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

11 **DFT, INC. WAGE AND HOUR CASES**

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO.: 4882

12 Coordinated Actions:

Honorable John S. Wiley, Jr.
Department SSC9

13 ERIC BETANCES vs. DFT, INC. D/B/A
14 CANNON MANAGEMENT
15

Superior Court of California, County of Los
Angeles: BC559751

16 Complaint Filed: October 6, 2014

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

Superior Court of California, County of San
Bernardino: CIVDS1605358

19 Complaint Filed: April 12, 2016

20 **PLAINTIFFS' SUPPLEMENTAL BRIEF IN**
21 **SUPPORT OF PLAINTIFFS' MOTION FOR**
22 **PRELIMINARY APPROVAL OF CLASS**
23 **ACTION SETTLEMENT**

[Supplemental Declaration of Edwin Aiwazian
and [Revised Proposed] Order filed concurrently
herewith.]

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

1 Plaintiffs Eric Betances and Rozana Valdez ("Plaintiffs") hereby submit the following
2 Supplemental Brief in support of Motion for Preliminary Approval of Class Action Settlement
3 ("Motion for Preliminary Approval") to address the Court's ruling which was issued during the June
4 13, 2018 hearing of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("June
5 13, 2018 Hearing").

6 **I. INTRODUCTION**

7 Based on the Court's guidance, Plaintiffs and Defendant DFT, Inc. d/b/a/ Cannon
8 Management ("Defendant") (together with Plaintiffs, the "Parties") negotiated and executed
9 Amendment No. 1 to Stipulation of Class Action and PAGA Settlement and Release¹ ("Amendment
10 No. 1"), a true and correct copy of which is attached as "**EXHIBIT A**" to the Supplemental
11 Declaration of Edwin Aiwarzian in Support of Plaintiffs' Motion for Preliminary Approval of Class
12 Action Settlement filed concurrently herewith ("Supplemental Declaration of Edwin Aiwarzian").
13 Together, the Stipulation of Class Action and PAGA Settlement and Release and Amendment No. 1
14 are referred to as "Settlement" or "Settlement Agreement."

15 The Parties have also prepared a [Revised Proposed] Order Granting Preliminary Approval
16 of Class Action Settlement ("Revised Proposed Preliminary Approval Order"), which is submitted to
17 the Court concurrently herewith.

18 Additionally, the Parties have prepared, and now present for the Court's consideration and
19 approval, a revised Notice of Class Action and PAGA Settlement² ("Revised Class Notice"), a true
20 and correct copy of which is attached as "**EXHIBIT A**" to the concurrently submitted Revised
21 Proposed Preliminary Approval Order and also attached as "**EXHIBIT 1**" to Amendment No. 1.

22 The Court is respectfully requested to grant preliminary approval of the class action
23 settlement.

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27 ¹ A redline version of the document which shows how the Stipulation Class Action and PAGA Settlement and Release
28 ("Original Settlement Agreement") has been revised, is attached as "**EXHIBIT B**" to the Supplemental Declaration of
Edwin Aiwarzian.

² A redline version of the Revised Class Notice showing how it was revised, is attached as "**EXHIBIT C**" to the
Supplemental Declaration of Edwin Aiwarzian.

1 **II. REASONABLE ESTIMATE OF THE NATURE AND VALUE OF THE CLAIMS**

2 The Court requested further information regarding the value of the claims of the putative class.
3 As set forth in the Declaration of Edwin Aiwazian In Support Of Plaintiffs' Motion for Preliminary
4 Approval of Class Action Settlement filed on June 1, 2018 ("Declaration of Edwin Aiwazian" or
5 "Aiwazian Declaration"), and discussed in the Motion for Preliminary Approval, the Parties
6 conducted extensive investigation into the facts of the case and formal and informal discovery and
7 exchange of information and documents.³ Prior to engaging in the mediation, Plaintiffs conducted
8 significant investigation and formal and informal discovery regarding the facts of the case, including
9 and not limited to, the exchange, review, and analysis of thousands of pages of documents and data
10 produced by Defendant.⁴ Class Counsel interviewed and obtained information from Plaintiffs and
11 putative class members, including the names of potential witnesses, researched applicable law, and
12 undertook damages/valuation calculations.⁵ Plaintiffs propounded onto Defendant, and reviewed and
13 provided responses to, multiple sets of formal written discovery requests.⁶ Class Counsel also
14 reviewed and analyzed a volume of documents and data obtained from Defendant and through other
15 sources.⁷ The volume of data and documents that Class Counsel reviewed and analyzed included and
16 was not limited to: Plaintiffs and other Class Members' employment records, a detailed sampling of
17 Class Members' time and pay data (including but not limited to, timecards, payroll records, and wage
18 statements), Defendant's Employee Handbook, agreements, internal memoranda (for example
19 Defendant's memo re: Use of Cell Phones and Personal Digital Assistants (PDA) While Driving),
20 job descriptions, and Defendant's operations and employment practices, forms (such as Auto Mileage
21 Log and Check Request forms), procedures, and policies (including but not limited to Defendant's
22 Company Related Driving Policy), among other information and documents.⁸ Class Counsel
23 prepared models and calculations of the value of the claims for mediation.⁹

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25 ³ Declaration of Edwin Aiwazian ("Aiwazian Declaration"), ¶¶ 11-13.

26 ⁴ *Id.*, ¶ 12.

27 ⁵ *Ibid.*

28 ⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Id.*, ¶ 18.

1 Plaintiffs' quantification of the value of the claims and *Kullar* analysis are set forth in the
2 concurrently filed Supplemental Declaration of Edwin Aiwazian.¹⁰ As discussed therein, Plaintiffs'
3 estimates of what could be recovered warranted further discounting based on the risks involved,
4 including, and not limited to, overcoming Defendant's arguments in its defense, evidence produced
5 and analyzed, satisfying class certification requirements, proving all of the elements of each cause of
6 action, the derivative nature of many of the claims, the costs and expenses of further litigation.¹¹
7 Importantly, Plaintiffs also considered risks to recovery and continued employment due to
8 Defendant's financial condition. Defendant provided a declaration from a certified public accountant
9 reflecting that the Settlement would strain Defendant's monetary resources but would be feasible
10 without harming Defendant's ability to continue its business operations or employee its employees,
11 while a larger settlement would jeopardize the operations of Defendant.¹²

12 Within the context of mediation, Defendant argued that the estimates of the value of the claims
13 were significantly inflated, asserting that there were multiple challenges to certification and to
14 proving the merits of the claims, including and not limited to, the key claims for overtime and
15 minimum wages and non-compliant meal and rest periods.¹³ For example, Defendant contended that
16 putative class members were paid for all hours worked.¹⁴

17 Defendant also contended that the non-compliant meal and rest period claims were meritless
18 and unlikely to be certified because it contended that putative class members were afforded the
19 opportunity to take duty-free meal and/or rest periods.¹⁵ Defendant further contended that any
20 allegation that putative class members were forced to miss meal and rest periods, or take late, short,
21 or interrupted ones, would require highly individualized questions of fact.¹⁶

22 Plaintiffs and Class Counsel have conducted adequate investigation and discovery to be
23 sufficiently informed of the nature and extent of putative class members' claims, and to enable both
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25 ¹⁰ Supplemental Declaration of Edwin Aiwazian ("Aiwazian Supp. Decl."), ¶¶ 5-59.

26 ¹¹ Aiwazian Supp. Decl., ¶¶ 13, 18, 23, 31, 34, 38, 43, 47, & 58-59.

27 ¹² *Ibid.*

28 ¹³ *Id.*, ¶¶ 11, 16, 21, 30, 34, 37, 41, & 49-55.

¹⁴ *Id.*, ¶ 11.

¹⁵ *Id.*, ¶¶ 16 & 21.

¹⁶ *Ibid.*

1 sides to fully evaluate the Settlement for its fairness, adequacy, and reasonableness.¹⁷ The Parties
2 have agreed that this case is well-suited for settlement given the legal issues relating to Plaintiffs'
3 principal claims, as well as the costs and risks to both sides that would attend further litigation.¹⁸

4 Having the benefit of discovery, pre-lawsuit filing investigation, interviews of Plaintiffs and
5 other putative class members, and data and information produced by Defendant in advance of and
6 during mediation and settlement negotiations, Plaintiffs recognized that if the litigation had
7 continued, significant legal and factual hurdles might have been encountered that would prevent
8 recovery on behalf of the putative class members.¹⁹ Although a number of cases have found wage-
9 and-hour actions to be amenable to class resolution²⁰, some courts have found that, for various
10 reasons, the issues raised here—unpaid wages, non-compliant meal periods, non-compliant rest
11 periods, and unreimbursed business expenses—raise individualized issues and/or are unmanageable,
12 and thus not suitable for adjudication on a class or representative basis.²¹

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14 ¹⁷ Aiwazian Decl., ¶¶ 11-13.

15 ¹⁸ Aiwazian Supp. Decl., ¶ 59.

16 ¹⁹ Aiwazian Decl., ¶¶ 11-13.

17 ²⁰ See, e.g., *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31 (Court successfully managed and
18 adjudicated wage-and-hour claims made on behalf of a group of employees, utilizing, among other things, statistics and
19 surveying.); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 (“Claims alleging that a uniform
20 policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely,
21 and properly, found suitable for class treatment [...] The theory of liability – that [the employer] has a uniform policy,
22 and that that policy, measured against wage order requirements, allegedly violates the law – is by its nature a common
23 question eminently suited for class treatment.”); *Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (“In our
24 view, real parties demonstrated that the existence of the practice and the fact of damage were matters suitable for class
25 treatment. Real parties’ evidence supports the reasonable inference that in the context of a class action, they could
26 establish that petitioners engaged in the alleged practice, that is, they never paid meal break premium wages, even though
27 a significant number of employees accrued them. Furthermore, in view of real parties’ theory of restitution, those facts
28 would also suffice to demonstrate the fact of damage. Under that theory, the fact of damage does not require a showing
that all -- or virtually all -- class members accrued unpaid meal break premium wages, but only that on a system-wide
basis, petitioners denied the class members the benefits of the compensation guarantee and enhanced enforcement
implemented by section 226.7.”); *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362, 383-
84, *modified on other grounds by Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3, 2014 B242807) 2014 Cal.App.
LEXIS 1102, **1-2 (stating that difficult issues of proof do not vitiate the preference for efficient and effective means of
resolving wage and hour claims, including misclassification and overtime, recognizing that “statistical sampling may
provide assistance in identifying the realistic demands of the job and illuminating whether the typical employee was able
to meet those expectations” and that “[b]y refocusing its analysis on the policies and practices of the employer and the
effect those policies and practices have on the putative class . . . the trial court may in fact find class analysis a more
efficient and effective means of resolving plaintiffs’ overtime claim”).

²¹ See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (stating that even “[i]n wage and
hour cases where a party seeks class certification based on allegations that the employer consistently imposed a uniform
policy or de facto practice on class members, the party must still demonstrate that the illegal effects of this conduct can
be proven efficiently and manageably within a class setting” and in litigating representative actions the procedures utilized
by the court “may not be used to abridge a party’s substantive rights,” including “abridge[ing] [the defendant’s]

1 Defendant contended that, in the context of a PAGA claim that is premised on the violation
2 of multiple provisions of the California Labor Code (as is the case here) a court would not assess
3 cumulative penalties, namely, if penalties are assessed, a penalty would only be assessed once per
4 pay period, rather than cumulatively per violation during a pay period.²² Defendant also contended
5 that, if any penalty were assessed, only an initial violation penalty rather than a heightened,
6 subsequent violation penalty would likely be applied.²³ Defendant also contended that an important
7 feature of the PAGA statute is that the Court has discretion to reduce the penalties to be assessed
8 against the employer.²⁴

9 There were also multiple additional risks to recovery, including, and not limited to, the risk
10 of possible bifurcation of discovery and/or trial of the PAGA claim—at the time, multiple courts had
11 taken such an approach.²⁵ Given the derivative nature of the PAGA claim, Defendant contended that
12 violations of underlying California Labor Code provisions would not only have to be proven, but that

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14 presentation of [a defense] simply because that defense was cumbersome to litigate,” because of “principles of due
15 process”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’
16 declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to
17 show harm); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1018 (stating that employers must
18 authorize, permit, or “relieve the employee of all duty for [a] designated meal [or rest] period,” and “relinquish [full]
19 control over [the employee’s] activities” and “afford” employees an “opportunity to take an *uninterrupted* thirty-minute
20 break,” but are not obligated to affirmatively ensure that no work related tasks are performed during such periods).

21 ²² Aiwasian Supp. Decl., ¶¶ 49.

22 ²³ Aiwasian Supp. Decl., ¶¶ 50.

23 ²⁴ Cal. Lab. Code § 2699(e)(2) (“[A] court may award a lesser amount than the maximum civil penalty amount specified
24 by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that
25 is unjust, arbitrary and oppressive, or confiscatory.”); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
26 Cal.App.4th 1112, 1136 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based
27 upon discretionary factors other than the employer’s ability to pay.)

28 ²⁵ See *Amalgamated Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal.4th 993, 1001 (Noting that PAGA
“require[s] a plaintiff to have suffered an injury resulting from an unlawful action”); *Stafford v. Dollar Tree Stores, Inc.*
(E.D. Cal. Nov. 21, 2014) 2014 WL 6633396, *4 (Court found that judicial economy supported bifurcation because of
the difficulties and inherent uncertainties of being able to establish liability with respect to a large number of potentially
aggrieved employees and noted that “PAGA’s public purpose would be ill—served if the court finds [the plaintiff] has
not been aggrieved by a Labor Code violation”); *Grappo v. Coventry Fin. Corp.* (1991) 235 Cal.App.3d 496, 504 (Trial
courts have “broad discretion to determine the order of proof in the interest of judicial economy”); see also Cal. Code
Civ. Proc. § 598 (The court may “when the convenience of witnesses, the ends of justice, or the economy and efficiency
of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order. . .
that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case[.]”);
Cal. Code Civ. Proc. § 1048(b) (Court can separate trial of any cause of action or of any separate issue in the interest of
convenience or to avoid prejudice); Cal. Code Civ. Proc. § 2019.020(b) (Courts have the power to “establish the sequence
and timing of discovery for the convenience of parties and witnesses and in the interests of justice”); see *Horton v. Jones*
(1972) 26 Cal.App.3d 952, 955 (Bifurcation and sequencing of litigation is allowed to avoid waste of time and money on
trial and litigation of issue s could be rendered made moot.)

1 it would also have to be demonstrated that the aggrieved employees actually suffered from said
2 violations, and that in doing so, a court would also have to be satisfied that Defendant's right to due
3 process would not be abridged.²⁶ While class certification requirements, strictly speaking, do not
4 need to be satisfied with respect to the PAGA claim, there was a risk that the Court would determine
5 that the PAGA claim was not sufficiently "manageable" and that representative adjudication would
6 interfere with Defendant's right to due process.²⁷

7 Taking into account the risks of litigating the PAGA claim, Plaintiffs' estimate of the value
8 of the PAGA claim was conservative, and this estimate warranted further discounting based on
9 multiple additional risks relating to representative adjudication of the PAGA claim.

10 Neither class certification, liability, damages, nor entitlement to monetary recovery is clear-
11 cut, which is why the Parties elected to settle this matter.²⁸ Class Counsel applied appropriate
12 discounts in light of the defenses asserted, developments in the law, and circumstances in this case,
13 which posed risks to certification and monetary recovery.²⁹ The risks included, and were not limited
14 to, the costs and uncertainty of further litigating this case through trial and/or appeals, as well as
15 consideration of the issues of, *inter alia*, whether each putative class member worked in excess of 8
16 hours in a day or 40 hours in a week, whether each putative class member was not provided with
17 compliant meal and rest periods, whether each putative class member incurred reimbursable expenses
18 that were not reimbursed, whether uncompensated work occurred and whether Defendant knew or
19 should have known about it, and the derivative nature of the other claims asserted in the case.³⁰ The
20 Settlement takes into account the strengths and weaknesses of each side's position, the chances of

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²⁶ Aiwazian Supp. Decl., ¶ 55.

23 ²⁷ See, e.g., *Litty v. Merrill Lynch & Co.*, No. CV-14-0425-PA, WL 5904904 at *3 (C.D. Cal. Nov. 10, 2014); *Ortiz v.*
24 *CVS Caremark Corp.*, No. C-12-05859, 2014 WL 1117614 (N.D. Cal. March, 18, 2014); see also *Duran v. US. Bank*
25 *National Association* (2014) 59 Cal.4th 1, 25, 29, 31, and 34-35 (Plaintiff needs to be able to demonstrate the illegal
26 effects of the policy or de facto practice efficiently and manageably, and in litigating representative actions the procedures
utilized by the court "may not be used to abridge a party's substantive rights," including "abridge[ing] [the defendant's]
presentation of [a defense] simply because that defense was cumbersome to litigate," because of "principles of due
process"); see also *Knight v. Cashcall, Inc.* (2014) 231 Cal.App.4th 112, 131 (noting "due process principles" require that
defendants have the opportunity "to fairly litigate individual liability questions").

27 ²⁸ Aiwazian Supp. Decl., ¶ 59.

28 ²⁹ *Ibid.*

³⁰ *Id.*, ¶¶ 13, 18, 23, 31, 34, 38, 43, 47, 58, & 59.

1 prevailing on the other causes of action in light of Defendant's contentions and defenses, the
2 uncertainty of how the case might have concluded at certification, trial, and/or appeal, and the real
3 possibility of no recovery.³¹ This Settlement, like most others, resolves disputed claims and is the
4 product of compromise.

5 In sum, for the aforementioned reasons, as well as the reasons and quantification set forth in
6 the concurrently filed Supplemental Declaration of Edwin Aiwarzian, the settlement of this matter is
7 fair, reasonable, and adequate in light of the strengths and weaknesses of Plaintiffs' claims.³²

8 **III. MODIFICATION OF OBJECTION PROCEDURE.**

9 Based on the Court's guidance, the Parties revised the settlement documents as discussed
10 below. The Court is respectfully requested to approve Amendment No. 1, the Settlement as amended
11 by Amendment No. 1, and the Revised Class Notice.

12 Amendment No. 1 removes the requirement that a Notice of Objection must be filed with the
13 Court and eliminates all language indicating that Class Members may only be heard at the Final
14 Approval Hearing if they have complied with all of the objection procedures contained in the
15 Settlement Agreement and Revised Class Notice.³³ Amendment No. 1 provides that Request for
16 Exclusion, Notices of Objection, and Workweek Disputes are to be submitted to the Settlement
17 Administrator by mail or fax. The Revised Class Notice comports with the above-mentioned changes
18 and now also explicitly states that the Court may hear any and all Class Members who object at the
19 Final Approval Hearing regardless of whether a Notice of Objection was submitted.³⁴

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26 ³¹ Aiwarzian Supp. Decl., ¶¶ 13, 18, 23, 31, 34, 38, 43, 47, 58, & 59.

27 ³² *Id.*, ¶¶ 59-60.

28 ³³ Amendment No. 1.

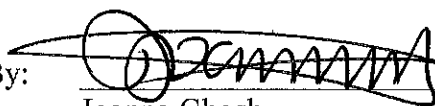
³⁴ Amendment No. 1, § E replacing Original Settlement Agreement, Exhibit A. with Exh. 1, Revised Class Notice.

1 **IV. CONCLUSION**

2 Having addressed the Court's points of inquiry, the Court is respectfully requested to grant
3 preliminary approval of the Settlement.³⁵

4 Dated: June 22, 2018

LAWYERS *for* JUSTICE, PC

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6 By: 

Joanna Ghosh

Attorneys for Plaintiffs

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28 ³⁵ If preliminary approval is granted, a hearing date in late January 2018 would be appropriate for the Final Approval Hearing based on the notice and administration deadlines and procedures provided by the Settlement.