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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 DIMITRI DIXON and RYAN SELTZ, individually,
12 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 WASHINGTON
DC, INC., and DOES 1-50, inclusive

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

**DECLARATION OF LAURA L. HO IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS,
COLLECTIVE, AND REPRESENTATIVE
ACTIONS 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*
16 *Collective Members, and Aggrieved Employees*

1 I, Laura L. Ho, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and a partner at the
3 law firm of Goldstein, Borgen, Dardarian & Ho (“GBDH”), in Oakland, California. I, along with
4 Outten & Golden LLP and Shavitz Law Group, P.A., am counsel of record for the Plaintiffs in the
5 above-captioned matter (together “Plaintiffs’ Counsel” or “Class Counsel”). I submit this declaration
6 in support of Plaintiffs’ Motion for Preliminary Approval of Class, Collective, and Representative
7 Action Settlement. I have personal knowledge of the facts set forth in this declaration and could and
8 would testify competently to them if called upon to do so.

9 2. I recommend approval of the proposed Settlement of wage and hour claims, which I
10 consider to be an outstanding result for the Plaintiffs. The Settlement will pay Cushman Appraisers an
11 amount that I strongly believe that is fair and appropriate, is in the best interests of the Settlement
12 Class, and will result in prompt and reasonable financial benefit to the participating class members for
13 their remaining claims. Additionally, after the lawsuits involved in this comprehensive settlement
14 were filed, Cushman reclassified Junior Appraisers to non-exempt as of September 9, 2019 and
15 changed its pay practices for employees who received recoverable draws as of January 2021, instead
16 paying a fixed, non-recoverable annual salary and separately paying a production bonus if the amount
17 exceeds the Appraiser’s annual salary. Cushman also promised, as part of the Settlement, not to
18 enforce any of its promissory notes against any participating settlement member.

19 **Background on *Dixon I* and *Dixon II***

20 3. Prior to filing a complaint, Plaintiff Dixon’s Counsel conducted an intensive
21 investigation into the facts underlying the alleged violations. We collected and reviewed documents
22 relating to the pay that the Plaintiff Dixon and others received, the policies governing them, and their
23 day-to-day activities. On June 4, 2018, we submitted, on behalf of Plaintiff Dimitri Dixon, a notice to
24 the California Labor and Workforce Development Agency (“LWDA”) that Defendant Cushman &
25 Wakefield Western, Inc. had violated the California Private Attorneys General Act.

26 4. Plaintiff Dixon filed a lawsuit on August 14, 2018 in the Superior Court of California for
27 the County of San Francisco alleging violations of the federal Fair Labor Standards Act (“FLSA”) and
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1 California state law on behalf of Appraisers and Senior Appraisers against Defendant Cushman and
2 Wakefield Western, Inc. (“*Dixon I*”).

3 5. Defendant removed on September 21, 2018. After unsuccessful mediation and settlement
4 discussions, on July 8, 2020, Plaintiff Dixon moved for conditional certification of the FLSA claim.
5 Cushman contested the motion. The Court granted conditional certification as to Defendant Cushman and
6 Wakefield Western, Inc. on October 7, 2020.

7 6. Plaintiff Dixon filed a new lawsuit on October 7, 2020 in the Northern District of California
8 against Defendant Cushman & Wakefield, Inc., alleging a single cause of action under the FLSA (“*Dixon*
9 *II*”). The parties stipulated to conditional certification and sending notice to collective members in *Dixon*
10 *II*. Twenty-three Appraisers and Senior Appraisers opted into *Dixon I* and *II*.

11 **Coordination of Seltz, Dixon I, and Dixon II**

12 7. Counsel for Plaintiffs Seltz and Dixon agreed to coordinate discovery and scheduling of the
13 *Seltz* and *Dixon I* cases early in litigation of the two original cases. In November 2018, all parties to the
14 *Seltz* and *Dixon I* actions agreed to stay the two cases to engage in comprehensive settlement negotiations.
15 Cushman agreed to engage in limited and targeted discovery to aid mediation, and provided pay data for
16 putative class members, job descriptions, and pay policy documents. In June 2019, Plaintiff Seltz’s
17 counsel, Plaintiff Dixon’s counsel, and Cushman’s counsel attended mediation with David Rotman in San
18 Francisco, CA, but were unable to reach a resolution.

19 8. After conditional certification in *Dixon I*, *Dixon II* and *Seltz*, in November 2020, the courts
20 granted the parties’ request to stay pending a third mediation with Steven Rottman. In advance of
21 mediation, Cushman produced updated payroll data.

22 9. On March 11, 2021, the parties attended an all-day remote mediation with Mr. Rottman.
23 By the end of the day, Cushman made a final proposal for Plaintiffs to consider over the course of the
24 following week. After communicating with each party separately, on March 17, 2021, Mr. Rottman
25 informed the parties that they had reached a deal in principle to resolve the three cases. Thereafter, the
26 parties negotiated the terms of the settlement and language of the notices to settlement members and
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1 confirmed data about the individuals covered by the settlement agreement. The agreement was fully
2 executed on June 30, 2021.

3 10. For purposes of the settlement, Plaintiffs have filed a Second Amended Complaint adding
4 Plaintiff Ryan Seltz to *Dixon I*, adding Cushman and Wakefield, Inc. and Cushman and Wakefield of
5 Washington, DC, Inc. as Defendants, and amending the class definition to include Junior Appraisers in
6 California and the collective definition to include Junior Appraisers and Appraisers who worked outside of
7 California.

8 **The Terms of the Settlement**

9 11. A true and correct copy of the Stipulation and Agreement to Settle Class, Collective,
10 and Representative Actions is submitted herewith as **Exhibit 1** (“Settlement Agreement” or
11 “Settlement”). The Settlement calls for Cushman to pay up to \$4,900,000, plus the employer share of
12 payroll taxes. If any of the Non-California Opt-In Eligible Plaintiffs decide not to opt-in to the
13 collective action, they will not release any claims and Cushman will not have to fund the amount of
14 their Individual Payment Amounts. This is not a reversion.

15 12. From the \$4,900,000 maximum common fund, the settlement provides for: payment of
16 one-third of the Settlement Fund as attorneys’ fees (\$1,633,333.33); reimbursement of actual litigation
17 costs of not more than \$60,000; service awards to Named Plaintiffs Ryan Seltz and Dimitri Dixon of
18 \$10,000 each and \$2,000 each to Declarants Benjamin Blake, Eric Hix, Katherine Pierno, John
19 Dickerson, Heather Elliot, and Teresa Simone; a payment of \$20,000 to the LWDA for the PAGA
20 claims; and claims administrator charges for mailing the Notice, processing any objections or opt outs,
21 calculating payment, issuing checks, and related tasks, not to exceed \$20,000.

22 13. The remaining amount – which I estimate to be \$3,134,666.67 (“Net Settlement Fund”)
23 – will be devoted to individual settlement payments calculated using a point-based formula. Each Non-
24 California Opt-in Eligible Plaintiff (*i.e.* individuals who are eligible to opt into the FLSA claims and were
25 mailed a notice of the collective actions prior to the settlement but chose not to opt in) will receive one
26 point per workweek; each *Seltz* Opt-in Plaintiff (*i.e.* individuals who opted into the *Seltz* FLSA claim) and
27 *Dixon II* Opt-in Plaintiff (*i.e.* individuals who opted into the *Dixon II* FLSA claim) will receive two points
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1 per workweek; each California Class Member (*i.e.* individuals who worked for Defendants in California
2 but did not opt into the *Dixon I* FLSA action) will receive three points per workweek; and each *Dixon I*
3 Opt-in Plaintiff (*i.e.* individuals who both worked in California and opted into the *Dixon I* FLSA action)
4 will receive four points per workweek.

5 **The Proposed Notice Is Appropriate**

6 14. The Proposed Notices to be sent to the California Class Members, the *Seltz* and *Dixon*
7 Opt-in Plaintiffs, and the Non-California Opt-in Eligible Plaintiffs, attached as Exhibits A, B, and E to
8 the Settlement Agreement respectively, accurately and clearly provide class members with the
9 information they need to decide whether to participate in the Settlement.

10 15. All California Class Members and *Dixon II* and *Seltz* Opt-in Plaintiffs will be mailed a
11 check (with no claim forms required) except those California Class Members who affirmatively opt out.
12 Non-California Opt-in Eligible Plaintiffs will receive a claim form with their notice of settlement.

13 16. For California Class Members who do not opt out and do not cash their checks, the amount
14 of those checks will be sent to the Controller of the State of California in the name of the California Class
15 Member and held under the Unclaimed Property Law.

16 17. Uncashed checks by *Dixon II* Opt-in Plaintiffs and *Seltz* Opt-in Plaintiffs will be deposited
17 into Plaintiffs' Counsel's client trust account and held until the Plaintiff can be located.

18 18. If any Non-California Opt-in Eligible Plaintiffs who opt into the settlement by filing a
19 claim form then fail to cash their checks within 180 days, any remaining amounts will be given to a *cy*
20 *pres* beneficiary approved by the Court. The parties are currently considering and have tentatively
21 agreed to selecting the National Employment Law Project, a national organization that conducts
22 research and advocates for policies on behalf of workers. See [Home - National Employment Law](https://www.nelp.org)
23 [Project, nelp.org](https://www.nelp.org) (last visited July 1, 2021). Plaintiffs anticipate that the *cy pres* amount, if any, will be
24 small. Plaintiffs will provide further detail about their proposed *cy pres* designee in Plaintiffs' motion for
25 final approval of the settlement.

26 **Class Certification for Settlement Purposes**

27 19. Numerosity: The number of California class members is approximately 111.
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1 20. Typicality: Plaintiffs propose Plaintiff Dixon as the class representative for the
2 California class. The claims and defenses of Plaintiff Dixon are typical of the California class. Plaintiff
3 Dixon worked as an Appraiser and alleges that she was misclassified as exempt from FLSA and California
4 Labor Code's overtime protections, received compensation in the form of a recoverable draw, often worked
5 more than eight hours per day and forty hours per week, was not provided meal and rest periods, was not
6 provided accurate itemized wage statements, was not paid all wages due twice per month or upon
7 termination, and was not reimbursed for all reasonable business expenses.

8 21. Adequacy: Based on my and my firm's and my co-counsel's interactions with the
9 named plaintiff, I am aware of no conflict of interest between Plaintiff Dixon and the class, and I
10 believe that there are no such conflicts. As explained below, my firm and I, as well as my co-counsel,
11 are qualified to serve as class counsel.

12 22. Commonality: Common questions of fact and law predominate over individual issues for
13 the California Class, including whether Cushman properly classified California Class Members as exempt
14 from overtime; whether Cushman was required to provide meal and rest breaks to California Class
15 Members; whether Cushman required California Class Members to have personal cell phones for work and
16 did not reimburse California Class Members for cell phone costs; whether the wage statements provided to
17 California Class Members were accurate; and whether Cushman failed to pay unpaid wages due upon
18 California Class Members' separation from the company.

19 **Conditional Certification for Settlement Purposes is Appropriate**

20 23. Conditional certification for settlement purposes is appropriate here where two nationwide
21 collectives have already been conditionally certified (the *Seltz* collective covering Junior Appraisers and the
22 *Dixon I* and *II* collectives covering Appraisers and Senior Appraisers in California (*Dixon I*) and outside of
23 California (*Dixon II*)) and notice has been sent to all those eligible to join the collectives. The collective for
24 settlement purposes, as reflected in the Second Amended Complaint, adds to *Dixon I* Junior Appraisers
25 nationwide and Appraisers who worked for Cushman outside of California so that the collective definition
26 in *Dixon I* includes all members of the previously certified collectives. The members of the proposed
27 settlement collective are similarly situated because they were employed in similar positions as real estate
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1 appraisers and were subject to the same treatment of Defendants as exempt from the FLSA's overtime
2 requirements.

3 24. The settlement contemplates two separate collective periods, one for the Junior Appraisers
4 and one for the Appraisers and Senior Appraisers. The Junior Appraiser collective period begins October
5 12, 2016 (based on the date the *Seltz* complaint was filed and tolling agreements in that case) and ends on
6 September 9, 2019 (the date Cushman reclassified Junior Appraisers). The Appraiser Collective period
7 begins October 7, 2017 (based on the date the *Dixon II* complaint was filed) and ends on May 31, 2021 (a
8 reasonable period of time after the Parties' March 2021 mediation).

9 **The Settlement Is an Excellent Result.**

10 25. For the reasons set forth below, I believe that the settlement is an excellent result. The
11 Settlement involves a maximum \$4.9 million fund for approximately 476 current and former employees
12 and Defendants have changed their policy of classifying Junior Appraisers as exempt and paying
13 Appraisers and Senior Appraisers on a wholly recoverable draw basis.

14 26. Cushman's reclassification of Junior Appraisers as non-exempt across the country as of
15 September 9, 2019 and changing of its pay practices for employees who received recoverable draws as of
16 January 2021 to instead paying a fixed, non-recoverable annual salary and separately paying a production
17 bonus if the amount exceeds the Appraiser's annual salary provided significant relief to the Appraisers
18 involved in these lawsuits in line with the injunctive relief sought and made settlement possible.

19 27. Those eligible for settlement awards will receive a significant amount of money. Those
20 who opted into the *Seltz* FLSA action will receive an average pre-tax recovery of \$4,715.28 and those who
21 opted into the *Dixon II* FLSA action will receive an average pre-tax recovery of \$4,809.33 (*Dixon II* has a
22 higher average award despite the same number of points per workweek because of the greater number of
23 workweeks in the Appraiser Collective Period).

24 28. California Class Members will receive an average pre-tax award of \$15,074.70, and even
25 more money if they also opted into a FLSA claim (*Dixon I* opt-ins will receive an average award of
26 \$16,760.67).

1 29. Those who choose to opt in as a result of the settlement (when they had previously declined
2 to opt in) will receive an average award of \$1,929.76 for Junior Appraisers (*i.e. Seltz* Non California Opt-In
3 Eligible Plaintiffs) and an average award of \$4,017.13 for Appraisers outside of California (*i.e. Dixon II*
4 Non-California Opt-In Eligible Plaintiffs). These amounts are significant given the various litigation risks
5 associated with each group of individuals (including the likelihood that non-California non-opt ins would
6 ultimately receive \$0 absent a settlement agreement).

7 30. The workweek value for *Seltz* and *Dixon II* Opt-in Plaintiffs is higher than Non-California
8 Opt-In Eligible Plaintiffs because they have already chosen to join the case and are properly before the
9 court, whereas Non-California Opt-In Eligible Plaintiffs declined the opportunity to join the case before
10 settlement, and absent settlement, would not be able to recover any money. The workweek value for *Seltz*
11 and *Dixon II* Opt-in Plaintiffs is lower than California Class Members, however, because California Class
12 Members have more causes of action available under California law, including meal period violations, rest
13 period violations, wage statement violations, expense reimbursements, and waiting time penalties. Further,
14 a fluctuating workweek method of calculating overtime damages under federal law is not available under
15 California law, which calculates the regular rate of pay based on non-overtime hours. Thus, the lower
16 average recovery for *Dixon II* and *Seltz* Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs
17 compared to California Class Members is reasonable.

18 31. Plaintiffs' Counsel believes that the point-based formula used in this Settlement is an
19 appropriate and reasonable way to allocate the Settlement fund in a way that reflects the relative value of
20 the various claims of individuals covered by the Settlement.

21 32. Plaintiffs' Counsel believe the Settlement of up to \$4,900,000 plus the employer's share of
22 payroll taxes is an excellent result for the value of the claims. Plaintiffs and the Class have been
23 represented by experienced counsel, who have had numerous wage and hour class action settlements
24 approved by federal and state courts and who have repeatedly been approved as Class Counsel. Defendant
25 was likewise represented by experienced counsel. The Settlement was made in an adversarial context with
26 parties represented by experienced counsel and was reached with the assistance of an experienced
27 mediator.

1 33. Furthermore, none of the “*Bluetooth* factors” that could indicate collusion are present: there
2 is no disproportionate share of the settlement amount sought by Plaintiffs’ Counsel (the maximum net
3 settlement fund to be distributed as individual awards is \$3,128,000 compared to the proposed attorneys’
4 fee award of \$1,633,333.33), no clear sailing agreement, and no reversion of unawarded fees back to
5 Defendants.

6 34. On the other hand, if Plaintiffs were to elect not to settle, Plaintiffs face uncertainties on
7 class certification, trial, and appeal. First, although Plaintiffs are confident that the proposed class would
8 be certified absent settlement, Cushman would certainly argue that individualized issues related to the
9 exemptions at issue preclude class certification. Additionally, Plaintiff expects Cushman to have contested
10 class certification on the grounds that whether class members were exempt from federal and state overtime
11 requirements could require individualized inquiries, including whether Appraisers and Senior Appraisers
12 had similar compensation structures (*i.e.* promissory notes with recoverable draws or guaranteed draws)
13 and job duties (as Cushman argued in opposition to Plaintiff Dixon’s motion for conditional certification).
14 Plaintiff also anticipates that Cushman would argue that individual inquiries predominate for whether
15 Appraisers were able to take meal and rest breaks throughout their work day.

16 35. Second, uncertainties about the amount of overtime worked by Appraisers also favors early
17 settlement of this case. The vast majority of Cushman’s exposure in these cases is due to overtime
18 damages. Plaintiffs estimate that Appraisers worked an average of 50 hours per week. Cushman, however,
19 would likely argue that Appraisers worked very little overtime, if any. Proving hours worked is inherently
20 fact-intensive and would likely require a trial. Further, Junior Appraisers were only misclassified as
21 exempt until September 2019, so the number of overtime hours for which the Junior Appraisers could
22 recover for is finite, favoring early settlement. Cushman also stopped using its recoverable draw system as
23 of January 2021, instead paying an unrecoverable base salary and undermining Plaintiffs’ argument that the
24 recoverable draw system failed to meet federal and California salary basis tests.

25 36. Third, the risk of delay and additional expense due to trial and post-trial appeals favors early
26 settlement. If this settlement is finally approved, Plaintiffs and others covered by the Settlement will
27 receive payments shortly thereafter. Without this early settlement, Plaintiffs would spend years litigating
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1 these three cases in further discovery including depositions, motions for summary judgment, a motion for
2 class certification, and ultimately appearing at trial. While Plaintiffs' Counsel remain confident that
3 Cushman failed to pay Appraisers overtime under state and federal law and to otherwise comply with
4 California law, they recognize that a fact finder could find for Cushman on any one or more of these issues.
5 Litigating class certification, establishing class-wide liability, and demonstrating damages for numerous
6 claims would likely take years, necessitate expert witness testimony, and include other costs, risks, and
7 potential delays. Cushman could also file motions to challenge the conditional certification of the FLSA
8 collectives in *Seltz* and *Dixon II*. Appeals could further delay and jeopardize recovery. By contrast, the
9 Settlement, with a maximum Total Settlement Amount of \$4,900,000 ensures timely relief and substantial
10 recovery of the wages, damages, and other amounts that Plaintiff and others covered by the Settlement
11 contend they are owed.

12 37. Plaintiffs have calculated a maximum total exposure around about \$61,420,494 for all three
13 cases. However, Plaintiffs' Counsel believe a likely recovery in this action would be much lower, given
14 the litigation risks discussed above. Even compared against the maximum exposure, which does not
15 account for the various risks discussed above, the maximum Total Settlement Fund of \$4.9 million
16 represents an 8% recovery, which is within the range of reasonableness.

17 38. The PAGA allocation of the settlement is \$26,666.67, with 75% of that amount, or \$20,000,
18 to be paid to the LWDA, which represents 1.3% of the maximum PAGA exposure. The PAGA allocation
19 is appropriate in light of Cushman's anticipated arguments that PAGA penalties cannot be stacked and that
20 a court would exercise its discretion to significantly reduce the amount of PAGA penalties because
21 Cushman reclassified Junior Appraisers to non-exempt status after Plaintiff Seltz filed a lawsuit and
22 changed its compensation practices in January 2021. Furthermore, the value of the PAGA claim in this
23 case is unusually small compared to the value of the California Class claims and FLSA claims because of
24 the high value of potential non-PAGA overtime damages and meal and rest break premiums.

25 39. My firm has worked on similar wage and hour cases in the past. For example, GBDH
26 represented plaintiffs and the class in *Foster v. Advantage Sales & Marketing, LLC*, No. 18-cv-07205-
27 LB (N.D. Cal.), a misclassification case that settled the claims of California class members as well as
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1 the FLSA claims for individuals outside of California. *Foster* was settled before the plaintiff filed a
2 motion for conditional certification of the FLSA claim.

3 **Service Awards and Claims Administrator**

4 40. In my view, the requested service awards of \$10,000 to Plaintiffs Dixon and Seltz are
5 fair and reasonable to compensate them for the critical role they played in stepping forward to bring
6 this case, and the time and effort they expended to help secure the result obtained for the Class.
7 Plaintiffs played a critical role in securing this settlement for class members, many of whom were scared to
8 opt into the FLSA actions due to fears of negative employment repercussions. The Named Plaintiffs are
9 also signing general releases against Cushman. Plaintiffs also took on the risks of paying costs personally
10 if the defendant prevailed in the case.

11 41. In agreeing to serve as class representative of the California class, Plaintiff Dixon
12 formally agreed to accept the responsibilities of representing the interests of all Class Members and
13 took on the risk of paying costs of the lawsuit. Plaintiff Dixon took on the danger of negative notoriety
14 resulting from suing her employer (which became her former employer during the pendency of the
15 lawsuit).

16 42. In my view, requested service awards of \$2,000 each to the six Declarants who worked
17 with Plaintiffs' Counsel by providing information, documents, and a declaration in support of
18 conditional certification of the FLSA claims are fair and reasonable to compensate them for the time
19 and effort they expended to help secure the result obtained. I estimate that each Declarant spent
20 approximately five hours with Plaintiffs' Counsel on the investigation of the claims and the drafting of
21 their declarations.

22 43. Plaintiffs' proposed service awards will be the subject of a separate motion supported
23 by admissible evidence and filed prior to the opt-out/objection deadline.

24 **Attorneys' Fees and Costs**

25 44. Plaintiffs will file a separate motion for the requested attorneys' fees, costs, and
26 expenses thirty-five (35) days prior to the opt-out/objection deadline so that class members will have
27 an opportunity to inspect Plaintiffs' Counsel's fee application prior to the deadline for submitting
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1 objections or requests for exclusion. At this time, Plaintiffs do not seek approval of the fees and costs,
2 but only ask that the Court include the fee request in the Notice so that the Class can be informed of
3 the provision.

4 45. Plaintiffs' Counsel took on the risk of litigating this case on a contingency basis.
5 Plaintiff Dixon's retainer agreement states that her counsel may seek reimbursement of up to one-third
6 of a common fund in the case of a settlement.

7 46. GBDH's lodestar through June 25, 2021 in this matter is \$748,326.50. Attached as
8 **Exhibit 2** is a chart of the professionals who have worked on this case, the hours they have spent, and
9 their current billing rate. The lodestar is supported by detailed and contemporaneously maintained
10 billing records of time reasonably spent litigating this case for close to a year, and the hourly rates of
11 attorneys in our firm are commensurate with the rates of practitioners with similar experience in the
12 Bay Area legal market. I expect that Plaintiffs' Counsel will incur approximately an additional 100
13 hours of time to bring this case to a close, including: appearing at the preliminary approval hearing;
14 preparing a motion for fees, costs and enhancements with supporting declarations from counsel and the
15 two Named Plaintiffs and six Declarants; addressing class member inquires and responding to any
16 objections; preparing a final approval motion with supporting declarations from counsel and the claims
17 administrator; appearing at the final approval hearing; and ensuring that the settlement funds are timely
18 and correctly disbursed. With the anticipated additional work at a blended rate of \$500 per hour, I
19 expect that the final lodestar for all three firms to be \$2,128,050.00 (including Outten & Golden LLP's
20 lodestar as of June 25, 2021 of \$677,993.50 and Shavitz Law Group, P.A.'s lodestar as of June 25,
21 2021 of \$201,730.00). This estimated lodestar is significantly less than the requested fees of
22 \$1,6333,333.33. In our separate fee motion, Plaintiffs' Counsel will provide the Court with an
23 updated, detailed breakdown of their lodestar.

24 47. My firm has incurred out-of-pocket litigation expenses through June 25, 2021 of
25 \$16,591.22. A chart summarizing these costs is attached as **Exhibit 3**. These expenses include the
26 types of litigation costs that courts routinely approve, including filing fees, legal research fees, and
27 document processing and delivery costs. When Plaintiffs file their fee motion, I and my co-counsel
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1 will provide the Court with detailed information concerning our updated litigation costs, which will be
2 no more than \$60,000.

3 **Qualifications for Appointment as Class Counsel for Purposes of the Settlement**

4 48. Courts in this District have appointed GBDH in the settlement of wage and hour class
5 actions. *See e.g.*, Final Approval Order, ECF No. 61, *Foster v. Advantage Sales & Mktg, LLC*, No. 18-
6 cv-07205-LB (N.D. Cal. May 28, 2020); Final Approval Order, ECF No. 48, *Garcia v. PPG Indus.,*
7 *Inc.*, No. 3:15-cv-00319-WHO (N.D. Cal. July 22, 2016); Final Approval Order, ECF No. 121,
8 *Talamantes v. PPG Indus., Inc.*, No. C 13-04062-WHO (N.D. Cal. Jan. 6, 2016), attached as **Exhibits**
9 **4, 5, and 6.**

10 49. GBDH is a plaintiffs' complex and class action firm that was founded in 1972, in
11 Oakland, California. GBDH has a national practice. We have litigated class and collective action
12 lawsuits over the last twenty years in Arizona, Florida, Georgia, Illinois, Missouri, Minnesota,
13 Maryland, New Jersey, New York, Pennsylvania, Tennessee, and Texas, as well as California, where
14 our office is located.

15 50. GBDH long has been recognized as one of the leading plaintiffs' class action and
16 employment litigation firms in the country. The National Law Journal listed the firm in its "A
17 National Who's Who of the Top Lawyers in Employment Litigation." *See* "Bias Law Booms," The
18 National Law Journal (July 27, 1992) at 36 (referring to the firm as "[i]n a league of their own").
19 *Business Week* published an article featuring the class action litigation our firm has accomplished,
20 referring to our firm as the "Swat Team of Bias Law." More recently, *The Recorder*, in San Francisco,
21 listed all of the firm's partners as among the "top attorneys" in employment law in the San Francisco
22 Bay Area. GBDH partners have been named "Northern California Super Lawyers" every year since
23 2004.

24 51. A copy of my resume is attached hereto as **Exhibit 7**. I have practiced law since 1994,
25 with an emphasis in employment litigation. I have been with GBDH since October 1998, became a
26 partner in January 2005, and became a named partner in January 2013. From October 1998 until
27 December 2004, I was an associate at GBDH. During my time at GBDH, I have been responsible for
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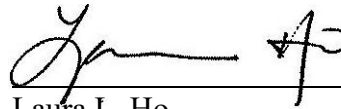
1 all facets of class action employment and other complex litigation, from pre-filing investigation
2 through trial and appeal. Since approximately October 1998, I have spent most of my time
3 representing workers in wage and hour matters, both individually and in class and collective actions,
4 leading to favorable statewide class action and nationwide collective action settlements that have
5 recouped millions of dollars in unpaid wages, including *Foster v. Advantage Sales & Mktg, LLC*, No.
6 18-cv-07205-LB (N.D. Cal.) (final approval in May 2020 of \$1,209,562 settlement fund for 59
7 California class members and 303 non-California opt-in eligible plaintiffs); *McBain v. Behr Process*
8 *Corp.*, No. RG 17855986 (Alameda County Superior Court) (final approval in August 2018 of \$5
9 million settlement for 456 sales representatives); *Willey v. Techtronic Indus. North Am., Inc.*, No.
10 RG16806307 (Alameda County Superior Court) (final approval in August 2017 for \$3.5 million
11 settlement for 343 field representatives); *Garcia v. PPG Indus., Inc.*, No. 3:15-cv-00319-WHO (N.D.
12 Cal.) (final approval in July 2016 of \$500,000 settlement for 866 non-exempt employees in California
13 and nationwide territory managers); *Talamantes v. PPG Indus., Inc.*, No. C 13-04062-WHO (N.D.
14 Cal.) (final approval in January 2016 of \$5 million settlement for 109 business development
15 representatives); *Garcia v. Oracle*, No. RG 07321026 (Alameda County Superior Court) (final
16 approval in 2012 of \$35 million settlement for 1,725 software employees); *Galv, et al. v. Genentech*,
17 No. 505266 (San Mateo County Superior Court) (final approval in 2012 of \$2.1 million settlement for
18 106 foundation specialists); *Zamora, et al. v. Balboa Life & Casualty, LLC, et al*, No. BC360026 (Los
19 Angeles County Superior Court) (final approval in 2013 of up to \$6 million settlement for
20 approximately 10,631 employees denied proper meal and rest breaks); *Myart v. Autozone*, No.
21 05CC03219 (Orange County Superior Court) (final approval in November 2011 of \$9 million
22 settlement on behalf of hourly workers statewide); *Contreras v. Bank of America*, No. CGC-07-467749
23 (San Francisco County Superior Court) (co-lead counsel in \$16.65 million settlement for 3,000
24 mortgage loan officers in California approved in 2010); *Meyn v. Peet's Coffee & Tea, Inc.*, No.
25 RG08398070 (Alameda County Superior Court) (final approval in 2010 of \$2.6 million settlement for
26 over 400 store managers); *Mousai v. E-Loan, Inc.*, No. 06-01993 SI (N.D. Cal.) (\$13.6 million
27 settlement in overtime class action for mortgage salespeople approved in May 2007); *Lin v. Siebel*

1 *Systems, Inc.*, No. CIV 435601 (San Mateo County Superior Court) (final approval in 2007 for \$27.5
2 million class action settlement in overtime case for certified class of over 800 software engineers);
3 *Butler v. Countrywide*, No. BC 268250 (Los Angeles County Superior Court) (\$30 million class
4 settlement for over 450 misclassified account executives approved in 2005).

5 52. The Named Plaintiffs and proposed class representative (Plaintiff Dixon) are jointly
6 represented by Plaintiffs' counsel. The firms have been working cooperatively in litigating this matter,
7 and have divided this work so that tasks are accomplished efficiently and without duplication.

8 53. GBDH, Outten & Golden LLP, and Shavitz Law Group, P.A. have committed to
9 supporting this litigation with adequate resources, including professional and para-professional
10 staffing, and litigation costs. Our firm has, in the past decades, handled many larger employment class
11 actions both alone and in conjunction with co-counsel firms. Our firm will commit the staffing that
12 may be required to represent the class effectively.

13 I declare under penalty of perjury under the laws of the State of California and the United
14 States that the foregoing is true and correct. Executed this 1st day of July, 2021, in Oakland, CA.

15
16  A handwritten signature in black ink, appearing to read 'Laura L. Ho', is written over a horizontal line.

17 Laura L. Ho
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25
26
27
28

Exhibit 1

1 Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
2 Ginger Grimes (SBN 307168)
ggrimes@gbdhlegal.com
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7 *and Aggrieved Employees*

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12 *Attorneys for Defendants*

13 *(Additional Counsel listed on the following page)*

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 DIMITRI DIXON and RYAN SELTZ, on behalf of
18 themselves and all those similarly situated,

19 Plaintiffs,

20 vs.

21 CUSHMAN & WAKEFIELD WESTERN, INC,
22 CUSHMAN & WAKEFIELD, INC. and
CUSHMAN & WAKEFIELD OF WASHINGTON,
DC, INC.,

23 Defendants.
24
25
26
27
28

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

**STIPULATION AND AGREEMENT TO
SETTLE CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTIONS**

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27
28

1 Plaintiffs Dimitri Dixon and Ryan Seltz (“Plaintiffs”) and Defendants Cushman & Wakefield,
2 Inc., Cushman & Wakefield Western, Inc., and Cushman & Wakefield of Washington, DC, Inc.
3 (“Cushman”) (collectively with Plaintiffs, the “Parties”) hereby enter into this Settlement Agreement
4 and Release (the “Agreement”) to resolve the wage and hour claims of Plaintiffs and class and
5 collective members and aggrieved employees (as defined below) with reference to the following:

6 **RECITALS**

7 **WHEREAS**, Plaintiffs have asserted claims against Cushman under the Fair Labor Standards
8 Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, and applicable state law based on the alleged misclassification
9 of the Plaintiffs as exempt from overtime and the alleged failure to pay overtime compensation to the
10 Plaintiffs and others similarly situated;

11 **WHEREAS**, the purpose of this Agreement is to settle fully and finally all released claims (as
12 hereinafter defined) that Plaintiffs and any Class Members (as defined below) may have against
13 Cushman;

14 **WHEREAS**, Cushman denies that it has committed any wrongdoing or violated any federal,
15 state or local laws pertaining to the payment of wages or hours worked and denies that it misclassified
16 any employees, and further denies that it is liable or owes back wages, minimum wages, overtime
17 wages or any related compensation, payments, penalties or interest to anyone with respect to the
18 alleged facts or causes of action asserted in the Actions (as defined below);

19 **WHEREAS**, the Parties previously participated in two different mediations with two different
20 mediators prior to conducting a third mediation on March 11, 2021 with experienced class action
21 mediator, Steven Rottman, Esq., and pursuant to that mediation subsequently reached an agreement to
22 settle the claims resulting in this Agreement; and,

23 **WHEREAS**, without admitting or conceding any liability or damages whatsoever, Cushman
24 on the one hand and Plaintiffs on the other agree to settle and resolve any and all claims asserted in the
25 Actions pursuant to the terms of this Agreement, in order to avoid the burden, expense, risks and
26 uncertainty of litigation.

27 **NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth in this
28 Agreement, as well as the good and valuable consideration provided for herein, and intending to be

1 legally bound, the Parties hereto agree to a full and complete settlement of the Actions and release of
2 claims on the following terms and conditions:

3 The Parties agree that the Actions shall be ended, settled, resolved, and concluded upon entry
4 of a final judgment by the Court granting the Parties' agreement for Cushman to pay a maximum total
5 sum of up to Four Million Nine Hundred Thousand Dollars (\$4,900,000), plus the employer share of
6 payroll taxes, as provided below, upon the terms and conditions of this Agreement and for the
7 consideration set forth herein, including but not limited to a release of claims by Plaintiffs and class
8 and collective members and alleged aggrieved employees, as set forth herein. This Agreement is
9 contingent upon approval by the Court and is entered into voluntarily by the Parties for settlement
10 purposes only.

11 **1. DEFINITIONS**

12 The terms set forth below shall have the meanings defined herein wherever used in this
13 Agreement (including its exhibits):

14 1.1. "Actions" means collectively, *Dixon v. Cushman & Wakefield Western, Inc.*, Case No.
15 3:18-cv-05813-JSC (N.D. Cal.); *Dixon v. Cushman & Wakefield, Inc.*, Case No. 3:20-cv-07001-JSC
16 (N.D. Cal.); and *Seltz v. Cushman & Wakefield, Inc., et al.*, Case No. 1:18-cv-02092-BAH (D. D.C.).

17 1.2. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation and Agreement"
18 means this written Stipulation and Agreement to Settle Class, Collective, and Representative Actions,
19 which sets forth the terms of the settlement and final amicable resolution of the Actions.

20 1.3. "Appraiser" means Appraisers and Seniors Appraisers who were compensated through
21 a recoverable draw, on a commission-only basis, or were otherwise not paid a guaranteed wage that
22 was "free and clear".

23 1.4. "Appraiser Collective Period" means the period from October 7, 2017 through May 31,
24 2021.

25 1.5. The "California Class" and "California Class Members" means all individuals who are
26 identified by Cushman as having worked as Appraisers and/or Junior Appraisers for Cushman in
27 California during any workweek during the California Class Period.

1 1.6. “California Class Period” means the period from August 14, 2014 through
2 May 31, 2021.

3 1.7. “Claim Form” means the form that Non-California Opt-in Eligible Plaintiffs must
4 timely return in order to opt in and become Participating Claimants. The Claim Form is subject to
5 approval by the Court. A copy of the Claim Form is attached as Exhibit C.

6 1.8. “Class List” means a list of all Class Members, including their names, last known
7 addresses, social security numbers, and to the extent available last known telephone numbers and
8 personal email addresses, and dates and locations of employment with Cushman as an Appraiser
9 and/or dates and locations of employment with Cushman as a Junior Appraiser. The Class List shall
10 be maintained in a confidential and password protected electronic database.

11 1.9. “Class Members” means, collectively, Plaintiffs, California Class Members, Non-
12 California Opt-in Eligible Plaintiffs, and Opt-in Plaintiffs.

13 1.10. The “Court” means the United States District Court, Northern District of California, the
14 Honorable Jacqueline Scott Corley currently presiding.

15 1.11. “Cushman” is Cushman & Wakefield, Inc., Cushman & Wakefield Western, Inc., and
16 Cushman & Wakefield of Washington, DC, Inc.

17 1.12. “Declarants” means Benjamin Blake, Eric Hix, Katherine Pierno, John Dickerson,
18 Heather Elliot, and Teresa Simone.

19 1.13. “Defense Counsel” means Thomas H. Petrides, Michelle Landry, and Mindy M. Wong
20 of Vedder Price (CA) LLP, and Aleksandra Rybicki of Vedder Price, P.C.

21 1.14. “Effective Date” shall mean the later date of the following: (a) the first court day after
22 which all time limitations for filing an appeal from the Court’s Judgment and Final Order Approving
23 Settlement of Class, Collective and Representative Action have expired without a notice of appeal
24 having been timely filed under Federal Rule of Appellate Procedure 4 (within 30 days after notice of
25 entry of the Judgment and Final Approval Order); (b) any appeal, writ, or other appellate proceeding
26 opposing the Settlement has been dismissed finally and conclusively with no right by any appellant or
27 objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has
28 upheld the Judgment with no right by any appellant or objector to pursue further remedies or relief.

1 1.15. “Eligible Workweek” means each calendar week worked by a Class Member as an
2 exempt Junior Appraiser or Appraiser during the California Class Period or applicable “Collective
3 Period” as defined in this Agreement. The Total Settlement Sum covers a total of approximately
4 68,500 Eligible Workweeks on behalf of 476 identified Class Members. If additional Class Members
5 should subsequently be identified that would cause the total number of Eligible Workweeks to exceed
6 the 68,500 Eligible Workweeks by more than 5%, then the Parties agree to meet and confer in good
7 faith regarding a potential resolution. If after meeting and conferring in good faith the Parties cannot
8 agree on a resolution, then those additional previously unidentified Class Members above the 5% shall
9 not be included in or be covered under this Settlement.

10 1.16. “Employer Payroll Taxes” means all taxes and withholdings an employer is required to
11 make pursuant to federal, state, and/or local law arising out of or based upon the payment of
12 employment compensation in this action, including but not limited to FICA, FUTA, and SUTA
13 obligations. Cushman shall pay Employer Payroll Taxes in addition to the Total Settlement Fund in
14 accordance with the terms of this Agreement.

15 1.17. “Final Approval Order” means the Judgment and Final Order Approving Settlement of
16 Class, Collective and Representative Action to be entered by the Court after a hearing (“Final Fairness
17 Hearing”) that (1) grants approval of the Fair Labor Standards Act (“FLSA”) settlement described in
18 this Agreement as fair, reasonable and adequate; and (2) grants final approval of the California Class
19 settlement described in this Agreement as fair, reasonable and adequate.

20 1.18. “Individual Payment Amount” is the amount of money, inclusive of the employee’s
21 share of payroll taxes withheld, that shall be paid to each Participating Claimant.

22 1.19. “Junior Appraiser” means individuals employed by any Cushman entity in the position
23 of Junior and/or Associate Appraiser. Prior to September 9, 2019, Junior Appraisers were classified as
24 exempt.

25 1.20. “Junior Appraiser Collective Period” means the period from October 12, 2016 through
26 September 9, 2019.

27 1.21. “Net Settlement Fund” means the Total Settlement Fund less 1) Court-approved
28 amounts for Attorneys’ Fees and Litigation Costs; 2) Court-approved Service Awards, 3) Settlement

1 Administrator Costs; and 4) the PAGA Payment as defined in Section 2.8(h) herein.

2 1.22. “Non-California Opt-in Eligible Plaintiffs” are the individuals identified by Cushman as
3 having worked as Junior Appraisers in any state other than California during any workweek during the
4 Junior Appraiser Collective Period or as Appraisers in any state other than California during any
5 workweek during the Appraiser Collective Period.

6 1.23. “Notices” means, collectively, (i) the Notice of Class, Collective, and Representative
7 Action Settlement, which will be issued to California Class Members (attached hereto as Exhibit A);
8 (ii) the Notice of Collective Action Settlement and Opportunity to Join, which will be issued to Non-
9 California Opt-in Eligible Plaintiffs (attached hereto as Exhibit B); and (iii) Notice of Collective
10 Action Settlement, which will be issued to *Dixon II* Opt-in Plaintiffs and *Seltz* Opt-in Plaintiffs
11 (attached hereto as Exhibit E).

12 1.24. “Operative Complaint” shall mean the Second Amended Complaint attached hereto as
13 Exhibit I , which the Parties have agreed that Plaintiffs will file in connection with this Agreement.

14 1.25. “Opt-in Plaintiffs” means:

15 a. “*Seltz* Opt-in Plaintiffs”: Junior Appraisers who submitted a timely and valid
16 consent-to-join form in the *Seltz v. Cushman & Wakefield, Inc., et al.*, action, Case No. 1:18-cv-02092-
17 BAH (D. D.C.) prior to the date of this Agreement. The relevant period for *Seltz* Opt-in Plaintiffs is
18 three years prior to the date the individual filed a consent to join form plus applicable tolling pursuant
19 to the Parties’ tolling agreements/stipulations dated December 5, 2017, November 21, 2018, September
20 23, 2019, and March 2, 2020 (“*Seltz* Opt-in Collective Period”). The dates of employment and
21 relevant period for each *Seltz* Opt-in Plaintiff is attached as Exhibit F;

22 b. “*Dixon I* Opt-in Plaintiffs”: Appraisers who submitted a timely and valid
23 consent-to-join form in *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC
24 (N.D. Cal.) prior to the date of this Agreement; and,

25 c. “*Dixon II* Opt-in Plaintiffs”: Appraisers who submitted a timely and valid
26 consent-to-join form in the *Dixon v. Cushman & Wakefield, Inc.*, Case No. 3:20-cv-07001-JSC (N.D.
27 Cal.) prior to the date of this Agreement. The relevant period for *Dixon II* Opt-in Plaintiffs is three
28 years prior to the date the individual filed a consent to join form (“*Dixon II* Opt-in Collective Period”).

1 The dates of employment and relevant period for each *Dixon II* Opt-in Plaintiff is attached as
2 Exhibit G.

3 1.26. “Participating Claimants” means all California Class Members who do not timely
4 request exclusion from the California Class, all Non-California Opt-in Eligible Plaintiffs who timely
5 submit Claim Forms, *Seltz* Opt-in Plaintiffs, and *Dixon II* Opt-in Plaintiffs.

6 1.27. “Parties” are the Plaintiffs (on behalf of themselves and all Participating Claimants and
7 Aggrieved Employees), and Cushman.

8 1.28. “Plaintiffs” means Dimitri Dixon and Ryan Seltz.

9 1.29. “Plaintiffs’ Counsel” means Laura L. Ho and Ginger Grimes of Goldstein, Borgen,
10 Dardarian & Ho, Justin Swartz, Deirdre Aaron, Jahan Sagafi and Molly Frandsen of Outten & Golden
11 LLP and Gregg Shavitz of the law firm Shavitz Law Group, PC.

12 1.30. “Preliminary Approval Order” means the order to be entered by the Court granting
13 preliminary approval of the settlement described in this Agreement following submission to the Court
14 of Plaintiffs’ motion for an order granting preliminary approval to the California Class settlement and
15 FLSA settlement described in this Agreement, certifying the California Class for settlement purposes
16 only, authorizing notice of this Settlement to the California Class, authorizing issuance of notice to
17 Class Members, and setting a date and time for a Final Fairness Hearing.

18 1.31. “Qualified Settlement Fund” or “QSF” means the account established by the Settlement
19 Administrator for the Total Settlement Fund paid by Cushman. The QSF will be controlled by the
20 Settlement Administrator subject to the terms of this Agreement and the Court’s Orders for
21 Preliminary Approval and Final Approval.

22 1.32. “Released California Claims” means any and all Released Class Claims, as defined
23 below in this paragraph, known or unknown, in law or in equity, whether or not concealed or hidden,
24 asserted or which could have been asserted at any time based on the facts alleged in the Second
25 Amended Complaint or arising out of the facts, matters, transactions or occurrences set forth in the
26 Second Amended Complaint whether asserted or not that Cushman misclassified California Class
27 Members as exempt from the California and federal overtime laws. Released Class Claims means any
28 claim, demand, right, liability, and/or cause of action that arose during the California Class Period and

1 based on any applicable federal, state and/or local laws, regulations, ordinances, or common law that
2 relates to claims which were asserted or could have been asserted at any time based on the facts alleged
3 in the Second Amended Complaint or arising out of the facts, matters, transactions or occurrences set
4 forth in the Second Amended Complaint, whether asserted or not, that Cushman (1) improperly failed
5 to pay California Class Members overtime, minimum wages or any other wages due for hours worked;
6 (2) failed to provide California Class Members legally required meal and rest periods or pay premium
7 pay due for such failure; (3) failed to timely pay California Class Members wages, pay all wages twice
8 per month, or pay all wages due upon termination of employment; (4) failed to maintain adequate
9 payroll records and/or time records for California Class Members; (5) failed to provide compliant wage
10 statements for California Class Members; (6) failed to pay or reimburse California Class Members for
11 business related expenses; (7) engaged in conduct subjecting them to statutory or civil penalties under
12 any California statute, ordinance, or otherwise arising from any alleged violation of the California
13 Labor Code, California Wage Orders or any federal or California statute regarding compensation and
14 hours, including without limitation, California Labor Code Sections 201, 202, 203, 226, 226.3, 226.7,
15 256, 510, 512, 558, 1174, 1174.5, 1194, 1198.4 and 2802; and (8) engaged in any unfair business
16 practices expressly alleged in the action pursuant to California Business & Professions Code Section
17 17200 *et. seq.*; and is more fully set forth below in Section 4.

18 1.33. “Released Claims” means “Released California Claims,” Released Opt-in Claims,” and
19 “Released PAGA Claims.”

20 1.34. “Released Opt-in Claims” means any and all Released Opt-in Claims, as defined below
21 in this paragraph, whether known or unknown, in law or in equity, whether or not concealed or hidden,
22 asserted or which could have been asserted at any time based on the facts alleged in the Second
23 Amended Complaint by Plaintiffs or arising out of the facts, matters, transactions or occurrences set
24 forth in the Second Amended Complaint, whether asserted or not, that Cushman misclassified Opt-in
25 Plaintiffs and Non-California Opt-in Eligible Plaintiffs as exempt from the federal and any applicable
26 state overtime laws. Released Opt-in Claims means any claim, demand, right, liability, and/or cause of
27 action that arose during the relevant collective period based on any applicable federal, state and/or
28 local laws, regulations, ordinances, or common law that relates to claims which were asserted or could

1 have been asserted at any time based on the facts alleged in the Second Amended Complaint that
2 Cushman (1) improperly failed to pay Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs
3 overtime, minimum wages or any other wages due for hours worked; and (2) violated any federal or
4 state laws, including without limitation, claims for violation of the Fair Labor Standards Act, 29 U.S.C.
5 § 201 *et seq.*, any analogous state or local law relating to the payment of wages and overtime
6 compensation, or any alleged violation of any wage and hour, wage payment, wage deduction,
7 recordkeeping, unfair business practice, or any similar wage-related laws, any administrative
8 regulations relating to the same, and any additional claims for penalties, wages, interest, liquidated
9 damages, or other monies predicated on same, and is more fully set forth below in Section 4.

10 1.35. “Released PAGA Claims” means any and all claims relating to penalties under the
11 California Private Attorneys General Act, California Labor Code section 2698 *et seq.*, that accrued
12 during the Aggrieved Employee’s employment as an Appraiser and/or Junior Appraiser, relating back
13 to August 14, 2017, and continuing through May 31, 2021.

14 1.36. “Released Parties” means Cushman and its past and present parents, subsidiaries,
15 related entities, and affiliates, and its and their respective present and former officers, directors,
16 stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors,
17 advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries,
18 administrators, trustees, partners, predecessors, successors and assigns, including, but not limited to,
19 C&W of Arizona Inc., C&W of California Inc., C&W of Colorado Inc., C&W of Connecticut Inc.,
20 C&W of Georgia Inc., C&W of Illinois Inc., C&W of Long Island Inc., C&W of Massachusetts Inc.,
21 C&W of Minnesota Inc., C&W of Nevada Inc., C&W of North Carolina Inc., C&W of Ohio Inc.,
22 C&W of Oregon Inc., C&W of Texas Inc., and C&W of Washington Inc.

23 1.37. “Reminder” means the text set forth in Exhibit D hereto, which the Settlement
24 Administrator shall send via e-mail and First Class United States Mail postcard to Non-California
25 Eligible Opt-in Plaintiffs who have not returned a Claim Form thirty (30) days after the initial
26 dissemination of the Notice.

27 1.38. “Service Awards” shall mean the payments that shall be paid, if authorized by the
28 Court, as discussed in Section 2.8(e) below.

1 1.39. “Settlement Administrator” means the entity selected by Plaintiffs’ Counsel subject to
2 Cushman’s approval to administer the Settlement through a competitive bidding process. CPT has
3 been selected at the Settlement Administrator.

4 1.40. “Stipulation to File Second Amended Complaint” shall mean the stipulation attached
5 hereto as Exhibit H, for Plaintiffs to file the Operative Complaint which the Parties have agreed
6 Plaintiffs will file in connection with this Agreement.

7 1.41. “Stipulation to Stay Action” shall mean the stipulations attached hereto as Exhibit J, for
8 the Parties to stay, respectively, the *Seltz* and *Dixon II* actions pending final approval of Settlement of
9 this Action.

10 a. “Total Settlement Fund” means the maximum sum of up to Four Million Nine
11 Hundred Thousand Dollars (\$4,900,000), which is inclusive of Individual Payment Amounts to
12 Participating Claimants, Attorneys’ Fees and Litigation Costs, Plaintiffs’ Service Awards, Settlement
13 Administration Costs, the PAGA payment to the LWDA, and PAGA penalties to the Aggrieved
14 Employees, for settlement of the Class, Collective and Representative Action. The portion of the Net
15 Settlement Fund allocated to Non-California Opt-in Eligible Plaintiffs pursuant to Section 2.8(f) of this
16 Agreement who do not become Participating Claimants, will not be paid into the Total Settlement
17 Fund but will remain with Cushman.

18 **2. APPROVAL AND NOTICE PROCEDURES**

19 The Parties and their respective counsel shall take all steps that may be requested by the Court
20 relating to the approval and implementation of this Agreement and shall otherwise use their respective
21 best efforts to obtain Court approval and implement this Agreement. The procedure for obtaining
22 Court approval of and implementing this Agreement shall be as follows:

23 2.1. Amendment of Complaint and Stay of Other Actions.

24 Not later than (14) days following the date on which this Agreement is executed by all Parties,
25 Plaintiffs shall file the Second Amended Complaint in the *Dixon v. Cushman & Wakefield Western,*
26 *Inc.*, Case No. 3:18-cv-05813-JSC action, adding as Named Plaintiff Ryan Seltz, adding as Defendants
27 Cushman & Wakefield, Inc. and Cushman & Wakefield of Washington, DC, Inc., and amending the
28 class definition to include Junior Appraisers in California, and the collective definition to include

1 Junior Appraisers and Appraisers who worked for Cushman outside of California. For settlement
2 purposes only, Cushman shall stipulate to the filing of the Second Amended Complaint pursuant to the
3 Stipulation to File Second Amended Complaint to be executed by counsel for the Parties within three
4 (3) business days after full execution of this Agreement.

5 The Parties shall also cooperate to seek a stay of further proceedings in the *Seltz and Dixon II*
6 Actions until the Effective Date, pursuant to the Stipulation to Stay Action to be executed by counsel
7 for the Parties within three (3) business days after full execution of this Agreement.

8 2.2. Preliminary Approval.

9 Not later than (14) days following the date on which this Agreement is executed by all Parties,
10 Plaintiffs will file an unopposed motion for entry of the Preliminary Approval Order. Plaintiffs'
11 Counsel agrees to allow Defense Counsel the opportunity to review and reasonably approve the motion
12 and supporting papers prior to filing. The proposed Preliminary Approval Order shall ask the Court to:
13 grant preliminary approval of this Agreement as fair, reasonable and adequate; conditionally certify the
14 California Class pursuant to this Agreement for settlement purposes only; appoint Class Counsel for
15 settlement purposes only; appoint Dimitri Dixon as Class Representative; conditionally certify the
16 FLSA collective action for settlement purposes only; approve CPT as the Settlement Administrator; set
17 the date and time for a Final Fairness Hearing; and approve the form and issuance of the Notices and
18 Claim Form, in the form attached as Exhibits A-E hereto, and direct distribution of the same.

19 2.3. Notice to Class Members.

20 The Settlement Administrator shall disseminate the Notices as follows:

21 a. No later than fifteen(15) business days after the Court enters the Preliminary
22 Approval Order, Cushman will provide the Settlement Administrator with the confidential Class List.
23 The Settlement Administrator shall at all times maintain the names and Social Security numbers of the
24 Class Members on the Class List as strictly confidential and will not disclose the names or Social
25 Security numbers to anyone, except as necessary to applicable taxing authorities, or pursuant to
26 Defendants' express written authorization or by order of the Court. The Settlement Administrator may
27 communicate with Plaintiffs' Counsel regarding information on the Class List, for example whether a
28 particular individual is on the Class List and what information has been used for calculating their

1 settlement share.

2 b. Within fourteen (14) calendar days after receipt of the Class List, the Settlement
3 Administrator shall send, via First Class United States mail, and email: (1) to the California Class
4 Members the Notice of Class, Collective, and Representative Action Settlement; (2) to the Non-
5 California Opt-in Eligible Plaintiffs the Notice of Collective Action Settlement and Opportunity to Join
6 and the Claim Form; and (3) to the *Dixon II* Litigation Opt-in Plaintiffs and the *Seltz* Opt-in Plaintiffs
7 the Notice of Collective Action Settlement. The Settlement Administrator shall perform a national
8 change of address (“NCOA”) database review prior to mailing. If any Notice is returned as
9 undeliverable, the Settlement Administrator shall promptly notify Plaintiffs’ Counsel and attempt to
10 locate such employee through one skip trace and, if a new address is identified, shall promptly mail an
11 additional Notice to such person. In the case of any employee who is known to be deceased, the
12 Settlement Administrator shall mail the employee’s Notice to the legal representative of the estate.

13 c. The Notices shall include the dates that the employee worked during the
14 applicable time periods in the respective positions as indicated in Cushman’s records and the estimated
15 Individual Payment Amount based on the formula set forth in Section 2.8(f), below, based on the
16 maximum Total Settlement Fund of \$4.9 million as set forth in Section 2.8 (a), less the amounts
17 identified as set forth in Sections 2.8(c) to 2.8(e), and less the PAGA Payment and penalties to
18 Aggrieved Employees as set forth in Section 2.8(h).

19 d. The Notices shall include contact information for Plaintiffs’ Counsel to answer
20 questions and a URL to a website maintained by the Settlement Administrator. The website shall
21 include links to: the Notices; the Claim Form; the Second Amended Complaint; the Settlement
22 Agreement; the Motion for Preliminary Approval; the Preliminary Approval Order; the Motion for
23 Final Approval and for Service Awards and Attorneys’ Fees and Litigation Costs (once filed); and the
24 Order Granting Final Approval (once entered).

25 e. The Settlement Administrator shall provide counsel for the Parties on a weekly
26 basis with a report that identifies the number of Notices mailed, the number returned, the number re-
27 sent or identified as undeliverable, the results of any skip traces performed, the number of Claim
28 Forms (Opt-Ins) received, the number of Opt-Out Letters received, the number of Objections received,

1 the number of Disputes received, and other relevant information.

2 2.4. Declaration of Compliance

3 No later than fourteen (14) calendar days after the deadline to postmark a request for exclusion
4 as set forth in Section 2.5(a) below, the Settlement Administrator shall provide Defense Counsel and
5 Plaintiffs' Counsel with a declaration attesting to completion of the notice process (and to any ongoing
6 attempt to obtain valid mailing addresses for, and the re-sending of, any returned Notices), including
7 the steps that the Settlement Administrator is required to take under Section 2.3(b)-(d) and the final
8 numbers with respect to the information provided under Section 2.3(e), which shall be filed with the
9 Court by Plaintiffs' Counsel with the final approval motion.

10 2.5. Responses to Notice

11 a. Opting Out from the California Class

12 Any California Class Member who does not wish to become a Participating Claimant may opt-
13 out from the California Class by submitting a request for exclusion as explained in the Notice of Class,
14 Collective, and Representative Action Settlement. For a request for exclusion to be valid, the
15 California Class Member must send a letter to the Settlement Administrator that (1) legibly states the
16 California Class Member's name and address, (2) states that the California Class Member does not
17 wish to participate in the Settlement, (3) requests exclusion from the Settlement, and (4) must be
18 signed by the California Class Member ("Opt Out Letter"). Any such request will be timely only if
19 postmarked no later than sixty (60) days after the date of the initial mailing of the Class Notices by the
20 Settlement Administrator, or if otherwise agreed by the Parties, through Plaintiffs' Counsel and
21 Defense Counsel, in writing. Opt Out Letters must be made individually and cannot be made on behalf
22 of a group of employees or on behalf of other California Class Members. The Parties will not
23 encourage California Class Members to exclude themselves.

24 b. Objections to Settlement

25 Any California Class Member wishing to object to the approval of this Settlement ("Objecting
26 California Class Members") shall object in accordance with the terms set forth in the Notice of Class,
27 Collective, and Representative Action Settlement, and the Objection will be timely only if filed no
28 later than sixty (60) days after the date of the initial mailing of the Notice by the Settlement

1 Administrator, or if otherwise agreed to by all Parties, through Plaintiffs' Counsel and Defense
2 Counsel, in writing, or if otherwise ordered by the Court. The Parties will not encourage California
3 Class Members to object to the Settlement. California Class Members who Opt Out of the Settlement
4 and Non-California Opt-in Eligible Plaintiffs shall not have the right or permission to submit
5 objections to the Settlement and any such objections received shall be disregarded for all purposes

6 c. Settlement Administrator's Receipt of Requests for Exclusion and Objections

7 The Settlement Administrator shall (a) date stamp all original Opt Out Letters and Objections
8 that it receives; (b) serve copies on Plaintiffs' Counsel and Defense Counsel no later than three (3)
9 business days after receipt, or immediately if received within five (5) business days of the Final
10 Fairness Hearing; and (c) provide the date-stamped original Objections to Plaintiffs' Counsel to file
11 with the Clerk of the Court with the Motion for Final Approval.

12 d. Failure to Give Notice of Intent to Object

13 Any California Class Member who fails to timely file such a written statement of his or her
14 intention to object shall be foreclosed from making any objection to this Settlement, unless otherwise
15 ordered by the Court.

16 e. Responses to Objections

17 Counsel for the Parties shall file any response to the Objections submitted by Objecting
18 California Class Members at least five (5) court days before the date of the Final Fairness Hearing.

19 f. Options Available to Non-California Opt-in Eligible Plaintiffs

20 Non-California Opt-in Eligible Plaintiffs shall have two options: either participate in the
21 Settlement by submitting a Claim Form within sixty (60) days after the date of the initial mailing of the
22 Notice by the Settlement Administrator or, in the case of re-mailing, thirty (30) days (but in no event
23 more than ninety (90) days from the date of initial mailing), or decline to participate in the Settlement
24 by not submitting the Claim Form. Non-California Opt-in Eligible Plaintiffs who do not wish to
25 participate in the settlement need not submit any exclusion request; they can exclude themselves
26 simply by not submitting the Claim Form. Non-California Opt-in Eligible Plaintiffs' only options are
27 to participate or not to participate; they shall not have the option of participating but submitting
28 Objections to the Settlement. The Parties shall not encourage Non-California Opt-in Eligible Plaintiffs

1 to exclude themselves by not submitting a Claim Form.

2 2.6. Application for Attorneys' Fees and Litigation Costs

3 Plaintiffs' motion for an award of Attorneys' Fees, Litigation Costs, and Service Awards, shall
4 be filed at least 35 days prior to the deadline for Objections as set forth in Section 2.5(b).

5 2.7. Final Fairness Hearing

6 Prior to the date of the Final Fairness Hearing, Plaintiffs' Counsel shall move the Court for
7 entry of the Final Approval Order. Plaintiffs' Counsel agrees to allow Defense Counsel the opportunity
8 to review and reasonably approve the motion and supporting papers prior to filing. Plaintiffs' Counsel
9 will provide Defense Counsel the motion and supporting papers five (5) business days prior to filing,
10 and Defense Counsel must provide any responses within three (3) business days of receipt.

11 A Final Fairness Hearing shall be held before the Court on the date specified in the Preliminary
12 Approval Order, which shall be no earlier than 150 days after the date of the Preliminary Approval
13 Order, provided, however, that the Parties may mutually agree, with Court approval, to reschedule the
14 Final Fairness Hearing to a later date without any further notice to the Class Members and any new
15 date shall be posted on the website maintained by the Settlement Administrator. At the Final Fairness
16 Hearing, the Parties will ask the Court to consider the level of participation, as well as any timely
17 objections and all responses by the Parties to such objections. At the Final Fairness Hearing, the
18 Parties shall ask the Court to give final approval to this Agreement and enter Judgment with respect to
19 the Settlement. Within two (2) business days of receipt of the Final Approval Order by Plaintiffs'
20 Counsel, Plaintiffs' Counsel shall serve a Notice of Entry of Judgment with a copy of the Judgment
21 and Final Approval Order on all Parties and each Class Member who submitted any Objections and
22 shall furnish a copy to the Settlement Administrator.

23 2.8. Settlement Payment Procedures

24 a. Total Settlement Fund

25 The maximum and all-inclusive Total Settlement Fund to be paid by Cushman shall be limited
26 to a total not to exceed Four Million Nine Hundred Thousand Dollars (\$4,900,000), plus the employer
27 share of payroll taxes on the wage portion being allocated to all Participating Class Members, less the
28 total gross amount of all Non-California Opt-in Eligible Plaintiffs who do not Opt-in to the Settlement

1 based on the combined Individual Payment Amounts as set forth in the Notices pursuant to Section
2 2.3(c) of this Agreement. All amounts to be paid by Cushman for the Total Settlement Fund shall be
3 paid to the Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue
4 Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.*, which shall be administered by
5 the Settlement Administrator pursuant to the final terms of the Settlement as approved by the Court.
6 The Settlement Administrator shall request and obtain from the IRS an appropriate Tax ID for the
7 Qualified Settlement Fund and shall act as a fiduciary with respect to the handling, management and
8 distribution of the settlement payments. All amounts to be paid to anyone pursuant to this Agreement
9 (“Settlement Amounts”) shall be paid out of the Qualified Settlement Fund. Such Settlement
10 Amounts, as set forth in detail below, shall include all amounts to be paid to Plaintiffs and
11 Participating Claimants; all amounts to be paid to Plaintiffs’ Counsel as Plaintiffs’ Counsel’s
12 Attorneys’ Fees; all amounts to be paid to Plaintiffs’ Counsel as Plaintiffs’ Counsel’s Litigation Costs;
13 all amounts to be paid as Service Awards to Plaintiffs and Declarants; all amounts to be paid as
14 Settlement Administration Costs; all amounts required to be reported, withheld and paid as federal,
15 state and local payroll taxes (including the employer’s share of payroll taxes to be separately funded by
16 Cushman), with respect to the Participating Claimants’ Individual Payment Amounts; the payment to
17 the Labor and Workforce Development Agency (“LWDA”) for its portion of the amount paid to settle
18 PAGA claims; PAGA penalties to the Aggrieved Employees; and any other Settlement Amounts to be
19 paid under this Agreement.

20 Within fifteen (15) business days after the entry of the Final Approval Order, the Settlement
21 Administrator shall calculate the Final Individual Payment Amount to be paid to each Participating
22 Claimant after first subtracting out the total gross amount with respect to all Non-California Opt-in
23 Eligible Plaintiffs who did not Opt-in to the Settlement, and prepare a Final Statement of Individual
24 Payment Amounts. From the Total Settlement Fund as adjusted, consistent with the terms of this
25 Agreement, the Settlement Administrator shall deduct the Settlement Administrator Costs, Plaintiffs’
26 Counsel’s Litigation Costs and Plaintiffs’ Counsel’s Attorneys’ Fees approved by the Court, and the
27 Service Awards to Plaintiffs and Declarants. The remaining funds shall constitute the “Net Settlement
28 Fund” from which to pay Participating Claimants. The PAGA Payment and penalties to the Aggrieved

1 Employees shall be deducted from the portion of the Net Settlement Fund allocated to California Class
2 Members.

3 b. Payment of Total Settlement Fund

4 Within fifteen (15) business days after the entry of the Final Approval Order, the Settlement
5 Administrator shall provide wiring instructions to Cushman to wire funds for the Total Settlement
6 Fund to the Settlement Administrator for deposit into the Qualified Settlement Fund, which are
7 sufficient to fund the payment of all Settlement Amounts. Within five (5) business days after
8 calculating the Final Individual Payment Amounts, the Settlement Administrator shall notify the
9 Parties of the amount necessary for Cushman to fund the Total Settlement Fund, plus the amount
10 necessary for Cushman to pay the employer's share of payroll taxes. Cushman shall wire funds to the
11 Settlement Administrator for deposit into the Qualified Settlement Fund in amounts sufficient to fund
12 payment of the Settlement Amounts and the employer's payroll taxes no later than fifteen
13 (15) business days after the Effective Date.

14 c. Settlement Administration Costs

15 All costs of administering the Settlement, including but not limited to all tax obligations,
16 custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
17 associated with preparing, issuing and mailing any and all notices or reminders to Participating
18 Claimants; all costs and fees associated with computing, processing, reviewing, issuing and paying the
19 Service Awards, Settlement Amounts, interest, taxes, and any other payments to be made out of or into
20 the Qualified Settlement Fund; all costs and fees associated with preparing any tax returns and any
21 other filings required by any governmental taxing authority or agency; all costs and fees associated
22 with preparing any other notices, reminders, reports, or filings to be prepared in the course of the
23 settlement or in administering disbursements from the Total Settlement Fund including any notice to
24 the Attorney General and state attorneys general under the Class Action Fairness Act; and any other
25 costs and fees incurred and/or charged by the Settlement Administrator in connection with the
26 execution of its duties under this Agreement ("Settlement Administration Costs"), which is estimated
27 at no more than \$20,000 and shall also be paid from the Total Settlement Fund. The Settlement
28 Administration Costs shall be paid to the Settlement Administrator within five (5) business days of

1 receipt of the funds into the Qualified Settlement Fund.

2 d. Attorneys' Fees and Costs

3 Subject to Court approval, Plaintiffs' Counsel will be paid up to one-third of the Total Settlement
4 Fund, which equals \$1,633,333.33 for attorneys' fees ("Attorneys' Fees"). Subject to Court
5 approval, Plaintiffs' Counsel will also be paid reasonable and actual costs actually expended in
6 prosecuting this action from the Total Settlement Fund ("Litigation Costs") in a sum not to exceed
7 \$60,000. The Settlement is not conditioned upon the Court's approval of Plaintiffs' Counsel's
8 request for Attorneys' Fees and Litigation Costs in the stated amounts and any amount not approved by
9 the Court will revert to the Net Settlement Fund to be split pro rata among the Participating Claimants.
10 The Court-ordered Attorneys' Fees and Litigation Costs shall be paid by the Settlement Administrator no
11 later than five (5) business days after receipt of funds into the Qualified Settlement Fund.

12 e. Service Awards Payable to Plaintiffs and Declarants

13 Subject to Court approval, Plaintiffs Dimitri Dixon and Ryan Seltz shall receive a Service
14 Award of \$10,000 each, and Declarants Benjamin Blake, Eric Hix, Katherine Pierno, John Dickerson,
15 Heather Elliot, and Teresa Simone shall receive an award of \$2,000 each. The Service Awards shall be
16 paid out of the Total Settlement Fund. In order to receive said Service Award, Plaintiffs agree to each
17 sign a Complete and General Release of all Claims (in substantially the form of Exhibit K for Plaintiff
18 Dixon and Exhibit L for Plaintiff Seltz), known or unknown, suspected or unsuspected, that they had,
19 now have, or may hereafter claim to have against the Released Parties arising out of, or relating in any
20 way to, their hiring by, employment with, separation of employment with the Released Parties
21 ("Plaintiffs' Released Claims"), arising or accruing from the beginning of time up through the date of
22 signature of this Settlement Agreement ("Plaintiffs' Released Period"). The Release for Plaintiff
23 Dixon shall include an acknowledgment and voluntary release of California Civil Code Section 1542.
24 The Settlement is not conditioned upon the Court's approval of Plaintiffs' request for Service Awards
25 in the stated amounts and any amount not approved by the Court as a Service Award will revert to the
26 Net Settlement Fund to be split pro rata among the Participating Claimants. The Court approved
27 Service Awards shall be paid by the Settlement Administrator no later than five (5) business days after
28 receipt of funds into the Qualified Settlement Fund. The Settlement Administrator will report the

1 Service Awards on Form 1099s, which it will provide to Plaintiffs and Declarants and to the pertinent
2 taxing authorities as required by law. Plaintiffs and Declarants agree to assume all responsibility and
3 liability for the payment of taxes due on their respective Service Awards.

4 f. Class Members' Individual Payment Amounts

5 The estimated proportionate share of the Net Settlement Fund for each Class Member will be
6 determined by the Settlement Administrator pursuant to the following formula:

7 (1) Each Non-California Opt-in Eligible Plaintiff shall be assigned one point
8 for each of their Eligible Workweeks

9 (2) Each *Seltz* Opt-in Plaintiff and *Dixon II* Opt-in Plaintiff shall be assigned
10 two points for each of their Eligible Workweeks;

11 (3) Each California Class Member shall be assigned three points for each of
12 their Eligible Workweeks;

13 (4) Each *Dixon I* Opt-in Plaintiff shall be assigned four points for each of
14 their Eligible Workweeks.

15 To calculate each Class Members' proportionate share:

16 (1) Add all points for all Eligible Settlement Class Members together to
17 obtain the "Denominator";

18 (2) Divide the number of points for each individual Class Member by the
19 Denominator to obtain each individual Members' "Portion of the Net Settlement Fund"; and

20 (3) Multiply each Class Member's Portion of the Net Settlement Fund by the
21 Net Settlement Fund to determine each Eligible Settlement Class Member's estimated Individual
22 Payment Amount.

23 g. Tax Characterization of Individual Payment Amounts

24 A portion of each California Class Member's Individual Payment Amount shall represent
25 wages and a portion shall represent non-wages, including interest and penalties: 1/3 of each Individual
26 Payment Amount shall be allocated as wages, 1/3 shall be allocated as interest, and 1/3 shall be
27 allocated as penalties, liquidated damages, and other non-wage recovery (which together with the 1/3
28

1 for interest shall not be subject to withholdings or deductions and shall be reported as non-wage
2 income).

3 For all other Participating Claimants who are not California Class Members, 1/2 of each
4 Individual Payment Amount shall be allocated as wages, and 1/2 shall be allocated as penalties,
5 liquidated damages, and other non-wage recovery (which shall not be subject to withholdings or
6 deductions and shall be reported as non-wage income).

7 That portion of each Participating Claimant's Individual Payment Amount constituting interest
8 or penalties will be reported, if required, on a Form 1099 provided to each Participating Claimant, with
9 the required copies of the Form 1099s provided to the pertinent taxing authorities.

10 That portion of each Participating Claimant's Individual Payment Amount constituting wages
11 shall be subject to all applicable federal, state and local taxes and withholdings and will be reported on
12 a Form W-4 provided to each Participating Claimant, with the required copies of the Form W-4s
13 provided to the pertinent taxing authorities.

14 Any and all employer payroll tax obligations on any wage amounts paid to Plaintiffs and
15 Participating Claimants under this Settlement (including any employer FICA or FUTA taxes owed by
16 Cushman or by the Qualified Settlement Fund) are to be paid by Cushman separately into the Qualified
17 Settlement Fund and in addition to the Total Settlement Fund.

18 The Parties are mindful that the total consideration payable hereunder is comprised of a number
19 of separate and distinct claims for damages and penalties by Plaintiffs and Participating Claimants.
20 Accordingly, having considered the matter in detail, having performed their own separate and
21 independent computations and estimation of the damages and penalties potentially awardable to
22 Plaintiffs and Class Members at trial or arbitration, and having done the foregoing with complete and
23 satisfactory access to, and advice from, accounting and legal advisors, the Parties mutually consent and
24 agree that the Participating Claimants' Individual Payment Amounts be apportioned among the
25 Participating Claimants' various wage and non-wage claims as set forth above. Moreover, the Parties
26 mutually consent and agree, and hereby represent to the Court in this judicially supervised settlement
27 transaction, that the apportionment of the Participating Claimants' Individual Payment Amounts as
28 stated above is a reasonable and arm's length determination of the character of the Individual Payment

1 Amounts for all purposes, including for tax purposes. Counsel for the Parties are not tax attorneys and
2 are not providing tax advice. All Parties to this Settlement are responsible for their own compliance
3 with applicable tax laws.

4 h. Payment of PAGA Penalties to the LWDA and to Aggrieved Employees

5 The Parties agree to allocate from the Total Settlement Fund and subject to Court approval the
6 amount of twenty six thousand six hundred sixty-six dollars and sixty-seven cents (\$26,666.67) to
7 settle the claims for PAGA penalties, of which seventy-five percent (75%), or the sum of twenty
8 thousand dollars (\$20,000), shall be paid to the LWDA of the State of California as its share of the
9 PAGA penalties alleged in the Second Amended Complaint, which the Parties believe in good faith is
10 a fair and reasonable apportionment (“PAGA Payment”). The remaining twenty-five percent (25%) of
11 the PAGA penalties in the sum of six thousand six hundred sixty-six dollars and sixty-seven cents
12 (\$6,666.67) will revert to the Net Settlement Fund to be split pro rata among the California Class
13 Members who were employed on or after August 14, 2017 (“Aggrieved Employees”) determined by
14 Eligible Workweeks worked on or after August 14, 2017 through May 31, 2021 (“PAGA Period”).
15 Each Eligible Workweek in the PAGA Period will have the same value. The Court approved PAGA
16 Payment shall be made by the Settlement Administrator to the LWDA no later than five (5) business
17 days after receipt of funds into the Qualified Settlement Fund.

18 Pursuant to PAGA, at the same time that Plaintiffs file the Motion for Preliminary Approval,
19 Plaintiffs’ Counsel will submit the required notice of PAGA settlement to the LWDA along with a
20 copy of this Agreement, and Class Counsel will take all reasonable steps necessary to timely notify the
21 LWDA of the settlement of the PAGA claims, per the requirements set forth in Labor Code section
22 2699(1)(2), including the submission of the [Proposed] Final Order Approving Settlement to the
23 LWDA at the time of filing the Motion for Final Approval of the Settlement and notifying the LWDA
24 of the final judgment pursuant to Labor Code section 2699(1)(3).

25 i. Unclaimed Funds for Participating Claimants and Aggrieved Employees

26 To the extent there are any payments made to Participating Claimants that remain undeliverable
27 and/or uncashed one hundred and eighty (180) days after the initial mailing of the checks by the
28 Settlement Administrator, all such checks will be voided (collectively, the “Voided Settlement

1 Checks”) and the equivalent amount of the Voided Settlement Checks shall be distributed by the
2 Settlement Administrator as follows:

3 (1) The funds representing the Voided Settlement Checks attributable to
4 California Class Members and Aggrieved Employees shall be sent to the Controller of the State of
5 California, in the name of that California Class Member and/or Aggrieved Employee, to be held
6 pursuant to the Unclaimed Property Law for the benefit of the California Class Member and/or
7 Aggrieved Employee until such time as they claim their property, as allowed by law. The Parties agree
8 this disposition results in no “unpaid residue” under California Civil Procedure Code § 384 (b), as the
9 entire Net Settlement Fund will be paid to California Settlement Class members, whether or not all
10 checks are cashed. Because no unpaid residue will exist, Cushman will not be required to pay any
11 interest on the uncashed checks;

12 (2) The funds representing the Voided Settlement Checks attributable to
13 Non-California Opt-in Eligible Plaintiffs who timely submitted Consent to Join forms shall be sent to a
14 cy pres beneficiary to be mutually agreed upon by the Parties and approved by the Court.

15 (3) Uncashed checks attributable to *Dixon II* Opt-in Plaintiffs shall be
16 deposited into the client trust account of Plaintiffs’ Counsel representing the *Dixon II* Opt-in Plaintiffs
17 to be held until such Plaintiffs can be located; and

18 (4) Uncashed checks attributable to *Seltz* Opt-in Plaintiffs shall be deposited
19 into the client trust account of Plaintiffs’ Counsel representing the *Seltz* Opt-in Plaintiffs to be held
20 until such Plaintiffs can be located.

21 j. No Additional Contribution by Cushman

22 Cushman’s monetary obligations under this Agreement are limited to the amount defined as the
23 Total Settlement Fund, as well as the employer’s share of payroll taxes. Cushman may not be called
24 upon or required to contribute additional monies above the Total Settlement Fund under any
25 circumstances whatsoever.

26 k. The Settlement Administrator

27 The Settlement Administrator will administer disbursements from the Total Settlement Fund
28 paid by Cushman into the Qualified Settlement Fund, including, but not limited to, distributing the

1 Notices, calculating claims against the Qualified Settlement Fund, preparing and issuing all
2 disbursements of the Settlement Amounts required to be paid to the Participating Claimants, Aggrieved
3 Employees, Plaintiffs, Declarants, Plaintiffs' Counsel, the LWDA, and the local state and federal
4 payroll tax authorities, tracking whether Participating Claimants have cashed issued checks and
5 sending a reminder to any such employee who has not cashed the check forty five (45) calendar days
6 after the initial mailing of the checks (*i.e.*, a reminder of the 180-day time-period to cash the check),
7 and handling inquiries about the calculation of the Individual Payment Amounts. The Settlement
8 Administrator shall be responsible for the timely filing of all federal, state and local tax returns of the
9 Qualified Settlement Fund and making the timely payment of any and all taxes and withholdings
10 required with such returns. The Settlement Administrator shall provide an address and toll-free
11 telephone number to respond to inquiries about the Notices and determination of the Individual
12 Payment Amounts. The Settlement Administrator shall also perform such other reasonable duties as
13 are regularly and customarily performed in connection with the settlement of class, collective and
14 representative actions.

15 All Settlement Administration Costs associated with administering disbursements from the
16 Qualified Settlement Fund including, but not limited to, the fees and costs of the Settlement
17 Administrator and the cost of the Notices, shall be paid entirely from the Total Settlement Fund paid
18 by Cushman into the Qualified Settlement Fund. The Parties expect that the Settlement Administrator
19 shall conduct all administration of all disbursements of the Total Settlement Fund.

20 I. Resolution of Disputes

21 Any Class Member who disputes the workweeks and estimated Individual Payment Amount
22 included in his or her Notice may so indicate and explain such disagreement in writing to the
23 Settlement Administrator via email or mail. The dispute correspondence must be postmarked within
24 forty-five (45) calendar days of the notice mailing. Any such employee may submit any
25 documentation relating to his or her dispute. Cushman's employment records will be presumed to be
26 correct unless proven otherwise by the Class Member. The Settlement Administrator shall notify
27 Defense Counsel and Plaintiffs' Counsel of any such dispute no later than three (3) business days after
28 receiving notice of the dispute. The Settlement Administrator shall attempt to resolve the

1 disagreement and may request any information or assistance from Defense Counsel and/or Plaintiffs'
2 Counsel that the Settlement Administrator, in its sole discretion, believes may assist it in resolving the
3 disagreement. However, the Settlement Administrator shall have final and binding authority to resolve
4 any disputes based on the records of either Cushman or the Class Member. The Parties and their
5 counsel shall use their best efforts to ensure that any and all such disputes are resolved.

6 m. Payment of Individual Payment Amounts

7 The Settlement Administrator shall issue and mail the settlement checks for the Individual
8 Payment Amounts within ten (10) business days after receipt of the funds into the Qualified Settlement
9 Fund. The mailing shall be by first-class United States mail to the last known mailing address of each
10 Participating Claimant on the Class List or as otherwise updated by the Participating Claimant.

11 n. Minimum Settlement Payment Amount

12 In the event that an individual Participating Claimant's Individual Payment Amount as
13 calculated based on the total number of workweeks as provided in this Agreement is less than Five
14 Dollars (\$5.00), the Participating Claimant shall receive an Individual Payment Amount equal to Five
15 Dollars (\$5.00) and the other Individual Payment Amounts shall be adjusted accordingly on a pro-rata
16 basis.

17 o. Opt-In for FLSA Claims

18 The cashing of the settlement check by a California Class Member who becomes a
19 Participating Claimant shall be deemed to be an opt-in for purposes of the FLSA claims referred to in
20 the Released Claims. The Settlement Administrator shall include a legend on the settlement checks
21 stating: "By cashing this check, I am opting into the *Dixon et al. v. Cushman & Wakefield Western,*
22 *Inc., et al.*, lawsuit under the FLSA and releasing the FLSA claims defined in the Settlement
23 Agreement."

24 **3. LIMITATIONS ON USE OF THIS SETTLEMENT**

25 3.1. No Admission

26 Neither the acceptance nor the performance by Cushman of the terms of this Agreement nor
27 any of the related negotiations or proceedings is or shall be claimed to be, construed as, or deemed to
28 be an admission by Cushman of the truth of any of the allegations in the Complaints, the representative

1 character of the Actions, the validity of any of the claims that were or could have been asserted by
2 Plaintiffs and/or Participating Claimants in the Actions, that any of the claims were meritorious, or of
3 any liability, wrongdoing or guilt of Cushman in the Actions. Cushman denies that it engaged in any
4 unlawful activity or wrongful conduct, failed to comply with the law in any respect, or has any liability
5 to anyone under the claims asserted in the Actions. This Agreement is entered into solely for the
6 purpose of compromising highly disputed claims.

7 3.2. Non-Evidentiary Use

8 Neither this Agreement nor any of its terms or related motions and documents filed in
9 connection with the Settlement shall be offered or used as evidence by any of the Parties, Participating
10 Claimants, or any other person or entity or their respective counsel either in the Actions or in any other
11 civil, criminal or administrative action or proceeding of any kind, either as evidence or in discovery for
12 any purpose, including the fact that Cushman was willing to certify the Class for settlement purposes
13 will have no bearing on, and will not be admissible in connection with, the issue of whether the Class
14 should be certified in a non-settlement context in the Actions or any other action; provided, however,
15 that nothing contained in this section shall prevent this Agreement from being used, offered, or
16 received in evidence in any proceeding to enforce, construe, or finalize the Settlement pursuant to the
17 terms of this Agreement.

18 3.3. No Public Comment

19 The Parties and their counsel agree that they will not issue any press releases, initiate any
20 contact with the press, hold any press conference, respond to any press inquiry, or have any
21 communication with the press about the fact, amount or terms of the Settlement. If the Parties are
22 contacted by the press or other third party regarding the Settlement, the Parties shall be limited in their
23 response to informing the initiating contactor that the Parties have mutually agreed to a settlement and
24 the initiating contactor should refer to the public records filed with the Court for more information. In
25 addition, the Parties and their counsel agree that they will not engage in any advertising or distribute
26 any marketing materials relating to the Settlement of this case in any manner that identifies Cushman,
27 including but not limited to any postings on any websites maintained by Plaintiffs' Counsel or any
28 other websites, internet blogs, chatrooms or social media sites. However, Plaintiffs' Counsel may

1 identify this Settlement in other matters to demonstrate their adequacy as counsel in such other matters,
2 and Cushman may inform its employees that Cushman encourages all Class Members to participate in
3 the Settlement and that California Class Members Opting-Out will not save Cushman any money.
4 Nothing herein shall prohibit Cushman or its counsel from making any necessary disclosures to any
5 government regulators, or its auditors, insurers, accountants or financial institutions for legitimate
6 business reasons, or to any putative Class Member asserting any similar claim and/or to such counsel
7 to notify them of this Settlement. This provision also does not limit or restrict the ability of Plaintiffs'
8 Counsel to file this Agreement with the Court or the LWDA in connection with the settlement approval
9 process.

10 3.4. No Solicitation Not to Participate

11 Neither the Parties, nor their respective counsel, will directly or indirectly solicit or otherwise
12 encourage any Class Member to Opt-Out and seek exclusion from the Settlement, to not Opt-in to the
13 Settlement, to object to the Settlement, or to appeal from the Judgment.

14 3.5. No Collateral Attack

15 This Agreement shall not be subject to collateral attack by any Participating Claimant or any
16 recipient of the Notices after the Judgment and Final Order is entered. Such prohibited collateral
17 attacks shall include but not be limited to claims that the number of work weeks attributed to the
18 Participating Claimant was erroneous or that the Participating Claimant failed for any reason to receive
19 timely notice of the procedure for disputing the calculation of his or her Individual Payment Amount.

20 3.6. Nullification

21 If (a) the Court should for any reason fail to certify a class for settlement; or (b) the Court
22 should for any reason fail to approve this Settlement materially in the form agreed to by the Parties; or
23 (c) the Court should for any reason fail to enter the Judgment and Final Order; or (d) the Judgment and
24 Final Order is reversed, modified, or declared or rendered void, then either Party will have the
25 unilateral right to void the Settlement in its entirety by providing written notice of such termination to
26 the other Party within ten (10) days of the Court's ruling; provided, however, that prior to terminating
27 the Agreement the Parties agree to first meet and confer in good faith to address and attempt to resolve
28 the Court's concerns. Upon written notice of any such termination by either Party (i) this Agreement

1 shall be considered null and void, (ii) neither this Agreement nor any of the related negotiations or
2 proceedings shall be of any force or effect, including with respect to any previously agreed class
3 certifications or payment obligations, (iii) all Parties to this Agreement shall stand in the same position,
4 without prejudice, as if the Agreement had been neither entered into nor filed with the Court, and
5 (iv) the Party voiding the Agreement shall be responsible to pay the fees and expenses incurred by the
6 Settlement Administrator through the date of such notice. However, an award by the Court of a lesser
7 amount than that sought by Plaintiffs for Attorneys' Fees and Litigations Costs or for any Service
8 Awards will not constitute a material modification of the Settlement within the meaning of this
9 paragraph and shall not render the Settlement voidable.

10 If five percent (5%) or more of the California Class Members request exclusion and opt out of
11 this Settlement, then Cushman in its sole discretion may nullify and void this Agreement in its entirety.
12 Cushman shall have ten (10) days after receiving notice that five percent (5%) or more of the
13 California Class has requested exclusion to inform the Parties of its decision to nullify and void this
14 Agreement. Cushman shall pay all reasonable costs incurred by the Settlement Administrator should it
15 exercise its rights under this section.

16 3.7. No Effect on Other Benefits. The Settlement Shares will not result in any additional
17 employee benefit payments (such as pension, ERISA, 401(k), vacation or bonus) and shall not have
18 any effect on the eligibility for, or calculation of, any past or future employee benefits, vesting, credits,
19 or hours of service, including but not limited to with respect to any employee pension, 401(k), health
20 and welfare, profit-sharing, stock option, vacation, PTO, paid sick, bonus or other benefit plan or
21 program of any kind. Plaintiffs and Class Members are deemed to have waived all such claims,
22 whether known or unknown by them, as part of their release of claims under this Agreement.

23 **4. RELEASE**

24 **4.1. PLAINTIFFS AND PARTICIPATING CLAIMANTS' RELEASE OF RELEASED**
25 **PARTIES**

26 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge the
27 Released Claims. Upon entry of the Judgment and Final Order, Plaintiffs and each and every
28 Participating Claimant shall be bound by this Agreement and shall have recourse to the benefits, rights,

1 and remedies exclusively as provided hereunder. Plaintiff Dixon and each and every California Class
2 Member who does not submit a timely Opt Out Letter shall be deemed to have, and by operation of the
3 Judgment and Final Order shall have fully, finally, and forever released, relinquished, and discharged
4 each and all of the Released Parties from any and all Released California Claims; provided, however,
5 that any California Class Member who Opt Out of the Settlement shall still be bound to the settlement
6 and release of claims for any penalties arising under PAGA. In addition, any California Class Member
7 who becomes a Participating Claimant and timely endorses and negotiates his or her settlement check
8 shall also release claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* and implementing
9 regulations. Furthermore, Plaintiff Seltz and each and every *Dixon II* Opt-in Plaintiff and *Seltz* Opt-in
10 Plaintiff, as well as any Non-California Opt-in Eligible Plaintiff who submits a Claim Form, shall be
11 deemed to have, and by operation of the Judgment and Final Order shall have fully, finally, and forever
12 released, relinquished, and discharged each and all of the Released Parties from any and all Released
13 Opt-in Claims.

14 Plaintiff Dixon and each and every California Class Member who does not submit a timely Opt
15 Out Letter shall be deemed to have acknowledged and agreed that: (1) their claims for missed meal
16 and rest breaks, overtime compensation, minimum wages, wages for all hours worked, statutory and
17 civil penalties, and any other payments and/or penalties in the Second Amended Complaint are
18 disputed; and (2) the payments set forth in this Agreement constitute a compromise and settlement in
19 full of any amounts allegedly due to them. In light of the payment by Cushman of all amounts due
20 under this Agreement, Plaintiff Dixon and every California Class Member who does not submit a
21 timely Opt Out Letter shall be deemed to have acknowledged and agreed that California Labor Code
22 section 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as follows:

23 An employer shall not require the execution of any release of a release of
24 a claim or right on account of wages due, or to become due, or made as an
25 advance on wages to be earned, unless payment of those wages has been
made.

26 Each California Class Member who does not submit a timely Opt Out Letter shall be deemed to
27 have made the foregoing release of Released Claims as set forth in this Section 4 as if by manually
28 signing it.

1 This Agreement does not release claims that cannot be released as a matter of law.

2 4.2 **RELEASED PARTIES' RELEASE OF PLAINTIFFS AND PARTICIPATING**
3 **CLAIMANTS**

4 Upon entry of the Judgment and Final Order, the Released Parties shall be bound by this
5 Agreement and shall have recourse to the benefits, rights, and remedies as provided hereunder. The
6 Released Parties shall be deemed to have, and by operation of the Judgment and Final Order shall have
7 fully, finally, and forever released, relinquished, and discharged each and all of the Plaintiffs and
8 Participating Claimants from any and all claims for reimbursement of draws paid by Cushman under
9 any alleged contracts, such as Promissory Notes.

10 This Agreement does not release claims that cannot be released as a matter of law.

11 **5. MISCELLANEOUS PROVISIONS**

12 5.1. Amendments

13 The terms and provisions of this Agreement may be amended only by a written agreement that
14 is both (a) signed by the Plaintiffs and Cushman who executed this Agreement and (b) approved by the
15 Court.

16 5.2. Assignment

17 None of the rights, commitments, or obligations recognized under this Agreement may be
18 assigned by any Party, Participating Claimant, Plaintiffs' Counsel, or Defense Counsel without the
19 express written consent of each Party and their respective counsel hereto. The representations,
20 warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the
21 Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to
22 any other person. Plaintiffs represent, covenant, and warrant that they have not directly or indirectly
23 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity
24 any portion of any liability, claim, demand, action, cause of action, or rights herein released and
25 discharged pursuant to this Agreement.

26 5.3. Successors

27 This Agreement will be binding upon, and inure to the benefit of, the successors of each of the
28 Parties.

1 5.4. Governing Law

2 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall
3 be determined, in accordance with the laws of the State of California, irrespective of the State of
4 California's choice of law principles, and the federal Rules of Civil Procedure and applicable federal
5 law with respect to the settlement of the FLSA claims.

6 5.5. Entire Agreement

7 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
8 contains the entire understanding of the Parties hereto with respect to the subject matter contained
9 herein. In case of any conflict between text contained in Sections 1 through 5 of this Agreement and
10 text contained in Exhibits to this Agreement, the former shall be controlling. There are no restrictions,
11 promises, representations, warranties, covenants, or undertakings governing the subject matter of this
12 Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all
13 prior agreements and understandings among the Parties hereto with respect to the settlement of the
14 action.

15 5.6. Attorney Authorization

16 Plaintiffs' Counsel and Defense Counsel warrant and represent that they are authorized by
17 Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken
18 by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents
19 required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with
20 each other and use their best efforts to effect the implementation of the Settlement. In the event the
21 Parties are unable to reach agreement on the form or content of any document needed to implement the
22 Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of
23 this Agreement, the Parties will seek the assistance of mediator Steve Rottman and then the Court, and
24 in all cases, all such documents, supplemental provisions and assistance of the Court will be consistent
25 with this Agreement.

26 5.7. Waiver of Compliance

27 Any failure of any Party, Defense Counsel, and/or Plaintiffs' Counsel hereto to comply with
28 any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the

1 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
2 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
3 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
4 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

5 5.8. Notices

6 All notices, demands, and other communications to be provided concerning this Agreement
7 shall be in writing and delivered by mail and by e-mail at the addresses set forth below, or such other
8 addresses as either Party may designate in writing from time to time:

9 If to Defendants: Thomas H. Petrides
10 Vedder Price (CA), LLP
11 1925 Century Park East, Suite 1900
12 Los Angeles, CA 90067
tpetrides@vedderprice.com; and

13 Mindy M. Wong
14 Vedder Price (CA), LLP
15 275 Battery Street, Suite 2464
16 San Francisco, CA 94111
mwong@vedderprice.com.

17 If to Plaintiffs: Laura L. Ho and Ginger Grimes,
18 Goldstein, Borgen, Dardarian &
19 Ho, 155 Grand Avenue, Suite 900
20 Oakland, CA 94612
cushmanappraiser@gbdhlegal.com

21 Deirdre Aaron
22 OUTTEN & GOLDEN, LLP
23 685 Third Avenue, 25th Floor
24 New York, NY 10017

25 Molly J. Frandsen
26 OUTTEN & GOLDEN, LLP
27 One California Street, 12th Floor
28 San Francisco, CA 94111
CWAppraisersCase@outtengolden.com

Gregg I. Shavitz
gshavitz@shavitzlaw.com
Paolo Meireles
Shavitz Law Group, P.A.
951 Yamato Rd, Suite 285
Boca Raton, FL 33431
gshavitz@shavitzlaw.com
pmeireles@shavitzlaw.com

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5.9. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Facsimile, PDF and electronic signatures will be presumptive evidence of execution of the original. Any executed counterpart will be admissible to prove the existence and contents of this Agreement. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

5.10. Meet and Confer Regarding Disputes

Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, a representative from Plaintiffs' Counsel and a representative from Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

5.11. Jurisdiction of the Court

The Parties agree that this Settlement Agreement shall be enforceable by the Court after Final Approval and entry of Judgment. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. It is the intent of the Parties that the Judgment entered by the Court upon final approval of the Settlement shall have *res judicata* effect and shall be final and binding upon Plaintiffs and all Participating Claimants regarding all of the Released California Claims and the Released Opt-in Claims.

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IT IS SO STIPULATED.

Dated: June 30, 2021

DocuSigned by:
Dimitri Dixon
Dimitri Dixon, Plaintiff

Dated: June __, 2021

Ryan Seltz, Plaintiff

Dated: June __, 2021

CUSHMAN & WAKEFIELD, INC., Defendant

By: _____

Title: _____

Dated: June __, 2021

CUSHMAN & WAKEFIELD WESTERN,
INC., Defendant

By: _____

Title: _____

Dated: June __, 2021

CUSHMAN & WAKEFIELD OF
WASHINGTON, DC, INC., Defendant

By: _____

Title: _____

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IT IS SO STIPULATED.

Dated: June ___, 2021

6/30/2021

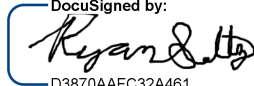
Dated: June ___, 2021

Dated: June ___, 2021

Dated: June ___, 2021

Dated: June ___, 2021

Dimitri Dixon, Plaintiff

DocuSigned by:

D3870AAFC32A461

Ryan Seltz, Plaintiff

CUSHMAN & WAKEFIELD, INC., Defendant

By: _____

Title: _____

CUSHMAN & WAKEFIELD WESTERN,
INC., Defendant

By: _____

Title: _____

CUSHMAN & WAKEFIELD OF
WASHINGTON, DC, INC., Defendant

By: _____

Title: _____

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IT IS SO STIPULATED.

Dated: June ____, 2021

Dimitri Dixon, Plaintiff

Dated: June ____, 2021

Ryan Seltz, Plaintiff

Dated: June 25, 2021

CUSHMAN & WAKEFIELD, INC., Defendant

By: Ryan Lawrence

Title: Deputy General Counsel

Dated: June 25, 2021

CUSHMAN & WAKEFIELD WESTERN,
INC., Defendant

By: Ryan Lawrence

Title: Deputy General Counsel

Dated: June 25, 2021

CUSHMAN & WAKEFIELD OF
WASHINGTON, DC, INC., Defendant

By: Ryan Lawrence

Title: Deputy General Counsel

Exhibit A

[EXHIBIT A]

OFFICIAL COURT NOTICE OF CLASS, COLLECTIVE, AND REPRESENTATIVE ACTION SETTLEMENT

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

If you worked for Cushman & Wakefield Western, Inc. in California as an Appraiser, Junior Appraiser, and/or Senior Appraiser, you may be entitled to a payment from a class action lawsuit settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- You have received this Notice because Cushman & Wakefield Western, Inc.’s (“Cushman”) records indicate that you were employed in the State of California as a covered Junior Appraiser between August 14, 2014 and September 9, 2019 and/or as covered Appraiser, and/or Senior Appraiser between August 14, 2014 and May 31, 2021.
- Former Cushman employees filed a lawsuit against Cushman alleging that Cushman failed to pay proper overtime wages and violated other state law provisions. Cushman denies these allegations and the Court has not made any ruling on the merits of the claims. The parties have entered into a settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. This is a global settlement which resolves three different cases: *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC (N.D. Cal.); *Dixon v. Cushman & Wakefield, Inc.*, Case No. 3:20-cv-07001-JSC (N.D. Cal.); and *Seltz v. Cushman & Wakefield, Inc., et al.*, Case No. 1:18-cv-02092-BAH (D. D.C.). The parties consolidated the actions and are seeking approval in the *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC (N.D. Cal.) action.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$**[AMOUNT]**, subject to deductions for applicable taxes.

Your legal rights may be affected by this settlement, and you have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW, CASH A SETTLEMENT CHECK	If you do nothing, you will remain a part of this case, release the Released California Claims discussed in Section 10 and the PAGA Claims discussed in Section 19 below, and be sent a settlement check. If you endorse and deposit the settlement check, you will further release the Released Collective Claims discussed in Section 10 below. If you do not cash or otherwise negotiate your settlement check, you will release the Released Class Claims, but not the Released Collective Claims.
EXCLUDE YOURSELF	If you do not want to participate in the settlement and want to retain your right to sue Cushman for unpaid wages and related wage and hour claims, you must submit a written Opt-out Letter to the Settlement Administrator, as discussed in Section 11 below. If you submit an Opt-out Letter, you will not be eligible to receive a settlement payment or object to the settlement, except for the PAGA payment discussed in Section 19 below, if applicable.

OBJECT

If you do not submit an Opt-out Statement, you may write to the Court about why you object to the settlement. More information about objecting is set forth in Section 15 below.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court still has to decide whether to approve the settlement. Settlement payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION**1. Why did I get this notice?**

The Court ordered that you be sent this Notice because you have a right to know about a proposed class and collective action settlement, and about all of your options, before the Court decides whether to approve the settlement. This Notice explains the lawsuit, your legal rights, and what benefits are available.

The Honorable Jacqueline Scott Corley, United States Magistrate Judge in the Northern District of California, is overseeing the litigation. The litigation is known as *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.██████████.com, by contacting class counsel using the contact information in Section 21 below, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

2. Am I covered by this settlement?

Cushman’s records state that you were employed in the state of California by Cushman as (1) an exempt-classified Appraiser and/or Senior Appraiser between August 14, 2014 and May 31, 2021 and were compensated through a recoverable draw, on a commission-only basis, or were otherwise not paid a guaranteed wage that was “free and clear”; and/or as (2) an exempt-classified Junior Appraiser between August 14, 2014 and September 9, 2019 (collectively, “appraisers”).

3. What is the litigation about?

The litigation is about whether Cushman failed to pay proper overtime wages to appraisers, and other related claims. Cushman denies any liability and wrongdoing of any kind associated with these allegations and further denies that any claims are appropriate for class treatment. Cushman maintains that its appraisers received all wages and payments to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action.

4. Why is this a class/collective action?

In a class action, one or more people called “class representatives” bring claims on behalf of other people who

have similar claims. The people are called “class members” and together are the “class.” Similarly, in a collective action, one or more people can seek to represent a “collective” of similarly situated people. The individuals who initiated this class/collective action are called the “Plaintiffs.” In a class/collective action, the Plaintiffs ask the court to resolve the issues for every member of the class.

5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Cushman. Both sides believe they will prevail in the litigation, but there was no decision in favor of either party. Instead, the parties have agreed to resolve this matter solely in order to avoid the burden, expense and risks associated with continued litigation. Plaintiffs and Class Counsel think the settlement is in the best interests of all Class Members.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

Cushman has agreed to pay a total of up to \$4,900,000.00 (the “Total Settlement Fund”), plus the employer share of payroll taxes on amounts allocated as wages. The Total Settlement Fund will be used to pay: (1) Participating Claimants and Aggrieved Employees; (2) attorneys’ fees of up to \$1,633,333.33 (one-third of the Total Settlement Fund), plus reimbursement of actual litigation expenses and costs of up to \$60,000.00; (3) Service Awards of \$10,000.00 each to the two Plaintiffs and \$2,000.00 each to the six Declarants; (4) \$20,000.00 to the California Labor and Workforce Development Agency; and (5) the Settlement Administrator’s fees and costs of up to \$20,000.00. As part of the Settlement, Cushman has also agreed to release appraisers from any and all claims for reimbursement of draws paid by Cushman under any alleged contracts, such as Promissory Notes.

7. How was my settlement payment calculated?

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked, the relative value of the damages available under the applicable laws in the location(s) where you worked, and whether you have already submitted a consent to join form to opt into the federal claims in this case. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at www.XXXX.com.

The Settlement Administrator used information from Cushman’s records to calculate your payment. Cushman’s records show that you worked as a **XX[Junior Appraiser/Appraiser]** in **XX[state]** from **XX [start date]** to **XX[end date]** **[repeat this line if worked in more than one covered position or location]**. If you have questions about your calculation, you may contact the Settlement Administrator using the contact information in Section 21 below. If you dispute Cushman’s records and/or the calculation of your settlement payment, you must notify the Settlement Administrator and may provide written documentation supporting your contention. You must submit this information by **[insert date 45 days from mailing]**. Cushman’s records are presumed to be correct unless proven otherwise by your information. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

One third of your settlement payment is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and two thirds of your settlement payment is not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor Cushman’s counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

HOW YOU GET A PAYMENT

8. How can I get my payment?

If you wish to participate in the Settlement, you do not need to take any current action. You will receive a payment. If your mailing address has changed, please contact the Settlement Administrator.

9. When will I get my settlement payment?

The Court is scheduled to hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. This date may change without further notice to class members. Please check [settlement website] to confirm that the date has not changed. If the Court grants final approval, settlement checks are anticipated to be mailed approximately three months after the court issues the final approval order. Please be patient and update the Settlement Administrator if your mailing address changes.

You will have 180 days after issuance of the settlement check to cash the check before it becomes null and void. If you choose not to cash your settlement check, the check amount will revert to the California unclaimed property fund.

10. What am I giving up by releasing my claims?

If you do not exclude yourself from the settlement (as described in Section 11 below), you will release the Released California Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Cushman asserting the Released California Claims. Released California Claims means any and all Released Class Claims, as defined below in this paragraph, known or unknown, in law or in equity, whether or not concealed or hidden, asserted or which could have been asserted at any time based on the facts alleged in the Second Amended Complaint or arising out of the facts, matters, transactions or occurrences set forth in the Second Amended Complaint whether asserted or not that Cushman misclassified California Class Members as exempt from the California and federal overtime laws. Released Class Claims means any claim, demand, right, liability, and/or cause of action that arose during the California Class Period and based on any applicable federal, state and/or local laws, regulations, ordinances, or common law that relates to claims which were asserted or could have been asserted at any time based on the facts alleged in the Second Amended Complaint or arising out of the facts, matters, transactions or occurrences set forth in the Second Amended Complaint, whether asserted or not, that Cushman (1) improperly failed to pay California Class Members overtime, minimum wages or any other wages due for hours worked; (2) failed to provide California Class Members legally required meal and rest periods or pay premium pay due for such failure; (3) failed to timely pay California Class Members wages, pay all wages twice per month, or pay all wages due upon termination of employment; (4) failed to maintain adequate payroll records and/or time records for California Class Members; (5) failed to provide compliant wage statements for California Class Members; (6) failed to pay or reimburse California Class Members for business related expenses; (7) engaged in conduct subjecting them to statutory or civil penalties under any California statute, ordinance, or otherwise arising from any alleged violation of the California Labor Code, California Wage Orders or any federal or California statute regarding compensation and hours, including without limitation, California Labor Code Sections 201, 202, 203, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1198.4 and 2802; and (8)

engaged in any unfair business practices expressly alleged in the action pursuant to California Business & Professions Code Section 17200 *et. seq.*; and is more fully set forth in Section 4 of the Settlement Agreement.

In addition, if you cash your settlement check, you will also opt in to the Fair Labor Standards Act claims in the case and release the Released Opt-in Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Cushman asserting the Released Opt-in Claims. Released Opt-in Claims means any and all Released Opt-in Claims, as defined below in this paragraph, whether known or unknown, in law or in equity, whether or not concealed or hidden, asserted or which could have been asserted at any time based on the facts alleged in the Second Amended Complaint by Plaintiffs or arising out of the facts, matters, transactions or occurrences set forth in the Second Amended Complaint, whether asserted or not, that Cushman misclassified Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs as exempt from the federal and any applicable state overtime laws. Released Opt-in Claims means any claim, demand, right, liability, and/or cause of action that arose during the relevant collective period based on any applicable federal, state and/or local laws, regulations, ordinances, or common law that relates to claims which were asserted or could have been asserted at any time based on the facts alleged in the Second Amended Complaint that Cushman (1) improperly failed to pay Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs overtime, minimum wages or any other wages due for hours worked; and (2) violated any federal or state laws, including without limitation, claims for violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, any analogous state or local law relating to the payment of wages and overtime compensation, or any alleged violation of any wage and hour, wage payment, wage deduction, recordkeeping, unfair business practice, or any similar wage-related laws, any administrative regulations relating to the same, and any additional claims for penalties, wages, interest, liquidated damages, or other monies predicated on same, and is more fully set forth in Section 4 of the Settlement Agreement..

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not wish to release the California Released Claims, then you must take steps to exclude yourself. This is sometimes referred to as “opting out” of the settlement.

11. How do I opt out of the settlement?

If you wish to exclude yourself from the settlement, you must submit a written Opt-out Letter to the court, that: (i) states your name and address; (ii) includes a statement indicating your intent to exclude yourself from the settlement, such as “I opt out of the Cushman wage and hour settlement”; and (iii) includes your signature. The Opt-out Letter must be postmarked by or otherwise received on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING]**.

If you submit an Opt-out Letter, you will not be eligible to receive a settlement check. You will retain the right to bring your own legal action against Cushman. You should be aware that your claims are subject to a statute of limitations, which means that they will expire on a certain date. If you ask to be excluded, you cannot object to the settlement.

Please note that opting-out of the settlement will not result in Cushman saving any money. Cushman encourages all California Class Members to participate in the settlement and not opt-out.

12. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not be eligible to receive a settlement check.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has decided that the lawyers at the law firm of Goldstein, Borgen, Dardarian & Ho, Outten & Golden LLP, and Shavitz Law Group, PA are qualified to represent you and all class members. These lawyers are called “Class Counsel.” You will not be charged separately for these lawyers; their fees are being covered by the settlement fund. You do not need to retain your own attorney in order to participate as a Class Member. If you do not opt out of the class and want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to one-third of the Total Settlement Fund for their attorneys’ fees. These fees would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also ask the Court to approve payment for up to \$60,000 for the out-of-pocket costs they incurred litigating the case.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

15. How do I tell the Court that I disapprove of the settlement?

If you have not submitted an Opt-out Letter, you can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. All written objections and supporting papers must (a) clearly identify the case name and number (*Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC); (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Ave, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California; and (c) be filed or postmarked on or before **[INSERT DATE 60 DAYS FROM NOTICE MAILING]**.

If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing (explained in Sections 17 and 18 below), either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

16. What’s the difference between objecting and opting out?

Objecting is telling the Court that you do not like something about the settlement and asking the Court not to approve the settlement as is. You can object only if you stay in the Class.

Opting out (also known as excluding yourself) is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you submit both an objection and an Opt-out Letter, the Settlement Administrator will attempt to contact you to determine whether you intended to object or exclude yourself. If the Settlement Administrator cannot reach you, it will be presumed that you intended to exclude yourself, and your objection will not be considered.

THE COURT’S FAIRNESS HEARING

17. When and where will the Court decide whether to approve the settlement?

The Court will hold the Fairness Hearing on _____ in _____. This date may change without further notice to class members. Please check [[settlement website](#)] to confirm that the date has not changed.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly submitted objections. Please contact Class Counsel using the contact information provided in Section 21 below if you have any questions about the date and time of the Fairness Hearing.

18. Do I have to come to the fairness hearing?

No. Class Counsel will attend to answer questions the Court may have. But, you are welcome to attend at your own expense. If you send an objection, you do not have to attend. As long as you have not excluded yourself and have mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

19. Aggrieved Employee Additional Payment

The lawsuit also included a California Private Attorneys General Act (“PAGA”) claim brought on behalf of the State of California that sought civil penalties from Cushman for the overtime and other violations that Plaintiffs alleged.

As part of the settlement of the PAGA claim, Cushman agreed to pay \$26,666.67, which will be distributed according to PAGA’s requirement that 75% (or \$20,000.00) be distributed to the California Labor Workforce Development Agency and the remaining 25% (or \$6,666.67) be paid to Aggrieved Employees.

If you work for worked for Cushman as an appraiser in California from August 14, 2017 through May 31, 2021 (“PAGA Period”), you are an “Aggrieved Employee.”

If you are an Aggrieved Employee, and if the Court approves the PAGA settlement, you will release the Released PAGA Claims and will be precluded from bringing any and all claims relating to penalties under PAGA that accrued during your employment as an appraiser during the relevant PAGA Period, and will receive a portion of the PAGA settlement amount. “Released PAGA Claims” means any and all claims relating to penalties under the California Private Attorneys General Act, California Labor Code section 2698 et seq., that accrued during the Aggrieved Employee’s employment as an Appraiser and/or Junior Appraiser, relating back to August 14, 2017, and continuing through May 31, 2021.

Your individual PAGA settlement payment will be determined by your proportional share of the \$6,666.67 based on the number of workweeks you worked between August 14, 2017 through May 31, 2021 as an appraiser.

Even if you choose to opt out of the California settlement, you will still release the Released PAGA Claims and be sent a check for your portion of the PAGA settlement. If you choose not to cash your PAGA settlement check, the check amount will revert to the California unclaimed property fund.

GETTING MORE INFORMATION

20. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.XXX.com](#).

21. How do I get more information?

If you have other questions about the settlement or want more information, you can contact the Settlement Administrator, **phone number and email address _____** or Class Counsel at:

Laura L. Ho
Ginger Grimes
Goldstein, Borgen, Dardarian & Ho, 155
Grand Avenue, Suite 900
Oakland, CA 94612
(866) 762-8575
cushmanappraiser@gbdhlegal.com

DATED: _____, 21__

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT.**

Exhibit B

[EXHIBIT B]

OFFICIAL COURT NOTICE OF COLLECTIVE ACTION SETTLEMENT AND OPPORTUNITY TO JOIN

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

If you worked for Cushman & Wakefield, Inc. or any subsidiary of Cushman as an Appraiser, Junior Appraiser, or Senior Appraiser, you may be entitled to a payment from a collective action lawsuit settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- You have received this Notice because Cushman’s records indicate that you were employed in as a covered Junior Appraiser between October 12, 2016 and September 9, 2019 and or/ as a covered Appraiser and/or Senior Appraiser between October 7, 2017 and May 31, 2021.
- Former Cushman employees filed a lawsuit against Cushman alleging that Cushman failed to pay proper overtime wages and violated other state law provisions. Cushman denies these allegations and the Court has not made any ruling on the merits of the claims. The parties have entered into a settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. This is a global settlement which resolves three different cases: *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC (N.D. Cal.); *Dixon v. Cushman & Wakefield, Inc.*, Case No. 3:20-cv-07001-JSC (N.D. Cal.); and *Seltz v. Cushman & Wakefield, Inc., et al.*, Case No. 1:18-cv-02092-BAH (D. D.C.). The parties consolidated the actions and are seeking approval in the *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC (N.D. Cal.) action.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes.
- As described more fully below, to participate in the settlement, you must mail a properly completed Consent to Join Settlement, Release, and Claim Form (“Claim Form”) to the Settlement Administrator so that it is post-marked or received by [60 DAYS FROM DATE OF MAILING]. If you fail to timely return a Claim Form post-marked or otherwise received by [60 DAYS FROM DATE OF MAILING], you will not receive any money from the settlement.

Your legal rights may be affected by this settlement, and you have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM AND OBTAIN A PAYMENT	<p>By returning a properly completed claim form, you agree to participate in the settlement, be eligible to receive a settlement payment, and release your claims. The Claim Form must be postmarked by or otherwise received on or before [INSERT DATE 60 DAYS FROM NOTICE MAILING].</p> <p>If you choose to participate in the settlement, you will release the Released Opt-in Claims discussed in Section 10 below.</p>

DO NOTHING

If you do nothing, you will not be eligible to receive a settlement payment. You will retain your right to file your own legal action against Cushman, should you choose.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Settlement payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this notice?

The Court ordered that you be sent this Notice because you have a right to know about a proposed class and collective action settlement, and about all of your options, before the Court decides whether to approve the settlement. This Notice explains the lawsuit, your legal rights, and what benefits are available.

The Honorable Jacqueline Scott Corley, United States Magistrate Judge in the Northern District of California, is overseeing the litigation. The litigation is known as *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www._____.com, by contacting Plaintiffs' Counsel using the contact information in Section 16 below, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

2. Am I covered by this settlement?

Cushman's records state that you were employed by Cushman as (1) an exempt-classified Appraiser and/or Senior Appraiser between October 7, 2017 and May 31, 2021 and were compensated through a recoverable draw, on a commission-only basis, or were otherwise not paid a guaranteed wage that was "free and clear"; and/or as (2) as exempt-classified Junior Appraiser between October 12, 2016 and September 9, 2019 (collectively, "appraisers").

3. What is the litigation about?

The litigation is about whether Cushman failed to pay proper overtime wages to appraisers. Cushman denies any liability and wrongdoing of any kind associated with these allegations. Cushman maintains that its appraisers received all wages and payments to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action.

4. Why is this a collective action?

In a "collective action," one or more people called "Named Plaintiffs" sue on behalf of people who have similar claims. However, the other employees who have similar claims do not become part of the collective action until

they “opt in” to the lawsuit. You may “opt in” to the lawsuit and participate in the settlement by returning the enclosed Claim Form. If you timely return the enclosed Claim Form, and the Court approves the settlement, you will receive a settlement check.

5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Cushman. Both sides believe they will prevail in the litigation, but there was no decision in favor of either party. Instead, the parties have agreed to resolve this matter solely in order to avoid the burden, expense and risks associated with continued litigation.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

Cushman has agreed to pay a total of up to \$4,900,000.00 (the “Total Settlement Fund”). The Total Settlement Fund will be used to pay: (1) Participating Claimants and Aggrieved Employees; (2) attorneys’ fees of up to \$1,633,333.33 (one-third of the Total Settlement Fund) plus reimbursement of actual litigation expenses and costs of up to \$60,000.00; (3) Service Awards of \$10,000.00 each to the two Plaintiffs and \$2,000.00 each to the six Declarants; (4) \$20,000.00 to the California Labor and Workforce Development Agency; and (5) the Settlement Administrator’s fees and costs of up to \$20,000.00. As part of the Settlement, Cushman has also agreed to release appraisers from any and all claims for reimbursement of draws paid by Cushman under any alleged contracts, such as Promissory Notes.

7. How was my settlement payment calculated?

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked, the relative value of the damages available under the applicable laws in the location(s) where you worked, and whether you have already submitted a consent to join form to opt into the case. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at www.XXXX.com.

The Settlement Administrator used information from Cushman’s records to calculate your payment. Cushman’s records show that you worked as a **XX[Junior Appraiser/Appraiser]** in **XX[state]** from **XX [start date]** to **XX[end date]** **[repeat this line if worked in more than one covered position or location]**. If you have questions about your calculation, you may contact the Settlement Administrator using the contact information in Section 16 below. If you dispute Cushman’s records and/or the calculation of your settlement payment, you must notify the Settlement Administrator and may provide written documentation supporting your contention. You must submit this information by **[insert date 45 days from mailing]**. Cushman’s records are presumed to be correct unless proven otherwise by your information. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

One half of your settlement payment is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and one half of your settlement payment is not subject to deductions and will be reported on a Form 1099. Neither Plaintiffs’ Counsel nor Cushman’s counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

HOW YOU GET A PAYMENT

8. How can I get my payment?

You must sign and return the enclosed Claim Form by the deadline to be eligible to receive a settlement payment. Your Claim Form must be postmarked by, or otherwise received on or before, **[INSERT DATE 60 DAYS FROM NOTICE MAILING]**.

The Settlement Administrator is **XX**. You may return the Claim Form in the pre-stamped return envelope or by mailing, emailing, or faxing it to:

[INSERT SETTLEMENT ADMINISTRATOR CONTACT]

To be effective, the Claim Form must be completed in full and signed.

If you do not submit a Claim Form or submit an incomplete or invalid Claim Form, you will not receive a settlement payment.

9. When will I get my settlement payment?

The Court is scheduled to hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. If the Court grants final approval, settlement checks are anticipated to be mailed approximately three months after the court issues the final approval order. Please be patient and update the Settlement Administrator if your mailing address changes.

10. What am I giving up by releasing my claims?

If you sign and return a Claim Form, you will release the Released Opt-in Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Cushman asserting the Released Opt-in Claims. Released Opt-in Claims means any and all Released Opt-in Claims, as defined below in this paragraph, whether known or unknown, in law or in equity, whether or not concealed or hidden, asserted or which could have been asserted at any time based on the facts alleged in the Second Amended Complaint by Plaintiffs or arising out of the facts, matters, transactions or occurrences set forth in the Second Amended Complaint, whether asserted or not, that Cushman misclassified Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs as exempt from the federal and any applicable state overtime laws. Released Opt-in Claims means any claim, demand, right, liability, and/or cause of action that arose during the relevant collective period based on any applicable federal, state and/or local laws, regulations, ordinances, or common law that relates to claims which were asserted or could have been asserted at any time based on the facts alleged in the Second Amended Complaint that Cushman (1) improperly failed to pay Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs overtime, minimum wages or any other wages due for hours worked; and (2) violated any federal or state laws, including without limitation, claims for violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, any analogous state or local law relating to the payment of wages and overtime compensation, or any alleged violation of any wage and hour, wage payment, wage deduction, recordkeeping, unfair business practice, or any similar wage-related laws, any administrative regulations relating to the same, and any additional claims for penalties, wages, interest, liquidated damages, or other monies predicated on same, and is more fully set forth in Section 4 of the Settlement Agreement.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The law firms of Goldstein, Borgen, Dardarian & Ho, Outten & Golden LLP, and Shavitz Law Group, PA have been designated as legal counsel to represent you and other appraisers who participate in the settlement. You will not be charged separately for these lawyers; their fees are being covered by the settlement fund.

12. How will the lawyers be paid?

Plaintiffs' Counsel will ask the Court to approve payment of up to one-third of the Total Settlement Fund for their attorneys' fees. These fees would compensate Plaintiffs' Counsel for investigating the facts, litigating the case, and negotiating the settlement. Plaintiffs' Counsel will also ask the Court to approve payment for the out-of-pocket costs they incurred litigating the case.

THE COURT'S FAIRNESS HEARING

13. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing on _____ in _____. This date may change without further notice. Please check [[settlement website](#)] to confirm that the date has not changed.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable. Please contact Plaintiffs' Counsel using the contact information provided in Section 16 below if you have any questions about the date and time of the Fairness Hearing.

14. Do I have to come to the fairness hearing?

No. Plaintiffs' Counsel will attend to answer questions the Court may have. But, you are welcome to come at your own expense.

GETTING MORE INFORMATION

15. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.XXXXX.com](#) or contact Plaintiffs' Counsel using the contact information in Section 16 below.

16. How do I get more information?

If you have other questions about the settlement or want more information, you can contact the Settlement Administrator, [phone number and email address _____](#) or Plaintiffs' Counsel at:

Laura L. Ho and Ginger Grimes
Goldstein, Borgen, Dardarian & Ho
155 Grand Avenue, Suite 900

Oakland, CA 94612
(866) 762-8575
cushmanappraiser@gbdhlegal.com

Deirdre Aaron

OUTTEN & GOLDEN, LLP
685 Third Avenue, 25th Floor
New York, NY 10017

Molly J. Frandsen
OUTTEN & GOLDEN, LLP
One California Street, 12th Floor
San Francisco, CA 94111

CWAppraisersCase@outtengolden.com
212-245-1000

DATED: _____, 2021

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

Exhibit C

[EXHIBIT C]

Estimated Award (before taxes): \$[AMOUNT]

[Collective Member Name]

[Mailing Address 1]

[Mailing Address 2]

[City, State ZIP]

CONSENT TO JOIN SETTLEMENT, RELEASE, AND CLAIM FORM

The form must be returned to the Settlement Administrator so that it is postmarked or received by facsimile or email by [60 DAYS FROM DATE OF MAILING].

I hereby consent to join and opt-in as a plaintiff for settlement purposes in the above-captioned lawsuit against Cushman & Wakefield, Inc., Cushman & Wakefield Western, Inc., and Cushman & Wakefield of Washington, DC, Inc. and to be bound by any adjudication of this action by the Court. I further agree to be bound by the collective action settlement. I hereby designate the law firms of Goldstein, Borgen, Dardarian & Ho, Outten & Golden LLP, and Shavitz Law Group to represent me in this action. I understand that if I return this Claim Form, I will fully and completely release Cushman & Wakefield, Inc. and its past and present parents, subsidiaries, related entities, and affiliates, and its and their respective present and former officers, directors, stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys, accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, partners, predecessors, successors and assigns from any and all Released Opt-in Claims, as defined below in this paragraph, whether known or unknown, in law or in equity, whether or not concealed or hidden, asserted or which could have been asserted at any time based on the facts alleged in the Second Amended Complaint by Plaintiffs or arising out of the facts, matters, transactions or occurrences set forth in the Second Amended Complaint, whether asserted or not, that Cushman misclassified Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs as exempt from the federal and any applicable state overtime laws. Released Opt-in Claims means any claim, demand, right, liability, and/or cause of action that arose during the relevant collective period based on any applicable federal, state and/or local laws, regulations, ordinances, or common law that relates to claims which were asserted or could have been asserted at any time based on the facts alleged in the Second Amended Complaint that Cushman (1) improperly failed to pay Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs overtime, minimum wages or any other wages due for hours worked; and (2) violated any federal or state laws, including without limitation, claims for violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, any analogous state or local law relating to the payment of wages and overtime compensation, or any alleged violation of any wage and hour, wage payment, wage deduction, recordkeeping, unfair business practice, or any similar wage-related laws, any administrative regulations relating to the same, and any additional claims for penalties, wages, interest, liquidated damages, or other monies predicated on same, and is more fully set forth in Section 4 of the Settlement Agreement.

Full Legal Name (print)

Signature

Maiden or other names worked under

Street Address*

City, State and Zip Code*

Cell phone*

Home Telephone Number*

E-mail Address*

*This information will be will not be filed in the public record.

Exhibit D

[EXHIBIT D]

**IMPORTANT REMINDER REGARDING
CUSHMAN SETTLEMENT**

Recently you should have received a Court-authorized Notice advising that you are eligible to receive a settlement payment from a collective action lawsuit against Cushman & Wakefield, Inc., Cushman & Wakefield Western, Inc., and Cushman & Wakefield of Washington, DC, Inc. The litigation is known as *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC.

IMPORTANT: Our records indicate that you have not yet submitted a Claim Form. In order to receive a settlement payment, you must complete a Claim Form and submit it to:

CUSHMAN SETTLEMENT ADMINISTRATOR

<ADDRESS>

<PHONE>

<FAX>

<E-MAIL>

<WEBSITE>

Your claim form must be postmarked or otherwise received by **[INSERT DATE 60 DAYS FROM MAILING]**.

If you have any questions, you may contact the Settlement Administrator or Plaintiffs' Counsel:

Laura L. Ho and Ginger Grimes
Goldstein, Borgen, Dardarian & Ho
155 Grand Avenue, Suite 900
Oakland, CA 94612
(866) 762-8575
cushmanappraiser@gbdhlegal.com

Deirdre Aaron

OUTTEN & GOLDEN, LLP
685 Third Avenue, 25th Floor
New York, NY 10017

Molly J. Frandsen
OUTTEN & GOLDEN, LLP
One California Street, 12th Floor
San Francisco, CA 94111

CWAppraisersCase@outtengolden.com
212-245-1000

Exhibit E

[EXHIBIT E]

OFFICIAL COURT NOTICE OF COLLECTIVE ACTION SETTLEMENT

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

Because you filed a Consent to Join a case against Cushman & Wakefield, Inc., you may be entitled to a payment from a proposed settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- You have received this Notice because you submitted a consent to join form in the case *Dixon v. Cushman & Wakefield, Inc.*, Case No. 3:20-cv-07001-JSC (N.D. Cal.) or in the case *Seltz v. Cushman & Wakefield, Inc., et al.*, Case No. 1:18-cv-02092-BAH(D. D.C.).
- Former Cushman employees filed a lawsuit against Cushman alleging that Cushman failed to pay proper overtime wages and violated other state law provisions. Cushman denies these allegations and the Court has not made any ruling on the merits of the claims. The parties have entered into a settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. This is a global settlement which resolves three different cases: *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC (N.D. Cal.); *Dixon v. Cushman & Wakefield, Inc.*, Case No. 3:20-cv-07001-JSC (N.D. Cal.); and *Seltz v. Cushman & Wakefield, Inc., et al.*, Case No. 1:18-cv-02092-BAH (D. D.C.). The parties consolidated the actions and are seeking approval in the *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC (N.D. Cal.) action.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes.
- The Court in charge of this case still has to decide whether to approve the settlement. Settlement payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this notice?

The Court ordered that you be sent this Notice because you have a right to know about a proposed collective action settlement. This Notice explains the lawsuit, your legal rights, and what benefits are available.

The Honorable Jacqueline Scott Corley, United States Magistrate Judge in the Northern District of California, is overseeing the litigation. The litigation is known as *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www._____.com, by contacting Plaintiffs' Counsel using the contact information in Section 12 below, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

2. What is the litigation about?

The litigation is about whether Cushman failed to pay proper overtime wages to appraisers. Cushman denies any liability and wrongdoing of any kind associated with these allegations. Cushman maintains its appraisers received all wages and payments to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action.

3. Why is this a collective action?

In a "collective action," one or more people called "Named Plaintiffs" sue on behalf of people who have similar claims. You are part of the collective action because you have "opted in" to the lawsuit.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Cushman. Both sides believe they will prevail in the litigation, but there was no decision in favor of either party. Instead, the parties have agreed to resolve this matter solely in order to avoid the burden, expense and risks associated with continued litigation.

THE SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the settlement provide?

Cushman has agreed to pay a total of up to \$4,900,000.00 (the "Total Settlement Fund"). The Total Settlement Fund will be used to pay: (1) Participating Claimants and Aggrieved Employees;

(2) attorneys' fees of up to \$1,633,333.33 (one-third of the Total Settlement Fund) plus reimbursement of actual litigation expenses and costs of up to \$60,000.00; (3) Service Awards of \$10,000.00 each to the two Plaintiffs and \$2,000.00 each to the six Declarants; (4) \$20,000.00 to the California Labor and Workforce Development Agency; and (5) the Settlement Administrator's fees and costs of up to \$20,000.00. As part of the Settlement, Cushman has also agreed to release appraisers from any and all claims for reimbursement of draws paid by Cushman under any alleged contracts, such as Promissory Notes.

6. How will my settlement payment be calculated?

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked, the relative value of the damages available under the applicable laws in the location(s) where you worked, and whether you have already submitted a consent to join form to opt into one of the consolidated cases. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at www.XXXX.com.

The Settlement Administrator used information from Cushman's records to calculate your payment. Cushman's records show that you worked as a **XX[Junior Appraiser/Appraiser]** in **XX[state]** from **XX [start date]** to **XX[end date]** **[repeat this line if worked in more than one covered position or location]**. If you have questions about your calculation, you may contact the Settlement Administrator using the contact information in Section 12 below. If you dispute Cushman's records and/or the calculation of your settlement payment, you must notify the Settlement Administrator and may provide written documentation supporting your contention. You must submit this information by **[insert date 45 days from mailing]**. Cushman's records are presumed to be correct unless proven otherwise by your information. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

One half of your settlement payment is subject to payroll deductions for applicable taxes and withholdings like any other paycheck, for which you will receive a Form W-2, and one half of your settlement payment is not subject to deductions and will be reported on a Form 1099. Neither Plaintiffs' Counsel nor Cushman's counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

7. When will I get my settlement payment?

The Court is scheduled to hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. If the Court grants final approval, settlement checks are anticipated to be mailed approximately three months after the court issues the final approval order. Please be patient and update the Settlement Administrator if your mailing address changes.

8 What claims have I released?

Because you signed a Consent to Join Form, you will release the Released Opt-in Claims. This means that you cannot sue, continue to sue, or be part of any other legal action against Cushman

asserting the Released Opt-in Claims. Released Opt-in Claims means any and all Released Opt-in Claims, as defined below in this paragraph, whether known or unknown, in law or in equity, whether or not concealed or hidden, asserted or which could have been asserted at any time based on the facts alleged in the Second Amended Complaint by Plaintiffs or arising out of the facts, matters, transactions or occurrences set forth in the Second Amended Complaint, whether asserted or not, that Cushman misclassified Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs as exempt from the federal and any applicable state overtime laws. Released Opt-in Claims means any claim, demand, right, liability, and/or cause of action that arose during the relevant collective period based on any applicable federal, state and/or local laws, regulations, ordinances, or common law that relates to claims which were asserted or could have been asserted at any time based on the facts alleged in the Second Amended Complaint that Cushman (1) improperly failed to pay Opt-in Plaintiffs and Non-California Opt-in Eligible Plaintiffs overtime, minimum wages or any other wages due for hours worked; and (2) violated any federal or state laws, including without limitation, claims for violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, any analogous state or local law relating to the payment of wages and overtime compensation, or any alleged violation of any wage and hour, wage payment, wage deduction, recordkeeping, unfair business practice, or any similar wage-related laws, any administrative regulations relating to the same, and any additional claims for penalties, wages, interest, liquidated damages, or other monies predicated on same, and is more fully set forth in Section 4 of the Settlement Agreement.

THE COURT'S FAIRNESS HEARING

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing on _____ in _____. This date may change without further notice to class members. Please check [[settlement website](#)] to confirm that the date has not changed.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable. Please contact Plaintiffs' Counsel using the contact information provided in Section 12 below if you have any questions about the date and time of the Fairness Hearing.

10. Do I have to come to the fairness hearing?

No. Plaintiffs' Counsel will attend to answer questions the Court may have. But, you are welcome to come at your own expense.

GETTING MORE INFORMATION

11. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.XXXXX.com](#) or contact Plaintiffs' Counsel using the contact information in Section 12 below.

12. How do I get more information?

If you have other questions about the settlement or want more information, you can contact the Settlement Administrator, **phone number and email address _____** or Plaintiffs' Counsel at:

Laura L. Ho and Ginger Grimes
Goldstein, Borgen, Dardarian & Ho
155 Grand Avenue, Suite 900
Oakland, CA 94612
(866) 762-8575
cushmanappraiser@gbdhlegal.com

Deirdre Aaron

OUTTEN & GOLDEN, LLP
685 Third Avenue, 25th Floor
New York, NY 10017

Molly J. Frandsen
OUTTEN & GOLDEN, LLP
One California Street, 12th Floor
San Francisco, CA 94111

CWAppraisersCase@outtengolden.com
212-245-1000

DATED: _____, 20__

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S
OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.**

Exhibit F

Last Name, First Name	Class ID	Consent Date	Hire Date	Term Date	Job Title	Work State	Seltz Beg Date [10/12/16]	Seltz End Date [9/9/19]
Blake, Benjamin	0035	Seltz: 1/13/2020	01/04/12	11/09/15	Jr Appraiser	OR	03/14/15	11/09/15
Chester, Cameron	0068	Seltz: 12/2/2020	01/03/17		Jr Appraiser	OR	01/03/17	09/09/19
Hix, Eric	0198	Seltz: 1/13/2020	06/01/15	05/24/16	Jr Appraiser	FL	06/01/15	05/24/16
Hoffman, Samuel	0200	Seltz: 10/2/2020	10/15/13	05/13/16	Jr Appraiser	NY	05/28/15	05/13/16
Pierno, Katherine	0367	Seltz: 1/13/2020	05/28/13	08/07/18	Jr Appraiser	OH	03/14/15	08/07/18
Seltz, Ryan	0420	Seltz: 6/26/2018	05/03/17	10/27/17	Jr Appraiser	DC	05/03/17	10/27/17
Smith, Christina	0438	Seltz: 11/2/2020	07/10/06	06/23/17	Jr Appraiser	CT	06/28/15	06/23/17

Exhibit G

Last Name, First Name	Class ID	Consent Date	Hire Date	Term Date	Job Title	Work State	Dixon II Begin Date [10/7/17]	Dixon II End Date [5/31/21]
Beigle, Kelly	0609	Dixon II: 1/14/2021	09/23/19	07/03/20	Sr Appraiser	DC	09/23/19	07/03/20
Bengford, Austin	0025	Dixon II: 3/1/2021	01/28/19	02/26/21	Appraiser	CO	01/28/19	02/26/21
Campbell, Travis	0054	Dixon II: 12/8/2020	04/01/17	08/31/18	Appraiser	IL	10/07/17	08/31/18
Chester, Cameron	0068	Seltz: 12/2/2020	01/03/17		Appraiser	OR	07/01/20	05/31/21
Danielson, John	0093	Dixon II: 1/22/2021	03/01/19	12/17/19	Appraiser	MI	03/01/19	12/17/19
Dickerson, John	0104	Dixon II: 7/8/2020	06/15/15	11/27/17	Appraiser	WA	10/07/17	11/27/17
Edlund, Michael	0119	Dixon II: 1/26/2021	01/21/19		Appraiser	CO	01/21/19	05/31/21
Martin (Caffrey), Tonya	0053	Dixon II: 12/16/2020	09/24/15	11/30/20	Appraiser	KS	10/07/17	11/30/20
Pike, Chase	0589	Dixon II: 2/18/2021	02/19/18		Sr Appraiser	DC	02/19/18	05/31/21
Simone, Teresa	0431	Dixon II: 7/8/2020, 12/18/20	05/18/15	04/03/19	Appraiser	OH	10/07/17	04/03/19
Symmes, Holly	0664	Dixon II: 12/7/2020	10/12/20		Appraiser	MA	10/12/20	05/31/21
Taylor, Ray	0459	Dixon II: 12/8/2020	11/18/13	02/28/18	Sr Appraiser	DC	10/07/17	02/28/18
Villena-Lanzi, Aleksandra	0477	Dixon II: 12/18/2020	07/09/18		Appraiser	DC	07/09/18	05/31/21
Wilkes, David	0496	Dixon II: 12/14/20	06/20/16	01/03/20	Appraiser	OR	10/07/17	01/03/20

Exhibit H

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

7 Attorneys for Plaintiff
DIMITRI DIXON

8 Michelle L. Landry (SBN 190080)
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9 Mindy M. Wong (SBN 267820)
mwong@vedderprice.com
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11 275 Battery Street, Suite 2464
12 San Francisco, CA 94111
T: (415) 749-9500
13 F: (415) 749-9502

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tpetrides@vedderprice.com
15 VEDDER PRICE (CA), LLP
16 1925 Century Park East, Suite 1900
Los Angeles, California 90067
17 T: (424) 204-7700
18 F: (424) 204-7702

19 Attorneys for Defendant
CUSHMAN & WAKEFIELD WESTERN, INC.

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 DIMITRI DIXON, individually, and on behalf
23 of all others similarly situated,

24 Plaintiff,

25 v.

26 CUSHMAN & WAKEFIELD WESTERN, INC.,

27 Defendant.
28

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

The Honorable Jacqueline Scott Corley

**JOINT STIPULATION AND [PROPOSED]
ORDER TO FILE SECOND AMENDED
COMPLAINT**

Complaint Filed: August 14, 2018
Trial Date: TBD

1 Plaintiff Dimitri Dixon (“Plaintiff”) and Defendant Cushman & Wakefield Western, Inc.
2 (“Cushman”) (collectively, the “Parties”), by and through their respective counsel, submit this
3 Stipulation and Proposed Order to File Second Amended Complaint.

4 WHEREAS, on June 30, 2021, the Parties entered into a written settlement agreement to
5 resolve this action together with the related cases filed in the Northern District of California,
6 *Dixon v. Cushman & Wakefield, Inc.*, Case No. 3:20-cv-07001-JSC (“*Dixon I*”) and the District
7 of Columbia, *Seltz v. Cushman & Wakefield, Inc.*, No. 1:18-cv-02092 (“*Seltz*”);

8 WHEREAS, pursuant to the terms of the settlement, the Parties desire to amend the
9 operative complaint in this action to: (1) add an additional plaintiff, Ryan Seltz, (2) add
10 defendants Cushman & Wakefield, Inc. and Cushman & Wakefield of Washington, DC, Inc., and
11 (3) to add additional claims to address those raised in the *Dixon II* and *Seltz* actions;

12 WHEREAS, the Parties intend to stipulate to stay the *Dixon II* and *Seltz* actions and to
13 seek approval of the California class action and PAGA settlement before this court, along with
14 the related FLSA and state claims in the *Dixon II* and *Seltz* actions;

15 NOW THEREFORE, the Parties, by and through their respective counsel, and subject to
16 order of this Court, stipulate as follows:

17 1. that Plaintiff be permitted to file a Second Amended Complaint (“SAC”) in the
18 above-entitled action, in the form and content which is attached hereto as Exhibit A;

19 2. that Defendants’ date to respond to the SAC shall be stayed pending the Court
20 ruling on Plaintiff’s motion for preliminary approval of the global settlement;

21 3. that by entering into this stipulation, Defendants do not waive any objection or
22 rights they have or could assert to the SAC; and

23 4. that if for any reason the settlement is not approved and the Parties resume
24 litigation, Plaintiff agrees to immediately dismiss, without prejudice, all claims in the SAC other
25 than the claims asserted in the First Amended Complaint on file herein, as those claims are
26 alleged in the *Dixon II* and *Seltz* actions.

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IT IS SO STIPULATED.

Dated: GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____
Laura L. Ho

Attorneys for Plaintiff DIMITRI DIXON
and the Putative Class and Collective

Dated: VEDDER PRICE (CA), LLP

By: _____
Mindy M. Wong

Attorneys for Defendant
CUSHMAN & WAKEFIELD WESTERN, INC.

SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatories on this e-filed document.

Dated: _____
Type Name

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: _____
HON. JACQUELINE SCOTT CORLEY
MAGISTRATE JUDGE

Exhibit I

1 Laura L. Ho (CA SBN 173179)
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2 Ginger Grimes (SBN 307168)
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3 GOLDSTEIN, BÖRGEN, DARDARIAN & HO
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4 Oakland, CA 94612
Tel: (510) 763-9800
5 Fax: (510) 835-1417

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

7 *[Additional counsel on following page]*
8

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
situated,

13 Plaintiffs,

14 vs.

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

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

SECOND AMENDED COMPLAINT

1. **Violations of the Fair Labor Standards Act**
2. **Violations of California Overtime Law**
3. **Violations of California Meal Period Law**
4. **Violations of California Rest Period Law**
5. **Violations of California Business Expenses Reimbursement Law**
6. **Violations of California Accurate Itemized Wage Statements Law**
7. **Violation of California Unfair Competition Law**
8. **Violation of the Private Attorney General Act of 2004 (“PAGA”)**
9. **Violation of California Final Pay Law**

JURY TRIAL DEMANDED

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10 Fax: (415) 638-8810

11 Paolo Meireles (*pro hac vice* application forthcoming)
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13 Boca Raton, FL 33431
Tel: (561) 447-8888
14

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

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1 Plaintiff Dimitri Dixon and Plaintiff Ryan Seltz (“Plaintiffs”), individually and on behalf of all
2 others similarly situated, allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff Dimitri Dixon brings this action individually, and in a representative capacity
5 on behalf of all other similarly situated individuals (members of the California Class and Dixon
6 Collective), against Defendants Cushman and Wakefield Western, Inc. (“C&W Western”) and
7 Cushman & Wakefield, Inc. (“C&W”) for violations of several California Labor Code provisions
8 (“Labor Code”), including Labor Code §§ 203, 226.7, 510, 512, 558, 226, 1174, and California
9 Industrial Welfare Commission Wage Orders 4-2001, Cal. Code Regs. Tit. 8, § 11040; and the Fair
10 Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*

11 2. Plaintiff Ryan Seltz brings this action individually and in a representative capacity on
12 behalf of all similarly situated individuals (members of the Seltz Collective) against Defendants C&W
13 and Cushman and Wakefield, of Washington, DC, Inc. (“C&W DC”) for violations of the FLSA.

14 3. Plaintiffs, Class Members, and Collective Action Members were employed as
15 Appraisers (including as Junior Appraisers and Senior Appraisers) by one or more Defendants and
16 were denied the benefits and protections required by the FLSA, Labor Code, and other statutes and
17 regulations applicable to non-exempt employees in the State of California.

18 4. Plaintiffs allege that Defendants **failed to:**

- 19 a. Properly classify employees as non-exempt under California law and the FLSA;
20 b. Pay Plaintiff Dixon and Class Members all overtime wages for hours worked in
21 excess of eight (8) hours a day and to pay Plaintiffs, Class Members, and Collective Action Members
22 all overtime wages for hours worked in excess of forty (40) hours a week;
23 c. Provide Plaintiff Dixon and Class Members mandated meal periods;
24 d. Provide Plaintiff Dixon and Class Members mandated rest periods;
25 e. Reimburse Plaintiff Dixon and Class Members for all necessary expenditures
26 that they incurred in direct consequence of the discharge of work duties including, but not limited to,
27 the cost of cell phone usage required for work-related purposes;

- 1 f. Keep required payroll records that accurately show the total hours Plaintiff
2 Dixon and Class Members worked, as well as the wages that should have been paid;
- 3 g. Furnish Plaintiff Dixon and Class Members with accurate wage statements;
- 4 h. Comply with the Unfair Competition Law (“UCL”), California Business &
5 Professions Code § 17200 *et seq.*; and
- 6 i. Comply with the Private Attorneys General Act of 2004 (“PAGA”), codified as
7 California Labor Code § 2698 *et seq.*
- 8 j. Pay Plaintiff Dixon and Class Members All Wages Due Upon Termination.

9 **JURISDICTION AND VENUE**

10 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1337 and
11 diversity jurisdiction under 28 U.S.C. § 1332.

12 6. This Court also has jurisdiction over Plaintiff’s claims under the FLSA pursuant to 29
13 U.S.C. § 216(b).

14 7. This Court has supplemental jurisdiction over the California claims pursuant to 28
15 U.S.C. § 1367 because they are so closely related to the claims under the FLSA that they form part of
16 the same case or controversy under Article III of the United States Constitution.

17 8. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391.

18 9. Plaintiff Dixon fulfilled the administrative prerequisites for filing suit under Labor Code
19 § 2699.3(a). Specifically, on June 4, 2018, Plaintiff Dixon submitted to the California Labor and
20 Workforce Agency (“LWDA”) via its website a notice describing the allegations set forth in this
21 Complaint. A true and correct copy of the Notice (LWDA Case Number LWDA-CM-543235-18) is
22 attached as Exhibit 1. On the same day, Plaintiff Dixon served a copy of the Notice on Defendant
23 C&W Western. via certified mail, as shown in Exhibit 1. As of sixty-five (65) calendar days after
24 submission of the Notice to the LWDA, the LWDA had provided no notice to Plaintiff Dixon
25 regarding its intention to investigate (or not investigate) Plaintiff Dixon’s claims. Plaintiff Dixon
26 timely submitted a filing fee of \$75 to the LWDA. On August 14, 2018, Plaintiff Dixon submitted to
27 the LWDA a notice describing additional allegations set forth in this Complaint. A true and correct
28 copy of the Notice is attached as Exhibit 2. On the same day, Plaintiff Dixon served a copy of the

1 Notice on Defendant C&W Western via certified mail, as shown in Exhibit 2. As of sixty-five (65)
2 calendar days after submission of the Notice to the LWDA, the LWDA has provided no notice to
3 Plaintiff Dixon regarding its intention to investigate (or not investigate) Plaintiff Dixon’s claims.
4 Plaintiff Dixon timely submitted a filing fee of \$75 to the LWDA. On August 16, 2019, Plaintiff
5 Dixon submitted to the LWDA a notice describing additional allegations set forth in this Complaint. A
6 true and correct copy of the Notice is attached as Exhibit 3. On the same day, Plaintiff Dixon served a
7 copy of the Notice on Defendant C&W Western via certified mail, as shown in Exhibit 3. As of sixty-
8 five (65) calendar days after submission of the Notice to the LWDA, the LWDA has provided no
9 notice to Plaintiff Dixon regarding its intention to investigate (or not investigate) Plaintiff Dixon’s
10 claims. Plaintiff Dixon timely submitted a filing fee of \$75 to the LWDA.

11 **PARTIES**

12 10. Plaintiff Dimitri Dixon is an adult individual who resides in Tustin, CA. Plaintiff is a
13 “person” under California Business & Professions Code § 17201 and California Labor Code § 18.
14 Plaintiff was employed as an Appraiser Trainee¹ by C&W and worked in that capacity from September
15 2007 to December 10, 2018.

16 11. Plaintiff Ryan Seltz is an adult individual who resided in Washington, D.C. during his
17 employment for C&W as an Appraiser from approximately May 2017 through October 2017.

18 12. Defendant C&W is a commercial real estate services company. C&W is the parent
19 corporation of Defendant C&W Western, Defendant C&W DC., and related corporate entities in states
20 across the country, and together they employ Appraisers (including Junior Appraisers and Senior
21 Appraisers) like Plaintiffs. Upon information and belief, these entities have offices throughout the
22 country, including in Georgia, New York, Ohio, Illinois, Washington D.C., and Washington state, as
23 well as non-U.S. offices in locations such as London and Singapore. Defendants act as a single
24 integrated enterprise that employed and/or jointly employed Plaintiffs and those similarly situated
25 during all relevant times.

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28 ¹ Ms. Dixon’s official job title was “Associate Director,” though she was referred to and identified as
an “Appraiser Trainee” at all relevant times.

FACTUAL ALLEGATIONS

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2 13. Plaintiff Dixon was an employee of C&W and C&W Western, a commercial real estate
3 services company. Plaintiff Dixon began working as an Appraiser Trainee on September 17, 2007. As
4 an Appraiser Trainee, Plaintiff Dixon’s duties included appraising the value of real estate investments,
5 researching property sales, listings, and rentals, constructing financial models, researching financial
6 information, preparing appraisals for firm clients, and inspecting property.

7 14. Plaintiff Dixon worked across several practice areas within C&W and C&W Western’s
8 Valuation Advisory Group, and began working as an Appraiser Trainee in the Senior Housing practice
9 area, supervised by Ryan McCafferty. Upon information and belief, around June 2013, Plaintiff Dixon
10 transferred to the Auto Specialty practice area, supervised by Chris Kelsey. Plaintiff Dixon most
11 recently worked within C&W and C&W Western’s Auto Specialty practice area.

12 15. Throughout her tenure at C&W and C&W Western, Plaintiff Dixon actively sought a
13 state-certified appraisal license. Plaintiff Dixon held an Appraiser Trainee license. Plaintiff Dixon’s
14 licensure status affected the number of C&W and C&W Western projects that she could complete.

15 16. Plaintiff Dixon was compensated through a “recoverable draw” scheme. At the
16 beginning of each year of her employment, Plaintiff Dixon was required to sign a standard promissory
17 note with C&W and C&W Western, where she agreed to pay C&W and C&W Western the balance of
18 a fixed sum of money equal to her annual compensation. Each employee then receives a bi-monthly
19 draw against this obligation, which is the sole basis of compensation. Such “draw” payments
20 constitute advancements to Plaintiff Dixon, which Plaintiff owes to C&W and C&W Western in the
21 form of debt. The promissory note allows C&W and C&W Western, among other things, to recoup the
22 entire balance of the advanced sum at any time, including after the employee-employer relationship
23 terminates.

24 17. Appraisers work on assigned projects that generate fees. Such fees are intended, in part,
25 to cover their bi-monthly draw payments and satisfy outstanding debt obligations. Employees earn
26 fees through a complicated fee arrangement, which is stipulated in their employment contracts. A
27 portion of the fees generated by employees – including Plaintiff Dixon – are set aside for C&W and
28 C&W Western to account for and offset various accrued expenses and costs, including referral fees,

1 supervisory offsets and other miscellaneous costs. Upon information and belief, beginning around
2 June 2013, fees earned by Plaintiff Dixon for completed projects were significantly reduced due to
3 “supervisory offsets.”

4 18. Upon information and belief, C&W and C&W Western calculates the total fee amount
5 generated by Appraisers (minus any deductions made pursuant to the employment contract), as well as
6 the total amount of draw payments made that period; the draw payments are then deducted from the
7 fees collected. Any positive amount is paid to the employee. Any negative amount is carried forward
8 as debt owed to C&W and C&W Western, which must be settled by appraisers.

9 19. Plaintiff Dixon’s employment contract states that she may not receive less than the draw
10 payments. The employment contract further states that the draw payments “are loans to be repaid to
11 C&W upon demand.” The employment contract states that if an Appraiser’s fee share does not
12 sufficiently reimburse C&W and C&W Western for their advanced draw payments, employees are
13 personally liable to C&W and/or C&W Western.

14 20. Plaintiff Dixon has consistently carried forward a deficit while working for C&W.
15 Plaintiff Dixon worked on C&W and C&W Western projects with the goal of settling mounting
16 deficits resulting from the combined draw payments and promissory note obligations.

17 21. In 2017, C&W and/or and C&W Western held a promissory note against Plaintiff
18 Dixon for \$54,000, which was equal to the total bi-monthly draw payments received throughout the
19 year.

20 22. Plaintiff Dixon repeatedly alerted her supervisors that her deficit was beginning to grow
21 and that the fee split with her supervisor precluded Plaintiff Dixon from settling the outstanding debt
22 obligations. Plaintiff Dixon made two suggestions as ways to settle her obligations: (1) C&W and/or
23 C&W Western should increase her fee share and/or (2) she should be given additional projects to earn
24 more fees. Upon information and belief, as of December 2017, Plaintiff Dixon was only receiving
25 fifty (50) percent of the total fees generated, and otherwise continued receiving fewer and fewer
26 projects.

27 23. Upon information and belief, around December 2017, after Plaintiff Dixon discussed
28 her decreasing project volume with Lars Platt, a regional leader at C&W and/or C&W Western, Mr.

1 Platt informed Plaintiff Dixon that there simply was not enough business to accommodate Plaintiff
2 Dixon's request.

3 24. Upon information and belief, around December 2017, Michele Kauffman, a C&W
4 and/or C&W Western area leader, and another one of Plaintiff Dixon's supervisors, told Plaintiff
5 Dixon that she should continue to work on obtaining her appraiser license as a way to position herself
6 for more projects at C&W and C&W Western.

7 25. On May 16, 2018, Plaintiff Dixon received an email stating that, effective June 4, 2018,
8 Plaintiff Dixon's recoverable draw compensation would be reduced from \$54,000 to \$45,760, as
9 Plaintiff Dixon had not performed enough work to settle the deficit owed to Defendants.

10 26. After a period of receiving few opportunities to conduct appraisals in late 2017 and
11 early 2018, Plaintiff Dixon was told that she owed more than \$28,000 to C&W and/or C&W Western
12 and that Plaintiff Dixon needed to figure out a way to reduce that figure.

13 27. Upon information and belief, on or around May 17, 2018, Plaintiff Dixon discussed
14 with Ms. Kauffman the low number of projects she was assigned and her growing draw deficit. Ms.
15 Kauffman told Plaintiff that C&W and C&W Western did not have work that she could perform,
16 explaining that only a handful of low-level assignments – with correspondingly lower fees – were
17 available. Additionally, Ms. Kauffman informed Plaintiff Dixon that such low-value assignments were
18 not projects that C&W, as a firm, typically took on.

19 28. Plaintiff Dixon's draw payments were stopped effective June 4, 2018.

20 29. Plaintiff Dixon's resulting stress, growing deficit, and feeling of helplessness caused
21 Plaintiff Dixon severe anxiety, chest pains, and depression. Because of these symptoms, Plaintiff
22 Dixon took medical leave.

23 30. Upon information and belief, around 2010, Plaintiff Dixon's supervisor, Ryan
24 McCafferty, complained that Plaintiff Dixon did not possess a cell phone for work-related usage.
25 Based on McCafferty's complaint, Plaintiff Dixon obtained a cell phone, which she used for work-
26 related purposes. At no point did C&W and/or C&W Western provide cell phones to Plaintiff Dixon
27 or similarly situated appraisers. C&W and C&W Western have never compensated Plaintiff Dixon for
28 expenses related to the continued use of her cell phone.

1 31. On April 15, 2019, Plaintiff Dixon was notified of her termination from C&W and
2 C&W Western, effective December 10, 2018. Defendants alleged that Plaintiff owed a draw balance
3 of \$15,632.54 and demanded repayment.

4 32. During the applicable time period, Plaintiff Dixon and Class Members regularly and
5 consistently worked more than eight (8) hours in a workday and/or more than forty (40) hours in a
6 workweek. Nonetheless, Defendants C&W and C&W Western failed to pay Plaintiff Dixon and Class
7 Members for all hours worked in excess of eight (8) hours in a workday and/or in excess of forty (40)
8 hours in a workweek.

9 33. Defendants C&W and C&W Western failed to provide Plaintiff Dixon and Class
10 Members with meal and rest periods in accordance with California law.

11 34. Defendants C&W and C&W Western failed to keep accurate payroll records showing
12 the daily hours worked by Plaintiff Dixon and Class Members, as well as wages they should have been
13 paid.

14 35. Defendants C&W and C&W Western failed to furnish Plaintiff Dixon and Class
15 Members with accurate itemized wage statements in accordance with California law.

16 36. Defendants C&W and C&W Western misclassified Plaintiff Dixon and Class Members
17 as “exempt” employees.

18 37. Defendants C&W and C&W Western failed to pay Plaintiff Dixon and Class Members
19 all wages due upon termination.

20 38. C&W and C&W Western employed Plaintiff Dixon and Class Members during
21 PAGA’s statutory period.

22 39. Plaintiff Seltz worked for C&W and C&W DC as an Appraiser in Washington, D.C.
23 from approximately May 2017 through October 2017. As an Appraiser, Plaintiff Seltz regularly
24 worked more than 40 hours per week and frequently worked approximately 55 hours per week, without
25 being paid overtime.

COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

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2 40. Plaintiffs, on behalf of themselves and all Collective Action Members, re-allege and
3 incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth
4 herein.

5 41. Pursuant to 29 U.S.C. § 216, Plaintiffs seek to prosecute the FLSA claims as a
6 collective action on behalf of two groups of Appraisers. Plaintiff Dixon represents the following
7 collective of Appraisers:

8 All persons employed by CUSHMAN AND WAKEFIELD WESTERN,
9 INC. and CUSHMAN AND WAKEFIELD, INC., as Appraisers
10 (including and Senior Appraisers) assigned to at least one Cushman &
11 Wakefield office in any state between October 7, 2017 through May 31,
12 2021 (“Dixon Collective”).

13 42. Plaintiff Seltz represents the following collective of Junior Appraisers:

14 All persons employed by CUSHMAN AND WAKEFIELD, INC., and
15 CUSHMAN AND WAKEFIELD, OF WASHINGTON, DC, INC. as
16 Junior Appraisers or Associate Appraisers assigned to at least one
17 Cushman & Wakefield office in any state between October 12, 2016
18 through September 9, 2019 (“Seltz Collective”).

19 43. There are numerous similarly situated current and former Appraisers and Junior
20 Appraisers throughout the United States who would benefit from the issuance of a Court-supervised
21 notice. Those similarly situated employees are known to C&W, C&W Western, and C&W DC and are
22 readily identifiable through C&W, C&W Western, and C&W DC’s records.

23 44. Plaintiffs and the Collective Action Members of the Dixon Collective and the Seltz
24 Collective are similarly situated because, among other things, they all: (a) had the same duties; (b)
25 performed the same tasks; (c) were misclassified as exempt from overtime wages; (d) were paid under
26 the same employment contracts and promissory notes; (e) were required, suffered, or permitted to
27 work, and did work in excess of forty hours per week; and (f) were not paid at a rate of one and one-
28 half times their regular rate of pay for all overtime hours worked.

45. As part of its regular business practice, C&W, C&W Western, and C&W DC
intentionally, willfully, and repeatedly engaged in a uniform pattern, practice, and/or policy of

1 violating the FLSA with respect to the Collective Action Members of the Dixon Collective and the
2 Seltz Collective. This policy and pattern or practice included, but is not limited to, willfully:
3 misclassifying Appraisers and Junior Appraisers as exempt from overtime wages; failing to pay
4 Appraisers and Junior Appraisers overtime wages for hours that they worked in excess of forty hours
5 per workweek; and failing to record all of the time that Appraisers and Junior Appraisers worked for
6 the benefit of C&W, C&W Western, and C&W DC.

7 46. C&W, C&W Western, and C&W DC were aware or should have been aware that
8 federal law requires it to pay employees an overtime premium for hours worked in excess of forty
9 hours per workweek.

10 47. C&W, C&W Western, and C&W DC's deceptive conduct prevented Plaintiffs and all
11 other Collective Action Members from discovering or asserting their claims earlier than they did
12 because C&W, C&W Western, and C&W DC, among other things, repeatedly declared that Appraisers
13 and Junior Appraisers were exempt from overtime.

14 **CALIFORNIA CLASS ACTION ALLEGATIONS**

15 48. Plaintiff Dixon, on behalf of herself and all California Class Action Members, re-alleges
16 and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
17 herein.

18 49. Plaintiff Dixon seeks to proceed as a class action with regard to their California law
19 claims pursuant to Federal Rule of Civil Procedure Rule 23 on behalf of the following class of persons:

20 All persons employed in California by CUSHMAN AND WAKEFIELD
21 WESTERN, INC., and CUSHMAN AND WAKEFIELD, INC., as an
22 Appraiser (including Junior Appraisers and Senior Appraisers) assigned
23 to at least one Cushman & Wakefield office between August 14, 2014
24 through May 31, 2021 ("California Class Action Members").

25 50. Plaintiff Dixon reserves the right under Federal Rule of Civil Procedure Rule 15 of to
26 amend or modify the class description with greater specificity or further division into subclasses or
27 limitation to particular issues.

28 51. **Numerosity.** The putative class is so numerous that joinder of all members is
impracticable. Although the precise number of such persons is unknown, and the facts on which the

1 calculation of that number would be based are within the sole custody and/or control of C&W and
2 C&W Western, upon information and belief, C&W and C&W Western have employed over forty
3 Appraisers in California within the last four years.

4 52. **Commonality and Predominance.** Among the proposed class, there is a well-defined
5 community of interest in the questions of law and/or fact involved. Common questions of law and/or
6 fact predominate over questions that affect only individual California Class Action Members.

7 Common questions include, but are not limited to:

8 a. Whether C&W and/or C&W Western is the employer of California Class Action
9 Members;

10 b. Whether C&W and C&W Western's uniform classification of all California
11 Class Action Members as exempt from overtime violated the California Labor Code;

12 c. Whether C&W and C&W Western owe California Class Action Members
13 overtime wages for hours worked greater than forty (40) in a week or eight (8) in a day;

14 d. Whether C&W and C&W Western failed to keep accurate payroll records of
15 hours worked, meal and rest periods taken, and overtime worked in accordance with California law;

16 e. Whether C&W and C&W Western reimbursed California Class Action
17 Members for cell phone expenses for use during working hours;

18 f. Whether the wage statements C&W and C&W Western issued to California
19 Class Action Members included all hours worked and/or rates of pay; and

20 g. Whether C&W and C&W Western's Labor Code violations serve as predicate
21 violations of the UCL;

22 h. Whether C&W and C&W Western failed to pay Plaintiff Dixon and Class
23 Members all wages due upon termination of employment.

24 53. **Typicality.** Plaintiff Dixon's claims are typical of the claims of the Class as all Class
25 Members are similarly affected by C&W and C&W Western's wrongful conduct as complained of
26 herein. Plaintiff Dixon was subjected to the same violations of her rights under the law and seeks the
27 same types of relief on the same theories and legal grounds as the members of the class she seeks to
28 represent.

1 54. **Adequacy of Representation.** Plaintiff Dixon will fairly and adequately represent and
2 protect the interests of the Class Members. Plaintiff Dixon's interests are not in conflict with those of
3 the Class. Plaintiff Dixon's counsel are competent and experienced in litigating large employment
4 class actions and other complex litigation matters, including cases involving factual and legal claims
5 similar to those alleged here.

6 **FIRST CAUSE OF ACTION**
7 **Violations of the Fair Labor Standards Act**
8 **[29 U.S.C. §§ 201 *et seq.*]**

9 **All Defendants**

10 55. Plaintiffs, on behalf of themselves and all Collective Action Members, re-allege and
11 incorporate by reference the allegations contained in the foregoing paragraphs as if fully set forth
12 herein.

13 56. C&W, C&W Western, and C&W DC have been, and continues to be, an employer
14 engaged in interstate commerce within the meaning of the FLSA of the employees identified by the
15 collectives defined herein.

16 57. C&W, C&W Western, and C&W DC employed and/or continues to employ Plaintiffs
17 and each of the Collective Action Members within the meaning of the FLSA.

18 58. C&W, C&W Western, and C&W DC has had annual gross revenues in excess of
19 \$500,000.

20 59. Plaintiffs expressly consent in writing to be a party to these collective actions pursuant
21 to 29 U.S.C. § 216(b). Plaintiff Dixon's written consent to join was previously filed with the Court.

22 60. Plaintiff Seltz filed a written consent to join a collective action under 29 U.S.C. §
23 216(b) in *Seltz v. Cushman & Wakefield, Inc.*, No. 1:18-cv-02092-BAH.

24 61. C&W, C&W Western, and C&W DC has had a policy and practice of misclassifying
25 Appraisers and Junior Appraisers, including Plaintiffs and Collective Action Members, as exempt from
26 overtime wages.
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1 62. C&W, C&W Western, and C&W DC has had a policy and practice of refusing to pay
2 any overtime compensation to Appraisers and Junior Appraisers for hours worked in excess of forty
3 hours per week.

4 63. C&W, C&W Western, and C&W DC have violated the FLSA, including §§ 207(a)(1)
5 and 215(a) because C&W, C&W Western, and C&W DC willfully fail to compensate its Appraisers
6 and Junior Appraisers for all hours worked and at a rate not less than one and one-half times their
7 regular rate of pay for work performed in excess of forty hours in a workweek.

8 64. As a result of C&W, C&W Western, and C&W DC's misclassification of its Appraisers
9 and Junior Appraisers and its attendant failure to record, report, credit, and/or compensate Plaintiffs
10 and Collective Action Members, C&W, C&W Western, and C&W DC has failed to make, keep, and
11 preserve records with respect to each of its employees sufficient to determine the wages, hours, and
12 other conditions and practices of employment in violation of the FLSA, including §§ 211(c) and
13 215(a).

14 65. C&W, C&W Western, and C&W DC's conduct, as alleged, constitutes a willful
15 violation of the FLSA within the meaning of the statute, 29 U.S.C. § 255(a).

16 66. Due to C&W, C&W Western, and C&W DC's FLSA violations, Plaintiffs, on behalf of
17 themselves and all Collective Action Members, are entitled to recover from C&W, C&W Western, and
18 C&W DC unpaid wages, as well as overtime compensation, an additional amount equal to the unpaid
19 wages and overtime as liquidated damages, reasonable attorneys' fees, and costs pursuant to § 216(b)
20 of the FLSA, as well as further relief as described below.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Pay Overtime Wages**

23 **[Cal. Labor Code §§ 510, 558, and 1194, and Cal. Code Regs. tit. 8 § 11040]**

24 **Defendants C&W and C&W Western**

25 67. Plaintiff Dixon, on behalf of herself and all California Class Action Members, re-alleges
26 and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
27 herein.

28 68. California Labor Code § 510 and Wage Order No. 4 requires an employer to
compensate a non-exempt employee for all work performed in excess of eight hours per workday or

1 forty hours per workweek, at one and one-half times the employee’s regular rate of pay.

2 69. Plaintiff Dixon and Class Members are non-exempt employees. Neither of the
3 exemptions to California Industrial Welfare Commission Wage Orders 4-2001, Cal. Code Regs. Tit. 8,
4 § 11070 apply. During the relevant period, Plaintiff and Class Members have not earned a monthly
5 salary equivalent to no less than two (2) times the State’s minimum wage for full-time employment.

6 70. Plaintiff Dixon’s entire compensation depends on fees generated from projects assigned
7 by C&W and C&W Western. Plaintiff Dixon and Class Members’ ultimate compensation depends on
8 the quantity of work available. Therefore, Plaintiff and Class Members have not been paid on a salary
9 basis pursuant to 29 C.F.R. § 541.602(a). See *Ming-Hsiang Kao v. Joy Holiday*, 12 Cal. App. 5th 947,
10 959 (2017) (since state “law was patterned to some extent on federal law, the general approach in
11 interpreting California law has been to use the federal salary basis test unless some other provision of
12 California law calls for a more protective standard”); DLSE Manual § 51.6.4 (detailing that the DLSE
13 will enforce the federal “salary basis test” to the extent that it does not conflict with “California
14 statutory law, case law, or public policy”).

15 71. Furthermore, because the promissory notes directly encumber Plaintiff Dixon and Class
16 Members’ compensation and allow Defendants to claw back disbursed payments, the compensation
17 received by Plaintiff and Class Members were not made “free and clear” under 29 C.F.R. § 531.35, and
18 thus do not constitute a salary. See *Ming-Hsiang Kao*, 12 Cal. App. 5th at 959; see also, *Takacs v.*
19 *A.G. Edwards and Sons, Inc.*, 444 F. Supp. 2d 1100, 1108 (S.D. Cal. 2006) (finding that a deficit owed
20 to an employer because of diminished commissions made the employee’s compensation conditional –
21 not “free and clear” – and therefore not a salary).

22 72. C&W and C&W Western misclassified Plaintiff Dixon and Class Members as exempt
23 employees.

24 73. During all relevant times, C&W and C&W Western required Plaintiff Dixon and
25 California Class Action Members to work in excess of eight hours per workday and forty hours per
26 workweek. C&W and C&W Western failed to pay the overtime wages that Plaintiff Dixon and
27 California Class Action Members earned.

28 74. Due to C&W and C&W Western’s Labor Code violations, Plaintiff Dixon and Class

1 Members are entitled to recover from C&W and C&W Western unpaid overtime compensation,
2 interest, reasonable attorneys' fees, and costs pursuant to the California Labor Code, as well as further
3 relief as described below.

4 **THIRD CAUSE OF ACTION**
5 **Failure to Provide Meal Periods**
6 **[Cal. Labor Code §§ 226.7, 512, and 1194, and Cal. Code Regs. tit. 8 § 11040]**
7 **Defendants C&W and C&W Western**

8 75. Plaintiff Dixon, on behalf of herself and all California Class Action Members, re-alleges
9 and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
10 herein.

11 76. California Labor Code § 512(a) states, “[a]n employer may not employ an employee for
12 a work period of more than five hours per day without providing the employee with a meal period of
13 not less than 30 minutes. An employer may not employ an employee for a work period of more than
14 10 hours per day without providing the employee with a second meal period of not less than 30
15 minutes.”

16 77. Wage Order No. 4 states, “[n]o employer shall employ any person for a work period of
17 more than five (5) hours without a meal period of not less than 30 minutes.” If no meal period is
18 provided, the Wage Order requires the employer to “pay the employee one (1) hour of pay at the
19 employee’s regular rate of compensation for each workday that the meal period is not provided.”

20 78. California Labor Code § 226.7 states, “[a]n employer shall not require an employee to
21 work during a meal ... period mandated pursuant to an applicable statute, or applicable regulation,
22 standard, or order of the Industrial Welfare Commission.” Section 226.7 requires an employer to pay
23 one additional hour of pay at the employee’s regular rate if the meal or rest period is not provided.

24 79. Plaintiff Dixon and Class Members are non-exempt employees. Neither of the
25 exemptions to California Industrial Welfare Commission Wage Orders 4-2001, Cal. Code Regs. Tit. 8,
26 § 11070 apply. During the relevant period, Plaintiff Dixon and Class Members have not earned a
27 monthly salary equivalent to no less than two (2) times the State’s minimum wage for full-time
28 employment.

80. Plaintiff Dixon’s entire compensation depends on fees generated from projects assigned

1 by Defendants; Plaintiff Dixon and Class Members’ ultimate compensation depends on the quantity of
2 work available. Therefore, Plaintiff Dixon and Class Members have not been paid on a salary basis
3 pursuant to 29 C.F.R. § 541.602(a). *See Ming-Hsiang Kao*, 12 Cal. App. 5th at 959 (since state “law
4 was patterned to some extent on federal law, the general approach in interpreting California law has
5 been to use the federal salary basis test unless some other provision of California law calls for a more
6 protective standard”); DLSE Manual § 51.6.4 (detailing that the DLSE will enforce the federal “salary
7 basis test” to the extent that it does not conflict with “California statutory law, case law, or public
8 policy”).

9 81. Furthermore, because the promissory notes directly encumber Plaintiff Dixon and Class
10 Members’ compensation and allow Defendants C&W and C&W Western to claw back disbursed
11 payments, the compensation received by Plaintiff Dixon and Class Members were not made “free and
12 clear” under 29 C.F.R. § 531.35, and thus do not constitute a salary. *See Ming-Hsiang Kao*, 12 Cal.
13 App. 5th at 959; *see also, Takacs*, 444 F. Supp. 2d at 1108 (finding that a deficit owed to an employer
14 because of diminished commissions made the employee’s compensation conditional – not “free and
15 clear” – and therefore not a salary).

16 82. C&W and C&W Western misclassified Plaintiff Dixon and Class Members as exempt
17 employees.

18 83. C&W and C&W Western do not have a policy or practice of providing meal periods to
19 California Class Action Members, and C&W and C&W Western has not paid employees premium pay
20 for missed meal periods as required by California Labor Code §§ 226.7 and 512, and Wage Order No.
21 4.

22 84. As a result of C&W and C&W Western’s unlawful failure to provide meal periods to all
23 California Class Action Members and C&W and C&W Western’s failure to pay an hour of premium
24 pay at the regular rate for each missed meal period, Plaintiff Dixon and California Class Action
25 Members are entitled to recover one hour of pay at their regular rate of compensation for each workday
26 that a meal period was not provided, plus interest, attorney’s fees, and costs, as well as further relief as
27 described below.

FOURTH CAUSE OF ACTION

Failure to Provide Rest Periods

[Cal. Labor Code §§ 226.7 and 1194, Cal. Code Regs. tit. 8 § 11040]

Defendants C&W and C&W Western

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85. Plaintiff Dixon, on behalf of herself and all California Class Action Members, re-alleges and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

86. California Labor Code § 226.7 states, “[a]n employer shall not require an employee to work during a ... rest ... period,” and “[i]f an employer fails to provide an employee a ... rest ... period ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the ... rest ... period is not provided.”

87. Wage Order No. 4 states, “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” The Wage Orders require an employer to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

88. Plaintiff Dixon and Class Members are non-exempt employees. Neither of the exemptions to California Industrial Welfare Commission Wage Orders 4-2001, Cal. Code Regs. Tit. 8, § 11070 apply. During the relevant period, Plaintiff Dixon and Class Members have not earned a monthly salary equivalent to no less than two (2) times the State’s minimum wage for full-time employment.

89. Plaintiff Dixon’s entire compensation depends on fees generated from projects assigned by Defendants; Plaintiff Dixon and Class Members’ ultimate compensation depends on the quantity of work available. Therefore, Plaintiff Dixon and Class Members have not been paid on a salary basis pursuant to 29 C.F.R. § 541.602(a). *See Ming-Hsiang Kao*, 12 Cal. App. 5th at 959 (since state “law was patterned to some extent on federal law, the general approach in interpreting California law has been to use the federal salary basis test unless some other provision of California law calls for a more protective standard”); DLSE Manual § 51.6.4 (detailing that the DLSE will enforce the federal “salary

1 basis test” to the extent that it does not conflict with “California statutory law, case law, or public
2 policy”).

3 90. Furthermore, because the promissory notes directly encumber Plaintiff Dixon and Class
4 Members’ compensation and allow Defendants C&W and C&W Western to claw back disbursed
5 payments, the compensation received by Plaintiff Dixon and Class Members were not made “free and
6 clear” under 29 C.F.R. § 531.35, and thus do not constitute a salary. *See Ming-Hsiang Kao*, 12 Cal.
7 App. 5th at 959; *see also, Takacs*, 444 F. Supp. 2d at 1108 (finding that a deficit owed to an employer
8 because of diminished commissions made the employee’s compensation conditional – not “free and
9 clear” – and therefore not a salary).

10 91. C&W and C&W Western misclassified Plaintiff Dixon and Class Members as exempt
11 employees.

12 92. C&W and C&W Western do not have a policy or practice of providing rest periods to
13 California Class Action Members, and C&W and C&W Western has not paid employees premium pay
14 for missed rest periods as required by California Labor Code § 226.7 and Wage Order No. 4.

15 93. As a result of C&W and C&W Western’s unlawful failure to provide rest periods to all
16 California Class Action Members and C&W and C&W Western’s failure to pay an hour of premium
17 pay at the regular rate for each day a rest period was not provided, Plaintiff Dixon and California Class
18 Action Members are entitled to recover one hour of pay at their regular rate of compensation for each
19 workday that a rest period was not provided, plus interest, attorney’s fees, and costs, as well as further
20 relief as described below.

21 **FIFTH CAUSE OF ACTION**
22 **Failure to Reimburse Business Expenses**
23 **[Cal. Labor Code § 2802, and Cal. Code Regs. tit. 8, § 11040, 11070]**
24 **Defendants C&W and C&W Western**

25 94. Plaintiff Dixon, on behalf of herself and all California Class Action Members, re-alleges
26 and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
27 herein.

28 95. California Labor Code § 2802 requires employers to indemnify an employee for all
necessary expenditures or losses incurred by the employee in direct consequence of the discharge of

1 the employee's duties.

2 96. During all relevant times, C&W and C&W Western failed to indemnify Plaintiff Dixon
3 and California Class Action Members for their expenses related to use of their personal cell phones for
4 work purposes. Plaintiff Dixon and California Class Action Members are entitled to indemnification
5 of these work-related expenses plus prejudgment interest pursuant to California Labor Code § 2802.

6 97. Plaintiff Dixon, on behalf of herself and similarly situated California Class Action
7 Members, requests relief for these violations and further relief as described below.

8 **SIXTH CAUSE OF ACTION**

9 **Failure to Furnish Accurate Itemized Wage Statements**
10 **[Cal. Labor Code §§ 226 and 226.3, and Cal. Code Regs. tit. 8 § 11040]**
11 **Defendants C&W and C&W Western**

12 98. Plaintiff Dixon, on behalf of herself and all California Class Action Members, re-alleges
13 and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
14 herein.

15 99. California Labor Code § 226 provides that every employer must furnish each employee
16 with an itemized wage statement that shows the total numbers of hours worked each pay period, gross
17 wages, net wages, all deductions, all applicable hourly rates of pay, the legal name and address of the
18 employer, and other information.

19 100. C&W and C&W Western failed to furnish Plaintiff Dixon and California Class Action
20 Members itemized wage statements accurately showing, at a minimum, gross wages, total hours
21 worked, net wages earned, and all applicable hourly rates in effect during the pay period as well as the
22 number of hours corresponding to each hourly rate.

23 101. During all relevant times, all California Class Action Members were injured by these
24 failures because, among other things, they were confused about whether they were paid properly,
25 and/or they were misinformed about how many total hours they worked during each pay period.

26 102. California Labor Code § 226(e)(1) states that an employee suffering injury as a result of
27 a knowing and intentional failure by an employer to provide accurate itemized wage statements is
28 entitled to recover the greater of all actual damages suffered or fifty dollars (\$50) for the initial
violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars

1 (\$4,000). Pursuant to California Labor Code § 226(h), Plaintiff Dixon and California Class Action
2 Members are entitled to injunctive relief to ensure C&W’s compliance with California Labor Code
3 § 226.

4 103. Plaintiff Dixon and California Class Action Members are entitled to an award of costs
5 and reasonable attorneys’ fees under California Labor Code § 226(h), as well as further relief as
6 described below.

7 **SEVENTH CAUSE OF ACTION**
8 **Unfair Competition Law Violations**
9 **[Cal. Business & Professions Code §§ 17200 *et seq.*]**
10 **Defendants C&W and C&W Western**

11 104. Plaintiff Dixon, on behalf of herself and all California Class Action Members, re-alleges
12 and reincorporates by reference the allegations contained in the foregoing paragraphs as if fully set
13 forth herein.

14 105. California Business & Professions Code §§ 17200 *et seq.* prohibits unfair competition
15 in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

16 106. C&W and C&W Western has committed unlawful, unfair, deceptive, and/or fraudulent
17 acts as defined by California Business & Professions Code §17200. C&W and C&W Western’s
18 unlawful, unfair, deceptive, and/or fraudulent business practices include, but are not limited to, failing
19 to pay for all hours worked, failing to pay overtime wages, failing to provide mandated meal and rest
20 periods, and failing to indemnify Appraisers for business expenses.

21 107. As a result of such unlawful, unfair, and/or fraudulent business practices, C&W and
22 C&W Western reaped ill-gotten benefits and illegal profits at the expense of Plaintiff Dixon and
23 California Class Action Members.

24 108. Plaintiff Dixon, on behalf of herself and similarly situated California Class Action
25 Members, requests further relief as described below.

26 **EIGHTH CAUSE OF ACTION**
27 **Violation of the Private Attorney General Act of 2004 (“PAGA”)**
28 **[Cal. Labor Code §§ 2698 *et seq.*]**
Defendant C&W Western

1 109. Plaintiff Dixon, on behalf of herself and all other aggrieved employees, re-alleges and
2 incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
3 herein.

4 110. Plaintiff Dixon is an “aggrieved employee” under PAGA, as she was employed by
5 C&W Western during the applicable statutory period and suffered one or more Labor Code violations.
6 As such, Plaintiff Dixon seeks to recover, on behalf of herself and all aggrieved employees, the civil
7 penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

8 111. Plaintiff Dixon seeks to recover the PAGA civil penalties through a representative
9 action as permitted by PAGA and the California Supreme Court in *Arias v. Super. Ct.*, 46 Cal. 4th 969
10 (Cal. Ct. App. 2009). Class certification of the PAGA claims is not required, but Plaintiff Dixon may
11 seek certification of the PAGA claims.

12 112. Plaintiff Dixon seeks to pursue remedies pursuant to PAGA for the following
13 violations:

14 a. For C&W Western’s failure to pay California Appraisers overtime, Plaintiff
15 Dixon seeks recovery of civil penalties as set forth in California Labor Code § 558. For C&W
16 Western’s failure to provide California Appraisers with meal periods or rest periods, Plaintiff Dixon
17 seeks civil penalties under California Labor Code § 558.

18 b. For C&W Western’s knowing and intentional failure to provide accurate wage
19 statements, California Labor Code § 226.3 imposes a civil penalty, in addition to any other penalty
20 provided by law, of two hundred fifty dollars (\$250) per aggrieved employee for the first violation of
21 California Labor Code § 226(a), and one thousand dollars (\$1,000) per aggrieved employee for each
22 subsequent violation.

23 c. For C&W Western’s failure to keep accurate records as required by California
24 Labor Code § 1174(d), including records of aggrieved employees’ overtime hours, driving time, off-
25 site work, weekend hours, holiday hours, and meal periods, C&W Western is subject to a civil penalty
26 of five hundred dollars (\$500) under California Labor Code § 1174.5. C&W Western is also liable for
27 civil penalties under California Labor Code § 558.

28 d. For C&W Western’s failure to indemnify California Appraisers for all necessary

1 business expenditures, C&W Western is liable for the amount civil penalties described in the
2 paragraph below, pursuant to California Labor Code § 2802.

3 e. For C&W Western’s willful failure to pay all wages to an employee who is
4 discharged or quits, the employee’s wages continue from the due date at the same rate paid as a penalty
5 under California Labor Code § 203. The penalty does not continue for more than thirty (30) days.
6 California Labor Code § 256 imposes a civil penalty in an amount not exceeding thirty (30) days’ pay.

7 113. California Labor Code § 2698 *et seq.* imposes a civil penalty of one hundred dollars
8 (\$100) per pay period, per aggrieved employee for the initial violation of Labor Code §§ 226.7, 510,
9 512, 558, 1194, and 2802. For each subsequent violation, the penalty is two hundred dollars (\$200)
10 per aggrieved employee, per pay period.

11 114. True and correct copies of the claim notices filed online with the California Labor and
12 Workforce Development Agency (“LWDA”), LWDA Case Number LWDA-CM-543235-18, copies of
13 which were sent via certified mail to Defendant C&W Western, is attached as Exhibit 1, 2 and 3. As
14 of today’s date, the LWDA has provided no notice to Plaintiff Dixon regarding its intention to
15 investigate or not investigate Plaintiff’s claims.

16 115. Enforcement of statutory provisions to protect workers and to ensure proper and prompt
17 payment of wages is a fundamental public interest. Plaintiff Dixon’s successful enforcement of
18 important rights affecting the public interest will confer a significant benefit for the general public.
19 Private enforcement of these rights is necessary, as no public agency has pursued enforcement.

20 116. As a result of the violations alleged, Plaintiff Dixon, an aggrieved employee, on behalf
21 of herself and other aggrieved employees, seeks all relief available pursuant to California Labor Code
22 § 2699, including all civil penalties, attorneys’ fees, expenses, and costs.

23 **NINTH CAUSE OF ACTION**
24 **Failure to Pay All Wages Upon Termination**
25 **[Cal. Labor Code §§ 201, 202, 203, and 256]**
26 **Defendants C&W and C&W Western**

27 117. Plaintiff Dixon, on behalf of herself and all others similarly situated, re-alleges and
28 incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
herein.

1 118. California Labor Code § 201 provides that any discharged employee is entitled to all
2 wages due at the time of discharge.

3 119. California Labor Code § 202 provides that any employee who quits his or her
4 employment is entitled to all wages due within seventy-two (72) hours of notice of his intention to quit,
5 or at the time of quitting if the employee provided seventy-two (72) hours previous notice of his or her
6 intent to quit.

7 120. Where an employer willfully fails to pay discharged or quitting employees all wages
8 due as required under the California Labor Code §§ 201 and 202, the employer is liable to such
9 employees under California Labor Code § 203 for waiting time penalties in the amount of one (1)
10 day's compensation at the employees' regular rate of pay for each day the wages are withheld, up to
11 thirty (30) days.

12 121. During all relevant times, Defendants C&W and C&W Western knowingly and
13 willfully violated California Labor Code §§ 201 and 202 by failing to pay Plaintiff Dixon and
14 California Class Members who are no longer employed by Defendants C&W or C&W Western all
15 wages owed as alleged herein. Defendants C&W and C&W Western are therefore liable to Plaintiff
16 Dixon and California Class Members who are no longer employed by Defendants C&W and C&W
17 Western for waiting time penalties as required by California Labor Code § 203.

18 122. Plaintiff Dixon, on behalf of herself and similarly situated California Class Members,
19 also requests further relief as described below.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, individually and on behalf of the California Class Members and
22 Collective Action Members, respectfully requests this Court to grant relief against Defendants C&W,
23 C&W Western, and C&W DC as follows:

24 A. Certify this action as a class action pursuant to Rule 23 for the California Class
25 Members, and appoint Plaintiff Dixon as Class Representative, and her attorneys as Class Counsel
26 against Defendants C&W and C&W Western;

27 B. Designate this action as a collective action on behalf of the Collective Action Members
28 and authorize issuance of notice pursuant to 29 U.S.C. § 216(b) to all members of the Dixon Collective

1 and Seltz Collective, apprising them of the pendency of this action and permitting them to timely assert
2 FLSA claims in this action by filing individual consents to opt into this proceeding;

3 C. Direct class notice to all California Class Action Members;

4 D. Declare that Defendants C&W and C&W Western misclassified all California Class
5 Members under the California Labor Code as exempt from overtime wages;

6 E. Declare that Defendants C&W, C&W Western, and C&W DC misclassified all
7 members of the Dixon Collective and Seltz Collective, under the FLSA as exempt from overtime
8 wages;

9 F. Award unpaid wages, including all overtime compensation and meal and rest period
10 premiums, due under California law and the FLSA, to Plaintiff, Class Members, and Collective Action
11 Members;

12 G. Award damages for Defendants C&W and C&W Western's failure to provide accurate
13 itemized wage statements;

14 H. Award statutory penalties for Defendants C&W and C&W Western's failure to pay
15 Plaintiff Dixon and Class Members all wages due upon termination.

16 I. Award damages and restitution for Defendants C&W and C&W Western's failure to
17 reimburse necessary business expenses;

18 J. Award civil penalties under California Labor Code § 2698 *et seq.* for violations of
19 Labor Code §§ 203, 226.7, 510, 512, 558, 1194, and 2802, as well as Wage Order 4;

20 K. Award liquidated damages to Plaintiffs and Collective Action Members as a result of
21 C&W, C&W Western, and C&W DC's willful failure to pay for all wages due as well as overtime
22 compensation pursuant to the FLSA;

23 L. Award pre-judgment and post-judgment interest;

24 M. Enjoin Defendants C&W and C&W Western from violating California law;

25 N. Award costs and expenses of this action;

26 O. Award reasonable attorneys' fees; and

27 P. Award such other relief as this Court deems just and proper.
28

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on each and every cause of action so triable.

Dated:

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

Laura L. Ho

Attorneys for Plaintiff

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Exhibit J

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DIMITRI DIXON

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14 Attorneys for Defendant
15 CUSHMAN & WAKEFIELD WESTERN, INC.

16 [Additional counsel listed on signature page.]

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 DIMITRI DIXON, individually, and on behalf of
21 all others similarly situated,

22 Plaintiff,

23 vs.

24 CUSHMAN & WAKEFIELD, INC.,

25 Defendant.
26
27

Case No. 3:20-cv-07001-JSC

The Honorable Jacqueline Scott Corley

**STIPULATION AND [PROPOSED] ORDER
TO STAY ACTION PENDING FINAL
APPROVAL OF SETTLEMENT**

Action Filed: October 7, 2020

Trial Date: None Set

1 Plaintiff Dimitri Dixon (“Plaintiff”) and Defendant Cushman & Wakefield, Inc. (“Defendant”)
2 (collectively, the “Parties”), by and through their respective counsel, hereby stipulate and agree as
3 follows:

4 WHEREAS, Plaintiff filed this collective action on October 7, 2020, for alleged violations of
5 the Fair Labor Standards Act (“FLSA”), pursuant to 29 U.S.C. § 216(b) (the “Action”);

6 WHEREAS, after participating in private mediation with mediator Steven Rottman on March
7 11, 2021, the Parties reached a global proposed settlement of the FLSA claims alleged in this Action
8 and the FLSA and class action claims alleged in *Dixon v. Cushman & Wakefield Western, Inc., et al.*,
9 Northern District of California, Case No. 18-cv-05813 (“*Dixon I*”), and *Seltz v. Cushman & Wakefield,*
10 *Inc.*, District of Columbia, Case No. 18-cv-02092 (“*Seltz*”) (collectively with this action, the “Related
11 Actions”);

12 WHEREAS, pursuant to the Parties’ settlement agreement, their proposed global settlement of
13 the Related Actions is being submitted to the Court in *Dixon I* for review and approval, which will
14 encompass all of the claims in the Related Actions; and

15 WHEREAS, the Parties respectfully submit that judicial economy would be best served if this
16 Action is stayed pending final approval of the settlement in the *Dixon I* case and then dismissed upon
17 the court’s entry of final judgment approving the global settlement.

18 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between
19 Plaintiff and Defendant through their respective undersigned counsel, and subject to the Court’s
20 approval that:

21 1. This Action be stayed pending the entry of an order granting final approval of the
22 Parties’ global settlement in *Dixon I*, which will include the claims alleged in this Action, and a final
23 judgment entered thereon, and such settlement becoming effective pursuant to such approval; and

24 2. Within seven (7) calendar days after entry of an order granting final approval of the
25 Parties’ global settlement in *Dixon I* and a judgment thereon, and such settlement becoming effective
26 pursuant to the terms of such approval, the Parties will submit a stipulation for dismissal of this Action
27 with prejudice.

28

IT IS SO STIPULATED.

Dated:

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____

Laura L. Ho

Laura L. Ho (SBN 173179)

lho@gbdhlegal.com

Ginger L. Grimes (SBN 307168)

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Attorneys for Plaintiff and the Collective Class

Dated:

VEDDER PRICE (CA), LLP

By: _____

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Attorneys for Defendant

CUSHMAN & WAKEFIELD, INC.

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SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatories on this e-filed document.

Dated:

ORDER

Pursuant to the foregoing stipulation, IT IS SO ORDERED.

Dated:

HON. JACQUELIE SCOTT CORLEY
U.S. MAGISTRATE JUDGE

VP/#50856692.1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

Plaintiff,

v.

CUSHMAN & WAKEFIELD, INC. and
CUSHMAN & WAKEFIELD OF
WASHINGTON, DC, INC.,

Defendants.

Case No. 1:18-cv-02092-BAH

**STIPULATION AND [PROPOSED] ORDER TO STAY ACTION
PENDING FINAL APPROVAL OF SETTLEMENT**

Plaintiff Ryan Seltz (“Plaintiff”) and Defendants Cushman & Wakefield, Inc. and Cushman & Wakefield of Washington, DC, Inc. (“Defendants”) (collectively, the “Parties”), by and through their respective counsel, hereby stipulate and agree as follows:

WHEREAS, Plaintiff filed this putative class and collective action complaint on June 29, 2018, against Defendant Cushman & Wakefield, Inc., in the Superior Court for the District of Columbia, Case No. 2018 CA 004710 B, for alleged violations of the Fair Labor Standards Act (“FLSA”) to 29 U.S.C. §§ 201 *et seq.*, the District of Columbia (“D.C.”) Minimum Wage Act (the “DCMWA”), D.C. Code §§ 32-1001 *et seq.*, and the D.C. Wage Payment and Collection Law (“DCWPCL”), D.C. Code §§ 32-1001 *et seq.*, (the “Action”);

WHEREAS, Defendant Cushman & Wakefield, Inc. removed this Action to this Court on September 6, 2018;

WHEREAS, Plaintiff filed a First Amended Class and Collective Action Complaint on October 11, 2019, adding Defendant Cushman & Wakefield of Washington, DC, Inc., and alleged violations of the Fair Labor Standards Act (“FLSA”) to 29 U.S.C. §§ 201 *et seq.*, the D.C. Minimum Wage Act, D.C. Code §§ 32-1001 *et seq.*, (the “DCMWA”), the D.C. Wage

Payment and Collection Law, D.C. Code §§ 32-1301 *et seq.* (“DCWPCL”); and supporting District of Columbia and Department of Labor regulations;

WHEREAS, after participating in private mediation with mediator Steven Rottman on March 11, 2021, the Parties reached a global proposed settlement of the FLSA and state law claims alleged in this Action and the FLSA and class action claims alleged in *Dixon v. Cushman & Wakefield Western, Inc., et al.*, Northern District of California, Case No. 18-cv-05813-JSC (“*Dixon I*”) and *Dixon v. Cushman & Wakefield, Inc., et al.*, Northern District of California, Case No. 20-cv-07001-JSC (“*Dixon II*”) (collectively with this action, the “Related Actions”);

WHEREAS, pursuant to the Parties’ settlement agreement, their proposed global settlement of the Related Actions is being submitted to the Court in *Dixon I* for review and approval, which will encompass all of the claims in the Related Actions; and

WHEREAS, the Parties respectfully submit that judicial economy would be best served if this Action is stayed pending final approval of the settlement in the *Dixon I* case and then dismissed upon the court’s entry of final judgment approving the global settlement.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff and Defendant through their respective undersigned counsel, and subject to the Court’s approval that:

1. This Action be stayed pending the entry of an order granting final approval of the Parties’ global settlement in *Dixon I*, which will include the claims alleged in this Action, and a final judgment entered thereon, and such settlement becoming effective pursuant to such approval; and

2. Within seven (7) calendar days after entry of an order granting final approval of the Parties’ global settlement in *Dixon I* and a judgment thereon, and such settlement becoming

effective pursuant to the terms of such approval, the Parties will submit a stipulation for dismissal of this Action with prejudice.

IT IS SO STIPULATED.

Dated:

Respectfully submitted,

By: /s/ Aleksandra Rybicki

By: /s/ Susan E. Huhta

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*Attorneys for Plaintiff and the
Putative Class and Collective*

ORDER

Pursuant to the foregoing stipulation, IT IS SO ORDERED.

Dated:

HON. BERYL A. HOWELL
U.S. CHIEF DISTRICT JUDGE

VP/#50858589.1

Exhibit K

[EXHIBIT K]

**COMPLETE AND GENERAL RELEASE OF ALL CLAIMS
BY CLASS REPRESENTATIVE**

In consideration for the Service Award, as defined in the “Stipulation and Agreement to Settle Class, Collective, and Representative Actions,” (“Settlement Agreement”) Dimitri Dixon (“Class Representative”) provides this Complete and General Release of all Claims known or unknown, suspected or unsuspected, that Class Representative had, now has, or may hereafter claim to have against the Released Parties (as defined in the Settlement Agreement) arising out of, or relating in any way to, Class Representative’s hiring by, employment with, separation of employment with the Released Parties (“Plaintiffs’ Released Claims”), arising or accruing from September 7, 2007 through December 10, 2018 (“Plaintiffs’ Released Period”).

The award of a Service Award by the Court in the Final Approval Order of this Litigation, as defined in the Settlement Agreement, is a condition precedent to Class Representative’s performance under this Complete and General Release of All Claims by Class Representative. As a result, if the Court does not award any Service Award to Class Representative, then the Class Representative and Defendant, as defined in the Settlement Agreement, agree that this Complete and General Release of All Claims is void.

Class Representative, individually and on behalf of Class Representative’s heirs, executors, administrators, representatives, attorneys, successors and assigns knowingly and voluntarily releases and forever discharges Released Parties to the full extent permitted by law, of and from any and all claims, known and unknown, asserted and unasserted, which Class Representative has or may have against the Released Parties during the Class Representatives’ Released Period.

To effect a full and complete General Release as described above, Class Representative expressly waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California, except as described in paragraph 6 above, and does so understanding and acknowledging the significance and consequence of specifically waiving §1542. Section 1542 of the Civil Code of the State of California states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Thus, notwithstanding the provisions of § 1542, and to implement a full and complete release and discharge of the Released Parties, Class Representative expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Class Representative does not know or suspect to exist in Class Representative’s favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Class Representative warrants Class Representative has read this Settlement Agreement, including this waiver of California Civil Code § 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff’s choosing about this Settlement

COMPLETE AND GENERAL RELEASE OF ALL CLAIMS

Page 2

Agreement and specifically about the waiver of § 1542, and that Plaintiff understands this Settlement Agreement and the § 1542 waiver, and so Plaintiff freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

Class Representative is not waiving any rights she may have to: (i) Class Representative's own vested accrued employee benefits under Released Parties' health, welfare or retirement benefits plans as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits under applicable workers' compensation (except as to claims under California Labor Code §§ 132(a) and 4553) or unemployment insurance or indemnification statutes; (iii) pursue claims which by law cannot be waived by signing this Settlement Agreement; (iv) enforce this Settlement Agreement; or (v) challenge the validity of this Settlement Agreement.

Executed on _____, 2021

Dimitri Dixon

Exhibit L

[EXHIBIT L]

COMPLETE AND GENERAL RELEASE OF ALL CLAIMS
BY PLAINTIFF

In consideration for the Service Award, as defined in the “Stipulation and Agreement to Settle Class, Collective, and Representative Actions,” (“Settlement Agreement”) Ryan Seltz (“Plaintiff”) provides this Complete and General Release of all Claims known or unknown, suspected or unsuspected, that Plaintiff had, now has, or may hereafter claim to have against the Released Parties (as defined in the Settlement Agreement) arising out of, or relating in any way to, Plaintiff’s hiring by, employment with, and separation of employment with the Released Parties (“Plaintiffs’ Released Claims”), arising or accruing from the beginning of time through May 31, 2021 (“Plaintiffs’ Released Period”).

The award of a Service Award by the Court in the Final Approval Order of this Litigation, as defined in the Settlement Agreement, is a condition precedent to Plaintiff’s performance under this Complete and General Release of All Claims by Plaintiff. As a result, if the Court does not award any Service Award to Plaintiff, then the Plaintiff and Defendant, as defined in the Settlement Agreement, agree that this Complete and General Release of All Claims is void.

Plaintiff, individually and on behalf of Plaintiff’s heirs, executors, administrators, representatives, attorneys, successors and assigns knowingly and voluntarily releases and forever discharges the Release Parties to the full extent permitted by law, of and from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties during the Plaintiffs’ Released Period.

Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff’s favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Settlement Agreement and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff’s choosing about this Settlement Agreement and that Plaintiff understands this Settlement Agreement, and so Plaintiff freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

Plaintiff is not waiving any rights they may have to: (i) Plaintiff’s own vested accrued employee benefits under the Released Parties’ health, welfare or retirement benefits plans as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits under applicable workers’ compensation or unemployment insurance or indemnification statutes; (iii)

COMPLETE AND GENERAL RELEASE OF ALL CLAIMS

Page 2

pursue claims which by law cannot be waived by signing this Settlement Agreement; (iv) enforce this Settlement Agreement; or (v) challenge the validity of this Settlement Agreement.

Executed on _____, 2021

Ryan Seltz

Exhibit 2

fees and matter id = '681' and not hidden and not on hold

Matter ID: 681
Client Sort: Cushman & Wakefield
Description: Dixon v. Cushman & Wakefield

<u>Professional</u>	<u>Hours</u>	<u>Current Rate</u>	<u>Dollars</u>
Ho, Laura	252.10	990.00	249,579.00
Ryan, Megan	32.50	690.00	22,425.00
Grimes, Ginger	83.00	565.00	46,895.00
Romero, Alan	57.00	540.00	30,780.00
Holtzman, Beth	430.70	515.00	221,810.50
stat, Scott	87.50	390.00	34,125.00
Fuentes, Reynaldo	102.40	375.00	38,400.00
Thompson, Jacqueline	161.40	365.00	58,911.00
Grimes, Scott	7.40	365.00	2,701.00
Kirkpatrick, Stuart	100.60	350.00	35,210.00
Valdez, Damon	21.40	350.00	7,490.00
Total for this Matter and Date Range in Query:	1,336.00		748,326.50

Exhibit 3

costs and matter id = '681' and not hidden and not on hold

<u>Description</u>	<u>Cost</u>
Matter ID: 681	
Description: Dixon v. Cushman & Wakefield	
Court Fees/Filing Fees/Service Fees	1,747.70
Other Litigation Costs	6,177.34
In-House Copying @ \$.10/page	7.10
In-house printing	283.20
In-House Postage	94.30
Research - Online	3,708.23
Travel - airline/car/mileage/taxi/gas	15.00
Meals	26.09
Telephone	32.26
Special Masters/Mediators/Arbitrators	4,500.00
Total For this Matter and Date Range in Query:	16,591.22

Exhibit 4

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

WILMA FOSTER, et al.

Plaintiff,

v.

ADVANTAGE SALES & MARKETING,
LLC.,

Defendant.

Case No. 18-cv-07205-LB

FINAL APPROVAL ORDER

Re: ECF No. 51, 58

INTRODUCTION

This is an overtime-pay case under federal and California law: a nationwide collective action under the Federal Labor Standards Act (“FLSA”) and a California class action under Federal Rule of Civil Procedure 23.¹ The plaintiffs claim that their employer, defendant Advantage Sales and Marketing, LLC, d/b/a Advantage Solutions, misclassified them as exempt under the FLSA and California law and so failed to pay requisite compensation. The parties entered into a settlement agreement, and the court previously granted the plaintiffs’ unopposed motion for preliminary approval of the proposed settlement.² The plaintiffs moved for final approval of the settlement.³

¹ SAC – ECF No. 49 at 6–7. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Order – ECF No. 48.

³ Mot. – ECF No. 58.

1 The court held a fairness hearing on May 28, 2020, finds the settlement fair, adequate, and
 2 reasonable, and approves the final settlement, including fees, costs, and service awards.

3 4 STATEMENT

5 1. The Lawsuit

6 On November 28, 2018, named plaintiff Wilma Foster filed this wage-and-hours lawsuit on
 7 behalf of employees who worked for Advantage as Customer Development Managers-Retail
 8 (“CDMRs”) as (1) a FLSA collective action on behalf of a nationwide collective and (2) a class
 9 action on behalf of a California class alleging violations of California law.⁴ (Shortly after the
 10 plaintiff filed the complaint, Advantage reclassified CDMRs from exempt to non-exempt.⁵) The
 11 First Amended Complaint (filed on February 4, 2019) added a Private Attorney General Act
 12 (“PAGA”) claim.⁶ The Second Amended Complaint (“SAC”) added Adam Thimons and
 13 Kimberly Schmidt as named plaintiffs.⁷

14 Advantage produced documents and data enabling the plaintiffs to make informed damage
 15 assessments, and on March 11, 2019, the parties met in person for a day-long settlement
 16 discussion, made progress, and ultimately were unable to settle that day.⁸ On March 28, 2019,
 17 Advantage filed a motion to compel the opt-in plaintiffs to arbitration and to stay the PAGA
 18 claim.⁹ The plaintiffs served requests for production relating to the motion to compel.¹⁰ The
 19 parties ultimately agreed to a settlement conference and to postpone the plaintiffs’ filing their
 20 opposition to the motion to compel, and the case was referred to Magistrate Judge Kandis

23 ⁴ Compl. – ECF No. 1.

24 ⁵ Ho Decl. – ECF No. 58-1 at 2 (¶ 3).

25 ⁶ FAC – ECF No. 15 at 14–17 (¶¶ 87–93).

26 ⁷ SAC – ECF No. 49 at 2.; Consent Forms – ECF No. 14.

27 ⁸ Ho Decl. – ECF No. 42-1 at 3 (¶¶ 8–9).

28 ⁹ *Id.* (¶ 10); Mot. – ECF No. 25.

¹⁰ Ho Decl. – ECF No. 42-1 at 3–4 (¶¶ 11–13).

1 Westmore for a settlement conference.¹¹ At the settlement conference on September 6, 2019, the
 2 parties reached a tentative agreement and memorialized the material terms on the record.¹² They
 3 finalized their long-form settlement agreement on November 7, 2019, and agreed to the filing of
 4 the SAC, and the plaintiffs thereafter filed the motion for preliminary approval of the settlement
 5 and leave to file the SAC.¹³ The court granted the unopposed motion for preliminary approval and
 6 leave for plaintiffs to file the SAC.¹⁴

7 The plaintiffs moved for final approval of the settlement and for their attorney’s fees and
 8 costs.¹⁵ The court held a fairness hearing on May 28, 2020.

9
 10 **2. Settlement**

11 **2.1 Settlement Class**

12 There are 59 California class members and 303 Non-California opt-in eligible plaintiffs.¹⁶

13 The California Rule 23 class is as follows:

14 Individuals employed by Advantage Sales & Marketing LLC d/b/a Advantage
 15 Solutions as Customer Development Managers-Retail (“CDMR”) in California
 16 during any workweek between January 1, 2017 and December 31, 2018 and who
 were classified as exempt.¹⁷

17 The nationwide FLSA collective is as follows:

18 Individuals employed by Advantage Sales & Marketing LLC d/b/a Advantage
 19 Solutions as Customer Development Managers-Retail (“CDMR”) outside of
 20 California during any workweek between January 1, 2017 and December 31, 2018
 and who were classified as exempt, excluding, however, all California Class
 Members.¹⁸

21
 22 ¹¹ Stipulation and Order – ECF No. 29.

23 ¹² Minute Entry – ECF No. 37.

24 ¹³ Ho Decl. – ECF No. 42-1 at 4 (¶¶ 17–18); Settlement Agreement, Ex. A to *id.* at 19–45.

25 ¹⁴ Order – ECF No. 48.

26 ¹⁵ Mots. – ECF Nos. 51, 58.

27 ¹⁶ Longley Decl. – ECF No. 58-2 at 6 (¶ 16).

28 ¹⁷ Proposed Order – ECF No. 58-3 at 2; Settlement Agreement, Ex. A to Ho Decl. – ECF No. 42-1 at 21 (§ 1.3).

¹⁸ Proposed Order – ECF No. 58-3 at 2; Settlement Agreement, Ex. A to Ho Decl. – ECF No. 42-1 at 23 (§§ 1.13–1.14).

1 The settlement agreement specifies the following definitions for the class:

2 The “California Class” and “California Class Members” means all individuals who
3 are identified by Defendant as having worked as exempt Customer Development
4 Managers-Retail (“CDMR”) for Defendant in California during any workweek
5 between January 1, 2017 and December 31, 2018.

6 . . .

7 “Non-California Opt-in Eligible Plaintiffs” are the individuals identified by
8 Defendant as having worked as CDMRs in any state other than California during
9 any workweek between January 1, 2017 and December 31, 2018. Non-California
10 Opt-in Eligible Plaintiffs will receive a Notice of Collective Action Settlement and,
11 after, final approval of the settlement is granted, a check in the amount of their
12 Individual Payment Amount minus any payroll taxes withheld.

13 “Non-California Opt-in Plaintiffs” are all Non-California Opt-in Eligible Plaintiffs
14 who elect to opt in to this action pursuant to 29 U.S.C. § 216(b) by cashing their
15 settlement check, as set forth below.

16 “Participating Claimants” means all California Class Members who do not timely
17 request exclusion from California Class, and all Non-California Opt-in Plaintiffs.¹⁹

18 **2.2 Settlement Amount and Allocation**

19 The settlement fund is \$1,209,652.²⁰ In the settlement agreement, it was \$1,200,000, but 42
20 non-California CDMRs were inadvertently left off the mailing list, and Advantage funded an extra
21 \$9,652 that (with the reserve fund of \$20,000) covered payments to them.²¹ The \$1,209,652 is
22 allocated as follow: (1) \$749,950 (\$355,149 to the California class members and \$394,801 to the
23 Non-California opt-in eligible plaintiffs), with payments to individuals allocated pro rata based on
24 work weeks; (2) \$17,702 for administration costs; (3) \$10,000 for the PAGA claim (deducted
25 from the allocation to the California class members); (4) service awards to plaintiffs (\$10,000 to
26 Ms. Foster and \$3,000 each to Mr. Thimons and Ms. Schmidt); (5) \$400,000 for attorney’s fees;
27 and (6) \$16,000 in costs.²²

28 ¹⁹ Settlement Agreement, Ex. A to Ho Decl. – ECF No. 42-1 at 21–23 (§§ 1.3, 1.13–1.15).

²⁰ Ho Decl. – ECF No. 58-1 at 3 (¶ 10).

²¹ *Id.* (¶¶ 5–10); Settlement Agreement, Ex. A to Ho Decl. – ECF No. 42-1 at 30 (§ 2.7).

²² Ho Decl. – ECF No. 58-1 at 3–4 (¶ 11); Longley Decl. – ECF No. 58-2 at 7 (¶ 22).

1 For the “Individual Payment Amounts” allocated based on workweeks, the payments will be
2 allocated evenly (one-third each) to (1) wages (and Advantage will pay any employer payroll-tax
3 obligations separately, in addition to the settlement fund), (2) interest, and (3) non-wage income
4 (penalties, liquidated damages, and other non-wage recovery reported on an IRS Form 1099).²³

5 For the 59 California Class members, the highest estimated individual award is \$8,264.03, the
6 lowest award is \$612.99, and the median payment is \$7,696.44.²⁴ For the 303 Non-California opt-
7 in plaintiffs, the highest estimated individual award is \$2,253.70, the lowest award is \$3.10, and
8 the median payment is \$1,284.73.²⁵

9 Funds from opt-out class members or their uncashed checks will be given to *cy pres*
10 beneficiary Employee Rights Advocacy Institute for Law & Policy, a non-profit advocacy group
11 for employee rights.²⁶ If the non-California CMDRs do not cash their checks, they will not be
12 opting into the settlement, their claims will not be released, and Advantage will retain the funds.²⁷

13 **2.3 Release Provisions**

14 The release is limited to the claims that were brought or could have been brought based on the
15 facts alleged in the SAC.²⁸ The three named plaintiffs have a general release.²⁹

16 **2.4 Administration**

17 The court appointed Atticus Administration to send the class notice, update addresses
18 (including through skip traces on returned mail), and administer the settlement under the
19 procedures in the settlement agreement.³⁰ Atticus complied with these procedures. On December
20 23, 2019, it sent the class notice and statements of workweeks by first-class mail to the 320
21

22 ²³ Settlement Agreement, Ex. A to Ho Decl. – ECF No. 42-1 at 33 (§ 2.7(e)).

23 ²⁴ Longley Decl. – ECF No. 58-2 at 8 (¶ 25).

24 ²⁵ *Id.*

25 ²⁶ Settlement Agreement, Ex. A to Ho Decl. – ECF No. 42-1 at 34 (§ 2.7(g)).

26 ²⁷ Ho Decl. – ECF No. 42-1 at 4–5 (¶ 20).

27 ²⁸ Settlement Agreement, Ex. A to Ho Decl. – ECF No. 42-1 at 23–24 (§ 1.19), 39–40 (§ 4).

28 ²⁹ *Id.* at 32 (§ 2.7(d)).

³⁰ Order – ECF No. 48.

1 settlement class members that Advantage identified.³¹ The customized statements of workweeks
 2 had dates of employment and the estimated Individual Payment Amount.³² If notices were
 3 returned as undeliverable, Atticus updated the addresses (through skip-tracing if necessary) and
 4 resent the notices.³³ In the end, Atticus mailed the notices to 318 California Class Members and
 5 non-California opt-in eligible plaintiffs (99.38% of the settlement class).³⁴

6 In January 2020, four CDMRs contacted either plaintiff's counsel or Atticus and identified
 7 themselves as non-California opt-in eligible plaintiffs, and Atticus sent the notice packages to
 8 them in January 2020.³⁵ In February 2020, Advantage sent Atticus the data files for the 38
 9 additional non-California opt-in eligible plaintiffs, and Atticus sent notice packages to them on
 10 February 5, 2020.³⁶ Of the 42 additional notices, three were undeliverable, and no address updates
 11 were identified.³⁷

12 In sum, Atticus sent notices to 362 CDMRs: 59 California class members and 303 non-
 13 California opt-in eligible plaintiffs.³⁸ Of the 362 CDMRs, 357 (98.62%) received the notice
 14 packages.³⁹ No California class member objected or requested exclusion.⁴⁰

16 ANALYSIS

17 1. Jurisdiction

18 The court has federal-question jurisdiction under 28 U.S.C. § 1331 for the FLSA claim and
 19 supplemental jurisdiction under 28 U.S.C. § 1367 for the state-law claims.

21 ³¹ Longley Decl. – ECF No. 58-2 at 4 (¶¶ 7–8).

22 ³² *Id.* (¶ 9).

23 ³³ *Id.* at 5 (¶ 10).

24 ³⁴ *Id.*

25 ³⁵ *Id.* (¶ 11).

26 ³⁶ *Id.* (¶ 12).

27 ³⁷ *Id.* at 6 (¶ 15).

28 ³⁸ *Id.* (¶ 16).

³⁹ *Id.*

⁴⁰ *Id.* at 6 (¶ 18).

1 **2. Certification of Settlement Class**

2 The court determines whether the settlement classes meet the requirements for class
3 certification first under Rule 23 and then under the FLSA.

4 **2.1 Rule 23 Requirements**

5 The court reviews the propriety of class certification under Federal Rule of Civil Procedure
6 23(a) and (b). When parties enter into a settlement before the court certifies a class, the court
7 “must pay ‘undiluted, even heightened, attention’ to class certification requirements” because the
8 court will not have the opportunity to adjust the class based on information revealed at trial. *Staton*
9 *v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003) (quoting *Amchem Prods., Inc. v. Windsor*,
10 521 U.S. 591, 620 (1997)); *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir.
11 2019).

12 Class certification requires the following: (1) the class is so numerous that joinder of all
13 members individually is “impracticable;” (2) there are questions of law or fact common to the
14 class; (3) the claims or defenses of the class representatives are typical of the claims or defenses of
15 the class; and (4) the person representing the class will fairly and adequately protect the interests
16 of all class members. Fed. R. Civ. P. 23(a); *Staton*, 327 F.3d at 953. Also, the common questions
17 of law or fact must predominate over any questions affecting only individual class members, and
18 the class action must be superior to other available methods for fairly and efficiently adjudicating
19 the controversy. Fed. R. Civ. P. 23(b)(3). All claims arise from the defendant’s uniform practices,
20 and thus liability can be determined on a class-wide basis. *Betorina v. Ranstad US, L.P.*, No. 15-
21 cv-03646-EMC, 2017 WL 1278758, at *5 (N.D. Cal. Apr. 6, 2017).

22 The court finds (for settlement purposes only) that the proposed settlement classes meet the
23 Rule 23(a) prerequisites of numerosity, commonality, typicality, and adequacy. Also, under Rule
24 23(b)(3) (and for settlement purposes only), common questions predominate over any questions
25 affecting only individual members, and a class action is superior to other available methods.

1 First, there are 59 California Class Members.⁴¹ The class is numerous. *Nelson v. Avon Prods.,*
2 *Inc.*, No. 13-cv-02276-BLF, 2015 WL 1778326, at *5 (N.D. Cal. April 17, 2015) (“Courts have
3 repeatedly held that classes comprised of ‘more than forty’ members presumptively satisfy the
4 numerosity requirement”) (internal citations omitted).

5 Second, there are questions of law and fact common to the class that predominate over any
6 individual issues. Common fact questions are that Advantage classified all CDMRs as exempt
7 during the class period, the CDMRs had the same job duties, Advantage sent them schedules with
8 no-meal-and-rest periods on the schedules, and they all had arbitration agreements. Common law
9 questions include whether the arbitration agreements are valid and whether the CDMRs qualify for
10 any of the exemptions under California law or the FLSA. The claims depend on common
11 contentions that — true or false — will resolve issues central to the validity of the claims. *Cf. Wal-*
12 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *Betorina*, 2017 WL 1278758 at *4.

13 Third, the claims of the representative parties are typical of the claims of the class. The
14 representative parties and all class members allege wage-and-hours violations based on similar
15 facts. All representatives possess the same interest and suffer from the same injury. *Cf. Betorina*,
16 2017 WL 1278758 at *4.

17 Fourth, the representative parties fairly and adequately protect the interests of the class. The
18 factors relevant to a determination of adequacy are (1) the absence of potential conflict between
19 the named plaintiff and the class members, and (2) counsel chosen by the representative party who
20 is qualified, experienced, and able to vigorously conduct the litigation. *In re Hyundai & Kia*, 926
21 F.3d at 566 (citing *Hanlon v. Chrysler Crop.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). The factors
22 exist here: the named plaintiffs have shared claims and interests with the class (and no conflicts of
23 interest), and they retained qualified and competent counsel who have prosecuted the case
24 vigorously. *Cf. id.*; *Local Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*,
25 244 F.3d 1152, 1162 (9th Cir. 2001); *Hanlon*, 150 F.3d at 1021–22.

26
27
28 ⁴¹ *Id.* at 6 (¶ 16).

1 Finally, a class action is superior to other available methods for fairly and efficiently
2 adjudicating the controversy.

3 In sum, the prerequisites of Fed. R. Civ. P. 23(a) and (b)(3) are met. The court conditionally
4 certifies the class under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only.

5 **2.2 FLSA Class**

6 The FLSA authorizes “opt-in” representative actions where the complaining parties are
7 “similarly situated” to other employees. 29 U.S.C. § 216(b); *see generally* *Tyson Foods, Inc. v.*
8 *Bouaphakeo*, 136 S. Ct. 1036, 1042 (2016). Here, all class representatives worked as CDMRs
9 during the class period, and their wage-and-hour claims — and related issues such as the validity
10 of the arbitration agreements — present common fact and law questions. The court certifies the
11 FLSA class for settlement purposes only.

13 **3. Approval of Settlement**

14 Settlement is a strongly favored method for resolving disputes, particularly “where complex
15 class action litigation is concerned.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th
16 Cir. 1992); *see, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). A court may
17 approve a proposed class-action settlement only “after a hearing and on finding that it is fair,
18 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The court need not ask whether the proposed
19 settlement is ideal or the best possible; it determines only whether the settlement is fair, free of
20 collusion, and consistent with the named plaintiffs’ fiduciary obligations to the class. *See Hanlon*,
21 150 F.3d at 1027 (9th Cir. 1998). In *Hanlon*, the Ninth Circuit identified factors relevant to
22 assessing a settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk, expense,
23 complexity, and likely duration of further litigation; (3) the risk of maintaining class-action status
24 throughout trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
25 the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a
26 government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at
27 1026 (citation omitted).

1 When parties “negotiate a settlement agreement before the class has been certified, “settlement
 2 approval ‘requires a higher standard of fairness’ and ‘a more probing inquiry than may normally
 3 be required under Rule 23(e).” *Roes, 1–2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir.
 4 2019) (quoting *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012)). “Specifically, ‘such
 5 settlement agreements must withstand an even higher level of scrutiny for evidence of collusion or
 6 other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court’s
 7 approval as fair.’” *Id.* at 1049 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,
 8 946 (9th Cir. 2011)).

9 The court has evaluated the proposed settlement agreement for overall fairness under the
 10 *Hanlon* factors and concludes that it is free of collusion and approval is appropriate.

11 First, as the plaintiffs point out, the settlement provides good value and is fair, and they collect
 12 cases in this district where courts have approved settlements at comparable or lower rates
 13 compared to the maximum recoverable at trial.⁴² *See, e.g., Stovall-Gusman v. W.W. Granger, Inc.*,
 14 No. 13-cv-02540-HSG, 2015 WL 3776765, at *4–5 (N.D. Cal. June 17, 2015) (approving a final
 15 settlement representing 7.3% of the plaintiffs’ estimated trial award in wage-and-hour class
 16 action); *Balderas v. Massage Envy Franchising, LLC*, No. 12-cv-06327-NC, 2014 WL 3610945,
 17 at *5 (N.D. Cal. July 21, 2014) (granting preliminary approval of gross settlement representing 8%
 18 of the maximum recovery and net settlement representing 5% of the maximum recovery), *final*
 19 *approval*, 12-cv-06327-NC – ECF No. 78 (N.D. Cal. Mar. 15, 2015); *Nelson v. Avon Prods., Inc.*,
 20 No. 13-cv-02276-BLF, 2017 WL 733145, at *2–4 (N.D. Cal. Feb. 24, 2017) (approving settlement
 21 amount of \$1,800,000, representing 12 to 24% of recovery rate, for 289 class members alleging
 22 claims for misclassification as exempt from overtime wages).

23 Second, a related point is that the value is significant compared to litigation risks and
 24 certainties. The plaintiffs identify the risks: (1) class certification could require individual

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 26 ⁴² Mot. – ECF No. 58 at 18–19; Ho Decl. – ECF No. 42-1 at 10–11 (¶¶ 47–50) (estimating a maximum
 27 exposure of \$4,112,633 for the California Class with PAGA damages and a maximum exposure of
 28 \$8,472,812 for the FLSA Collective (but discounting it to \$4,236,406 given the potential fluctuating-
 workweek application for the FLSA overtime claim).

1 assessment of the CDMRs’ duties and whether they were exempt from federal and state overtime
 2 laws; (2) the merits of Advantage’s motion to compel individual arbitration; (3) uncertainties
 3 about the amounts of overtime; and (4) the relative short liability period.⁴³ In particular, if
 4 Advantage prevailed on a motion to compel arbitration, a “large portion of the class would be
 5 excluded from a class or collective action.”⁴⁴ *Cf. In re Uber FCRA Litig.*, No. 14-cv-05200-EMC,
 6 2017 WL 2806698, at *6 (N.D. Cal. June 29, 2017) (“[S]ome 40% of the class members are
 7 subject to arbitration . . . [thus] a large portion of the class would be excluded from this litigation,
 8 and would be forced to arbitrate their claims individually. Given the small amount of potential
 9 recovery per individual, there is strong likelihood that few would pursue individual arbitration.
 10 This fact alone accounts for a significant discount on the potential recovery”). Moreover,
 11 settlement allows payment to the CDMRs now, while litigation would be costly and protracted,
 12 possibly through an appeal.⁴⁵

13 Third, a class action allows class members — who otherwise would not pursue their claims
 14 individually because costs would exceed recoveries — to obtain relief.

15 Finally, the settlement is the product of serious, non-collusive, arm’s-length negotiations,
 16 reached the agreement after a settlement conference with Judge Westmore.⁴⁶

17 In sum, the court finds that viewed as a whole, the proposed settlement is sufficiently fair,
 18 adequate, and reasonable. Fed. R. Civ. P. 23(e)(2). The court approves the settlement.

19 For the same reasons, the court approves the settlement of the FLSA collective action.

24 ⁴³ *Id.* at 16–18; Ho Decl. – ECF No. 42-1 at 7 (¶ 29) (“Advantage claims the arbitration agreements are
 25 enforceable . . . and that 57 of the 59 California Class Members and 253 of the 261 Non-California
 26 Opt-in Eligible Plaintiffs are covered by the agreements”).

26 ⁴⁴ Mot. – ECF No. 58 at 18.

27 ⁴⁵ *Id.* at 17.

28 ⁴⁶ Minute Entry – ECF No. 37.

1 **4. Class Representative, Class Counsel, and Claims Administrator**

2 The court confirms its appointment of Ms. Foster as the class representative.⁴⁷ She has claims
3 that are typical of members of the class generally, and she is an adequate representative of the
4 other members of the proposed classes.

5 The court confirms its appointment of Laura Ho and Byron Goldstein of Goldstein, Borgen,
6 Dardarian & Ho LLP and Andrew Horowitz of Obermayer Rebmann Maxwell & Hoppel, LLP as
7 class counsel for settlement purposes only. *See* Fed. R. Civ. P. 23(a) & (g)(1). They have the
8 requisite qualifications, experience, and expertise in prosecuting class actions.

9 The court approves Atticus’s expenses of \$17,702.

10
11 **5. Class Notice**

12 The class administrator provided notice to the members of the class in the form that the court
13 approved previously. The notice met all legal prerequisites: it was the best notice practicable,
14 satisfied the notice requirements of Rule 23, adequately advised class members of their rights
15 under the settlement agreement, met the requirements of due process, and complied with the
16 court’s order regarding court notice.⁴⁸ The form of notice fairly, plainly, accurately, and
17 reasonably provided class members with all required information, including (among other things):
18 (1) a summary of the lawsuit and claims asserted; (2) a clear definition of the class; (3) a
19 description of the material terms of the settlement, including the estimated payment; (4) a
20 disclosure of the release of the claims; (5) an explanation of class members’ opt-out rights, a date
21 by which they must opt out, and information about how to do so; (6) the date and location of the
22 final fairness hearing (including how to check if the date of the hearing changes); and (7) the
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26 _____
27 ⁴⁷ Order – ECF No. 48 at 11.

28 ⁴⁸ *Id.* at 11–12.

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identity of class counsel and the provisions for attorney’s fees, costs, and class-representative service awards.⁴⁹

6. CAFA and PAGA Notices

On February 27, 2020, the plaintiffs provided notice of the settlement and other information showing compliance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to the appropriate federal and state officials.⁵⁰ The court’s final approval hearing is more than 90 days after service as required by 28 U.S.C. § 1715. The plaintiff also provided notice of the settlement of PAGA penalties to the California Labor and Workforce Development Agency.⁵¹

7. Attorney’s Fees and Costs

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The court approves \$400,000 in attorney’s fees and \$16,000 in costs.⁵²

Fee provisions in class-action settlements must be reasonable. *In re Bluetooth.*, 654 F.3d at 941. The court is not bound by the parties’ settlement agreement as to the amount of fees. *Id.* at 942–43. The court must review fee awards with special rigor:

Because in common fund cases the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage, courts have stressed that when awarding attorneys’ fees from a common fund, the district court must assume the role of fiduciary for the class plaintiffs. Accordingly, fee applications must be closely scrutinized. Rubber-stamp approval, even in the absence of objections, is improper.

Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1052 (9th Cir. 2002) (quotation omitted).

When counsel recovers a common fund that confers a “substantial benefit” on a class of

⁴⁹As part of the notice, class members and eligible plaintiffs received their estimated settlement amounts based on customized statements of weeks worked. Longley Decl. – ECF No. 58-2 at 4 (¶¶ 8–9); Notice Packets, Ex. B to *id.* at 13–31; Additional Notice, Ex. C to *id.* at 33–40.

⁵⁰ Ho Decl. – ECF No. 58-1 at 4 (¶ 13); Longley Decl. – ECF No. 58-2 at 3 (¶ 5); CAFA Notice, Ex. A to *id.* at 11–12.

⁵¹ Ho Decl. – ECF No. 58-1 at 4 (¶ 12).

⁵² Mot. – ECF No. 58 at 25; Fees Mot. – ECF No. 51 at 7.

1 beneficiaries, counsel is “entitled to recover their attorney’s fees from the fund.” *Fischel v.*
 2 *Equitable Life Assurance Soc’y*, 307 F.3d 997, 1006 (9th Cir. 2002). In common-fund cases, courts
 3 may calculate a fee award under either the “lodestar” or “percentage of the fund” method. *Id.*;
 4 *Hanlon*, 150 F.3d at 1029.

5 Where the settlement involves a common fund, courts typically award attorney’s fees based on
 6 a percentage of the settlement fund. The Ninth Circuit has established a “benchmark” that fees
 7 should equal 25% of the settlement, although courts diverge from the benchmark based on factors
 8 that include “the results obtained, risk undertaken by counsel, complexity of the issues, length of
 9 the professional relationship, the market rate, and awards in similar cases.” *Morales v. Stevco, Inc.*,
 10 No. CIV-F-09-0704-AWI-JLT, 2013 WL 1222058, *2 (E.D. Cal. Mar. 25, 2013); *see also Morris v.*
 11 *Lifescan, Inc.*, 54 F. App’x 663, 664 (9th Cir. 2003) (affirming 33% fee award); *In re Pac. Enter.*
 12 *Secs. Litig.*, 47 F.3d at 379; *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311
 13 (9th Cir. 1990).

14 When determining the value of a settlement, courts consider the monetary and non-monetary
 15 benefits that the settlement confers. *See, e.g., Staton*, 327 F.3d at 972–74; *Pokorny v. Quixtar, Inc.*,
 16 No. C-07-0201-SC, 2013 WL 3790896, *1 (N.D. Cal. July 18, 2013) (“The court may properly
 17 consider the value of injunctive relief obtained as a result of settlement in determining the
 18 appropriate fee.”); *In re Netflix Privacy Litig.*, No. 5:11-CV-0379-EJD, 2013 WL 1120801, *7
 19 (N.D. Cal. Mar. 18, 2013) (settlement value “includes the size of the cash distribution, the *cy pres*
 20 method of distribution, and the injunctive relief”).

21 Finally, Ninth Circuit precedent requires courts to award class counsel fees based on the total
 22 benefits being made available to class members rather than the actual amount that is ultimately
 23 claimed. *Young v. Polo Retail, LLC*, No. C-02-4547-VRW, 2007 WL 951821, *8 (N.D. Cal. Mar.
 24 28, 2007) (citing *Williams v. MGM-Pathé Commc’ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (“district
 25 court abused its discretion in basing attorney fee award on actual distribution to class” instead of
 26 amount being made available)).

27 If the court applies the percentage method, it then typically calculates the lodestar as a “cross-
 28 check to assess the reasonableness of the percentage award.” *See, e.g., Weeks v. Kellogg Co.*, No.

1 CV-09-8102-MMM-RZx, 2013 WL 6531177, *25 (C.D. Cal. Nov. 23, 2013); *see also Serrano v.*
 2 *Priest*, 20 Cal. 3d 25, 48–49 (1977); *Fed-Mart Corp. v. Pell Enters., Inc.*, 111 Cal. App. 3d 215,
 3 226–27 (1980).⁵³ “The lodestar . . . is produced by multiplying the number of hours reasonably
 4 expended by counsel by a reasonable hourly rate.” *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th
 5 19, 26 (2000). Once the court has fixed the lodestar, it may increase or decrease that amount by
 6 applying a positive or negative “multiplier to take into account a variety of other factors, including
 7 the quality of the representation, the novelty and complexity of the issues, the results obtained, and
 8 the contingent risk presented.” *Id.*

9 Based on counsel’s submissions, the court finds that the requested fees are appropriate as a
 10 percentage of the common fund, supported by a lodestar cross-check (with counsel’s suggested
 11 multiplier). First, the settlement achieved significant relief, including a non-reversionary payment
 12 to the class members, Advantage’s separate payment of payroll taxes, and (shortly after the lawsuit
 13 was filed), Advantage’s reclassification of CDMRs from exempt to non-exempt.⁵⁴ No class
 14 member objected to the settlement or opted out, which supports the conclusion of reasonableness.
 15 Second, class counsel assumed significant litigation risk and litigated the case efficiently on a
 16 contingency basis, achieving a settlement in a year.⁵⁵ *Cf. Burden v. SelectQuote Ins. Servs.*, No.
 17 10-cv-05966-LB, 2013 WL 3988771, at *5 (N.D. Cal. Aug. 2, 2013) (adjusting the benchmark
 18 25% to 33% for these reasons); *see also In re Volkswagen ‘Clean Diesel’ Mktg., Sales Practices,*
 19 *& Prod. Liab. Litig.*, MDL No. 2672 CRB (JSC), 2017 WL 1352859, at *6 (N.D. Cal. April 12,
 20 2017) (“Class counsel, however, ‘should not be ‘punished’ for efficiently litigating [the] action . . .
 21 [a] positive multiplier rewards [] Class Counsel for its efforts in achieving swift settlement”).

22 Also, this is a smaller case, and courts award fees above the 25% benchmark, particularly when
 23 the benchmark would undercompensate counsel. *See, e.g., Cicero v. DirecTV, Inc.*, No. EDCV 07-

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 26 ⁵³ Longley Decl. – ECF No. 58-2 at 6 (¶ 18).

27 ⁵⁴ *Id.* at 8 (¶ 25); Ho Decl. – ECF No. 51-1 at 3 (¶ 7).

28 ⁵⁵ Ho Decl. – ECF No. 51-1 at 3–4 (¶¶ 8–9).

1 1182, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) (collecting cases); *Burden*, 2013 WL
 2 3988771 at *5.⁵⁶

3 The lodestar cross-check supports this conclusion. The billing rates are normal and customary
 4 (and thus reasonable) for lawyers of comparable experience doing similar work.⁵⁷ *See Cuvillo v.*
 5 *Feld Entm't, Inc.*, No. 13-cv-04951-BLF, 2015 WL 154197, at *2–3 (N.D. Cal. Jan. 12, 2015)
 6 (“court has broad discretion in setting the reasonable hourly rates used in the lodestar calculation”)
 7 (citation omitted); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (court can rely on its own
 8 experience); *accord Open Source Sec. v. Perens*, 803 F. App’x 73, 77 (9th Cir. 2020). Counsel
 9 provided billing records justifying the hours worked in the case and allowing a conclusion about
 10 the multiplier.⁵⁸ The lodestar is more than the 25-percent benchmark.⁵⁹ The court applies the
 11 multiplier (based on the quality of the representation, the complexity and risk, the amounts at stake
 12 in the litigation, the efficiency of the litigation, and the result obtained) and awards 400,000 (33%
 13 of the common fund).⁶⁰

14 The court also awards the reasonable out-of-pocket costs of up to \$16,000. Fed. R. Civ. P.
 15 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (attorneys may recover reasonable
 16 expenses that would typically be billed to paying clients in non-contingency matters); *Van*
 17 *Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving reasonable costs
 18 in class action settlement). Costs compensable under Rule 23(h) include “nontaxable costs that are
 19 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Costs were \$15,106.38 on
 20 May 7, 2020.⁶¹ Counsel estimates that total costs will be \$16,000 (less than the maximum \$20,000
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24 ⁵⁶ *See* Mot. – ECF No. 51 at 9 (collecting cases).

25 ⁵⁷ Ho Decl. – ECF No. 51-1 at 5–7 (¶ 15); Fox Decl. – ECF No. 51-2 at 2–3 (¶¶ 6–8).

26 ⁵⁸ Ho Decl. – ECF No. 51-1 at 8–12 (¶¶ 18–31); Fox Decl. – ECF No. 51-2 at 3–4 (¶¶ 9–15).

27 ⁵⁹ Ho Decl. – ECF No. 58-1 at 5 (¶ 18).

28 ⁶⁰ *See also* Proposed Order – ECF No. 58-3 at 6 (collecting cases).

⁶¹ Ho Decl. – ECF No. 58-1 at 6 (¶ 20).

1 in the settlement agreement), and any excess costs will be redistributed to class and collective-
 2 action members.⁶² The court approves costs of up to \$16,000.

3 4 **8. Service Awards**

5 The settlement proposes service awards of \$10,000 to Ms. Foster and \$3,000 each to Mr.
 6 Thimons and Ms. Schmidt. The court reduces Ms. Foster’s award to \$6,000 and awards \$2,000
 7 each to Mr. Thimons and Ms. Schmidt.

8 District courts must evaluate proposed awards individually, using relevant factors that include
 9 “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class
 10 has benefitted from those actions, ... [and] the amount of time and effort the plaintiff expended in
 11 pursuing the litigation.” *Staton*, 327 F.3d at 977. “Such awards are discretionary . . . and are
 12 intended to compensate class representatives for work done on behalf of the class, to make up for
 13 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
 14 willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d
 15 948, 958–59 (9th Cir. 2009) (citation omitted). The Ninth Circuit has “noted that in some cases
 16 incentive awards may be proper but [has] cautioned that awarding them should not become routine
 17 practice.” *Radcliffe v. Experian Info. Sols.*, 715 F.3d 1157, 1163 (9th Cir. 2013) (discussing
 18 *Staton*, 327 F.3d at 975–78). Also, district courts “must be vigilant in scrutinizing all incentive
 19 awards to determine whether they destroy the adequacy of the class representatives.” *Id.* at 1164.
 20 In this district, a \$5,000 incentive award is “presumptively reasonable.” *Bellinghausen v. Tractor*
 21 *Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015) (collecting cases).

22 Ms. Foster’s request of \$10,000 is double the presumptively reasonable award of \$5,000. Her
 23 efforts in this case include gathering documents, explaining her work to her attorneys, reviewing
 24 Advantage’s motion to compel arbitration, helping draft her declaration to oppose the motion, and
 25 participating in the settlement conference.⁶³ She played a “critical role” in developing the facts and

26 _____
 27 ⁶² *Id.*

28 ⁶³ Foster Decl. – ECF No. 42-3 at 2–3 (¶¶ 4–8).

1 representing the class in settlement discussions, and she assumed the risk of being perceived as a
2 “trouble-maker,” possibly affecting her future employment in her industry.⁶⁴ In total, she spent
3 28.5 hours prosecuting the case.⁶⁵

4 The plaintiffs’ cases show that the proposed award is high, considering the hours Ms. Foster
5 spent (in the context of the discovery landscape). *Cf. Harris v. Vector Mktg. Corp.*, No. 08-cv-
6 5198-EMC, 2012 WL 381202, at *7–8 (N.D. Cal. Feb. 6, 2012) (awarding \$12,500 where the
7 plaintiff spent “more than 100 hours on this case (which included being deposed twice)” and the
8 defendant “pursued disclosure of her private information”); *Dyer v. Wells Fargo Bank, N.A.*, 303
9 F.R.D. 326, 335–36 (awarding \$10,000 where the plaintiff was deposed, attended a four-day
10 mediation (which required her to travel and miss work), and spent “more than 200 hours assisting
11 in the case”); *Bellinghausen.*, 306 F.R.D. at 267–68 (awarding \$15,000 where the plaintiff spent
12 73 hours on the case, attended mediation, and was rejected by potential employers because of his
13 status as class representative); *Browner v. Bank of Am. Nat’l Ass’n*, No. 14-cv-02702-LB, 2016
14 WL 161295, at *6 (N.D. Cal. Jan. 14, 2016) (approving \$15,000 where the plaintiff spent between
15 80 to 100 hours in the case). Still, the plaintiffs observe, the proposed award is not
16 disproportionate compared to the net recoveries (a median recovery for the California Class and
17 the non-California opt-in eligible plaintiffs of \$7,696.44 and \$1,284, respectively).⁶⁶ *Cf. Bolton v.*
18 *U.S. Nursing Corp.*, No. 12-cv-4466-LB, 2013 WL 5700403, at *6 (N.D. Cal. Oct. 18, 2013).

19 Given the hours spent, the recoveries here, and the points of reference from other cases, the
20 court allows \$6,000 for Ms. Foster and \$2,000 each for Mr. Thimons and Ms. Schmidt. Mr.
21 Thimons spent a total of ten hours in this case, including discussing his work as a CDMR with
22 plaintiff’s counsel, gathering relevant documents, and making himself available for the settlement
23 conference.⁶⁷ Ms. Schmidt spent about nine hours total in similar fact-gathering and settlement
24

25 ⁶⁴ Ho Decl. – ECF No. 58-1 at 4 (¶ 14); Foster Decl. – ECF No. 42-3 at 4 (¶ 12).

26 ⁶⁵ Foster Decl. – ECF No. 42-3 at 3 (¶ 9)

27 ⁶⁶ Longley Decl. – ECF No. 58-2 at 8 (¶ 25).

28 ⁶⁷ Thimons Decl. – ECF No. 42-4 at 2 (¶¶ 2, 4), at 3 (¶ 7).

1 efforts.⁶⁸ Their awards are below the presumptively reasonable amount in this district. *Cf.*
 2 *Bellinghausen*, 306 F.R.D. at 266. Ms. Foster’s \$6,000 is about three times their awards, and the
 3 court finds this the reasonable service award for her based on the relative hours and the case.

4
 5 **9. *Cy Pres* Award**

6 If there is a *cy pres* distribution to the beneficiary Employee Rights Advocacy Institute for
 7 Law & Policy, it accounts for and has a substantial nexus to the nature of the lawsuit, the
 8 objectives of the statutes, and the interest of the silent class members. *See Lane v. Facebook, Inc.*,
 9 696 F.3d 811, 818–22 (9th Cir. 2012); *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038–41 (9th Cir.
 10 2011).

11
 12 **10. Release of Claims⁶⁹**

13 As of the date the judgment becomes final (meaning that the time for appeal has expired with
 14 no appeal taken, all appeals are resolved, and none are left pending, or this judgment is affirmed in
 15 all material respects after completion of the appellate process), the named plaintiffs, California
 16 class members, and non-California plaintiffs who opt in by cashing their checks are barred from
 17 bringing or presenting any action or proceeding against any Released Parties that involves or
 18 asserts any of the Released Claims (as those terms are defined in the Settlement Agreement).

19
 20 **11. Post-Distribution Accounting**

21 Within 21 days after the distribution of the settlement funds and payment of attorney’s fees,
 22 the parties must file a post-distribution accounting, which provides the following information:

23 The total settlement fund, the total number of class members, the total number of class
 24 members to whom notice was sent and not returned as undeliverable, the number and
 25 percentage of claim forms submitted, the number and percentage of opt-outs, the number
 26 and percentage of objections, the average and median recovery per claimant, the largest
 and smallest amounts paid to class members, the methods of notice and the methods of

27 ⁶⁸ Schmidt Decl. – ECF No. 42-5 at 2–3 (¶¶ 2, 4–8).

28 ⁶⁹ The remaining provisions in this order are taken from the proposed order’s identification of relevant provisions from the settlement agreement. Proposed Order – ECF No. 58-3 at 8–9.

United States District Court
Northern District of California

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payment to class members, the number and value of checks not cashed, the amounts distributed to each *cy pres* recipient, the administrative costs, the attorney’s fees and costs, the attorneys’ fees in terms of percentage of the settlement fund, and the multiplier, if any.

Within 21 days after the distribution of the settlement funds and award of attorney’s fees, the parties must post the post-distribution accounting, including the easy-to-read chart, on the settlement website. The court may hold a hearing following submission of the parties’ post-distribution accounting.

12. Non-Admission

This order and the Settlement Agreement are not evidence of, or an admission or concession on the part of, the Released Parties with respect to any claim of any fault, liability, wrongdoing, or damages.

13. Order for Settlement Purposes

The findings and rulings in this order are made for the purposes of settlement only and may not be cited or otherwise used to support the certification of any contested class or subclass in any other action.

14. Use of Agreement and Ancillary Terms

The Settlement Agreement and any documents, actions, statements, or filings in furtherance of settlement (including matters associated with the mediation) are not admissible and cannot be offered into evidence in any action related or similar to this one for the purposes of establishing, supporting, or defending against any claims that were raised or could have been raised in this action or are similar to such claims.

CONCLUSION

The court (1) certifies the class and the FLSA collective for settlement purposes only, (2) approves the settlement and authorizes the distribution of funds (as set forth in this order), (3) appoints the class representative and class counsel, (4) approves \$400,000 in attorney’s fees, up to

1 \$16,000 in costs, \$17,702 for Atticus’s administration costs, and service awards of \$6,000 to Ms.
2 Foster and \$2,000 each to Mr. Thimons and Ms. Schmidt, (5) orders the post-distribution
3 accounting, and (6) orders the parties and Atticus to carry out their obligations in the settlement
4 agreement.

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6 **IT IS SO ORDERED.**

7 Dated: May 28, 2020



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9 LAUREL BEELER
United States Magistrate Judge

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United States District Court
Northern District of California

Exhibit 5

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

HECTOR GARCIA, ROBERT CAHIGAL,
BRIAN HOLLIDAY, and TINA DIEMER,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

PPG INDUSTRIES, INC.,

Defendant.

Case No. 3:15-cv-00319-WHO

**ORDER APPROVING SETTLEMENT OF
CLAIMS OF FLSA CLASS MEMBERS
AND CALIFORNIA RULE 23 CLASS
MEMBERS**

Before the Court is the Plaintiffs’ Motion for an Order (1) granting final approval to the settlement of FLSA claims as set forth in the Settlement Agreement (“Agreement”) between the parties in the above-captioned matter; (2) granting final approval to the California Rule 23 class action settlement described in the Agreement; (3) granting approval of payment to the claims administrator; and (4) dismissing the Civil Action with prejudice in accordance with the terms of the Agreement. Also before the Court is Plaintiffs’ unopposed motion for an Order approving Plaintiffs’ application for attorney’s fees and costs and approving Plaintiffs’ application for enhancement payments as provided for in the Agreement.

The Court preliminarily approved the Agreement in this action by order entered on March 23, 2016 (the “Preliminary Approval Order”).

On July 20, 2016, the Court conducted a hearing (the “Fairness Hearing”) to consider final approval of the Agreement. The Court has considered all matters submitted to it at the Fairness Hearing and otherwise, the pleadings on file, the applicable law, and the record.

1 For good cause shown, and as more fully explained below, the Motions are GRANTED. The
2 Court ORDERS as follows:

3 1. **Final Certification of the Settlement Classes.** The FLSA Class is comprised of the
4 Named Plaintiffs and those other individuals who filed (and did not withdraw) written consents to
5 join this action pursuant to 29 U.S.C. § 216(b). The members of the FLSA Class are identified in the
6 Agreement in **Exhibits A-1** and the Individuals that executed written consents to join this action
7 pursuant to 29 U.S.C. § 216(b) are set forth in **Exhibit A to the Motion For Final Approval**. The
8 Court finds that the FLSA Settlement Class satisfies the requirements to be maintainable as a
9 collective action under 29 U.S.C. § 216(b). The Court finally certifies that class for purposes of
10 settlement of this action only.

11 The California Rule 23 Class is comprised of the foregoing:

12 Individuals employed by PPG Industries, Inc. and/or any subsidiary
13 (including PPG Architectural Finishes, Inc.) and/or any predecessor
14 (including Akzo Nobel Paints LLC) in California during the period of
15 January 22, 2011, through September 15, 2015, and who were
16 classified as non-exempt, excluding, however, all Opt-in Plaintiffs and
17 FLSA Class Members.

18 The Covered California Rule 23 Class Members are described in the Agreement and identified by
19 name in **Exhibit B** of the Agreement. The Court finds that the Covered California Rule 23 Class, as
20 defined in the Agreement, meets the requirements of Rule 23(a) and Rule 23(b)(3) of the Federal
21 Rules of Civil Procedure. Accordingly, for the purposes of settlement, the Court certifies the
22 California Rule 23 Class.

23 2. **Class Representatives.** For purposes of settlement, the Court appoints as Class
24 Representatives for the California Rule 23 Class Plaintiffs, Hector Garcia, Robert Cahigal, and Tina
25 Diemer.

26 3. **Class Counsel.** For purposes of settlement, the Court appoints as Class Counsel for
27 the California Rule 23 Class Laura L. Ho, Byron Goldstein, William C. Jhaveri-Weeks, of the law
28 firm of Goldstein, Borgen, Dardarian & Ho (300 Lakeside Drive, Suite 1000, Oakland, CA 94612)

1 and Bruce Fox and Andrew Horowitz of the law firm of Obermayer Rebmann Maxwell and Hippel
2 LLP (BNY Mellon Center 500 Grant Street Suite 5240 Pittsburgh, PA 15219).

3 4. **Approval of the Agreement.** The Court approves the Agreement and finds that it is a
4 reasonable compromise of the claims of the Plaintiffs, the FLSA Class and the California Rule 23
5 Class, reached by the Parties after exchange of sufficient information to assess the merits and value
6 of the claims and intensive arms-length negotiations with the assistance of an experienced mediator.

7 The Agreement is fair, just, reasonable and adequate to, and in the best interest of, the FLSA
8 Class and California Rule 23 Class. It achieves a definite and certain result for the benefit of the
9 FLSA Class and California Rule 23 Class that is preferable to continuing litigation in which the
10 FLSA Class and California Rule 23 Class would necessarily confront substantial risk, uncertainty,
11 delay, and cost. The Court also finds that the settlement terms negotiated by the parties and
12 described in their Agreement are a fair and reasonable resolution of a *bona fide* dispute between the
13 Plaintiffs, FLSA Class Members and California Rule 23 Class Members, and the Defendant.

14 This Order constitutes final approval of the Agreement. The Agreement is binding on the
15 parties to it and on all members of the FLSA Class and California Rule 23 Class in accordance with
16 the terms of the Agreement, excepting only those individuals, if any, who effectively excluded
17 themselves from the California Rule 23 Class in accordance with the terms of the Agreement.

18 5. **Notice to the FLSA and California Rule 23 Classes.** The Court determines that the
19 Notice Materials were given as required by the Preliminary Approval Order. The Court finds that the
20 notice given of the proposed settlement was the best practical notice under the circumstances and
21 provided all members of the FLSA and Covered California Rule 23 Classes with fair and adequate
22 notice of the terms of the settlement, the Fairness Hearing, and the opportunity to join, object to
23 and/or exclude themselves from the settlement. The Court finds the Notice Materials satisfied the
24 requirements of Rule 23 of the Federal Rules of Civil Procedure.

25 6. **Attorneys' Fees and Litigation Expenses.** The Court approves Class Counsel's
26 requested fee award of \$166,665.97. The Court finds this fee award is justified. The Court finds
27 that the Expenses Payment requested in plaintiffs' unopposed motion is reasonable and that Class
28 Counsel shall be awarded the requested amount for litigation expenses actually incurred in the

1 prosecution of this litigation, which is \$4,363. The Claims Administrator shall be awarded up to
2 \$28,500 for its reasonable fees and expenses incurred in the administration of the settlement.

3 7. **Enhancement Payments.** The Enhancement Payments to the Named Plaintiffs as set
4 forth in the Agreement are approved for their substantial services for the benefit of the settlement
5 classes.

6 8. **Administering the Settlement of Claims.** The Parties shall administer the
7 settlement as set forth in the Agreement.

8 9. **Release of Claims.** As of the date this judgment becomes final (meaning that the time
9 for appeal has expired with no appeal taken, all appeals are resolved and none are left pending, or
10 this judgment is affirmed in all material respects after completion of the appellate process), the
11 Named Plaintiffs, FLSA Class Members and Covered California Rule 23 Class Members (excepting
12 two people, John Baba and Terresa Castañeda, who timely requested exclusion in accordance with
13 the Preliminary Approval Order), are forever barred from bringing any Released Claims against any
14 Released Party (as those terms are defined in the Agreement).

15 10. **Dismissal with Prejudice.** All claims in this action are DISMISSED WITH
16 PREJUDICE and, except as provided herein, without costs against Defendant.

17 11. **Dispute Resolution.** Without affecting the finality of this judgment, the Court
18 reserves jurisdiction over the implementation, administration, and enforcement of this judgment and
19 the Agreement and all matters ancillary to the same.

20 12. **Non-Admission.** This Order and the Agreement are not evidence of, or an admission
21 or concession on the part of, the Released Parties with respect to any claim of any fault, liability,
22 wrongdoing, or damages whatsoever.


23 13. **Order for Settlement Purposes.** The findings and rulings in this Order are made for
24 the purposes of settlement only and may not be cited or otherwise used to support the certification of
25 any contested class or subclass in any other action.

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1 14. **Use of Agreement and Ancillary Terms.** Neither the Agreement nor any ancillary
2 documents, actions, statements, or filings in furtherance of settlement (including matters associated
3 with the mediation) will be admissible or offered into evidence in any action related or similar to this
4 one for the purposes of establishing, supporting or defending against any claims that were raised or
5 could have been raised in this action or are similar to such claims.

6 **So ordered.**

7 Date: July 22, 2016
8 San Francisco, California



9 Hon. William H. Orrick
10 United States District Judge

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Exhibit 6

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LUCIEANN TALAMANTES, ROBERT
CAHIGAL, HECTOR GARCIA, DEWEY
TAKAGI, BRIAN HOLLIDAY AND TINA
DIEMER, on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

PPG INDUSTRIES, INC.,

Defendant.

Case No.: C 13-04062 WHO

**ORDER APPROVING SETTLEMENT OF
CLAIMS OF FLSA CLASS MEMBERS AND
CALIFORNIA RULE 23 CLASS MEMBERS**

1 Before the Court is the Plaintiffs' Motion for an Order (1) granting final approval to the
2 settlement of FLSA claims as set forth in the Settlement Agreement ("Agreement") between the parties
3 in the above-captioned matter; (2) granting final approval to the California Rule 23 class action
4 settlement described in the Agreement; (3) granting approval of payment to the claims administrator;
5 and (4) dismissing the Civil Action with prejudice in accordance with the terms of the Agreement.
6 Also before the Court is Plaintiffs' unopposed motion for an Order approving plaintiffs' application for
7 attorney's fees and costs and approving plaintiffs' application for enhancement payments as provided
8 for in the Agreement.

9 The Court preliminarily approved the Agreement, a copy of which was attached to the
10 Preliminary Approval Motion, in this action by order entered on October 16, 2015 (the "Preliminary
11 Approval Order").

12 On January 6, 2016, the Court conducted a hearing (the "Fairness Hearing") to consider final
13 approval of the Agreement. The Court has considered all matters submitted to it at the Fairness
14 Hearing and otherwise, the pleadings on file, the applicable law, and the record.

15 For good cause shown, and as more fully explained below, the Motions are GRANTED. The
16 Court ORDERS as follows:

17 1. **Final Certification of the Settlement Classes.** The FLSA Class is comprised of the
18 Named Plaintiffs and those other individuals who filed (and did not withdraw) written consents to join
19 this action pursuant to 29 U.S.C. § 216(b). The members of the FLSA Class are identified in the
20 Settlement Agreement in Exhibit A, as well as three individuals who filed consent forms during the
21 Settlement Notice period, whose participation in the Settlement was agreed to by counsel for both
22 Parties (ECF Nos. 110, 114, 116). The California Rule 23 Class is comprised of all individuals who
23 were identified by Defendant as having worked as a Home Depot Business Development
24 Representative for PPG Industries, Inc. and/or any subsidiary (including PPG Architectural Finishes,
25 Inc.) and/or any predecessor (including Akzo Nobel Paints LLC) in California during any workweek
26 from September 3, 2009 through March 31, 2013, excluding, however, the members of the FLSA
27 Class. The members of the California Rule 23 Class are identified in the Settlement Agreement in
28 Exhibit B. The Court finds that the California Rule 23 Class, as defined in the Agreement, meets the

1 requirements of Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure. Accordingly, for
2 the purposes of settlement, the Court certifies the California Rule 23 Class.

3 2. **Class Representatives.** For purposes of settlement, the Court appoints as Class
4 Representatives for the California Rule 23 Class Plaintiffs, Lucieann Talamantes, Robert Cahigal,
5 Hector Garcia, Dewey Takagi, and Tina Diemer.

6 3. **Class Counsel.** For purposes of settlement, the Court appoints as Class Counsel for the
7 California Rule 23 Class Laura L. Ho, Byron Goldstein, William C. Jhaveri-Weeks, of the law firm of
8 Goldstein, Borgen, Dardarian & Ho (300 Lakeside Drive, Suite 1000, Oakland, CA 94612) and Bruce
9 Fox and Andrew Horowitz of the law firm of Obermayer Rebmann Maxwell and Hippel LLP (BNY
10 Mellon Center 500 Grant Street Suite 5240 Pittsburgh, PA 15219).

11 4. **Approval of the Agreement.** The Court approves the Agreement and finds that it is a
12 reasonable compromise of the claims of the Plaintiffs, the FLSA Class and the California Rule 23
13 Class, reached by the Parties after extensive discovery and intensive arms-length negotiations with the
14 assistance of an experienced mediator.

15 The Agreement is fair, just, reasonable and adequate to, and in the best interest of, the FLSA
16 Class and California Rule 23 Class. It achieves a definite and certain result for the benefit of the FLSA
17 Class and California Rule 23 Class that is preferable to continuing litigation in which the FLSA Class
18 and California Rule 23 Class would necessarily confront substantial risk, uncertainty, delay, and cost.
19 The Court also finds that the settlement terms negotiated by the parties and described in their
20 Agreement are a fair and reasonable resolution of a *bona fide* dispute between the Plaintiffs, FLSA
21 Class Members and California Rule 23 Class Members, and the Defendant.

22 This Order constitutes final approval of the Agreement. The Agreement is binding on the
23 parties to it and on all members of the FLSA Class and California Rule 23 Class in accordance with the
24 terms of the Agreement, excepting only those individuals, if any, who effectively excluded themselves
25 from the California Rule 23 Class in accordance with the terms of the Agreement.

26 5. **Notice to the California Rule 23 Class.** The Court determines that the Notice
27 Materials were given as required by the Preliminary Approval Order. The Court finds that the notice
28 given of the proposed settlement was the best practical notice under the circumstances and provided all

1 members of the California Rule 23 Class with fair and adequate notice of the terms of the settlement,
2 the Fairness Hearing, and the opportunity to object to the settlement and/or exclude themselves from
3 the settlement. The Court finds the Notice Materials satisfied the requirements of Rule 23 of the
4 Federal Rules of Civil Procedure.

5 6. **Attorneys' Fees and Litigation Expenses.** The Court approves Class Counsel's
6 requested fees award of \$1,666,667. The Court finds this fee award is justified. The Court finds that
7 the Expenses Payment requested in plaintiffs' unopposed motion is reasonable and that Class Counsel
8 shall be awarded the requested amount for litigation expenses actually incurred in the prosecution of
9 this litigation. The Claims Administrator shall be awarded up to \$16,000 for its reasonable fees and
10 expenses incurred in the administration of the settlement.

11 7. **Enhancement Payments.** The Enhancement Payments to the Named Plaintiffs as set
12 forth in the Agreement are approved for their substantial services for the benefit of the settlement
13 classes.

14 8. **Administering the Settlement of Claims.** The Parties shall administer the settlement
15 as set forth in the Agreement.

16 9. **Release of Claims.** As of the date this judgment becomes final (meaning that the time
17 for appeal has expired with no appeal taken, all appeals are resolved and none are left pending, or this
18 judgment is affirmed in all material respects after completion of the appellate process), the Named
19 Plaintiffs, FLSA Class Members and California Rule 23 Class Members, are forever barred from
20 bringing or presenting any action or proceeding against any Released Party that involves or asserts any
21 of the Released Claims (as those terms are defined in the Agreement).

22 10. **Dismissal with Prejudice.** All claims in this action are DISMISSED WITH
23 PREJUDICE and, except as provided herein, without costs against Defendant.

24 11. **Dispute Resolution.** Without affecting the finality of this judgment, the Court reserves
25 jurisdiction over the implementation, administration, and enforcement of this judgment and the
26 Agreement and all matters ancillary to the same.

1 12. **Non-Admission.** This Order and the Agreement are not evidence of, or an admission or
2 concession on the part of, the Released Parties with respect to any claim of any fault, liability,
3 wrongdoing, or damages whatsoever.

4 13. **Order for Settlement Purposes.** The findings and rulings in this Order are made for
5 the purposes of settlement only and may not be cited or otherwise used to support the certification of
6 any contested class or subclass in any other action.

7 14. **Use of Agreement and Ancillary Terms.** Neither the Agreement nor any ancillary
8 documents, actions, statements, or filings in furtherance of settlement (including matters associated
9 with the mediation) will be admissible or offered into evidence in any action related or similar to this
10 one for the purposes of establishing, supporting or defending against any claims that were raised or
11 could have been raised in this action or are similar to such claims.

12 **So ordered.**

13 Dated: January 6, 2016

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15 Hon. William H. Orrick
16 U.S. District Judge
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Exhibit 7

LAURA L. HO
GOLDSTEIN, BORGEN, DARDARIAN & HO

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(510) 763-9800
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LEGAL EXPERIENCE

Goldstein, Borgen, Dardarian & Ho, Oakland, CA, Partner, January 2005 – present; Associate, October 1998 – December 2004. Plaintiffs’ federal and state court employment class action litigation. 2009 California Lawyer of the Year Award Winner for employment law. 2006, 2010-2018 Super Lawyer. Top Attorney In Northern California, San Francisco Magazine August 2011. Best Lawyer’s 2014 and 2018 Lawyer of the Year for Oakland in Litigation-Labor and Employment.

The Honorable John C. Coughenour, Chief Judge of the Federal District Court of the Western District of Washington, Seattle, WA; Judicial Law Clerk, September 1997 – September 1998.

ACLU Foundation National Immigrants’ Rights Project, San Francisco, CA; Staff Counsel, November 1996 to September 1997. Federal court litigation on behalf of immigrants.

Asian Law Caucus, Inc., San Francisco, CA; Attorney (NAPIL Equal Justice Fellow), September 1994 to October 1996; Legal Intern, June to August 1993. Conducted wide-ranging advocacy on behalf of low-wage immigrant workers, including litigation and policy work; established workers’ rights clinic for Asian immigrant workers; supervised law students.

EDUCATION

Yale Law School, New Haven, CT; J.D., June 1994

Honors: Connecticut Bar Fellowship, 1993-94; Raphael Lemkin Human Rights Fellowship, 1992-93; Stephen J. Massey Prize, 1992-93

Activities: Lowenstein International Human Rights Project, Director, 1992-93; Pacific Islander, Asian and Native American Law Student Association, Executive Board Member and Coordinator for Minority Recruitment, 1992-93; Yale Journal of International Law, Editor, 1991-92.

University of Washington, Seattle, WA; B.A. in History, B.A. in International Studies, June 1991

Honors: *Cum Laude*, yearly High Scholarship all four years.

BAR ADMISSION

1994; California, U.S. District Court, Northern District of California and U.S. Court of Appeals, Ninth Circuit; 1995, U.S. District Court, Central District of California; 1997, U.S. Court of Appeals, 10th Circuit

PROFESSIONAL AFFILIATIONS

Asian Law Caucus, Board Member, 2005 – 2014

San Francisco Bar Association, Labor and Employment Committee, Executive Member 2006-2008
NELA, elected Executive Board Member 2016 – 2019, Wage and Hour practice group chair
(former)

ABA, Labor & Employment Law Section, Diversity and Inclusion in the Legal Profession, Plaintiff
Co-Chair

ABA, Labor & Employment Law Section, FLSL subcommittee co-chair, Midwinter Report Co-
Editor in Chief, State Law Midwinter Report Senior Editor

Fellow of the College of Labor and Employment Law

LITIGATION EXPERIENCE

(partial listing)

Flowers v. Twilio, (Superior Court, Alameda County) (final approval of \$10 million settlement for
certified class of consumers granted in 2019)

Siciliano v. Apple, (Superior Court, Santa Clara County) (final approval of \$16 million settlement
for certified class of consumers in California granted in 2018)

Willey v. TTI, RG16806307 (Superior Court, Alameda County) (final approval of \$3.5 million
settlement for 350 California class members approved in August 2017)

In re Uber FCRA, 14-CV-05200-EMC (N.D. Cal.) (final approval of nationwide FCRA class action
settlement granted in 2018)

Talamantes v. PPG Indus., Inc., 13-cv-4062-WHO (N.D. Cal.) (final approval of \$5 million
settlement on behalf of 109 class and collective action members nationwide granted in December
2015)

Vasquez v. USM, Inc., C13-05449 WHA (N.D. Cal.) (final approval of California wage and hour
class action settlement on behalf of janitors granted in 2015)

Willner v. Manpower Inc., 11-cv-2846 (final approval of \$8.75 million settlement for temporary
employees granted in 2015)

Bennett v. SimplexGrinnell, 11-CV-01854-JST (N.D. Cal.) (final approval of \$4.9 class settlement
on behalf of employees who perform testing and inspection of fire and sprinkler systems for
prevailing wages granted in 2015)

Welch v. Genentech, Case No. CIV 524550 (Superior Court, San Mateo County) (final approval of
\$2.95 million class settlement granted in December 2014)

Lange v. Ricoh, Case No. RG13682710 (Superior Court, Alameda County) (final approval granted
in December 2014 of class settlement for 250 account executives for expense reimbursements)

Melliz v. Bellflower, Case No. BC551555 (Superior Court, Los Angeles County) (California Voting
Rights Act case brought on behalf of Latino voters settled in January 2015)

Moreno v. Anaheim, Case No. 30-2012-00579998-CU-CR-CXCA (Superior Court, Orange County)
(California Voting Rights Act case brought on behalf of Latino voters settled in January 2014)

Rios v. ABC Unified School District, BC505510 (Superior Court, Los Angeles County) (California Voting Rights Act case brought on behalf of Latino voters settled in November 2013)

Macey v. Wells Fargo, JCCP 4654 (Superior Court, San Francisco County) (final approval of \$3 million class settlement granted in March 2014)

Morazan v. Aramark, No. 13-CV-00936-YGR (N.D. Cal.) (final approval of \$2.75 million class settlement granted in November 2013)

Vemulapati v. Siebel Systems Inc., No. RG 13662755 (Superior Court, Alameda County final approval of class action settlement granted in September 2013)

Zamora v. Countrywide, BC 360026 (Superior Court, Los Angeles County) (class settlement for over 10,000 hourly employees for meal and rest and other claims given final approval in March 2013)

Garcia v. Oracle, RG 07321026 (Superior Court, Alameda County) (certified class action regarding misclassification and related claims for 1,700 computer and technical employees; final approval of \$35 million class settlement granted in March 2012)

Galu v. Genentech, Inc., No. CIV505266 (Superior Court, San Mateo County) (lead counsel for \$2.1 million settlement for approximately 100 people; final approval granted in 2012)

Myart v. Autozone, Case No. 05CC03219 (Superior Court, Orange County) (Class counsel in certified class action for over 30,000 hourly workers for off the clock claims; final approval granted in November 2011)

Contreras v. Bank of America, Case No. CGC-07-467749 (Superior Court, San Francisco County) (\$16.65 million class settlement for California mortgage loan officers finally approved in 2010)

Meyn v. Peet's, No. RG08398070 (Superior Court, Alameda County) (\$2.6 million class settlement for California Store Managers finally approved in 2010)

Mousai v. E-Loan, Inc., No. 06-01993 SI (N.D. Cal.) (\$13.6 million settlement in overtime class action for mortgage salespeople approved in May 2007)

Lin v. Siebel Systems, Inc., No. CIV 435601 (Superior Court, San Mateo County) (\$27.5 million class action settlement in overtime case for certified class of over 800 software engineers approved in 2007)

Butler v. Countrywide, No. BC 268250 (Superior Court, Los Angeles County) (\$30 million class settlement for certified class of over 450 misclassified account executives approved in 2005)

Bullock v. Automobile Club of Southern California, No. SACV01-731GLT (C.D. Cal.) (FLSA collective action certified for over 500 opt-in Sales Agent plaintiffs; \$19 million settlement approved in 2004)

Cruz, et al. v. Estados Unidos Mexicanos, et al., No. C01-00892 CRB (N.D. Cal.) (counsel for settlement class of WWII era braceros for return of "savings fund" wages)

Gentry v. Superior Court (Circuit City Stores), No. S141502 (Cal. 2007) (counsel for amici curiae in overtime case involving class action waiver in arbitration agreement)

Sav-on Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319 (2004) (counsel for amici curiae in case involving class certification standards in California)

Morillion v. Royal Packing Co., 22 Cal. 4th 575 (2000) (counsel for amici curiae in case involving definition of “hours worked” under California Labor Code)

Earley v. Superior Court, 79 Cal. App. 4th 1420 (2000) (counsel for amici curiae in case involving California’s one-wage fee shifting statute for overtime wage claims)

Cuadra v Millan, 17 Cal. 4th 855 (1998) (writ proceeding successfully challenging DLSE’s practice of calculating back wages from date of hearing rather than date of filing of claim)

Bureerong v. Uvawas, 922 F. Supp. 1450 (C.D. Cal. 1996) (group action for wages and other damages for Thai sweatshop workers held in virtual “slave” sweatshop)

Sale v. HCC, 509 U.S. 155 (1993) (challenge to U.S. policy of interdicting on the high seas Haitians fleeing from Haiti and returning them to Haiti without determining whether those returned are refugees as defined under international law)

HCC v. Sale, 823 F. Supp. 1028 (E.D.N.Y. 1993) (successfully challenging U.S. policy of indefinite detention of Haitian refugees who tested positive for HIV)

CONFERENCE PRESENTATIONS AND PUBLICATIONS (partial listing)

13th Annual ABA Section of Labor and Employment Law Conference, New Orleans, LA (Nov. 2019)

PLI’s Cutting Edge Employment Law Issues 2019: The California Difference, San Francisco, CA (Sept. 2019) (program co-chair and panelist)

National Employment Lawyers Association, Litigating Wage & Hour Cases: Challenges & Opportunities, Silver Spring, MD (April 2017)

PUBLICATIONS

(partial)

Contributing Editor, The Fair Labor Standards Act, Cumulative Supplement, Bureau of National Affairs, Inc.

Chapter and Senior Editor, Wage and Hour Laws, A State-by-State Survey, Main Volume and Supplements, ABA Section of Labor and Employment Law

Practising Law Institute Employment Law Yearbook, Co-Editor for Chapter 6 “EEO Class Actions” 2015-19.

Articles:

Collective Action Basics, 10 Emp. Rts. and Emp. Pol’y J. 427 (2006)

Litigation of Wage and Hour Collective Actions Under the Fair Labor Standards Act, 7 Emp. Rts. and Emp. Pol'y J. 129 (2003) (with David Borgen)

(Dis)assembling Rights of Women Workers on the Global Assemblyline: Human Rights and Garment Industry, 31 Harv. C.R.-C.L. L. Rev. 383 (1996) (with Cathy Powell and Leti Volpp).

Worker Protection Compromised: The Fair Standards Act Meets the Bankruptcy Code, 2 Asian Pac. Am. L.J. 38 (1994) (with Lora Jo Foo and Thomas M. Kim).

Litigating as Law Students: An Inside Look at Haitian Centers Council, 103 Yale L.J. 2337 (1994) (with Victoria Clawson and Elizabeth Detweiler).