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7

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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 DIMITRI DIXON and RYAN SELTZ,
individually, and on behalf of all others similarly
situated,

13 Plaintiffs,

14 vs.

15 CUSHMAN & WAKEFIELD WESTERN, INC.,
16 CUSHMAN & WAKEFIELD, INC., and
CUSHMAN & WAKEFIELD OF
17 WASHINGTON DC, INC., and DOES 1-50,
inclusive

18 Defendants.
19

Case No. 3:18-cv-05813-JSC

**DECLARATION OF DEIRDRE A. AARON
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: August 5, 2021
Time: 9:00a.m.
Dept: Courtroom E, 15th Floor
Before: Hon. Magistrate Judge Jacqueline Scott
Corley

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15 *Attorneys for Plaintiffs. Proposed Class and Collective*
16 *Members, and Aggrieved Employees*
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1 I, Deirdre Aaron, declare as follows:

2 1. I am a partner at Outten & Golden LLP (“O&G”), and together with Laura Ho and
3 Ginger Grimes of Goldstein, Borgen, Dardarian & Ho and Paolo Meireles of Shavitz Law Group,
4 P.A., attorneys for the Plaintiffs in the above-captioned matter (“Class Counsel”). I make these
5 statements based on personal knowledge and would so testify if called as a witness.

6 2. This Declaration is submitted in support of Plaintiffs’ Motion for Preliminary
7 Approval of Class, Collective, and Representative Action Settlement.

8 3. I am a member in good standing of the bar of the State of New York and the
9 Commonwealth of Pennsylvania, and am admitted *pro hac vice* in this matter.

10 **The Seltz Litigation**

11 4. In November 2017, in an effort to explore a potential pre-litigation resolution of his
12 claims, my firm, as Plaintiff Ryan Seltz’s counsel, sent a letter to Cushman on behalf of current
13 and former Appraisers, inviting Cushman to engage in class and collective-wide settlement
14 discussions.

15 5. Plaintiff Seltz and Cushman thereafter agreed to toll the FLSA and state law
16 statutes of limitations for putative class and collective members as of December 5, 2017,
17 exchanged data and other information, and engaged in pre-mediation discussions.

18 6. Because pre-suit negotiations were unsuccessful at resolving his claims, Plaintiff
19 Seltz filed a lawsuit on June 29, 2018 in the Superior Court for the District of Columbia seeking
20 unpaid overtime wages under the FLSA and related D.C. state laws, on behalf of Appraisers
21 working for Defendant Cushman & Wakefield, Inc. and Cushman & Wakefield of Washington,
22 DC, Inc.

23 7. On July 31, 2018, Plaintiff Seltz’s counsel and Cushman’s counsel attended
24 mediation with Hunter Hughes in Atlanta, Georgia, but were unable to reach a resolution.

25 8. Defendants removed *Seltz* to federal court on September 6, 2018.

26 9. On August 7, 2020, the district court entered the parties’ stipulation granting
27 conditional certification of the FLSA claims of Junior Appraisers nationwide and authorizing
28 notice to the potential collective action members.

1 10. Although the complaint in the *Seltz* matter included class allegations under D.C.
2 law, Plaintiff Seltz ultimately did not pursue certification of a D.C. law class because evidence
3 obtained through discovery suggested the potential class was not sufficiently numerous.

4 **Settlement Agreement**

5 11. My firm is experienced in settling cases with weighting formulas that account for
6 the differing value of FLSA and state claims, as well as opt-in and non-opt-in status. I believe that
7 the weighting formula is an appropriate and reasonable way to allocate the Settlement fund in a
8 way that reflects the relative value of the various claims of individuals covered by the Settlement.

9 **Settlement Administration**

10 12. The parties have selected CPT, a well-regarded national settlement administrator, to
11 be the Settlement Administrator after soliciting bids from three experienced and reputable
12 administrators. Our practice is to solicit competing bids from multiple administrators before engaging
13 one for an administration.

14 13. Plaintiff chose CPT because CPT submitted a competitive bid and Plaintiffs' Counsel
15 has been very satisfied with CPT's performance in the past. CPT administered the collective notice
16 process in *Seltz*, *Dixon I*, and *Dixon II*. CPT has also administered the settlement process or notice
17 process in numerous other cases O&G. Over the last two years, in addition to the collective notice
18 process in this case, CPT administered settlement disbursement in one case and the dissemination
19 of a pre-settlement survey in another.

20 14. CPT has estimated that their costs and expenses will not exceed \$20,000. This
21 "not-to-exceed" cost is consistent with similar work performed by settlement administrators on
22 similar matters.

23 15. CPT estimates that based on its experience in other cases, approximately 30% of
24 the non-California Eligible Opt-in Plaintiffs will return claim forms in this case. Based on their
25 experience and communications with non-California Eligible Opt-in Plaintiffs to date and the
26 participation rate during the conditional certification notice process, Plaintiffs agree that 30% is a
27 reasonable estimate.
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1 16. Because the method of notice is delineated in the Settlement Agreement, no new
2 methods were proposed by the solicited administrators, and instead the parties evaluated whether the
3 proposed settlement administrators were equipped to handle the notice and claims process as
4 negotiated by the parties.

5 **Comparable Settlements**

6 17. My firm has litigated similar cases to this case. For example, in *Walton v. AT&T*
7 *Services, Inc.*, No. 15 Civ. 3653-VC (N.D. Cal.), O&G represented senior training managers who
8 were alleged to have been misclassified as exempt from overtime under federal and California
9 law. The 44 California Class Members, 69 Opt-ins, and 122 PAGA aggrieved employees received
10 86% of the net settlement fund (with California workweeks worth 3 times as much as workweeks
11 outside of California, reflecting stronger California law claims), while only 14% of the net
12 settlement fund was allocated to opt-in eligible individuals who had not yet opted into the case
13 (and that portion of the fund was reversionary). Attached as Exhibit A is a true and correct copy of
14 the Order Granting Final Approval of Settlement and Final Judgment in *Walton v. AT&T Services,*
15 *Inc.*, dated February 14, 2018.

16 18. My firm also represented plaintiffs and the class in *Wolf v. The Permanente*
17 *Medical Group, Inc.*, No. 17 Civ. 5345-CV (N.D. Cal.), which involved allegations that
18 teleservice representatives who worked in call centers throughout California worked off-the-clock
19 and were owed damages under the FLSA and California law.

20 **Proposed Enhancement Awards**

21 19. I believe that the proposed enhancement award of \$10,000 to Plaintiff Seltz is
22 warranted because of the critical role he played in stepping forward to bring this case, the time and
23 effort he expended to help secure the positive collective outcome in the case, the general release he
24 will agree to, and the risks assumed by agreeing to be a plaintiff in a lawsuit.

25 20. I believe that the proposed enhancement award of \$2,000 each to Declarants
26 Benjamin Blake, Eric Hix, and Katherine Pierno is reasonable and reflective of the time each spent on
27 providing information, including documents, to Plaintiffs' Counsel and reviewing drafts of their
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1 declarations in support of Plaintiff Seltz's motion for conditional certification of his FLSA claim. I
 2 estimate that each of these declarations took approximately five hours of the Declarants' time.

3 Attorneys' Fees and Costs

4 21. O&G's retainer agreement with Plaintiff Seltz allowed for a one-third contingency
 5 fee arrangement.

6 22. As of June 25, 2021, O&G has devoted approximately 1,439.35 attorney and
 7 support staff hours litigating and settling this case. O&G's lodestar as of June 25, 2021 is
 8 \$677,993.50, calculated by multiplying each attorney or paralegal's hours by their reasonable
 9 hourly rate, as demonstrated in the table below.

Name	Position	Hours	Rate	Amount
Justin Swartz	Partner	88.4	\$ 990	\$ 87,516.00
Daniel Stromberg	Partner	5.7	\$ 750	\$ 4,275.00
Sally J. Abrahamson	Partner	146.1	\$ 650	\$ 94,965.00
Deirdre A. Aaron	Partner	327.6	\$ 600	\$ 196,560.00
Pamela A. Disney	Associate	222.6	\$ 425	\$ 94,605.00
Molly J. Frandsen	Associate	323.9	\$ 350	\$ 113,365.00
Ashley Morales	Paralegal	5.55	\$ 270	\$ 1,498.50
Christopher C. Alter	Paralegal	12.6	\$ 270	\$ 3,402.00
Lynsey Major	Paralegal	201.6	\$ 270	\$ 54,432.00
Michelle Fujii	Paralegal	6.1	\$ 270	\$ 1,647.00
Rania Tootla	Paralegal	22.6	\$ 270	\$ 6,102.00
Sara Olson	Paralegal	12.3	\$ 270	\$ 3,321.00
Stephanie Yu	Paralegal	11.5	\$ 270	\$ 3,105.00
DC Law Clerk	Law Clerk	38.6	\$ 250	\$ 9,650.00
SF Law Clerk	Law Clerk	14.2	\$ 250	\$ 3,550.00
Total		1439.35		\$ 677,993.50

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23 23. These numbers will continue to grow due to additional work performed by
 24 Plaintiffs' counsel, including preparing for preliminary and final approval hearings, and
 25 overseeing the administration of the settlement.

26 24. O&G maintains all records regarding costs expended on each case. I have
 27 reviewed the records of costs expended in this matter. As of the date of June 25, 2021, which
 28 does not yet account for additional costs to be incurred in the course of the approval process and

1 any other costs arising during the settlement check distribution process, O&G has incurred
 2 \$23,026.78 in litigation costs and expenses. This amount includes mediation fees, travel fees,
 3 computerized research costs, court filings, and printing/copying, and mailing costs. When
 4 Plaintiffs file their fee motion, I and my co-counsel will provide the Court with detailed
 5 information concerning our updated litigation costs, which will be no more than \$60,000.

6 25. O&G's costs are summarized as follows:

Cost Category	Cost
Computerized Research	\$ 4,274.46
Court Filing Fees	\$ 555.76
Document Management/Hosting	\$ 989.80
FedEx/UPS	\$ 145.83
Meals	\$ 24.05
Mediation Fees	\$ 4,500.00
Postage (U.S. Mail)	\$ 8.75
Printing/Copying	\$ 206.00
Telephone Charges	\$ 10.76
Travel	\$ 11,796.19
Website Design/Hosting Cost	\$ 515.18
Total	\$ 23,026.78

17 **Qualifications for Appointment of Class Counsel for Purposes of the Settlement**

18 26. O&G is the among largest firms in the country that exclusively represents
 19 individuals (not companies) in employment matters. O&G is a 50+ attorney firm with offices in
 20 New York, San Francisco, and Washington, D.C., representing plaintiffs in a wide variety of
 21 employment matters, including individual and class action litigation involving wage and hour,
 22 discrimination, and harassment claims, as well as contract and severance negotiations. In addition
 23 to taking contingency fee matters, O&G maintains a substantial practice of hourly work for paying
 24 clients and often receives fee awards in the cases it handles, giving O&G a solid foundation of
 25 resources from which to take on class action matters such as this one.

26 27. **O&G's experience advocating for workers' rights.** O&G has represented
 27 plaintiffs in hundreds of class and collective actions asserting employment rights on behalf of
 28 workers in California and around the country. For example, one judge recently found that "Class

1 Counsel have capably and effectively represented the Settlement Class Members’ interests,” and
 2 praised them for “their outstanding work on this case.” *Zamora v. Lyft, Inc.*, No. 16-cv-02558-
 3 VC, ECF No. 103 at 6 (N.D. Cal.). O&G attorneys “have . . . extensive experience and expertise
 4 in prosecuting wage-and-hour class actions and collective actions.” *Galeener v. Source*, No. 13-
 5 cv-4960, ECF No. 131 (N.D. Cal. Mar. 13, 2015); *Lillehagen v. Alorica*, No. 13-cv-0092, ECF
 6 No. 262 (C.D. Cal. May 31, 2016) (same); *Yuzary v. HSBC Bank USA, N.A.*, No. 12-cv-3693,
 7 2013 WL 1832181, at *4 (S.D.N.Y. Oct. 2, 2013) (finding that O&G attorneys “have substantial
 8 experience prosecuting and settling employment class actions, including wage and hour class
 9 actions[,] and are well-versed in wage and hour and class action law”); *Johnson v. Brennan*, No.
 10 10 Civ. 4712, 2011 WL 1872405, at *2 (S.D.N.Y. May 17, 2011) (same); *accord Ballinger v.*
 11 *Advance Magazine Publishers, Inc.*, No. 13 Civ. 4036, 2014 WL 7495092, at *7 (S.D.N.Y. Dec.
 12 29, 2014) (“[b]ased on the firm’s performance before me in this and other cases and its work in the
 13 foregoing and other cases, I have no question that it will prosecute the interests of the class
 14 vigorously”); *Perez v. Allstate Ins. Co.*, No. 11 Civ. 1812, 2014 WL 4635745, at *25 (E.D.N.Y.
 15 Sept. 16, 2014) (“O & G has the requisite experience in handling class actions . . . , are well versed
 16 in the applicable law, and have the resources necessary to represent the NYLL Class fairly and
 17 adequately”); *Capsolas v. Pasta Res., Inc.*, No. 10 Civ. 5595, 2012 WL 1656920, at *2 (S.D.N.Y.
 18 May 9, 2012) (O&G attorneys “have years of experience prosecuting and settling wage and hour
 19 class actions, and are well-versed in wage and hour law and in class action law”); *Damassia v.*
 20 *Duane Reade, Inc.*, 250 F.R.D. 152, 158 (S.D.N.Y. 2008) (O&G lawyers have “an established
 21 record of competent and successful prosecution of large wage and hour class actions, and the
 22 attorneys working on the case are likewise competent and experienced in the area”).

23 28. **O&G’s appointment as class counsel in wage and hour actions.** Courts have
 24 repeatedly appointed O&G as class counsel in wage and hour class actions. For instance, courts
 25 have appointed O&G class counsel in the following wage and hour litigations, among others:
 26 *Strauch v. Computer Science Corp.*, __ F.R.D. __, No. 14 Civ. 956, 2017 WL 2829652, at *24
 27 n.15 (D. Conn. June 30, 2017) (in wage and hour litigation, finding that O&G “adequately
 28 represent[s] the interests of the putative class”), motion to decertify denied, 2017 WL 4683993 (D.

1 Conn. Oct. 18, 2017); *Perez v. Allstate Insurance Co.*, No. 11 Civ. 1812, 2014 WL 4635745, at
 2 *25 (E.D.N.Y. Sept. 16, 2014) (appointing O&G as class counsel and noting that “O & G has the
 3 requisite experience in handling class actions . . . , are well versed in the applicable law, and have
 4 the resources necessary to represent the NYLL Class fairly and adequately”); *Jacob v. Duane*
 5 *Reade, Inc.*, 289 F.R.D. 408, 423 (S.D.N.Y. 2013) (appointing O&G as class counsel in assistant
 6 manager misclassification case because it has “experience in handling class actions, sufficient
 7 knowledge of the pertinent law, and sufficient resources to commit to this representation”), *aff’d*,
 8 602 F. App’x 3 (2d Cir. 2015); and *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 165
 9 (S.D.N.Y. 2008) (granting class certification and appointing O&G as class counsel in multi-state
 10 wage and hour class action); *cf. Houser v. Pritzker*, 28 F. Supp. 3d 222, 248, 255 (S.D.N.Y. 2014)
 11 (appointing O&G class counsel in nationwide Title VII litigation and noting that O&G “bring[s] to
 12 the case a wealth of class action litigation experience”).

13 29. **O&G’s appointment as class counsel in settlement contexts.** O&G also has
 14 frequently been appointed class counsel in class settlements, including, among others: *Pickett v.*
 15 *Simos Insourcing Sols., Corp.*, 249 F. Supp. 3d 897, 899 (N.D. Ill. 2017) (appointing O&G class
 16 counsel); *Walsh v. CorePower Yoga LLC*, No. 16 Civ. 5610, 2017 WL 589199, at *8 (N.D. Cal.
 17 Feb. 14, 2017) (O&G has “a proven track record in the prosecution of class actions as they have
 18 successfully litigated and tried many major class action cases”); *Long v. HSBC USA Inc.*, No. 14
 19 Civ. 6233, 2015 WL 5444651, at *9 (S.D.N.Y. Sept. 11, 2015) (O&G attorneys “have appeared in
 20 many major [Fair Labor Standards Act (“FLSA”)] and state labor law cases”); *Puglisi v. TD Bank,*
 21 *N.A.*, No. 13 Civ. 637, 2015 WL 574280, at *4 (E.D.N.Y. Feb. 9, 2015) (“O & G has substantial
 22 experience prosecuting and settling nationwide wage and hour class and collective actions, and are
 23 well-versed in wage and hour law and class action law and are well-qualified to represent the
 24 interests of the class.”); *Aboud v. Charles Schwab & Co.*, No. 14 Civ. 2712, 2014 WL 5794655, at
 25 *2-4 (S.D.N.Y. Nov. 4, 2014) (certifying class and approving settlement of nationwide wage and
 26 hour class and collective action); *Zeltser v. Merrill Lynch & Co.*, No. 13 Civ. 1531, 2014 WL
 27 4816134, at *8 (S.D.N.Y. Sept. 23, 2014) (O&G “are experienced employment lawyers with good
 28 reputations among the employment law bar”); *Hanifin v. Accurate Inventory & Calculating*

1 *Service, Inc.*, No. 11 Civ. 1510, 2014 WL 4352060, at *8 (N.D.N.Y. August 20, 2014) (same);
 2 *Clem v. KeyBank, N.A.*, No. 13 Civ. 789, 2014 WL 2895918, at *2-4 (S.D.N.Y. June 20, 2014)
 3 (finding O&G adequate counsel, certifying class, and approving settlement of nationwide wage
 4 and hour class and collective misclassification action); *Yuzary v. HSBC Bank USA, N.A.*, No. 12
 5 Civ. 3693, 2013 WL 5492998, at *2-4 (S.D.N.Y. Oct. 2, 2013) (certifying class action under the
 6 NYLL and appointing O&G as class counsel); *Hernandez v. Merrill Lynch & Co., Inc.*, No. 11
 7 Civ. 8472, 2012 WL 5862749, at *4 (S.D.N.Y. Nov. 15, 2012) (appointing O&G as class counsel,
 8 noting the firm's years of experience prosecuting and settling wage and hour class actions);
 9 *Capsolas v. Pasta Resources Inc.*, No. 10 Civ. 5595, 2012 WL 1656920, at *2 (S.D.N.Y. May 9,
 10 2012) (certifying class and approving settlement of wage and hour class action); and *Palacio v.*
 11 *E*TRADE Financial Corp.*, No. 10 Civ. 4030, 2012 WL 1058409, at *1-2 (S.D.N.Y. Mar. 12,
 12 2012) (certifying class and approving settlement of wage and hour class action brought under New
 13 York, California, and federal law).

14 30. **O&G's experience representing plaintiffs in California state and federal**
 15 **courts.** O&G attorneys have represented plaintiffs asserting employment claims in representative
 16 actions in federal and California state courts, including: *Borrego v. Raley's Family of Fine Stores*,
 17 34-2015-00177687 (Sacramento Co. Super. Ct.) (pregnancy discrimination); *Chen v. Morgan*
 18 *Stanley Smith Barney LLC*, 30-2014-00724866-CUOE-CJC (Orange Co. Super. Ct.) (PAGA
 19 claims on behalf of financial advisors regarding reimbursement of business expenses); *Lee v. The*
 20 *Hertz Corp.*, No. CGC-15-547520 (San Francisco Co. Super. Ct.) (Fair Credit Reporting Act
 21 claims based on employment application process); *Beilke v. Uber Technologies, Inc.*, No. CGC-
 22 17-560916 (San Francisco Co. Super. Ct.) (claims by drivers for miscalculation of fees
 23 contractually owed); *Calhoun v. Academy Mortgage Corp.* (UT), No. RIC-1811790 (Riverside
 24 Co. Super Ct.) (Settlement of Fair Credit Reporting Act claims based on employment application
 25 process); *Storch v. Carrington Holding Co.*, No. 34, 2017, 201455-CU, OE, GDS (Sacramento
 26 Co. Super. Ct.) (\$1,000,000 settlement for overtime misclassification claims on behalf of
 27 mortgage loan officers); *Gupta v. MGM HD Productions, LLC*, No. BC580436 (Los Angeles
 28 Super. Ct.) (wage claims for unpaid interns); *Whitworth v. SolarCity Corp.*, No. 16-cv-1540-JSC

1 (N.D. Cal.) (off-the-clock and meal break claims on behalf of installers); *Godhigh v Savers*, No.
 2 16-cv-2874-WHO (N.D. Cal.) (\$750,000 settlement for overtime misclassification claims of retail
 3 store assistant managers in 2018); *Wolf v. Permanente Medical Group, Inc.*, No. 17-cv-05345-VC
 4 (N.D. Cal.) (\$2,950,000 settlement for off-the-clock claims of telephone service representatives in
 5 2018); *Zamora v. Lyft, Inc.*, No. 16-cv-02558-VC (N.D. Cal.) (\$1,950,000 settlement for claims of
 6 drivers asserting that Lyft used deceptive language in explaining how Prime Time Premiums
 7 would be paid to drivers; Lyft eliminated the challenged language during the litigation); *Walton v.*
 8 *AT&T Svcs., Inc.*, No. 15-cv-03653-VC (N.D. Cal.) (\$2,750,000 settlement for overtime
 9 misclassification claims of deliverers and designers of corporate trainings in 2018); *Armstrong v.*
 10 *Concentrix Corp.*, No. 16-cv-05363-WHO (N.D. Cal.) (\$320,000 settlement for off-the-clock
 11 claims of at-home customer service representatives in 2018); *Brown v. Permanente Medical*
 12 *Group, Inc.*, No. 16-cv-05272-VC (N.D. Cal.) (\$6,255,000 settlement for off-the-clock claims of
 13 advice nurses in 2017); *Zajonc v. Morgan Stanley & Co. LLC*, No. 14 Civ. 5563 (N.D. Cal.)
 14 (\$5,995,000 settlement as part of multi-case settlement) (Final Analyst trainee off-the-clock wage
 15 and hour claims); *Buccellato v. AT&T, Inc.*, No. 10 Civ. 463 LHK (N.D. Cal.) (\$12.5 million
 16 settlement of overtime misclassification claims for technical support workers in 2011); *Lillehagen*
 17 *v. Alorica, Inc.*, No. 13 Civ. 92 (C.D. Cal.) (nationwide class action settlement) (call center worker
 18 off-the-clock claims).

19 31. **My background and experience.** I am a partner in O&G's Class Action Practice
 20 Group. Since joining the firm in September 2012, I have been engaged primarily in prosecuting
 21 wage and hour class and collective actions and class action discrimination cases.

22 32. Recent representative cases I have litigated include *Kis v. Covelli*, No. 18 Civ. 54
 23 (N.D. Ohio May 29, 2020) (\$4.625 million settlement on behalf of Panera café assistant managers
 24 in overtime misclassification case); *Ratcliffe v. Food Lion*, No. 18 Civ. 1177 (M.D. Tenn. Oct. 15,
 25 2020) (\$550,000 settlement on behalf of grocery store assistant managers in overtime
 26 misclassification case); and *Rotondo v. J.P. Morgan Chase Bank N.A.*, No. 19 Civ. 2328 (S.D.
 27 Ohio Dec. 2, 2019) (\$5 million settlement on behalf of fathers denied paid parental leave).
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Respectfully submitted,

By: /s/ Deirdre A. Aaron
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Exhibit A

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11 *Attorneys for Plaintiffs and Settlement Classes*

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

14 WENDELL WALTON and MICHAEL
15 MANTONYA, individually and on behalf
16 of all others similarly situated,
17 Plaintiffs,

17 v.

18 AT&T SERVICES, INC.,
19 Defendant.

Case Number: 15-cv-03653-VC

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT
AND FINAL JUDGMENT**

1 On February 1, 2018, a hearing was held on the unopposed motion of Plaintiffs Wendell
2 Walton and Michael Mantonya (“Plaintiffs”) for final approval of the class settlement; and on the
3 separate motions of Plaintiffs and their counsel for awards of the Class Representative Service
4 Payments and the Class Counsel Attorneys’ Fees and Costs Payment. Jahan C. Sagafi and Relic
5 Sun appeared for Plaintiffs. Paul Berkowitz appeared for Defendant AT&T Services, Inc.
6 (“AT&T”).

7 The Parties have submitted their Stipulation of Class Settlement and Release (the
8 “Settlement”), which this Court preliminarily approved in its October 19, 2017 order (the
9 “Preliminary Approval Order”). In accordance with the Preliminary Approval Order, Class
10 Members have been given notice of the terms of the Settlement and the opportunity to submit a
11 claim form, comment on the settlement, and/or opt out of its provisions. In addition, pursuant to
12 the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), AT&T has given the
13 Attorney General of the United States and the appropriate state officials in the states in which the
14 Class Members reside timely notice of the Settlement.

15 Having received and considered the Settlement, the supporting papers filed by the Parties,
16 and the evidence and argument received by the Court at the final approval hearing on February 2,
17 2018, by means of this order (the “Final Approval Order”) the Court grants final approval to the
18 Settlement, and HEREBY ORDERS and MAKES DETERMINATIONS as follows:

19 **Definitions**

20 1. Except as otherwise specified herein, the Court for purposes of this Final
21 Approval Order adopts all defined terms set forth in the Settlement.

22 **Jurisdiction**

23 2. This Court has jurisdiction over the subject matter of this litigation and all related
24 matters and all state and federal claims raised in this action and released in the Settlement, and
25 personal jurisdiction over AT&T and all Class Members (except for those who timely filed opt
26 out requests). Specifically, this Court has federal question jurisdiction over this action pursuant
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1 to 28 U.S.C. section 1331 and section 16(b) of the Fair Labor Standards Act (“FLSA”), 29
2 U.S.C. § 216(b).

3 3. This Court also has supplemental jurisdiction over all state-law claims asserted by
4 Plaintiffs because the state-law claims derive from a common nucleus of operative fact and form
5 part of the same case or controversy as those claims over which the Court has primary
6 jurisdiction. *See* 28 U.S.C. § 1367 (providing for supplemental jurisdiction over related state-
7 law claims that “form part of the same case or controversy”); *United Mine Workers v. Gibbs*, 383
8 U.S. 715, 726 (1996) (holding that federal courts have supplemental jurisdiction over state law
9 claims that arise from the same “common nucleus of operative fact” such that the parties “would
10 ordinarily be expected to try them all in one judicial proceeding”).

11 4. This Court also has jurisdiction to approve the Settlement’s release of claims by
12 Class Members over which the Court has jurisdiction, even if the Court would not independently
13 have jurisdiction over those released claims. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442
14 F.3d 741, 748 (9th Cir. 2006) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287-88
15 (9th Cir. 1992) (“[A] federal court may release not only claims alleged in the complaint, but also
16 state claims arising from the same nucleus of operative facts over which the court would not
17 have jurisdictional competence.”)).

18 **Dissemination of Notice to Class Members**

19 5. Pursuant to the Preliminary Approval Order, the notice documents were sent to
20 each Class Member by email and by first-class mail. The notice was clear and organized,
21 following the model forms provided by the Federal Judicial Center at www.fjc.gov. The notice
22 materials informed Class Members of the terms of the Settlement, how their settlement share
23 would be calculated, how to receive their settlement share, the requirement of signing the
24 Arbitration Agreement to receive payment, their right to comment on (including object to) the
25 Settlement or opt out of the Settlement to pursue their claims individually, and their right to
26 appear in person or by counsel at the final approval hearing and be heard regarding approval of
27 the Settlement. Adequate periods of time were provided by each of these procedures.

1 6. The Court finds and determines that this notice procedure afforded adequate
2 protections to Class Members and provides the basis for the Court to make an informed decision
3 regarding approval of the Settlement based on the responses of Class Members. Notice was
4 accomplished in the manner prescribed by the Settlement. The Court finds and determines that
5 the notice provided in this case was the best notice practicable, which satisfied the requirements
6 of law and due process.

7 **Notice to Attorneys General Pursuant to CAFA**

8 7. Pursuant to CAFA, within 10 days after the filing of the motion seeking
9 preliminary approval of the Settlement, JND Legal Administration, on behalf of AT&T, served
10 upon the Attorney General of the United States and the appropriate state officials of the states in
11 which the Class Members reside a notice of the Settlement consisting of: a copy of the complaint
12 in this action; a notice of the scheduled judicial hearing in this class action; copies of the
13 Settlement; and the proposed Notice. The Notice of Settlement also invited comment on the
14 Settlement. This Final Approval Order is being entered at least 90 days after the later of the
15 dates on which the appropriate federal and state officials were served with the notice of proposed
16 settlement.

17 8. The Court finds and determines that AT&T’s notice of Settlement was timely,
18 adequate, and compliant with the statutory requirements of CAFA. Accordingly, 28 U.S.C.
19 §1715(e) has no application to the Settlement.

20 **Certification Under Fed. R. Civ. P. 23 And the FLSA**

21 9. For the reasons stated in the Preliminary Approval Order, this Court finds and
22 determines that the proposed Settlement Class, as defined in paragraph 3 of the Settlement and in
23 section II of its Preliminary Approval Order, meets all of the legal requirements for class
24 certification under Federal Rule of Civil Procedure 23 (“Rule 23”) (a) and (b)(3), and it is hereby
25 ordered that the Settlement Class is finally approved and certified as a Class for purposes of
26 settlement of this action.

1 10. This Court finds and determines that the action meets all of the legal requirements
2 for certification as a collective action under section 16(b) of the FLSA, 29 U.S.C. § 216(b), for
3 the three-year period preceding the filing of Plaintiffs' complaint, and it is hereby ordered that
4 the action is certified as a collective action for purposes of settlement of this action.

5 **Fairness**

6 11. Pursuant to Rule 23(e), the Court further finds and determines that the terms of
7 the Settlement are fair, reasonable and adequate to the Class and to each Class Member and that
8 the Class Members who have not opted out will be bound by the Settlement, that the Settlement
9 is ordered finally approved, and that all terms and provisions of the Settlement should be and
10 hereby are ordered to be consummated. The Court specifically finds that the Settlement is
11 rationally related to the strength of Plaintiffs' claims given the risk, expense, complexity, and
12 duration of further litigation. This Court also finds that the Settlement is the result of arms-
13 length negotiations between experienced counsel representing the interests of the Class Members
14 and AT&T, under the supervision of an experienced and independent third-party mediator, after
15 thorough factual and legal investigation. *Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003);
16 *Class Plaintiffs*, 955 F.2d at 1291.

17 12. The Court finds and determines that the payments to be made to the Class
18 Members as provided for in the Settlement are fair and reasonable. The proposed plan of
19 allocation bases each Class Member's recovery on (a) the number of weeks during the Covered
20 Period the Class Member worked, (b) the Class Member's job position, and (c) whether the Class
21 Member worked in California. The plan of allocation is rational. The Court hereby gives final
22 approval to and orders the payment of those amounts be made to the claimants out of the Net
23 Fund Value in accordance with the terms of the Settlement.

24 **Class Member Response**

25 13. The Court further finds that the response of the Class Members to the Settlement
26 supports settlement approval. Of the 404 Class Members, only one opted out of the Settlement.
27 No Class Members objected to the Settlement.
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1 **Appointment of Class Representative; Class Representative And Witness Service**
2 **Awards**

3 14. The Court confirms as final the appointment of Wendell Walton and Michael
4 Mantonya as Class Representatives of the Rule 23 Class and the nationwide FLSA Class under
5 section 16(b). The Court finds and determines that the award of \$20,000 each to Mr. Walton and
6 Mr. Mantonya for their services as Class Representatives, in addition to their Individual
7 Settlement Payments, is fair and reasonable. The Court also finds and determines that the
8 witness service awards of \$5,000 each to Carolyn Castille, Gary Fujino, Janet Condon, Teresa
9 Swigart, Ronald Hansen, Catherine Brown, and Ursula Gulley for their services as witnesses, in
10 addition to their Individual Settlement Payments, is fair and reasonable.

11 15. Plaintiffs have satisfied the criteria as set forth in *Staton v. Boeing Co.*, 327 F.3d
12 938 (9th Cir. 2003). Under *Staton*, such awards should be evaluated using “relevant factors,
13 includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to
14 which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff
15 expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation.” *Staton*,
16 327 F.3d at 977 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)) (internal
17 quotation marks omitted) (alterations in original). Here, the Class Representatives’ initiation of
18 this suit caused them personal exposure and potential adverse consequences with future
19 employers. Likewise, Messrs. Fujino and Hansen and Meses. Castille, Condon, Swigart, Brown,
20 and Gulley have taken risks by affiliating themselves publicly with the lawsuit; their testimony
21 enhanced the case’s value overall by providing support for Plaintiffs’ motion to certify the FLSA
22 collective and their liability arguments.

23 16. The Class Representatives’ assertion of state law claims on behalf of their fellow
24 Class Members tolled the statutes of limitations for those state law claims, to the benefit of the
25 Class Members who worked or work in those states. Furthermore, Class Counsel attest that
26 Messrs. Walton and Mantonya were substantially involved throughout the litigation, educating
27 Class Counsel regarding Class Members’ job duties and AT&T’s policies and procedures.

1 Messrs. Walton and Mantonya also sat for depositions in this case. The Court hereby approves
2 the Class Representative and Witness Service Awards as set forth herein be made to Class
3 Representatives, Messrs. Fujino and Hansen, and Meses. Castille, Condon, Swigart, Brown, and
4 Gulley out of the Qualified Settlement Fund in accordance with the terms of the Settlement.

5 **Appointment of Class Counsel; Attorneys' Fees And Costs**

6 17. Class counsel attest to performing substantial work on behalf of the class
7 members, totaling \$1,658,069.00 in lodestar. The Court finds the hours worked by Class
8 Counsel to be reasonably incurred, for the benefit of the class members. Class Counsel's hourly
9 rates, ranging from \$235.00 to \$285.00 for staff and \$250.00 to \$850.00 for attorneys, are
10 reasonable in light of the market for legal services of this type and quality. The Court confirms
11 as final the appointment of the following law firms and attorneys as class counsel ("Class
12 Counsel") for the Rule 23 and FLSA Classes: Jahan C. Sagafi, Michael N. Litrownik, and Relic
13 Sun of Outten & Golden LLP and Jason Marsili and Brianna Primozic of Posner & Rosen LLP.
14 The Court finds and determines that the payment of \$962,500 in attorneys' fees and \$53,823.85
15 in litigation costs and expenses, for a total payment of \$1,016,323.85 to Class Counsel, is fair
16 and reasonable and consistent with Ninth Circuit fee jurisprudence. *See, e.g., Vizcaino v.*
17 *Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002); *Chemical Bank v. City of Seattle (In re*
18 *Washington Public Power Supply Sec. Litig.)*, 19 F.3d 1291, 1297 (9th Cir. 1994). This fee is
19 35% of the total fund, which is consistent with the Ninth Circuit's 25% benchmark for megafund
20 class action settlements of \$50-200 million, recognizing that the benchmark is typically adjusted
21 downward for larger cases and upward for smaller cases. Under a lodestar cross-check, the
22 lodestar multiplier is 0.58x, which strongly supports the fee award. The Court hereby gives final
23 approval to and orders that that payment of that amount be made to Class Counsel out of the
24 Gross Fund Value in accordance with the terms of the Settlement.

1 **Settlement Administrator Report**

2 18. Upon completion of administration of the Settlement, the Settlement
3 Administrator will provide written certification of such completion to the Court and counsel for
4 the Parties.

5 **Release**

6 19. By operation of the entry of this Final Approval Order and pursuant to the
7 Settlement, all Qualified Claimants are permanently barred from prosecuting against AT&T any
8 Participating Class Member Released Claim as set forth in paragraph 24 of the Settlement. The
9 Court has reviewed the release in paragraph 24 of the Settlement and finds it to be fair,
10 reasonable, and enforceable under Rule 23, the FLSA, and all other applicable law.

11 **Contingency on Finality**

12 20. If, for any reason, the Settlement ultimately does not become Final (as defined in
13 the Settlement, paragraph 15.a.), this Final Approval Order will be vacated; the Parties will
14 return to their respective positions in this action as those positions existed immediately before the
15 parties executed the Settlement; and nothing stated in the Settlement or any other papers filed
16 with this Court in connection with the Settlement will be deemed an admission of any kind by
17 any of the Parties or used as evidence against, or over the objection of, any of the Parties for any
18 purpose in this action or in any other action.

19 **Final Judgment and Dismissal**

20 22. By means of this Final Approval Order, this Court hereby enters final judgment in
21 this action, as defined in Federal Rule of Procedure 58(a)(1).

22 23. Without affecting the finality of the Court’s judgment in any way, the Court
23 retains jurisdiction over this matter for purposes of resolving issues relating to interpretation,
24 administration, implementation, effectuation and enforcement of the Settlement. Nothing in this
25 Final Approval Order will preclude any action to enforce the Parties’ obligations under the
26 Settlement or under this order, including the requirement that AT&T make the settlement
27 payments in accordance with the terms of the Settlement.

1 24. The Parties are hereby ordered to comply with the terms of the Settlement.

2 25. This action is dismissed with prejudice, each side to bear its own costs and
3 attorneys' fees except as provided by the Settlement and the Court's orders.

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6 Dated: February 14, 2018



The Honorable Vince Chhabria
United States District Judge

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