APP-002

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: Randall Aiman-Smith (SBN 124599); Hallie Von Rock (SBN 233152) Aiman-Smith & Marcy 7677 Oakport Street, Suite 1150 Oakland, CA 94621 TELEPHONE NO.: 510.817.2711 FAX NO. *(Optional)*: 510.562.6830 E-MAIL ADDRESS *(Optional)*: ras@asmlawyers.com; hvr@asmlawyers.com ATTORNEY FOR *(Name)*: Appellants Alexander Brown and Arik Silva	*FOR COURT USE ONLY* FILED LOS ANGELES SUPERIOR COURT AUG 10 2016 Sherri R. Carter, Executive Officer/Clerk By Grace Ho, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 600 South Commonwealth Avenue MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90005 BRANCH NAME: Central Civil West	
PLAINTIFF/PETITIONER: Jessica Aparacio and Jason Poliran DEFENDANT/RESPONDENT: Abercrombie & Fitch Stores, Inc., et al.	
☑ NOTICE OF APPEAL ☐ CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER: BC499281

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. NOTICE IS HEREBY GIVEN that *(name)*: Objector Class Members Alexander Brown and Arik Silva appeals from the following judgment or order in this case, which was entered on *(date)*: 6/15/2016
   - ☐ Judgment after jury trial
   - ☐ Judgment after court trial
   - ☐ Default judgment
   - ☐ Judgment after an order granting a summary judgment motion
   - ☐ Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
   - ☐ Judgment of dismissal after an order sustaining a demurrer
   - ☐ An order after judgment under Code of Civil Procedure section 904.1(a)(2)
   - ☐ An order or judgment under Code of Civil Procedure section 904.1(a)(3)–(13)
   - ☑ Other *(describe and specify code section that authorizes this appeal)*:

     Order of Final Approval of Class Action Settlement under C.C.P section 902. See, Attachment A.

BY FAX

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2. For cross-appeals only:
   a. Date notice of appeal was filed in original appeal:
   b. Date superior court clerk mailed notice of original appeal:
   c. Court of Appeal case number *(if known)*:

Date: August 10, 2016

Hallie Von Rock
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

CIT/CASE: BC499281
LEA/DEF#:
RECEIPT #: FIN454043017
DATE PAID: 08/10/16 03:
PAYMENT: $100.00
RECEIVED:
CHECK: $100.00
CASH: $0.00
CHANGE: $0.00
CARD: $0.00

ATTACHMENT A

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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

JESSICA APARICIO and JASON POLIRAN, on behalf of themselves and others similarly situated,

Plaintiff,

vs.

ABERCROMBIE & FITCH STORES, INC.; and, DOES 1 to 50, Inclusive,

Defendants.

Case No.: BC499281

[Assigned for All Purposes to Hon. Kenneth Freeman, Dept. 310)

NOTICE OF RULING AND ORDER RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Complaint Filed: January 16, 2013

Trial Date: None Set

PLEASE TAKE NOTICE that on June 15, 2016, the Honorable Kenneth R. Freeman issued a Ruling and Order re: Motion for Final Approval of Class Action Settlement in the above matter. A true and correct copy of the Court's Order is attached hereto as Exhibit "A".

DATED: June 24, 2016

KINGSLEY & KINGSLEY, APC

By: _____
ARI J. STILLER
ERIC B. KINGSLEY

Attorneys for Plaintiff

EXHIBIT "A"

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JESSICA APARICIO and JASON POLIRAN, on behalf of themselves and the Class, Plaintiffs, vs. ABERCROMBIE & FITCH STORES, INC. Defendant.	LASC Case No: BC499281 COURT'S RULING AND ORDER RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT Hearing Date: April 28, 2016

I.

BACKGROUND

This is a wage and hour class action by Jason Poliran (Plaintiff) on behalf of himself and similarly situated employees of Defendants Abercrombie & Fitch Stores, Inc., Gilly Hicks, LLC, and J.M. Hollister, LLC (Defendants). (The original plaintiff was Jessica Aparicio; she was replaced when she became unavailable and ceased communicating with counsel. The original defendant was Abercrombie & Fitch Stores, Inc. Gilly Hicks, LLC was added as Doe 1 and J.M. Hollister, LLC as Doe 2).

EXHIBIT A

In September, 2013, two other employees sued Defendants in Alameda County (*Brown v. Abercrombie & Fitch Stores, Inc).*. Defendants removed both actions to federal court, but Aparicio's efforts to have this remanded were successful. *Brown* remains in the District Court, although the "rest break" claim in that action is stayed pending the outcome of the settlement in this action.

The *Brown* plaintiffs' motion to intervene in this action was heard and denied in August, 2015.

This motion for final approval was originally set for March 15, 2016. In advance of the hearing, the Court issued a Checklist of issues that required further briefing. The Court's Checklist also contained an order granting motions for protective order by Plaintiff and by Defendants, concerning discovery served by the *Brown* plaintiffs.

In response to one item on the Court's Checklist, the parties stipulated to the filing of a Third Amended Complaint; this resolved two issues: that the class was defined differently in the pleading than the Settlement Agreement; and that the Settlement Agreement releases unpled claims for Labor Code §226 violations.

The Third Amended Complaint, filed March 22, 2016, defines the class as, "All persons employed by Defendants in a non-exempt position in California who worked at least one shift of 3.5 hours or greater in an Abercrombie & Fitch, Abercrombie, or Hollister store at any time from February 26, 2012 to September 30, 2014 or in a Gilly Hicks store at any time from January 16, 2009 to September 30 2014." (TAC, ¶21).

The Third Amended Complaint contains the following causes of action:

1. Failure to Allow Rest Breaks (Labor Code §226.7)
2. Waiting Time Penalties (Labor Code §203)
3. Unfair Competition (B&P Code §17200)

4. PAGA Penalties (Labor Code §2699)

II.

NOTICE AND CLAIMS PROCESS

In California, the notice must have "a reasonable chance of reaching a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251 (emphasis added). Importantly, however, the plaintiff need not demonstrate that each member of the class has received notice. As long as the notice had a "reasonable chance" of reaching a substantial percentage of class members, it should be found effective.

Rust Consulting, Inc. acted as claims administrator for this settlement. It obtained a mailing address and toll-free number, and created a website to provide class members with information. (Declaration of Josh Lunde, ¶¶3-6). On October 29, 2015, defense counsel provided Rust with a mailing list and class information. (Id. at ¶8). The class list contained 34,191 names. The mailing addresses were updated utilizing the NCOA. (Id. at ¶9).

On November 13, 2015 class notices were mailed to the 34,191 class members. (Id. at ¶10). As of February 15, 2016, 4,155 notices were returned undeliverable. (Id. at ¶11). Of those, Rust performed 3,696 address traces and pursuant to these efforts, 1,739 more current addresses were obtained and notices were re-mailed. (Ibid). Of the 1,739 re-mailed, 220 were returned a second time. As of February 5, 2016, 102 notices were returned with forwarding addresses attached and were promptly re-mailed. (Id. at ¶12).

The Checklist requested that the claims administrator explain why, since 4,155 notices were returned undeliverable, only 3,696 traces were performed. The claims administrator explains that 459 of the notices were returned after December 28, 2015, the deadline for opting out or objecting. (Supplemental Lunde Declaration, ¶6). This is a satisfactory explanation, since

the Settlement Agreement requires that skip traces be performed on mail returned at least 30 days before the opt-out deadline and here, the claims administrator performed skip tracing right up to the opt out date. (Settlement Agreement, ¶52(c)(ii))

The Court also requested an explanation regarding why the Class Notice changed between the time the motion for preliminary approval was originally filed and when it was later approved, following a continuance for further briefing. Attorney Liane Katzenstein Ly states that she cannot explain how this occurred but that it was not intentional, and that she does not believe any harm was done to class members by omitting this section. (Supplemental Ly Declaration, ¶¶ 4-16). The Court accepts the explanation. The Court approved the Class Notice with the omitted section and, while it may be preferable to have such information provided to class members, the notice was not rendered defective by its omission. The Class Notice that was served contained all the required information.

III.

DUNK FACTORS AND THE FAIRNESS OF THE INSTANT SETTLEMENT

It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. California Practice Guide, *Civil Procedure Before Trial*, The Rutter Group, ¶14:139.12 (2012). The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to the proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; In re

Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); Manual for Complex Litigation (Third) §30.42.

1. Strength of the plaintiff's case

The core of this litigation is a claim for failure to provide rest periods for fractional rest period shifts, based on Plaintiff's allegation that the rest period policy maintained and implemented by Defendants was incorrect. (Declaration of Eric B. Kingsley, ¶28). The policy in Defendant's handbook until April, 2013 stated that associates earned a ten minute rest break every four hours worked, which generally should be as close to the middle of each four hour work period as practicable, and that a rest break was not required if the associated worked less than 3.5 hours. (Id. at ¶29). Plaintiff's rest break claim is based on the fact that this policy does not include the "fractional language." (Ibid). In April, 2013, Defendants updated their rest break policy to include the correct fractional language. (Id. at ¶31). In October, 2013, Defendants updated the policy in their handbooks. (Id. at ¶32).

Plaintiff also learned that inaccurate rest period documents conflicting with Defendant's official policy remained on its intranet (known as "Link"), and were still in circulation until August, 2014. (Id. at ¶34). Plaintiff did not believe a class could be certified based on these documents for many reasons, among them that they conflict with Defendant's official updated

handbook and guidance forms that were disseminated. (Ibid).

Based on conversations with class members, Class Counsel learned that rest periods were not a major issue on shifts of 3.5000 to 3.9999 hours because when an employee worked a shift of this length, it was the result of a longer shift being cut short and generally a rest period had been provided at around the two hour mark. (Id. at ¶36). On these shorter fractional shifts, Class Counsel believed that rest periods were more likely to occur. (Ibid). The same is true for shifts of 6-8 hours. (Ibid).

The main claim in this action is for failure to provide lawful rest periods. (Id. at ¶45). In order to determine potential damages, Class Counsel analyzed time records for fractional rest period shifts for each class member and, based on these calculations, estimated that the full value of the rest period penalties for fractional shifts was approximately $5 million. (Id. at ¶¶57, 58, and Exhibit Y). As the damages chart indicates, Class Counsel discounted the various shift categories based on the applicable rest period policies in place during each period of time and based on the length of the shift. (Id. at ¶61). With the discounts, Class Counsel determined that the fair value for the settlement was $2,078,305.48. (Ibid).

There are 4,107 employees who only recorded working a shift between 4-6 hours or 8-10 hours in length, which did not fall within the factional shift categories. (Id. at ¶59). Because they were not recorded as working a fractional shift, they would not receive any credit for an Eligible Shift if settlement funds were awarded solely for fractional shifts; therefore, those 4,107 class members were given credit for one eligible shift. (Ibid).

Also, 448 of the 34,191 class members worked a shift of 3.5 hours or more at a Gilly Hicks store between January 16, 2009 and February 1, 2010. (Id. at ¶60). This is 1.3% of the class. (Ibid). Defendants did not maintain a rest period policy during this period of time but, given that these claims are seven years old, this settlement constitutes the best hope of these class

members to recover anything. (Ibid). Given that a small number of class members were possibly subject to violations beyond just on fractional shifts, Plaintiffs are willing to send an additional opt-out form to these 2009 Gilly Hicks class members with their settlement disbursements to be completely sure that they have no objections, if the Court requires. (Ibid). The Court does not so require.

This factor weighs in favor of final approval.

2. The risk, expense, complexity and likely duration of further litigation.

Had this case not settled, there would have been additional risks and expenses associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

This factor weighs in favor of final approval.

3. The risk of maintaining class action status through trial.

There is always a risk of decertification. [*Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.")].

This factor weights in favor of final approval.

4. The amount offered in settlement

As part of the Court's analysis of this factor, the Court should take into consideration the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the

reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

The gross settlement is $2,000,000, non-reversionary. This represents nearly 100% of the discounted fair value of the claims. After the deductions are made for the expenses associated with this settlement, approximately $1,193,482.34 will remain to be disbursed to class members. Each participating class member's gross settlement award will be determined by dividing their individual Adjusted Eligible Shifts by 301,198.40, and the resulting fraction will then be multiplied by the net settlement fund of $1,193.482.34. (Lunde Declaration, ¶14). The average gross settlement award is expected to be $34.90. (Ibid).

This factor weighs in favor of final approval.

5. The extent of discovery completed and the stage of the proceedings

The parties have vigorously litigated this action after the Court lifted the stay, including the exchange of written discovery. (Kingsley Declaration, ¶5). From July through September, 2013, the parties met and conferred regarding Defendant's production of information, resulting in Defendants production of employee shift data, daily hours worked, and daily rates. (Id. at ¶6).

The parties indicated for the court their competing positions on the extent of pre-certification discovery and the appropriateness of a *Belaire* notice. (Id. at ¶ 7 and exhibits F, G, H). As a result of these efforts, Defendant produced contact information for 1,000 class members (as ordered by the Court), all handbooks with rest break policies as well as other documents purporting to contain rest break policies, all documents regarding rest breaks that were posted to

the Link (Defendant's intranet), time records for the full class for each shift encompassed by the class definition. (Id. at ¶ 8). Class Counsel sent questionnaires to all class members whose information was provided and received approximately 65 responses. (Ibid). Class Counsel also made dozens of telephone calls to an additional sample of class members to inquire about rest period experiences. (Ibid).

Following remand from the District Court, the parties engaged in additional, informal discovery. (Id. at ¶12). Defendant produced rest period policies showing that Gilly Hicks and Hollister operated under the same rest period policy, which prompted Plaintiff to add them as doe defendants. (Ibid). Defendants also provided time records for these new entities. (Ibid).

This factor weighs in favor of final approval.

6. Experience and views of counsel

Class Counsel has extensive experience with similar wage and hour class action litigation. (Id. at ¶¶63, 64). Based on Class Counsel's analysis of the risks involved going forward, this settlement is fair and reasonable and in the best interest of the class. (Id. at ¶51).

This factor weighs in favor of final approval.

7. Reaction of the class members to the proposed class settlement

Rust received 11 written requests for exclusion. (Lunde Declaration, ¶13).

Rust received 2 objections, although it is unclear whether one was intended to be an objection or a request for exclusion. (Id. at ¶15). Rust followed up with that class member by phone to confirm that the intent was to object rather than request exclusion. (Ibid).

One of the objections is a hand-written note by class member Ashley Richie, who objected because she believed she was not provided lawful meal periods. (Kingsley Declaration, ¶25). However, meal period claims are not part of this case or this settlement. (Ibid).

The other objectors are the *Brown* plaintiffs, whose objections are discussed below.

Class Counsel has received nearly 100 phone calls from class members supporting the proposed settlement. (Kingsley Declaration, ¶26).

The Court, having fully considered all written and oral objections at the hearing, rules as follows:

Objections

Name of Objector	Nature of Objection(s)	Represented by Counsel?	Ruling on Objection
Alexander Brown and Arik Silva	The settlement is tainted and grossly undervalues the claims because it is based on the incorrect premise that Abercombie's policies are contained in the employee handbook.	Yes	**Overruled.**
Alexander Brown and Arik Silva	The statement fails as a matter of law under Trotsky v. Los Angeles Fed. Savings & Loan (1975) 48 Cal.App.3d 134	Yes	**Overruled**
Alexander Brown and Arik Silva	The *Aparicio* plaintiff is inadequate to represent a class that includes Labor Code §226 because those claims were never raised, and the settlement would release those claims for no consideration.	Yes	**Overruled.**
Alexander Brown and Arik Silva	The *Aparicio* plaintiff is inadequate to represent a class whose members worked shifts that are specifically excluded from the SAC	Yes	**Overruled**
Alexander Brown and Arik Silva	*Aparicio* plaintiff, his counsel, and the proposed *Aparicio* settlement are all inadequate because the proposed settlement releases, for no consideration, valuable The claims that were not raised in the SAC or subject to discovery.	Yes	**Overruled.**
Alexander Brown and Arik Silva	There is no presumption of fairness, and significant evidence of collusion and malfeasance in the proposed settlement.	Yes	**Overruled**
Alexander Brown and	The *Aparicio* parties have failed to provide the court with an adequate	Yes	**Overruled.**

Arik Silva	analysis of liability and damages under *Kullar*.		
Nelson Beato and Randall Pittmann	Join in all objections filed by Alexander Brown and Arik Silva	No	**All Overruled.**
Ashley Richie	Objects because she believed she was not provided lawful meal periods.	No	**Overruled.**

Conclusion on *Dunk* factors

The *Dunk* factors weigh in favor of granting final approval.

IV.

Attorney's Fees, Costs, and Incentive Payments

A. Class Counsel requests attorney fees of $666,667.

1. Determining the Lodestar Amount and Calculating Counsel's Hourly Rate and Fees

The Court employs the lodestars method in awarding fees, as opposed to a "percentage of the common fund" method. This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's efforts.

Class Counsel, Kingsley & Kingsley, APC, provided information in support of the fee award. Kingsley stated that he has spent 149.70 hours on this case and anticipates another 45 hours; at his $725/hour billing rate, the total is $141,157.50. (Kingsley Declaration, ¶¶72, 79, 80). Other attorneys in the firm also worked on this case. Darren Cohen spent 3.3 hours and bills $610/hour, for a total of $2,013. (Id. at ¶73). Liane Katzenstein Ly has spent 201.8 hours and anticipates spending another 15; at her hourly rate of $450, the total is $97,560. (Declaration of Liane Katzenstein Ly, ¶¶ 3, 4). Kelsey Szamet has spent 20.1 hours and bills at $450/hour, for a

total of $9,045. (Kingsley Declaration, ¶73). Ari Stiller has spent 154.4 hours and expects to spend another 90 hours; at his hourly rate of $325/hour the total is $79,430. (Declaration of Ari Stiller, ¶¶ 3-5). Allison Callaghan spent 34.5 hours and bills at $300/hour, for a total of $10,350. (Kingsley Declaration, ¶73). The hourly rates are reasonable for attorneys with their respective years of experience, and the hours spent are reasonable for this case, which has been pending for over three years. It appears that all attorneys utilized skill in litigating this case, and by all accounts, have good reputations in the legal community; at the very least, there is no evidence before the Court to indicate that the attorneys have negative reputations in the legal community. It also appears that Class Counsel spent appreciable time on the case, which time could have been spent on other meritorious fee-generating cases. Thus, $339,555 is the lodestar

2. The attorney fee request results in a positive multiplier of 1.96.

Based on the $339,555 lodestar, the fee request of $666,667 translates into a positive multiplier of 1.96.

Once the Court has calculated the lodestar figure, it may consider other relevant factors that could increase or decrease that figure. "The court expresses these factors as a number (or as an equivalent percentage), and the lodestar is multiplied by that number. Thus, the number is referred to as the 'multiplier.'" Pearl, *California Fee Awards* (2006 Supp)., §13.1. Although there are some objective standards governing what factors may be used to decide whether to apply a multiplier, the trial courts have considerable discretion in determining the size of the multiplier, as long as they consider the proper factors. Id. Indeed, "there is 'no mechanical formula [that] dictate[s] how the [trial] court should evaluate all these factors....[Citation]..'" *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.

"[The lodestar] may be adjusted by the court based on factors including... (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent

to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award. [Citation].. The purpose of such adjustment is to fix a fee at the fair market value for the particular action." *Ketchum v. Moses, supra*, 24 Cal.4th at 1132. See also *Serrano III, supra,* 20 Cal.3d at 49. However, the Court cannot consider the same factors when setting both the multiplier and the lodestar. See *Ketchum, supra*, 24 Cal.4th at 1138; see also *Flannery v. CHP* (1998) 61 Cal.App.4th 629 (reversing the application of a 2.0 multiplier to a fee award, in part because "the skill and experience of counsel" and "the nature of the work performed" factors were duplicative of factors the trial court had explicitly considered in setting the lodestar).

The issues in this case were not particularly novel, but Class Counsel displayed skill in quickly resolving this litigation. Further, Class Counsel accepted this case on a contingent fee basis, and the percentage is within the realm of what is normal in wage and hour cases. As in all contingency cases, Class Counsel risked no payment and was required to advance costs.

3. Cross-check

As a "cross-check," the fee request of $666,667 represents 1/3 of the gross settlement amount. The determination of what constitutes an appropriate percentage "is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award." [*In re Ikon Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193].

These factors favor the $666,667 award. As for the first factor, private contingency fee agreements are routinely 30% to 40% of the recovery. [Id. at 194]. As for the second factor, although the median percentage of attorney fees in class actions is 25%, "most fees appear to fall

in the range of nineteen to forty-five percent." [Id]. As for the third factor, Class Counsel has experience in class actions, including wage and hour cases. Most importantly, Class Counsel achieved good results for the class as evidenced by the class members' reaction to the settlement. As for the fourth factor, Class Counsel negotiated a $2,000,000 gross settlement amount that provides an average payout of approximately $34.92. For the foregoing reasons, the fee request of $666,667 is granted.

A. Costs

Class Counsel request costs in the amount of $8,500, which is the settlement cap. Class Counsel's actual costs are $12,049.84. (Kingsley Declaration, ¶83 and Exhibit CC). The costs include filing fees, attorney service fees, copying, Court Call, Case Anywhere, claims administration costs associated with *Belaire* notice, postage, legal research, investigator fees, court reporter costs, and other miscellaneous costs.

These costs appear reasonable and necessary to the conduct of the litigation. Further, as with the fee requests, the maximum cost request was disclosed to class members and deemed unobjectionable. For these reasons, the cost request is granted in the amount of $8,500.

A. Cost of Administration

Claims administrator Rust requests administration costs of $88,851. (Lunde Declaration, ¶16). Based upon the size of the class and the work performed, as well as the fact that the Settlement Agreement provides for up to $90,000 for settlement administration, an amount made known to the class with no objections being received thereto, the request for administration costs of $88,851 is granted.

B. Incentive Payment

Class Counsel seeks an incentive payment of $5,000 to the class representative.

The Court considers the following factors, among others, in determining whether to pay

an incentive or enhancement award to a class representative[1]:

- Whether an incentive was necessary to induce the class representative to participate in the case;
- Actions, if any, taken by the class representative to protect the interests of the class;
- The degree to which the class benefited from those actions;
- The amount of time and effort the class representative expended in pursuing the litigation;
- The risk to the class representative in commencing suit, both financial and otherwise;
- The notoriety and personal difficulties encountered by the class representative;
- The duration of the litigation; and
- The personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Jason Poliran worked for Defendant at its Santa Anita Mall store, and was not provided with all required rest breaks, and was not paid premium wages for those missed breaks. (Poliran Declaration, ¶3). He agreed to act as a class representative when the original class representative became unavailable. (Id. at ¶4). In this role he has devoted considerable time: providing Class Counsel with information, consulting with Class Counsel on multiple occasions; regularly discussing the status of the case with Class Counsel via telephone and email; and evaluating the settlement proposal. (Id. at ¶5). Poliran has attempted to be diligent and fair in representing the class, and has not placed his interests above those of the class. (Id. at ¶6).

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[1] California Practice Guide, *Civil Procedure Before Trial*, ¶14:146.10 (The Rutter Group 2012) (citing *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412).

The Court grants the requested $3,000 for the following reasons:

- The risks Poliran voluntarily undertook when he agreed to act as class representative;
- The time expended on this litigation;
- The positive result for the class.

VIII.

RULING AND ORDER

For the foregoing reasons, the motion for final approval is granted. The Court finds the settlement is fair, reasonable, and in the interests of the class. The Court grants the Plaintiffs' motion for attorneys' fees, costs, and incentive payments.

All objections are overruled.

A final distribution report is ordered to be filed by noon on March 15, 2017. The Court sets a non-appearance review for March 17, 2017.

Dated: June 15, 2016

KENNETH R. FREEMAN

Kenneth R. Freeman
Judge of the Superior Court

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On June 24, 2016, I served all interested parties in this action the following documents described as **NOTICE OF RULING AND ORDER RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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NATALIE M. McLAUGHLIN (admitted pro hac vice)
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7677 Oakport Street, Suite 1150
Oakland, CA 94621

[XX] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] **BY ELECTRONIC MAIL THROUGH CASE ANYWHERE:** On interested parties set forth on the attached service list.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 24, 2016, at Encino, California.

Michelle A. Tanzer

CASE NAME:	CASE NUMBER:
Aparacio, et al. v. Abercrombie & Fitch Stores, Inc., et al.	BC499281

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

☑ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My residence or business address is *(specify):*
   7677 Oakport Street, Suite 1150
   Oakland, CA 94621

3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows *(complete either a or b):*

   a. ☑ **Mail.** I am a resident of or employed in the county where the mailing occurred.

      (1) I enclosed a copy in an envelope and

      (a) ☐ **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.

      (b) ☑ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

      (2) The envelope was addressed and mailed as follows:

      (a) Name of person served: See, Service List.

      (b) Address on envelope:
      See, Service List.

      (c) Date of mailing: August 10, 2016

      (d) Place of mailing *(city and state):* Oakland, CA

   b. ☐ **Personal delivery.** I personally delivered a copy as follows:

      (1) Name of person served:

      (2) Address where delivered:

      (3) Date delivered:

      (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 10, 2016

Norma Dale ▶ Norma Dale

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

SERVICE LIST

August 10, 2016

Aparacio v. Abercrombie & Fitch Co., et al.

Los Angeles Superior Court Case No. BC499281

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