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Attorneys for Plaintiff

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

**SUPPLEMENTAL DECLARATION OF
JOHN GLUGOSKI IN SUPPORT OF
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

1 I, **JOHN GLUGOSKI**, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California with Righetti
3 Glugoski, P.C. (Formerly Righetti Law Firm P.C.), attorneys of record for Plaintiff. I have
4 personal knowledge of the following facts and if called as a witness would testify as follows:

5 **LITIGATION HISTORY**

6 2. On September 29, 2023, the Court issued its tentative ruling requesting additional
7 briefing on issues set forth in the tentative ruling. The Order became final on October 5, 2023.
8 A true and correct copy of the Court's October 5, 2023 Order is attached hereto as Exhibit 1.

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

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

22 4. *Lindsey, et al. v. Sizewise Rental, LLC* Alameda County Superior Court Case No.
23 RG15761762 was filed on or about **February 10, 2015**. This case was both a Class Action and
24 a PAGA penalties case. Plaintiff was represented by Righetti Glugoski,, P.C. (the same firm
25 representing Plaintiff in this case) The Court granted final approval of the settlement reached
26 between the parties. Judgment was entered on September 7, 2016. A true and correct copy of the
27 Judgment is attached hereto as Exhibit 2.

28 5. Before the parties had settled the *Lindsey* action, Sizewise had implemented a

1 policy to pay the one-hour premium for denied meal period and stepped up its enforcement to
2 curtail the alleged violations in the *Lindsey* matter. The one-hour premium pay process consisted
3 of a time keeping system that *red-flagged* a potential violation as opposed to an *automatic payout*.
4 Further evaluation would be done to see if there was any potential waiver of the meal period.

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

7 7. On **January 23, 2018**, another lawsuit was filed entitled *Jacob Buys v. Sizewise*,
8 Sacramento Superior Court Case No. 34-2018-00225848-CU-OE-GDS. This too was a Class
9 Action and PAGA case. Righetti Glugoski **was not counsel** of record in this case. The parties
10 reached a settlement of the case which was approved by the Court. A true and correct copy of the
11 Order Granting Final Approval is marked and attached hereto as Exhibit 3.

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

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

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

24 **SETTLEMENT DATA AND VALUATION**

25 11. Sizewise confirmed that there are 4,628 pay periods covered by this lawsuit. There
26 are 178 aggrieved employees who worked and are covered by these 4,628 pay periods.

27 12. In 2015 after *Lindsey* commenced, Sizewise implemented two Meal Break Waiver
28 Forms pursuant to the California Labor Code: 1) for shifts that lasted no longer than 6 hours and

2) a second meal period waiver for shifts that went over 10 hours but were less than 12 hours in length. This practice eliminated concerns about shifts where it might be unclear what the employee's situation was in terms of a meal break for shifts of 6 hours or less and/or 12 hours or less. At the time of his hiring, Plaintiff signed the two Meal Break waivers. Marked and attached hereto 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.

13. During the *Lindsey* litigation, we (Plaintiff's counsel) were made aware that soon after the waivers were put in place, Sizewise also implemented a policy in 2015 to pay the one-hour premium for denied meal period. Simultaneously, Sizewise stepped up its enforcement to curtail the alleged violations in the *Lindsey* matter. The 2015 red flag procedure consisted of Sizewise programming the time keeping system to generate a "red flag" for every apparent non-compliant meal period (i.e., did not take place before the end of the fifth hour of work, was less than 30 minutes or not recorded at all). This would alert Sizewise of a potential violation; however, this did not address the issue of potential waiver of the meal period by employee or time entry errors. Thus, Sizewise would then discuss the situation with the employee to determine if there was any issue of waiver or an error in entering the time.

14. In approximately the Spring of 2018 (after January 23, 2018, when Sizewise was sued again by another Plaintiff's counsel), Sizewise eliminated the "red flag" procedure, which consisted of the secondary evaluation listed above. Sizewise opted for a stronger compliance program and replaced the "red flag" procedure with "an automatic one-hour of premium pay" for non-compliant meal periods in their time keeping system without any evaluation. This new procedure eliminated a secondary step of analysis as to whether a meal period premium was owed and instead paid it outright. The automatic one hour of pay was in place during the entire PAGA period covered by this lawsuit. One key fact that impacts this case significantly is that the system allowed for employees to override the automatic hour pay where the employee indicated that they waived or choose to take a late meal period. This happened in approximately 6% of the shifts at issue.

15. In these situations, the automatic meal period premium pay was overridden.

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

3 16. During the course of this litigation and in furtherance of a potential resolution,
4 Sizewise provided detailed analysis concerning their meal break compliance. Sizewise provided
5 among other things: 1) number of shifts, 2) number of shifts eligible for a meal period, 3) lengths
6 of shifts, 4) shifts where a waiver existed, 5) shift where a premium was paid. More importantly,
7 the report documents a compliance rate of approximately 94%. A true and correct copy of the
8 detailed report of the information provided to Plaintiff's counsel outlining the various scenarios
9 concerning meal period compliance is hereto as Exhibit 5.

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

15 18. Sizewise also supplied evidence of the number of meal premiums paid for the
16 PAGA period and the corresponding dollar amount: 837 meal period premiums paid totaling
17 \$31,240.42.

18 19. Plaintiff's counsel has been practicing in this area for 30 years and is familiar with
19 compliance rates and efforts made by employers to eliminate meal period issues. This 94%
20 compliance rate is substantial and consistent with a company who has gone through great lengths
21 to remedy the problem. It is rare to see a company implement automatic premium payouts.

22 20. This compliance rate cannot be overlooked and should be commended.
23 Unfortunately, although they are one of few employers that implemented these pro-employee
24 practices, Sizewise has ceased operations in California.

25 21. In assessing potential exposure, Plaintiff's counsel applies a 94% compliance rate
26 to \$462,800 (the amount assuming a violation in every pay periods) to arrive at
27 \$27,768. Applying a 94% compliance rate to 4,628 pay periods equals 278 pay periods.

28 22. Of these 278 pay periods, it is not a foregone conclusion that the remaining 6% of

the pay periods have a violation. The records provide Sizewise with a strong defense to the contrary. As indicated above, employees 1) knew they would be paid a one hour premium for non-compliant meal periods and 2) could choose to override the payment by conceding that they chose to “work through lunch” or decided not to take a meal period.

23. Sizewise no longer conducts business in California effective March 22, 2022. There has not been a single case filed against Sizewise for damages or PAGA since Nunaley filed his claim. This would suggest that the issues that first arose in *Lindsey* and again in *Buys* (both of which were also class actions for damages) are a thing of the past. Nor has Plaintiff been advised by any of his past co-worker that they believe they have any wage and hour claims against Sizewise.

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

25. There is no unsubstantiated and/or disproportionate allocation of civil penalties between Plaintiff and the aggrieved employees. Plaintiff’s individual claims were negotiated and settled separately from the PAGA claims at issue here and Plaintiff’s portion of any PAGA claim was not given any value in reaching the agreed upon amount set forth in the individual settlement.

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

27. In March 2020 (before Plaintiff was terminated one month later), Plaintiff engaged in direct conversations regarding 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. Plaintiff did

1 complain about wage and hour issues and hazardous working conditions and that is documented.

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

6 29. The overwhelming majority of Plaintiff's individual settlement applies to his
7 wrongful termination/retaliation/whistleblower case that rocked him emotionally and financially.
8 Plaintiff suffered severe emotional distress as a result of this alleged wrongful termination. In
9 addition, after Plaintiff was terminated, Plaintiff was out-of-work for close to six (6) months. He
10 suddenly had no income for an extended period of time to pay rent and expenses and could not
11 find work. This further caused stress anxiety and emotional distress from what Plaintiff believes
12 to be a wrongful termination.

13 30. When Plaintiff found a job, Plaintiff was paid much less than the amount he was
14 making at Sizewise. He suffered a huge economic loss from receiving no income at all for six
15 months followed by two years of reduced income when compared to his earnings at Sizewise.
16 The value of lost income is estimated to be well into six figures. In addition, Plaintiff's retained
17 all wage and hour claims for unpaid overtime, unpaid wages, meal and rest period premiums,
18 wage statements, liquidated damages, and waiting time penalties that the other employees
19 received compensation for in the *Buys* settlement.

20 31. Plaintiff's PAGA claim was not factored into in any way in negotiating and
21 arriving at the total amount of the individual settlement but is part of a broad release. The PAGA
22 and individual settlements were negotiated separately.

23 32. Plaintiff contends that the value of his individual claims far exceeds what the case
24 has settled for but Plaintiff reached this agreement in good faith. He did not put his interests in
25 his individual claims above the interests of the aggrieved employees or LWDA. If anything, his
26 efforts procured additional monies for the LWDA and an additional PAGA payment for
27 employees who did not expect any additional compensation or believe they are entitled to any
28 additional compensation.

33. Neither Plaintiff nor Plaintiff's counsel have any relationship with the proposed Cy Pres beneficiary. Soon after the Court issued its tentative ruling, Plaintiff has tried repeatedly to obtain a declaration from Refugee Net to support their adequacy to be appointed as the Cy Pres in this matter. Plaintiff has received no answer to e-mails and numerous telephone messages. The parties have discussed the matter and are amenable to proceeding with an alternate Cy Pres.

34. Plaintiff submits a revised bid confirming that costs of administration will not exceed \$2,500.00 and this amount includes a distribution to the cy pres. A true and correct copy of the revised bid is marked and attached hereto as Exhibit 6.

35. Although the PAGA Settlement Agreement provides Plaintiff's counsel the right to seek attorney fees and costs, Plaintiff counsel will not seek an award of fees and costs as part of this settlement. Plaintiff' counsel has waived the right to seek fees and costs as part of the PAGA Settlement to ensure that the most money possible finds its way to the LWDA and aggrieved employees.

36. The total amount of \$7,500 (\$10,000 minus \$2,500 cost of administration will be split with 75% going to the LWDA and 25% going to the aggrieved employees. Plaintiff will amend the Proposed Order to reflect that Plaintiff is foregoing any request for attorney fees and costs pursuant to this settlement and that the \$7,500 will all be applied to pay the LWDA and aggrieved employees.

37. The parties have drafted a notice to send to the aggrieved employees along with their checks. Marked and attached hereto as Exhibit 7 is a true and correct copy of the proposed notice.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of October, 2023, at San Francisco, California.


John Glugoski
Attorneys for Plaintiff

EXHIBIT 1

FILED
San Francisco County Superior Court



OCT 05 2023

CLERK OF THE COURT
BY: *Christina Green*
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

TYLER NUNALEY, as an individual and on
behalf of others similarly situated,

Plaintiff,

v.

SIZEWISE RENTALS LLC, and DOES 1
through 50, Inclusive,

Defendant.

Case No. CGC-20-587743

ORDER CONTINUING PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL
OF PAGA SETTLEMENT AND ENTRY OF
JUDGMENT

The above-entitled motion is currently set for a hearing on October 5, 2023. Prior to that date, the Court provided the parties with a tentative ruling, a copy of which is attached hereto as Exhibit A. The parties informally notified the Court that they submit on the Court's tentative ruling. Accordingly, the Court hereby adopts its tentative ruling, which is to require a supplemental filing.

Plaintiff shall submit a supplemental filing addressing the issues raised in the tentative ruling on or before October 9, 2023. The hearing on Plaintiff's motion is continued from October 5, 2023 to November 3, 2023 at 1:30 p.m.

IT IS SO ORDERED.

Dated: October 5, 2023

Ethan P. Schulman
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

TYLER NUNALEY, as an individual and on
behalf of others similarly situated,

Plaintiff,

v.

SIZEWISE RENTALS LLC, and DOES 1
through 50, Inclusive,

Defendant.

Case No. CGC-20-587743

TENTATIVE RULING ON PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL
OF PAGA SETTLEMENT AND ENTRY OF
JUDGMENT

TENTATIVE RULING

The Court's tentative ruling is to continue Plaintiff's Motion for Approval of PAGA Settlement and Entry of Judgment for a supplemental filing. The issues that must be addressed in the supplemental filing are set forth below.

The parties may stipulate to the tentative ruling, in which case the Court will enter an order adopting the tentative ruling, setting a date for a supplemental filing, and setting a continued hearing date for the motion. If the parties elect to do so, they must contact the clerk for Department 304 via email stating the date on which a supplemental filing will be submitted and their availability for a hearing at least five court days after the submission of the supplemental filing. If the parties do not so stipulate, the Court will hold a hearing on this tentative ruling on October 5, 2023 at 10:00 a.m. prior to the submission of any supplemental materials.

1 **I. Fairness**

2 “Aside from the requirement that the court ‘review and approve’ a settlement in a civil action filed
3 under PAGA (§ 2699, subd. (l)(2)), PAGA itself does not provide a standard for this review and approval
4 in the majority of PAGA cases.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 75.) “Despite
5 the fact that a representative action under PAGA is not a class action, and is instead a type of qui tam
6 action, a standard requiring the trial court to determine independently whether a PAGA settlement is fair
7 and reasonable is appropriate.” (*Id.* at 76 (cleaned up).) Accordingly, “a trial court should evaluate a
8 PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to
9 remediate present labor law violations, deter future ones, and to maximize enforcement of state labor
10 laws.” (*Id.* at 77.) The *Moniz* court explained that many of the same factors that can be used to evaluate
11 the fairness of class action settlements—the strength of the plaintiff’s case, the risk, the stage of the
12 proceeding, the complexity and likely duration of further litigation, and the settlement amount—can also
13 be used to evaluate the fairness of a PAGA settlement. (*Id.*; see also *Kullar v. Foot Locker Retail, Inc.*
14 (2008) 168 Cal.App.4th 116, 129; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1494, 1801-1802.)
15 The trial court must also scrutinize whether, in resolving the action, a PAGA plaintiff has adequately
16 represented the state’s interest, and hence the public interest. (*Moniz*, 72 Cal.App.5th at 89.)

17 The parties are required to provide sufficient information for the Court to independently determine
18 whether the settlement is fair. Plaintiff must provide a value for its PAGA claims and describe the
19 evidentiary record that supports the valuation provided. At present, Plaintiff has not done so. Instead,
20 Plaintiff provides an estimated Gross Settlement Amount based upon a PAGA settlement from a separate
21 action spanning a different time. (See Glugoski Decl. ¶¶ 15-16, 31; Opening Brief, 6-7, 11.)
22 Accordingly, Plaintiff must both provide a valuation of the PAGA claims and explain why the PAGA
23 settlement should be approved under *Moniz*. In particular, while Plaintiff contends that he “was able to
24 calculate Defendant’s total penalty exposure for the one-year statutory PAGA period” (Glugoski Decl. ¶
25 24), he does not disclose what that exposure was or how it was calculated. Further, while Plaintiff asserts
26 in a footnote that he concluded after extensive investigation that the alleged violations were “not strong
27 claims” and explains that “Defendant had made substantial improvements on its practices and
28 implemented an automatic premium pay for missed and late meal periods” (*id.* ¶ 19 fn. 3), he does not

1 indicate when those improvements were put into place, other than that it occurred some time after the
2 filing of the *Buys* case in January 2018 and during the PAGA period at issue here (May 21, 2019 to
3 March 22, 2022). (*Id.* ¶¶ 16-17; Ex. 2 § I, 2.) Plaintiff must provide more factual context and specificity
4 for his assessment of Defendant's maximum potential exposure and any discount he applied to that
5 exposure in arriving at the \$10,000 Gross Settlement Amount.

6 Additionally, it is unclear from the facts provided why the Gross Settlement Amount is \$10,000
7 while Plaintiff's individual settlement provides for \$50,000 for "any disputed wages" and \$250,000 for
8 "non-wage damages, including, but not limited to, any alleged penalties and emotional distress
9 damages." (Glugoski Decl. Ex. 2, 1; see *id.* ¶¶ 15-16; Opening Brief, 11.) Part of the discrepancy may be
10 due to the fact that Plaintiff's individual claims encompass a broader time period. (See Compl. ¶¶ 17,
11 31.) However, the full basis for the discrepancy remains unclear. Accordingly, Plaintiff must provide a
12 fuller explanation as to how his individual settlement payment was calculated such that the Court may
13 effectively scrutinize whether Plaintiff has adequately represented the interests of the State and public.

14 **II. Notice**

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

18 **III. Distribution of Settlement Proceeds**

19 The settlement agreement states residual funds will be paid to Refugee Net, the proposed cy pres
20 beneficiary. (*Id.* at Ex. 2 § V.B.) Plaintiff's counsel must submit a declaration stating their relationship
21 and their client's relationship with the proposed cy pres beneficiary, if any. Additionally, a representative
22 of the proposed cy pres beneficiary must submit a declaration demonstrating that Refugee Net is an
23 appropriate cy pres beneficiary under Code of Civil Procedure § 384(b).

24 **IV. Settlement Administrator**

25 The Court raises two issues as to the Settlement Administrator. First, the settlement agreement
26 states the settlement administration costs are not to exceed \$4,000. (*Id.* § IV.A.) The bid provided by
27 ILYM Group, Inc. states that settlement administration costs are estimated at \$2,500. (*Id.* at Ex. 4.)
28 Plaintiff must submit a revised bid stating the agreed upon cap of \$4,000 or that settlement administration

1 costs shall not exceed the current estimate of \$2,500. Second, the settlement agreement directs residual
2 funds to Refugee Net as the cy pres beneficiary. (*Id.* at Ex. 2 § V.B). However, the bid is silent as to the
3 disposition of residual funds. Plaintiff is directed to submit a revised bid that includes the transfer of
4 residual funds to the proposed cy pres beneficiary.

5 **V. Attorneys' Fees**

6 Plaintiff's counsel seeks up to \$1,500, or fifteen percent of the Gross Settlement Amount, in
7 attorneys' fees. (See Glugoski Decl. Ex. 2 §§ V.B., VI.B.) However, the settlement agreement provides
8 that the Gross Settlement Amount of \$10,000 is the maximum amount Defendant can be required to pay,
9 and that amount is already fully accounted for in the \$2,500 payment to the Settlement Administrator and
10 the proposed \$7,500 Net Settlement Amount. The moving papers represent that the Net Settlement
11 Amount of \$7,500 will be allocated between the LWDA and the PAGA Settlement Aggrieved
12 Employees, and make no reference to any payment of attorneys' fees. (E.g., Opening Brief, 12, 14;
13 Glugoski Decl. ¶ 26.) The proposed settlement agreement must be amended to correct this discrepancy.
14 If the amended settlement agreement provides for an award of attorneys' fees, the supplemental filing
15 must include a summary of hours worked, counsel's hourly rates, and counsel's lodestar, and must also
16 explain the allocation of attorneys' fees as between the proposed settlement agreement and the separate
17 award of \$70,000 in fees and costs provided for in Plaintiff's individual settlement agreement.

18 **VI. Proposed Order and Judgment**

19 Plaintiff is directed to email a Word-editable version of the proposed order and proposed
20 judgment, as two separate documents, to ComplexLit@sftc.org.

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 5, 2023, I electronically served ORDER CONTINUING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF PAGA SETTLEMENT AND ENTRY OF JUDGMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **OCT 05 2023**

Brandon E. Riley, Court Executive Officer

By: 
Felicia Green, Deputy Clerk

EXHIBIT 2



14149180

MATTHEW RIGHETTI, ESQ. {121012}
 JOHN GLUGOSKI, ESQ. {191551}
 MICHAEL RIGHETTI, ESQ {258541}
 RIGHETTI · GLUGOSKI, P.C.

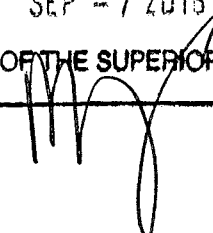
456 Montgomery Street, Suite 1400
 San Francisco, CA 94104
 Telephone: (415) 983-0900
 Facsimile: (415) 397-9005

Attorneys for Plaintiff

FILED
 ALAMEDA COUNTY

SEP - 7 2016

CLERK OF THE SUPERIOR COURT

By  Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CHARLES LINDSEY, an individual, and
 JONATHAN WALTON, an individual, on
 behalf of themselves and all persons
 similarly situated,

Plaintiffs,

vs.

SIZEWISE RENTALS, LLC and DOES 1
 through 100, inclusive,

Defendants.

CASE NO. RG15761762

JUDGMENT

Hon. George C. Hernandez, Jr.

Date: September 7, 2016

Time: 2:30 p.m.

Dept: 17

Reservation #: R1701691

1 On September 7, 2016, the Court gave final approval of this proposed class action
2 settlement and entered its Order Granting Final Approval of Class Action Settlement (the "Final
3 Approval Order").

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

5 1. The Court enters Judgment in the entire action as of the date of the Court's Final
6 Approval Order and pursuant to the terms set forth in the Settlement Agreement filed in the
7 Register of Actions on January 4, 2016. Upon entry of the Final Approval Order and Judgment,
8 Plaintiffs and each and every Settlement Class Member shall be deemed to have conclusively
9 released and forever discharged Sizewise for any and all Released Claims for the duration of the
10 Settlement Class Period as set forth in the Settlement Agreement. Plaintiffs and Settlement
11 Class Members shall neither sue, nor file, initiate, or continue to prosecute any lawsuit, action,
12 charge, complaint, administrative claim, or arbitration, or otherwise make a claim against
13 Sizewise as to the Released Claims.

14 2. Plaintiffs shall take nothing from their Complaint in this action except as set forth in
15 (i) the Settlement Agreement attached hereto as Exhibit and (ii) the Final Approval Order. This
16 Final Judgment is intended to be a final disposition of the Action in its entirety, and is intended
17 to be immediately appealable. Without affecting the finality of this Judgment in any way, the
18 Court hereby retains continuing jurisdiction over the interpretation, implementation, and
19 enforcement of the Settlement and all orders entered in connection therewith pursuant to California
20 Code of Civil Procedure section 664.6 and Rule 3.769(h) of the California Rules of Court to
21 adjudicate any matters related to the terms of the Settlement Agreement, the Final Approval Order
22 and this Judgment.

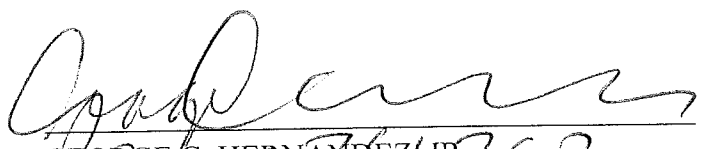
23
24 **IT IS SO ORDERED.**

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Dated:

9/7

,2016



GEORGE C. HERNANDEZ JR.
Judge of the Alameda Superior Court

CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: Lindsey, et al. vs. Sizewise Rentals, LLC
ACTION NO.: RG15761762

I certify that, I am not a party to the within action. I served the foregoing **Judgment** by depositing a true copy thereof in the United States mail in Oakland, California in a sealed envelope with postage fully prepaid thereon addressed to:

Zachary Crosner
Crosner Legal, P.C.
4640 Admiralty Way, Ste. 500
Marina Del Rey, CA. 90292

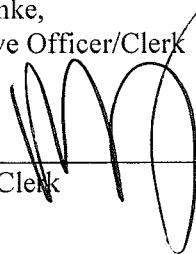
Matthew Righetti
Righetti Glugoski, P.C.
456 Montgomery Street, Ste. 1400
San Francisco, CA. 94104

✓ Kevin D. Reese
Ogletree, Deakins, Nash, Smoak &
Stewart, P.C.
Steuart Tower, Ste. 1300
One Market Plaza
San Francisco. CA. 94105

I declare under penalty of perjury that the following is true and correct

Executed on Sept. 22, 2016 at Oakland, California.

Chad Finke,
Executive Officer/Clerk

by 
Deputy Clerk

1000

ZACHARY CROSNER (SBN#: 272295)

MICHAEL CROSNER (SBN#: 41299)

CROSNER LEGAL, P.C.

4640 Admiralty Way, Ste. 500

Marina Del Rey, CA 90292

Tel: (310) 496-5818

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ENDORSED
FILED
ALAMEDA COUNTY

FEB 10 2015

CLERK OF THE SUPERIOR COURT

By _____ Deputy

S. IYANU

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

**CHARLES LINDSEY, an individual, and
JONATHAN WALTON, an individual, on
behalf of themselves and all persons similarly
situated,**

Plaintiffs,

vs.

**SIZEWISE RENTALS, LLC and DOES 1
through 100, inclusive,**

Defendants.

CLASS ACTION

Case No. **RG 15761762**

COMPLAINT FOR:

1. Failure to provide meal periods
2. Failure to provide rest periods
3. Failure to pay minimum wage;
Failure to pay overtime
4. Inaccurate Wage Statements
5. Waiting time penalties
6. Bus. And Prof. Code 17200
7. PAGA Penalties

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiffs, Charles Lindsey and Jonathan Walton, by and through their attorneys
3 themselves, all other persons similarly situated and the general public and hereby alleges as
4 follows. Plaintiffs are current employees of Defendant, SIZEWISE RENTALS, LLC, a medical
5 equipment company that manufactures, sells and delivers a diversified line of medical equipment
6 within California and other states. Plaintiffs Charles Lindsey ("Plaintiff Lindsey") and Jonathan
7 Walton ("Plaintiff Walton") have worked as non-exempt medical equipment delivery drivers
8 and were paid an hourly wage by Defendant. Plaintiff Jonathan Walton has also worked as an
9 exempt, salaried assistant manager for Defendant wherein his job duties included supervising
10 and disciplining medical equipment delivery drivers and otherwise implementing and enforcing
11 Defendant's policies and procedures pertaining to its medical equipment delivery drivers.
12 Plaintiffs allege, generally, that Defendant failed to provide uninterrupted, off-duty meal periods
13 lasting not less than 30 minutes before the fifth hour of the shift, and Defendant never provided
14 any second meal periods whatsoever during shifts lasting longer than 10 hours. Moreover,
15 despite failing to provide meal periods lasting not less than 30 minutes, Defendant automatically
16 deducted 30 minutes from Plaintiffs' and similarly situated delivery drivers' paychecks despite
17 the fact that they did not clock out during such times. Defendant's auto-deduct of 30 minutes
18 violates California law because Plaintiffs and similarly situated delivery drivers were not actually
19 receiving 30 minute meal periods. As a result, Defendant failed to pay Plaintiffs and other
20 delivery drivers for all hours worked, failed to provide meal periods, failed to maintain accurate
21 pay stubs and failed to pay all wages upon termination. These allegations are brought on behalf
22 of Plaintiffs and on behalf of all similarly situated delivery drivers of Defendant in California
23 within four years preceding the filing of the Complaint to the present.
24

PARTIES, JURISDICTION AND VENUE

25
26 2. This class action is brought pursuant to Section 382 of the California Code of
27 Civil Procedure. The monetary damages and restitution sought by Plaintiff will be established
28 according to proof at trial. There is no federal question at issue, as all the issues related to

1 payment of wages alleged herein are based solely on California law and statutes, including the
2 Labor Code, Civil Code, Code of Civil Procedure, Business and Professions Code.

3 3. Plaintiff Charles Lindsey is a resident of the State of California and currently lives
4 in Alameda County. Plaintiff is an adult who was employed by Defendants in California within
5 one year preceding the filing of this action and/or preceding the initiation of proceedings with the
6 LWDA to exhaust administrative remedies. Plaintiff is currently employed by Defendant as a
7 non-exempt employee delivery driver.

8 4. Plaintiff Jonathan Walton is a resident of the State of California and currently
9 lives in Alameda County. Plaintiff is an adult who was employed by Defendants in California
10 within one year preceding the filing of this action and/or preceding the initiation of proceedings
11 with the LWDA to exhaust administrative remedies. Plaintiff has been employed by Defendant
12 as a non-exempt employee delivery driver during the four years preceding the filing of this
13 complaint. He is currently a supervisor.

14 5. Plaintiffs are informed and believe and on that basis, allege that Defendant is and
15 at all times material herein mentioned was a corporation doing business in the State of California
16 and within the County of Alameda. Defendant operates manufacturing and delivery facilities in
17 Northern California including Alameda and Sacramento County. Accordingly, many of the acts
18 complained herein occurred in Alameda County.

19 6. Defendants include corporations doing business in California and are "persons" as
20 defined by California Labor Code Section 18. Defendants are "employers" as that term is used in
21 the California Labor Code, and the California Industrial Welfare Commission's orders regulating
22 wages, hours and working conditions.

23 7. The names and capacities of Defendants sued herein under California Code of
24 Civil Procedure Section 474 as Does 1 through 100, inclusive, are presently not known to
25 Plaintiffs, who therefore sues these Defendants by such fictitious names. Plaintiffs will seek to
26 amend this Complaint and include these Doe Defendants' names and capacities when they are
27 ascertained. Each of the fictitiously named Defendants is responsible in some manner for the
28 conduct alleged herein and for the injuries suffered by Plaintiffs, the members of the Class and
the general public.

8. At all times herein mentioned each of the Defendants sued as DOE was the agent
and the employee of each of the remaining Defendants and was at all times acting within the
purpose and scope of such agency and employment.

9. At all times mentioned in the causes of action alleged herein, each and every Defendant was an agent and/or employee of each and every other Defendant. In doing the things alleged in the causes of action stated herein, each and every Defendant was acting within the course and scope of this agency or employment and was acting with the consent, permission and authorization of each of the remaining Defendants. All actions of Defendants as alleged in the causes of action stated herein were ratified and approved by every other Defendant or their officers or managing agents.

FACTS APPLICABLE TO ALL CLAIMS

Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

10. Defendant operates six manufacturing and delivery facilities throughout California. Plaintiffs worked at Defendant's facility in Hayward, CA in the County of Alameda. Defendant employs delivery drivers whose job it is/was to delivery medical equipment manufactured by Defendant to various medical facilities. Defendant pays delivery drivers an hourly wage. There are/were approximately 30-50 delivery drivers working at each of Defendant's facility locations. Shift lengths varied, but Plaintiffs and other similarly situated drivers worked shifts from 6:00 am to 2:30 pm on Monday through Friday. On a consistent basis Plaintiffs and similarly situated drivers would work overtime extending their shifts over 10 hours in a work day.

11. Plaintiffs and similarly situated employees were neither instructed to nor provided a means to clock out for meal periods. As a result, there are no accurate records of meal period provided by Defendant and/or received by Plaintiffs and other delivery drivers. During their shift, delivery drivers would receive orders with specific times (deadlines) for medical equipment to be delivered throughout the workday. Deliveries were generally scheduled on the same day as the delivery deadline without advance notice and without any specific allotted time for 30 minute meal breaks. Because drivers were required to deliver Defendant's products prior to the scheduled delivery deadline, Drivers were prevented from taking uninterrupted, off-duty meal periods lasting not less than 30 minutes of time before their fifth hour of work. Further, Defendants did not provide a formal means for drivers to report missed, late or shortened meal periods. In the instances where Drivers were prevented from taking at least a 30 minute, uninterrupted, off-duty meal break before the fifth hour of work (or the tenth hour of work for the second meal period), Defendant did not have any policy or practice whatsoever to

1 compensate Plaintiffs and similarly situated individuals one additional hour of pay as required by
2 California law.

3 12. Plaintiffs are informed and believe that there are no records, official or otherwise,
4 as to when the meal periods started and stopped. Nevertheless, Defendant deducted 30 minutes
5 of pay from Plaintiffs' pay each day based on the assumption that they were receiving 30 minute,
6 off-duty, uninterrupted meal periods. On days when Plaintiffs received much less than the full 30
7 minutes, their paychecks still reflected a 30 minute deduction. Defendant's practice of
8 automatically deducting 30 minutes for meal periods applied to all delivery drivers working for
9 Defendant at its California facilities. Throughout Plaintiff Walton's employment as an assistant
10 manager supervising delivery drivers for the past two and a half years, he has received several
11 complaints from delivery drivers for not being provided proper meal breaks. However, Plaintiff
12 Walton was never instructed by Defendant to provide drivers with 30 minute meal breaks; to
13 monitor drivers meal breaks in order to ensure they were being provided; nor to compensate
14 drivers with an additional one hour of pay when drivers were not provided with a meal break, as
15 required by California law. Plaintiff Walton was also never instructed by Defendant to notate or
16 submit to Defendant any instances where delivery drivers were not provided a meal break in
17 compliance with California law. In light of Defendant's practice of automatically deducting 30
18 minutes from each delivery drivers' daily wages, Plaintiffs and similarly situated delivery drivers
19 were not paid for all hours worked because they were indeed performing work during the time
20 that Defendant deducted from their wages.

21 13. Defendant did not have a policy providing a second meal period for shifts lasting
22 more than 10 hours. Plaintiffs and similarly situated delivery drivers were never provided second
23 meal periods during shifts lasting more than 10 hours. Plaintiffs and other delivery drivers
24 consistently worked overtime shifts lasting more than 10 hours, but were never provided second
25 meal periods.

26 14. As a result of Defendant's "auto-deduct" program and failure to provide second
27 meal periods, Plaintiffs and similarly situated drivers seek relief for un-remedied violations of
28 California law, including, *inter alia*; damages, and/or restitution, as appropriate, to members of
the Class, and to victims of the practices at issue, who have not received required compensation
for all hours worked, including overtime hours, and who have not received the mandatory one
hour premium in those instances when Plaintiff and similarly situated drivers worked without
meal periods and/or second meal periods.

15. Plaintiffs and similarly situated employees were neither instructed to take nor provided with rest breaks for every four hours worked or major fraction thereof. Moreover, Plaintiffs and similarly situated delivery drivers were unable to take proper rest periods due to the demanding delivery deadlines imposed. Defendant did not maintain a rest period policy for its delivery drivers that was compliant with California law. Throughout Plaintiff Walton's employment as an assistant manager, he was never instructed by Defendant to provide drivers with 10 minute rest periods; to monitor drivers rest periods to ensure they were being provided; nor to compensate drivers with an additional one hour of pay when drivers were not provided with a rest break, as required by California law. Plaintiff Walton was also never instructed by Defendant to notate or submit to Defendant instances where delivery drivers were not provided a rest period in compliance with California law.

16. Plaintiffs are both adequate and proper class representatives. Plaintiffs bring this action in their individual capacity, on behalf of all others similarly situated, and pursuant to California Business and Professions Code Section 17204, and on behalf of the general public. Plaintiffs were employed by Defendant within four years from the filing of the complaint.

17. Defendants are, and at all relevant times were, employers under applicable California Industrial Welfare Commission Orders.

CLASS ACTION ALLEGATIONS

18. Plaintiffs brings this case as a class action pursuant to California Code of Civil Procedure Section 382. This action seeks relief on behalf of a class of persons in the employ of Defendant in California between four years preceding the filing of the complaint and the present defined as follows:

All current and former non-exempt delivery drivers employed by Defendant in the State of California within four (4) years of the filing of this complaint to the present ("the Class").

19. The Class is sufficiently numerous, since it is estimated that 30-50 delivery drivers worked with Plaintiffs at their facility and the same amount are estimated to be employed at each of Defendant's six additional California facility locations, the joinder of whom in one action is impracticable, and the disposition of whose claims in a class action will provide substantial benefits to both the parties and the Court.

1 20. There is a well-defined community of interest in the questions of law and fact
2 involved affecting the parties to be represented. The questions of law and fact common to the
3 Class predominate over questions that may affect individual class members, including but not
4 limited to the following:

- 5 a. Whether Defendant implemented and engaged in a systematic practice whereby it
6 unlawfully deducted 30 minutes-worth of wages without providing 30 minute
7 meal periods as required by law;
- 8 b. Whether Defendant failed to maintain accurate records of the start and stop time
9 of meal periods;
- 10 c. Whether Defendant's auto-deduct practice resulted in the nonpayment of wages
11 for hours worked;
- 12 d. Whether Defendant implemented and engaged in a systematic practice whereby it
13 failed to provide uninterrupted, off-duty meal periods lasting not less than 30
14 minutes;
- 15 e. Whether Defendant failed to provide second meal periods during shifts lasting
16 more than 10 hours;
- 17 f. Whether Defendant failed to provide rest periods every four hours or major
18 fraction thereof;
- 19 g. Whether Defendant failed to maintain accurate wage statements;
- 20 h. Whether Defendant failed to pay all wages owed at termination based on the
21 alleged practices described above;
- 22 i. Whether systematic acts and practices of Defendant as alleged herein violated,
23 *inter alia*, applicable provisions of the California Labor Code, including but not
24 limited to, Sections 203, 226, 226.7, 512, 1194, 1194.2, 1197, and applicable
25 Industrial Welfare Commission Orders, and California Business and Professions
26 Code Section 17200, et seq.

27 21. Because Plaintiffs worked on a daily and weekly basis and were routinely
28 required to work without 30 minute meal periods and with no second meal periods, and because
Plaintiffs' pay was automatically deducted 30 minutes every shift they worked, and because
Plaintiffs were not provided with timely and accurate wage statements, Plaintiffs are asserting
claims that are typical of the claims of the Class.

 22. Plaintiffs will fairly and adequately represent and protect the interests of the Class
in that they have no disabling conflict of interest that would be antagonistic to those of the other

1 members of the Class. Plaintiffs have retained counsel, who is competent and experienced in the
2 prosecution of class action wage and hour violations.

3 23. Because Plaintiffs and the members of the Class have all similarly suffered
4 irreparable harm and damages as a result of Defendant's unlawful and continuously wrongful
5 conduct, class treatment is especially appropriate. Because the hours worked and employment
6 circumstances by the class members follow common patterns, all of which are reflected in the
7 records possessed by Defendant, this action will provide substantial benefits. Absent this action,
8 Defendant's unlawful conduct will continue un-remedied and uncorrected.

9 24. Class action treatment is superior to any other available alternatives to ensure that
10 fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a
11 larger number of similarly situated persons to prosecute their common claims in a single forum
12 simultaneously, efficiently and without the duplication of efforts and expense that numerous
13 individuals would entail. No difficulties are likely to be encountered in the management of this
14 class action that would preclude its maintenance as a class action, and no superior alternative
15 exists for the fair and efficient adjudication of this controversy. The Class members are readily
16 identifiable from Defendant's records.

17 25. Defendant's wrongful and unlawful conduct has been widespread, recurring and
18 uniform at their California facilities. Defendant knew or should have known that its delivery
19 drivers, including Plaintiffs and the members of the Class, were not being provided with their
20 earned meal breaks as required by law, were having wages illegally deducted, and were not paid
21 all wages owed at termination. Absent a class action, Defendants will likely continue their
22 wrongdoing resulting in further damage to Plaintiffs and members of the Class.

23 **FIRST CAUSE OF ACTION**

24 **(Failure To Provide Meal Periods, Cal. Lab. Code Sections 226.7, 512)**

25 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
26 preceding paragraphs.

27 26. Labor Code Section 226.7(a) provides, "No employer shall require any employee
28 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
Commission."

1 27. Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant
2 part, "Unless the employees is relieved of all duty during a 30 minute meal period, the meal
3 period shall be considered an 'on duty' meal period and counted as time worked."

4 28. Labor Code Section 512, which provides in relevant part:

5 Meal periods

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

18 29. During all relevant periods, Defendant illegally and unlawfully required Plaintiffs
19 and members of the Class to work through meal periods and were prevented from taking
20 uninterrupted 30 minute meal breaks due to Defendant's scheduled delivery deadlines.
21 Defendant did not maintain a meal period policy for second meal periods on shifts lasting more
22 than 10 hours. Defendant did not record or otherwise keep records of meal periods taken by
23 Plaintiffs and members of the Class. Despite having no records of meal periods taken by the
24 Class and despite having no meal period policy for shifts lasting longer than 10 hours, Defendant
25 never paid Plaintiffs and the Class the one hour premium required for failure to provide a meal
26 period.

27 30. During all relevant periods, both the California Labor Code and the pertinent
28 wage orders required that Plaintiffs and Class members be compensated for the meal periods for
29 which Defendant failed to provide. Defendant failed to compensate Plaintiffs and Class members
30 for meal periods worked as required by law. Plaintiffs and Class members are entitled to recover
31 their unpaid compensation arising therefrom.

32 31. By unlawfully requiring Plaintiffs and Class members to work without meal
33 breaks and in failing to properly compensate Plaintiffs and Class members for the meal periods
34 they worked as alleged herein, Defendant acted in willful, oppressive and conscious disregard of
35 Plaintiffs and Class members' statutory and regulatory right to meal periods and compensation.

32. Plaintiffs and the other members of the Class are therefore entitled to the relief requested below.

33. As a result of the unlawful acts of Defendants, Plaintiffs and the Class members have been deprived of meal periods, and are entitled to recovery under Labor Code Section 226.7(b) in the amount of one addition hour of pay at the employee's regular rate of compensation for each work day that a meal period was not provided.

SECOND CAUSE OF ACTION

(Failure to Provide Rest Periods, Cal. Lab. Code Sections 226.7, 512)

Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

34. Labor Code Section 226.7(a) provides, "No employer shall require any employee to work during any rest period mandated by an applicable order of the California IWC.

35. Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant part that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

36. During the relevant time period, Defendant required Plaintiffs and class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

37. During the relevant time period, Defendants failed to pay Plaintiffs and class members the full rest period premium due pursuant to California Labor Code section 226.7.

38. Defendant's conduct violates applicable IWC Wage Orders and California Labor Code section 226.7

39. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiffs and class members are entitled to recover from Defendant one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

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THIRD CAUSE OF ACTION

**(Failure to Pay Minimum Wage and Overtime,
Cal. Lab. Code Sections 1194, 1194.2, 1197)**

Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

40. Labor Code Section 1197 provides, "the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

41. Labor Code Section 1194 provides in relevant part that any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

42. Labor Code Section 1194.2 provides in relevant part that: "In any action under ... Section 1194 to recover wages because of a payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

43. As alleged herein, Defendant automatically deducted 30 minutes of wages from each shift worked by Plaintiffs and the Class members based on the assumption that Plaintiffs and class members were provided 30 minute meal periods. Thus, during those shifts where Plaintiffs and similarly situated delivery drivers were required to perform work during the 30 minutes that were automatically deducted from their wages, Defendant failed to pay for all hours worked and thus violated the Cal. Labor Code.

44. As a result of the unlawful acts of Defendants, Plaintiffs and the Class members have been deprived of minimum wages and/or overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, including liquidated damages, interest thereon, attorneys' fees, costs, and any other damages as set forth under California Law.

FOURTH CAUSE OF ACTION

**(Failure to Make Payment Within the Required Time:
California Labor Code Sections 201, 202, 226)**

1 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
2 preceding paragraphs.

3 45. California Labor Code Section 201 provides in relevant part, "[i]f an employer
4 discharges an employee, the wages earned and unpaid at the time of discharge are due and
5 payable immediately."

6 46. California Labor Code Section 202 provides in relevant part, "[i]f an employee
7 not having a written contract for a definite period quits his or her employment, his or her wages
8 shall become due and payable not later than 72 hours thereafter, unless the employee has given
9 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to
10 his or her wages at the time of quitting."

11 47. As alleged herein, Defendant willfully failed to pay earned wages to Plaintiffs and
12 the Class who are former employees of Defendant at the time they became due and payable.
13 Thus, Defendants violated Cal. Labor Code Sections 201 and 202.

14 **FIFTH CAUSE OF ACTION**

15 **(Inaccurate Wage Statements: Cal. Lab. Code Sections 226, *et seq.*)**

16 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
17 preceding paragraphs.

18 48. Labor Code Section 226 requires that "every employer shall, semimonthly or at
19 the time of each payment of wages, furnish each of his or her employees, either as a detachable
20 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
21 paid by personal check or cash, an accurate itemized statement in writing showing:

22 (1) gross wages earned,

23 (2) total hours worked by the employee, except for any employee whose
24 compensation is solely based on a salary and who is exempt from payment of
25 overtime under subdivision (a) of Section 515 or any applicable order of the
26 Industrial Welfare Commission,

27 (3) the number of piece-rate units earned and any applicable piece rate if the
28 employee is paid on a piece-rate basis,

(4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,

- 1 (5) net wages earned,
2 (6) the inclusive dates of the period for which the employee is paid,
3 (7) the name of the employee (and the last four digits of his or her social security
4 number or an employee identification number other than a social security number
5 *may* be shown on the itemized statement),
6 (8) the name and address of the legal entity that is the employer, and
7 (9) all applicable hourly rates in effect during the pay period and the
8 Corresponding number of hours worked at each hourly rate by the employee.”

9 49. Defendant fails to provide accurate and complete information, as specified in
10 items 1 through 9 of section 226(a), and the employee cannot "promptly and easily determine"

- 11 • gross hours worked;
12 • amount of gross or net wages paid to the employee during the pay period or other
13 specified information;
14 • deductions the employer made from the gross wages to determine the net wages paid
15 to the employee during the pay period; and
16 • name and address of the employer, or the legal entity which secured the services of
17 the employer; and
18 • total hours worked.

19 As a result of Defendant's failures to provide accurate wage statements, Plaintiffs and Class
20 members have suffered actual injury and are entitled to damages therefrom as set forth in Lab.
21 Code 226(e)(1).

22 **SIXTH CAUSE OF ACTION**

23 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant To Business And 24 Professions Code Section 17200, *et seq.*)**

25 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
26 preceding paragraphs.

27 50. Business and Professions Code Section 17200, et seq. prohibits acts of unfair
28 competition, which shall mean and include any "unlawful business act or practice."

51. Labor Code Section 90.5(a) states it is the public policy of California to enforce
vigorously minimum standards in order to ensure employees are not required to work under
substandard and unlawful conditions, and to protect employers who comply with the law from

1 those who attempt to gain competitive advantage at the expense of their workers by failing to
2 comply with minimum labor standards.

3 52. The policies, acts and practices heretofore described were and are an unlawful
4 business acts or practices because Defendant's failure to provide meal period breaks, failure to
5 pay compensation for all work based on auto-deduct policy, and failure to provide accurate and
6 timely wage statements violates applicable Labor Code sections, including but not limited to
7 Labor Code Sections 226, 226.7, 512, 1194, 1194.2, 1197, 1198, 2802, applicable Industrial
8 Welfare Commission Wage Orders, and other provisions of California common and/or statutory
9 law. Plaintiffs reserve the right to allege additional statutory and common law violations by
10 Defendants. Such conduct is ongoing to this date.

11 53. Defendants engaged in unfair competition in violation of Business and
12 Professions Code Section 17200, *et seq.*, by violating, *inter alia*, each of the following:

- 13 a. Causes of Action One through Six stated above;
- 14 b. Cal. Labor Code Sections 201, 202, 203;
- 15 c. Cal. Labor Code Sections 226, 226.7;
- 16 d. Cal. Labor Code Section 512;
- 17 e. Cal. Labor Code Section 1194 *et seq.*;
- 18 a. Cal. Labor Code Sections 1197, 1998,
- 19 h. California IWC Orders.

20 54. Defendants' course of conduct, act and practice in violation of the California laws
21 mentioned in each paragraph above constitute separate and independent violations of Section
22 17200 *et seq.* of the California Business and Professions Code.

23 55. The policies, acts or practices described herein were and are an unfair business act
24 or practice because any justifications for Defendant's illegal and wrongful conduct were and are
25 vastly outweighed by the harm such conduct caused Plaintiffs, the class members, and the
26 members of the general public. Such conduct is ongoing to this date.

27 56. The harm to Plaintiffs and the Class in being wrongfully denied earned wages and
28 meal and rest breaks outweighs the utility if any, of Defendant's policies/practices, and therefore,
Defendant's actions described herein constitute an unfair business practice or act within the
meaning of Business and Professions Code Section 17200.

57. Plaintiffs and the other members of the Class are therefore entitled to the relief
requested below.

1 **SEVENTH CAUSE OF ACTION**

2 **For PAGA Penalties**
3 **(Cal. Labor Code Sections 2698)**

4 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
5 preceding paragraphs.

6 58. As a direct proximate result of the labor code violations alleged herein, Plaintiffs
7 are entitled to recover penalties pursuant to California Labor Code Sections 2698-99 (Private
8 Attorney General's Act aka PAGA). Plaintiffs seek statutory penalties for violations of Cal.
9 Labor Code Sections 200-204, 210, 226, 226.3, 500-508, 510, 515, 1174, 1194, 1197 and 1198.

10 59. Plaintiffs have taken all the steps necessary to exhaust administrative remedies
11 and Plaintiffs have exhausted his administrative remedies.

12 60. Plaintiffs gave written notice of his claims under Cal. Lab. Code section 2699 et
13 seq. to the California Labor and Workforce Development Agency and the California Labor and
14 Workforce Development Agency did not respond within the time frame established under Cal.
15 Lab. Code section 2699 as to whether it intended to investigate Plaintiffs' claims. As such,
16 Plaintiffs are entitled to recover certain civil penalties for himself and other current or former
17 aggrieved employees through a civil action filed on their behalf. These penalties are in addition
18 to all other remedies permitted by law.

19 61. In addition to penalties, Plaintiffs and other similarly situated current and former
20 individuals are also entitled to recover interest thereon, attorney's fees and costs.

21 62. Based on Defendants' conduct as alleged herein, Defendants are liable to
22 Plaintiffs and similarly situated current and former individuals for civil penalties, injunctive
23 relief, plus interest, attorneys' fees, expenses and costs of suit.

24 **PRAYER FOR RELIEF**

25 WHEREFORE Plaintiffs and the Class pray for judgment and relief as follows:

- 26 1. An order the this action may proceed and be maintained as a class action;
27 2. On the First Cause of Action:
28 a. A declaratory judgment that Defendants have violated Labor
Code Sections 226.7, 512, and the applicable IWC Wage
Order;

- b. Pursuant to Labor Code Section 226.7, an award to Plaintiffs and the Class of an additional hour of pay at the rate of the employee's regular rate of compensate for each work day that a meal break was not provided;
- c. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the date that the wages were due and payable at the interest rate specified in subdivision (b) or Section 3289 of the Civil Code;
- d. An award to Plaintiffs and the Class members of reasonable attorneys' fees and costs pursuant to Labor Code Section 218.5;

3. For the Second Cause of Action:

- a. A declaratory judgment that Defendants have violated Labor Code Sections 226.7, 512, and the applicable IWC Wage Order;
- b. Pursuant to Labor Code Section 226.7, an award to Plaintiffs and the Class of an additional hour of pay at the rate of the employee's regular rate of compensation for each work day that a meal break was not provided;
- c. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the date that the wages were due and payable at the interest rate specified in subdivision (b) or Section 3289 of the Civil Code;
- d. An award to Plaintiffs and the Class members of reasonable attorneys' fees and costs pursuant to Labor Code Section 218.5;

4. For the Third Cause of Action:

- a. A declaratory judgment that Defendants have violated Labor Code Sections 1194, 1194.2 and 1197;
- b. An award to Plaintiffs and the Class of damages for the balance of unpaid compensation, liquidated damages, including interest thereon, and penalties subject to proof;
- c. An award to Plaintiffs and the Class of reasonable attorneys' fees and costs pursuant to Labor Code Section 1194; and

1 d. Pursuant to Labor Code Section 218.6, an award of all accrued
2 interest from the date that the wages were due and payable at
3 the interest rate specified in subdivision (b) or Section 3289 of
4 the Civil Code.

5 5. For the Fourth Cause of Action:

- 6 a. A declaratory judgment that Defendants have violated Labor
7 Code Sections 201, 202 and 203;
8 b. An award to Plaintiffs and the Class who are former hourly-
9 paid employees of continuing wages as a penalty from the due
10 date thereof at the same rate until paid or until this action was
11 commenced; but for no more than 30 days; and

12 5. For the Fifth Cause of Action:

- 13 a. A declaratory judgment that Defendants have violated Labor
14 Code 226;
15 b. An award to Plaintiffs and the Class of damages as set forth in
16 Lab. Code Section 226(e)(1); and
17 c. An award to Plaintiffs and the Class of actual damages as well
18 as an award of costs and reasonable attorneys' fees.

19 6. For the Sixth Cause of Action:

- 20 a. Ordering Defendants, their agents, servants and employees, and
21 all persons acting, directly or indirectly, in concert with them,
22 to restore and disgorge all funds to each member of the Class
23 acquired by means of any act or practice declared by this Court
24 to be unlawful, unfair or fraudulent and therefore constitute
25 unfair competition under Section 17200 *et. seq.* of the Business
26 and Professions Code;
27 b. For injunctive relief pursuant to Business and Professions Code
28 Section 17203, consisting of *inter alia*: (1) a declaration that
Defendants have engaged in unlawful and unfair and fraudulent
business acts and practices in violation of California Business
and Professions Code Section 17200 *et. seq.*; (2) a preliminary
and/or permanent injunction enjoining Defendants and their
respective successors, agents, servants, officers, directors,

SW-JB 000637

1 employees and all persons acting in concert with them from
2 pursuing the policies, acts and practices complained of herein
3 and prohibiting Defendants from continuing such acts of unfair
4 and illegal business acts and practices; and

5 c. Restitution, including, but not limited to, the relief permitted by
6 the California IWC Order Nos. 7-1997 through 7-2001 *et. seq.*

7 6. For the Seventh Cause of Action:

8 a. An award for the maximum statutory civil penalties allowed
9 for each Labor Code violation as set forth and allowed in the
10 California Labor Code Private Attorney's General Act, or such
11 other amount set by the Court pursuant to Labor Code Section
12 2699€(2), plus reasonable attorney fees and costs of suit
13 pursuant to Labor Code Section 2699(g)(1).

14 7. For an award of attorneys' fees and costs;

15 8. Pre- and post-judgment interest; and

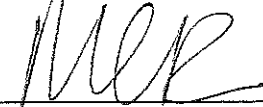
16 9. Such other and further relief as the Court deems just and proper.

17 **JURY DEMAND**

18 Plaintiffs hereby demand a trial by jury.

19 DATED: March 9, 2015

20 RIGHETTI GLUGOSKI, P.C.

21 

22 MICHAEL RIGHETTI
23 Attorneys for Plaintiffs

EXHIBIT 3

FILED
ENDORSED

2020 SEP 30 AM 7:01

SACRAMENTO COURTS
DEPT. #54

David Mara, Esq. (230498)
Jamie Serb, Esq. (289601)
MARA LAW FIRM, PC
2650 Camino Del Rio, Suite 205
San Diego, CA 92105
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for Plaintiff JACOB BUYS, on behalf
of himself, all others similarly situated, and on behalf
of the general public.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

JACOB BUYS, on behalf of himself, all
others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

SIZEWISE RENTALS, INC.;
SIZEWISE RENTALS, L.L.C. and
DOES 1-100,

Defendants.

Case No. 34-2018-00225848-CU-OE-GDS
CEK

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
GENERAL RELEASE PAYMENT, AND
ENTERING OF FINAL JUDGMENT**

UNOPPOSED

CLASS ACTION

BY FAX

Date: August 18, 2020
Time: 9:00 a.m.
Dept: 54

Action Filed: January 23, 2018
Trial Date: None Set



1 **ORDER**

2 This matter came on for hearing on August 18, 2020, at 9:00 a.m., in Department 54 of the
3 above-captioned Court on Plaintiff's Unopposed Motion for Final Approval of Class Action
4 Settlement, Attorneys' Fees, Costs, Class Representative General Release Payment, and Entering
5 of Judgment pursuant to: (1) California Rule of Court 3.769(g); (2) the Order Granting Plaintiff's
6 Motion for Preliminary Approval of Class Action Settlement, Conditional Certification, Approval
7 of Class Notice, Setting of Final Approval Hearing Date (hereinafter referred to as the "Preliminary
8 Approval Order"); and (3) Joint Stipulation and Settlement Agreement (hereinafter referred to as
9 the "Settlement Agreement").

10 Having received and considered the Settlement Agreement, the supporting papers filed by
11 the Parties, and the evidence and argument received by the Court in conjunction with Plaintiff's
12 Motion for Preliminary Approval of Class Action Settlement; and Plaintiff's Motion for Final
13 Approval, Attorneys' Fees, Costs, Class Representative General Release Payment, and Entering
14 of Judgment, the Court grants final approval of the Settlement and **HEREBY ORDERS AND**
15 **MAKES THE FOLLOWING DETERMINATIONS:**

16 1. Pursuant to the Preliminary Approval Order, the Notice of Class Action Settlement
17 (hereinafter referred to as the "Notice") was mailed to all members of the Class by first-class U.S.
18 mail. The Notice informed the Class of the terms of the Settlement, of their right to receive their
19 proportional Settlement Payment, of their right to request exclusion from the Class and the
20 Settlement, of their right to comment upon or object to the Settlement and to appear in person or
21 by counsel at the final approval hearing and of the date set for the Final Approval hearing.
22 Adequate periods of time were provided by each of these procedures.

23 2. In response to the Notice, no members of the Class filed a written objection to the
24 Settlement and no class members stated an intention to appear at the final approval hearing. One
25 Class Member, Tyler Nunaley, submitted a request to be excluded from the Settlement. Mr.
26 Nunaley made his request for exclusion after the deadline set forth in the order granting
27 preliminary approval. However, Mr. Nunaley has provided evidence that his ability to timely
28 request exclusion was prejudiced because he did not obtain notice of the proposed settlement with

1 sufficient time to request exclusion. Defendants disputed Mr. Nunaley's proffered evidence and
2 characterization of the record, but agreed to not oppose Mr. Nunaley's request to be excluded from
3 this action after meeting and conferring with his counsel. Thus, Mr. Nunaley's request for
4 exclusion from the settlement is granted. Therefore, there is a total of one request for exclusion
5 from the Settlement.

6 3. The Court finds and determines that this notice procedure afforded adequate
7 protections to Class Members and provides the basis for the Court to make an informed decision
8 regarding approval of the Settlement based on the Class Members' response. The Court finds and
9 determines that the Notice provided in conjunction with preliminary approval was the best notice
10 practicable, which satisfied the requirements of law and due process.

11 4. The Court further finds and determines that the terms of the Settlement Agreement
12 are fair, reasonable and adequate to the Class and to each Class Member and that the settlement is
13 ordered finally approved, and that all terms and provisions of the Settlement Agreement should be
14 and hereby are ordered to be consummated.

15 5. The Court has certified a Class, as that term is defined in and by the terms of the
16 Settlement Agreement, and the Court deems this definition sufficient for purposes of California
17 Rule of Court 3.765(a).

18 6. The Court hereby approves the terms set forth in the Settlement Agreement and
19 finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties
20 to effectuate the settlement according to its terms. The Court finds that the settlement was reached
21 as a result of informed and non-collusive arm's-length negotiations facilitated by a neutral
22 mediator. The Court further finds that the Parties conducted extensive investigation, research, and
23 discovery and that their attorneys were able to reasonably evaluate their respective positions. The
24 Court also finds that settlement will enable the Parties to avoid additional and potentially
25 substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the
26 case. The Court has reviewed the monetary recovery provided as part of the settlement and
27 recognizes the significant value accorded to the Class.

1 7. The Court hereby confirms David Mara, Jamie Serb, and Tony Roberts of Mara
2 Law Firm, PC as Class Counsel in this action.

3 8. The Court hereby confirms Plaintiff Jacob Buys as the Class Representative in this
4 action.

5 9. The Court finds and determines that the individual Settlement Payments provided
6 for by the terms of the Settlement Agreement to be paid to Participating Class Members are fair
7 and reasonable. The Court hereby gives final approval to and orders the payment of those amounts
8 be made to the Participating Class Members in accordance with the terms of the Settlement.

9 10. The Court finds and determines that payment to the California Labor and
10 Workforce Development Agency of \$11,250 as its share of the settlement of civil penalties in this
11 case is fair, reasonable, and appropriate. The Court hereby gives final approval to and orders that
12 the payment of that amount be paid in accordance with the Settlement.

13 11. The Court finds and determines the enhancement award in the sum of \$10,000 to
14 Plaintiff Jacob Buys is fair and reasonable. The Court hereby orders the Administrator to make
15 this payment to the Plaintiff/Class Representative in accordance with the terms of the Settlement
16 Agreement.

17 12. The Court finds and determines that the payment to be paid to the Settlement
18 Administrator, ILYM Group Inc., in the sum of \$7,478.12 for its fee and expenses incurred is fair
19 and reasonable. The Court hereby orders the Administrator to make this payment to itself in
20 accordance with the terms of the Settlement Agreement.

21 13. Pursuant to the terms of the Settlement, and the authorities, evidence and argument
22 submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in the sum of
23 \$99,990.00 and litigation costs of \$17,355.90. The Court finds such amounts to be fair and
24 reasonable. The Court hereby orders the Settlement Administrator to make these payments in
25 accordance with the terms of the Settlement Agreement.

26 14. Neither Defendants nor any related persons or entities shall have any further
27 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability,
28 except as provided for by the Settlement Agreement.

1 15. Nothing in this Order shall preclude any action to enforce the Parties' obligations
2 pursuant to the Settlement Agreement or pursuant to this Order, including the requirement that
3 Defendants make payments to Participating Class Members in accordance with the Settlement
4 Agreement.

5 16. The Court hereby enters final judgment in this case in accordance with the terms of
6 the Settlement Agreement, Preliminary Approval Order and this Order.

7 17. The Parties shall bear their own costs and attorneys' fees except as otherwise
8 provided for by the Settlement Agreement and this Court's Order Granting Final Approval.

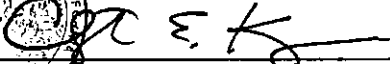
9 18. Without affecting the finality of this Order in any way, the Court retains jurisdiction
10 of all matters relating to the interpretation, administration, implementation, effectuation and
11 enforcement of this order and the Settlement.

12 **JUDGMENT**

13 19. This document shall constitute a judgment for purposes of California Rules of
14 Court, Rule 3.769(h). In accordance with, and for the reasons stated in this Order, judgment shall
15 be entered within the meaning and for purposes of Code of Civil Procedure sections 577, 904.1(a),
16 and Rules 3.769, and 8.104 of the California Rules of Court whereby named Plaintiff/Class
17 Representative and all Class Members shall take nothing from Defendants except as expressly set
18 forth in the Settlement Agreement filed on January 22, 2020, in conjunction with Plaintiff's Motion
19 for Preliminary Approval of the Class Action Settlement. The Court pursuant to California Rule
20 of Court 3.769(h) shall retain jurisdiction over the parties to enforce the terms of the judgment.

21
22 Dated: 9-30-2020



23 
24 BY ORDER OF THE COURT
25 HONORABLE JUDGE OF THE
26 SUPERIOR COURT OF CALIFORNIA
27 CHRISTOPHER E. KRUEGER
28

1 Case Name: Jacob Buys v. Sizewise Rentals, Inc.
2 Court: Sacramento Superior Court
3 Case Number: 34-2018-00225848
4 LWDA Number: LWDA-CM-365720-17

5 **PROOF OF SERVICE**

6 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

7 I am employed in the County of: San Diego, State of California.

8 I am over the age of 18 and not a party to the within action; my business address is:
9 2650 Camino Del Rio N., Suite 205, San Diego 92108

10 On September 22, 2020, I served the foregoing document(s) described as:

11 [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF
12 CLASS ACTION SETTLEMENT, ATTORNEYS' FEES, COSTS, CLASS
13 REPRESENTATIVE GENERAL RELEASE PAYMENT, AND ENTERING OF FINAL
14 JUDGMENT

15 On interested parties in this action by placing a true copy thereof enclosed in a sealed envelope
16 addressed as follows:

17 **Ogletree, Deakins, Nash, Smoak &
18 Stewart P.C.**

19 Kevin D. Reese, Esq.

20 Michael D. Thomas, Esq.

21 Jared L. Palmer, Esq.

22 One Market Street, Suite 1300

23 San Francisco, CA 94105

24 charles.thompson@ogletree.com

25 jared.palmer@ogletree.com

RIGHETTI GLUGOSKI, P.C.

John Glugoski, Esq.

37 Graham Street, Suite 130

San Francisco, CA 94129

jglugoski@righettilaw.com

26 [XX] (BY E-MAIL) On September 22, 2020 I caused the documents to be sent to the persons at
27 the electronic notification addresses of the parties named above. I did not receive, within
28 a reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

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

Dated: September 22, 2020


Mathew Adame

EXHIBIT 4

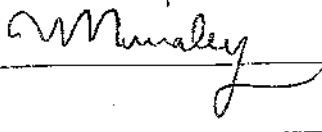
Meal Break Waiver Form

I understand that I am entitled to a duty-free, uninterrupted and unpaid meal break of no less than 30 minutes on any day that I work more than 5 hours. I also understand that if I work no more than six hours in a day, that I may voluntarily waive my meal break. I voluntarily prefer to skip my meal break on any day that I work more than 5 hours, but no more than 6 hours. I hereby voluntarily waive my right to a meal break on such days.

I also understand that I may revoke this meal break waiver in writing at any time, and that my employer will not retaliate against me for exercising my right to a meal break.

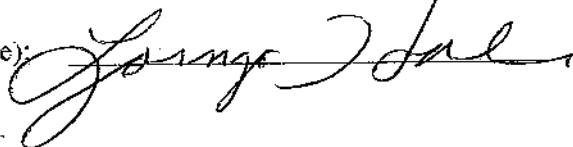
I have read, understood, and voluntarily agree to this waiver.

Employee Name: TYLER NUNALEY

Employee Signature: 

Date: 1-14-19

Authorized Company Representative (Name / Title): LORENZO HALL MGR.

Authorized Company Representative (Signature): 

Date: 1-14-19

Meal Break Waiver Form

I understand that on a day when I work for more than 10 hours, I am entitled to a second 30-minute, duty-free, uninterrupted and unpaid meal break. I also understand that if I work no more than twelve hours in a day and I took my first 30-minute meal break, that I may voluntarily waive my second 30-minute duty-free unpaid meal break. I voluntarily prefer to skip this second meal break on such days. Thus, I hereby voluntarily waive my right to a second meal break on days in which I worked more than 10 hours but no more than 12 hours, and took my first 30-minute meal break.

I also understand that I may revoke this meal break waiver in writing at any time, and that my employer will not retaliate against me for exercising my right to a meal break.

I have read, understood, and voluntarily agree to this waiver.

Employee Name: TYLER NUNALEY

Employee Signature: *T. Nunaley*

Date: 1-14-19

Authorized Company Representative (Name / Title): LORENZO HALL MANAGER

Authorized Company Representative (Signature): *Lorenzo Hall*

Date: 1-14-19

EXHIBIT 5

Tyler Nunaley v. Sizewise Rentals, LLC

No. CGC-20-587743

Meal Period Analysis Results

Meal Period Analysis

Time Period: 05/21/2019 - 03/22/2022

Shift Type	Column	MP Description	# MP	% of Shift Type	% of All Shifts
All Shifts	1.	All Shifts	42,153	100.00%	100.00%
Less Than/Equal to 5.00 Hours	2.	No MP Required	1,381	100.00%	3.28%
All Relevant Shifts	3.	Shifts Eligible for MP	40,772	100.00%	96.72%
Between 5.01 Hours and 6.00 Hours	4.	Total Observations	591	100.00%	1.45%
	5.	First MP - Compliant Based on Time Records	343	58.04%	0.84%
	6.	First MP - Short Based on Time Records	12	2.03%	0.03%
	7.	First MP - Late Based on Time Records	9	1.52%	0.02%
	8.	First MP - Short/Late Based on Time Records	1	0.17%	0.00%
	9.	First MP - Missing Based on Time Records	226	38.24%	0.55%
Between 6.01 Hours and 10.00 Hours	10.	Total Observations	35,294	100.00%	86.56%
	11.	First MP - Compliant Based on Time Records	32,340	91.63%	79.32%
	12.	First MP - Short Based on Time Records	276	0.78%	0.68%
	13.	First MP - Late Based on Time Records	768	2.18%	1.88%
	14.	First MP - Short/Late Based on Time Records	29	0.08%	0.07%
Between 10.01 Hours and 12.00 Hours	15.	First MP - Missing Based on Time Records	1,881	5.33%	4.61%
	16.	Total Observations	3,984	100.00%	9.77%
	17.	First MP and Second MP - Compliant Based on Time Records	165	4.14%	0.40%
	18.	First MP - Short Based on Time Records	33	0.83%	0.08%
	19.	First MP - Late Based on Time Records	258	6.48%	0.63%
	20.	First MP - Short/Late Based on Time Records	4	0.10%	0.01%
	21.	First MP - Missing Based on Time Records	133	3.34%	0.33%
	22.	First MP Compliant Based on Time Records; Second MP - Short Based on Time Records	4	0.10%	0.01%
	23.	First MP Compliant Based on Time Records; Second MP - Late Based on Time Records	40	1.00%	0.10%
	24.	First MP Compliant Based on Time Records; Second MP - Short/Late Based on Time Records	5	0.13%	0.01%
	25.	First MP Compliant Based on Time Records; Second MP - Missing Based on Time Records	3,342	83.89%	8.20%
Equal to or Greater Than 12.01 Hours	26.	Total Observations	903	100.00%	2.21%
	27.	First MP and Second MP Compliant Based on Time Records	173	19.16%	0.42%
	28.	First MP - Short Based on Time Records	11	1.22%	0.03%
	29.	First MP - Late Based on Time Records	127	14.06%	0.31%
	30.	First MP - Short/Late Based on Time Records	1	0.11%	0.00%
	31.	First MP - Missing Based on Time Records	142	15.73%	0.35%
	32.	First MP Compliant Based on Time Records; Second MP - Short Based on Time Records	2	0.22%	0.00%
	33.	First MP Compliant Based on Time Records; Second MP - Late Based on Time Records	52	5.76%	0.13%
	34.	First MP Compliant Based on Time Records; Second MP - Short/Late Based on Time Records	1	0.11%	0.00%
	35.	First MP Compliant Based on Time Records; Second MP - Missing Based on Time Records	394	43.63%	0.97%

Total Compliance Rate Based on Time Records Only (Excludes Waivers and Premiums Paid)	80.99%
Total Compliance Rate Based on Time Records and Premiums Paid (Excludes Waivers)	84.81%
Total Compliance Rate Based on Time Records and Waivers (Excludes Premiums Paid)	89.74%
Total Compliance Rate Based on Time Records and Including Waivers and Premiums Paid	93.56%

EXHIBIT 6

Case Name: Sizewise

Friday, September 29, 2023

Requesting Attorneys Name:

John Glugoski

E-Mail:

jglugoski@righettilaw.com

ILYM Contact:

Lisa Mullins

E-Mail:

Lisa@ilymgroup.com

Contact Number:

714.878.8836

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggreived Employees	178
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$125.00	1	\$125.00
NCOA	Flat Rate	\$50.00	1	\$50.00
Toll Free Customer Support	Flat Fee	\$59.66	1	\$59.66

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$384.66

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check Stub & Release - (including 1099)	Per Check	\$1.50	178	\$267.00
Check Mailing Postage	Per Piece	\$0.63	178	\$112.14
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	36	\$71.20
Preparation of Taxes	Hourly	\$120.00	1	\$120.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,620.34

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Process Uncashed Funds to Court-Approved Cy Pres	Flat Fee	\$100.00	1	\$100.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$345.00

TOTAL CASE ESTIMATE: \$3,350.00

DISCOUNTED/NOT TO EXCEED PRICE: \$2,500.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 7

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF SETTLEMENT

Re: Tyler Nunaley, an individual and on behalf of all other aggrieved employees, Plaintiff, vs. Sizewise Rentals LLC, Does 1-50 inclusive, Defendants, Superior Court of California, County of San Francisco, Case No. CGC-20-587743 filed on October 21, 2020 (the “Action”)

[claims admin info]

You have received the enclosed check in connection with the Settlement of the above-referenced lawsuit brought by former employee Tyler Nunaley (“Plaintiff”) against Sizewise Rentals, L.L.C. (hereinafter, “Sizewise”) for civil penalties pursuant to the Private Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”).

Plaintiff claimed that he and other hourly non-exempt employees of Sizewise employed in California between May 21, 2019 and March 22, 2022, were subjected to the following claims including, but not limited to: (1) Failure to Pay All Wages Owed, including Minimum, Regular, and Overtime Wages; (2) Failure to Timely Pay All Wages During Employment; (3) Failure to Provide Compliant Meal Periods and Pay Meal Period Premiums; (4) Failure to Authorize and Permit Compliant Rest Breaks and Pay Rest Break Premiums; (5) Failure to Provide Sick Pay as Required by Law; (6) Failure to Timely Pay Final Wages at Termination; and (7) Failure to Provide Accurate Itemized Wage Statements.

Sizewise denies, and continues to deny, all allegations and liability, but to avoid further time and expense of protracted and uncertain litigation, Sizewise and Plaintiff have agreed to settle the lawsuit for civil penalties. The settlement, approved by the Court on [DATE], resolves the alleged claims brought on behalf of all hourly non-exempt employees of Sizewise who worked in California any time between May 21, 2019 and March 22, 2022, excluding pay periods covered by the prior PAGA settlement in *Jacob Buys on behalf of himself, all others similarly situated, and on behalf of the general public v. Sizewise Rentals, LLC; and Does 1-100*, filed in the Superior Court of California, County of Sacramento, on January 23, 2018, Case No. 34-2018-00225848-CU-OE-GDS (“PAGA Settlement Members”).

Pursuant to the Court’s Order, a payment of \$10,000.00 was approved in settlement of this lawsuit. Upon the date the Order approving this Settlement becomes final, the Action is dismissed with prejudice, and Sizewise provides the Settlement Administrator all funds due under this Settlement, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any and all Released PAGA Claims defined as any and all claims to recover civil penalties pursuant to PAGA that were alleged in, or that could have been alleged based on the facts alleged in, the PAGA Notice and the Action, for any alleged violations by Sizewise of California Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, based on alleged violations of Labor Code §§ 201-204, 210, 226, 226.7, 245, 246, 246.5, 248.5 510, 512, 558, 1182.12, 1194, 1197, 1197.1, 1197.5, 1198, and the related applicable IWC Wage Order provisions for the PAGA Period.

After accounting for settlement administration costs not to exceed two thousand five hundred dollars (\$2,500), the remaining sum called the “PAGA Fund” will be divided pursuant to California law as follows: \$5,625.00 (75%) to the State of California Labor Workforce Development Agency and \$1,875 (25%) to all PAGA Group employees to be shared on a proportionate basis. The enclosed check represents your share based upon the number of Pay Periods you worked any time during the period between May 21, 2019 and March 22, 2022, excluding pay periods covered by the prior PAGA settlement in *Jacob Buys on behalf of himself, all others similarly situated, and on behalf of the general public v. Sizewise Rentals, LLC; and Does 1-100* (“PAGA Period”). An IRS 1099

form is enclosed. You will be solely responsible for paying federal, state, or local taxes, if any, on the amount of your check.

Regardless of whether you negotiate the enclosed check, by way of this Settlement and the corresponding final Order, for the PAGA Period, each PAGA Settlement Member shall fully release Sizewise for all claims for civil penalties under PAGA as alleged in the PAGA Notice and Plaintiff's Complaint filed in this Action or reasonably could have been asserted under Labor Code § 2698, *et seq.*, based upon the facts alleged in the PAGA Notice and Plaintiffs' Complaint filed in this Action.

Your enclosed check is valid for 180 days from the date of its issuance. **It is strongly recommended that you cash or deposit this check immediately.** After that date, you cannot cash the check and it will be null and void and the amount paid to Refugee Net for the benefit of child services, a cy pres charitable organization. **Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims arising from the Action, including all claims set forth in the release of claims described above.**

If the check is lost or misplaced, please contact the Administrator immediately, toll-free (800) _____ to have it reissued. If you have any questions about your check, please contact the [insert administrator information].

Very truly yours,