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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

TYLER NUNALEY, an individual and on
behalf of all other aggrieved employees,

Plaintiff,

v.

SIZEWISE RENTALS LLC, DOES 1-50
inclusive,

Defendants.

Case No. CGC-20-587743

**PLAINTIFF'S SUPPLEMENTAL
BRIEFING IN SUPPORT OF
MOTION FOR APPROVAL OF
PAGA SETTLEMENT AND
ENTRY OF JUDGMENT**

Hearing Date: November 3, 2023

Time: 10:00 a.m.

Judge: Hon. Ethan P. Schulman

Location: Department 304

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TABLE OF AUTHORITIES

Cases

Jacob Buys, et al. v. Sizewise Rental, LLC,
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1 **I. INTRODUCTION**

2 On September 29, 2023, the Court issued its tentative ruling requesting additional briefing
3 on issues set forth in the tentative ruling. The Order became final on October 5, 2023. Plaintiff
4 hereby submits this supplemental brief in support of the Motion for Approval of PAGA
5 settlement, addressing the issues raised by the Court. A copy of the Court’s October 5, 2023
6 Order is attached to the Supplemental Declaration of J. Glugoski as Exhibit 1.

7 Plaintiff will address each of these in turn but initially Plaintiff sets for the procedural
8 history of this case as it is important in evaluating this matter.

9 Based on the procedural history, the facts and data provided, the proposed settlement is
10 reasonable and fair and should be approved by this Court.

11 **II. PRIOR HISTORY**

12 **A. OVERVIEW OF THE THREE CASES BROUGHT AGAINST SIZEWISE**

13 This action is the third action in a five-year span (2015-2020) against Sizewise for
14 allegations of denied meal periods, rest breaks, and unpaid wages, two of which were litigated
15 by Plaintiff’s Counsel. The cases are:

- 16 • *Lindsey, et al. v. Sizewise Rental, LLC* Alameda County Superior Court Case No.
17 RG15761762 filed on or about February 10, 2015 [Class Action and PAGA –
18 Righetti Glugoski, P.C., Counsel for Plaintiff].
- 19 • *Jacob Buys, et al. v. Sizewise Rental, LLC* Sacramento County Superior Court
20 Case No. 34-2018-00225848 filed on or about January 23, 2018 [Class Action and
21 PAGA].
- 22 • *Tyler Nunaley, et al v. Sizewise Rental, LLC* San Francisco County Superior Court
23 Case No. RG15761762 filed on or about February 10, 2015 [Individual Action for
24 Wrongful Termination, Wage and Hour Claims, and PAGA – Righetti Glugoski,
25 Counsel for Plaintiff].

26 *Lindsey, et al v. Sizewise Rental, LLC*, Alameda County Superior Court Case No.
27 RG15761762, was filed on or about **February 10, 2015**. This case was both a Class Action and
28 a PAGA penalties case. Plaintiff was represented by Righetti Glugoski, P.C. (the same firm

1 representing Plaintiff in this case). The Court granted final approval of the settlement reached
2 between the parties. Judgment was entered on September 7, 2016. See Exhibit 2, marked and
3 attached to the Supp. Decl. of J. Glugoski.

4 Before the parties had settled the *Lindsey* action, Sizewise had implemented a policy to
5 pay the one-hour premium for denied meal period and stepped up its enforcement to curtail the
6 alleged violations in the *Lindsey* matter. The one-hour premium pay process consisted of a time
7 keeping system that *red-flagged* a potential violation as opposed to an *automatic payout*. Further
8 evaluation would be done to see if there was any potential waiver of the meal period.

9 When *Lindsey* settled, Plaintiff's counsel had already engaged in extensive litigation and
10 was familiar with Sizewise's practices.

11 On **January 23, 2018**, another lawsuit was filed entitled *Jacob Buys v. Sizewise*,
12 Sacramento Superior Court Case No. 34-2018-00225848-CU-OE-GDS. This too was a Class
13 Action and PAGA case. Righetti Glugoski **was not counsel** of record in this case. The parties
14 reached a settlement of the case which was approved by the Court. The Order Granting Final
15 Approval was submitted along with Plaintiff's moving papers and is submitted again as Ex. 3 to
16 the Supplemental Declaration of J. Glugoski.

17 Mr. Nunaley was not a potential class member in the *Lindsey* action **but was** a putative
18 class member in the *Buys* matter from which he opted out.

19 On **October 21, 2020**, Nunaley who had opted out of the *Buys* settlement filed this action
20 for **individual** damages covering his entire tenure. This was only after attempts to resolve his
21 individual claims were unsuccessful (the main obstacle being the wrongful termination cause of
22 action).

23 Since the *Buys* case had settled all the damage claims to date for all employees but
24 Nunaley, there was no basis to allege a class action. Plaintiff Nunaley included an alleged cause
25 of action for PAGA. Plaintiff Nunaley presumed his opt out in *Buys* meant he would have to
26 allege a PAGA claim on his own to recover his portion of the PAGA claim. To the extent any
27 other employee's PAGA claim was unresolved, Plaintiff could represent those aggrieved
28 employees as well.

II. PLAINTIFF’S RESPONSE TO ISSUES RAISED BY COURT

Neither the parties nor the Court benefit from protracted litigation where the circumstances are such that a proposed settlement will most likely bring a better result than proceeding to trial. Plaintiff’s counsel has extensive experience in the area of Wage and Hour Class Actions and PAGA representative actions and the knowledge on how to properly evaluate the risks and the value of cases. As discussed in detail below, Plaintiff has received all necessary information to assess whether this settlement is in the best interest of the LWDA and the aggrieved employees. The facts circumstances and data in this case are such that this settlement is fair and reasonable and in the best interest of not just the LWDA and aggrieved employees but also the Court and the parties.

A. VALUATION OF THE PAGA CLAIMS

The Court requested further briefing on the following:

- provide a value for its PAGA claims and describe the evidentiary record that supports the valuation provided (Order p. 2:17-21).
- Plaintiff must provide more factual context and specificity for his assessment of Defendant’s maximum potential exposure and any discount he applied to that exposure in arriving at the \$10,000 Gross Settlement Amount (Order p. 2:3-5).

1. Value of the PAGA Claims

Sizewise confirmed that there are 4,628 pay periods covered by this lawsuit. Suppl. Declaration of J. Glugoski para 11.

In discussing settlement, Defendant confirmed that there are 178 aggrieved employees who worked a total of 4,628 pay periods. Under PAGA the statutory penalty is \$100 per pay period. $4,628 \text{ pay periods} \times \$100 = \$462,800$.¹ This presumes one violation occurred for every pay period worked.

2. Potential Exposure and Applied Discount.

¹ This is a PAGA only settlement. In other words, this case does not seek damages on behalf of the aggrieved employees nor does this case settle the damages claims for any aggrieved employees. The recovery under PAGA is set forth by statute.

1 Plaintiff below set forth the facts, circumstances, and data to support potential exposure
2 and the applied discounts. The facts center around three key issues: a) 2015 meal waivers, 2) the
3 2015 red flag procedure, and 3) the 2018 automatic payout.

4
5 **a. Aggrieved Employees Signed Meal Period Waivers for Shifts of 6**
6 **Hours or Less and Second Meal Period Waivers for Shifts of 12**
7 **Hours or Less.**

8 After *Lindsey* was filed but before it was settled, Sizewise implemented meal period
9 waivers.

10 California Labor Code Section 512(a) states

11 (a) An employer shall not employ an employee for a work period of
12 more than five hours per day without providing the employee with a
13 meal period of not less than 30 minutes, except that if the total work
14 period per day of the employee is no more than six hours, the meal
15 period may be waived by mutual consent of both the employer and
16 employee. An employer shall not employ an employee for a work
17 period of more than 10 hours per day without providing the employee
18 with a second meal period of not less than 30 minutes, except that if
19 the total hours worked is no more than 12 hours, the second meal period
20 may be waived by mutual consent of the employer and the employee
21 only if the first meal period was not waived.

22 In 2015 after *Lindsey* commenced, Sizewise implemented two Meal Break Waiver Forms
23 pursuant to the California Labor Code: 1) for shifts that lasted no longer than 6 hours and 2) a
24 second meal period waiver for shifts that went over 10 hours but were less than 12 hours in
25 length. This practice eliminated concerns about shifts where it might be unclear what the
26 employee's situation was in terms of a meal break for shifts of 6 hours or less and/or 12 hours or
27 less. At the time of his hiring, Plaintiff signed the two Meal Break waivers. Marked and attached
28 to the Supp. Decl, of J. Glugoski as Exhibit 4 are true and correct copies of the Meal Break
waivers entered into by Plaintiff. Plaintiff understands that virtually all employees signed these
waivers.

29 **b. Implementation of Automatic Meal Period Premium Pay Following**
30 **Red Flag Procedure.**

31 Because Plaintiff's counsel was counsel of record in the *Lindsey* action, counsel was made

1 aware that soon after the waivers were put in place, Sizewise also implemented a policy in 2015
2 to pay the one-hour premium for denied meal period. Simultaneously, Sizewise stepped up its
3 enforcement to curtail the alleged violations in the *Lindsey* matter.

4 **i. Red Flag Procedure**

5 The 2015 red flag procedure consisted of Sizewise programming the time keeping system
6 to generate a “red flag” for every apparent non-compliant meal period (e.g., did not take place
7 before the end of the fifth hour of work, was less than 30 minutes or not recorded at all, etc...).
8 This would alert Sizewise of a potential violation; however, this did not address the issue of
9 potential waiver of the meal period by employee or time entry errors. Thus, Sizewise would then
10 discuss the situation with the employee to determine if there was any issue of waiver or an error
11 in entering the time. Supplemental Decl. of J. Glugoski para. 13.

12 **ii. Automatic Payout**

13 In approximately the Spring of 2018 (after January 23, 2018, when Sizewise was sued
14 again by another Plaintiff’s counsel), Sizewise eliminated the “red flag” procedure, which
15 consisted of the secondary evaluation listed above. Sizewise opted for a stronger compliance
16 program and replaced the “red flag” procedure with “an automatic one-hour of premium pay” for
17 non-compliant meal periods in their time keeping system without any evaluation.

18 This new procedure eliminated a secondary step of analysis as to whether a meal period
19 premium was owed and instead paid it outright. The automatic one hour of pay was in place
20 during the entire PAGA period covered by this lawsuit. Supplemental Decl. of J. Glugoski.

21 One key fact that impacts this case significantly is that the system allowed for employees
22 to override the automatic hour pay where the employee indicated that they waived or chose to
23 take a late meal period. This happened in approximately 6% of the shifts at issue.

24 In these situations, the automatic meal period premium pay was overridden.² These
25

26
27 2 The data provided in this case shows that when Sizewise takes into consideration recorded meal period times,
28 premium pay paid to the employee, and applicable written waivers, there is a 94% compliance rate for meal periods.
The remaining 6% involves situations where the employee overrode the automatic one hour of pay by confirming
that he/she chose to take a late meal period or waived the meal period altogether.

1 situations arise in shifts between 6-10 hours and more than 12 and is the area where the focus of
2 this case lies.

3 **c. Evidence Produced In Litigation**

4 During the course of this litigation and in furtherance of a potential resolution, Sizewise
5 provided it's time and pay data during the relevant time period and a detailed analysis concerning
6 their meal break compliance. Sizewise provided among other things: 1) number of shifts,³ 2)
7 number of shifts eligible for a meal period, 3) lengths of shifts, 4) shifts where a waiver existed,
8 and 5) shifts where a premium was paid. More importantly, the report documents a compliance
9 rate of approximately 94%. **A detailed report of the information provided to Plaintiff's**
10 **counsel outlining the various scenarios concerning meal period compliance is attached as**
11 **Exhibit 5 to the Declaration of J. Glugoski.**

12 Increased efforts by Sizewise to enforce meal period requirements resulted in Sizewise
13 reaching an approximate 94% compliance rate.⁴ Prior to these efforts, Plaintiff alleged that
14 employees would be forced to work off-the-clock during what would otherwise be meal periods.
15 The automatic premium pay policy with the meal periods waivers were in place during the PAGA
16 period at issue here.

17 Sizewise also supplied evidence of the number of meal premiums paid for the PAGA
18 period and the corresponding dollar amount: 837 meal period premiums paid totaling \$31,240.42.
19 Suppl. Declaration of Glugoski. In fact, Plaintiff was among those who received premium pay
20 payments for denied meal periods during his tenure. Suppl. Declaration of Glugoski.

21 **d. Assessment of Potential Exposure and Applied Discount.**

22 There are 4,628 pay periods. If you multiply the number of pay periods time \$100
23 (applicable PAGA penalty), the potential exposure is \$462,800. This assumes a violation in every
24

25 3 As set forth in Ex. 5, there were 42,153 shifts worked during the PAGA period. If you divide that number by 5
26 days a week, you arrive at 8,430.6 workweeks. Pay periods were every 2 weeks. If you divide 8430.6 weeks by 2
27 weeks you arrive at 4,215.3 pay periods. The additional 412.7 pay periods account for situations where the pay
period did not track the usual pay period cycle. For example, an employee who separated his employment in the first
week of the two-week pay period cycle and thus was paid prior to the usual pay day.

28 4 Plaintiff originally stated the compliance rate to be 98%; however, it is actually 93.56%.

1 period, which is not the case and that the facts would not support a reduction by the Court in the
2 amount of the penalty.

3 California Labor Code section 2699, subdivision (e)(2) gives the court discretion to
4 reduce PAGA civil penalties if it finds that awarding the full amount of penalties would be
5 “unjust, arbitrary and oppressive, or confiscatory.” Sizewise’s efforts to eliminate these
6 violations suggest a situation that would warrant a Court awarding a lesser penalty.

7 Here, the data demonstrates a compliance rate of 94% after a detailed effort to “fix” the
8 issue over many years. Sizewise’s efforts to fix the problem continuously evolved culminating
9 in an automatic payout of the meal period premium in 2018.

10 Plaintiff’s counsel has been practicing in this area for 30 years and is familiar with
11 compliance rates and efforts made by employers to eliminate meal period issues. This 94%
12 compliance rate is substantial and consistent with a company who has gone through great lengths
13 to remedy the problem. It is rare to see a company implement automatic premium payouts. Supp.
14 Decl. of J. Glugoski. This compliance rate cannot be overlooked and should be commended.
15 Unfortunately, although they are one of few employers that implemented these pro-employee
16 practices, Sizewise has ceased operations in California. Supp. Decl. of J. Glugoski.

17 In assessing potential exposure, Plaintiff’s counsel applies a 94% compliance rate to
18 \$462,800 (the amount assuming a violation in every pay periods) to arrive at \$27,768.

19 Applying a 94% compliance rate to 4,628 pay periods equals 278 pay periods.

20 Focusing on the 6% of non-compliant meal periods per company records, the potential
21 pay period violations involve shifts between 6.01 and 10 hours and greater than 12.01 hours.⁵

22 Of these 278 pay periods, it is not a foregone conclusion that the remaining 6% of the pay
23 periods have a violation. The records provide Sizewise with a strong defense to the contrary. As
24 indicated above, employees 1) knew they would be paid a one hour premium for non-compliant
25 meal periods and 2) could choose to override the payment by conceding that they chose to “work

26
27 5 As stated above, Sizewise obtained waivers for shifts of 6 hours or less and/or second meal period waivers for
28 shifts of 12 hours or less. The waivers did not address shifts between 6.01 and 10 hours and greater than 12.01 hours.
An employee would still be able to waive his/her meal period for shifts between 6.01 and 10 hours.

1 through lunch” or decided not to take a meal period. Supp. Decl. of J. Glugoski at para 22.

2 Common sense tells that employees who knew they would be paid a one-hour premium
3 would want to be paid the premium if the facts supported the payment of the premium. It is also
4 difficult to fathom that employees would override the automatic penalty if it was due. This is not
5 to say that there were not issues of potential coercion or misunderstandings on the part of the
6 employee as to whether their conduct rose to the level of a waiver; however, trying to establish
7 this issue would be a daunting task.

8 Nevertheless, this leaves Plaintiff having to challenge affirmations by employees that
9 they did in fact waive their meal period to prove they did not.

10 Sizewise has a viable defense to some if not all the pay periods. Conversely, Plaintiff could
11 show in at least some situations that perhaps the override was based on a misunderstanding of
12 the law or coercion. This would however, be an uphill battle.

13 This evidence alone would justify a severe reduction in overall exposure. It is a strong
14 possibility that the Court would find all or most of the pay periods without a violation.

15 **e. Sizewise Ceased Operations in California In March of 2022 and The**
16 **Only Outstanding Case Is This Matter.**

17 Sizewise no longer conducts business in California effective March 22, 2022. There has
18 not been a single case filed against Sizewise for damages or PAGA since Nunaley filed his claim.
19 This would suggest that the issues that first arose in *Lindsey* and again in *Buys* (both of which
20 were also class actions for damages) are a thing of the past.

21 Nor has Plaintiff been advised by any of his past co-worker that they believe they have
22 any wage and hour claims against Sizewise. Id.

23 Further, this settlement will not impact, wipe out, or dilute any other pending action
24 against Sizewise based on its operations in California.

25 **B. MONIZ v. ADECCO NOT APPLICABLE HERE**

26 As set forth above, the facts of this case are such that the settlement in this case is fair
27 and reasonable.

28 Furthermore, the facts at issue in *Moniz v. Adecco U.S., Inc.*, 72 Cal.App.5th 56, 87-88

1 (Cal. Ct. App. 2021) are not applicable here. In *Moniz*:

2 the settlement allocated 88 percent of the aggrieved employees' share
3 of the civil penalties to Associates and 12 percent to Colleagues, and,
4 given the number of aggrieved employees in each group, each
Associate was to receive \$10.27 whereas each Colleague was to
receive \$157.92."

5 *Moniz v. Adecco U.S., Inc.*, 72 Cal.App.5th 56, 87-88 (Cal. Ct. App. 2021)

6 The *Moniz* court went on to say:

7 The unsubstantiated and disproportionate allocation of civil penalties
8 between Associates and Colleagues provides sufficient cause for us
9 to question the scrutiny applied here and remand the matter." *Moniz*
v. Adecco U.S., Inc., 72 Cal.App.5th 56, 89 (Cal. Ct. App. 2021)

10 There is no unsubstantiated and/or disproportionate allocation of civil penalties between
11 Plaintiff and the aggrieved employees. Plaintiff's individual claims were negotiated and settled
12 separately from the PAGA claims at issue here and Plaintiff's portion of any PAGA claim was
13 not given any value in reaching the agreed upon amount set forth in the individual settlement.
14 Supp. Decl. of J. Glugoski para. 25.

15 **C. VALUATION OF THE INDIVIDUAL-NON PAGA CLAIMS**

16 In its Order the Court also stated that "Plaintiff must provide a fuller explanation as to
17 how his individual settlement payment was calculated such that the Court may effectively
18 scrutinize whether Plaintiff has adequately represented the interests of the State and public (Order
19 p. 3:11-13).

20 **1. Description of The Case**

21 Plaintiff Tyler Nunaley was hired by Sizewise on December 31, 2018 as a non-exempt
22 Warehouse Technician, whose duties centered on preparing orders and maintaining, cleaning,
23 sterilizing, and repairing medical equipment such as "hospital beds." Plaintiff worked in both the
24 warehouse and in the field. For example, he might be required to travel to a customer's (patient)
25 location to repair a "hospital bed," pick up a bed to return to the warehouse or, in the alternative,
26 deliver replacement equipment if a repair could not be completed. He would then replace the
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equipment and return the old equipment to the warehouse for cleaning, sterilization, and repair. Plaintiff's employment ended officially on April 1, 2020. Supp. Decl. of J. Glugoski para 26.

In March 2020 (before Plaintiff was terminated one month later), Plaintiff engaged in direct conversations regarding OSHA violations and wage and hour violations with Sizewise's HR department. Soon after he complained of these issues, he was terminated. Sizewise denies any wrongdoing and claims that his termination was related to job performance. Supp. Decl. of J. Glugoski para. 27.

Plaintiff's retaliation and wrongful termination is alleged to be the quintessential retaliation/wrongful termination/whistleblower case. Plaintiff's claims stem from the employer's alleged decision to terminate him following his repeated complaints of OSHA, meal and rest break violations, and non-payment of wages. Supp. Decl. of J. Glugoski para. 28.

The overwhelming majority of Plaintiff's individual settlement applies to his wrongful termination/retaliation/whistleblower case that rocked him emotionally and financially. Supp. Decl. of J. Glugoski para. 29. Through the filing of a wrongful termination lawsuit, Plaintiff is entitled to seek and potentially recover different types of damages such as:

- **Economic Damages:** As a starting point, wrongfully terminated workers can recover their lost wages and other employment benefits. This includes "back pay" – lost wages for the period between your termination date and the time your case is resolved. It also can include "front pay" – lost wages for some period in the future that you will be unemployed. Notably, plaintiff has a duty to mitigate their damages, which means that you have to look for work after your termination.
- **Non-Economic (Intangible) Damages:** Next, plaintiff may also be eligible to recover financial compensation for non-economic or intangible losses. This could include financial compensation for emotional distress and for any damage that was caused to one's professional reputation.
- **Punitive Damages:** Finally, punitive damages may be available. Punitive damages are designed to punish the grossly negligent or despicable conduct of the defendant. Their purpose is to punish the bad-acting employer and to discourage other companies from engaging in similar unlawful conduct in the future.

Non-Economic and Punitive Damages

Plaintiff suffered severe emotional distress as a result of this alleged wrongful termination. In addition, after Plaintiff was terminated, Plaintiff was out-of-work for close to six (6) months. He suddenly had no income for an extended period of time to pay rent and expenses

1 and could not find work. This further caused stress anxiety and emotional distress from what
2 Plaintiff believes to be a wrongful termination. Supp. Decl. of J. Glugoski para. 29.

3 **Economic Damages**

4 Plaintiff's economic damages have four components: 1) lost income as a result of the
5 wrongful termination, 2) unpaid wages and premium pay for each denied meal and each denied
6 rest break while employed 3) waiting time penalties and 4) liquidated damages.⁶

7 When Plaintiff found a job, Plaintiff was paid much less than the amount he was making
8 at Sizewise. He suffered a huge economic loss from receiving no income at all for six months
9 followed by two years of reduced income when compared to his earnings at Sizewise. The value
10 of lost income is estimated to be well into six figures. Supp. Decl. of J. Glugoski para. 30.

11 In addition, Plaintiff retained all wage and hour claims for unpaid overtime, unpaid
12 wages, meal and rest period premiums, wage statements, liquidated damages, and waiting time
13 penalties that the other employees received compensation for in the *Buys* settlement. Id.
14 Plaintiff valued the total for all his individual claims (i.e., lost income, emotional distress,
15 punitive damages, etc...) in the very high six-figures.⁷

16 Plaintiff contends that the value of his individual claims far exceeds what the case has
17 settled for; but, Plaintiff reached this agreement in good faith. He did not put his interests in his
18 individual claims above the interests of the aggrieved employees or the LWDA. If anything, his
19 efforts procured additional monies for the LWDA and an additional PAGA payment for
20 employees who did not expect any additional compensation or believe they are entitled to any
21 additional compensation. Suppl. Decl. of J. Glugoski para 32.

22 **D. CY PRES HAS NO RELATIONSHIP TO PLAINTIFF OR COUNSEL BUT**
23 **PLAINTIFF IS UNABLE TO OBTAIN CY PRES DECLARATION.**

24 **The Court's Order states:**

25 _____
26 6 Had Plaintiff remained a member of the *Buys* settlement, items 2-4 would have been resolved through the *Buys*
27 settlement. Since, he opted out, he never received any compensation for those claims.

28 7 Plaintiff's PAGA claim was not factored into in any way in negotiating and arriving at the total amount of the
individual settlement. Supp. Decl. of J. Glugoski para. 31.

1 Plaintiff's counsel must submit a declaration stating their relationship and their
2 client's relationship with the proposed cy pres beneficiary, if any. Additionally,
3 a representative of the proposed cy pres beneficiary must submit a declaration
4 demonstrating that Refugee Net is an appropriate cy pres beneficiary under
Code of Civil Procedure § 384(b).

5 Neither Plaintiff nor Plaintiff's counsel have any relationship with the proposed Cy Pres
6 beneficiary. Plaintiff is submitting a declaration demonstrating that Refugee Net is an appropriate
7 cy pres beneficiary under Code of Civil Procedure § 384(b). Supp. Decl. of J. Glugoski para. 33.

8 Soon after the Court issued its tentative ruling, Plaintiff has tried repeatedly to obtain a
9 declaration from Refugee Net to support their adequacy to be appointed as the Cy Pres in this
10 matter. Plaintiff has received no answer to e-mails and numerous telephone messages. The
11 parties have discussed the matter and are amenable to proceeding with an alternate Cy Pres and
12 requests guidance from the Court on this issue. *Id.*

13 **E. SETTLEMENT ADMINISTRATION COSTS CAPPED AT \$2,500.**

14 **The Court's Order states:**

15 The Court raises two issues as to the Settlement Administrator. First, the
16 settlement agreement states the settlement administration costs are not to
17 exceed \$4,000. (*Id.* § IV.A.) The bid provided by ILYM Group, Inc. states that
18 settlement administration costs are estimated at \$2,500. (*Id.* at Ex. 4.) Plaintiff
19 must submit a revised bid stating the agreed upon cap of \$4,000 or that
20 settlement administration costs shall not exceed the current estimate of \$2,500.
Second, the settlement agreement directs residual funds to Refugee Net as the
cy pres beneficiary. (*Id.* at Ex. 2 § V.B). However, the bid is silent as to the
disposition of residual funds. Plaintiff is directed to submit a revised bid that
includes the transfer of residual funds to the proposed cy pres beneficiary.

21 Plaintiff submits a revised bid confirming that costs of administration will not exceed
22 \$2,500.00 and this amount includes a distribution to the cy pres. See Ex. 6, marked and attached
23 to the Suppl. Decl. of J. Glugoski para. 34.

24 **F. THE ONLY DEDUCTIONS FROM THE SETTLEMENT FUND ARE**
25 **COSTS OF ADMINISTRATION TO MAXIMIZE RECOVERY FOR THE**
26 **LWDA AND AGGRIEVED EMPLOYEES.**

27 **The Court's Order states:**
28

1 Plaintiff's counsel seeks up to \$1,500, or fifteen percent of the Gross Settlement
2 Amount, in attorneys' fees. (See Glugoski Decl. Ex. 2 §§ V.B., VI.B.) However,
3 the settlement agreement provides that the Gross Settlement Amount of \$10,000
4 is the maximum amount Defendant can be required to pay, and that amount is
5 already fully accounted for in the \$2,500 payment to the Settlement
6 Administrator and the proposed \$7,500 Net Settlement Amount. The moving
papers represent that the Net Settlement Amount of \$7,500 will be allocated
between the LWDA and the PAGA Settlement Aggrieved Employees, and make
no reference to any payment of attorneys' fees.

7 Although the PAGA Settlement Agreement provides Plaintiff's counsel the right to seek
8 attorney fees and costs, Plaintiff counsel will not seek an award of fees and costs as part of this
9 settlement. Plaintiff' counsel has waived the right to seek fees and costs as part of the PAGA
10 Settlement to ensure that the most money possible finds its way to the LWDA and aggrieved
11 employees. See Suppl. Decl. of J. Glugoski para. 35.

12 Thus, the total amount of \$7,500 (\$10,000 minus \$2,500 cost of administration will be
13 split with 75% going to the LWDA and 25% going to the aggrieved employees. See Suppl. Decl.
14 of J. Glugoski para. 36.

15 Plaintiff will amend the Proposed Order to reflect that Plaintiff is foregoing any request
16 for attorney fees and costs pursuant to this settlement.

17 **G. THE PARTIES WILL SEND A NOTICE ALONG WITH THE CHECKS.**

18 **The Court's Order states:**

19 PAGA Aggrieved Employees will receive a notice with their settlement check
20 regarding the nature of the payment. (See Glugoski Decl. ¶ 27.) Plaintiff must
include the proposed notice in its supplemental filing

21 The parties attach the proposed notice as Exhibit 7 to the Supp. Decl. of J. Glugoski.

22
23 Dated: October 10, 2023

Respectfully submitted,

24 **RIGHETTI GLUGOSKI, P.C.**

25 By: /s/ John Glugoski
26 John Glugoski, Esq.
Attorneys for Plaintiff
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