

John A. Van Hook (SBN 205067)
VAN HOOK LAW FIRM
14156 Magnolia Blvd., Suite 200
Sherman Oaks, California 91423
Telephone: (310) 592-5884
Email: john@vanhooklawfirm.com

Adrian Byrne (SBN 304020)
THE BYRNE LAW GROUP
8605 Santa Monica, Blvd. Suite 48497
West Hollywood, CA 90069
Telephone: (800) 805-4002
Email: adrian@thebyrnelawgroup.com

*Attorneys for Plaintiff Isabel Sanchez
the Putative Class, and all Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL**

ISABEL SANCHEZ, individually, on
behalf of herself, all those similarly
situated, and all Aggrieved Employees,

Plaintiff,

vs.

AGRO PACK LLC, a California limited
liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: ECU002547

[Assigned to Hon. L. Brooks Anderholt]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION, AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR AWARD OF CLASS
COUNSEL'S ATTORNEYS FEES AND
COSTS, CLASS REPRESENTATIVE
ENHANCEMENT, AND SETTLEMENT
ADMINISTRATION COSTS**

- Declaration of John A. Van Hook
- Declaration of Adrian C. Byrne
- Declaration of Kevin Lee
- [Proposed] Order

**[Concurrently filed with Plaintiff's Motion for
Final Approval of Class and Representative
Action Settlement]**

**Date: January 25, 2024
Time: 8:30 a.m.
Dept.: 9**

1 **NOTICE OF MOTION AND MOTION**

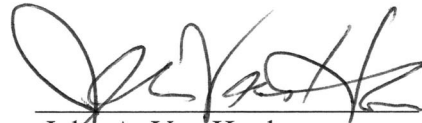
2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

3 PLEASE TAKE NOTICE THAT on January 25, 2024, at 8:30 a.m., or as soon thereafter
4 as this matter may be heard, in Department 9 of the above-entitled Court, located at 939 West
5 Main Street, El Centro, CA. 92243, Plaintiff and Class Representative Isabel Sanchez will
6 move, and hereby does move, for an Order Awarding Class Counsel's Attorney's Fees and
7 Costs, a Class Representative Enhancement, and Settlement Administration Costs. The amounts
8 requested herein are consistent with those set forth in the Joint Stipulation for Class and
9 Representative Action Settlement and Plaintiff's Preliminary Approval Motion, granted on
10 September 27, 2023.

11 This Motion is based on this Notice of Motion and Motion, the attached Memorandum
12 of Points and Authorities, the Declarations of John A. Van Hook, Adrian C. Byrne, and Kevin
13 Lee, and exhibits thereto, and such further oral and documentary evidence that may be
14 presented at the time of hearing, and all other documents and records on file in this action.

15
16 Dated: January 2, 2024

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

17
18 

19 John A. Van Hook
20 Adrian C. Byrne
21 Attorneys for Plaintiff Isabel Sanchez, the
22 Settlement Class, and all Aggrieved
23 Employees
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	4
II.	THE REQUESTS FOR CLASS COUNSEL'S FEES AND COSTS, SETTLEMENT ADMINISTRATION COSTS, AND CLASS REPRESENTATIVE ENHANCEMENT ARE REASONABLE AND APPROPRIATE.....	5
	A. The Uniformly Positive Reaction of the Class Members Supports Approval of the Requested Attorney's Fees, Costs, Administration Costs, and Enhancement Payment.	5
	B. Legal Standard for Attorneys' Fees in a Class Action Settlement.....	5
	C. The Fee Award Allocated by the Settlement is Reasonable Under the Lodestar Method	6
	D. The Requested Fees are Reasonable	8
	E. The Percentage-of-the-Fund Method Confirms that The Fee Request is Reasonable.	9
	F. Class Counsel's Out of Pocket Costs are Fair and Reasonable.....	10
	G. The Requested Payment of the Settlement Administrator Costs Is Reasonable	10
	H. The Requested Service Payment for Class Representative Isabel Sanchez is Fair and Reasonable.....	11
III.	CONCLUSION.....	13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In conjunction with Plaintiff's Motion for Final Approval of Class and Representative
4 Action Settlement, Plaintiff Isabel Sanchez ("Sanchez," "Plaintiff" or "Class Representative")
5 requests approval of Class Counsel's attorney's fees, out-of-pocket litigation costs, and an
6 enhancement payment to the Class Representative.

7 The Court preliminarily approved the settlement reached in this action on September 27,
8 2023. Plaintiff now moves for an award of attorney's fees in the amount of \$154,000, which
9 represents just under one-third (1/3) of the \$462,500 gross settlement fund, the benchmark in
10 class action settlements. Class Counsel's lodestar incurred in the case is \$104,259.00,
11 approximately 68% of the common fund fee request, without application of a multiplier.
12 Plaintiff also seeks \$4,000 in reimbursement of litigation costs (reduced from Plaintiff's actual
13 costs of \$4,324.51) and \$38,500.00 in settlement administration costs to the third-party
14 administrator, Phoenix Settlement Administrators ("PSA"). Plaintiff further seeks approval of
15 an enhancement payment to the Class Representative of \$2,500.00.

16 Class Counsel's requested award of attorneys' fees and costs is reasonable and
17 appropriate in light of the work performed by Class Counsel in the case, the contingent nature of
18 this action, and the results achieved under the settlement. *Lealao v. Beneficial California, Inc.*
19 (2000) 82 Cal.App.4th 19; *Williams v. MGM-Pathe Commc'ns Co.* (9th Cir. 1997) 129 F.3d
20 1026, 1027.

21 The requested enhancement payment to the Class Representative is reasonable and
22 appropriate in light of the risks taken, and commensurate with the substantial efforts and active
23 participation by Class Representative at every stage of this litigation and settlement.

24 The final settlement administration costs sought also are reasonable, and are less than
25 the amount indicated in the class notice.

26 The class notice set forth the amounts to be requested for attorney's fees, costs, Class
27 Representative enhancement, and settlement administration costs. **Zero (0) class members**

1 objected to any aspect of the settlement, including these fees, costs, and enhancements. (*See*
2 Declaration of Kevin Lee [“Lee Decl.”], ¶ 9.)

3 Accordingly, Plaintiff respectfully requests that this Court approve the amounts
4 requested for attorneys’ fees, reimbursement for litigation costs and expenses, settlement
5 administration costs, and the Class Representative enhancement payment.

6 **II. THE REQUESTS FOR CLASS COUNSEL'S FEES AND COSTS, SETTLEMENT**
7 **ADMINISTRATION COSTS, AND CLASS REPRESENTATIVE**
8 **ENHANCEMENT ARE REASONABLE AND APPROPRIATE.**

9 **A. The Uniformly Positive Reaction of the Class Members Supports Approval**
10 **of the Requested Attorney's Fees, Costs, Administration Costs, and**
11 **Enhancement Payment.**

12 The positive reaction from the class members supports the amounts requested. The
13 Court-approved class notice that was distributed to Settlement Class Members (translated into
14 English and in Spanish) disclosed the amount of the settlement and the amounts that would be
15 requested from the gross settlement for Class Counsel’s attorney’s fees, costs and expenses, and
16 enhancement to the Class Representative. (*See* Lee Decl., Exh. A.)

17 Following the Class Notice, not a single Class Member has objected to any aspect of the
18 settlement. (*See* Lee Decl., ¶ 9.)

19 **B. Legal Standard for Attorneys’ Fees in a Class Action Settlement**

20 Trial courts have “wide latitude” in assessing the value of attorneys’ fees, and their
21 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao, supra*,
22 82 Cal.App.4th at 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. (The “experienced trial
23 court is the best judge of the value of professional services rendered in [her] court[.]”); *In*
24 *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. California law provides
25 that attorneys’ fees awards should be equivalent to fees paid in the legal marketplace to
26 compensate for the result achieved and risk incurred. *Lealao*, 82 Cal.App.4th at 47. In *Lealao*,
27 the court held that when an action leads to a recovery that can be “monetized” with a reasonable
28 degree of certainty, the trial court should “ensure that the fee awarded is within the range of fees
freely negotiated in the legal marketplace in comparable litigation.” *Id.*, at 50. Fee awards that

1 are too small will “chill the private enforcement essential to the vindication of many legal rights
2 and obstruct the representative actions that often relieve the courts of the need to separately
3 adjudicate numerous claims.” *Id.* at 53.

4 Courts generally recognize two methods for calculating attorney fees in the class action
5 context: the lodestar/multiplier method and the percentage-of-the-recovery method. *Wershba v.*
6 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (overruled on other grounds by
7 *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260).

8 **C. The Fee Award Allocated by the Settlement is Reasonable Under the**
9 **Lodestar Method**

10 The lodestar analysis supports Class Counsel’s application and the attorneys’ fees
11 allocated in the Settlement. Under this method, the Court multiplies reasonable hourly rates of
12 counsel by the reasonable amount of hours needed to litigate the case to a successful conclusion.
13 *Laffitte v. Robert Half Internat. Inc.*, (2016) 1 Cal. 5th 480, 489. Once the court has fixed the
14 lodestar, it may increase or decrease that amount by applying a positive or negative multiplier to
15 take into account a variety of other factors, including the quality of the representation, the
16 novelty and complexity of the issues, the results obtained, and the contingent risk presented.”
17 *Id.*, at 489 (citing *Lealao*, 82 Cal.App.4th at p. 26).

18 1) The Quality of Representation on This Case

19 Class Counsel have substantial experience. John A. Van Hook has been practicing for
20 more than 24 years with approximately 20 years litigating and advising on wage and hour
21 issues, prosecuting and defending wage and hour class actions, collective actions, and PAGA
22 representative actions. (See Van Hook Decl., ¶¶ 24-26.) Adrian C. Byrne is licensed in England
23 and Wales, in addition to California. For the past eight years, Mr. Byrne has been practicing
24 exclusively employment law with a focus on representative PAGA and class wage and hour
25 cases. During that time, Mr. Byrne estimates that he has litigated over 50 representative PAGA
26 and/or class wage and hour actions. (See Byrne Decl., ¶¶ 3-4.) Class Counsel’s skills in
27 analyzing the pertinent legal and factual issues and reputation in this area were essential to

1 achieving the settlement quickly, efficiently, and on terms that were beneficial to the Settlement
2 Class Members.

3 2) The Complexity of the Issues in this Case

4 As described in more detail in Plaintiff’s concurrently filed Motion for Final Approval,
5 and the already approved Motion for Preliminary Approval, this case presented numerous
6 different legal claims, each with unique substantive and procedural challenges and defenses.
7 The uncertainties arising from predicate claims created challenges for other derivative claims in
8 the case, such as the claim for waiting time penalties under Labor Code § 203, which may be
9 defeated by the existence of “good faith” disputes regarding whether wages were actually owed.
10 Defendant argued that Plaintiff’s claims were not proper for class treatment because, inter alia,
11 individualized inquiries will predominate over any common questions. (*See* Van Hook Decl., ¶¶
12 14-15.)

13 While Plaintiff and class counsel remain confident that we could obtain certification on
14 Plaintiff’s various claims, and ultimately prevail, these issues nonetheless created a substantial
15 risk that Plaintiff may not prevail on a class wide basis, either because the Court may not grant
16 certification, may subsequently decertify claims that were initially certified, and/or Plaintiff may
17 not prevail at trial on some or all of the claims. (*See* Van Hook Decl., ¶ 14.)

18 Plaintiff’s PAGA claims presented their own unique set of complexities, including
19 unsettled questions about the availability and calculation of potential PAGA penalties, such as
20 the meaning of “initial” and “subsequent” violations, and the appropriateness of “stacking”
21 PAGA penalties for multiple alleged violations in the same pay period. Likewise, these issues
22 added to the uncertainty of the potential application by the Court of its discretion under Labor
23 Code § 2699 (e)(2) to reduce an award of PAGA penalties. (*See* Van Hook Decl., ¶ 15.)

24 In addition to these substantive challenges and complexities, Plaintiff and Class Counsel
25 faced procedural obstacles in obtaining certification of a putative class, and proceeding with the
26 PAGA claims on a representative basis, over Defendant’s vigorous arguments. *Id.*

27 Class Counsel’s extensive experience litigating these substantive and procedural issues

1 was critical to the result achieved for the Settlement Class Members.

2 3) The Results Obtained

3 The results achieved by the settlement support Class Counsel's request for attorney's
4 fees. Class Counsel achieved an exceptional result in this case, under all the circumstances and
5 risks of non-recovery. (*See* Van Hook Decl., ¶ 27; and Byrne Decl., ¶¶ 8, 11, 12.)

6 The parties reached a non-collusive, arm's length settlement, with the assistance of a
7 respected retired superior court judge and mediator, which was followed by extensive additional
8 negotiation of the final Settlement Agreement. (*See* Van Hook Decl., ¶¶ 7-11.)

9 Class Members' support for the results achieved by Class Counsel is demonstrated by
10 the absence of *any* objections to either the settlement terms in general, or the request for fees,
11 costs, and awards, which were described clearly in the Class Notice. (*See* Lee Decl., ¶ 9; Exh.
12 A.) Class Counsel's prosecution of this action resulted in tangible benefits for the Settlement
13 Class Members. Given the small amounts at stake for most Settlement Class Members, and the
14 transitory nature of employment of many of the Settlement Class Members, it is unlikely that
15 many (if any) of the Settlement Class Members would have recovered anything in the absence
16 of the efforts by Plaintiff and Class Counsel.

17 4) The Contingent Risk Presented in this Case

18 From the outset of the case to the present, prosecution of this action has involved
19 significant financial risk for Class Counsel. Class Counsel undertook this matter on a contingent
20 basis, investing Class Counsel's own time, resources, and out-of-pocket costs, with no
21 guarantee of recovery, and at the expense of other work that Class Counsel could have
22 performed.

23 **D. The Requested Fees are Reasonable**

24 The lodestar method supports the reasonableness of Class Counsel's fee request, even
25 absent a multiplier. Class Counsel expended a total of 180.3 hours during this litigation,
26 amounting to an aggregate lodestar of \$104,259.00. This does not include the additional fees
27 Class Counsel anticipates incurring in attending the final fairness hearing, and additional work

1 that may result after final approval. Class Counsel sought to litigate this case efficiently and
2 with the goal of obtaining an expeditious and superior resolution for the class. (*See* Van Hook
3 Decl., ¶ 22 & Ex. A; and Byrne Decl., ¶¶ 6-7 & Ex. AA.)

4 Mr. Van Hook's hourly rate is \$650, and Mr. Byrne's hourly rate is \$465. These rates
5 are comparable to those of other California and class action attorneys with similar experience
6 and results, and comparable to rates charged for hourly legal work. (*See* Van Hook Decl., ¶ 21;
7 and Byrne Decl., ¶ 7.)

8 Based on these factors, Plaintiff respectfully submits that Class Counsel's fee request is
9 appropriate and justified.

10 **E. The Percentage-of-the-Fund Method Confirms that The Fee Request is**
11 **Reasonable.**

12 Courts may use the percentage-of-the-fund method of calculating fees to "cross-check"
13 the reasonableness of the requested attorney's fee amount. *See Laffitte v. Robert Half*
14 *International, Inc.* (2016) 1 Cal.5th 480, 505. The goal of the percentage-of-the-fund fee award
15 is "to ensure that the fee awarded is within the range of fees freely negotiated in the legal
16 marketplace in comparable litigation." *Lealao*, 82 Cal.App.4th at 50. Plaintiff and Class
17 Counsel are requesting an award of attorneys' fees in the amount of \$154,000, just under 33%
18 of the gross settlement fund. This percentage is reasonable and confirms the fairness of the fee
19 request.

20 A fee award of one-third of the settlement fund here falls well within the percentages
21 awarded in other class action litigation by numerous California and federal trial courts. *See*
22 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("[e]mpirical studies show that,
23 regardless whether the percentage method or the lodestar method is used, fee awards in class
24 actions average around one-third of recovery"); *Cicero v. DirecTV, Inc.* (C.D. Cal. 2010) 2010
25 WL 2991486, at *6 ("a review of California cases in other districts reveals that courts usually
26 award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery
27 of a common fund under \$10 million"). *See also Williams v. Costco Wholesale Corp.* (S.D. Cal.
28 July 7, 2010) 2010 WL 2721452, *6 (noting the typical range of attorneys' fees requests are

1 between 20 percent and 50 percent *In re Warner Communications Securities Litigation*
2 (S.D.N.Y. 1985) 618 F.Supp. 735, 749 aff'd, (2d Cir. 1986) 798 F.2d 35 (“Traditionally, courts
3 in this Circuit and elsewhere have awarded fees in the 20%–50% range in class actions”);
4 *Zinman v Avemco Corp.* (E.D. Pa. 1978) 1978 WL 5686 (50% fee award); *In re Ampicillin*
5 *Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494, 499 (awarding a 45% fee).

6 The requested percentage here of 33% also approximates the legal marketplace by
7 awarding a fee comparable to (and likely significantly lower than) the amount clients and
8 counsel would likely have negotiated at the outset of the litigation. *See Lealao*, 82 Cal.App.4th
9 at 47; *see also In re Oracle Sec. Litig.* 852 F. Supp. 1437, 1450 (N.D. Cal. 1994).

10 **F. Class Counsel's Out of Pocket Costs are Fair and Reasonable**

11 Reflecting the goal of Plaintiff and Class Counsel to pursue this case efficiently, Class
12 Counsel’s out-of-pocket litigation costs are very reasonable. Class Counsel seeks
13 reimbursement of only \$4,000 in out-of-pocket litigation costs, less than the estimated total of
14 \$4,244.31. (*See Van Hook Decl.*, ¶ 23 & Ex. B.)

15 Plaintiff is entitled to recover litigation costs and expenses reasonably incurred in the
16 prosecution of their wage-and-hour claims. *See Lab. Code* §§ 226(e)(1), 1194(a), 2802(c),
17 2699(g)(1); *Civ. Code* § 1021.5. These expenses were reasonable and necessary in the
18 prosecution of the class action. Class Counsel seeks reimbursement for commonly reimbursed
19 costs, including the mediation fees, PAGA notice filing fee, and court filing and process serving
20 costs. (*See Van Hook Decl.* ¶ 23, Exh. B.)

21 The costs that Class Counsel incurred in this litigation are the type of costs that would
22 be billed to any client, whether contingency or hourly, and are therefore appropriate for
23 reimbursement.

24 **G. The Requested Payment of the Settlement Administrator Costs Is** 25 **Reasonable**

26 Plaintiff also seeks the approval of the requested fees of the settlement administrator,
27 Phoenix Settlement Administrators (“PSA”) in the amount of \$38,500, which is below the

1 estimate of \$40,000 described in the class notice. (See Lee Decl. ¶ 13, 17 & Exh. A.) Given the
2 number of Settlement Class Members (3,778 individuals) and the fact that the administration
3 costs cover mailing of the notice packet, distribution of checks to 3,777 individuals, tax
4 reporting, among other duties and costs, the settlement administration costs are reasonable in
5 Class Counsel's experience.

6 **H. The Requested Service Payment for Class Representative Isabel Sanchez is**
7 **Fair and Reasonable**

8 It is appropriate to provide an incentive payment to the named Plaintiff for their service
9 as class representatives. See, e.g., *In re Cellphone Fee Termination Cases*, supra, 186
10 Cal.App.4th at 1380 (upholding \$10,000 incentive awards to each of the four class
11 representatives). Courts frequently approve service awards of \$10,000 or more for Class
12 Representatives to compensate them "for the expense or risk they have incurred in conferring a
13 benefit on other members of the class." *Id.* at 1394 quoting *Clark v. American Residential*
14 *Services, LLC* (2009) 175 Cal. App. 4th 785, 806. The "[c]riteria courts may consider in
15 determining whether to make an incentive award include: 1) the risk to the class representative
16 in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties
17 encountered by the class representative; 3) the amount of time and effort spent by the class
18 representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
19 enjoyed by the class representative as a result of the litigation." *Id.* at 1394-1395 quoting *Van*
20 *Vranken v. Ail. Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299. All of the above factors
21 support the service award requested here.

22 Ms. Sanchez, the sole named Plaintiff and Class Representative, seeks a modest
23 enhancement award of \$2,500. This payment is requested in recognition of the risks incurred,
24 and the time, efforts, and assistance that the Class Representative has spent on behalf of the
25 class. Plaintiff deserves the requested service payment because Plaintiff took on the significant
26 risk of potential liability for Defendant's costs if the case was not successful. (See Van Hook
27 Decl., ¶ 28.)

1 Plaintiff, who no longer works for Defendant, also faces risks to her future job prospects
2 by prosecuting this action. Plaintiff faces the ongoing risk that any prospective future employer
3 might treat her adversely due to her decision to step forward and fight for the employment rights
4 of herself and other workers. Courts have recognized that assuming potentially career-damaging
5 risks for the vindication of the rights of fellow employees is a factor justifying a substantial
6 enhancement award. *See, e.g., Roberts v. Texaco* (S.D.N.Y. 1997) 979 F.Supp. 185, 201
7 (“present or past employee whose present position or employment credentials or
8 recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
9 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
10 enhancement award is justified”).

11 Plaintiff also provided substantial, invaluable assistance to Class Counsel throughout
12 this case, and during the process of investigating and evaluating the claims prior to initiating
13 suit. Plaintiff met with and communicated with counsel regularly and performed multiple tasks,
14 including: assisting Class Counsel in fact gathering and analysis, in locating evidence to support
15 Plaintiff’s claims; assisting in the preparation of the PAGA notice and the complaint in this
16 action; regularly and promptly answering Class Counsel’s factual questions and staying
17 informed regarding the progress of the litigation; meeting with Class Counsel to prepare for and
18 strategize regarding the mediation, and attending and actively participating in a full-day
19 mediation. (*See* Van Hook Decl., ¶ 28; and Byrne Decl., ¶ 14.)

20 In short, this case would not have been prosecuted, and this settlement would not have
21 been achieved, without the diligent efforts of Plaintiff. (*See* Van Hook Decl., ¶ 28; and Byrne
22 Decl., ¶ 14.)

23 Moreover, the Class Notice explicitly set forth the proposed payment of the Class
24 Representative enhancement of \$2,500. (*See* Lee Decl., Exh. A.) Not a single Settlement Class
25 Member objected to this or any other term of the proposed settlement. (*See* Lee Decl., ¶ 9.)

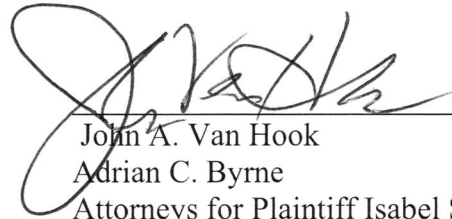
26 For all of these reasons, the enhancement payment to Plaintiff is reasonable and
27 justified.

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court award Class
3 Counsel’s attorney’s fees and costs, the settlement administration costs, and the Class
4 Representative Enhancement payment.

5
6 Dated: January 2, 2024

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP

7
8 

John A. Van Hook

Adrian C. Byrne

Attorneys for Plaintiff Isabel Sanchez, the
Settlement Class, and all Aggrieved
Employees