19 \*\*4, 20 (S.D.N.Y. Oct. 28, 2011) (“[T]he fact that a plaintiff has filed a federal lawsuit is searchable on  
20 the internet and may become known to prospective employers when evaluating the person . . . Even  
21 where there is not a record of actual retaliation, notoriety, or personal difficulties, class representatives  
22 merit recognition for assuming the risk of such for the sake of absent class members.”).

23 Employers commonly screen employee candidates to determine whether they have ever filed  
24 suit, and employee candidates who might be branded “litigious” are likely to be screened out of the  
25 process. In fact, an entire industry has developed for providing employers with background information  
26 on employee candidates. By bringing this action against an employer, Plaintiffs have assumed  
27 reputational risk that may impact their ability to find employment in the future. *La Fleur v. Medical*  
28 *Management Intern, Inc.*, No. 13-00398-VAP, 2014 WL 2967475, \*8 (C.D. Cal. June 25, 2014)

1 (awarding \$15,000 to each named plaintiff in part for attesting to their fear that the lawsuit will harm  
2 their future job prospects in the industry).

3 Second, the Class Representative Enhancement Payments should be awarded because Plaintiffs  
4 “remained fully involved and expended considerable time and energy during the course of the litigation.”  
5 *In re Toys ‘R’ Us-Del FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). As detailed in their  
6 declarations, Plaintiffs expended considerable time and effort assisting Plaintiffs’ Counsel with the  
7 prosecution of the class’s claims, and their unique contribution to the litigation should be rewarded.

8 Third, the Class Representative Enhancement Payments are appropriate because Plaintiffs  
9 otherwise “will not gain any benefit beyond that he [or she] would receive as an ordinary class member.”  
10 *In re Toys “R” Us FACTA Litig.*, 295 F.R.D. at 472; *Van Vranken*, 901 F. Supp. at 299 (holding that a  
11 substantial award is appropriate where a class representative’s claim made up “only a fraction of the  
12 common fund.”). Here, absent the incentive award, Plaintiffs will recover no more than other Class  
13 Members, despite undergoing personal sacrifice in bringing this suit on behalf of the Class.

14 In sum, due to Plaintiffs’ effort, commitment, and personal sacrifice, all Class Members can now  
15 benefit from a \$950,000 settlement. Thus, the proposed incentive award for Plaintiffs’ service as class  
16 representatives are fair and provide adequate relief for the Settlement Class, and the risk of being branded  
17 “litigious” by prospective employers, is reasonable and deserved.

### 18 **III. CONCLUSION**

19 For the foregoing reasons, Plaintiffs respectfully request that the Court grant: (1) an award of  
20 attorneys’ fees in the amount of one-third of the common fund, or \$316,667; (2) out-of-pocket costs to be  
21 reimbursed to Plaintiffs’ Counsel; and (3) the proposed Class Representative Enhancement Payments.  
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Dated: February 2, 2023

Respectfully submitted,

By: /s/ Raul Perez

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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 OMAR ZINE, individually, and on behalf of  
17 other members of the general public similarly  
situated,

18 Plaintiff,

19 vs.

20 NESPRESSO USA, INC., a Delaware  
corporation; and DOES 1 through 10, inclusive,

21 Defendants.

22 WILLIAM BABER, an individual, on behalf of  
23 himself and all others similarly situated and  
aggrieved,

24 Plaintiff,

25 vs.

26 NESPRESSO USA, INC., a Delaware  
corporation; NESTLE USA, INC., a Delaware  
corporation; and DOES 1 through 100, inclusive,

27 Defendants.  
28

Case No.: 3:20-cv-05144-SK  
Consolidated with 3:21-cv-00487-JSC

Assigned to the Hon. Sallie Kim

**DECLARATION OF RAUL PEREZ IN  
SUPPORT OF MOTION FOR ATTORNEYS'  
FEES, COSTS, AND CLASS  
REPRESENTATIVE ENHANCEMENT  
PAYMENTS**

Date: May 8, 2023  
Time: 9:30 a.m.  
Place: Courtroom C

1 **DECLARATION OF RAUL PEREZ**

2 I, Raul Perez, hereby declare as follows:

3 1. I am an attorney licensed to practice before all courts of the State of California and the  
4 United States District Court, Northern District of California. I am a Partner at Capstone Law APC  
5 (“Capstone” or with Shegerian & Associates, Inc., “Plaintiffs’ Counsel”), counsel for Plaintiff Omar  
6 Zine (“Zine” or with William Baber, “Plaintiffs”) in the above-captioned action. Unless indicated  
7 otherwise, I have personal knowledge of the following facts and if called as a witness, I could and would  
8 testify competently to them. I make this declaration in support of the Motion for Attorneys’ Fees, Costs,  
9 and Class Representative Enhancement Payments.

10 **BRIEF OVERVIEW OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS**

11 2. On June 25, 2020, Plaintiff Zine filed his class action complaint against Defendant  
12 Nespresso USA, Inc. (“Defendant” or “Nespresso”) (collectively with Plaintiffs, the “Parties”) in Contra  
13 Costa County (Case No. C20-01185). On July 27, 2020, Defendant removed this case to the Northern  
14 District of California. Zine’s operative Second Amended Complaint alleges that Defendant failed to pay  
15 overtime, minimum wages, provide compliant meal periods and rest periods, provide compliant wage  
16 statements, provide timely wages upon termination, failure to pay vested vacation time and paid time off  
17 upon termination, and unreimbursed business expenses.

18 3. On October 4, 2021, the Parties participated in a mediation with Jeffrey Krivis, Esq., an  
19 experienced mediator of wage and hour class actions. Mr. Krivis helped to manage the Parties’  
20 expectations and provided a useful, neutral analysis of the issues and risks to both sides. With Mr.  
21 Krivis’s guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiffs’  
22 claims. The terms of the settlement are now set forth in complete and final form in the Joint Stipulation  
23 of Class Action and PAGA Settlement and Release. At all times, the Parties’ negotiations were  
24 adversarial and non-collusive. The Settlement therefore constitutes a fair, adequate, and reasonable  
25 compromise of the claims at issue.

26 4. Plaintiffs’ Counsel’s evaluation of the Settlement’s reasonableness was informed by  
27 their thorough investigation into Plaintiffs’ claims and Defendant’s defenses, and their review of the  
28 considerable discovery produced by Defendant during the matter’s pendency.

1           5.       Prior to filing his action, Zine contacted Capstone's attorneys to discuss the factual bases  
2 for pursuing an action against Defendant for Labor Code violations. Zine was intimately familiar with  
3 Defendant's labor policies and practices, and over the course of multiple interviews, knowledgeably  
4 summarized those policies and practices to Capstone's attorneys. During those conversations, he  
5 explained how the policies and practices were instituted, and provided valuable insight into how they  
6 gave rise to the alleged Labor Code violations. Based on these interviews, Capstone's attorneys  
7 determined that there were legally sufficient grounds for pursuing an action against Defendant.

8           6.       In preparation for drafting Zine's Complaint, Capstone's attorneys conducted a  
9 preliminary investigation into the factual bases for Zine's claims, which entailed, *inter alia*, a careful  
10 examination of his personnel files and associated records. Following the filing of Zine's Complaint, and  
11 in response to formal and informal discovery requests, Plaintiffs' Counsel received a considerable  
12 amount of documents and data, including employee demographic data, putative class members' contact  
13 information, a sample of time and pay records, and Defendant's labor policies and procedures manuals  
14 which covered a broad range of topics including, *inter alia*, employee clock-in policies and procedures,  
15 attendance policies, meal periods/rest periods, overtime & premium pay, etc. The document and data  
16 exchanges allowed Plaintiffs' Counsel to fully assess the nature and magnitude of the claims being  
17 settled, as well as the impediments to recovery, and ultimately enabled Plaintiffs' Counsel so as to make  
18 an independent assessment of the reasonableness of the settlement's terms.

19           7.       Following the production of the Class Members' contact information, Plaintiffs'  
20 Counsel also interviewed numerous Class Members to determine the extent and frequency of the alleged  
21 Labor Code violations and to learn more about the day-to-day circumstances giving rise to the alleged  
22 violations. These Class Members worked in both stand-alone Nespresso boutiques, and Bloomingdales  
23 locations during the entire class period from 2017 through 2021. Geographically, these Class Members  
24 worked in all relevant regions; i.e., Northern and Southern California. The Class Members interviewed  
25 held the following positions: greeter, sales associate, coffee specialist, barista, boutique specialist,  
26 manager in-training, in-house trainer, team lead, shift lead, assistant manager, and chef.

27           8.       In summary, Plaintiffs' Counsel performed a thorough investigation into the claims at  
28 issue, which included: (1) determining Plaintiffs' suitability as private attorneys general and class

1 representatives through interviews, background investigations, and analyses of their employment files  
 2 and related records; (2) evaluating all of Plaintiffs' potential representative claims; (3) researching similar  
 3 wage and hour class actions as to the claims brought, the nature of the positions, and the type of  
 4 employer; (4) analyzing a sample of employees' time and wage records; (5) reviewing Defendant's labor  
 5 policies and procedures manuals; (6) interviewing Class Members; (7) researching settlements in similar  
 6 cases; (8) evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of settlement;  
 7 (9) drafting the mediation brief; and (10) participating in the mediation.

8 9. By engaging in such a thorough investigation and evaluation of Plaintiffs' claims,  
 9 Plaintiffs' Counsel can opine that the Settlement, for the consideration and on the terms set forth in the  
 10 Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in  
 11 light of all known facts and circumstances, including the risk of significant delay and uncertainty  
 12 associated with litigation, and various defenses asserted by Defendant.

#### 13 ATTORNEYS' FEES AND COSTS

14 10. I have reviewed a summary of the billing records for this action, which are maintained  
 15 during the regular course of business and billed contemporaneously. The bill for attorneys' fees is  
 16 summarized in the charts below. Plaintiffs' Counsel will also expend further hours not accounted for  
 17 below to draft the Final Approval Motion and continue to supervise the administration of the settlement  
 18 to completion.

19 Attorney	Title	CA Bar Yr.	Rate	Hours	Fees
20 Mark Ozzello	Senior Counsel	1984	\$950	62	\$58,900.00
Raul Perez	Partner	1994	\$950	29.9	\$28,405.00
21 Liana Carter	Senior Counsel	1999	\$800	11.5	\$9,200.00
Eduardo Santos	Senior Counsel	2007	\$650	30.3	\$19,695.00
22 Jamie Greene	Partner	2007	\$650	11.7	\$7,605.00
23 Anthony Castillo	Senior Counsel	2009	\$625	23.9	\$14,937.50
24 Brandon Brouillette	Fmr. Senior Counsel	2010	\$600	77	\$46,200.00
Joseph Hakakian	Associate	2018	\$475	33.2	\$15,770.00
<b>Total</b>				<b>279.5</b>	<b>\$200,712.50</b>

26 Major Tasks	Hours	Fees
27 Drafting Initial and Amended Complaints	34.2	\$22,685.00
28 Legal and Factual Analysis of Claims and Defenses	12.1	\$8,172.50



<b>Major Tasks</b>	<b>Hours</b>	<b>Fees</b>
Discovery and Document Review	42.6	\$28,942.50
Stipulations, Miscellaneous Filings, and Case Management	67.6	\$51,577.50
Mediation & Settlement Negotiations	75.4	\$56,600.00
Drafting Settlement and Settlement Approval Motions	47.6	\$32,735.00
<b>Total</b>	<b>279.5</b>	<b>\$200,712.50</b>

<b>Major Task / Attorney</b>	<b>Hours</b>	<b>Fees</b>
<b>Drafting Initial and Amended Complaints</b>	<b>34.2</b>	<b>\$22,685.00</b>
Mark Ozzello (\$950)	7.8	\$7,410.00
Anthony Castillo (\$625)	15.9	\$9,937.50
Brandon Brouillette (\$600)	2.8	\$1,680.00
Joseph Hakakian (\$475)	7.7	\$3,657.50
<b>Legal and Factual Analysis of Claims and Defenses</b>	<b>12.1</b>	<b>\$8,172.50</b>
Mark Ozzello (\$950)	1.6	\$1,520.00
Jamie Greene (\$650)	3.6	\$2,340.00
Anthony Castillo (\$625)	6.9	\$4,312.50
<b>Discovery and Document Review</b>	<b>42.6</b>	<b>\$28,942.50</b>
Mark Ozzello (\$950)	15.2	\$14,440.00
Brandon Brouillette (\$600)	11.9	\$7,140.00
Joseph Hakakian (\$475)	15.5	\$7,362.50
<b>Stipulations, Miscellaneous Filings, and Case Management</b>	<b>67.6</b>	<b>\$51,577.50</b>
Mark Ozzello (\$950)	25.9	\$24,605.00
Raul Perez (\$950)	0.8	\$760.00
Liana Carter (\$800)	11.5	\$9,200.00
Jamie Greene (\$650)	3.9	\$2,535.00
Anthony Castillo (\$625)	1.1	\$687.50
Brandon Brouillette (\$600)	17.6	\$10,560.00
Joseph Hakakian (\$475)	6.8	\$3,230.00
<b>Mediation &amp; Settlement Negotiations</b>	<b>75.4</b>	<b>\$56,600.00</b>
Mark Ozzello (\$950)	10.6	\$10,070.00
Raul Perez (\$950)	22.3	\$21,185.00
Eduardo Santos (\$650)	0.7	\$455.00
Jamie Greene (\$650)	4.2	\$2,730.00
Brandon Brouillette (\$600)	34.4	\$20,640.00
Joseph Hakakian (\$475)	3.2	\$1,520.00

<b>Major Task / Attorney</b>	<b>Hours</b>	<b>Fees</b>
<b>Drafting Settlement and Settlement Approval Motions</b>	<b>47.6</b>	<b>\$32,735.00</b>
Mark Ozzello (\$950)	0.9	\$855.00
Raul Perez (\$950)	6.8	\$6,460.00
Eduardo Santos (\$650)	29.6	\$19,240.00
Brandon Brouillette (\$600)	10.3	\$6,180.00
<b>Total</b>	<b>279.5</b>	<b>\$200,712.50</b>

<b>Attorney</b>	<b>Major Task</b>	<b>Hours</b>	<b>Fees</b>
Mark Ozzello (\$950)	Drafting Initial and Amended Complaints	7.8	\$7,410.00
	Legal and Factual Analysis of Claims and Defenses	1.6	\$1,520.00
	Discovery and Document Review	15.2	\$14,440.00
	Stipulations, Miscellaneous Filings, and Case Management	25.9	\$24,605.00
	Mediation & Settlement Negotiations	10.6	\$10,070.00
	Drafting Settlement and Settlement Approval Motions	0.9	\$855.00
<b>Total</b>		<b>62</b>	<b>\$58,900.00</b>
Raul Perez (\$950)	Stipulations, Miscellaneous Filings, and Case Management	0.8	\$760.00
	Mediation & Settlement Negotiations	22.3	\$21,185.00
	Drafting Settlement and Settlement Approval Motions	6.8	\$6,460.00
<b>Total</b>		<b>29.9</b>	<b>\$28,405.00</b>
Liana Carter (\$800)	Stipulations, Miscellaneous Filings, and Case Management	11.5	\$9,200.00
<b>Total</b>		<b>11.5</b>	<b>\$9,200.00</b>
Eduardo Santos (\$650)	Mediation & Settlement Negotiations	0.7	\$455.00
	Drafting Settlement and Settlement Approval Motions	29.6	\$19,240.00
<b>Total</b>		<b>30.3</b>	<b>\$19,695.00</b>
Jamie Greene (\$650)	Legal and Factual Analysis of Claims and Defenses	3.6	\$2,340.00
	Stipulations, Miscellaneous Filings, and Case Management	3.9	\$2,535.00
	Mediation & Settlement Negotiations	4.2	\$2,730.00
<b>Total</b>		<b>11.7</b>	<b>\$7,605.00</b>

Attorney	Major Task	Hours	Fees
Anthony Castillo (\$625)	Drafting Initial and Amended Complaints	15.9	\$9,937.50
	Legal and Factual Analysis of Claims and Defenses	6.9	\$4,312.50
	Stipulations, Miscellaneous Filings, and Case Management	1.1	\$687.50
<b>Total</b>		<b>23.9</b>	<b>\$14,937.50</b>
Brandon Brouillette (\$600)	Drafting Initial and Amended Complaints	2.8	\$1,680.00
	Discovery and Document Review	11.9	\$7,140.00
	Stipulations, Miscellaneous Filings, and Case Management	17.6	\$10,560.00
	Mediation & Settlement Negotiations	34.4	\$20,640.00
	Drafting Settlement and Settlement Approval Motions	10.3	\$6,180.00
<b>Total</b>		<b>77</b>	<b>\$46,200.00</b>
Joseph Hakakian (\$475)	Drafting Initial and Amended Complaints	7.7	\$3,657.50
	Discovery and Document Review	15.5	\$7,362.50
	Stipulations, Miscellaneous Filings, and Case Management	6.8	\$3,230.00
	Mediation & Settlement Negotiations	3.2	\$1,520.00
<b>Total</b>		<b>33.2</b>	<b>\$15,770.00</b>

11. While adjusting our rates to track market increases, Capstone's rates have steadily remained reasonable and competitive, and have been consistently approved by many federal and state courts over the past several years. *See, e.g., Johnson v. Equity Residential Services, LLC*, No. MSC19-02145 (Contra Costa County Superior Court Nov. 1, 2022) (approving Capstone's rates for Associates (\$500) and Senior Counsel/Partners (\$625 to \$950)); *Lopez v. Big Creek Lumber Company*, No. 21CV-00613 (Merced County Superior Court Oct. 31, 2022) (approving Capstone's rates for Associates (\$475) and Senior Counsel/Partners (\$625 to \$950)); *Villagomez v. Agemark Corp.*, No. CV-19-004058 (Stanislaus County Superior Court Oct. 19, 2022) (approving Capstone's rates for Senior Counsel and Partners (\$625 to \$950)); *Ceja v. El Toro Loco Market, LLC*, No. BCV-21-101202 (Kern County Superior Court Oct. 12, 2022) approving Capstone's rates for Associates (\$475-\$525) and Senior Counsel/Partners (\$625 to \$950)); *Espinosa v. Alliance Healthcare Services, Inc.*, No. 37-2020-00011228-CU-OE-CTL (San Diego County Superior Court Oct. 10, 2022) (approving Capstone's rates for Associates (\$475) and Senior Counsel/Partners (\$600 to \$950)); *Piana v. LoanDepot.com, LLC*, No. 30-2017-00913164-CU-OE-CXC (Orange County Superior Court Apr. 1, 2022) (approving Capstone's

1 rates for Associates (\$295 to \$345) and Senior Counsel/Partners (\$485 to \$775)); *Tomlinson v. U.S.*  
 2 *Bancorp*, No. 19STCV09493 (Los Angeles County Superior Court March 17, 2022) (approving  
 3 Capstone's rates for Associates (\$265 to \$295) and Senior Counsel/Partners (\$485 to \$775)); *Parks v.*  
 4 *Davidson Hotel Company, LLC*, No. 37-2018-00036699-CU-OE-CTL (San Diego Superior Court Feb.  
 5 17, 2022) (approving Capstone's rates for Associates (\$295 to \$485) and Senior Counsel/Partners (\$485  
 6 to \$775)); *Bejar v. Maxco Supply, Inc.*, No. BCV-20-101653 (Kern County Superior Court Feb. 9, 2022)  
 7 (approving Capstone's rates for Senior Counsel/Partners from \$485 to \$775); *Navarro v. Gino/Guiseppe,*  
 8 *Inc.*, No. 17-CV-01723 (Merced County Superior Court Dec. 14, 2021) (approving Capstone's rates for  
 9 Associates (\$265 to \$485) and Senior Counsel/Partners (\$485 to \$775)); *Darling v. J And A Food*  
 10 *Service, Inc.*, No. 19-CV-0193682 (Shasta County Superior Court Nov. 8, 2021) (approving Capstone's  
 11 rates ranging from \$485 to \$775); *Eagles v. Pentagon Technologies Group, Inc.*, No. RG19046330  
 12 (Alameda County Superior Court Nov. 18, 2021) (approving Capstone's rates ranging from \$485 to  
 13 \$775); *De La Cruz v. The Monterey Bay Aquarium Foundation*, No. 19CV004102 (Monterey County  
 14 Superior Court Oct. 19, 2021) (approving Capstone's rates ranging from \$265 to \$775); *Anderson v.*  
 15 *RSCR California, Inc.*, No. CIVDS1827742 (San Bernardino County Superior Court Sept. 28, 2021)  
 16 (approving Capstone's rates ranging from \$265 to \$775); *Gold v. Benihana National Corp.*, No. 37-  
 17 2016-00022320-CU-OE-NC (San Diego Superior Court Aug. 17, 2021) (approving Capstone's rates for  
 18 Associates (\$295 to \$485) and Senior Counsel/Partners (\$545 to \$775)); *Kirby v. Kindred Healthcare*  
 19 *Operating, LLC*, No. CIVDS1708958 (San Bernardino Superior Court July 13, 2021) (approving  
 20 Capstone's rates ranging from \$485 to \$745); *Moran v. San Diego Blood Bank*, No. 37-2018-00025721-  
 21 CU-OE-CTL (San Diego Superior Court June 25, 2021) (approving Capstone's rates for Associates  
 22 (\$265 to \$485) and Senior Counsel/Partners (\$485 to \$775)); *Alvarez v. AutoPartsPros, LLC*, No. 37-  
 23 2019-00039872-CU-OE-CTL (San Diego Superior Court April 9, 2021) (approving Capstone's rates  
 24 ranging from \$485 to \$775); *Sandoval v. Abacus Data Systems, Inc.*, No. 37-2018-00039466-CU-OE-  
 25 CTL (San Diego County Superior Court Feb. 26, 2021) (approving Capstone's rates for Associates  
 26 (\$295 to \$445) and Senior Counsel/Partners (\$485 to \$775)).

27 12. Capstone's rates are comparable to those of other plaintiff's firms, such as Goldstein,  
 28 Borgen, Dardarian & Ho (rates ranging from \$800-\$1015 for partners and \$540-\$550 for associates),

1 Matern Law Group, PC (\$995 partner rate and \$825-\$950 for senior associates), Baron & Budd (rates  
 2 ranging from \$775 for the requested partner to \$390-\$630 for non-partners), Wasserman Comden  
 3 Casselman & Essensten (rates ranging from \$670-750 for partners and \$300-500 for associates), and  
 4 Blood Hurst & Reardon (\$510-695 for partners). *See Aarons v. BMW of North America*, No. 11-7667-  
 5 PSG, 2014 U.S. Dist. LEXIS 118442, \*40-41 (C.D. Cal. Apr. 29, 2014) (also approving rates of  
 6 Strategic and Capstone). Other courts have approved hourly rates in this range for plaintiff's side law  
 7 firms in the Southern California area. *See, e.g., Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS  
 8 91636, \*24 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650-\$800 for senior attorneys in  
 9 consumer class action); *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160, 1172 (C.D. Cal.  
 10 2010) (approving hourly rates between \$445 and \$675); *Faigman v. AT&T Mobility LLC*, 2011 U.S.  
 11 Dist. LEXIS 15825, \* 2 (N.D. Cal. Feb. 15, 2011) (approving hourly rates of \$650 an hour for partner  
 12 services and \$500 an hour for associate attorney services); *Richard v. Ameri-Force Mgmt. Servs., Inc.*,  
 13 No. 37-2008-00096019 (San Diego Super. Ct., Aug. 27, 2010) (\$695 to \$750 an hour for partners; \$495  
 14 an hour for associates); *Barrera v. Gamestop Corp.*, No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) (\$700  
 15 an hour for partners; \$475 an hour for associates); *Anderson v. Nextel Retail Stores, LLC*, No. CV 07-  
 16 4480 (C.D. Cal. June 20, 2010) (\$655 to \$750 an hour for partners; \$300 to \$515 an hour for associates);  
 17 *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Super. Ct.) (approving 2012 partner rates  
 18 between \$550 and \$850 per hour); and *Holloway v. Best Buy Co.*, C-05-5056-PJH (MEJ) (N.D. Cal.)  
 19 (approving 2011 partner rates of \$825 to \$700 an hour, associate rates between \$355 and \$405 per hour).

20 13. Finally, Capstone's rates are in line with the adjusted Laffey Matrix, which is a fee scale  
 21 that courts often consult in determining the reasonableness of hourly rates. *See Exhibit 1.*

22 14. As summarized in the table below, counsel has incurred a total of \$12,198.82 in costs  
 23 and expenses to date.

Cost & Expense Categories	Amount
Belaire West Privacy Notice Mailing (CPT Group, Inc.)	\$713.99
Berger Consulting Group	\$2,275.00
Court Fees, Courier Fees, Filings & Service of Process	\$2,165.65
Delivery & Messenger (UPS, FedEx, messenger, etc.)	\$47.87
Investigation Services	\$2,215.08
Mediation Fees	\$4,500.00

Cost & Expense Categories	Amount
Research Services (PACER, Westlaw, etc.)	\$270.65
Telephone (Long distance, conference calls)	\$10.58
<b>Total</b>	<b>\$12,198.82</b>

#### CAPSTONE LAW APC FIRM PROFILE

15. Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues.

16. In February, 2015, Ryan H. Wu and I were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for our work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act (“PAGA”) notwithstanding a representative action waiver in an arbitration agreement.

17. Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshalls of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.

18. Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state’s consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of “benefit of the bargain” damages models in consumer class actions.

19. Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of

1 pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour*  
2 *Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an  
3 \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.

4 20. Capstone has an established practice in automotive defect class actions and is currently  
5 appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No.  
6 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A.,*  
7 *Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).

8 21. Capstone has settled over 100 high-stakes class and representative actions. Capstone's  
9 settlements have directly compensated hundreds of thousands of California workers and consumers.  
10 Capstone's actions have also forced employers to modify their policies for the benefit of employees,  
11 including changing the compensation structure for commissioned employees and changing practices to  
12 ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA  
13 enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of  
14 California.

15 22. The following is a representative sample of Capstone's settlements:

- 16 a. *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-  
17 PLA (N.D. Cal.): gross settlement of \$12 million on behalf of  
18 approximately 150,000 personal bankers, tellers, sales associates, and  
19 assistant branch manager trainees for wage and hour violations;
- 20 b. *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash  
21 payments and unique buyback program for nearly 2 million consumers;
- 22 c. *Moore v. Petsmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross  
23 settlement of \$10 million on behalf of over 19,000 non-exempt  
24 PetSmart employees for wage and hour violations;
- 25 d. *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross  
26 settlement of \$9 million on behalf of approximately 1,200 pharmacists  
27 for wage and hour violations;
- 28 e. *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura

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- Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- f. *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- g. *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- h. *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- i. *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- j. *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 non-exempt employees;
- k. *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- l. *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- m. *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- n. *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and

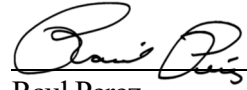


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extending warranty coverage for the electric battery on the Nissan Leaf  
valued at over \$10 million.

23. Attached as Exhibit 2 is a true and correct copy of Capstone’s firm resume.

I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct. Executed this 2nd day of February, 2023, at Los Angeles, California.

  
\_\_\_\_\_  
Raul Perez

# Exhibit 1

# LAFFEY MATRIX

History

Case Law

See the Matrix

Contact us

Home

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

\* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

\*\* The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

# Exhibit 2



## FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over thirty seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshalls of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.
- Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).



## SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers;
- *Moore v. Petsmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.



## PROFESSIONAL BIOGRAPHIES

### Partners

**Rebecca Labat.** Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

**Raul Perez.** Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4<sup>th</sup> 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.





**Melissa Grant.** Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

**Ryan H. Wu.** Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshalls of CA LLC)*, 3 Cal.5th 531(2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of "benefit of the bargain" damages models in consumer class actions.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation: Employees' Perspective*," both published in the *California Labor & Employment Law Review*.

**Robert Drexler.** Robert Drexler is a partner with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims



such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2020.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored *Defective Prosthetic Devices: Strict Tort Liability for the Hospital?* 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

**Jamie Greene**. Jamie Greene is a partner with Capstone Law, where she leads the firm's business development and case generation team. Ms. Greene is responsible for evaluating all potential new cases and referrals, developing new claims, and managing the firm's client and cocounseling relationships. She also supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation.

Before joining Capstone, Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. Ms. Greene is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California.

**Bevin Allen Pike**. Bevin Allen Pike is a partner with Capstone Law, where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

#### **Senior Counsel**

**Theresa Carroll**. Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.



**Liana Carter**. Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

**Anthony Castillo**. Anthony Castillo is a senior counsel with Capstone Law. His practice focuses on analyzing and developing pre-litigation wage-and-hour and consumer claims, including PAGA representative actions and class actions for failure to pay overtime and minimum wages, meal and rest period violations, and claims under the Fair Labor Standards Act and the Investigative Consumer Reporting Agency Act. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues.

Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

**Molly DeSario**. Molly DeSario is a senior counsel with Capstone Law, specializing in employment class action litigation. Ms. DeSario's practice focuses primarily on wage-and-hour class action and Private Attorneys General Act litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work. She has experience briefing and arguing a multitude of dispositive motions in state and federal court and has successfully certified and settled numerous classes for claims such as exempt misclassifications, unpaid wages, missed meal and rest breaks, and unreimbursed business expenses.

Ms. DeSario began her career as a general practice litigation associate with Sandler & Mercer in Rockville, Maryland, handling a wide range of civil and criminal matters. Since 2005, she has primarily litigated class action cases and, for the last seven years, has focused on representing employees and consumers in class and collective actions across California and the nation, helping them recover millions of dollars in unpaid wages, restitution, and penalties. Molly graduated from Northeastern University School of Law in 2002. During law school, she interned for the U.S. Attorney's Office in Boston, Massachusetts, and the Honorable Paul L. Friedman at the U.S. District Court for the District of Columbia. She received her undergraduate degree in Marketing and International Business from the University of Cincinnati, where she graduated summa cum laude.

**Helga Hakimi**. Helga Hakimi is a senior counsel at Capstone Law. Her practice primarily involves employment law class action litigation, namely wage-and-hour class actions and PAGA litigation on behalf of



employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work, and related employer violations under the Fair Labor Standards Act and California Labor Code.

Prior to joining Capstone, Ms. Hakimi was a partner at a civil litigation firm in West Los Angeles, where she handled mainly real estate litigation, business litigation, and defense of some employment law matters; prior to that, she worked as a civil litigation attorney handling complex personal injury litigation. Ms. Hakimi's interest in advocating for employee rights began in law school, where she volunteered for the Workers' Rights Clinic and assisted low-income community members in Northern California's greater Bay Area region with employment-related legal issues. Upon graduating from law school, Ms. Hakimi worked as an associate for a municipal law firm, and thereafter at the local City Attorney's Office, where she advised municipalities and cities in civil matters involving land use, environmental law, development issues, Constitutional law, and First Amendment rights. Ms. Hakimi graduated from Berkeley Law (Boalt Hall School of Law), where she earned her Juris Doctorate and was awarded the Prosser Award in Remedies. Ms. Hakimi received her Bachelor of Arts degree in Political Science with a minor in Education Studies from the University of California, Los Angeles, and graduated summa cum laude and with Departmental Highest Honors.

**Daniel Jonathan.** Daniel Jonathan is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Mr. Jonathan began his career as an associate at Kirkland & Ellis representing Fortune 500 clients in high-stakes litigation in various matters, including class action defense and plaintiff's actions for accounting fraud. Following that, he was a senior counsel at a boutique litigation firm where he successfully first-chaired several trials. Mr. Jonathan graduated from the Northwestern University School of Law. He received his undergraduate degree in Accounting from the University of Southern California, where he graduated cum laude. He has passed the CPA examination and worked as an auditor at Deloitte before attending law school.

**Jonathan Lee.** A senior counsel with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California.

Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

**Mark A. Ozzello.** Mark A. Ozzello is a senior counsel with Capstone Law. He is a nationally recognized and respected consumer and employment attorney who has litigated those issues throughout the country. He has always been at the forefront of consumer rights, sitting on the Board of Governors for the Consumer Attorneys of California and regularly appearing as a featured speaker on consumer rights issues nationwide.

Mr. Ozzello is a former partner of Arias Ozzello & Gignac and, most recently, was Of Counsel to Markun Zusman Friere & Compton, LLP. In his capacity as a litigator, he has obtained results for his clients in excess of \$200 million dollars. Mark has also achieved consistent success in the California Courts of Appeal,



and several judicial opinions regularly cite to his matters as authority for class certification issues. He has also argued appellate issues in several Circuit Courts of Appeals with great success. Mr. Ozzello attended Pepperdine University School of Law where he was an Editor to the Law Review, publishing several articles during his tenure in that capacity. He received his undergraduate degree from Georgetown University.

Mr. Ozzello has always strived to be an integral part of local communities. He has established educational scholarship programs at several charitable organizations, including El Centro De Amistad in Los Angeles and St. Bonaventure Indian Mission and School in Thoreau, New Mexico, and presides over a legal clinic in Los Angeles which provides pro bono legal assistance to non-English speaking individuals.

**Cody Padgett.** A senior counsel at Capstone Law, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

**Eduardo Santos.** Eduardo Santos is a senior counsel at Capstone Law, and concentrates his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

**Mao Shiokura.** Mao Shiokura is a senior counsel with Capstone. Her practice focuses on identifying, evaluating, and developing new claims, including PAGA representative actions and class actions for wage-and-hour violations and consumer actions under the Consumers Legal Remedies Act, False Advertising Law, Unfair Competition Law, and other consumer protection statutes. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships.

Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.



**John Stobart.** John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm’s amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

**Roxanna Tabatabaepour.** Roxanna Tabatabaepour is a senior counsel with Capstone Law. Her practice primarily involves representing employees in class actions and representative actions for various violations of the California Labor Code.

Before joining Capstone, Ms. Tabatabaepour’s experience included representing workers in single-plaintiff and class/representative action lawsuits regarding wage-and-hour violations, as well as individual claims for discrimination, retaliation, failure to accommodate, harassment, and wrongful termination, under both California and federal laws. Ms. Tabatabaepour received her undergraduate degrees from the University of California San Diego. She subsequently graduated from the American University, Washington College of Law, where she was a Marshall-Brennan Constitutional Literacy Fellow and taught Constitutional Literacy to teens in marginalized communities.

**Orlando Villalba.** Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor’s degree in International Business from the University of Southern California.

**Tarek Zohdy.** A senior counsel with Capstone Law, Tarek Zohdy develops, investigates and litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class actions from investigation through settlements that have provided significant relief to millions of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as “Lemon Law.” He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in



2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

### Associates

**Tyler Anderson.** Tyler Anderson is an associate with Capstone Law. His practice focuses on complex motions, writs, and appeals. Before joining Capstone, Mr. Anderson was Co-Director of the Los Angeles Center for Community Law and Action (“LACCLA”), a nonprofit law firm that represents tenant unions and union organizers. While there, Mr. Anderson tried a disparate impact federal Fair Housing Act case that resulted in a jury verdict of over \$1,000,000. He also frequently used California Anti-SLAPP laws to block attempts to silence tenant union organizers. Prior to working at LACCLA, Mr. Anderson clerked for the Honorable Martha Vazquez, a federal district court judge for the District of New Mexico who, at the time, sat on the Executive Committee of the Federal Judiciary. Before that, Mr. Anderson was a litigation associate at the international law firm Jenner & Block LLP. Mr. Anderson graduated from Harvard Law School, where he was the Executive Articles Editor of the Harvard Journal on Legislation as well as President of one of the largest student-run pro bono organizations at Harvard University, Project No One Leaves. He graduated with several “Dean’s Scholar” prizes for receiving top grades in his constitutional law courses.

**Sairah Budhwani.** Sairah Budhwani is an associate with Capstone Law. Her practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work violations. Previously, Ms. Budhwani litigated employment discrimination, harassment, and retaliation claims, and also represented incarcerated individuals contesting the conditions of their confinement. Ms. Budhwani graduated from UCLA School of Law in 2019 and received an undergraduate degree in Urban Studies from University of California, Irvine in 2012. Ms. Budhwani is admitted to practice law in California. She is fluent in Urdu.

**Laura Goolsby.** Laura Goolsby is an associate with Capstone Law. Her practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. Prior to joining Capstone Law, Ms. Goolsby was an associate at a California civil litigation practice representing individuals in toxic tort disputes. Previous to that, Ms. Goolsby was a trial attorney in a California lemon law firm, trying cases against automobile manufacturers in state and federal court. Ms. Goolsby is published in the University of Pennsylvania Journal of Law and Change law review and served as a judicial intern to the U.S. Department of Justice Immigration Court while in law school. Ms. Goolsby graduated from California Western School of Law, where she was a member of the award-winning Philip C. Jessup International Moot Court team and spent multiple trimesters on the Dean’s List. She graduated with several Academic Excellence Awards for receiving top grades in various international law, civil rights law, and legal skills courses.

**Joseph Hakakian.** Joseph Hakakian is an associate with Capstone Law. His practice focuses on prosecuting wage-and-hour class and representative actions in state and federal court. Prior to joining Capstone Law, Mr. Hakakian served as a summer clerk for Mark Ozzello at Markun Zusman Freniere & Compton, LLP, working on various actions including wage-and-hour claims, unpaid overtime, false advertising, and unfair competition. He graduated from UCLA School of Law, with a business law specialization, where he served as a staff editor for the Journal of Environmental Law and Policy and worked as a law clerk with the Consumer Protection Division of the Los Angeles District Attorney’s Office. Prior to attending law school, Mr. Hakakian received his undergraduate degree from University of California, Los Angeles, in 2013, where he graduated summa cum laude, Dean’s Honor List, and College Honors, and received scholastic achievement awards from Golden Key Honor Society and Phi Alpha Theta Honor Society. Joseph is an active member of



the Consumer Attorneys Association of Los Angeles (CAALA), Consumer Attorneys of California (CAOC), and Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

**Ninel Kocharyan.** Ninel Kocharyan is an associate with Capstone Law. Her practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violation of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work violations. Ms. Kocharyan began her career in entertainment law reviewing, drafting, and negotiating contracts for talent and ensuring FTC compliance. She immigrated to the United States from Russia at the age of 15 with a passion to pursue a career in law. Ms. Kocharyan graduated from Thomas Jefferson School of Law in 2014 and received her undergraduate degree from University of California, Los Angeles where she majored in Political Science. Ms. Kocharyan is admitted to practice law in California.

**Alexander Lima.** Alexander Lima is an associate with Capstone Law. His practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Mr. Lima was an associate at a California civil litigation practice representing individuals and entities in real estate disputes. Mr. Lima graduated from Santa Clara University, School of Law in 2018, where he served as an Executive Board Member of the Honors Moot Court and was selected as a regional finalist for the American Bar Association Negotiation Competition. He received his undergraduate degree from the University of California, Riverside in 2014.

**Trisha Monesi.** Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations.

**Jezzette Ron.** Jezzette Ron is an associate with Capstone Law. Her practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. She began her career as in-house counsel for a private entity reviewing and drafting company policies. During this time, she actively supported the company with human resource and workers compensation matters. Additionally, she ensured company compliance with California Labor Codes and Occupational Safety and Health Administration (OSHA) regulations. She also implemented an Illness Injury Prevention Program, which included a COVID-19 Exposure Control and Response procedure in compliance with OSHA. Ms. Ron graduated from Whittier Law in 2017, where she served as a board member of the Student Bar Association. She received her undergraduate degree from the University of California, Riverside in 2012 where she majored in Business Management and Public Policy. Ms. Ron is admitted to practice law in California and takes pride in being an advocate for creating a work friendly environment for all employees.

## **OUTREACH AND EDUCATION**

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal





([www.impactlitigation.com](http://www.impactlitigation.com)). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

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4 **SHEGERIAN & ASSOCIATES, INC.**  
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5 Los Angeles, California 90049  
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6 Facsimile Number: (310) 860-0771

7 *Attorneys for Plaintiff William Baber*

8 *[Additional counsel on next page]*

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11  
12 OMAR ZINE, individually, and on behalf  
13 of other members of the general public  
similarly situated,

14 Plaintiff,

15 vs.

16 NESPRESSO USA, INC., a Delaware  
17 corporation; and DOES 1 through 10,  
inclusive,

18 Defendants.

19  
20 WILLIAM BABER, an individual, on  
21 behalf of himself and all others similarly  
situated and aggrieved,

22 Plaintiff,

23 vs.

24 NESPRESSO USA, INC., a Delaware  
25 corporation; NESTLE USA, INC., a  
Delaware corporation; and DOES 1  
26 through 100, inclusive,

27 Defendants.  
28

Case No.: 3:20-cv-05144-SK  
Consolidated with 3:21-cv-00487-JSC

**DECLARATION OF CHERYL A.  
KENNER IN SUPPORT OF MOTION  
FOR ATTORNEYS' FEES, COSTS,  
AND CLASS REPRESENTATIVE  
ENHANCEMENT PAYMENTS**

Date: May 8, 2023  
Time: 9:30 a.m.  
Place: Courtroom C

*[Filed concurrently with (1) Notice of  
Motion and Motion for Attorneys' Fees,  
Costs, and Class Representative  
Enhancement Payments; (2) Declaration  
of Raul Perez; (3) Declaration of  
Plaintiff Omar Zine; (4) Declaration of  
Plaintiff William Baber; and (5)  
Proposed Order]*

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7 *Attorneys for Plaintiff Omar Zine*  
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**DECLARATION OF CHERYL A. KENNER**

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I, Cheryl A. Kenner, declare:

1. I am an associate of the law firm Shegerian & Associates, Inc. (“S&A”), attorneys of record for Plaintiff William Baber (“Baber”) in this Action. I am admitted to practice before all courts of the State of California. Raul Perez, Mark A. Ozzello, and Joseph Hakakian of Capstone Law APC are counsel of record for plaintiff Omar Zine (“Zine”) (Zine and Baber are referred to collectively as “Plaintiffs”). I have personal knowledge of the facts thereto. I make this declaration upon my personal knowledge and, if called upon and sworn as a witness, I could and would competently testify hereto.

2. I submit this Declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement served and filed herewith. I have been involved in all aspects of this Action since at least February 2020, prior to the inception of the case, and have personal knowledge of the following facts.

**THE PARTIES AND PROCEDURAL HISTORY**

3. Plaintiff Baber worked for Nespresso in California as an hourly-paid, non-exempt retail sales specialist from approximately August 20, 2017 through approximately January 31, 2020.

4. On June 3, 2020, Plaintiff William Baber filed a class action and PAGA Representative action complaint alleging that Defendant failed to pay overtime, minimum wages, provide compliant meal periods and rest periods, provide compliant wage statements, provide timely wages upon termination, which are substantially overlapping causes of action with the similar class definition as the *Zine* case. On September 15, 2020, Plaintiff Baber filed a first amended complaint.

5. On January 7, 2021, Plaintiff Baber transferred his case from the Central District of California to consolidate it with Plaintiff Zine’s action.

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**ADEQUACY OF THE CLASS REPRESENTATIVES**

1  
2 6. Over the course of multiple interviews with Plaintiff Baber, Plaintiff  
3 Baber demonstrated that he was intimately familiar with Defendant’s labor policies  
4 and practices, and was able to knowledgeably summarize those policies and practices  
5 in speaking with me.

6 7. The Class Representatives’ claims are typical of the claims of the Class.  
7 As with all Class Members, the Class Representatives worked for Defendant  
8 Nespresso (“Defendant”) as employees during the Class Period and suffered injury for  
9 Defendant’s alleged failure to provide them with meal periods and rest breaks, failure  
10 to pay them minimum and overtime wages, failure to issue them timely and accurate  
11 wage statements, failure to pay them all wages owed every pay period and upon  
12 separation, and for Defendant’s alleged unlawful, unfair, and deceptive business  
13 practices. Thus, the Class Representatives are members of the Class they seek to  
14 represent, and their claims are typical of the Class.

15 8. The Class Representative Enhancement Payments are intended to  
16 compensate Plaintiffs Omar Zine and William Baber as the Class Representatives for  
17 their willingness to accept the responsibilities of representing the interests of all class  
18 members in addition to providing a broader release of claims than absent Class  
19 Members. The purpose is to provide incentive payments, taking into consideration the  
20 risks, time and effort they expended in coming forward to provide invaluable  
21 information and litigate this matter on behalf of all Class Members throughout the  
22 duration of the Action.

**INVESTIGATION, DISCOVERY, AND LITIGATION EFFORTS**

23  
24 9. All negotiations were completed in a manner free of fraud, collusion, and  
25 over-reaching; in fact, there is no evidence to suggest that the negotiations were  
26 tainted in any way. Defendant is represented by a respected law firm also with  
27 extensive experience in wage and hour class and PAGA actions. As is proper practice  
28 for class action attorneys, Plaintiffs’ Counsel did not discuss attorneys’ fees until after

1 an agreement was reached in principle with respect to the direct class settlement  
2 benefits and the gross settlement fund amount. Plaintiffs' Counsel acted consistently  
3 with their ethical obligations by negotiating attorneys' fees only after the Parties  
4 settled all other material terms affecting the Class. By deferring fee negotiations until  
5 the material terms of the relief for the Class were mutually agreed upon, Plaintiffs'  
6 Counsels' interests were aligned with that of the Class throughout the litigation.

7 10. Thus far, Plaintiffs' Counsel have devoted substantial time and resources  
8 in connection with the investigation, litigation, discovery, negotiations, and settlement  
9 of this matter over the course of nearly three years, all with no guarantee of  
10 compensation for their services or the reimbursement of costs expended in light of the  
11 fact that Plaintiffs' Counsel entered into a fee agreement with Plaintiffs on a  
12 contingency basis. Class Members' individual claims would have been far too small  
13 to cost-effectively litigate. Still, Plaintiffs' Counsel expended substantial resources  
14 throughout the prosecution of this case and expect to do so to continue efforts to  
15 effectuate the settlement. The massive amount of legal work undertaken by Plaintiffs'  
16 Counsel has included, among other things: (1) preliminary research, factual  
17 investigation—including reviewing Plaintiff's personnel file and records—and  
18 multiple meetings and conversations with the Class Representatives; (2) drafting the  
19 extensive PAGA letter to ensure it supplied the legally sufficient facts and theories to  
20 withstand a challenge to its adequacy, the initial Complaint, and the operative First  
21 Amended Complaint, which involved multiple meet-and-confer discussions on  
22 Defendant's Motion to Dismiss; (3) drafting formal and informal discovery requests  
23 and obtaining informal discovery requests; (4) reviewing and analyzing documents  
24 and data Defendant produced; (5) conducting legal research; (6) contacting putative  
25 class members and discussing the case and claims with them; (7) speaking to putative  
26 Class members in preparation for the mediation; (8) analyzing classwide data and  
27 statistics; (9) drafting a mediation brief, preparing for the mediation, and attending the  
28 mediation; (10) engaging in extensive settlement negotiations and drafting the

1 Memorandum of Understanding, the Settlement Agreement, and the Notice Packet;  
2 (11) drafting various stipulations to transfer and consolidate the two cases; (12)  
3 appearing for various court appearances; (13) drafting and preparing for the motion  
4 for preliminary approval, including supporting documents and declarations; (14)  
5 vetting and selecting and then working with the Settlement Administrator on various  
6 issues; (15) assisting the Class Representatives in understanding the proposed  
7 Settlement; and (16) addressing various other case management matters. The  
8 requirements of litigating this action have been significant such that it precluded  
9 Plaintiffs' Counsel from pursuing other cases of similar complexity, and because  
10 Plaintiffs' Counsel are a boutique law firm with few attorneys and staff.

11 11. In response to Plaintiffs' formal and informal discovery requests,  
12 Plaintiffs' Counsel received a considerable amount of documents and data, including  
13 employee demographic data, putative class members' contact information, a sample  
14 of time and pay records, and Defendant's labor policies and procedures manuals  
15 which covered a broad range of topics including, inter alia, employee clock-in  
16 policies and procedures, attendance policies, meal periods/rest periods, overtime &  
17 premium pay, etc.

18 12. The document and data exchanges allowed Plaintiffs' Counsel to fully  
19 assess the nature and magnitude of the claims being settled, as well as the  
20 impediments to recovery, and ultimately enabled Plaintiffs' Counsel so as to make an  
21 independent assessment of the reasonableness of the settlement's terms. Plaintiffs'  
22 Counsel were able to realistically assess the value of Plaintiffs' claims and  
23 intelligently engage defense counsel in settlement discussions that culminated in the  
24 proposed settlement.

25 13. Following the production of the Class Members' contact information,  
26 Plaintiffs' Counsel also interviewed numerous Class Members to determine the extent  
27 and frequency of the alleged Labor Code violations and to learn more about the day-  
28 to-day circumstances giving rise to the alleged violations. These Class Members

1 worked in both stand-alone Nespresso boutiques, and Bloomingdales locations during  
2 the entire class period from 2017 through 2021. Geographically, these Class Members  
3 worked in all relevant regions; i.e., Northern and Southern California. The Class  
4 Members interviewed held the following positions: greeter, sales associate, coffee  
5 specialist, barista, boutique specialist, manager in-training, in-house trainer, team  
6 lead, shift lead, assistant manager, and chef.

7 14. By engaging in such a thorough investigation and evaluation of  
8 Plaintiffs' claims, Plaintiffs' Counsel can opine that the Settlement, for the  
9 consideration and on the terms set forth in the Settlement Agreement, is fair,  
10 reasonable, and adequate, and is in the best interests of Class Members in light of all  
11 known facts and circumstances, including the risk of significant delay and uncertainty  
12 associated with litigation, and various defenses asserted by Defendant.

13 15. I will certainly expend further hours to continue the steps to effectuate  
14 the settlement; field telephone calls from Class Members regarding the Class Notice  
15 and proposed Settlement, address updates, and other issues attendant to class  
16 settlements, and oversee the Settlement Administrator's handling of the notice and  
17 administration.

#### 18 **ATTORNEY HOURS**

19 16. Capstone Law APC and Shegerian & Associates, Inc. jointly drafted and  
20 each executed a counsel retainer agreement setting forth their fee-splitting agreement.  
21 Plaintiff Omar Zine executed his respective retainer agreement with this fee-splitting  
22 arrangement on October 6, 2020. Plaintiff William Baber executed his respective  
23 retainer agreement with this fee-splitting arrangement on October 7, 2020.

24 17. As explained earlier, Plaintiffs' Counsel have expended a great deal of  
25 effort in litigating this set of consolidated cases. To-date, the lodestar value of the  
26 time spent by Shegerian & Associates ("S&A") on this case is 227.3 hours and  
27 \$161,458.00.

28



1 18. S&A maintains and retains records of all persons who have billed time  
 2 for their work in this Action. I have reviewed my time records and the time records  
 3 of attorney Anthony Nguyen and have verified that these reported hours are accurate.  
 4 Based on the 227.3 hours total hours that S&A attorneys worked on this case and the  
 5 applicable hourly rates at the time the work was performed, the lodestar value of the  
 6 non-clerical time spent on this case by S&A is \$161,458.00. No clerical or paralegal  
 7 time has been included. The breakdown of hours worked to-date is as follows:

Name	Title	Hours	Rate	Lodestar
<b>Shegerian &amp; Associates, Inc.</b>				
<b>Anthony Nguyen</b>	<b>Partner</b>	<b>47.9</b>	<b>\$900</b>	<b>\$43,110.00</b>
Drafting Initial and Amended Complaints		2.5		\$2,250.00
Discovery & Document Review		5.5		\$4,950.00
Legal and Factual Analysis of Claims and Defenses		7.3		\$6,570.00
Stipulations, Miscellaneous Filings, and Case Management		22.9		\$20,610.00
Mediation & Settlement Negotiations		5.8		\$5,220.00
Drafting Settlement and Settlement Approval Motions		3.9		\$3,510.00
<b>Cheryl A. Kenner</b>	<b>5<sup>th</sup>/6<sup>th</sup> /7<sup>th</sup> year associate</b>	<b>179.4</b>	<b>\$650 to \$675</b>	<b>\$118,348.00</b>
Drafting Initial and Amended Complaints		5.8		\$3,770.00
Discovery & Document Review		20.6		\$13,390.00
Legal and Factual Analysis of Claims and Defenses		11.7		\$1,820.00
Stipulations, Miscellaneous Filings, and Case Management		25.3		\$16,558.00
Mediation & Settlement Negotiations		83.8		\$61,193.00
Drafting Settlement and Settlement Approval Motions		32.2		\$21,588.00
<b>S&amp;A Total</b>		<b>227.3</b>		<b>\$161,458.00</b>

1           19. S&A’s hourly rates are comparable to, or less than, those charged by  
 2 other class action plaintiffs’ counsel and the firms defending class actions, and have  
 3 been approved by numerous federal and state courts. According to The National Law  
 4 Journal’s Nationwide Sampling of Law Firm Billing Rates, billing rates for senior  
 5 partners and associates at the following firms based in Southern California were, at  
 6 the end of 2014 (several years ago), as follows<sup>1</sup>:

Name	Range of Billing Rate for Partners	Range of Billing Rate for Associates
Cooley Godward Kronish	\$660-\$990	\$160-\$630
Knobbe, Martens, Olsen & Bear	\$440-\$785	\$295-\$535
Manatt, Phelps & Phillips	\$640-\$795	\$370 (avg.)
Rutan & Tucker	\$345-\$675	\$230-\$500
Shepard, Mullin, Richter & Hampton	\$490-\$875	\$275-\$535

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17 The hourly rates listed above for Class Counsel compare favorably with the 8-year-  
18 old rates listed above, which are lower than the rates those firms now bill in 2023.

#### 19           **ATTORNEY COSTS**

20           20. To-date, the total costs of Shegerian & Associates, Inc. (“S&A”) is  
 21 \$11,887.06. The largest categories of fees and costs that S&A expended are as  
 22 follows: (1); \$4,500.00 in mediation costs; (2) \$2,275.00 in consultant costs (3)  
 23 \$2,083.07 in filing and service fees; and (4) \$1,650.00 in research costs.

24           21. I reviewed S&A’s actual litigation costs of \$11,887.06 for accuracy and  
 25 confirmed all costs are correct. A true and correct copy of S&A’s costs to-date are  
 26 attached hereto as **Exhibit 1**.

27  
28 <sup>1</sup> As per the 2011 National Law Journal 2011 survey, ten California law firms regularly charge hourly rates of \$660, \$795, \$850, and even \$980 per hour.

**QUALIFICATIONS AND EXPERIENCE**

1  
2 22. S&A is one of California’s largest plaintiff-only employment law firms.  
3 With seasoned trial, appellate, and class action attorneys S&A has the experience,  
4 resources, and expertise to successfully prosecute complex employment actions.

5 23. Since its founding in 1999, S&A has consistently been recognized as a  
6 major force in employment litigation, making law on cutting-edge issues and  
7 obtaining hundreds of millions of dollars in recovery for employees.

8 24. S&A employs seasoned class action attorneys who regularly litigate  
9 wage and hour claims through certification and on the merits, and have considerable  
10 experience settling wage and hour class actions.

11 25. I am an associate attorney at S&A. I received a B.A. from the University  
12 of California, Los Angeles in 2007. I received my J.D. from Loyola Law School in  
13 Los Angeles in 2015. I was admitted to practice and became an active member of the  
14 State Bar of California in December 2015 and have been an active member in good  
15 standing continuously since then. Since January 2016, I have been practicing as a  
16 litigation attorney in Los Angeles with a focus on employment and consumer class  
17 action litigation.

18 26. Anthony Nguyen is a partner and shareholder of S&A and is assigned to  
19 work on this case. Mr. Nguyen received a B.A. from the University of California,  
20 Berkeley in 2005. Mr. Nguyen received his J.D. from University of California, Los  
21 Angeles, School of Law in 2008. Mr. Nguyen was admitted to practice and became an  
22 active member of the State Bar of California in December 2008 and has been an  
23 active member in good standing continuously since then. Mr. Nguyen focuses his  
24 practice on employment litigation.

25 27. I am not aware of any conflicts of interest between S&A and the Class  
26 Members nor between Plaintiffs and the Class Members. No one at S&A has any  
27 financial interest in or otherwise has a relationship with CPT Group, Inc. which would  
28 create a conflict of interest.

1           28. S&A has extensive experience litigating class actions and PAGA actions  
2 in California. S&A is one of the leading Plaintiff's law firms in the United States,  
3 with over \$300 million recovered for its clients in verdicts and settlements. A  
4 representative list of those cases, excluding the instant case, that I litigated and played  
5 an integral role in at S&A is as follows:

6           (a) In *Santos v. Harvard Label, Inc.; et al.*, Los Angeles Superior Court  
7 Case No. 19STCV41389, I obtained a \$1,300,000 class settlement on  
8 behalf of approximately 678 nonexempt employees who allegedly were  
9 not provided meal periods or rest breaks, were not paid all minimum  
10 and overtime wages, did not receive accurate wage statements, were  
11 not paid all wages owed upon separation, and were subjected to  
12 defendant's unlawful, unfair, and deceptive business practices;

13           (b) In *Castillo; et al. v. Berger Transfer & Storage, Inc.; et al.*, Los  
14 Angeles Superior Court Case No. 20STCV31076, I obtained a  
15 \$765,000 class settlement (awaiting final approval) on behalf of 61  
16 allegedly misclassified truck drivers who allegedly were not paid all  
17 minimum wages for non-productive time, did not receive accurate  
18 wage statements, were not paid all wages owed upon separation, were  
19 not reimbursed all necessary, business-related expenses, had unlawful  
20 deductions from their earnings, and were subjected to defendant's  
21 unlawful, unfair, and deceptive business practices;

22           (c) In *Portillo; et al. v. AJR Trucking, Inc.; et al.*, Los Angeles Superior  
23 Court Case No. 19STCV15591, I obtained a \$1,095,000 settlement on  
24 behalf of approximately 823 truck drivers (two subclasses of hourly,  
25 nonexempt and misclassified independent contractors) who allegedly  
26 were not provided meal periods or rest breaks, were not paid all  
27 minimum and overtime wages, did not receive accurate wage  
28 statements, were not paid all wages owed upon separation, were not

1 reimbursed and necessary, business-related expenses, and were  
2 subjected to defendant's unlawful, unfair, and deceptive business  
3 practices;

4 (d) In a set of two consolidated cases entitled *Hernandez v. CTC Global*  
5 *Corp.*, Orange County Superior Court Case No. 30-2020-01138945-  
6 CU-OE-CJC, co-counsel and I obtained a \$750,000 settlement on  
7 behalf of approximately 499 nonexempt employees who allegedly were  
8 not provided meal periods or rest breaks, were not paid all minimum  
9 and overtime wages, did not receive accurate wage statements, were  
10 not paid all wages owed upon separation, and were subjected to  
11 defendant's unlawful, unfair, and deceptive business practices;

12 (e) In *Miller v. Sea View Restaurants, Inc. dba Gladstones*, Los Angeles  
13 Superior Court Case No. 20STCV00257, I obtained a \$275,000 PAGA  
14 settlement on behalf of approximately 202 nonexempt restaurant  
15 employees who allegedly were not provided meal periods or rest  
16 breaks, were not paid all minimum and overtime wages, did not receive  
17 accurate wage statements, were not paid all wages owed upon  
18 separation, and were subjected to defendant's unlawful, unfair, and  
19 deceptive business practices;

20 (f) In *Guth v. The Green Goddess, Inc.*, Los Angeles Superior Court Case  
21 No. 20STCV12952, I obtained a \$150,000 class settlement (awaiting  
22 final approval) on behalf of 261 nonexempt employees who allegedly  
23 were not provided meal periods or rest breaks, were not paid all  
24 minimum and overtime wages, did not receive accurate wage  
25 statements, were not paid all wages owed upon separation, and were  
26 subjected to defendant's unlawful, unfair, and deceptive business  
27 practices;

28

1 (g) In *Garcia v. Del Real Foods, LLC; Staffmark Investment LLC*, Los  
2 Angeles Superior Court Case No. 20STCV05491, I obtained a  
3 \$700,000 class settlement on behalf of 3,706 nonexempt employees  
4 who allegedly were not provided meal periods or rest breaks, were not  
5 paid all minimum and overtime wages, did not receive accurate wage  
6 statements, were not paid all wages owed upon separation, and were  
7 subjected to defendant's unlawful, unfair, and deceptive business  
8 practices;

9 (h) In *Rubio v. CSC ServiceWorks, Inc.*, United States District Court,  
10 Central District Court of California Case No. 2:20-cv-02873-SB-GJS, I  
11 obtained an \$825,000 settlement on behalf of 375 nonexempt  
12 employees who allegedly were not provided meal periods or rest  
13 breaks, were not paid all minimum and overtime wages, did not receive  
14 accurate wage statements, were not paid all wages owed upon  
15 separation, and were subjected to defendant's unlawful, unfair, and  
16 deceptive business practices;

17 (i) In *Rios v. ESHU Enterprises, LLC dba Popeye's Chicken*, Los Angeles  
18 Superior Court Case No. 20STCV35422, I obtained a \$300,000  
19 settlement on behalf of 380 nonexempt employees who allegedly were  
20 not provided meal periods or rest breaks, were not paid all minimum  
21 and overtime wages, did not receive accurate wage statements, were  
22 not paid all wages owed upon separation, and were subjected to  
23 defendant's unlawful, unfair, and deceptive business practices;

24 (j) I was appointed class counsel in *Aguilar; Iturbide v. Santa Rosa Berry*  
25 *Farms, LLC; et al.*, Ventura County Superior Court Case No. 56-2019-  
26 00525899-CU-OE-VTA, in which I obtained a \$500,000 settlement on  
27 behalf of a class of 1,647 nonexempt farm worker employees who  
28 allegedly were not provided meal periods or rest breaks, were not paid

1 minimum and overtime wages, did not receive timely and accurate  
2 wage statements, were not reimbursed for their business expenses,  
3 were not paid all wages owed upon separation, and were subjected to  
4 defendant's unlawful, unfair, and deceptive business practices;

5 (k) I was appointed class counsel in *Felder v. TBI Airport Management,*  
6 *Inc.*, Los Angeles Superior Court Case No. 19STCV08563, in which I  
7 obtained a \$100,000 settlement on behalf of only 17 nonexempt airport  
8 employees who allegedly were not provided meal periods or rest  
9 breaks, were not paid all minimum and overtime wages, did not receive  
10 timely and accurate wage statements, were not paid all wages owed  
11 upon separation, and were subjected to defendant's unlawful, unfair,  
12 and deceptive business practices;

13 (l) I was appointed class counsel in *Estrada v. Sameday Insurance*  
14 *Services, Inc.; et al.*, Los Angeles Superior Court Case No.  
15 19STCV43499, in which we obtained a \$267,700 settlement on behalf  
16 of a class of 105 nonexempt sales agent employees who allegedly were  
17 not provided meal periods or rest breaks, were not paid minimum and  
18 overtime wages, did not receive timely and accurate wage statements,  
19 were not reimbursed for their business expenses, were not paid all  
20 wages owed upon separation, and were subjected to defendant's  
21 unlawful, unfair, and deceptive business practices;

22 (m) I was appointed class counsel in *Botello v. GL HMM, LLC; et al.*, LASC  
23 Case No. 18STCV05209, in which we obtained a \$267,500 settlement on  
24 behalf of a class of 375 nonexempt car dealership employees who  
25 allegedly were not provided meal periods or rest breaks, were not paid  
26 minimum and overtime wages, did not receive timely and accurate wage  
27 statements, were not reimbursed for their business expenses, had wages  
28 unlawfully deducted, were not paid all wages owed upon separation, and

1           were subjected to defendant’s unlawful, unfair, and deceptive business  
2           practices.

3           29.       While at my prior law firm of Kabateck Brown Kellner LLP (KBK) I  
4           successfully resolved several class actions under the supervision of reputable,  
5           seasoned class action attorneys. A representative list of those cases I litigated and  
6           played an integral role in while at KBK is as follows:

7           (a) I was appointed co-class counsel, through my prior firm KBK, in  
8           consolidated actions *Singh, et al. v. Roadrunner Transportation Systems,*  
9           *Inc., Central Cal Transportation, LLC; and Morgan Southern, Inc.; Rich,*  
10          *et al. v. Roadrunner Transportation Systems, Inc., et al.,* and *Phillips v.*  
11          *Roadrunner Transportation Systems, Inc., et al.,* Case No. 1:15-cv-01497  
12          (E.D. Cal.), in which we obtained a \$9.25 million settlement on behalf of  
13          a class of 897 drayage independent contractor truck drivers who were  
14          misclassified and therefore, were not paid minimum wages nor all wages  
15          owed ever pay period and upon separation, were not provided meal  
16          periods or rest breaks, did not receive timely and accurate wage  
17          statements, were not reimbursed for their business expenses, had wages  
18          unlawfully deducted, and were subjected to defendant’s unlawful, unfair,  
19          and deceptive business practices;

20          (b) I was appointed co-class counsel, through my prior firm KBK, in the  
21          action *Vargas, et al. v. Andrews International, Inc., et al.,* L.A.S.C. Case  
22          No. BC601767, in which we obtained a \$4.7 million settlement on behalf  
23          of a class of approximately 5,500 nonexempt security guards who were  
24          not paid minimum wages nor all wages owed ever pay period and upon  
25          separation, were not provided compliant meal periods or rest breaks, did  
26          not receive timely and accurate wage statements, and were subjected to  
27          defendant’s unlawful and unfair business practices;

28



1 (c) I was appointed class counsel, through my prior firm KBK, in the action  
2 *Craft, et al. v. RWI Transportation, LLC, et al.*, Case No. 2:2017-cv-  
3 05289 (C.D. Cal.), in which we obtained a \$915,000 settlement on behalf  
4 of a class of 584 drayage independent contractor truck drivers who were  
5 misclassified and therefore, were not paid minimum wages nor all wages  
6 owed ever pay period and upon separation, were not provided meal  
7 periods or rest breaks, did not receive timely and accurate wage  
8 statements, were not reimbursed for their business expenses, had wages  
9 unlawfully deducted, and were subjected to defendant's unlawful, unfair,  
10 and deceptive business practices;

11 (d) I was appointed class counsel, through my prior firm KBK, in the action  
12 *Castro, et al. v. Pacific 9 Transportation, Inc., et al.*, L.A.S.C. Case No.  
13 BC537252, in which we obtained a \$2.5 million settlement (amount  
14 increased after Defendant declared bankruptcy, and the Bankruptcy  
15 Court confirmed this new amount in Debtor-Defendant's Chapter 11  
16 Plan of Reorganization) on behalf of a class of drayage independent  
17 contractor truck drivers who were misclassified and therefore, were not  
18 paid minimum wages nor all wages owed ever pay period and upon  
19 separation, were not provided meal periods or rest breaks, did not receive  
20 timely and accurate wage statements, were not reimbursed for their  
21 business expenses, and were subjected to defendant's unlawful, unfair,  
22 and deceptive business practices;

23 (e) I was appointed class counsel, through my prior firm KBK, in the action  
24 *Marin, et al. v. General Assembly Space, Inc., et al.*, Case No. 2:17-cv-  
25 05449 (C.D. Cal.), in which we obtained a \$1 million settlement on  
26 behalf of a class of over 1,000 educational course instructors who were  
27 misclassified and therefore, were not paid minimum wages and overtime  
28 wages nor all wages owed ever pay period and upon separation, were not

1 provided meal periods or rest breaks, did not receive timely and accurate  
2 wage statements, were not reimbursed for their business expenses, and  
3 were subjected to defendant's unlawful, unfair, and deceptive business  
4 practices;

5 (f) I was appointed co-class counsel, through my prior firm KBK, in the  
6 action *Everett, et al. v. Pulte Group, Inc., et al.*, Placer County Superior  
7 Court Case No. SCV0033498, in which we obtained a \$675,000  
8 settlement on behalf of a class of several hundreds of purchasers of and  
9 homeowners with certain solar panel roof tiles in a products liability  
10 class action;

11 (g) I was appointed class counsel, through my prior firm KBK, in the action  
12 *Gomez, et al. v. Automobile Club of Southern California, Inc., et al.*,  
13 L.A.S.C. Case No. BC564641, in which we obtained a \$500,000  
14 settlement (half contingent on success of MSJ) on behalf of a class of  
15 homeowner-policyholders who were subjected to Defendant's Wildfire  
16 Smoke Endorsement imposing a \$5,000 sublimit on wildfire smoke  
17 damage that the Court later ruled as unenforceable, granting Plaintiff's  
18 Motion for Summary Judgment in the related action *Marrufo, et al. v.*  
19 *Automobile Club of Southern California, Inc., et al.*, L.A.S.C. Case No.  
20 BC597839;

21 (h) I was appointed co-class counsel, through my firm KBK, in related  
22 actions *Hernandez, et al. v. Gold Point Transportation, Inc.*, L.A.S.C.  
23 Case No. BC477445, and *Hall, et al. v. Gold Point Transportation, Inc.*,  
24 L.A.S.C. Case No. BC516215, in which we obtained a \$2.8 million  
25 settlement on behalf of a class of 707 drayage independent contractor  
26 truck drivers who were misclassified and therefore, were not paid  
27 minimum or overtime wages nor all wages owed ever pay period and  
28 upon separation, were not provided meal periods or rest breaks, did not

1 receive timely and accurate wage statements, were not reimbursed for  
2 their business expenses, and were subjected to defendant's unlawful,  
3 unfair, and deceptive business practices;

4 (i) In *Castaneda, et al. v. Western Freight Carrier, Inc.*, L.A.S.C. Case No.  
5 BC564481, I was appointed class counsel, through my firm KBK, in a  
6 \$1.5 million settlement of the class action on behalf of 257 drayage truck  
7 drivers, in which Plaintiff alleged that Western Freight Carrier, Inc.  
8 misclassified employees as independent contractors; failed to provide  
9 meal periods and rest breaks; failed to reimburse business expenses and  
10 pay overtime and minimum wages and all wages owed every pay period  
11 and upon separation; failed to furnish timely and accurate wage  
12 statements; and violated Business & Professions Code section 17200 *et*  
13 *seq.* of California's Unfair Competition Act;

14 (j) In *Mendoza v. Pacer Cartage, Inc.*, Case No. 13-cv-2344, (S.D. Cal.), I  
15 was appointed class counsel, through my firm KBK, in a \$2.7 million  
16 settlement on behalf of the final Class of 520 independent contractor  
17 truck drivers who were misclassified as such and therefore, were not paid  
18 minimum or overtime wages nor all wages owed ever pay period and  
19 upon separation, were not provided meal periods or rest breaks, did not  
20 receive timely and accurate wage statements, were not reimbursed for  
21 their business expenses, and were subjected to defendant's unlawful,  
22 unfair, and deceptive business practices;

23 (k) In *Estrada, et al. v. Harbor Express, Inc.*, L.A.S.C. Case No. BC508808,  
24 I was appointed class counsel, through my firm KBK, in a \$1.3 million  
25 settlement of the class action on behalf of 487 drayage truck drivers, in  
26 which Plaintiff alleged that Harbor Express, Inc. misclassified employees  
27 as independent contractors; failed to provide meal periods and rest  
28 breaks; failed to reimburse business expenses and pay overtime and

1 minimum wages and all wages owed every pay period and upon  
2 separation; failed to furnish timely and accurate wage statements; and  
3 violated Business & Professions Code section 17200 *et seq.* of  
4 California's Unfair Competition Act; and

5 (l) In *Ruiz, et al. v. Fred Loya Insurance*, L.A.S.C. Case No. BC547879, I  
6 was appointed class counsel, through my firm KBK, in a \$700,000  
7 settlement on behalf of 166 class members, in which Plaintiff alleged that  
8 Fred Loya Insurance misclassified its employees; failed to provide meal  
9 periods and rest breaks; failed to reimburse business expenses and pay  
10 overtime and minimum wages and all wages owed every pay period and  
11 upon separation; failed to furnish timely and accurate wage statements;  
12 and violated Business & Professions Code section 17200 *et seq.* of  
13 California's Unfair Competition Act.

14 **Verdicts**

15 30. S&A employs several seasoned trial attorneys and has extensive  
16 experience litigating a variety of employment actions in California. A representative  
17 list of actions that have resolved at trial or settlement is as follows:

- 18 (a) S&A obtained a \$155 million verdict in *Andrew Rudnicki v. Farmers*  
19 *Insurance Exchange and Farmers Insurance Group; et al.*, L.A.S.C.  
20 Case No. BC630158, a wrongful termination case;
- 21 (b) S&A obtained a \$31,089,793 verdict in *Codie Rael v. Axis SybronEndo;*  
22 *et al.*, L.A.S.C. Case No. BC584994, an age discrimination and  
23 constructive discharge case;
- 24 (c) S&A obtained a \$26.1 million verdict in *Bobby Dean Nickel v. Staples,*  
25 *Inc; et al.*, L.A.S.C. Case No. BC481391, an age discrimination case;
- 26 (d) S&A obtained a \$21.7 million verdict in *April Rodriguez v. Valley Vista*  
27 *Services, Inc; et al.*, L.A.S.C. Case No. BC473793, a disability  
28 discrimination case;

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- (e) S&A obtained a \$16,673,514 verdict in *Rickey Moland v. McWane Inc; et al.*, L.A.S.C. Case No. BC559796, a racial discrimination and wrongful termination case;
- (f) S&A obtained a \$15.4 million verdict in *TJ Simers v. Los Angeles Times; et al.*, L.A.S.C. Case No. BC524471, a disability discrimination and age discrimination case;
- (g) S&A obtained a \$13,011,671 verdict in *Dr. Lauren Pinter-Brown v. University of California Los Angeles; et al.*, L.A.S.C. Case No. BC624838, a gender discrimination, retaliation, and constructive discharge case;
- (h) S&A obtained a \$9.1 million verdict in *Sonia Lozano v. Alcoa Fastenings Systems Inc; et al.*, L.A.S.C. Case No. BC329868, a violation of CFRA, disability discrimination, retaliation, and unfair business practice case;
- (i) S&A obtained a \$8.8 million verdict in *Robert Leggins v. Rite Aid Corp.; et al.*, L.A.S.C. Case No. BC511139, a racial discrimination, age discrimination, harassment, and wrongful termination case;
- (j) S&A obtained a \$8,461,391 verdict in *Talbert Mitchell v. SEIU Local 721; et al.*, L.A.S.C. Case No. BC575572, a disability discrimination, retaliation, and whistleblower case;
- (k) S&A obtained a \$7,020,000 verdict in *Lili Hadsell v. City of Baldwin Park; et al.*, L.A.S.C. Case No. BC548602, a gender discrimination, retaliation, and wrongful termination case;
- (l) S&A obtained a \$6,012,258 verdict in *Maria C. Martinez v Rite Aid Corp.; et al.*, L.A.S.C. Case No. BC292672, an intentional infliction of emotional distress and wrongful termination case;

- 1 (m) S&A obtained a \$4,573,835 verdict in *Della Hill v. Asian*  
2 *American Drug Abuse Program, Inc; et al.*, L.A.S.C. Case No.  
3 BC582516, a failure to accommodate and wrongful termination case; and  
4 (n) S&A obtained a \$1,829,160 verdict in *Cynthia Begazo v. Passages*  
5 *Malibu PHP LLC; et al.*, L.A.S.C. Case No. BC595150, a disability  
6 discrimination, whistleblower and wrongful termination case.

7 **Settlements**

- 8 (a) In *Walsh v. Pacific Bell Telephone Co. dba AT&T*, Orange County  
9 Superior Court Case No. 30-2011-00498062-CU-OE-CXC, S&A was  
10 appointed co-class counsel in a \$16.8 million settlement on behalf of a  
11 class of 4,235 current and former call center employees who were  
12 subjected to Defendant’s “total absence” attendance policy that  
13 unlawfully punished employees for taking protected medical and/or  
14 disability leaves of absence in violation of the California Fair  
15 Employment and Housing Act (“FEHA”), the California Family Rights  
16 Act (“CFRA”), and California Business and Professions Code section  
17 17200;
- 18 (b) S&A recovered \$10 million in a confidential settlement on behalf of a  
19 client alleging sexual orientation discrimination, harassment, retaliation,  
20 and wrongful termination;
- 21 (c) S&A recovered \$10 million in a confidential settlement on behalf of a  
22 client alleging age discrimination, intentional infliction of emotional  
23 distress, and wrongful termination
- 24 (d) S&A recovered \$7.75 million in a confidential settlement on behalf of a  
25 client alleging age discrimination, retaliation, failure to accommodate  
26 and engage in the interactive process, and wrongful termination;
- 27 (e) S&A recovered \$6 million in a confidential settlement on behalf of a  
28 client alleging pregnancy discrimination, disability discrimination,

1 retaliation, failure to accommodate and engage in the interactive process,  
2 and wrongful termination;

3 (f) S&A recovered \$5 million in a confidential settlement on behalf of a  
4 client alleging disability discrimination, retaliation, failure to  
5 accommodate and engage in the interactive process;

6 (g) S&A recovered \$4.6 million in a confidential settlement on behalf of a  
7 client alleging racial discrimination, age discrimination, retaliation,  
8 failure to provide personnel file and pay statements;

9 (h) S&A recovered \$4.25 million in a confidential settlement on behalf of a  
10 client alleging disability discrimination, retaliation, failure to  
11 accommodate and engage in the interactive process, and wrongful  
12 termination;

13 (i) S&A recovered \$3.5 million in a confidential settlement on behalf of a  
14 client alleging retaliation, defamation, and wrongful termination;

15 (j) S&A recovered \$3 million in a confidential settlement on behalf of a  
16 client alleging age discrimination, failure to accommodate and engage in  
17 the interactive process, retaliation, and wrongful termination; and

18 (k) S&A recovered \$3 million in a confidential settlement on behalf of a  
19 client alleging disability discrimination, racial discrimination, and age  
20 discrimination.

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

24 Executed this 31st day of January 2023 at Los Angeles, California.

25  
26   
27 \_\_\_\_\_  
Cheryl A. Kenner  
28

# Exhibit 1



**Costs Detail**

**All Transactions**

Date	Description	Amount
01/01/2019	LWDA	\$ 75.00
04/14/2020	Bosco Legal Services - Mailing Services	\$ 53.30
06/04/2020	Bosco Legal Services - Civil Case Cover Sheet; Summons; Complaint	\$ 1,628.50
06/25/2020	Bosco Legal Services - Serve: Nespresso USA, Inc.	\$ 64.25
06/25/2020	Bosco Legal Services - Serve: Nestle USA, Inc.	\$ 109.45
07/15/2020	Bosco Legal Services- File and Conform; Proof of Service	\$ 50.00
08/06/2020	Bosco Legal Services - File and Conform: Minute Order	\$ 51.57
08/25/2020	Bosco Legal Services - File and Conform: Minute Order	\$ 51.00
03/01/2021	First Mediation Corporation	\$ 4,500.00
10/05/2021	Berger Consulting Group, LLC - Analysis	\$ 2,275.00
11/16/2021	CPT Group: Belaire-West Notice	\$ 713.99
07/13/2022	LASC - Purchased Documents	\$ 5.00
	Estimated Postage Costs	\$ 120.00
	Estimated Supply Costs	\$ 120.00
	Copy Costs (1,200 copies at \$0.10)	\$ 120.00
	Estimated Future Costs Post-Final Approval	\$ 300.00
	Westlaw Legal Research	\$ 1,650.00
<b>TOTAL</b>		<b>\$ 11,887.06</b>

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6 Facsimile Number: (310) 860-0771

7 *Attorneys for Plaintiff William Baber*

8 [*Additional counsel on next page*]

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 OMAR ZINE, individually, and on  
13 behalf of other members of the general  
14 public similarly situated,

15 **Plaintiff,**

16 vs.

17 NESPRESSO USA, INC., a Delaware  
18 corporation; and DOES 1 through 10,  
19 inclusive,

20 **Defendants.**

21 WILLIAM BABER, an individual, on  
22 behalf of himself and all others similarly  
23 situated and aggrieved,

24 **Plaintiff,**

25 vs.

26 NESPRESSO USA, INC., a Delaware  
27 corporation; NESTLE USA, INC., a  
28 Delaware corporation; and DOES 1  
through 100, inclusive,

**Defendants.**

Case No.: 3:20-cv-05144-SK  
Consolidated with 3:21-cv-00487-JSC

**DECLARATION OF PLAINTIFF  
WILLIAM BABER IN SUPPORT OF  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND CLASS  
REPRESENTATIVE  
ENHANCEMENT PAYMENTS**

Date: May 8, 2023  
Time: 9:30 a.m.  
Place: Courtroom C

[*Filed concurrently with* (1) Notice of Motion and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments; (2) Declaration of Cheryl A. Kenner; (3) Declaration of Raul Perez; (4) Declaration of Plaintiff Omar Zine; and (5) Proposed Order]

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*Attorneys for Plaintiff Omar Zine*

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**DECLARATION OF WILLIAM BABER**

I, William Baber, hereby declare as follows:

1. I am over eighteen years old and unless the context indicates otherwise, I have personal knowledge of the following facts and if called as a witness, I could and would testify competently to them. I am a named plaintiff in the above-captioned action, and a representative for the Settlement Class. I make this declaration in support of the Motion for Attorneys’ Fees, Costs, and Class Representative Enhancement Payments.

2. I was employed by Defendant Nespresso USA, Inc. (“Defendant” or “Nespresso”) as an hourly paid, nonexempt Retail Sales Specialist from approximately August 20, 2017 to January 31, 2020. I worked at Nespresso’s Beverly Hills location and its Santa Monica location. My primary job duties included stocking merchandise, selling merchandise, inventorying, organizing, packing and unpacking merchandise, cashiering, assisting customers, and providing food and drinks to customers.

3. I decided to file this lawsuit because I had a number of grievances against Defendant stemming from its labor policies. These grievances are set forth in detail in my operative Complaint.

4. Prior to filing the action, my attorneys and I had multiple conferences about the factual bases for the claims that I wanted to pursue against Defendant.<sup>1</sup> During those conferences, my attorneys provided me with an overview of how those claims would be litigated, and generally educated me about the nature of complex/representative litigation and my role as the representative plaintiff, including when the two cases were consolidated.

5. After retaining my attorneys, I spent considerable time on the phone discussing the facts of my case with my attorneys. I discussed the facts related to my employment with Defendant, including discussing my job duties and responsibilities,

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<sup>1</sup> Although the preservation of my attorney-client privilege requires that I refrain from revealing the specifics of my communications with my attorneys, I understand that the privilege is not waived by stating generally the matters that I have discussed with my attorneys.

1 Defendant's bag search policies and other store policies, my job position, the hours and  
2 days I worked, and how I was compensated.

3 6. My attorneys provided me with a draft of the Complaint for my review and  
4 approval. I closely reviewed the Complaint to ensure accuracy and completeness.  
5 Following the filing of the Complaint, I collaborated with my attorneys on the  
6 prosecution of my claims, and I regularly contacted my attorneys to stay current on the  
7 status of the litigation, and to discuss my attorneys' progress in prosecuting the claims.

8 7. I have worked to the best of my ability to prosecute this action on behalf of  
9 the entire Class, always considering the interests of the Class Members just as I would  
10 consider my own interests, never putting my own interests ahead of the Class's. I believe  
11 class actions are an important tool to assure compliance with the law even where an  
12 individual's losses may be relatively small. I have no interests which are inconsistent  
13 with the interests of the Class.

14 8. When I agreed to represent other nonexempt employees performing duties  
15 for Defendant in the State of California, I understood that it was my duty to be readily  
16 available and to participate actively in this case. I knew that I would be required to  
17 review documents, search for documents and produce them to my attorneys, answer  
18 written questions, potentially answer oral questions and testify truthfully under oath in a  
19 deposition and in court, and be available to appear in court, if necessary.

20 9. I understood that I needed to maintain awareness of the status and progress  
21 of the lawsuit.

22 10. Since initiating this lawsuit until now, I have remained engaged in this  
23 lawsuit, remained in constant communication with my attorneys, and have provided my  
24 attorneys with information they used in the litigation. I have spent large amounts of time  
25 and effort pursuing my claims and the claims of the other employees from the time I  
26 retained my attorneys to the present date.

27 11. I have carefully reviewed the terms of the proposed settlement. My  
28 attorneys explained the specifics of how the settlement would work and I accepted the

1 settlement only after I had spent time evaluating the proposed outcome to assure that it  
2 was fair. Based on my attorneys’ evaluation and recommendation, and my own review, I  
3 believe the settlement is fair and reasonable and adequately compensates Class  
4 Members.

5 12. In summary, over the course of this litigation I have spent a significant  
6 amount of time conferring and working with my attorneys on the prosecution of my  
7 claims and evaluating the settlement and related documents. I estimate that I have spent  
8 about 40 hours assisting my attorneys in prosecuting this lawsuit.

9 13. Throughout this case, I have not sought individual benefits from the  
10 lawsuit. Rather, I maintained this lawsuit because I wanted to hold Defendant  
11 accountable for its unlawful conduct. I believe that I have fulfilled my responsibilities,  
12 and I will continue to fulfill those responsibilities, to the best of my ability, until the  
13 conclusion of the case.

14 14. I am committed to this case and will continue to make myself available as  
15 needed in the settlement process.

16  
17 I declare under penalty of perjury under the laws of the United States of America  
18 that the foregoing is true and correct.

19 Executed on January 31, 2023, at Gardena, California.

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*William Baber*  
\_\_\_\_\_  
William Baber

1 Raul Perez (SBN 174687)  
 Raul.Perez@capstonelawyers.com  
 2 Mark A. Ozzello (SBN 116595)  
 Mark.Ozzello@capstonelawyers.com  
 3 Joseph Hakakian (SBN 323011)  
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7 *Attorneys for Plaintiff Omar Zine*

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 CKenner@Shegerianlaw.com  
 10 SHEGERIAN & ASSOCIATES, INC.  
 11520 San Vicente Boulevard  
 11 Los Angeles, California 90049  
 Telephone: (310) 860-0770  
 12 Facsimile: (310) 860-0771

13 *Attorneys for Plaintiff William Baber*

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 OMAR ZINE, individually, and on behalf of  
 17 other members of the general public similarly  
 situated,

18 Plaintiff,

19 vs.

20 NESPRESSO USA, INC., a Delaware  
 corporation; and DOES 1 through 10, inclusive,

21 Defendants.  
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Case No.: 3:20-cv-05144-SK  
 Consolidated with 3:21-cv-00487-JSC

Assigned to the Hon. Sallie Kim

**DECLARATION OF OMAR ZINE IN  
 SUPPORT OF MOTION FOR ATTORNEYS'  
 FEES, COSTS, AND CLASS  
 REPRESENTATIVE ENHANCEMENT  
 PAYMENTS**

Date: May 8, 2023  
 Time: 9:30 a.m.  
 Place: Courtroom C

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**DECLARATION OF OMAR ZINE**

I, Omar Zine, hereby declare as follows:

1. I am over eighteen years old and unless the context indicates otherwise, I have personal knowledge of the following facts and if called as a witness, I could and would testify competently to them. I am a named plaintiff in the above-captioned action, and a representative for the Settlement Class. I make this declaration in support of the Motion for Attorneys’ Fees, Costs, and Class Representative Enhancement Payments.

2. I was employed by Defendant Nespresso USA, Inc. (“Defendant”) as an hourly paid, non-exempt Specialist Boutique Coffee from approximately December 2015 to February 2019. My primary job duties included performing product demonstrations, providing customer service, opening and closing the store, and stocking merchandise.

3. I decided to file this lawsuit because I had a number of grievances against Defendant stemming from its labor policies. These grievances are set forth in detail in the operative Complaint.

4. Prior to filing the action, my attorneys and I had multiple conferences about the factual bases for the claims that I wanted to pursue against Defendant.<sup>1</sup> During those conferences, my attorneys provided me with an overview of how those claims would be litigated, and generally educated me about the nature of complex/representative litigation and my role as the representative Plaintiff.

5. After retaining my attorneys, I spent considerable time on the phone discussing the facts of my case with my attorneys. I discussed the facts related to my employment with Defendant, including discussing my job duties and responsibilities, my job position, the hours and days I worked, and how I was compensated.

6. My attorneys provided me with a draft of the Complaint for my review and approval. I closely reviewed the Complaint to ensure accuracy and completeness. Following the filing of the Complaint, I collaborated with my attorneys on the prosecution of my claims, and I regularly contacted my attorneys to stay current on the status of the litigation, and to discuss my attorneys’ progress in

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<sup>1</sup> Although the preservation of my attorney-client privilege requires that I refrain from revealing the specifics of my communications with my attorneys, I understand that the privilege is not waived by stating generally the matters that I have discussed with my attorneys.



1 prosecuting the claims.

2 7. I have worked to the best of my ability to prosecute this action on behalf of the entire  
3 class, always considering the interests of the class members just as I would consider my own interests. I  
4 believe class actions are an important tool to assure compliance with the law even where an individual's  
5 losses may be relatively small. I have no interests which are inconsistent with the interests of the class.

6 8. When I agreed to represent other non-exempt employees performing duties for  
7 Defendant in the State of California, I understood it was my duty to be readily available and to participate  
8 actively in this case. I knew that I would be required to review documents, search for documents and  
9 produce them to my attorneys, answer written questions, potentially answer oral questions and testify  
10 truthfully under oath, and be available to appear in court, if necessary.

11 9. I understood that I needed to maintain awareness of the status and progress of the  
12 lawsuit.

13 10. Since initiating this lawsuit until now, I have kept aware of the status of the lawsuit and  
14 provided my attorneys with information used by them in the litigation. I have spent large amounts of  
15 time and effort pursuing my claims and the claims of the other employees from the time I retained my  
16 attorneys to the present date.

17 11. I have carefully reviewed the terms of the proposed settlement. My attorneys explained  
18 the specifics of how the settlement would work and I accepted the settlement only after I had spent time  
19 evaluating the proposed outcome to assure that it was fair. Based on my attorneys' evaluation and  
20 recommendation, and my own review, I believe the settlement is fair and reasonable and adequately  
21 compensates Class Members.

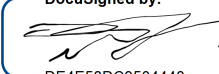
22 12. In summary, over the course of this litigation I have spent a significant amount of time  
23 conferring and working with my attorneys on the prosecution of my claims and evaluating the settlement  
24 and related documents. I estimate that I have spent between 25 and 30 hours assisting my attorneys in the  
25 prosecution of this lawsuit.

26 13. Throughout this case, I have not sought individual benefits from the lawsuit. Rather, I  
27 maintained this lawsuit because I wanted to hold Defendant accountable for its unlawful conduct. I  
28 believe that I have fulfilled my responsibilities, and I will continue to fulfill those responsibilities, to the

1 best of my ability, until the conclusion of the case.

2 14. I am committed to this case and will continue to make myself available as needed in the  
3 settlement process.

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5 I declare under penalty of perjury under the laws of the United States of America that the  
6 foregoing is true and correct. Executed on [Date] 2/8/2023, at [City] Omar zine,  
7 California.

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Omar Zine

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13 Attorneys for Plaintiff William Baber

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 OMAR ZINE, individually, and on behalf of  
17 other members of the general public similarly  
situated,

18 Plaintiff,

19 vs.

20 NESPRESSO USA, INC., a Delaware  
corporation; and DOES 1 through 10, inclusive,

21 Defendants.

22 WILLIAM BABER, an individual, on behalf of  
23 himself and all others similarly situated and  
aggrieved,

24 Plaintiff,

25 vs.

26 NESPRESSO USA, INC., a Delaware  
corporation; NESTLE USA, INC., a Delaware  
corporation; and DOES 1 through 100, inclusive,

27 Defendants.  
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Case No.: 3:20-cv-05144-SK  
Consolidated with 3:21-cv-00487-JSC

Assigned to the Hon. Sallie Kim

**[PROPOSED] ORDER GRANTING MOTION  
FOR ATTORNEYS' FEES, COSTS, AND  
CLASS REPRESENTATIVE  
ENHANCEMENT PAYMENTS**

Date: May 8, 2023  
Time: 9:30 a.m.  
Place: Courtroom C

**ORDER**

On May 8, 2023, this Court conducted a hearing on Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Enhancement Payments. Having carefully considered the papers, evidence, and arguments presented, the Court finds and orders as follows:

1. The Court finds that the requested award of attorneys’ fees in the amount of \$316,667, or one-third of the common fund created by the settlement, is reasonable for a contingency fee in a class action such as this. *See Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480 (2016) (affirming award of attorneys’ fees in the amount of one-third of the non-reversionary common fund); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 297 (N.D. Cal. 1995) (“the cases . . . in which high percentages such as 30-50 percent of the fund were awarded involved relatively smaller funds of less than \$10 million”).

2. Plaintiffs’ counsel has also provided sufficient evidence to establish that the award is reasonable in light of a lodestar cross-check, which the Court finds to be the product of reasonable billing rates and hours billed to the litigation.

3. Additionally, evidence submitted by Plaintiffs’ Counsel demonstrates that the requested costs of \$24,085.88 are fair and reasonable.

4. The Court accordingly awards a total of \$316,667 in attorneys’ fees and \$24,085.88 in costs to Capstone Law APC and Shegerian & Associates, Inc. The award of attorneys’ fees and costs will be divided between counsel as follows: (i) \$158,333.50 in attorneys’ fees and \$12,198.82 in litigation costs to Capstone Law APC; and (ii) \$158,333.50 in attorneys’ fees and \$ 11,887.06 in litigation costs to Shegerian & Associates, Inc.

5. In addition to their general release payments, the Court also approves enhancement payments of \$5,000, each, to Plaintiffs Omar Zine and William Baber.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Sallie Kim  
United States Magistrate Judge