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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

DFT, INC. WAGE AND HOUR CASES

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO.: 4882

Coordinated Actions:

Honorable John S. Wiley, Jr.
Department SSC9

**ERIC BETANCES vs. DFT, INC. D/B/A
CANNON MANAGEMENT**

Superior Court of California, County of Los
Angeles: BC559751

Complaint Filed: October 6, 2014

**ROXANA VALDEZ vs. DFT, INC.
D/B/A CANNON MANAGEMENT**

Superior Court of California, County of San
Bernardino: CIVDS1605358

Complaint Filed: April 12, 2016

**SUPPLEMENTAL DECLARATION OF
EDWIN AIWAZIAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Supplemental Brief In Support Of Plaintiffs'
Motion for Preliminary Approval of Class Action
Settlement and [Revised Proposed] Order filed
concurrently herewith.]

Date: July 3, 2018
Time: 10:00 a.m.
Department: SSC9

SUPPLEMENTAL DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwazian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers for Justice, PC, attorneys of record for Plaintiffs Eric Betances and Roxana Valdez. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

2. On June 1, 2018, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") and supporting documents seeking approval of the settlement reached by Plaintiffs and Defendant DFT, Inc. d/b/a/ Cannon Management ("Defendant") (together, the "Parties").

3. On June 13, 2018, Plaintiffs' Motion for Preliminary Approval came on for hearing in Department SSC9 before the Honorable Lisa H. Cole in the above-captioned Court and the Court issued a tentative ruling granting preliminary approval of the settlement contingent upon the following: (1) Plaintiffs' counsel ("Class Counsel") providing the estimated value of the claims; (2) modifying the objection procedure such that Class Members need only submit objections to the settlement administrator (and are not required to file objections with the Court) and making corresponding change to the Class Notice; and (3) removing language from the Class Notice that indicates that only Class Members who submit an objection may be heard by the Court at the Final Approval Hearing.

4. To address the Court's points of inquiry and to provide clarification, the Parties met and conferred, negotiated, and executed the Amendment No. 1 to Stipulation of Class Action and PAGA Settlement and Release ("Amendment No. 1") on June 22, 2018, a true and correct copy of which is attached hereto as "EXHIBIT A." A redline version of the Amendment No. 1, showing how the original terms of the Stipulation of Class Action and PAGA Settlement and Release have been revised, is attached hereto as "EXHIBIT B." Together, the original Stipulation of Class Action and PAGA Settlement and Release and Amendment No. 1 are hereinafter referred to as the "Settlement," "Agreement," or "Settlement Agreement." Based on the Court's guidance, the Parties have also prepared a revised Notice of Class Action and PAGA

1 Settlement ("Revised Class Notice") which is attached to Amendment No. 1 as "Exhibit 1." A
2 redline version of the Revised Class Notice, showing how the original document has been
3 revised is attached hereto as "**EXHIBIT C.**"

4 **REASONABLE ESTIMATE OF THE VALUE OF THE CLAIMS**

5 5. Plaintiffs' actions allege that Defendant has violated the California Labor Code
6 and California Business and Professions Code by engaging in a uniform policy and systematic
7 scheme of wage abuse against Plaintiffs and the putative class members, including *inter alia*,
8 failing to properly compensate for overtime and minimum wages, failing to provide compliant
9 meal and rest periods and associated premium pay, failing to timely pay wages and associated
10 waiting time penalties, failing to provide compliant wage statements, failing to maintain requisite
11 payroll records, and failing to reimburse necessary business expenses. Plaintiffs further contend
12 that Defendant thereby engaged in unfair business practices and that its conduct gives rise to
13 penalties under the Private Attorneys General Act. For example, Plaintiffs claimed that they and
14 the other putative class members were regularly required to perform work off-the-clock, during
15 meal and rest periods and before clocking-in and after clocking-out of work.

16 6. Collectively, the operative complaints in each of the included actions in this
17 coordinated proceeding, assert claims for: (1) failing to properly pay overtime wages (Cal. Lab.
18 Code §§ 510 and 1198); (2) failing to provide compliant meal periods and associated premiums
19 (Cal. Lab. Code §§ 226.7 and 512(a)); (3) failing to provide compliant rest periods and
20 associated premiums (Cal. Lab. Code § 226.7); (4) failing to pay minimum wages (Cal. Lab.
21 Code §§ 1194, 1197, and 1197.1); (5) failing to timely pay wages upon termination of
22 employment (Cal. Lab. Code §§ 201 and 202); (6) failing to timely pay wages during
23 employment (Cal. Lab. Code § 204); (7) failing to provide compliant wage statements (Cal. Lab.
24 Code § 226(a)); (8) failing to keep requisite payroll records (Cal. Lab. Code § 1174(d)); (9)
25 failing to reimburse necessary business expenses (Cal. Lab. Code §§ 2800 and 2802); (10)
26 recovery of penalties under the California Private Attorneys General Act of 2004 (Cal. Lab.
27 Code §§ 2698, *et seq.*); and (11) engaging in unfair business practices (Cal. Bus. and Prof. Code
28 §§ 17200, *et seq.*). The merits of the principal claims will be addressed separately below.

7. Based on data provided by Defendant prior to mediation on June 29, 2017 and confirmed thereafter, the total number of putative class members during the period from approximately October 6, 2010 to June 9, 2017 ("relevant time period") was estimated to be seven hundred ninety-two (792) individuals, who worked approximately one hundred and nine thousand one hundred ninety-four (109,194) weeks and had an estimated average hourly rate of pay of fourteen dollars and fifty cents (\$14.50).

A. Failure to Pay Overtime and Minimum Wages

8. Plaintiffs alleged causes of action for failure to pay overtime and minimum wages. Plaintiffs contended that Defendant's uniform policies, practices, and procedures required its hourly-paid or non-exempt employees to perform work during meal and rest periods and before clocking-in and after clocking-out. For example, Plaintiffs contended that Defendant's policies, practices, and procedures required Plaintiffs and other putative class members to perform various duties off-the-clock in order to complete their daily tasks and assignments. Plaintiffs further contended that Defendant failed to properly calculate the regular rate for purposes of paying overtime by failing to take into consideration non-discretionary bonuses and incentive pay, such as, *inter alia*, leasing bonuses and occupancy bonuses. Finally, Plaintiffs contended that Defendant failed to properly compensate Plaintiffs and the putative class members at their applicable minimum, regular, or overtime rates for their work, and that Defendant failed to compensate them for all of the hours they worked.

9. California Labor Code section 510 provides that when an employee works more than eight (8) hours in any workday or more than forty (40) hours in any workweek, the employer must pay the employee at least one and one-half times the employee's regular rate of pay for all overtime hours worked. If an employee works more than twelve (12) hours in one day, the employer must pay the employee no less than twice his or her regular rate of pay. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order(s) provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

1 10. California Labor Code section 1197 provides that it is unlawful to pay employees
2 at a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
3 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action,
4 as well as liquidated damages in an amount equal to the wages unlawfully not paid and interest
5 thereon. Although California Labor Code section 1197.1 also provides for penalties, the
6 penalties that it provides for are civil penalties, which, arguably, may only be recovered by the
7 Labor Commissioner during a one-year statute of limitations period.

8 11. Defendant contended, *inter alia*, that its overtime policies and practices comply
9 with California and federal law, and that its non-exempt employees are paid over the California
10 minimum wage for all hours worked. Defendant contended that it had a compliant policy
11 regarding payment of overtime and produced wage statements reflecting payment of overtime
12 compensation to many of the putative class members (including and not limited to Plaintiffs).
13 Defendant also contended that it had properly included non-discretionary compensation when
14 calculating the regular rate for purposes of paying overtime wages. Defendant further contended
15 that all employees were required to record all time worked and were given the opportunity to
16 make any necessary timecard revisions or changes, and that Defendant was not aware that any
17 work had been performed off-the-clock. Defendant also argued that individual liability issues
18 predominate, including: (a) whether each employee worked off-the-clock; (b) whether Defendant
19 knew or should have known about each employee's off-the-clock work; (c) whether each
20 employee worked in excess of 8 hours in a day and 40 hours in a week; and (d) whether
21 Defendant knew or should have known that each putative class member performed overtime
22 work. Defendant also contended that the putative class members worked at different locations,
23 held many different job titles, and performed many different job duties, and that these
24 circumstances would raise highly individualized questions of fact, which would pose challenges
25 to certification and the merits of the claims for overtime and minimum wages.

26 12. Class Counsel considered information obtained through investigations and
27 obtained from Plaintiffs and other putative class members, as well as class data provided by
28 Defendant, and created a damages/valuation model prior to the mediation. Based thereon,

1 assuming that it could be proven that Defendant failed to pay one (1) hour of overtime wages per
2 workweek during the relevant time period, the value of this claim was estimated to be
3 \$2,374,969.50 (109,194 workweeks x 1 hour of overtime wages x overtime hourly rate of
4 \$21.75, which is based on the average hourly rate of \$14.50). Assuming that it could be proven
5 that Defendant failed to pay one (1) hour of minimum wages each workweek, the value of this
6 claim was estimated to be \$1,583,313 (109,194 workweeks x 1 hour of minimum wages x
7 average hourly rate of \$14.50).

8 13. However, this assumes an exposure based on the case having been certified and
9 Plaintiffs having proved all elements of the overtime and minimum wage claims, despite the
10 risks and expenses associated with obtaining and maintain class certification and establishing
11 liability. Importantly, Plaintiffs also considered risks to recovery and continued employment due
12 to Defendant's financial condition. Defendant provided a declaration from a certified public
13 accountant reflecting that the Settlement would strain the Defendant's monetary resources but
14 would be feasible without harming Defendant's ability to continue its business operations or its
15 employments of its employees, while a larger settlement would jeopardize the operations of the
16 Company. While Class Counsel disagreed with Defendant's arguments and factual contentions,
17 Class Counsel recognized the realities of the case and took into consideration applicable case
18 law, risks and expenses associated with obtaining and maintaining class certification and
19 establishing liability, and other risks to recovery (including and not limited to, Defendant's
20 financial condition. Taking into account these attendant risks and discounting fifty percent
21 (50%) for them, the value of the overtime wage claim was estimated to be \$1,187,484.75 and the
22 value of the minimum wage claim was estimated to be \$791,656.50.

23 **B. Failure to Provide Compliant Meal Periods and Associated Premiums**

24 14. Plaintiffs' theory of liability was also based on Defendant's failure to provide
25 timely, full, and/or uninterrupted meal periods. Plaintiffs contended, *inter alia*, that Defendant's
26 policies, practices, and procedures required employees to perform job duties during their meal
27 periods and prevented them from receiving compliant meal periods. Plaintiffs further contended
28 that Defendant failed to pay meal period premiums for missed, late, short, or interrupted meal

1 periods.

2 15. Under California law, an employer must provide an employee with uninterrupted
3 meal periods of not less than thirty (30) minutes before the employee works more than five (5)
4 hours, except that if the total work period per day of the employee is no more than six (6) hours,
5 the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab.
6 Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an
7 employee works more than ten (10) hours per day, except that if the total hours worked is no
8 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
9 employer and employee only if the first meal period was not waived. *Id.* An “on-duty” meal
10 period is illegal unless “the nature of the work prevents an employee from being relieved of all
11 duty and when by written agreement between the parties an on-the-job paid meal period is
12 agreed to.” IWC Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An employer
13 must pay each employee to whom it fails to “provide” a meal period one hour of wages at his or
14 her regular rate of pay “for each work day that the meal or rest period is not provided.” Cal. Lab.
15 Code § 226.7(b).

16 16. Defendant contended that it had practices, policies, and procedures to provide
17 meal periods every workday to its employees that fully complied with California law.
18 Defendant argued that, consistent with *Brinker Restaurant Corporation v. Superior Court* (2012)
19 53 Cal.4th 1004, it did nothing to impede, discourage, or dissuade employees from taking their
20 meal period, and that it made the meal periods available. To the extent that putative class
21 members failed to take their meal periods or took a short or late meal period, Defendant
22 contended that they did so voluntarily and that all applicable meal periods were still provided to
23 them. Thus, Defendant argued that it did not act unlawfully to deprive putative class members of
24 meal periods. Defendant also contended that there were multiple individual issues that would
25 pose challenges to certification, including and not limited to, (a) whether any meal periods were
26 non-compliant and (b) why they were non-compliant. Defendant also contended that the putative
27 class members worked at different locations, held different job positions, and performed different
28 job duties, and as a result, there was variation as to the circumstances that could allegedly cause

1 the employees to be deprived of the opportunity to take legally-compliant, duty-free meal
2 periods, and this variation in circumstances raised highly individualized questions of fact.
3 Defendant also produced what it contended was evidence of meal period premiums paid to some
4 putative class members.

5 17. Class Counsel considered information obtained through investigations and
6 obtained from Plaintiffs and other putative class members, as well as class data provided by
7 Defendant, and created a damages/valuation model prior to the mediation. Based thereon,
8 assuming that it could be proven that one (1) meal period premium was due for every workweek
9 during the relevant time period, the value of this claim was estimated to be \$1,583,313 (109,194
10 workweeks x 1 meal period premium x average hourly rate of \$14.50).

11 18. Class Counsel also considered the risk of further litigating the case, including the
12 significant additional costs that will be incurred by both sides if the case does not settle, as
13 litigating a class action through class certification, trial, and/or appeals is very expensive.
14 Moreover, litigating meal period claims is inherently difficult as an employer's records, as is the
15 case here, do not usually indicate when a meal period is interrupted. Importantly, Plaintiffs also
16 considered Defendant's financial condition and the risks it posed to Defendant's ongoing
17 operations and continue employment of putative class members currently employed by
18 Defendant. While Class Counsel disagreed with Defendant's arguments and factual contentions,
19 Class Counsel recognized the realities of the case, applicable case law, risks and expenses of
20 obtaining and maintaining class certification and establishing liability, and other risks to
21 recovery (including but not limited to, Defendant's financial condition). Taking into account
22 these attendant risks and discounting fifty percent (50%) for them, the value of the meal period
23 claim was estimated to be \$791,656.50.

24 **C. Failure to Provide Compliant Rest Periods and Associated Premiums**

25 19. Plaintiffs' theory of liability was also based on Defendant's failure to provide its
26 employees with timely, full, and/or uninterrupted rest periods. Plaintiffs contended that
27 Defendant's employment policies, practices, and procedures forced employees to perform job
28 duties during their rest periods and prevented them from regularly receiving compliant rest

1 periods.

2 20. California law requires an employer to provide rest periods to all employees at the
3 rate of ten (10) minutes every four hours of work or major fraction thereof. Cal. Lab. Code §
4 226.7. When an employer fails to provide a compliant rest period, the employer is required to
5 either (a) provide another rest period or (b) pay one additional hour of pay at the regular rate of
6 pay for each work day that the meal or rest period is not provided. See Cal. Lab. Code §
7 226.7(b); *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 271-272. See Cal.
8 Lab. Code § 226.7(b).

9 21. Defendant contended that it had methods, policies, and procedures to provide all
10 applicable rest periods every workday to its non-exempt employees that fully complied with
11 California laws. Additionally, Defendant argued that, consistent with *Brinker*, it did nothing to
12 impede, discourage, or dissuade employees from taking their rest periods, and it authorized and
13 permitted employees to take rest periods. Defendant also presented what it contended was a
14 facially-compliant rest period policy. Defendant also argued that the reasons why a putative class
15 member failed to receive a compliant rest period raised individual issues that could not be
16 certified.

17 22. Class Counsel considered information obtained through investigations and
18 obtained from Plaintiffs and other putative class members, as well as class data provided by
19 Defendant, and created a damages/valuation model prior to the mediation. Based thereon,
20 assuming that it could be proven that two (2) rest period premiums were due for every workweek
21 during the relevant time period, the value of this claim was estimated to be \$3,166,626 (109,194
22 workweeks x 2 rest period premiums x average hourly rate of \$14.50).

23 23. Class Counsel also considered the risk of further litigating the case, as well as
24 significant additional costs that will be incurred by both sides if the case does not settle, as
25 litigating a class action through class certification, trial, and/or appeals is very expensive.
26 Moreover, litigating rest period claims is inherently difficult as an employer's records, as is the
27 case here, do not usually indicate when a rest period is short, late, interrupted or missed entirely.
28 Importantly, Plaintiffs also considered Defendant's financial condition and the risk it posed to

1 Defendant's ongoing operations and continued employment of putative class members who are
2 currently employed by Defendant. While Class Counsel disagreed with Defendant's arguments
3 and factual contentions, Class Counsel recognized the realities of the case and took into
4 consideration applicable case law, the costs and expenses of further litigation and obtaining and
5 maintaining class certification, and other risks to recovery (including but not limited to,
6 Defendant's financial condition). Taking into account these attendant risks and discounting fifty
7 percent (50%) for them, the value of the rest period claim was estimated to be \$1,583,313.

8 **D. Waiting Time Penalties for Failure to Time Provide Wages During Employment**
9 **and Upon Termination**

10 24. California Labor Code section 204 provides that wages earned by any person in
11 any employment between the 1st and 15th days, inclusive, of any calendar month, other than
12 those wages due upon termination of an employee, are due and payable between the 16th and the
13 26th day of the month during which the labor was performed. Further, all wages earned by any
14 person in any employment between the 16th and the last day, inclusive, of any calendar month,
15 are due and payable between the 1st and the 10th day of the following month.

16 25. Plaintiffs alleged that Defendant intentionally and willfully failed to pay Plaintiffs
17 and the putative class members all wages due to them while they were employed by Defendant,
18 within the time period permissible under California law. These wages included, but were not
19 limited to, overtime and minimum wages, and meal and rest break premium wages. However,
20 arguably, this provision of the California Labor Code only states requirements and does not
21 provide for civil penalties or private relief for failure to comply with the requirements stated
22 therein. Instead, redress may be pursued for the failure to pay wages and interest thereon (which
23 is discussed herein with respect to the claims for unpaid minimum and overtime wages).

24 26. California Labor Code sections 201 and 202 provide that if an employer
25 discharges an employee, the wages earned and unpaid at the time of discharge are due and
26 payable immediately. If an employee quits his or her employment, his or her wages shall
27 become due and payable not later than seventy-two (72) hours of quitting, unless the employee
28 has given seventy-two (72) hours of notice of his or her intention to quit, in which case the

1 employee is entitled to his or her wages at the time of quitting.

2 27. California Labor Code section 203 provides that if an employer fails to pay an
3 employee all wages due at termination or within seventy-two (72) hours of resignation, in
4 accordance with sections 201 and 202, then that employee's wages shall continue as a penalty
5 until paid for a period of up to thirty (30) days from the date they were due. California Labor
6 Code section 203 further provides that the statute of limitations to recover the penalty is the same
7 as the statute of limitations for recovery of the unpaid wages from which the penalties arise, i.e.
8 three years.

9 28. Plaintiffs alleged that Defendant intentionally and willfully failed to pay Plaintiffs
10 and the other putative class members all wages due to them upon termination, within the time
11 period permissible under California law. For example, Plaintiffs alleged that Defendant's non-
12 exempt employees are entitled to unpaid minimum and overtime wages arising from, *inter alia*,
13 off-the-clock work and non-complaint meal and rest periods, thereby triggering waiting time
14 penalties under California Labor Code section 203.

15 29. Based on information and data provided by Defendant, it was estimated that
16 approximately three hundred eight-eight (388) putative class members had been terminated
17 during the time period commencing from October 6, 2011. Assuming that these individuals were
18 not timely paid all wages due to them upon termination, waiting time penalties (calculated at
19 daily pay at the average hourly rate, for an average work day of 8 hours) were estimated to be
20 \$1,350,240 collectively (388 individuals x [30 days x average hourly rate of \$14.50 x 8 hours]),
21 or approximately \$3,480 per individual according to Plaintiffs' calculation. However, this
22 presumes that Plaintiffs would prevail on the underlying California Labor Code claims, which is
23 necessary to show that Defendant failed to timely pay wages that were due to the putative class
24 members upon termination.

25 30. Defendant was adamant that no waiting time penalties should be awarded.
26 Defendant pointed out that waiting time penalties are derivative of each and every other
27 underlying cause of action and contended that it paid the terminated employees all wages due
28 and owing. Moreover, Defendant emphasized that, under California Labor Code section 203,

1 employers are only obligated to pay waiting time penalties if they “willfully” fail to pay wages
2 due and owing at the time of termination or resignation. As Title 8, California Code of
3 Regulations, section 13520 states,

4 A willful failure to pay wages within the meaning of Labor Code Section 203
5 occurs when an employer intentionally fails to pay wages to an employee
6 when those wages are due. However, a good faith dispute that any wages are
7 due will preclude imposition of waiting time penalties under Section 203.

8 A “good faith dispute” that any wages are due occurs when an employer
9 presents a defense, based in law or fact, which, if successful, would preclude
10 any recovery on the part of the employee. The fact that a defense is ultimately
11 unsuccessful will not preclude a finding that a good faith dispute did exist.
12 Defenses presented which, under all the circumstances, are unsupported by
13 any evidence, are unreasonable, or are presented in bad faith, will preclude a
14 finding of a “good faith dispute.”

15 31. Accordingly, in assessing the likely recovery of waiting time penalties, Class
16 Counsel considered the chances of prevailing on each of the underlying causes of action, as well
17 as the additional hurdles of prevailing on the claim for waiting time penalties, including the
18 inherent difficulty in proving the “willful” prong of section 203, applicable case law, costs and
19 expenses of further litigation and obtaining and maintaining class certification, and other risks to
20 recovery (including but not limited to, Defendant’s financial condition). Taking into account
21 these attendant risks and discounting fifty percent (50%) for them, the value of the waiting time
22 penalties claim was estimated to be \$675,120.

23 **E. Wage Statement Violations**

24 32. Plaintiffs also alleged a cause of action under California Labor Code section
25 226(a). That section states that an employer must provide an accurate and itemized wage
26 statement twice a month or each time wages are paid, whichever is the more frequent. Failure to
27 do so entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the
28 initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation
in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
(\$4,000). Cal. Labor Code § 226(e). Arguably, actual damages may be sought, under a three-
year statute of limitations, or, statutory penalties may be sought, under a one-year statute of
limitations.

33. Based on data provided by Defendant, at the time of mediation, it was estimated that approximately six hundred fifteen (615) putative class members worked during the one-year statutory limitations period (i.e., from October 6, 2013), and that these putative class members worked sixteen thousand four hundred sixty-nine (16,469) pay periods. Based on this data, assuming that an injurious wage statement could be proven for each of these putative class members for each of these pay periods, the value of this claim was estimated to be \$1,616,150 $[(615 \text{ initial violations} \times \$50 \text{ first violation penalty}) + [16,469 - 615 \text{ subsequent violations} \times \$100 \text{ each subsequent violation penalty}]]$.

34. Defendant contended that Plaintiffs and putative class members suffered no actual injury from the alleged wage statement violations. Defendant also contended that this cause of action is entirely derivative of the foregoing causes of action. In other words, Plaintiffs would have to prove, for example, that off-the-clock work occurred, that overtime was worked, that all hours of work had not been properly recorded and compensated, and/or that non-compliant meal and rest periods occurred, and that Defendant did not pay premiums, etc., to demonstrate that the wage statements were inaccurate. Defendant further contended, *inter alia*, that if off-the-clock and/or overtime work occurred and was not reflected in the wage statements, it was because the work was hidden. When assessing the value of this claim, Class Counsel considered these factors, the derivative nature of this cause of action, the chances of prevailing on each of the underlying causes of action, applicable case law, costs and expenses of further litigation and obtaining and maintaining class certification, and other risks to recovery (including but not limited to Defendant's financial condition). Taking into account these attendant risks and discounting fifty percent (50%) for them, the value of the wage statement claim was estimated to be \$808,075.

F. Failure to Maintain Requisite Payroll Records

35. Plaintiffs alleged that Defendant had intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiffs and the putative class members. Plaintiffs also alleged that Defendant's intentional and willful failure to keep accurate payroll records violated the statutorily-protected right to accurate

1 and complete payrolls records, and that Plaintiffs and the putative class members have suffered
2 injury and damage as a result.

3 36. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
4 central location in the state or at the plants or establishments at which employees are employed,
5 payroll records showing the hours worked daily by and the wages paid to, and the number of
6 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
7 respective plants or establishments. These records must be kept in accordance with rules
8 established for this purpose by the Labor Commissioner, but in any case, shall be kept on file for
9 not less than three years. Under California Labor Code section 1174.5, a willful violation of the
10 employer's recordkeeping obligations set forth in California Labor Code 1174(d) is subject to a
11 civil penalty of \$500. Arguably, this civil penalty would only be recoverable by the Labor
12 Commissioner, however, Plaintiffs assert a cause of action under PAGA. Therefore, the value of
13 this claim is included in the valuation of the PAGA claim contained in paragraphs 48-58 herein.

14 37. Defendant contended that Plaintiffs and putative class members suffered no actual
15 injury or damage from the alleged recordkeeping violations. Moreover, Defendant challenged
16 certification of the recordkeeping issue on the basis that individual liability issues predominated,
17 including (a) whether each putative class member's payroll records were not maintained
18 properly, and (b) whether Defendant's alleged failure to keep requisite payroll records was
19 "willful." Like the wage statement violations, this cause of action is entirely derivative of the
20 causes of action for failure to properly pay overtime and minimum wages, and to provide
21 compliant meal and rest periods.

22 38. As such, when assessing the value of this claim, Class Counsel considered the
23 foregoing factors, the derivative nature of this cause of action, the chances of prevailing on the
24 other causes of action, the inherent difficulty in proving the "willful" prong of Labor Code
25 section 1174.5, applicable case law, costs and expenses of further litigation and obtaining and
26 maintaining class certification, and other risks to recovery (including but not limited to,
27 Defendant's financial condition) and applied appropriate discounts for settlement purposes.

28 ///

G. Unreimbursed Business Expenses

39. Plaintiffs contended that Defendant had failed to reimburse Plaintiffs and the other putative class members for necessary business expenses, including, but not limited to, the costs associated with purchasing clothing to comply with Defendant's dress code and use of personal cell phones, vehicles, and computers.

40. California Labor Code section 2802 requires an employer to indemnify its employees for all necessary expenditures made by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

41. Defendant contended that it has a policy and practice of reimbursing employees for necessary business-related expenses. Defendant also contended that, with respect to the alleged expenses for which Plaintiffs and the other putative class members never requested reimbursement from Defendant, Defendant did not know and had no reason to know that they incurred the alleged business-related expenses. Defendant further contended that the reason for why a putative class member undertook certain expenses, while not others, and failed to receive reimbursement for other expenses while not others, would raise individual issues that could not be certified. Defendant produced what it contended was a mileage policy and evidence of mileage reimbursement to some putative class members. Defendant also produced what it contended was evidence that it had provided clothing as uniforms for some putative class members.

42. Defendant also contended that the California Labor Code only requires reimbursement of "necessary" expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. See, Cal. Lab. Code 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary, would depend, in part, on the reasonableness of the employee's choice, and whether or not an expense was incurred, would have to be established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137.

1 43. By Plaintiffs' calculation, if Plaintiffs proved that Defendant willfully failed to
2 reimburse necessary business-related expenses for each of the seven hundred ninety-two (792)
3 putative class members in the amount of \$4 per workweek during the relevant time period, the
4 value of this claim was estimated to be \$436,775 (109,194 workweeks x \$4 unreimbursed
5 business expenses). Class Counsel also took into consideration the additional costs attendant to,
6 and risk of, establishing that expenses were incurred, and that the nature of the expenses were
7 such that Defendant was required to reimburse them. While Class Counsel disagreed with
8 Defendant's arguments and factual contentions, Class Counsel considered the realities of the
9 case, as well as the risks and expenses of further litigation and obtaining and maintaining class
10 certification, and other risks to recovery (including but not limited to Defendant's financial
11 condition). Taking into account these attendant risks and discounting fifty percent (50%) for
12 them, the value of the unreimbursed business expense claim was estimated to be \$218,388.

13 **H. Unfair Business Practices**

14 44. Plaintiffs pleaded this cause of action in order to augment their other causes of
15 action and aid in their prosecution. California's Unfair Competition Law, Business and
16 Professions sections 17200, *et seq.* ("UCL") prohibits any "unlawful, unfair or fraudulent
17 business practices." A violation of the UCL may be predicated on the violation of any state or
18 federal law.

19 45. Arguably, California Business and Professions Code section 17208 extends the
20 statute of limitations on Plaintiff's other claims, which qualify as unfair business practices, to
21 four (4) years. However, claims brought under the UCL are equitable actions for injunctive or
22 restitutionary relief, and a court may take into consideration equitable defenses when fashioning
23 equitable remedies. Restitution under the UCL is limited to returning to the Plaintiffs and
24 putative class members monies unlawfully withheld, such as unpaid wages or unpaid meal or rest
25 period premiums, or restitutionary disgorgement.

26 46. Plaintiffs' theory of relief is that each of Defendant's alleged violations of the
27 California Labor Code (for which other causes of action were asserted) constitutes business
28 practices that are either unlawful (i.e., is forbidden by law) and/or unfair (i.e., harm to victim

1 outweighs any benefit). In order to prevail on the UCL cause of action, Plaintiffs would have to
2 prove that Defendant violated the predicate provisions of California law, and that the violations
3 constitute unlawful and/or unfair business acts and practices in violation of California Business
4 and Professions Code sections 17200, *et seq.* Plaintiffs would have to prove that Defendant's
5 conduct throughout the time period at issue has been unfair, unlawful, harmful, and injurious to
6 Plaintiffs and the putative class members. With respect to the UCL's standing requirement,
7 Plaintiffs would also have to prove that they have suffered an economic injury as a result of
8 Defendant's conduct.

9 47. As discussed above, Defendant vigorously challenged the likelihood of Plaintiffs'
10 success in establishing that any of provisions of the California Labor Code, on which the UCL
11 claim is predicated, were violated and that such violations were injurious. Throughout this
12 litigation, Defendant also relentlessly challenged Plaintiffs' standing and adequacy to assert class
13 claims and contended there were individualized issues that would pose challenges to
14 certification. When assessing the likelihood of prevailing on this cause of action, Class Counsel
15 considered applicable case law, the chances of prevailing on the other causes of action, risks and
16 expenses of obtaining and maintaining class certification, and other risks to recovery, and
17 applied appropriate discounts for settlement purposes.

18 **I. PAGA Penalties**

19 48. Under the PAGA, as amended, California Labor Code sections 2698, *et seq.*, civil
20 penalties to be assessed and collected by the California Labor and Workforce Development
21 Agency ("LWDA"), for a violation of the California Labor Code, may, as an alternative, be
22 recovered by an aggrieved employee plaintiff. If a California Labor Code provision that is
23 alleged to be violated specifically provides for a civil penalty, said civil penalty is recoverable by
24 the aggrieved employee plaintiff. Additionally, the PAGA statute establishes a civil penalty that
25 is recoverable by an aggrieved employee plaintiff, for violation of provisions of the California
26 Labor Code that do not otherwise specifically provide for a civil penalty, as follows: one hundred
27 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
28 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent

1 violation. Cal. Lab. Code § 2699(f)(2). Pursuant to California Labor Code section 2699(i),
2 seventy-five percent (75%) of the penalties recovered are to be allocated to the LWDA, with the
3 remaining twenty-five percent (25%) allocated to the aggrieved employees. Cal. Lab. Code
4 § 2699(a). A one-year statute of limitations period applies to such claims for civil penalties.
5 Cal. Civ. Proc. Code § 340.

6 49. Defendant contended that violations of multiple provisions of the California
7 Labor Code do not give rise to cumulative penalties, but that instead, the initial violation penalty
8 and subsequent violation penalty, should only apply no more than once per pay period, rather
9 than cumulatively for each separate California Labor Code provision that is alleged to have been
10 violated during a pay period.

11 50. Defendant also contended that an important feature of the PAGA statute is that,
12 when determining whether or not to assess a penalty, the court exercises the same discretion that
13 the LWDA has and may reduce the penalties to be assessed against the employer pursuant to
14 California Labor Code section 2699(e)(1)-(2). As such, Defendant contended that, with respect
15 to the PAGA claim, the Court was unlikely to assess cumulative penalties for the maximum
16 number of possible, separate California Labor Code violations, because it would be unjust,
17 arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by
18 multiple provisions of the California Labor Code that are interrelated and work in tandem.

19 51. Defendant also maintained and continues to maintain that it had legally-compliant
20 employment policies and practices throughout the statutory period. Defendant denied and
21 continues to deny that it ever violated any provision of the California Labor Code and argued,
22 that, even if, *arguendo*, such violations occurred, it will not be treated as having engaged in
23 subsequent violations giving rise to heightened penalties. In other words, Defendant argued that
24 heightened civil penalties for subsequent violations would not be assessed unless it could be
25 shown that Defendant had notice that it was violating the law, e.g. because it had been cited by a
26 labor agency or adjudged by a court to have done so. See, e.g., *Amaral v. Cintas Corp. No. 2*
27 (2008) 163 Ca.4th 1157, 1209. Defendant argued that it would be able to show a lack of
28 willfulness in the violations, such that the alleged California Labor Code violations would not be

1 considered “willful.” Defendant contended that, at best, even if a violation giving rise to a
2 penalty was shown for each pay period, only the lower civil penalty associated with initial
3 violations would apply.

4 52. Importantly, to prevail on the PAGA claim, Defendant contended that some
5 courts have required plaintiffs to show at the outset that they have suffered injury, in order to
6 establish standing, and that Plaintiffs would also have to prove all requisite elements to prove
7 violations of the underlying California Labor Code provisions, in order to show that Defendant’s
8 conduct gave rise to penalties. The overtime and meal and rest period allegations are
9 fundamental to this action, however for the reasons discussed above, there were substantial
10 challenges to prevailing and showing liability and exposure for the claims. Defendant argued that
11 Plaintiffs would not be able to establish violations of the underlying California Labor Code
12 provisions and the fundamental allegations regarding overtime and meal and rest periods.
13 Defendant also contended that multiple individualized issues vitiated the manageability of
14 representative adjudication of PAGA penalties.

15 53. Defendant would also likely seek bifurcation of discovery and/or trial of the
16 PAGA claim – at the time, multiple courts had taken such an approach.

17 54. Defendant also maintained that, in addition to its strong arguments against the
18 underlying claims, taking the current unsettled state of law, it would be unjust to award the
19 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
20 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
21 methodology for the valuation and/or assessment of PAGA penalties.

22 55. Defendant also contended that, before a PAGA claim could be tried, under
23 existing law, the court of law would have to be satisfied that the adjudication of the PAGA
24 claim, based on a theory of uniform wage and hour practices relating to a large group of
25 aggrieved employees, is sufficiently “manageable” so as not to interfere with Defendant’s right
26 to due process. Defendant alleged that the putative class members worked at different locations,
27 in different positions, and that their job roles, job duties, and work hours varied. Defendant
28 contended that there was variation as to the circumstances that could allegedly cause the

employees to work overtime or to be deprived of the opportunity to take legally-compliant, duty-free meal and/or rest periods. Defendant further contended that these issues presented challenges not only to liability, but challenges to Plaintiffs' ability to show that a PAGA claim could be efficiently and manageably adjudicated without abridging Defendant's due process rights.

56. Defendant pointed to case law that held that, given the derivative nature of a PAGA claim, it would stand or fall based on the claims from which it derives, and the success of showing, *inter alia*, failure to properly pay wages, failure to provide compliant breaks, failure to reimburse for expenses, etc. Defendant also pointed to case law demonstrating that courts have attributed little separate value to PAGA claims, for example, allowing them to be resolved for \$0 where the other underlying claims are being resolved. See, e.g. *Matter of Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by the trial court in approving the allocation of \$0 toward the settlement of the PAGA claim, where PAGA claim is resolved as a part of an overall resolution of the underlying California Labor Code violations); *Franco v. Ruiz Food Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *14 (Approving the allocation of \$10,000, out of the settlement of \$2.5 million, toward the settlement of the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-SKO, 2012 WL 5364575, at *3 (Approving the allocation of \$10,000, out of the settlement of \$3.7 million, toward the settlement of the PAGA claim); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL 672645, at *1 (Approving an allocation of \$10,000, out of the settlement of \$6.9 million, toward the settlement of the PAGA claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-cv-1683-MMA (JMA), 2011 WL 4899942, at *18 (Approving an allocation of \$3,000, out of the settlement of \$1.2 million, toward the settlement of the PAGA claim); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14 (Approving the allocation of \$10,000, out of the settlement of \$518,245, toward the settlement of the PAGA claim).

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///

1 57. Assuming that a court would be satisfied that the PAGA claim was susceptible to
2 being efficiently and fairly tried and adjudicated on a representative basis, and assuming that it
3 could be shown that civil penalties in the amount of \$750 are owed for each of the six hundred
4 fifteen (615) aggrieved employees who were estimated to have worked during the one-year
5 statutory period (i.e., from October 6, 2013), the amount of PAGA penalties at issue, which the
6 Court could determine whether or not to assess and whether or not to reduce, were estimated to
7 be approximately \$461,250 (615 individuals x \$750 civil penalties).

8 58. Class Counsel recognized the realities of the case and considered the current state
9 of the law, the costs of continued litigation, the risks and expenses associated with establishing
10 liability, and other risks to recovery (including but not limited to Defendant's financial
11 condition). Taking into account these attendant risks and discounting fifty percent (50%) for
12 them, the value of the PAGA claim was estimated to be \$230,625.

13 **J. Summary**

14 59. The foregoing discussion confirms that the amount of the Settlement is adequate
15 in light of the merits of this case, Plaintiffs' allegations and causes of action, the evidence at
16 issue with respect to those allegations and causes of action, and legal and factual arguments and
17 circumstances which pose challenges to monetary recovery. The conclusion to be drawn from
18 the foregoing analysis is that neither class certification, liability, nor the ability to adjudicate
19 and/or recover monetary relief on a class-wide or representative-basis is clear-cut, which is why
20 the Parties elected to settle this matter. Class Counsel applied appropriate discounts in light of
21 the defenses asserted, information and evidence obtained, and circumstances in this case, which
22 posed risks to certification of a class, representative adjudication, and monetary recovery, and
23 applied appropriate discounts for settlement purposes. This Settlement, like most others, is the
24 product of compromise.

25 ///

26 ///

27 ///

28 ///

Executed on this 22nd day of June 2018, at Glendale, California.

21

**SUPPLEMENTAL DECLARATION OF EDWIN AIWAZIAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

EXHIBIT A

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Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
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Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — SPRING STREET COURTHOUSE

DFT, INC. WAGE AND HOUR CASES

Coordinated actions:

**BETANCES vs. DFT, INC. D/B/A CANNON
MANAGEMENT**

**VALDEZ VS. DFT, INC. D/B/A CANNON
MANAGEMENT**

**JUDICIAL COUNCIL COORDINATION
PROCEEDING NO: 4882**

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
NO.: BC559751**

Complaint Filed: October 6, 2014

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
NO.: CIVDS1605358**

Complaint Filed: April 12, 2016

**AMENDMENT NO. 1 TO STIPULATION
OF CLASS ACTION AND PAGA
SETTLEMENT AND RELEASE**

1 Plaintiffs Eric Betances and Roxana Valdez ("Plaintiffs" or "Class Representatives"), as
2 individuals and on behalf of all others similarly situated, and Defendant DFT, Inc. dba Cannon
3 Management ("Defendant"), pursuant to Paragraph 59 of the Stipulation of Class Action and PAGA
4 Settlement and Release entered into on or about May 31, 2018 ("Agreement"), hereby agree to
5 amend and supplant the Agreement as stated herein. The amendments stated herein are
6 incorporated in the Agreement by this reference:

7
8 **A. Paragraph 25 is hereby amended to state as follows:**

9 "Notice of Objection" means a Settlement Class Member's valid and timely written
10 objection to this Settlement. For the Notice of Objection to be valid, it must be in
11 writing and include: (a) the objector's full name, signature, address, telephone
12 number, and last four numbers of his or her Social Security number, (b) the case
13 name and number of the Action, (c) a written statement of all grounds for the
14 objection accompanied by any legal support for such objection, (d) a statement of
15 whether the objector intends to appear at the Final Approval Hearing and whether he
16 or she is represented by counsel, and (e) copies of any papers, briefs, or other
17 documents upon which the objection is based. The Notice of Objection must be
18 faxed or mailed to the Settlement Administrator, on or before the Response
19 Deadline, as judged by the fax-stamp or postmark date on the copies submitted to
20 the Settlement Administrator.

21
22 **B. Paragraph 36 is hereby amended to state as follows:**

23 "Response Deadline" means the deadline by which Putative Class Members must
24 fax or postmark Requests for Exclusion to the Settlement Administrator, by which
25 Putative Class Members must fax or postmark Notices of Objection to the
26 Settlement Administrator, and by which Putative Class Members must fax or
27 postmark any Workweek Disputes to the Settlement Administrator. The Response
28 Deadline will be forty-five (45) calendar days from the initial mailing of the Class

1 Notice by the Settlement Administrator, unless the 45th day falls on a Sunday or
2 Federal holiday, in which case the Response Deadline will be extended to the next
3 day on which the U.S. Postal Service is open. The deadline to submit a Request for
4 Exclusion to the Settlement Administrator, to fax or mail a Notice of Objection to
5 the Settlement Administrator, or submit a Workweek Dispute to the Settlement
6 Administrator will be extended the later of (a) fifteen (15) calendar days or (b) the
7 Response Deadline for any Settlement Class Member who is re-mailed a Class
8 Notice by the Settlement Administrator, unless the 15th day falls on a Sunday or
9 Federal holiday, in which case the Response Deadline will be extended to the next
10 day on which the U.S. Postal Service is open. The Response Deadline may also be
11 extended by express agreement between Class Counsel and Defendant. Under no
12 circumstances, however, will the Settlement Administrator have the authority to
13 extend the deadline for Putative Class Members to submit a Request for Exclusion,
14 Notice of Objection, or Workweek Dispute.

15
16 **C. Paragraph 61 is hereby amended to state as follows:**

17 Class Notice. All Putative Class Members will be mailed a Class Notice. Each Class
18 Notice will provide: (a) information regarding the nature of the Action; (b) a
19 summary of the Settlement's principal terms; (c) the Putative Class definition; (d)
20 the total number of Workweeks and PAGA Workweeks (if applicable) attributed to
21 each respective Putative Class Member; (e) each Putative Class Member's estimated
22 Settlement Share and Individual PAGA Payment (if applicable) and the formula for
23 calculating them; (f) the dates which comprise the Class Period and PAGA Period;
24 (g) instructions on how to submit valid Requests for Exclusion, Notices of
25 Objection, or Workweek Disputes; (h) the deadlines by which the Putative Class
26 Member must fax or postmark Requests for Exclusion to the Settlement
27 Administrator, fax or mail Notices of Objection to the Settlement Administrator,
28 and/or fax or postmark a Workweek Dispute to the Settlement Administrator; (i) the

Released Claims, as set forth herein; and (j) the date and time of the Final Approval Hearing.

D. Paragraph 66 is hereby amended to state as follows:

Objection Procedures. To object to the Settlement, a Settlement Class Member must fax or mail a valid Notice of Objection to the Settlement Administrator at the address specified in the Class Notice, by First Class U.S. mail, on or before the Response Deadline. The Notice of Objection must be signed by the Settlement Class Member and contain all information required by this Stipulation of Settlement. The date of the fax-stamp or postmark date on the mailing envelope will be deemed the exclusive means for determining that the Notice of Objection is timely. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written Notices of Objection to this Stipulation of Settlement or appeal from the Final Approval Order and Judgment. The Settlement Administrator shall promptly forward all copies of Notices of Objections that it receives, to counsel for the Parties, and shall also attach copies of the Notices of Objection as an exhibit to its declaration to be filed in connection with final approval of the Settlement. The Parties shall have the option to respond to any Notices of Objection at or before the Final Approval Hearing. Any Settlement Class Member who has submitted a timely and valid, or otherwise accepted, Request for Exclusion will be foreclosed from making any objections and seeking any adjudication or review, whether by appeal or otherwise, to this Stipulation of Settlement.

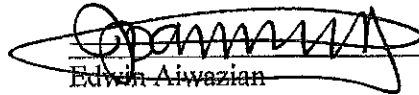
E. Exhibit A (the “Notice of Class Action and PAGA Settlement”) shall be replaced with: the [Revised] Notice of Class Action and PAGA Settlement that is attached hereto as Exhibit 1.

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

1 THE PARTIES HAVE AGREED TO AMENDMENT OF THE AGREEMENT AS STATED
2 HEREIN, BY AND THROUGH THEIR UNDERSIGNED COUNSEL.

3 Dated: June 22, 2018

LAWYERS for JUSTICE, PC

4 

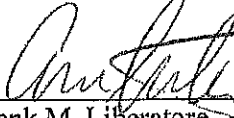
5 Edvard Aivazian

6 Joanna Ghosh

Attorneys for Plaintiffs

7 Dated: June 21, 2018

JACKSON LEWIS P.C.

8 

9 Frank M. Liberatore

10 Eric J. Gitig

11 Attorneys for Defendant

EXHIBIT 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DFT, INC. WAGE AND HOUR CASES

Coordinated actions:

BETANCES vs. DFT, INC. D/B/A CANNON
MANAGEMENT

VALDEZ VS. DFT, INC. D/B/A CANNON
MANAGEMENT

JUDICIAL COUNCIL COORDINATION PROCEEDING NO: 4882

SUPERIOR COURT OF CALIFORNIA COUNTY OF
LOS ANGELES
NO.: BC559751

SUPERIOR COURT OF CALIFORNIA COUNTY OF
SAN BERNARDINO
NO.: CIVDS1605358

To: All hourly-paid or non-exempt individuals employed by DFT, Inc. dba Cannon Management within the State of California between October 6, 2010 to [the date of Preliminary Approval].

**PLEASE READ THIS NOTICE CAREFULLY
IT MAY AFFECT YOUR LEGAL RIGHTS**

INTRODUCTION

You have received this Notice of Class Action and PAGA Settlement ("Settlement Notice") because the records of DFT, Inc. dba Cannon Management ("Cannon") indicate that you were employed as an hourly-paid or non-exempt employee by Cannon within the State of California at any time between October 6, 2010 and [date of Preliminary Approval] ("Class Period"). All individuals who fall within that description are considered "Class Members" under the terms of this Settlement Notice.

We are providing you with this Settlement Notice to make you aware that a proposed class action settlement (the "Settlement") of the above-entitled coordinated lawsuits (collectively referred to as the "Action"), pending in the Superior Court of the State of California for the County of Los Angeles, has been reached by the parties and has been granted preliminary approval by the Court supervising the Action. A Final Approval Hearing will be held on [date and time of Final Approval Hearing] to determine whether the Settlement should be granted final approval.

Cannon's records indicate that you are a Class Member and therefore you are entitled to payment under the Settlement. The Settlement affects your legal rights unless you "opt out" of the Settlement. The purpose of this Settlement Notice is to: (1) describe the Action; (2) inform you of the terms of the Settlement; and (3) inform you of your rights and options in connection with the Settlement. Cannon will not fire, punish, retaliate, or otherwise discriminate against any employee because he or she chooses to or not to participate in the Settlement or objects to the Settlement.

SUMMARY OF THE ACTION

Plaintiffs Eric Betances and Roxana Valdez (collectively, "Plaintiffs") are former employees of Cannon. Plaintiff Eric Betances ("Betances") filed a putative class and representative action complaint against Cannon in Los Angeles Superior Court on October 6, 2014 (Los Angeles Superior Court, Case No. BC559751); Plaintiff Roxana Valdez ("Valdez") filed a putative representative action complaint in San Bernardino Superior Court on April 12, 2016 (San Bernardino Superior Court, Case No. CIVDS1605358) (collectively, the "Lawsuits"). The Lawsuits collectively allege that Cannon violated the

Questions? Contact the Settlement Administrator toll free at 1-***-***-****

California Labor Code and Business Professions Code by failing to pay wages, including, but not limited to, overtime and minimum wages, failing to provide meal and rest periods, failing to reimburse business expenses, failing to provide accurate wage statements, failing to provide timely wages during and after employment, failing to keep payroll records, and committing unfair business practices. Plaintiffs seek recovery of alleged unpaid wages, statutory penalties, civil penalties under the California Private Attorneys General Act ("PAGA"), interest, and attorneys' fees and costs. Plaintiffs also seek to maintain a class action for their claims on behalf of themselves and all hourly-paid or non-exempt individuals employed by Cannon within the State of California during the Class Period.

Cannon has denied, and continues to deny, the factual allegations and legal claims asserted in the Action and believes that Plaintiffs' claims have no merit. By agreeing to settle, Cannon is not admitting liability on any of the factual allegations or claims asserted in the Action or that it can or should proceed as a class action. Cannon has agreed to settle the case solely for economic efficiency.

The parties have actively litigated this Action and the Lawsuits. Counsel for the parties have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Plaintiffs' counsel believes that the claims alleged in the Action have merit, Plaintiffs' counsel also recognizes that further proceedings in this Action, including a trial and possible appeals, would be very expensive and lengthy, and that it is uncertain how various legal questions at issue would ultimately be determined in the Action. Therefore, upon careful consideration of all of the facts and circumstances of this case, Plaintiffs' counsel believes that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members.

Plaintiffs and Cannon engaged in extensive settlement discussions in an attempt to resolve the claims in the Action. As a result of these discussions, the parties entered into a Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"). Each party has entered into this Settlement with the intention to avoid further disputes and litigation and their attendant risk, inconvenience, and expense.

The Court granted preliminary approval of the Settlement on [date of Preliminary Approval] on behalf of a Class defined as:

All hourly-paid or non-exempt individuals employed by Cannon within the state of California at any time during the period from October 6, 2010 to [date of Preliminary Approval].

At that time the Court also preliminarily approved Plaintiffs to serve as Class Representatives, Phoenix Class Action Administration Services to serve as Settlement Administrator, and Lawyers for Justice, PC and Girardi | Keese to serve as counsel for Plaintiffs and the Class ("Class Counsel").

By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. The final determination of whether the Settlement is fair, reasonable, and adequate will be made at the Final Approval Hearing, which is scheduled for [date and time of Final Approval Hearing], in Department 9 of the Los Angeles County Superior Court – Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012.

SUMMARY OF SETTLEMENT TERMS

Settlement Amount. Cannon has agreed to pay a maximum settlement amount of \$550,000 ("Maximum Settlement Amount") to fully resolve the Action and obtain a release of claims as described below. All payments associated with the Settlement shall be paid from the Maximum Settlement Amount, including all payments to Class Members, Plaintiffs, Class Counsel, the Settlement Administrator, and employees' and employer's share of tax withholdings or deductions on the wage portion of each Class Member's Settlement Share. The Net Settlement Amount refers to the amount available for payment to the Class Members after deducting the following from the Maximum Settlement Amount: (1) Class Representative Enhancement Payments; (2) Settlement Administration Costs, (3) Attorneys' Fees and Costs, and (4) the PAGA Settlement Amount (as defined below).

Settlement Administration and Other Payments. The Court has tentatively approved certain payments to be made from the Maximum Settlement Amount as follows, which will be subject to final approval by the Court:

- Class Representative Enhancement Payments. Enhancement Payments of up to \$7,500 to Plaintiff Betances and up to \$5,000 to Plaintiff Valdez for their efforts and services they have provided on behalf of the Class in prosecuting the Action. These Class Representatives Enhancement Payments will be in addition to whatever payment Plaintiffs are otherwise entitled to as Class Members.
- PAGA Settlement Amount. Payment of \$30,000 as alleged civil penalties under the PAGA, of which \$22,500 (75%) will be paid to the California Labor & Workforce Development Agency ("LWDA"), and \$7,500.00 (25%) shall be paid on a *pro rata* basis to Class Members who do not submit timely and valid Requests for Exclusion ("Settlement Class Members") and who were employed by Cannon during the period of October 6, 2013 through [date of Preliminary Approval] ("PAGA Class Members").
- Settlement Administration Costs. Payment to the Settlement Administrator, estimated at this time not to exceed \$17,000, for the expense of notifying the Class of the Settlement, processing Requests for Exclusion, Notices of Objection, and Workweek Disputes, and distributing payments under the Settlement.
- Attorneys' Fees and Costs. Payment to Class Counsel of attorneys' fees in the amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$192,500) as reasonable compensation for the work Class Counsel has performed in this Action, and will continue to perform through settlement finalization, together with reimbursement of the costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an amount not to exceed \$30,000.

Calculation of Each Class Member's Settlement Share. Each Class Member who does not validly opt out of the Settlement (i.e., Settlement Class Member) will be issued a share of the Net Settlement Amount ("Settlement Share") if the Settlement is granted final approval by the Court. Each Class Member's Settlement Share will be calculated as follows:

1. "Workweeks" means the number of weeks of employment that each Class Member worked as an hourly-paid or non-exempt employee for Cannon within the State of California during the Class Period.
2. Each Class Member's number of Workweeks will be calculated based on each Class Member's individual payroll and/or time records, as maintained by Cannon. The Settlement Administrator will determine the total number of Workweeks worked by all Class Members resulting in the "Class Workweeks."
3. To determine each Class Member's estimated Settlement Share, the Settlement Administrator will use the following formula: $\text{estimated Settlement Share} = (\text{Net Settlement Amount} \div \text{Class Workweeks}) \times \text{Workweeks}$.
4. If any Class Members validly opts out of the Settlement, the Settlement Administrator will proportionately increase the Settlement Share of each Class Member to ensure that the entire Net Settlement Amount is distributed to Class Members.
5. Each Class Member's Settlement Share will be reduced by any required deductions for each Class Member, including the employer's and employee's share of payroll taxes or withholdings with respect to the wage portion of the Settlement Share, resulting in the Class Member's Individual Settlement Payment.

Cannon's records indicate that you worked a total of [number] Workweeks. Based on your Workweeks and the above calculations, if the Settlement is approved and you elect not to opt out of the Settlement, your estimated gross Individual Settlement Payment is \$[Individual Settlement Payment].

Calculation of Individual PAGA Payments. In addition to the Settlement Share described above, each Class Member who does not validly opt out of the Settlement and who worked as an hourly-paid or non-exempt employee for Cannon within the State of California during the period of October 6, 2013 through [date of Preliminary Approval] (the "PAGA Period") (i.e., PAGA Class Members) will be issued a share of the PAGA Settlement Amount ("Individual PAGA Payment") if the

Settlement is granted final approval by the Court. Each PAGA Class Member's Individual PAGA Payment will be calculated as follows:

1. "PAGA Workweeks" means the number of weeks of employment that each PAGA Class Member worked as an hourly-paid or non-exempt employee for Cannon within the State of California during the PAGA Period.
2. The Settlement Administrator will calculate the total number of PAGA Workweeks of each individual PAGA Class Member ("Individual PAGA Workweeks") and the total number of PAGA Workweeks worked by all PAGA Class Members ("Total PAGA Workweeks").
3. To determine each PAGA Class Member's Individual PAGA Payment, the Settlement Administrator will use the following formula: $\text{Individual PAGA Payment} = (\$7,500.00 \div \text{Total PAGA Workweeks}) \times \text{Individual PAGA Workweeks}$.
4. The remaining portion of the PAGA Settlement Amount (\$22,500) will be paid by the Settlement Administrator to the LWDA.

Cannon's records indicate that you worked a total of [number] PAGA Workweeks. Based on your Individual PAGA Workweeks and the above calculations, if the Settlement is approved and you elect not to opt out of the Settlement, your estimated Individual PAGA Payment is \$[Individual PAGA Payment].

Tax Withholding. IRS Forms W-2 and 1099 will be distributed to the Class Members and the appropriate taxing authorities, reflecting the payments that are issued to the Class Members under the Settlement. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

- Individual Settlement Payments: One-third (1/3) of each Settlement Share will be allocated as alleged unpaid wages, one-third (1/3) will be allocated as alleged unpaid interest, and one-third (1/3) will be allocated as alleged unpaid penalties. The portion allocated as wages will be reduced for employee's and employer's share of federal and state withholdings and taxes. Each Settlement Share minus employees' and employers' share of taxes is an Individual Settlement Payment.
- Individual PAGA Payments: All Individual PAGA Payments will be allocated as alleged unpaid penalties and will be reported on an IRS Form-1099 by the Settlement Administrator (and will not be reduced for any taxes or withholdings).

Release of Claims. Upon final approval of the Settlement, each Class Member (other than those who submit a timely and valid Request for Exclusion) shall be deemed to have fully, finally, and forever released Cannon and any of its current and former parents, subsidiaries, affiliates, divisions, successors, assigns, and officers, directors, employees, and shareholders thereof, if any (the "Released Parties"), from any and all Released Claims, which include all allegations, claims, rights, demands, liabilities and causes of action of any nature and description, against Cannon and any of its current and former parents, subsidiaries, affiliates, divisions, successors, assigns, and officers, directors, employees, and shareholders thereof, if any ("Released Parties, under state, federal, or local law, whether statutory, constitutional, contractual, common law, and administrative law claims, made or which could have been made in the Action, based on the allegations in the Lawsuits and amendments thereto, during the Class Period, including the following claims and any corresponding or related claims under the Fair Labor Standards Act: failure to pay for all hours worked, including but not limited to minimum wage and overtime hours; failure to provide meal periods and failure to pay associated premium payments; failure to provide rest breaks and failure to pay associated premium payments; failure to timely pay wages during employment; failure to reimburse business expenses; failure to keep accurate payroll records; failure to provide compliant wage statements; failure to timely pay all wages due at time of separation and associated waiting time penalties; failure to comply with the California Labor Code and associated PAGA civil penalties; and alleged violation of the California Business and Professions Code section 17200, *et seq.*, including, but not limited to, injunctive relief, punitive damages, liquidated damages, penalties of any nature, interest, fees, and costs.

All Class Members who do not submit a timely and valid Request for Exclusion from the Settlement (i.e., Settlement Class Members) shall be bound by this release.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an Order finally approving the Settlement.

YOUR OPTIONS UNDER THE SETTLEMENT

Option 1— *Do Nothing*

You do not need to do anything if you want to receive payment from and participate in the Settlement. If you chose this **Option 1** (i.e., do nothing in response to this Settlement Notice) and the Court grants final approval of the Settlement, you will be mailed a check for your Individual Settlement Payment and, if applicable, Individual PAGA Payment. In addition, you will be deemed to have released and waived the Released Claims against the Released Parties. Class Members will be bound by the Release of Claims unless they submit a valid Request for Exclusion pursuant to Option 2 below.

Stated above in this Settlement Notice is the number of Workweeks, and if applicable, PAGA Workweeks credited to you, and your estimated Individual Settlement Share and, if applicable, Individual PAGA Payment. If you believe that the number of Workweeks or PAGA Workweeks shown above are incorrect, you can dispute that information by faxing or mailing a Workweek Dispute to the Settlement Administrator on or before **[Response Deadline]** at the following address:

DFT, Inc. Wage and Hour Cases Settlement Administration
c/o Claims Administrator Name
Address
Facsimile Number

To be valid, a Workweek Dispute must be in writing and contain: (i) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (ii) the case name and number of the Action (the case name and number is: DFT, Inc. Wage and Hour Cases, JCCP 4882); and (c) the number of Workweeks and/or PAGA Workweeks you contend is correct and any evidence supporting your contention.

Option 2 — *Opt Out of the Settlement*

If you do not wish to participate in the Settlement, you may exclude yourself or “opt out” from the Settlement. If you opt out, you will receive no compensation from the Settlement, and you will not be bound by its terms. To validly opt out, you must submit a valid Request for Exclusion to the Settlement Administrator postmarked or fax stamped no later than **[Response Deadline – 45 days from mailing of Notice]**, and sent to the Settlement Administrator at the address listed above in Option 1.

The Request for Exclusion must be in writing and must include (i) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (ii) the case name and number of the Action (the case name and number is: DFT, Inc. Wage and Hour Cases, JCCP 4882); and (iii) a clear statement that you do not wish to be included in the Settlement.

If you choose this **Option 2**, you will no longer be a Class Member. You will not be deemed to have released the Released Claims, you will not receive any payment from the Settlement, and you will lack standing to submit any objection to the Settlement.

Option 3 — *Object to the Settlement*

If you wish to object to the Settlement because you find it unfair or unreasonable, you must fax or mail a Notice of Objection to the Settlement Administrator. A valid Notice of Objection must be in writing and include: (i) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (ii) the case name and number of the Action (the case name and number is: DFT, Inc. Wage and Hour Cases, JCCP 4882); (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection, (iv) a statement of whether you intend to appear at

the Final Approval Hearing and whether you are represented by counsel, and (v) copies of any papers, briefs, or other documents upon which the objection is based.

If you submit a Notice of Objection as outlined above, you may, but are not required to, appear at the Final Approval Hearing set for [Date and Time of Fairness Hearing] in Department 9 of the Los Angeles County Superior Court – Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, and discuss your objection with the Court and counsel for the parties. You may also retain an attorney to represent you at the hearing. If you wish to appear at the Final Approval Hearing and/or retain an attorney to represent you at the hearing, you must do so at your own expense. Notwithstanding the foregoing, the Court may hear any and all Class Members who object at the Final Approval Hearing regardless of whether a Notice of Objection was submitted.

All Notices of Objection must be faxed or mailed to the Settlement Administrator (at the address or fax number listed above under Option 1) no later than **[Response Deadline – 45 days from mailing of Notice]**. By submitting a Notice of Objection, you are not excluding yourself from the Settlement. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only.

If you choose this **Option 3**, you may still receive payment under the Settlement if the Settlement is granted final approval by the Court. In addition, you will be subject to the Release of Claims referenced above.

Additional Information

This Settlement Notice is only a summary of the case and the settlement. **Class Members should contact the Settlement Administrator at 1-***-***-**** with any concerns or questions regarding the Settlement.** You may also refer to the pleadings, the Joint Stipulation of Class Action and PAGA Settlement and Release (which is attached as Exhibit __ to the Declaration of Edwin Aiwasian in Support of Preliminary Approval of Class Action Settlement), Amendment No 1 to Joint Stipulation of Class Action and PAGA Settlement and Release (which is attached as Exhibit __ to the Supplemental Declaration of Edwin Aiwasian in Support of Preliminary Approval of Class Action Settlement) and other papers filed in the Action, which may be inspected at the Office of the Clerk for the Superior Court of California for the County of Los Angeles, Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, California 90012.

All inquiries by Class Members regarding this Settlement Notice and/or the settlement should be directed to the Settlement Administrator or Counsel for the Parties, at the addresses set forth below.

Class Counsel
Edwin Aiwasian, Esq.
LAWYERS FOR JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020

V. Andre Sherman, Esq.
GIRARDI | KEESE
1126 Wilshire Boulevard
Los Angeles, California 90017
Tel: (213) 977-0211

Counsel for DFT, Inc. dba Cannon Management
Frank M. Liberatore, Esq.
Eric J. Gitig, Esq.
JACKSON LEWIS P.C.
725 S. Figueroa, Suite 2500
Los Angeles, CA 90017
Tel.: (213) 689-0404

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH QUESTIONS.

EXHIBIT B

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
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Attorneys for Plaintiffs

Frank M. Liberatore (SBN 119976)
Eric J. Gitig (SBN 307547)
JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017
Tel: (213) 689-0404 / Fax: (213) 689-0430

Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — SPRING STREET COURTHOUSE

DFT, INC. WAGE AND HOUR CASES

Coordinated actions:

BETANCES vs. DFT, INC. D/B/A CANNON
MANAGEMENT

VALDEZ VS. DFT, INC. D/B/A CANNON
MANAGEMENT

**JUDICIAL COUNCIL COORDINATION
PROCEEDING NO: 4882**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
NO.: BC559751

Complaint Filed: October 6, 2014

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
NO.: CIVDS1605358

Complaint Filed: April 12, 2016

**AMENDMENT NO. 1 TO STIPULATION
OF CLASS ACTION AND PAGA
SETTLEMENT AND RELEASE**

1 Plaintiffs Eric Betances and Roxana Valdez ("Plaintiffs" or "Class Representatives"), as
2 individuals and on behalf of all others similarly situated, and Defendant DFT, Inc. dba Cannon
3 Management ("Defendant"), pursuant to Paragraph 59 of the Stipulation of Class Action and PAGA
4 Settlement and Release entered into on or about May 31, 2018 ("Agreement"), hereby agree to
5 amend and supplant the Agreement as stated herein. The amendments stated herein are
6 incorporated in the Agreement by this reference:

7
8 **A. Paragraph 25 is hereby amended to state as follows:**

9 "Notice of Objection" means a Settlement Class Member's valid and timely written
10 objection to this Settlement. For the Notice of Objection to be valid, it must be in
11 writing and include: (a) the objector's full name, signature, address, telephone
12 number, and last four numbers of his or her Social Security number, (b) the case
13 name and number of the Action, (c) a written statement of all grounds for the
14 objection accompanied by any legal support for such objection, (d) a statement of
15 whether the objector intends to appear at the Final Approval Hearing and whether he
16 or she is represented by counsel, and (e) copies of any papers, briefs, or other
17 documents upon which the objection is based. The Notice of Objection must be filed
18 ~~with the Court and copies thereof must also be faxed or~~ mailed to the Settlement
19 Administrator, on or before the Response Deadline, as judged by the ~~file-stamp date~~
20 ~~on the filing and fax-stamp or~~ postmark date on the copies submitted to the
21 Settlement Administrator.

22
23 **B. Paragraph 36 is hereby amended to state as follows:**

24 "Response Deadline" means the deadline by which Putative Class Members must
25 fax or postmark Requests for Exclusion to the Settlement Administrator, by which
26 Putative Class Members must ~~file a Notice of Objection with the Court and fax or~~
27 ~~mail-postmark~~ copies of the Notices of Objection to the Settlement Administrator,
28 and by which Putative Class Members must fax or postmark any Workweek

1 Disputes to the Settlement Administrator. The Response Deadline will be forty-five
2 (45) calendar days from the initial mailing of the Class Notice by the Settlement
3 Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which
4 case the Response Deadline will be extended to the next day on which the U.S.
5 Postal Service is open. The deadline to submit a Request for Exclusion to the
6 Settlement Administrator, to ~~file a Notice of Objection with the Court and fax or~~
7 ~~mail copies of the~~ Notice of Objection to the Settlement Administrator, or submit a
8 Workweek Dispute to the Settlement Administrator will be extended the later of (a)
9 fifteen (15) calendar days or (b) the Response Deadline for any Settlement Class
10 Member who is re-mailed a Class Notice by the Settlement Administrator, unless
11 the 15th day falls on a Sunday or Federal holiday, in which case the Response
12 Deadline will be extended to the next day on which the U.S. Postal Service is open.
13 The Response Deadline may also be extended by express agreement between Class
14 Counsel and Defendant. Under no circumstances, however, will the Settlement
15 Administrator have the authority to extend the deadline for Putative Class Members
16 to submit a Request for Exclusion, Notice of Objection, or Workweek Dispute.

17
18 **C. Paragraph 61 is hereby amended to state as follows:**

19 Class Notice. All Putative Class Members will be mailed a Class Notice. Each Class
20 Notice will provide: (a) information regarding the nature of the Action; (b) a
21 summary of the Settlement's principal terms; (c) the Putative Class definition; (d)
22 the total number of Workweeks and PAGA Workweeks (if applicable) attributed to
23 each respective Putative Class Member; (e) each Putative Class Member's estimated
24 Settlement Share and Individual PAGA Payment (if applicable) and the formula for
25 calculating them; (f) the dates which comprise the Class Period and PAGA Period;
26 (g) instructions on how to submit valid Requests for Exclusion, Notices of
27 Objection, or Workweek Disputes; (h) the deadlines by which the Putative Class
28 Member must fax or postmark Requests for Exclusion to the Settlement

1 Administrator, fax or file Notices of Objection with the Court and mail Notices of
2 Objection ~~copies thereof~~ to the Settlement Administrator, and/or fax or postmark a
3 Workweek Dispute to the Settlement Administrator; (i) the Released Claims, as set
4 forth herein; and (j) the date and time of the Final Approval Hearing.

5
6 **D. Paragraph 66 is hereby amended to state as follows:**

7 Objection Procedures. To object to the Settlement, a Settlement Class Member must
8 ~~file a valid Notice of Objection with the Court and~~ fax or mail a ~~copy of the valid~~
9 Notice of Objection to the Settlement Administrator at the address specified in the
10 Class Notice, by First Class U.S. mail, on or before the Response Deadline. The
11 Notice of Objection must be signed by the Settlement Class Member and contain all
12 information required by this Stipulation of Settlement. The date of ~~filing the fax-~~
13 ~~stamp and or~~ postmark date on the mailing envelope will be deemed the exclusive
14 means for determining that the Notice of Objection is timely. ~~Settlement Class~~
15 ~~Members who fail to object in the specific manner specified above will be deemed~~
16 ~~to have waived all objections to the Settlement and will be foreclosed from making~~
17 ~~any objections and seeking any adjudication or review, whether by appeal or~~
18 ~~otherwise, to this Stipulation of Settlement.~~ At no time will any of the Parties or
19 their counsel seek to solicit or otherwise encourage Settlement Class Members to
20 submit written Notices of Objection to this Stipulation of Settlement or appeal from
21 the Final Approval Order and Judgment. The Settlement Administrator shall
22 promptly forward all copies of Notices of Objections that it receives, to counsel for
23 the Parties, and shall also attach copies of the Notices of Objection as an exhibit to
24 its declaration to be filed in connection with final approval of the Settlement. The
25 Parties shall have the option to respond to any Notices of Objection at or before the
26 Final Approval Hearing. Any Settlement Class Member who has submitted a timely
27 and valid, or otherwise accepted, Request for Exclusion will be foreclosed from
28 making any objections and seeking any adjudication or review, whether by appeal or

1 otherwise, to this Stipulation of Settlement.

2
3 **E. Exhibit A (the “Notice of Class Action and PAGA Settlement”) shall be**
4 **replaced with:** the [Revised] Notice of Class Action and PAGA Settlement that is
5 attached hereto as Exhibit 1.

6
7 **THE PARTIES HAVE AGREED TO AMENDMENT OF THE AGREEMENT AS STATED**
8 **HEREIN, BY AND THROUGH THEIR UNDERSIGNED COUNSEL.**

9 Dated: June ____, 2018

LAWYERS *for* JUSTICE, PC

10
11 _____
12 Edwin Aiwazian
13 Joanna Ghosh
14 *Attorneys for* Plaintiffs

15 Dated: June ____, 2018

JACKSON LEWIS P.C.

16 _____
17 Frank M. Liberatore
18 Eric J. Gitig
19 *Attorneys for* Defendant
20
21
22
23
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EXHIBIT C

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DFT, INC. WAGE AND HOUR CASES

Coordinated actions:

BETANCES vs. DFT, INC. D/B/A CANNON
MANAGEMENT

VALDEZ VS. DFT, INC. D/B/A CANNON
MANAGEMENT

JUDICIAL COUNCIL COORDINATION PROCEEDING NO: 4882

SUPERIOR COURT OF CALIFORNIA -COUNTY
OF LOS ANGELES
NO.: BC559751

SUPERIOR COURT OF CALIFORNIA -COUNTY
OF SAN BERNARDINO
NO.: CIVDS1605358

To: All hourly-paid or non-exempt individuals employed by DFT, Inc. dba Cannon Management within the State of California between October 6, 2010 to [the date of Preliminary Approval].

**PLEASE READ THIS NOTICE CAREFULLY
IT MAY AFFECT YOUR LEGAL RIGHTS**

INTRODUCTION

You have received this Notice of Class Action and PAGA Settlement ("Settlement Notice") because the records of DFT, Inc. dba Cannon Management ("Cannon") indicate that you were employed as an hourly-paid or non-exempt employee by Cannon within the State of California at any time between October 6, 2010 and [date of Preliminary Approval] ("Class Period"). All individuals who fall within that description are considered "Class Members" under the terms of this Settlement Notice.

We are providing you with this Settlement Notice to make you aware that a proposed class action settlement (the "Settlement") of the above-entitled coordinated lawsuits (collectively referred to as the "Action"), pending in the Superior Court of the State of California for the County of Los Angeles, has been reached by the parties and has been granted preliminary approval by the Court supervising the Action. A Final Approval Hearing will be held on [date and time of Final Approval Hearing] to determine whether the Settlement should be granted final approval.

Cannon's records indicate that you are a Class Member and therefore you are entitled to payment under the Settlement. The Settlement affects your legal rights unless you "opt out" of the Settlement. The purpose of this Settlement Notice is to: (1) describe the Action; (2) inform you of the terms of the Settlement; and (3) inform you of your rights and options in connection with the Settlement. Cannon will not fire, punish, retaliate, or otherwise discriminate against any employee because he or she chooses to or not to participate in the Settlement or objects to the Settlement.

SUMMARY OF THE ACTION

Plaintiffs Eric Betances and Roxana Valdez (collectively, "Plaintiffs") are former employees of Cannon. Plaintiff Eric Betances ("Betances") filed a putative class and representative action complaint against Cannon in Los Angeles Superior Court on October 6, 2014 (Los Angeles Superior Court, Case No. BC559751); Plaintiff Roxana Valdez ("Valdez") filed a putative representative action complaint in San Bernardino Superior Court on April 12, 2016 (San Bernardino Superior Court, Case No. CIVDS1605358) (collectively, the "Lawsuits"). The Lawsuits collectively allege that Cannon violated the

Questions? Contact the Settlement Administrator toll free at 1-***-***-****

California Labor Code and Business Professions Code by failing to pay wages, including, but not limited to, overtime and minimum wages, failing to provide meal and rest periods, failing to reimburse business expenses, failing to provide accurate wage statements, failing to provide timely wages during and after employment, failing to keep payroll records, and committing unfair business practices. Plaintiffs seek recovery of alleged unpaid wages, statutory penalties, civil penalties under the California Private Attorneys' General Act ("PAGA"), interest, and attorneys' fees and costs. Plaintiffs also seek to maintain a class action for their claims on behalf of themselves and all hourly-paid or non-exempt individuals employed by Cannon within the State of California during the Class Period.

Cannon has denied, and continues to deny, the factual allegations and legal claims asserted in the Action; and believes that Plaintiffs' claims have no merit. By agreeing to settle, Cannon is not admitting liability on any of the factual allegations or claims asserted in the Action or that it can or should proceed as a class action. Cannon has agreed to settle the case solely for economic efficiency.

The parties have actively litigated this Action and the Lawsuits. Counsel for the parties have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Plaintiffs' counsel believes that the claims alleged in the Action have merit, Plaintiffs' counsel also recognizes that further proceedings in this Action, including a trial and possible appeals, would be very expensive and lengthy, and that it is uncertain how various legal questions at issue would ultimately be determined in the Action. Therefore, upon careful consideration of all of the facts and circumstances of this case, Plaintiffs' counsel believes that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members.

Plaintiffs and Cannon engaged in extensive settlement discussions in an attempt to resolve the claims in the Action. As a result of these discussions, the parties entered into a Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement"). Each party has entered into this Settlement with the intention to avoid further disputes and litigation and their attendant risk, inconvenience, and expense.

The Court granted preliminary approval of the Settlement on [date of Preliminary Approval] on behalf of a Class defined as:

All hourly-paid or non-exempt individuals employed by Cannon within the state of California at any time during the period from October 6, 2010 to [date of Preliminary Approval].

At that time the Court also preliminarily approved Plaintiffs to serve as Class Representatives, Phoenix Class Action Administration Services to serve as Settlement Administrator, and Lawyers for Justice, PC and Girardi | Keese to serve as counsel for Plaintiffs and the Class ("Class Counsel").

By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. The final determination of whether the Settlement is fair, reasonable, and adequate will be made at the Final Approval Hearing, which is scheduled for [date and time of Final Approval Hearing], in Department 9 of the Los Angeles County Superior Court – Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012.

SUMMARY OF SETTLEMENT TERMS

Settlement Amount. Cannon has agreed to pay a maximum settlement amount of \$550,000 ("Maximum Settlement Amount") to fully resolve the Action and obtain a release of claims as described below. All payments associated with the Settlement shall be paid from the Maximum Settlement Amount, including all payments to Class Members, Plaintiffs, Class Counsel, the Settlement Administrator, and employees' and employer's share of tax withholdings or deductions on the wage portion of each Class Member's Settlement Share. The Net Settlement Amount refers to the amount available for payment to the Class Members after deducting the following from the Maximum Settlement Amount: (1) Class Representative Enhancement Payments; (2) Settlement Administration Costs, (3) Attorneys' Fees and Costs, and (4) the PAGA Settlement Amount (as defined below).

Settlement Administration and Other Payments. The Court has tentatively approved certain payments to be made from the Maximum Settlement Amount as follows, which will be subject to final approval by the Court:

- Class Representative Enhancement Payments. Enhancement Payments of up to \$7,500 to Plaintiff Betances and up to \$5,000 to Plaintiff Valdez for their efforts and services they have provided on behalf of the Class in prosecuting the Action. These Class Representatives Enhancement Payments will be in addition to whatever payment Plaintiffs are otherwise entitled to as Class Members.
- PAGA Settlement Amount. Payment of \$30,000 as alleged civil penalties under the ~~California Private Attorneys General Act of 2004~~ (“PAGA”), of which \$22,500 (75%) will be paid to the California Labor & Workforce Development Agency (“LWDA”), and \$7,500.00 (25%) shall be paid on a *pro rata* basis to Class Members who do not submit timely and valid Requests for Exclusion (“Settlement Class Members”) and who were employed by Cannon during the period of October 6, 2013 through [date of Preliminary Approval] (“PAGA Class Members”).
- Settlement Administration Costs. Payment to the Settlement Administrator, estimated at this time not to exceed \$17,000, for the expense of notifying the Class of the Settlement, processing Requests for Exclusion, Notices of Objection, and Workweek Disputes, and distributing payments under the Settlement.
- Attorneys’ Fees and Costs. Payment to Class Counsel of attorneys’ fees in the amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (i.e., \$192,500) as reasonable compensation for the work Class Counsel has performed in this Action, and will continue to perform through settlement finalization, together with reimbursement of the costs and expenses associated with Class Counsel’s litigation and settlement of the Action, in an amount not to exceed \$30,000.

Calculation of Each Class Member’s Settlement Share. Each Class Member who does not validly opt out of the Settlement (i.e., Settlement Class Member) will be issued a share of the Net Settlement Amount (“Settlement Share”) if the Settlement is granted final approval by the Court. Each Class Member’s Settlement Share will be calculated as follows:

1. “Workweeks” means the number of weeks of employment that each Class Member worked as an hourly-paid or non-exempt employee for Cannon within the State of California during the Class Period.
2. Each Class Member’s number of Workweeks will be calculated based on each Class Member’s individual payroll and/or time records, as maintained by Cannon. The Settlement Administrator will determine the total number of Workweeks worked by all Class Members resulting in the “Class Workweeks.”
3. To determine each Class Member’s estimated Settlement Share, the Settlement Administrator will use the following formula: estimated Settlement Share = (Net Settlement Amount ÷ Class Workweeks) x Workweeks.
4. If any Class Members validly opts out of the Settlement, the Settlement Administrator will proportionately increase the Settlement Share of each Class Member to ensure that the entire Net Settlement Amount is distributed to Class Members.
5. Each Class Member’s Settlement Share will be reduced by any required deductions for each Class Member, including the employer’s and employee’s share of payroll taxes or withholdings with respect to the wage portion of the Settlement Share, resulting in the Class Member’s Individual Settlement Payment.

Cannon’s records indicate that you worked a total of [number] Workweeks. Based on your Workweeks and the above calculations, if the Settlement is approved and you elect not to opt out of the Settlement, your estimated gross Individual Settlement Payment is \$[Individual Settlement Payment].

Calculation of Individual PAGA Payments. In addition to the Settlement Share described above, each Class Member who does not validly opt out of the Settlement and who worked as an hourly-paid or non-exempt employee for Cannon within the State of California during the period of October 6, 2013 through [date of Preliminary Approval] (the “PAGA Period”) (i.e., PAGA Class Members) will be issued a share of the PAGA Settlement Amount (“Individual PAGA Payment”) if the

Settlement is granted final approval by the Court. Each PAGA Class Member's Individual PAGA Payment will be calculated as follows:

1. "PAGA Workweeks" means the number of weeks of employment that each PAGA Class Member worked as an hourly-paid or non-exempt employee for Cannon within the State of California during the PAGA Period.
2. The Settlement Administrator will calculate the total number of PAGA Workweeks of each individual PAGA Class Member ("Individual PAGA Workweeks") and the total number of PAGA Workweeks worked by all PAGA Class Members ("Total PAGA Workweeks").
3. To determine each PAGA Class Member's Individual PAGA Payment, the Settlement Administrator will use the following formula: Individual PAGA Payment = $(\$7,500.00 \div \text{Total PAGA Workweeks}) \times \text{Individual PAGA Workweeks}$.
4. The remaining portion of the PAGA Settlement Amount (\$22,500) will be paid by the Settlement Administrator to the LWDA.

Cannon's records indicate that you worked a total of [number] PAGA Workweeks. Based on your Individual PAGA Workweeks and the above calculations, if the Settlement is approved and you elect not to opt out of the Settlement, your estimated Individual PAGA Payment is \$[Individual PAGA Payment].

Tax Withholding. IRS Forms W-2 and 1099 will be distributed to the Class Members and the appropriate taxing authorities, reflecting the payments that are issued to the Class Members under the Settlement. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

- Individual Settlement Payments: One-third (1/3) of each Settlement Share will be allocated as alleged unpaid wages, one-third (1/3) will be allocated as alleged unpaid interest, and one-third (1/3) will be allocated as alleged unpaid penalties. The portion allocated as wages will be ~~subject to the~~ reduced for employee's and employer's share of federal and state withholdings and taxes. Each Settlement Share minus employees' and employers' share of taxes is an Individual Settlement Payment.
- Individual PAGA Payments: All Individual PAGA Payments will be allocated as alleged unpaid penalties and will be reported on an IRS Form-1099 by the Settlement Administrator (and will not be reduced for any taxes or withholdings).

Release of Claims. Upon final approval of the Settlement, each Class Member (other than those who submit a timely and valid Request for Exclusion) shall be deemed to have fully, finally, and forever released Cannon and any of its current and former parents, subsidiaries, affiliates, divisions, successors, assigns, and officers, directors, employees, and shareholders thereof, if any (the "Released Parties"), from any and all Released Claims, which include all allegations, claims, rights, demands, liabilities and causes of action of any nature and description, against Cannon and any of its current and former parents, subsidiaries, affiliates, divisions, successors, assigns, and officers, directors, employees, and shareholders thereof, if any ("Released Parties, under state, federal, or local law, whether statutory, constitutional, contractual, common law, and administrative law claims, made or which could have been made in the Action, based on the allegations in the Lawsuits and amendments thereto, ~~from October 6, 2010 through [date of Preliminary Approval]~~ during the Class Period, including the following claims and any corresponding or related claims under the Fair Labor Standards Act: failure to pay for all hours worked, including but not limited to minimum wage and overtime hours; failure to provide meal periods and failure to pay associated premium payments; failure to provide rest breaks and failure to pay associated premium payments; failure to timely pay wages during employment; failure to reimburse business expenses; failure to keep accurate payroll records; failure to provide compliant wage statements; failure to timely pay all wages due at time of separation and associated waiting time penalties; failure to comply with the California Labor Code and associated PAGA civil penalties; and alleged violation of the California Business and Professions Code section 17200, *et seq.*, including, but not limited to, injunctive relief, punitive damages, liquidated damages, penalties of any nature, interest, fees, and costs.

All Class Members who do not submit a timely and valid Request for Exclusion from the Settlement (i.e., Settlement Class Members) shall be bound by this release.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an Order finally approving the Settlement.

YOUR OPTIONS UNDER THE SETTLEMENT

Option 1— *Do Nothing*

You do not need to do anything if you want to receive payment from and participate in the Settlement. If you chose this **Option 1** (i.e., do nothing in response to this Settlement Notice) and the Court grants final approval of the Settlement, you will be mailed a check for your Individual Settlement Payment and, if applicable, Individual PAGA Payment. In addition, you will be deemed to have released and waived the Released Claims against the Released Parties. Class Members will be bound by the Release of Claims unless they submit a valid Request for Exclusion pursuant to Option 2 below.

Stated above in this Settlement Notice is the number of Workweeks, and if applicable, PAGA Workweeks credited to you, and your estimated Individual Settlement Share and, if applicable, Individual PAGA Payment. If you believe that the number of Workweeks or PAGA Workweeks shown above are incorrect, you can dispute that information by faxing or mailing a Workweek Dispute to the Settlement Administrator on or before **[Response Deadline]** at the following address:

DFT, Inc. Wage and Hour Cases Settlement Administration
c/o Claims Administrator Name
Address
Facsimile Number

To be valid, a Workweek Dispute must be in writing and contain: (i) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (ii) the case name and number of the Action (the case name and number is: DFT, Inc. Wage and Hour Cases, JCCP 4882); and (c) the number of Workweeks and/or PAGA Workweeks you contend is correct and any evidence supporting your contention.

Option 2 — *Opt Out of the Settlement*

If you do not wish to participate in the Settlement, you may exclude yourself or “opt out” from the Settlement. If you opt out, you will receive no compensation from the Settlement, and you will not be bound by its terms. To validly opt out, you must submit a valid Request for Exclusion to the Settlement Administrator postmarked or fax stamped no later than **[Response Deadline – 45 days from mailing of Notice]**, and sent to the Settlement Administrator at the address listed above in Option 1.

The Request for Exclusion must be in writing and must include (i) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (ii) the case name and number of the Action (the case name and number is: DFT, Inc. Wage and Hour Cases, JCCP 4882); and (iii) a clear statement that you do not wish to be included in the Settlement.

If you choose this **Option 2**, you will no longer be a Class Member. You will not be deemed to have released the Released Claims, you will not receive any payment from the Settlement, and you will lack standing to file-submit any objection to the Settlement.

Option 3 — ~~File an Objection with the Court~~ Object to the Settlement

If you wish to object to the Settlement because you find it unfair or unreasonable, you must ~~file-fax or mail~~ a Notice of Objection ~~with the Court and mail or fax a copy to~~ the Settlement Administrator. A valid Notice of Objection must be in writing and include: (i) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (ii) the case name and number of the Action (the case name and number is: DFT, Inc. Wage and Hour Cases, JCCP 4882); (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection, (iv) a

Questions? Contact the Settlement Administrator toll free at 1-***-***-****

statement of whether you intend to appear at the Final Approval Hearing and whether you are represented by counsel, and (v) copies of any papers, briefs, or other documents upon which the objection is based.

If you submit a Notice of Objection as outlined above, you may, but are not required to, appear at the Final Approval Hearing set for [Date and Time of Fairness Hearing] in Department 9 of the Los Angeles County Superior Court – Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, and discuss your objection with the Court and counsel for the parties. You may also retain an attorney to represent you at the hearing. If you wish to appear at the Final Approval Hearing and/or retain an attorney to represent you at the hearing, you must do so at your own expense. Notwithstanding the foregoing, the Court may hear any and all Class Members who object at the Final Approval Hearing regardless of whether a Notice of Objection was submitted.

All Notices of Objection must be ~~filed with the Court (at 111 North Hill Street, Los Angeles, California 90012) and faxed or mailed to the Settlement Administrator (at the address or fax number listed above under Option 1) no later than [Response Deadline – 45 days from mailing of Notice], and late objections will not be considered.~~ By ~~filing~~ submitting a Notice of Objection, you are not excluding yourself from the Settlement. Please note that you cannot both object to the Settlement and exclude yourself. You must choose one option only.

If you choose this **Option 3**, you may still receive payment under the Settlement if the Settlement is granted final approval by the Court. In addition, you will be subject to the Release of Claims referenced above.

Additional Information

This Settlement Notice is only a summary of the case and the settlement. **Class Members should contact the Settlement Administrator at 1-***-***-**** with any concerns or questions regarding the Settlement.** You may also refer to the pleadings, the Joint Stipulation of Class Action and PAGA Settlement and Release (which is attached as Exhibit _ to the Declaration of Edwin Aiwarzian in Support of Preliminary Approval of Class Action Settlement), Amendment No 1 to Joint Stipulation of Class Action and PAGA Settlement and Release (which is attached as Exhibit _ to the Supplemental Declaration of Edwin Aiwarzian in Support of Preliminary Approval of Class Action Settlement) and other papers filed in the Action, which may be inspected at the Office of the Clerk for the Superior Court of California for the County of Los Angeles, Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, California 90012.

All inquiries by Class Members regarding this Settlement Notice and/or the settlement should be directed to the Settlement Administrator or Counsel for the Parties, at the addresses set forth below.

Class Counsel

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PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH QUESTIONS.