

1 Laura L. Ho (CA SBN 173179)
lho@gbdhlegal.com
2 Ginger L. Grimes (SBN 307168)
ggrimes@gbdhlegal.com
3 GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

6 *Attorneys for Plaintiffs. Proposed Class and*
7 *Collective Members, and Aggrieved Employees*

8 *[Additional counsel on following page]*

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

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

14 Plaintiffs,

15 vs.

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

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

**PLAINTIFFS’ MOTION FOR
ATTORNEYS’ FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: March 31, 2022
(Final Approval Hearing)
Time: 9:00 a.m.
Dept: Courtroom E, 15th Floor
Before: Hon. Jacqueline Scott Corley

1 Justin M. Swartz (admitted *pro hac vice*)

jms@outtengolden.com

2 Deirdre Aaron (admitted *pro hac vice*)

daaron@outtengolden.com

3 OUTTEN & GOLDEN, LLP

685 Third Avenue, 25th Floor

4 New York, NY 10017

Tel: (212) 245-1000

5 Fax: (646) 509-2060

6 Jahan C. Sagafi (SBN 227887)

jsagafi@outtengolden.com

7 Molly J. Frandsen (SBN 320094)

mfrandsen@outtengolden.com

8 OUTTEN & GOLDEN, LLP

9 One California Street, 12th Floor

San Francisco, CA 94111

10 Tel: (415) 638-8828

Fax: (415) 638-8810

11 Paolo Meireles (admitted *pro hac vice*)

pmeireles@shavitzlaw.com

12 Shavitz Law Group, P.A.

13 951 Yamato Rd, Suite 285

Boca Raton, FL 33431

14 Tel: (561) 447-8888

15 *Attorneys for Plaintiffs. Proposed Class and*
16 *Collective Members, and Aggrieved Employees*

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NOTICE OF MOTION

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

PLEASE TAKE NOTICE that on March 31, 2022 at 9:00 a.m., in the Courtroom of the Honorable Jacqueline Scott Corley, located at Courtroom E, 15th Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs Dimitri Dixon and Ryan Seltz, on behalf of themselves and all others similarly situated, will and hereby do move the Court to: (1) approve Plaintiffs' request for attorneys' fees of \$1,633,333.33; (2) approve reimbursement of actual litigation costs of \$60,000; and (3) approve a separate allocation of \$20,000 in settlement administration costs.

This Motion is based upon: this Notice of Motion and Memorandum of Points and Authorities in Support Thereof; the Declarations of Laura L. Ho, Deirdre Aaron, Paolo Meireles, and Jackie Hitomi on behalf of CPT Group, Inc. and the exhibits thereto in support of the Motion; such argument of counsel as the Court may hear; the complete files, records, and pleadings in the above-captioned matter; and such additional matters as the Court may consider. A Proposed Order will be submitted with the Motion for Final Approval, to be filed by February 24, 2022.

Dated: October 25, 2021

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Laura L. Ho

Laura L. Ho

*Attorneys for Plaintiffs, Settlement Class and
Collective Members, and Aggrieved Employees*

MEMORANDUM OF POINTS AND AUTHORITIES

In accordance with the Court’s Order re: Motion for Preliminary Approval, ECF 134 (Aug. 30, 2021), granting preliminary approval of the parties’ class, collective, and representative action settlement, Plaintiffs Dimitri Dixon and Ryan Seltz move for an award of \$1,633,333.33 in attorneys’ fees (representing one-third of the maximum settlement amount of \$4,900,000.00), \$60,000 in litigation expenses, and \$20,000 in settlement administration costs.¹ The Settlement resolves three cases, which have been combined into one amended complaint in the instant case for settlement purposes: (1) *Dixon v. Cushman & Wakefield Western, Inc.*, No. 3:18-cv-05813-JSC (“*Dixon I*”); (2) *Dixon v. Cushman & Wakefield, Inc.*, No. 3:20-cv-07001-JSC (“*Dixon II*”); and (3) *Seltz v. Cushman & Wakefield, Inc.*, No. 1:18-cv-02092-BAH (“*Seltz*”). The results in this case justify the requested modest upward departure from the “benchmark” fee of 25% of the common fund, for the following reasons.

First, the settlement achieved significant relief for Appraisers employed by Defendants Cushman & Wakefield, Inc., Cushman & Wakefield Western, Inc., and Cushman & Wakefield of Washington, DC, Inc. (together, “Cushman”). The Settlement provides a maximum payment of \$4,900,000.00, plus a separate payment of the employer’s share of payroll taxes for the wage portion of the settlement payment, for 476 individuals who are eligible to participate in the settlement. Additionally, after these cases were filed, Cushman reclassified Junior Appraisers to non-exempt as of September 9, 2019 and changed its pay practices for employees who received recoverable draws as of January 2021, instead paying a fixed, non-recoverable annual salary and separately paying a production bonus if the amount exceeds the Appraiser’s annual salary. Cushman also promised, as part of the settlement agreement, not to enforce any of its promissory notes against any participating settlement member.

¹ Plaintiffs submit this motion at least 35 days prior to the deadline for class members to object to or opt out of the Settlement, in compliance with the Procedural Guidance for Class Action Settlements of the Northern District of California. *N.D. Cal. Class Settlm’t Guidance, Prelim. Approval* ¶ 9. Plaintiffs will submit a summary of the case history and background facts in their motion for final approval. *N.D. Cal. Class Settlm’t Guidance, Final Approval* ¶ 2.

1 *Second*, Class Counsel took on significant litigation risk and bore the financial burden of
2 litigating this case on a contingency basis. Class Counsel efficiently litigated the claims filed in three
3 cases, joining together early in litigation to coordinate discovery and scheduling between the cases to
4 litigate efficiently and negotiate a comprehensive settlement.

5 *Third*, the fees sought represent a negative multiplier (0.93) on Class Counsel’s approximate
6 lodestar through final approval in the case. Class Counsel’s lodestar will continue to grow through
7 final approval and the distribution of settlement awards. Plaintiffs have provided the Court with
8 detailed billing records attached to the declarations submitted with this motion showing the number of
9 hours spent on various tasks related to the three consolidated cases and hourly billing rate information.

10 Accordingly, Plaintiffs respectfully request that the Court approve the requested attorneys’
11 fees, reimbursement of actual litigation expenses, and approve the requested settlement administration
12 costs.

13 **I. THE COURT SHOULD AWARD THE REQUESTED ATTORNEYS’ FEES**

14 Plaintiffs are entitled to recover their attorneys’ fees and costs for prevailing on their asserted
15 claims. *See* Cal. Lab. Code §§ 1194(a), 2699(g)(1); Cal. Civ. Proc. Code § 1021.5; 29 U.S.C. §
16 216(b). Here, Plaintiffs are prevailing parties and entitled to recover their reasonable attorneys’ fees
17 and costs because they obtained a successful settlement. *See Farrar v. Hobby*, 506 U.S. 103, 111
18 (1992); *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1089
19 (9th Cir. 2010) (“Litigation that results in an enforceable settlement agreement can confer ‘prevailing
20 party’ status on a plaintiff.”).

21 In the Ninth Circuit, district courts have the discretion in common fund cases to choose either
22 the percentage-of-the-fund or the lodestar method in evaluating a request for attorneys’ fees. *Vizcaino*
23 *v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). “Because the benefit to the class is easily
24 quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the
25 common fund in lieu of the often more time-consuming task of calculating the lodestar.” *In re*
26 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“*Bluetooth*”). A district
27 court can depart from the Ninth Circuit’s 25% “benchmark” for a reasonable fee award if it provides an
28 adequate explanation of the special circumstances that justify the departure. *Id.* at 942.

1 Plaintiffs request attorneys' fees equal to one-third (or 33.3%) of the \$4.9 million maximum
 2 common fund, or \$1,633,333.33. Plaintiffs' request for a higher percentage than the 25% benchmark
 3 is justified because of the size of the common fund (*i.e.* under \$10 million), the excellent result for the
 4 476 individuals eligible to participate in the Settlement, the risks Class Counsel took in litigating a
 5 contingency fee case, and a lodestar cross-check results in a negative multiplier that supports a finding
 6 that the fee request is reasonable.

7 **A. An Attorneys' Fees Award of One-Third of the Settlement Common Fund Is Well**
 8 **Supported by Caselaw.**

9 In cases resulting in settlements such as this one, courts have approved fees of one-third of the
 10 settlement common fund. An upward departure from the benchmark is often appropriate for common
 11 funds below \$10 million. *See, e.g., Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1127
 12 (C.D. Cal. 2008) ("Cases of under \$10 Million will often result in fees above 25%."); *Moreno v. Cap.*
 13 *Bldg. Maint. & Cleaning Servs., Inc.*, No. 4:19-cv-07087-DMR, 2021 WL 4133860, at *5 (N.D. Cal.
 14 Sept. 10, 2021) (same; awarding one-third of the settlement common fund); *Miller v. CEVA Logistics*
 15 *USA, Inc.*, No. 2:13-cv-01321-TLN-CKD, 2015 WL 4730176, at *8 (E.D. Cal. Aug. 10, 2015)
 16 ("California district courts usually award attorneys' fees in the range of 30-40% in wage and hour class
 17 actions that result in the recovery of a common fund under \$10 million"; awarding one-third of the
 18 \$2.6 million settlement common fund); *Bennett v. SimplexGrinnell LP*, No. 3:11-cv-01854-JST, 2015
 19 WL 12932332, at *6 (N.D. Cal. Sept. 3, 2015) (38.8% of a \$4.9 million common fund); *Smith v. CRST*
 20 *Van Expedited, Inc.*, No. 3:10-cv-01116-IEG, 2013 WL 163293, at *5 (S.D. Cal. Jan. 14, 2013) (33 1/3
 21 % fee, and citing wage and hour class actions awarding fees of 40% of a common fund).²

22 In similar wage and hour lawsuits involving exemption misclassification, district courts in
 23 California routinely award one-third of the common fund for attorneys' fees. *See e.g., Nelson v. Avon*
 24 *Prods., Inc.*, No. 5:13-cv-02276-BLF, 2017 WL 733145, at *6 (N.D. Cal. Feb. 24, 2017) (awarding

25 _____
 26 ² This Court has approved attorneys' fees above the benchmark in recent cases with a settlement fund
 27 under \$10 million. *See, e.g., Philips v. Munchery Inc.*, No. 3:19-cv-00469-JSC, 2021 WL 326924, at
 28 *9 (N.D. Cal. Feb. 1, 2021) (approving 30% of the \$400,000 fund in WARN Act case); *Deaver v.*
Compass Bank, No. 3:13-cv-00222-JSC, 2015 WL 8526982, at *11-12 (N.D. Cal. Dec. 11, 2015)
 (awarding 33% of the \$500,000 settlement fund and citing cases in support of a greater than 30%
 award).

1 one-third of \$1.8 million common fund in administrative exemption misclassification case); *Lee v.*
2 *JPMorgan Chase & Co.*, No. 8:13-cv-00511-JLS-JPR, 2015 WL 12711659, at *7-9 (C.D. Cal. Apr.
3 28, 2015) (awarding one-third of \$2.4 million common fund in misclassification case involving
4 commercial and review appraisers); *Boyd v. Bank of Am. Corp.*, No. 8:13-cv-00561-DOC-JPR, 2014
5 WL 6473804, at *12 (C.D. Cal. Nov. 18, 2014) (awarding one-third of \$5.8 million common fund in
6 misclassification case involving real estate appraisers).

7 Courts frequently grant fee awards greater than the twenty-five percent benchmark where, as is
8 here, the requested award is less than the total lodestar, which supports the reasonableness of the
9 requested award. *See, e.g., Marshall v. Northrop Grumman Corp.*, No. 2:16-cv-06794-AB-JC, 2020
10 WL 5668935, at *7 (C.D. Cal. Sept. 18, 2020) (awarding one-third of the fund where class counsel’s
11 lodestar was greater than the requested award); *Moreno*, 2021 WL 4133860, at *6 (awarding one-third
12 of the common fund where there was a substantial negative multiplier); *Flores v. TFI Int’l, Inc.*, No.
13 3:12-cv-05790-JST, 2019 WL 1715180, at *10 (N.D. Cal. Apr. 17, 2019) (granting attorneys’ fees
14 totaling 61% of the total amount paid by Defendants where the award was 83% of counsel’s lodestar);
15 *see also Rosado v. Ebay Inc.*, No. 5:12-cv-04005-EJD, 2016 WL 3401987, at *8 (N.D. Cal. June 21,
16 2016) (a negative multiplier “strongly suggests the reasonableness of the negotiated fee”).

17 Compensation at the 25% benchmark would significantly undercompensate counsel in light of, among
18 other things, the among of time counsel incurred in these three matters and the excellent result
19 obtained in a case in which recovery was uncertain due to the litigation risks. *See* Declaration of Laura
20 L. Ho in Support of Plaintiffs’ Motion for Attorneys’ Fees and Costs (“Ho Fees Decl.”) ¶¶ 10-11.

21 The requested fee is reasonable and should not be conditioned on whether the Defendants do
22 not ultimately pay the maximum settlement amount because some portion of the Non-California Opt-
23 In Eligible Plaintiffs choose not to participate in the settlement by filing a claim. Percentage-of-the-
24 fund fee awards based on the maximum amount to be paid by the defendant are commonly approved in
25 similar cases in which the Defendants ultimately paid less than the maximum settlement fund. *See,*
26 *e.g., Williams v. MGM-Pathé Communications Co.*, 129 F.3d 1026 (9th Cir. 1997) (reversing as an
27 abuse of discretion a district court’s award of attorneys’ fees based on claims submitted rather than the
28 total fund); *Przytula v. Bed Bath & Beyond Inc.*, No. 1:17-cv-05124 (MTM) (N.D. Ill. Jan. 29, 2019) ,

1 ECF No. 123 (approving Plaintiffs’ Counsel’s FLSA case in which unclaimed funds and uncashed
 2 check amounts were not paid by defendant and awarding one-third of \$8.5 million settlement for
 3 attorneys’ fees), Suppl. Decl. of Deirdre A. Aaron in Support of Pls.’ Mot. for Prelim. Approval of
 4 Class, Collective, and Representative Action Settlement, ECF No. 130 (“Aaron Suppl. Decl.”) ¶ 5,
 5 Exs. A & B; *Schrivver v. Golden Corral Corp.*, No. 4:17-cv-00136-BYP (N.D. Ohio May 31, 2018),
 6 ECF No. 67 (approving Plaintiffs’ Counsel’s FLSA case in which unclaimed funds and uncashed
 7 check amounts were not paid by defendant and awarding one-third of \$3.9 million settlement for
 8 attorneys’ fees), Aaron Suppl. Decl. ¶ 6, Exs. C & D.

9 Thus, Plaintiffs’ requested award of one-third of the maximum settlement fund is reasonable
 10 and consistent with similar wage and hour cases.

11 **B. Given the Results Obtained and Risk Borne by Class Counsel, the Court Should Award**
 12 **Fees Equal to One-Third of the Common Fund.**

13 While the “benchmark” for a reasonable percentage-of-the-fund award is twenty-five percent in
 14 the Ninth Circuit, district courts may adjust the lodestar to account for several factors, including the
 15 quality of representation, the benefit obtained for the class, the complexity and novelty of the issues
 16 presented, and the risk of non-payment. *Bluetooth*, 654 F.3d at 942. Here, the efficient litigation by
 17 highly experienced Class Counsel resulted in an excellent settlement for the settlement class members
 18 and Class Counsel took on the risk of litigating a complex wage and hour misclassification case on
 19 contingency.

20 **1. The Excellent Settlement Result Supports the Fee Request.**

21 In light of the litigation risks and the per person allocation achieved, Class Counsel negotiated
 22 an excellent settlement, which justifies the modest upward adjustment to a fee of one-third of the fund.
 23 The Settlement provides a maximum payment of \$4,900,000.00, plus a separate payment of the
 24 employer’s share of payroll taxes for the wage portion of the settlement payment. Non-California Opt-
 25 in Eligible Plaintiffs who worked as a Junior Appraiser (*Seltz*) are eligible to submit a claim to receive
 26 an average pre-tax award of \$3,885.07 and those who worked as Appraisers or Senior Appraisers
 27 (*Dixon II*) are eligible to submit a claim to receive an average pre-tax award of \$4,719.30. Declaration
 28 of Laura L. Ho in Support of Plaintiffs’ Motion for Preliminary Approval of Class, Collective, and

1 Representative Actions Settlement, ECF 115 (“Ho Prelim. Decl.”) ¶ 27. Those who opted into the
2 *Seltz* FLSA action before the case was settled will receive an average pre-tax recovery of \$4,715.28
3 and those who opted into the *Dixon II* FLSA action before the case was settled will receive an average
4 pre-tax recovery of \$4,809.33. *Id.* California Class Members will receive an average pre-tax award of
5 \$15,074.70, and those California Class Members who also opted into the FLSA claim will receive an
6 average award of \$16,760.67. *Id.* ¶ 28. The monetary benefits for the settlement members are
7 significant and favor an upward adjustment from the benchmark. *Cf. Deaver*, 2015 WL 8526982, at
8 *11 (Scott Corley, J. noting that an average recovery of over \$700 for those who submitted claims
9 were “very favorable” considering the litigation challenges).

10 The results obtained are particularly notable for Non-California Opt-In Eligible Plaintiffs, who
11 were previously given opportunities to join the FLSA actions but chose not to. Had litigation
12 proceeded, those individuals would have likely ultimately received no monetary recovery. Under the
13 current settlement agreement, however, over 300 Appraisers were given another opportunity to
14 participate and receive a significant award. Plaintiffs estimate that around \$1,343,825.00 of the net
15 settlement fund is available to be claimed by Non-California Opt-In Eligible Plaintiffs. *See*
16 Supplemental Declaration of Laura L. Ho in Support of Plaintiffs’ Motion for Preliminary Approval of
17 Class, Collective, and Representative Actions Settlement, ECF 129 (“Ho Suppl. Decl.”) Ex. E.

18 Additionally, after these cases were filed, Cushman reclassified Junior Appraisers to non-
19 exempt as of September 9, 2019 and changed its pay practices for employees who received recoverable
20 draws as of January 2021, instead paying a fixed, non-recoverable annual salary and separately paying
21 a production bonus if the amount exceeds the Appraiser’s annual salary. Thus, even Appraisers who
22 chose not to opt into the case and who worked for Cushman after it made those changes have already
23 benefitted from the filing of these lawsuits. Finally, of great note, because it is not required by law, but
24 is a benefit bestowed solely by this settlement, Cushman also promised, as part of the settlement
25 agreement, not to enforce any of its promissory notes against any participating settlement member (a
26 monetary value worth thousands or tens of thousands of dollars for some class members – and in at
27 least one instance, over one hundred thousand dollars). *See* Ho Fees Decl. ¶ 9.

1 The excellent result in this settlement – the most important factor for a departure from the 25%
2 benchmark – supports Plaintiffs’ request for attorneys’ fees equal to one-third of the maximum
3 settlement fund.

4 **2. Class Counsel Took on Substantial Risk to Litigate this Case and Bore the**
5 **Financial Burden of Litigating on a Contingency Basis.**

6 Class Counsel’s willingness to take on the significant litigation risks involved in litigating three
7 complex cases involving difficult exemption misclassification claims to achieve an excellent result for
8 the Class weighs in favor of granting the fees requested. This case is not one in which a substantial
9 settlement and a recovery of a large attorney’s fee was a foregone conclusion. *See Vizcaino*, 290 F.3d
10 at 1048 (“Risk is a relevant circumstance.”). Misclassification cases – and particularly those that
11 involve both federal and state exemptions – present significant risks of losing on the merits after
12 extensive litigation. *See Deluca v. Farmers Ins. Exch.*, No. 3:17-cv-00034-TSH, 2020 WL 5071700, at
13 *4 (N.D. Cal. Aug. 24, 2020) (“Employment class actions are, by their nature, time-consuming and
14 expensive to litigate. Wage and hour trials are complex and expensive.”) (internal quotations and
15 citations omitted). Plaintiffs’ effort to bring and maintain these cases with class and collective action
16 features faced arguments by Cushman that: (i) Appraisers and Senior Appraisers did not have similar
17 compensation structures (*i.e.* promissory notes with recoverable draws or guaranteed draws), as
18 Cushman argued in opposition to Plaintiff Dixon’s motion for conditional certification; (ii) Plaintiff
19 Dixon’s California meal and rest period claims require individualized inquiries that preclude class
20 certification; (iii) due process entitles Cushman to cross-examine each class and collective member on
21 their job duties and to challenge their claimed overtime hours necessitates mini-trials, making the class,
22 collective, and representative actions inefficient; and (iv) Junior Appraisers, Appraisers, and Senior
23 Appraisers worked few, if any, overtime hours. Ho Prelim Decl. ¶ 35; Ho Fees Decl. ¶ 10. In light of
24 these litigation risks, awarding Class Counsel a fee of one-third of the fund is warranted.

25 The requested fee is also reasonable in light of the risks associated with litigating on a
26 contingent basis. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008)
27 (“The importance of assuring adequate representation for plaintiffs who could not otherwise afford
28 competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis

1 a larger fee than if they were billing by the hour or on a flat fee This substantial outlay, when there
2 is a risk that none of it will be recovered, further supports the award of the requested fees.”) (citations
3 omitted). Class Counsel dedicated sufficient attorney resources to the prosecution of this litigation,
4 which reduced Counsel’s ability to work on less risky cases in which recovery of fees was more
5 certain. Ho Fees Decl. ¶ 11; Declaration of Deirdre Aaron in Support of Plaintiffs’ Motion for
6 Attorneys’ Fees and Costs, submitted herewith (“Aaron Fees Decl.”) ¶ 11. In the time that these cases
7 have been pending, Class Counsel have not received any compensation or reimbursement for their
8 efforts and have advanced all expenses. Ho Fees Decl. ¶ 11; Aaron Fees Decl. ¶ 10. The significant
9 outlay of three firms’ resources in terms of both time and out of pocket expenses was wholly
10 dependent upon obtaining a substantial recovery for the Settlement Class. Class Counsel bore those
11 expenses because of the potential of recovering a fee award if they succeeded. Ho Fees Decl. ¶¶ 27-
12 29; Aaron Fees Decl. ¶¶ 52-53.

13 Additionally, Plaintiffs’ Counsel’s retainer agreements with Plaintiffs allowed for a one-third
14 contingency fee arrangement. Ho Fees Decl. ¶ 12; Aaron Fees Decl. ¶ 13. *See Philips*, 2021 WL
15 326924, at *9 (awarding a percentage recovery greater than the benchmark where, among other things,
16 the class counsel’s retainer agreements with 25 class members allowed for a one-third contingency fee
17 arrangement).

18 The substantial risk undertaken by Class Counsel in litigating a complex wage and hour case
19 involving exemption misclassification under state and federal law on a contingency basis supports an
20 upward departure from the 25% benchmark.

21 **C. Class Counsel’s Lodestar for Work Performed for the Class Also Supports the Award**
22 **Sought.**

23 The requested fee is also appropriate under the lodestar cross check to confirm the
24 reasonableness of the fee. *See Philips*, 2021 WL 326924, at *9. “The lodestar figure is calculated by
25 multiplying the number of hours the prevailing party reasonably expended on the litigation (as
26 supported by adequate documentation) by a reasonable hourly rate for the region and for the
27 experience of the lawyer.” *Philips*, 2021 WL 326924, at *8 (citing *Bluetooth*, 654 F.3d at 941).

1 **1. Class Counsel’s Hourly Rates are Reasonable.**

2 Class Counsel are entitled to the hourly rates charged by attorneys of comparable experience,
 3 reputation, and ability for similarly complex federal litigation. *Camacho v. Bridgeport Fin., Inc.*, 523
 4 F.3d 973, 979 (9th Cir. 2008). Here, Class Counsel’s hourly rates are reasonable in light of their
 5 significant experience, expertise, and skill in litigating complex class and collective actions involving
 6 California and federal wage and hour laws and the jurisdictions in which they are located. Ho Fees
 7 Decl. ¶¶ 14-25; Aaron Fees Decl. ¶¶ 15-35; Declaration of Paola C. Meireles in Support of Motion for
 8 Attorneys’ Fees and Costs (“Meireles Fees Decl.”) ¶¶ 5-13. The background and experience of the
 9 primary attorneys who worked on this matter are set forth in the supporting declarations of Class
 10 Counsel. Ho Fees Decl. ¶ 21(a); Aaron Fees Decl. ¶¶ 25-35; Meireles Fees Decl. ¶¶ 6-13, 22. Their
 11 rates are summarized in the table below:

Rates for Goldstein, Borgen, Dardarian & Ho		
Professional	Law School Graduation Year	2021 Rate
Laura Ho, Senior Partner	1994	\$990
Megan Ryan, Associate	2008	\$690
Ginger Grimes, Associate	2015	\$565
Alan Romero, Associate	2016	\$540
Beth Holtzman, Associate	2017	\$515
Reynaldo Fuentes, Associate	2019	\$465
Scott Grimes, Statistician	---	\$390
Jacqueline Thompson, Senior Paralegal	--	\$365
Scott Grimes, Senior Paralegal	--	\$365
Stuart Kirkpatrick, Paralegal	--	\$350
Damon Valdez, Paralegal	--	\$350
Rates for Outten & Golden		
Professional	Law School Graduation Year	2021 Rate
Justin M. Swartz, Partner	1998	\$990
Sally J. Abrahamson, Partner	2009	\$625
Deirdre A. Aaron, Partner	2010	\$600
Pamela A. Disney	2015	\$375
Molly J. Frandsen	2017	\$350
Christopher C. Alter	--	\$270
Christopher Truong	--	\$270
Emily R. Abelow	--	\$270
Lynsey Major	--	\$270
Rania Tootla	--	\$270
Sara Olson	--	\$270

Stephanie Yu	--	\$270
DC Law Clerk	--	\$250
SF Law Clerk	--	\$250
Rates for Shavitz Law Group		
Professional	Law School Graduation Year	2021 Rate
Gregg Shavitz, Managing Partner	1994	\$700.00
Paolo Meireles, Partner	2010	\$550.00
Christine Duignan, Of Counsel	1991	\$600.00
Logan Pardell, Associate	2015	\$400.00
Paralegal	--	\$150.00

Class Counsels' hourly rates have been approved by other federal and state courts. Recent approvals of GBDH rates include: *Lashbrook v. City of San Jose*, No. 5:20-cv-01236-NC (N.D. Cal. Sept. 2, 2020), ECF No. 25 (finding that GBDH's 2020 hourly rates were "within the market range of hourly rates charged by attorneys of comparable experience, reputation, and ability for similar litigation"); *Nevarez v. Forty Niners Football Co., LLC*, No. 5:16-cv-07013-LHK (N.D. Cal. Jul. 23, 2020), ECF No. 416 (awarding full lodestar based on GBDH's 2019 hourly rates, adjusted by an upward multiplier of 1.124); *Flowers v. Twilio, Inc.*, No. RG16804363 (Alameda Cnty. Super. Ct. June 13, 2019) (finding that GBDH's "2019 hourly rates are reasonable and commensurate with the prevailing rates for class actions"); *Yumori Kaku v. City of Santa Clara*, No. 17-CV-319862 (Santa Clara Cnty. Super. Ct. Jan. 22, 2019) (finding GBDH's 2018 hourly rates reasonable and "comparable to rates charged by other local attorneys with specialized skills that are necessary for litigating complex cases involving novel issues"); *Siciliano v. Apple, Inc.*, No. 2013-I-CV-257675 (Santa Clara Cnty. Super. Ct. Nov. 2, 2018) (approving GBDH's 2018 rates as reasonable in contested lodestar fee award). *See also* Ho Fees Decl. ¶ 19.

Recent approvals of O&G rates include: *del Toro Lopez v. Uber Techs., Inc.*, No. 4:17-cv-06255-YGR, 2018 WL 5982506, at *4 (N.D. Cal. Nov. 14, 2018) ("[O&G]'s hourly rates, ranging from \$250 to \$850 for attorneys, are reasonable in light of the market for legal services of this type and quality."); *Zamora v. Lyft, Inc.*, No. 3:16-cv-02558-VC, 2018 WL 4657308, at *3 (N.D. Cal. Sept. 26, 2018) ("[O&G]'s hourly rates, ranging from \$240 to \$260 for staff and \$280 to \$850 for attorneys, are reasonable in light of the market for legal services of this type and quality."); Aaron Fees Decl. ¶ 16.

1 Recent approvals of SLG rates include: *Lawson. v. Love's Travel Stops & Country Stores, Inc.*,
2 No. 1:17-cv-01266-CCC-MCC, 2021 WL 720359, at *5-6 (M.D. Pa. Feb. 24, 2021) (approving
3 attorney fee request based on rates of \$750/hour, \$575/hour, and \$400/hour, for Gregg I. Shavitz,
4 Paolo C. Meireles, and Logan A. Pardell, respectively); *see also Johnson v. Himagine Sols., Inc.*, No.
5 4:20-cv-00574-SPM, 2021 WL 2634669, at *6-8 (E.D. Mo. June 25, 2021); *Meo v. Lane Bryant, Inc.*,
6 No. 2:18-cv-06360-AKT, 2020 WL 4047897, at *2-3 (E.D.N.Y. July 17, 2020) (finding SLG's
7 lodestar estimate and requested fees to be reasonable, after it reviewed "the billing rates for the
8 respective attorneys" at SLG and "carefully reviewed the biographical information on each of the
9 attorneys, along with their professional affiliations, publications and prior cases."); *Slaughter v. Sykes*
10 *Enters.*, No. 1:17-cv-02038-KLM, 2019 WL 529512, at *8-11 (D. Colo. Feb. 11, 2019); Meireles Fees
11 Decl. ¶ 22.

12 Moreover, Class Counsel's rates do not account for contingent risk and are well within the
13 range of rates charged by similarly experienced and qualified attorneys practicing in their respective
14 jurisdictions area, and are those charged other clients who pay for attorneys' fees on an hourly basis.
15 Ho Fees Decl. ¶¶ 14-19; Aaron Fees Decl. ¶ 17; Meireles Fees Decl. ¶ 15.

16 **2. The Number of Hours Claimed is Reasonable.**

17 Class Counsel has maintained contemporaneous, detailed time records billed at 1/10 of an hour
18 increments and are filing their detailed billing records through October 15, 2021. Ho Fees Decl. ¶ 20,
19 Ex. A; Aaron Fees Decl. ¶ 36, Ex. A; Meireles Fees Decl. ¶ 19 Ex. A. Class Counsel has reviewed
20 these records and has exercised billing judgment twice: first, each firm closely reviewed their records
21 and exercised billing judgment by eliminating vague or duplicative entries. Ho Fees Decl. ¶ 23; Aaron
22 Fees Decl. 36; Meireles Fees Decl. ¶ 19 Ex.AX. Class Counsel also took a 5% across-the-board
23 reduction in their respective lodestar amounts as a further exercise of billing judgment. Ho Fees Decl.
24 ¶ 23; Aaron Fees Decl. ¶ 41; Meireles Fees Decl. ¶ 19 Ex. A.

25 Class Counsel summarize their time spent based on the various phases of the *Seltz and Dixon I*
26 *& II* cases.

1 a. *Dixon I & II*

2 GBDH's time was spent almost exclusively on the *Dixon* cases. GBDH began investigating
3 Plaintiff Dixon's claims in the summer of 2018. GBDH spent around 166.2 hours investigating
4 Plaintiff Dixon's claims and preparing her complaint, including interviewing Plaintiff Dixon,
5 reviewing Plaintiff Dixon's employment records, conducting legal research, drafting a PAGA notice
6 letter to the LWDA, conducting interviews with other Cushman Appraisers, and drafting the state court
7 complaint. Ho Fees Decl. ¶ 24(a). After the complaint was filed and up until the first joint mediation
8 between the *Seltz* and *Dixon* cases, GBDH spent approximately 181.6 hours conducting further legal
9 and factual research, meeting with the *Seltz* counsel about coordination of litigation, evaluating
10 Cushman's removal of Plaintiff Dixon's case to federal court, preparing a protective order, and serving
11 and responding to written discovery. *Id.* ¶ 24(b).

12 In November 2018, the parties in *Seltz* and *Dixon* agreed to stay the cases pending mediation.
13 The first joint mediation took place on June 27, 2019. *Id.* ¶ 24(c). GBDH was responsible for drafting
14 the California claims and salary basis test sections of the mediation brief. *Id.* Following the
15 unsuccessful June 2019 mediation, the parties agreed that the *Seltz* and *Dixon* cases would be
16 coordinated for discovery but remain in separate courts and in separate litigation – with the *Seltz* case
17 focused on Junior Appraisers and the *Dixon* case focused on Appraisers and Senior Appraisers.
18 GBDH spent about 185.3 hours on the *Dixon* case, continuing to pursue written discovery for
19 information about Appraisers and Senior Appraisers, drafting and submitting a supplemental PAGA
20 notice, drafting an amended complaint, strategizing with co-counsel about a newly filed case against
21 Cushman in Colorado involving Appraisers, and responding to written discovery requests to Plaintiff
22 Dixon. GBDH spent about 181.6 hours on this phase of the case. *Id.* ¶ 24(b).

23 Beginning around June 2020, GBDH also turned its attention to drafting and filing a section
24 216(b) motion contested by Cushman for the *Dixon* case, drafting and filing a reply brief to the section
25 216(b) motion, preparing and filing a new case against Cushman & Wakefield, Inc. (the nationwide
26 entity), negotiating a consolidated FLSA notice schedule for the two *Dixon* cases, and overseeing the
27 two *Dixon* notice and opt-in processes. GBDH spent about 687.2 hours on this phase of litigation. *Id.*
28 ¶ 24(d).

1 The final joint mediation session took place on March 11, 2021. *Id.* ¶ 24(e). In preparation for
2 the mediation, GBDH analyzed several sets of data for the *Dixon* cases and drafted the sections of the
3 brief related to the Appraisers and Senior Appraisers. Because the two *Dixon* cases encompassed a
4 much larger part of the three cases, GBDH took the lead in the negotiations during the mediation and
5 subsequent settlement discussions, including revising and negotiating the long form settlement
6 agreement. GBDH also took the lead in drafting the preliminary approval papers, and drafting
7 supplemental approval papers based on the Court’s tentative ruling seeking additional briefing on
8 certain issues. After the Court gave preliminary approval, GBDH has also taken the lead in
9 communicating with Plaintiff Dixon and *Dixon I & II* opt-in eligible plaintiffs, working with the
10 Settlement Administrator on the settlement notice process, and preparing this motion for attorneys’
11 fees and costs – spending about 345.4 hours for the final settlement phase of the case to date. *Id.*
12 Altogether, GBDH has spent about 1,565.7 hours litigating these cases through October 15, 2021. *Id.* ¶
13 21.

14 **b. Seltz**

15 Outten & Golden (“O&G”) and the Shavitz Law Group (“SLG”) primarily worked on the *Seltz*
16 case (together, “Counsel for Seltz”). O&G spent around 8.9 hours investigating Plaintiff Seltz’s claims
17 and preparing the complaint, including interviewing Plaintiff Seltz and other potential witnesses,
18 reviewing his employment records, conducting legal and company research, and drafting the initial
19 demand letter. Aaron Fees Decl. ¶ 43. Plaintiff Seltz and Cushman thereafter agreed to toll the FLSA
20 and state law statutes of limitations for putative class and collective members as of December 2017,
21 and ultimately engaged in private mediation in July 2018. In preparation for the mediation, Counsel
22 for Seltz performed legal research and review of mediation discovery to draft a mediation statement,
23 negotiated the mediation data exchange, and computed a damages model without incurring the expense
24 of retaining a damages expert. Counsel for Seltz also drafted and filed the state court complaint in
25 advance of mediation. Aaron Fees Decl. ¶ 44. O&G spent about 161.8 hours on this phase of the case,
26 not including the investigation stage. Aaron Fees Decl. ¶ 44. SLG spent about 97.5 hours on this
27 phase of the case (including on investigation). Meireles Fees Decl. ¶ 20(a).

1 After initial mediation was unsuccessful, Plaintiffs Seltz and Cushman engaged in early
2 discovery and initial case management, including negotiating the case scheduling order, and preparing
3 and serving initial disclosures and discovery requests. O&G spent about 99.2 hours on this phase of
4 litigation. Aaron Fees Decl. ¶ 45. SLG spent about 3.5 hours on this phase of the case. Meireles Fees
5 Decl. ¶ 20(b).

6 In November 2018, the parties in *Seltz* and *Dixon* agreed to stay the cases pending mediation.
7 In preparation for the June 2019 joint mediation, O&G performed legal research and review of
8 mediation discovery to draft sections of the mediation statement, negotiated the mediation data
9 exchange, and worked with SLG to analyze and compute a damages model without incurring the
10 expense of retaining a damages expert. Aaron Fees Decl. ¶ 46. O&G spent about 110.8 hours on this
11 this phase of the case. Aaron Fees. Decl. ¶ 46. SLG spent about 64 hours on this phase of the case.
12 Meireles Fees Decl. ¶ 20(c).

13 After mediation was unsuccessful, litigation and discovery continued. In this phase of the case,
14 Counsel for Seltz responded to discovery requests and produced documents, and reviewed document
15 productions from Cushman. O&G also drafted and filed a section 216(b) motion with detailed
16 exhibits, including several declarations O&G collected from individuals who had been employed by
17 Cushman as Junior Appraisers.³ Cushman decided not to oppose the motion, and Counsel for Seltz
18 negotiated a section 216(b) notice stipulation. Aaron Fees Decl. ¶ 47. O&G spent approximately
19 756.7 hours on this phase of the case. Aaron Fees Decl. 47; SLG spent about 119.1 hours on this phase
20 of the case. Meireles Fees Decl. ¶ 20(d).

21 In October of 2020, the parties in both the *Seltz* and *Dixon* matters resumed settlement
22 discussions and agreed to mediation. During this phase of the case, Counsel for Seltz negotiated the
23 mediation data exchange, contributed to the damages calculations, and O&G took the lead in drafting
24 the mediation statement. O&G also spent time on section 216(b) notice administration, including
25 communicating with opt-ins and potential opt-ins and SLG took the lead in conducting an in-depth
26

27 ³ Although Plaintiff Seltz's complaint pled a collective including both Junior Appraisers and
28 Appraisers, the motion for conditional certification only sought certification of a collective of Junior
Appraisers.

1 damages analysis for Junior Appraisers in advance of mediation. Aaron Fees Decl. ¶ 48. O&G spent
2 approximately 120.9 hours on this phase of the case. Aaron Fees Decl. ¶ 48. SLG spent about 101.3
3 hours on this phase of the case. Meireles Fees Decl. ¶ 20(e).

4 Following the March 11, 2021 mediation, O&G prepared the initial draft of the long form
5 settlement agreement and the settlement notices, and Counsel for Seltz participated in negotiating the
6 long form settlement agreement and related documents. O&G contributed research, and revisions to
7 the amended complaint and motion for preliminary approval, and drafted sections of the supplemental
8 briefing in support of the preliminary approval motion. Counsel for Seltz prepared detailed
9 declarations in support of the briefing. SLG reviewed and edited the settlement agreement and
10 approval papers. Aaron Fees Decl. ¶ 49; Meireles Fees Decl. ¶ 20(f). O&G spent approximately 232
11 hours on this phase of the case. Aaron Fees Decl. ¶ 49. SLG spent about 15.5 hours on this phase of
12 the case. Meireles Fees Decl. ¶ 20(f).

13 Since the Court preliminary approved the settlement, O&G has spent time on notice
14 administration and preparing the attorneys' fee application. O&G spent approximately 19.6 hours on
15 this phase of litigation. Aaron Fees Decl. ¶ 50. SLG has spent time preparing their records for the
16 attorneys' fee application. Meireles Fees Decl. ¶ 20(g).

17 Class Counsel will spend additional time to bring this case to a close, including: continuing to
18 oversee the notice process, addressing Settlement Class Member inquires; preparing a final approval
19 motion with supporting declarations from counsel and the claims administrator; preparing a motion for
20 service awards with supporting declarations from the two Class Representatives and six declarants;
21 appearing at the final approval hearing; and ensuring that the settlement funds are timely and correctly
22 disbursed. Ho Fees Decl. ¶¶ 25, 29. With the anticipated additional work, the ultimate lodestar is
23 expected to be approximately \$1,744,775.06. *Id.* ¶ 25. Plaintiffs' request for one-third of the common
24 fund results in a 0.93 multiplier on the approximate lodestar through final approval. *Id.* ¶ 23. The
25 resulting negative multiplier on Class Counsel's lodestar to the requested attorneys' fees award
26 "strongly suggests the reasonableness" of the requested award. *Rosado*, 2016 WL 3401987, at *8.

27 For all of the foregoing reasons, Plaintiffs request that the Court grant the requested fee award.
28

1 **II. THE COURT SHOULD AWARD THE REQUESTED LITIGATION COSTS**

2 “There is no doubt that an attorney who has created a common fund for the benefit of the class
3 is entitled to reasonable litigation expenses from that fund.” *Philips*, 2021 WL 326924, at *10 (citing
4 *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014)); *see also* Cal. Lab. Code §§ 218.5;
5 2699(g)(1); 29 U.S.C. § 216(b). “To that end, courts throughout the Ninth Circuit regularly award
6 litigation costs and expenses – including reasonable travel expenses – in wage-and-hour class actions.”
7 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 265 (N.D. Cal. 2015) (citations omitted); *see*
8 *also Uschold v. NSMG Shared Servs., LLC*, No. 3:18-cv-01039-JSC, 2020 WL 3035776, at *16 (N.D.
9 Cal. June 5, 2020) (approving litigation expenses including mediation costs). Courts also regularly
10 award administration costs associated with providing notice to the class. *See, e.g., Bellinghausen*, 306
11 F.R.D. at 266; *Uschold*, 2020 WL 3035776, at *18.

12 Plaintiffs request \$60,000 in litigation expenses and \$20,000 in settlement administration costs
13 from the maximum settlement fund.

14 **A. Class Counsel’s Request for \$60,000 in Litigation Expenses is Reasonable.**

15 Plaintiffs’ Counsel collectively expect to incur no more than \$60,000 in actual out-of-pocket
16 litigation costs and expenses once this Settlement is completed. Ho Fees Decl. ¶ 27; Aaron Fees Decl.
17 ¶ 52; Meireles Fees Decl. ¶ 26. The amount of the costs requested is reasonable for the settlement of
18 three cases that required three mediations prior to settlement. The costs through October 15, 2021 of
19 \$61,575.57 include but are not limited to: \$3,404.89 for court filing fees (\$1,747.70 for GBDH,
20 \$1,340.19 for O&G, and \$317.00 for SLG); \$6,438.96 in document management software costs
21 (\$5,382.14 for GBDH and \$1,056.82 for O&G); \$9,334.20 for photocopying, printing, postage,
22 telephone, and legal research expenses (\$4,537.42 for GBDH and \$4,796.78 for O&G); \$2,769.48 in
23 notice administration for the collective action notices sent to those eligible to join the FLSA actions
24 (\$2,320.30 for GBDH and \$449.18 for SLG); \$12,005.88 for travel which includes airline, car,
25 mileage, taxi and gas for O&G \$6,668.36 and SLG \$4,849.84 and (where necessary) meal expenses in
26 connection with attending the settlement conferences (\$41.09 for GBDH, \$24.05 for O&G, and
27 \$422.54 for SLG); and \$22,645 for the three mediations (\$4,500.00 for GBDH, \$16,250.00 for O&G,
28 and \$6,350.00 for SLG). Ho Fees Decl. ¶ 28; Aaron Fees Decl. ¶ 52; Meireles Fees Decl. ¶ 26. O&G

1 also had costs of \$336.99 for hosting a website with information about the *Seltz* case. Aaron Fees
2 Decl. ¶ 52. All costs incurred here were necessary to the prosecution of this litigation and would
3 normally have been billed to a client paying for counsel's services on a regular basis. Ho Fees Decl.
4 ¶ 29. Based upon the declarations of Class Counsel and exhibits thereto, the costs for which
5 reimbursement is requested have been adequately documented and were reasonably incurred for the
6 benefit of the Class. The total litigation expenses between the three firms totals \$61,575.57, which is
7 greater than the requested costs, underscoring the reasonableness of the requested costs. Accordingly,
8 the Court should award Class Counsel the reimbursement of actual litigation expenses.

9 **B. The Settlement Administrators Costs Are Reasonable.**

10 The Settlement Administrator, CPT, estimates that it will cost about \$20,000 through the
11 disbursement of settlement awards for the administration of this settlement. Declaration of Jackie
12 Hitomi on Behalf of Cpt Group, Inc., Settlement Administrator ¶ 11. CPT has provided a summary of
13 its responsibility over administering the settlement, including emailing, printing, and mailing the
14 Notice and Claim Form to all Settlement Class Members, Opt-in Plaintiffs, and Non-California Opt-in
15 Eligible Plaintiffs, as well as reminder mailings; establishing and maintaining a status website
16 containing case documents; collecting and processing responses, including claim forms for Non-
17 California Opt-in Eligible Plaintiffs; calculating and distributing the Individual Settlement Payments;
18 tax reporting; providing necessary reports and declarations; and performing other tasks required by the
19 Settlement Agreement, by agreement of the parties, or that the Court orders. *Id.* ¶¶ 2-5, 8-11. CPT has
20 already sent out notice packets to the 475 class members identified on Defendants' Class List, and sent
21 out 206 emails to those for whom email addresses were available. *Id.* ¶ 4. So far, 15 Notice Packets
22 were returned by the post office, and CPT was able to find better mailing addresses for 11 of the
23 Notice Packets. *Id.* ¶ 15. For the remaining 4, 3 were successfully emailed and only 1 did not have an
24 available email address. *Id.* ¶ 5. CPT and Class Counsel believe that CPT's estimated costs are
25 reasonable given the number of settlement class and collective members and methods of notice. *Id.* ¶
26 11; Ho Fees Decl. ¶ 31. The Court should approve the \$20,000 in settlement administration costs to
27 CPT.

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) approve Plaintiffs'
3 request for attorneys' fees of \$1,633,333.33; (2) approve reimbursement of actual litigation costs of
4 \$60,000; and (3) approve a separate allocation of \$20,000 in settlement administration costs. A
5 Proposed Order will be submitted with the Motion for Final Approval, to be filed by February 24,
6 2022.

7 Dated: October 25, 2021

Respectfully submitted,

8 GOLDSTEIN, BORGEN, DARDARIAN & HO

9 /s/ Laura L. Ho

10 Laura L. Ho

11 *Attorneys for Plaintiffs, Settlement Class and*
12 *Collective Members, and Aggrieved Employees*