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

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

Plaintiff,

v.

SIZEWISE RENTALS LLC, DOES 1-50
inclusive,

Defendants.

Case No. CGC-20-587743

**DECLARATION OF JOHN GLUGOSKI IN
SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL OF PAGA
SETTLEMENT AND ENTRY OF
JUDGMENT**

Hearing Date: October 5, 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 **EDUCATION AND EXPERIENCE**

6 2. I graduated from the University of California at Berkeley in 1993 with a degree
7 in Political Science. I then graduated from the University of San Francisco, School of Law in
8 1997. I am admitted to practice law before the following courts: United States Court of Appeals,
9 Ninth Circuit, United States Court of Appeals, Federal Circuit, United States District Court,
10 Northern, Central, Eastern, and Southern Districts of California, and all of California's state
11 courts.

12 3. I have been practicing law full time for over twenty-seven (27) years. My practice
13 has been devoted to complex class, collective and representative action litigation. Much of this
14 litigation has involved class action, and representative action prosecution of wage and hour laws
15 (state and federal), state and federal privacy laws (FCRA and CCCRA) and consumer laws. My
16 practice involves litigation in both state and federal courts. A sampling of some of the more
17 significant cases (including wage and hour litigation) handled by Righetti Law Firm, P.C.,
18 includes: *Rocher v. Sav-On Drug Stores* (Hon. Victoria G. Chaney, Los Angeles County Superior
19 Court), co-lead counsel in a certified overtime class action [in a seminal decision, the California
20 Supreme Court unanimously overturned the Court of Appeal's decision to reverse certification
21 (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4PthP 319); *Gentry v. Circuit City*
22 *Stores, Inc.* (Hon Tricia Ann Bigelow, Los Angeles County Superior Court), plaintiff's counsel
23 in an overtime class action where the court of appeal's decision affirming the trial court's order
24 to enforce an employment agreement barring class actions was reversed by the California
25 Supreme Court in *Gentry v. Superior Court* (2007) 42 Cal.4PthP 443; *Cooper et al. v. Chief Auto*
26 *Parts* (Hon. Ken Kawaichi, Alameda County Superior Court), a multi-party (over 200 included
27 plaintiffs) overtime case that proceeded through a merits arbitration; *Winfrey v. Chief Auto Parts*
28 (Hon. David Garcia, San Francisco Superior Court), a certified wage and hour class action where
the trial court's order to deny certification was reversed by the First DCA in an unpublished

1 opinion. *Crab Addison v. Superior Court*, (LASC Case No. BC377269) plaintiff’s counsel in a
2 wage and hour case styled as a class action where 2PndP DCA affirmed trial court’s order granting
3 plaintiffs access to names and contact information of putative class members without first
4 sending a “privacy letter” (regarded as a landmark published decision affirming the trial court’s
5 order). *Crab Addison v. Superior Court* (2008) 169 Cal.App.4PthP 958 (rehearing denied January
6 23, 2009; petition for review denied March 18, 2009); and *Rutti v. Lojack Corporation, Inc.*
7 (USDC, Central District, Case No. SA CV06-0350-DOC (RNBx, Judge Carter) plaintiffs’
8 counsel in a wage and hour class action. District court’s order granting Defendant’s motion for
9 summary judgment *reversed* when the 9PthP Circuit granted plaintiffs’ Petition for Rehearing.
10 See, *Rutti v. Lojack Corporation, Inc.* 596 F.3d 1046 (2010) [setting the parameters of both the
11 “de minimus” doctrine and workers’ right to wages under California law where employer
12 exercises control over workers]; *Home Depot and 99 Cent Only Stores* where the trial courts
13 limited the California Private Attorney General Act (PAGA) only to claims under the Labor Code
14 and not to claims under the IWC Wage Orders. In both cases the Courts of Appeal reversed in
15 published decisions. See *Home Depot v. Superior Court* (2011) 191 Cal.App.4th 210 (review
16 denied March 16, 2011) (holding PAGA applicable to seating claims on grounds that Labor Code
17 §1198 incorporates IWC Wage Order protections); *Bright v. 99 Cents Only Stores* (2010) 189
18 Cal.App.4th 1472 (review denied February 16, 2011) (same); PAGA action against Bank of
19 America on behalf of California bank tellers. The case was twice dismissed by Judge Real. Judge
20 Real’s orders were both reversed by the Ninth Circuit – *Green v. Bank of America, N.A.* (9th Cir.
21 2013) __ Fed. Appx., 2013 WL _____ and *Green v. Bank of America, N.A.* (9th Cir. 2015) 634
22 Fed.Appx. 188. On remand the Ninth Circuit removed the case from the docket of Judge Real
and re-assigned the case to Judge Percy Anderson.

23 4. There are many cases where Righetti Law Firm, P.C. (now Righetti Glugoski,
24 P.C.) has acted as class and representative action counsel in certified class actions and PAGA
25 actions in state and federal courts and on appeal.

26 5. We acted as trial counsel in what we believe are the only four class action
27 overtime cases ever to have been tried under the quantitative executive exemption standard
28 articulated in *Ramirez v. Yosemite Water Company* (1999) 20 Cal.4th 785. The first case was

1 tried in Los Angeles County Superior Court before the Hon. J. Stephen Czuleger, resulting in a
2 phase one finding that U-Haul had misclassified all California salaried “General Managers” as
3 exempt from overtime. The case settled before the phase two remedy trial convened. The second
4 case was tried in San Diego County Superior Court before the Honorable Patricia Cowett,
5 resulting in a phase one finding that Aiko *Party City* had misclassified salaried employees as
6 exempt from overtime (the phase two damages trial was completed as well). In the third case, we
7 are co-lead counsel in the *Sav-on* overtime litigation that completed the first phase of trial before
8 the Honorable Victoria G. Chaney in Los Angeles County Superior Court (complex). In the
9 fourth trial we were class counsel in a certified class action against Taco Bell alleging that its
10 restaurant general managers were misclassified as exempt under California law. The case was
11 tried in the San Diego County Superior Court before the Hon. Kevin Enright and settled after
12 four weeks of trial.

13 6. Righetti Glugoski, P.C. also represents various amicus groups on occasion in
14 court of appeal proceedings. We have handled appeals throughout California and in the federal
15 courts of the Ninth Circuit, the Seventh Circuit and the Federal Circuit.

16 **RELEVANT LITIGATION HISTORY AND INVESTIGATION**

17 7. Defendant Sizewise Rentals LLC (“Sizewise”) was a leading manufacturer and
18 provider of specialized bed frames, therapeutic surfaces and mobility equipment serving more
19 than 3,000 customers in the acute and post-acute care markets with products that address the
20 needs of bariatric, geriatric, pediatric, and standard patient populations. Sizewise employed non-
21 exempt employees who worked out of Sizewise equipment warehouses and repaired, delivered,
22 and/or picked-up equipment from clients.

23 8. While employed, Plaintiff raised concerns to Sizewise regarding working off-the-
24 clock without pay and being denied meal and rest breaks without premium pay.

25 9. Plaintiff, also discussed the alleged wage and hour violations with colleagues.
26 Those colleagues verified to Plaintiff that they had experienced the same violations that Plaintiffs
27 complained of.
28

1 10. Unbeknownst to Plaintiff, a case entitled *Jacob Buys vs. Sizewise Rentals, Inc.*
2 Case No. 2018-00225848-CU-OE was pending in the Sacramento Superior Court while he was
3 raising these issues with Sizewise.

4 11. At the time of Preliminary Approval of the *Buys* settlement, Mr. Nunaley was a
5 current employee of Defendant. At the same time as the *Buys* settlement, Mr. Nunaley had raised
6 concerns about off-the-clock, meal period, and rest break violations. He was terminated before
7 the Court granted Final Approval of the *Buys* Settlement. Once he began to pursue his individual
8 claims, Defendant claimed he was a member of the *Buys* settlement and he was barred from
9 bringing his own lawsuit. Ultimately, the Court found otherwise.

10 12. This case was filed by Plaintiff Tyler Nunaley **after** he opted out of a class action
11 and PAGA settlement in 2020 in the Sacramento Superior Court in the case entitled *Jacob Buys*
12 *vs. Sizewise Rentals, Inc.* Case No. 2018-00225848-CU-OE.

13 13. Plaintiff Nunaley was the sole opt out of the settlement. Mr. Nunaley was never
14 provided notice of the *Buys* settlement. Mr. Nunaley intervened in the action to request exclusion
15 from the settlement at the time of final approval because he was never provided notice. The Court
16 granted his request for exclusion on the grounds that he never was provided notice of the *Buys*
17 Settlement and therefore was not a class member.

18 14. After the Court's ruling confirming his opt out of the *Buys* matter, Plaintiff
19 Nunaley filed his own lawsuit alleging individual claims. Plaintiff's individual claims were based
20 on wrongful termination, retaliation, and various labor code wage and hour violations, stemming
21 primarily from missed meal periods and rest breaks. Although Plaintiff did not allege any class
22 claims, Plaintiff did allege PAGA claims on behalf of Plaintiff and the aggrieved employees not
23 covered by the *Jacob Buys vs. Sizewise Rentals, Inc.* action.

24 15. The prior class action and PAGA settlement occurred in *Jacob Buys vs. Sizewise*
25 *Rentals, Inc.* Case No. 2018-00225848-CU-OE in August of 2020. The deal points were as
26 follows:

- 27 • The parties agreed to settle this action with a non-reversionary, Gross Settlement
28 Amount ("GSA") in the total sum of \$300,000.00, from which the following

1 amounts will be deducted:

- 2 • The California Labor and Workforce Development Agency ("LWDA") will
3 receive \$11,250, representing its 75% portion of the settlement allocated to
4 settlement of the PAGA claim (\$15,000.00).

5 Marked and attached hereto as Exhibit 1 is a true and correct copy of the Court's Order Granting
6 Approval of the *Buys* Class and PAGA settlement.

7 16. The *Buys* case, filed on January 23, 2018, covered a **3.8-year PAGA period**
8 (January 23, 2017 to August 18, 2020).¹ The number of employees covered by the settlement was
9 179 (See Ex. 1). Here, the PAGA period covered by this lawsuit following the *Buys* settlement
10 release date is **1.7 years** (i.e., August 18, 2020 to March 22, 2022). Defendant ceased doing
11 business in California on March 22, 2022 and thus there are no more pay periods after that date.
12 There 178 aggrieved employees – one less than in the *Buys* case and these employees worked a
13 total of 4,228 pay periods. This is approximately 45% of the PAGA pay periods at issue in the
14 *Buys* Settlement that were settled for \$15,000.00.

15 17. After the filing of the *Buys* case, Defendant implemented a time keeping system
16 that automatically generated an hour of pay meal period premium for missed and late meal
17 periods. Furthermore, increased efforts to enforce meal periods and rest breaks requirements
18 resulted in Defendant reaching a 98% compliance rate. Prior to these efforts, Plaintiff alleged
19 that employees would be forced to work off-the-clock during what would otherwise be meal
20 periods and rest breaks. These changes in policy were in place during the PAGA period at issue
21 here.

22 18. The PAGA claim has been vigorously litigated for close to three (3) years. The
23 parties reached an agreement to settle the matter in its entirety for \$10,000.00.² Marked and
24

25 ¹ The Statute of Limitations under PAGA is one-year from the filing of the Complaint (i.e.,
26 January 23, 2017).

27 ² This is only a settlement of the PAGA claims for civil penalties. It is not a class settlement
28 and does not release the individual claims, if any, of the affected employees. (Cal. Labor Code
§2699(g)(1); *Iskanian v. CLS Transportation*, (2014) 59 Cal. 4th 348, 381.)

1 attached hereto as Ex. 2 is a true and correct copy of the PAGA Settlement and Release
2 Agreement.

3 19. This case alleged PAGA claims based on a variety of alleged Labor Code
4 violations and was filed on behalf of non-exempt employees (hereinafter referred to as “PAGA
5 Settlement Aggrieved Employees”) dating back to August 18, 2020 (i.e., the end date the of the
6 *Buys* settlement release).³ Plaintiff has represented himself individually and faithfully served as
7 the representative for the State of California to collect civil penalties from for the alleged
8 California Labor Code violations. At the time of settlement, the central issue involved whether
9 Defendant’s meal and rest break policies were complaint with California Law as the other relief
10 sought was tied to the alleged illegal meal and rest break practices.

11 20. On January 14, 2019, Defendant hired Plaintiff and terminated him on or about
12 April 1, 2020. Plaintiff alleged that Defendant failed to pay him all wages owed, denied him meal
13 and rest breaks, failed to provide accurate wage statements, and failed to timely pay him upon
14 separation. Plaintiff alleged that Defendant subjected all Settlement Aggrieved Employees in
15 California to the same policies.

16 21. On May 20, 2020, Plaintiff provided notice of Plaintiff’s allegations to the Labor
17 and Workforce Development Agency (LWDA). Plaintiff provided notice to Defendant as well.
18 The LWDA did not respond to these notices, thus allowing Plaintiff to initiate the PAGA lawsuit
19 under California Labor Code section 2699.3(a)(2)(A). The LWDA received notice of this
20 settlement and this motion.

21 22. After payment of administration costs, the proposed settlement provides a Net
22 Settlement Amount of \$7,500 with approximately \$5,625 allocated to the LWDA and \$1,875 to
23 the PAGA Settlement Aggrieved Employees. Based on this Settlement, the PAGA Settlement
24

25
26 ³ After extensive investigation, Plaintiff concluded that the alleged violations for unpaid
27 wages, meal periods, rest breaks, inaccurate wage statements, and waiting time penalties were
28 not strong claims. Defendant had made substantial improvements on its practices and
implemented an automatic premium pay for missed and late meal periods.

Aggrieved Employees will receive an average payment of \$10.50 to be mailed to each of the 178, PAGA Settlement Aggrieved Employees.

23. The parties engaged in hard-fought litigation and intended to take their claims and defenses to trial; however, Plaintiff also performed extensive work in this case attempting to prepare a trial plan that would meet the Court’s standards for a representative PAGA trial as to both liability and penalties. Given the problems identified above and the feedback from employees, Plaintiff concluded that a settlement of the action was in the best interest of all. In terms of an award of penalties under California Labor Code Section 2699(e)(1) & (2), Defendant was prepared to argue—and the Court could very well agree— that a lesser penalty was more appropriate than the statutory maximum penalty given the compliance rate and changes to its practices post-*Buys*.

24. These facts and the continuing risk and expense of further litigation, appeals, and a delayed trial led the parties to pursue mediation twice with different mediators. In preparation for the mediation, Defendant provided Plaintiff with information and data necessary for penalty calculations; for example, employment files, sampling data for all PAGA Settlement Aggrieved Employees, the total number of PAGA Settlement Aggrieved Employees, total number of pay periods between August 18, 2020 and March 22, 2022. Using this information, Plaintiff was able to calculate Defendant’s total penalty exposure for the one-year statutory PAGA period.

25. On April 20, 2023, the parties attended a mediation with the Honorable Ronald S. Prager (Ret.), a respected mediator. The parties resolved the case with Judge Prager on the terms set forth within the Settlement Agreement.

THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

26. A. Summary of Settlement Terms

The proposed Settlement Agreement (Glugoski Decl., Exhibit 2) involves the formation of a non-reversionary fund consisting of \$10,000.00 (“Gross Settlement Fund”). The Gross Settlement Fund will be used to make payments to the LWDA and PAGA Settlement Aggrieved Employees after, costs of administration. Plaintiff requests settlement administration costs to ILYM Group Inc. in the amount of \$2,500.00. The Net Settlement Fund will be distributed as

1 follows: Seventy-five percent (75%), i.e., \$5,625 will be distributed to the California Labor &
2 Workforce Development Agency (“LWDA”) as required by the PAGA and the remaining
3 twenty-five percent (25%), i.e., approximately \$1875 will be distributed to all PAGA Settlement
4 Aggrieved Employees on a pro-rata share basis based on the number of pay periods worked by
5 each Settlement Aggrieved Employee. (Glugoski Decl. ¶ 26.)

6 **27. The Notice**

7 Defendant agreed to fund the Settlement Amount within 80 days of the Court’s Order
8 approving the Settlement. (Settlement Agreement ¶¶ I *Definitions* & V B.) The PAGA Settlement
9 Aggrieved Employees will have 180 days to negotiate their checks. If for any reason a check is
10 un-cashed, the by the Administrator to Refugee Net for the benefit of child services, a cy pres
11 charitable organization. The Administrator will prepare and issue IRS Form 1099s to PAGA
12 Settlement Members who received payments and cashed checks, if so required under Federal or
13 California law. (Settlement Agreement ¶ V B.) A Notice informing the PAGA Settlement
14 Aggrieved Employees of the nature of the payment will be provided with the settlement check.

15 **28. Settlement Allocation to the PAGA Settlement Aggrieved Employees**

16 As noted, twenty-five percent (25%) of the PAGA penalties will be allocated to the
17 PAGA Settlement Aggrieved Employees. (Settlement Agreement ¶ V A.) Based on the numbers
18 Defendant provided, approximately 178 former employees will share in this fund in proportion
19 of the pay periods each member worked. The portion to each of the PAGA Settlement Aggrieved
20 Employees will be treated as non-wages since these are civil penalties and reported by the
21 Settlement Administrator by law PAGA Settlement Aggrieved Employees will receive, on
22 average, \$10.50.

23 **29. The Release**

24 The California Supreme Court has explained that a judgment in “a representative action
25 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of
26 2004...is binding not only on the named employee plaintiff but also on government agencies and
27 any aggrieved employee not a party to the proceeding.” (*Arias*, 46 Cal. 4th at 985–986.)

28 The release in the Settlement Agreement narrowly binds the PAGA Settlement Aggrieved

1 Employees for civil penalty claims brought in the Action (Settlement Agreement ¶ 15), as
2 follows:

3 PAGA all claims for PAGA penalties during the PAGA Period that were
4 alleged in, or that could have been alleged based on the facts alleged in,
the PAGA Notice and the Action (the “Released PAGA Claims”).

5 (Settlement Agreement § VI A.)

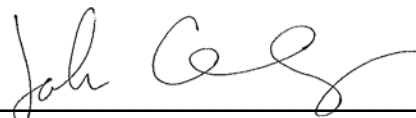
6 **30. Evaluation of the PAGA Settlement**

7 In this case, Plaintiff’s entire theory centers around Defendant’s alleged practice of failing
8 to pay all wages owed and denial of meal and rest breaks. Defendant maintains data for all 178
9 PAGA Settlement Aggrieved Employees. The data produced by Defendant confirms 4228 pay
10 periods. Therefore, based on this analysis, Plaintiffs believe the maximum total exposure value
11 of the claims is based on 4228 pay periods (x \$100 per violation.

12 31. Given the prior settlement in *Buys* and the changes to the policies, procedures,
13 and practices alleged in this lawsuit which resulted in a 98% compliance rate, this result is
14 positive and favorable to the State, which will receive \$5,625. The PAGA Settlement Aggrieved
15 Employees will receive \$1,875, which amounts on average to \$10.50 per aggrieved employee.

16 32. Marked and attached hereto as Exhibit 4 is the bid and resume from administrator
17 ILYM.

18 I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th
19 day of September, 2023, at San Francisco, California.

20
21 

22 John Glugoski
23 Attorneys for Plaintiff
24
25
26
27
28

EXHIBIT 1

FILED
ENDORSED

2020 SEP 30 AM 7:01

SACRAMENTO COURTS
DEPT. #54

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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.

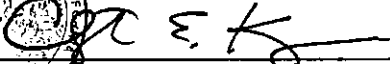
9 18. Without affecting the finality of this Order in any way, the Court retains jurisdiction
10 of all matters relating to the interpretation, administration, implementation, effectuation and
11 enforcement of this order and the Settlement.

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 2

ALEXANDER M. CHEMERS, CA Bar No. 263726
alexander.chemers@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213-239-9800
Facsimile: 213-239-9045

JARED L. PALMER, CA Bar No. 287974
jared.palmer@ogletree.com
TIMOTHY L. REED, CA Bar No. 258034
timothy.reed@ogletree.com
RYAN M. PARKER, CA Bar No. 332100
ryan.parker@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
One Embarcadero Center, Suite 900
San Francisco, CA 94111
Telephone: 415-442-4810
Facsimile: 415-442-4870

Attorneys for Defendant
SIZEWISE RENTALS LLC

**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,
vs.

SIZEWISE RENTALS LLC, DOES 1-50
inclusive,
Defendants.

Case No. CGC-20-587743

**PAGA SETTLEMENT AND RELEASE
AGREEMENT**

[Complex - Assigned for All Purposes to The
Honorable Ethan P. Schulman, Dept. 304]

Action Filed: October 21, 2020
Trial Date: None Set

1 Plaintiff Tyler Nunaley (“Plaintiff”), individually and in his capacity as a representative of
2 the State of California on behalf of other PAGA Settlement Members, and Defendant Sizewise
3 Rentals, L.L.C. (“Defendant” or “Sizewise”), enter into this PAGA Settlement and Release
4 Agreement (“Agreement”) as follows:

5 **I. DEFINITIONS**

6 As used in this Settlement, these terms shall have these meanings:

7 “Action” means this action, entitled *Tyler Nunaley, an individual and on behalf of all other*
8 *aggrieved employees v. Sizewise Rentals, L.L.C., Does 1-50 inclusive*, filed in the Superior Court of
9 California, County of San Francisco, on October 21, 2020, Case No. CGC-20-587743. The October
10 21, 2020 Complaint is the operative Complaint in the Action.

11 “Administrator” or “Settlement Administrator” means ILYM Group, Inc., the neutral entity
12 the Parties have agreed to appoint to administer the Settlement.

13 “Agreement” means this PAGA Settlement and Release Agreement including all recitals and
14 attached exhibits.

15 “Court” means the Superior Court of California, County of San Francisco.

16 “Defendant” means Sizewise Rentals, L.L.C or Sizewise.

17 “Defense Counsel” means Jared L. Palmer, Alexander M. Chemers, Timothy L. Reed, and
18 Ryan Parker of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

19 “Effective Date” of this Agreement means the date when both of the following have occurred:
20 (i) the Court issues an order granting approval of the Settlement, and the Action is dismissed with
21 prejudice, and (ii) the Court’s order approving the Settlement becomes Final.

22 “Final” shall mean the latest of: (i) if there are no objections to the Settlement, the date that
23 approval of the Settlement is granted by the Court, and the Judgment becomes final; (ii) if there are
24 objections to the Settlement and there is an appeal of the Court’s Settlement approval order, the date
25 the approval order is affirmed on appeal after all appellate options have been exhausted or the date
26 of dismissal of such appeal, and the Judgment becomes final; (iii) if there are objections to the
27 Settlement and if a petition for review is filed, the date of denial of the petition for review, or the
28 date the approval order is affirmed pursuant to such petition, and the Judgment becomes final; or (iv)

1 if there are objections to the Settlement and if no appeal is filed, the day following the expiration
2 date for filing or noticing any appeal of the approval order, and the Judgment becomes final.

3 “LWDA” means the California Labor and Workforce Development Agency, the agency
4 entitled, under California Labor Code section 2699, subd. (i).

5 “LWDA PAGA Payment” means the 75% of the PAGA Fund paid to the LWDA under
6 California Labor Code section 2699, subd. (i).

7 “Net Settlement Amount” or “PAGA Fund” means the Gross Settlement Amount, as set forth
8 below, minus the following payments in amounts approved by the Court: up to \$4,000 in fees and
9 costs incurred by the Settlement Administrator. The PAGA Fund shall be allocated 75% to the
10 LWDA and 25% to the PAGA Settlement Members.

11 “PAGA” means the California Labor Code Private Attorneys General Act of 2004, codified
12 at California Labor Code section 2698, *et seq.*

13 “PAGA Fund” is the Net Settlement Amount defined above, and shall be allocated 75% to
14 the LWDA and 25% to the PAGA Settlement Members.

15 “PAGA Members’ Information” means PAGA Settlement Member identifying information
16 in Defendant’s possession, including for each PAGA Settlement Member: (i) full name; (ii) last
17 known mailing address; (iii) social security number; and (iv) number of Pay Periods during the
18 “PAGA Period.”

19 “PAGA Notice” means the letter Plaintiff filed with the LWDA on his own behalf and on
20 behalf of the PAGA Settlement Members on May 21, 2020, alleging Defendant committed certain
21 violations of the California Labor Code. *See Exhibit A*, attached hereto.

22 “PAGA Period” means May 21, 2019 through March 22, 2022.

23 “PAGA Settlement Members” means all persons who worked as hourly non-exempt
24 employees in California between May 21, 2019 and March 22, 2022, excluding pay periods covered
25 by the prior PAGA settlement in *Jacob Buys on behalf of himself, all others similarly situated, and*
26 *on behalf of the general public v. Sizewise Rentals, LLC; and Does 1-100*, filed in the Superior Court
27 of California, County of Sacramento, on January 23, 2018, Case No. 34-2018-00225848-CU-OE-
28 GDS.

1 “Pay Period” means any pay period during the PAGA Period when a PAGA Settlement
2 Member worked, but excluding pay periods covered by the prior PAGA settlement in *Jacob Buys on*
3 *behalf of himself, all others similarly situated, and on behalf of the general public v. Sizewise Rentals,*
4 *LLC; and Does 1-100*, filed in the Superior Court of California, County of Sacramento, on January
5 23, 2018, Case No. 34-2018-00225848-CU-OE-GDS.

6 “Plaintiff” means Tyler Nunaley, individually and in his capacity as representatives of the
7 State of California on behalf of other PAGA Settlement Members.

8 “Plaintiff’s Counsel” means John Glugoski of Righetti Glugoski, P.C.

9 “Parties” means Plaintiff, individually and on behalf of the PAGA Settlement Members, and
10 Defendant.

11 “Released PAGA Claims” means the claims being released by the PAGA Settlement
12 Members, including Plaintiff, and by Plaintiff’s Counsel, as described in Paragraph 6(a), below.

13 “Released Parties” means (a) Sizewise Rentals, L.L.C. and (b) all of Sizewise’s current or
14 former parent companies, subsidiary companies, and/or related, affiliated, or predecessor companies,
15 partnerships, and/or joint ventures, and, with respect to each of them, all of its past, present, and
16 future employees, officers, partners, principals, directors, stockholders, owners, representatives,
17 assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators,
18 fiduciaries, and insurers of such programs), and any other persons acting by, through, under, or in
19 concert with any of the persons or entities listed in this subsection, and their successors. Said parties
20 shall be referred to collectively herein as the “Released Parties.”

21 “Settlement” means the disposition of the PAGA components of this Action effected by this
22 Agreement.

23 II. RECITALS

24 On May 21, 2020, Plaintiff’s counsel sent the PAGA Notice to the LWDA on behalf of
25 Plaintiff pursuant to California Labor Code section 2699.3. Plaintiff sought to represent himself and
26 all PAGA Settlement Members. At no time did the LWDA indicate an intention to investigate the
27 alleged violations referenced in the letter.

- 1 A. Plaintiff's Counsel filed a civil lawsuit in the Superior Court of California, County of
2 San Francisco, on October 21, 2020, Case No. CGC-20-587743. Plaintiff's
3 Complaint alleges the violations set forth in the PAGA Notice in the eighth cause of
4 action for enforcement of PAGA, California Labor Code sections 2698, *et seq.*
- 5 B. After several years of litigation and extensive informal and formal discovery, the
6 Parties agreed to engage in private mediation on two occasions. The first mediation
7 took place on August 11, 2022, with mediator Lou Marlin, Esq. The second mediation
8 too place on April 26, 2023, with mediator Hon. Ronald S. Prager, Ret. ("Judge
9 Prager"). The Parties engaged in extensive negotiations at mediation, which involved
10 substantial offers and counteroffers between the Parties for two entire days. The
11 mediation resolved with the Parties working with Judge Prager daily for nearly two
12 weeks after the April 26, 2023 mediation, ultimately culminating in this Agreement.
- 13 C. Counsel for all Parties have thoroughly investigated the facts and legal principles
14 relating to the claims and defenses alleged in the PAGA Notice, the Second Amended
15 Complaint and the Answer. The Parties' counsel have concluded the Agreement is
16 fair, reasonable, and adequate in light of all known facts and circumstances, including
17 the defenses asserted by Defendant, potential adverse findings regarding liability, and
18 numerous potential appellate issues.
- 19 D. Defendant denies, and continues to deny, each and every claim and contention alleged
20 in the PAGA Notice and in the Complaint, and has always maintained that it has never
21 engaged in any unlawful acts regarding any of the matters alleged in the PAGA Notice
22 or in the Action.

23 NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions
24 set forth, the Parties agree as follows.

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1 **III. NON-ADMISSION OF LIABILITY OR REPRESENTATIVE MANAGEABILITY**
2 **FOR OTHER PURPOSES**

3 This Agreement represents a compromise and settlement of highly disputed claims. Based
4 on the factual and legal issues involved, the expense and time necessary to prosecute the Action
5 through trial, the risks, uncertainty, and costs of further prosecution, the difficulty of proof necessary
6 to establish a manageable group for purposes of liability, and the relative benefits to the PAGA
7 Settlement Members of an expeditious resolution to the Action, the Parties have concluded that the
8 terms set forth in this Agreement are fair, reasonable, adequate, and in the best interests of the PAGA
9 Settlement Members.

10 By entering into this Agreement, Defendant denies any liability for any of the claims in the
11 Action, as well as any other potential or unknown claims based on wage and hour violations under
12 California or federal law. Defendant specifically denies that it has engaged in any unlawful or
13 wrongful conduct against Plaintiff or any of the PAGA Settlement Members. Nothing in this
14 Agreement is intended or should be construed as an admission by any of the Parties that the claims
15 or defenses in the Action have merit. The Parties agree that representative treatment of the PAGA
16 Settlement Members is for purposes of this Settlement only, and that there is no admission of
17 representative manageability for any purpose other than this Settlement, or that may be asserted in
18 any other dispute, claim or lawsuit.

19 If for any reason the Court does not approve this Settlement, Defendant reserves all available
20 defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses.
21 This Agreement, any documents referred to herein, and the Parties' actions taken to carry out this
22 Settlement, are not admissible in connection with any litigation (except for proceedings to enforce
23 or effectuate the Settlement and this Agreement) and may not be construed or used as an admission
24 or concession of unlawful conduct, fault, wrongdoing or liability on Defendant's part.

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1 **IV. TERMS OF THE PAGA SETTLEMENT**

2 **A. Gross Settlement Amount and PAGA Settlement Members' Information**

3 If the Settlement is approved by the Court and becomes Final, Defendant shall pay a non-
4 reversionary monetary settlement payment in the total amount of \$10,000 ("Gross Settlement
5 Amount" or "GSA"), plus fees and costs incurred by the Settlement Administrator up to \$4,000. The
6 Gross Settlement Amount is the maximum amount Defendant can be required to pay under this
7 Settlement. Defendant shall submit the GSA to the Settlement Administrator within thirty (30) days
8 of the Effective Date ("Final Payment Date").

9 The Parties agree to allocate 100% of the Net Settlement Amount, which is the Gross
10 Settlement Amount minus the Settlement Administrator Costs, to penalties and thus not to wages.
11 The payment of individual PAGA payments shall not obligate Defendant to confer any additional
12 benefits or make any additional payments to the PAGA Settlement Members (such as 401(k)
13 contributions or bonuses) beyond those specified in this Agreement.

14 **B. Settlement Administrator's Fees and Costs**

15 If approved by the Court, the Settlement Administrator shall receive a payment for its fees
16 and costs, to be paid from the Gross Settlement Amount and not to exceed \$4,000, except for a
17 showing of good cause to the Court for more than this amount. The Parties agree that the GSA will
18 include the Settlement Administrator's fees and costs, which shall not exceed \$4,000. The payment
19 for the Settlement Administrator's fees and costs will be approved by the Court before the GSA is
20 sent to the Settlement Administrator such that there will be no remainder to divert to the PAGA Fund.

21 **C. PAGA Fund**

22 Seventy-five percent (75%) will be sent to the LWDA and twenty-five percent (25%) will be
23 allocated among the PAGA Settlement Members based on proportionate number of pay periods
24 worked during the PAGA Period as set forth in Section 5.a.

25 **V. COMPUTATION AND DISTRIBUTION OF THE PAGA FUND**

26 **A. Formula for Calculating Share of PAGA Fund**

27 The portion of the PAGA Fund to be paid to each PAGA Settlement Member shall be
28 determined based on this formula:

1 The payments to PAGA Settlement Members will be based on the number of pay periods for
2 each PAGA Settlement Member worked during the PAGA Period. The value of a pay period will
3 be calculated by dividing the 25% portion of the PAGA Fund paid to PAGA Settlement Members
4 by the total number of pay periods ,which is estimated to be approximately 5,000 pay periods, for all
5 PAGA Settlement Members during the PAGA Period. The resulting value will then be multiplied
6 by the number of pay periods for each PAGA Settlement Member to calculate the individual PAGA
7 payment (“Individual Payment”).

8 **B. Distribution of PAGA Fund by Settlement Administrator**

9 The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified
10 that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to
11 perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the
12 Administrator’s expenses. The Parties and their Counsel represent that they have no interest or
13 relationship, financial or otherwise, with the Administrator other than a professional relationship
14 arising out of prior experiences administering settlements.

15 Within twenty (20) days of the Effective Date of this Agreement, Defendant shall transmit
16 the PAGA Members’ Information electronically to the Settlement Administrator. The Administrator
17 must maintain the PAGA Members’ Information in confidence and use it for no other purpose than
18 the Settlement. Defendant shall fully fund the GSA by transmitting the funds to the Administrator
19 no later than thirty (30) days after the Effective Date.

20 Within twenty (20) days after Defendant has fully funded the Gross Settlement Amount, the
21 Settlement Administrator shall calculate and distribute payments to the PAGA Settlement Members
22 and to the LWDA. The Settlement Administrator shall disburse the payments to the PAGA
23 Settlement Members, as set forth herein, without asking or requiring PAGA Settlement Members to
24 submit any claim as a condition of payment.

25 Payments to PAGA Settlement Members shall be made by check via U.S. Mail, postage
26 prepaid, to their last known addresses. Prior to the initial mailing to PAGA Settlement Members,
27 the Settlement Administrator shall conduct a search of the National Change of Address (“NCOA”)
28 database to update PAGA Settlement Members’ mailing addresses, if necessary. The Administrator

1 will skip-trace and re-mail all returned, undeliverable mail within seven days of receiving notice that
2 the mailing was undeliverable.

3 The Administrator shall maintain a list of postmarked dates for the initial mailing of payments
4 to the PAGA Settlement Members, and a list of PAGA Settlement Members who have not cashed
5 the checks. All checks disbursed under the terms of this Agreement will remain valid and negotiable
6 for 180 days from the date of their execution. The Administrator shall promptly send a replacement
7 check to any PAGA Settlement Member whose original check was lost or misplaced, as requested
8 by the PAGA Settlement Member prior to the void date. After 180 days, any uncashed checks will
9 be void. The value of these uncashed checks will be paid, by the Administrator to Refugee Net for
10 the benefit of child services, a cy pres charitable organization. The Administrator will prepare and
11 issue IRS Form 1099s to PAGA Settlement Members who received payments and cashed checks, if
12 so required under Federal or California law.

13 Any information provided by the Parties to each other, or by either of them to the
14 Administrator, may be used only with respect to this Settlement, and existing copies shall be
15 destroyed at any Parties' request, after the Administrator has discharged its obligation to pay out all
16 Settlement funds.

17 The Settlement Administrator also shall pay an amount equivalent to 75% of the PAGA Fund
18 to the LWDA, or as otherwise directed by the Court. A copy of the check that the Settlement
19 Administrator mails to the LWDA shall be provided to counsel for both Parties within five (5)
20 business days of mailing.

21 The Administrator will also handle payment of Plaintiff's Counsel's attorneys' fees and costs
22 as approved by the Court in an amount not to exceed One Thousand Five Hundred Dollars.

23 **VI. RELEASE OF CLAIMS**

24 **A. Claims Released by the LWDA and PAGA Settlement Members (Released** 25 **PAGA Claims)**

26 Upon the Effective Date of the Agreement, and subject to Defendant's funding of the GSA,
27 the Plaintiff, as representatives of the State of California and on behalf of the LWDA and the PAGA
28 Settlement Members, and their respective former and present representatives, agents, attorneys,

1 heirs, administrators, successors, and assigns, fully and finally release the Released Parties from all
2 claims for PAGA penalties during the PAGA Period that were alleged in, or that could have been
3 alleged based on the facts alleged in, the PAGA Notice and the Action (the “Released PAGA
4 Claims”).

5 The Parties agree that the Settlement shall be effective as a full and final accord and
6 satisfaction, settlement of, and as a bar to, the Released PAGA Claims. The Parties further agree the
7 Settlement shall be binding on the PAGA Settlement Members, including the Plaintiff, the LWDA,
8 the State of California, Defendant, and the Released Parties. As a result of this release, the PAGA
9 Settlement Members will be unable to bring a claim under, or recover in any other claim
10 encompassed within the Released PAGA Claims.

11 **B. Release by Plaintiff’s Counsel**

12 The Agreement includes and resolves all claims for attorneys’ fees or costs that Plaintiff or
13 Plaintiff’s Counsel may have under PAGA in the Action. *See, e.g.*, California Labor Code section
14 2699(g)(1). Plaintiff agrees to seek no more than One Thousand Five Hundred Dollars in attorney
15 fees and costs subject to Court Approval. Defendant agrees not to oppose Plaintiff’s request to seek
16 an order granting attorney fees and costs not to exceed One Thousand Five Hundred Dollars.

17 **C. Tax Treatment and Indemnification**

18 The Settlement Administrator will issue a Form 1099-Misc., and any other required tax
19 form(s), to PAGA Settlement Members relating to these payments. PAGA Settlement Members,
20 including Plaintiff, and Plaintiff’s Counsel shall assume any tax obligations or consequences that
21 may arise from payments made to them under this Settlement. PAGA Settlement Members,
22 including Plaintiff, and Plaintiff’s Counsel shall also hold Defendant harmless, and indemnify it,
23 from any dispute or controversy regarding any division or sharing of any of these payments.

24 Neither Parties or their counsel are providing any advice regarding taxes or taxability, nor
25 shall anything in this Settlement be relied upon as such within the meaning of United States Treasury
26 Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

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1 **VII. MISCELLANEOUS PROVISIONS**

2 **A. Mutual Full Cooperation**

3 Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel agree to cooperate fully with
4 each other to accomplish the terms of this Settlement, including, but not limited to, execution of such
5 documents, and to take such other action as may reasonably be necessary to implement the terms
6 herein. If the Court does not grant the motion for approval of this Settlement or conditions its
7 approval on any material change to this Agreement, Plaintiff's Counsel and Defense Counsel will
8 expeditiously and in good faith work together on the Parties' behalf to modify the Agreement or
9 submit supplemental evidence and supplementing points or authorities, if requested by the Court, or
10 to otherwise satisfy the Court's concerns.

11 In the event the Parties are unable to agree upon the form or content of any document
12 necessary to implement the Settlement, or on any modification of the Agreement that may become
13 necessary to implement the Settlement, the Parties will seek the assistance of Judge Prager to see if
14 the issues can be resolved before continuing with the Action.

15 **B. Parties' Representations**

16 The Parties and their counsel represent they are authorized to enter into this Agreement. The
17 Parties and their counsel also represent and warrant that they have not directly or indirectly assigned,
18 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
19 portion of any liability, claim, demand, action, cause of action, or right released and discharged by
20 the Parties in this Settlement.

21 **C. Binding Nature of the Agreement**

22 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
23 of the Released Parties. This Settlement shall be binding upon Plaintiff and the PAGA Settlement
24 Members, and upon their respective former and present spouses, representatives, agents, attorneys
25 (including Plaintiff's Counsel), heirs, administrators, successors, and assigns.

26 **D. Joint Drafting of Agreement**

27 The Parties have arrived at this Settlement as a result of a series of arm's-length negotiations,
28 taking into account all relevant factors, present and potential. This Agreement has been drafted

1 jointly by Plaintiff's Counsel and Defense Counsel and, therefore, in any construction or
2 interpretation of this Settlement, the same shall not be construed against any of the Parties.

3 **E. Execution of the Agreement**

4 All executed copies of this Agreement and photocopies thereof shall have the same force and
5 effect and shall be as legally binding and enforceable as the original. The Agreement may be
6 executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or email which
7 for purposes of this Agreement shall be accepted as an original. All executed counterparts and each
8 of them will be deemed to be one and the same instrument. Counsel for the Parties will exchange
9 between themselves signed counterparts. Any executed counterpart will be admissible in evidence
10 to prove the existence and contents of this Agreement.

11 **F. No Press Release or Publicity Regarding Terms of the Agreement**

12 The Parties agree not to publicize the terms of this Agreement or Settlement except in court
13 papers filed to obtain approval and to the LWDA. The Parties agree that they will issue no media or
14 press release, will not initiate any contact with the media or the press, will not respond to any media
15 or press inquiry, or will not have any communications with the media or the press about the fact,
16 amount, or terms of this Agreement or Settlement Agreement. Plaintiff and Plaintiff's Counsel shall
17 not publicize or refer to the fact or amount of the Agreement or Settlement on their websites, social
18 media, any other marketing materials, or legal publications in a way that identifies or alludes to
19 Defendant, but they may do so without naming or referring to Defendant.

20 Defendant may report the Settlement or results of this lawsuit if required to do so by public
21 disclosure regulatory requirements, or with respect to any financial or other disclosures, which in
22 their judgment are necessary.

23 **G. Continuing Jurisdiction of the Court**

24 After the Action is dismissed with prejudice, the Court shall retain jurisdiction over the
25 Parties, the Action and the Settlement solely for purposes of enforcing the Agreement, addressing
26 settlement administration matters, and resolving any disputes between and among the Parties arising
27 out of the Settlement, including but not limited to interpretation of the Agreement's terms.

28 ///

1 **H. Advice of Counsel**

2 Each Party represents and agrees that they have been advised or are fully aware of their right
3 to discuss all aspects of this Agreement with their independent attorneys prior to signing this
4 Agreement, that each Party has carefully read and fully understands all of the provisions of this
5 Agreement, and that each Party is voluntarily, and without fraud, duress, or undue influence, entering
6 into this Agreement.

7 **I. Notice**

8 All notices, demands or other communications between the Parties in connection with this
9 Agreement will be in writing and deemed to have been duly given as of the third business day after
10 mailing by United States mail, or the day sent by email or messenger, addressed as follows:

11
12 To Plaintiff: John Glugoski
13 Righetti Glugoski, P.C.
 220 Halleck Street, Suite 220
 San Francisco, CA 94129

14 To Defendant: Jared L. Palmer
15 One Embarcadero Center, Suite 900
 San Francisco, CA 94111

16 **J. Miscellaneous Provisions**

17 All terms and conditions of this Agreement and its exhibits will be governed by and
18 interpreted according to the internal laws of the state of California, without regard to conflict of law
19 principles.

20 This Settlement may be amended or modified only by a written instrument signed by Plaintiff
21 and Defendant or by their duly authorized representatives, and approved by the Court. No rights
22 under this Settlement may be waived except in writing. This Agreement constitutes the entire
23 agreement between the Parties relating to the Settlement of the Released PAGA Claims, superseding
24 any and all oral representations, warranties, covenants, or inducements made to or by any Party.

25 To the extent permitted by law, all agreements made, and orders entered during the Action
26 and in this Agreement relating to the confidentiality of information shall survive the execution of
27 this Agreement.

28 Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days.

1 In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal
2 holiday, such date or deadline shall be on the first business day thereafter.

3 The descriptive heading of any section or paragraph of this Agreement is inserted for
4 convenience of reference only and does not constitute a part of this Agreement.

5 **K. Stay of Litigation**

6 The Parties agree that upon the execution of this Agreement, and upon Court approval, the
7 Action shall be stayed, except to effectuate the terms of this Agreement.

8 **L. Waiver of Right to Appeal**

9 The Parties and Plaintiff's Counsel waive all rights to appeal, including all rights to post-
10 judgment or dismissal and appellate proceedings, the right to file motions to vacate judgment,
11 motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any
12 waiver of the right to oppose such motions, writs or appeals. If another party appeals, the Parties'
13 obligations to perform under this Agreement will be suspended until such time as the appeal is finally
14 resolved and the Settlement becomes final.

15 **M. Parties' Duties Regarding Motion for Approval of Settlement**

16 Plaintiff's Counsel will draft and file a Motion for Approval of Settlement. Once the
17 Settlement is approved and becomes Final, Plaintiff's Counsel is responsible for delivering the
18 Court's Approval to the Administrator. Plaintiff's Counsel is responsible for delivering to Defense
19 Counsel all documents necessary for obtaining approval of this Settlement under California Labor
20 Code section 2699, subd. (f)(2) or any other documents or information required by law or requested
21 by the Court.

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1 N. Subsequent Modifications

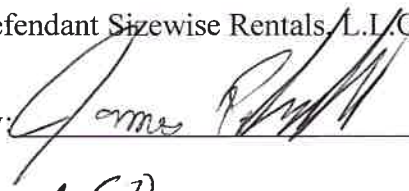
2 Upon stipulation or with Court approval, the Parties may alter the above dates or time periods.
3 The Parties may also make other non-substantive revisions to any notices or other documents as
4 necessary.

5
6 DATED: _____

Plaintiff Tyler Nunaley

7
8 DATED: 8/21/23

Defendant Sizewise Rentals L.L.C.

9 By: 

10 Its: CFD

11 Print Name: James Peltarek

12
13 *Approved as to form only:*

14 DATED: _____

RIGHETTI • GLUGOSKI, P.C.

15
16 By: _____
17 MATTHEW RIGHETTI
18 JOHN GLUGOSKI

19 Attorneys for Plaintiff
20 TYLER NUNALEY

21 DATED: August 21, 2023

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

22 By: 
23 ALEXANDER M. CHEMERS
24 JARED L. PALMER
25 TIMOTHY L. REED
26 RYAN M. PARKER

27 Attorneys for Defendant
28 SIZEWISE RENTALS, L.L.C.

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N. Subsequent Modifications

Upon stipulation or with Court approval, the Parties may alter the above dates or time periods.
The Parties may also make other non-substantive revisions to any notices or other documents as necessary.

DATED: 8-21-23


Plaintiff Tyler Nunaley

DATED: _____

Defendant Sizewise Rentals, L.L.C.

By: _____

Its: _____

Print Name: _____

Approved as to form only:
DATED: 8-24-23

RIGHETTI • GLUGOSKI, P.C.

By: 
MATTHEW RIGHETTI
JOHN GLUGOSKI

Attorneys for Plaintiff
TYLER NUNALEY

DATED: _____

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: _____
ALEXANDER M. CHEMERS
JARED L. PALMER
TIMOTHY L. REED
RYAN M. PARKER

Attorneys for Defendant
SIZEWISE RENTALS, L.L.C.

RIGHETTI • GLUGOSKI, P.C.

ATTORNEYS AT LAW

May 21, 2020

Attn: PAGA Administrator
Labor Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov.

SIZEWISE Rentals, LLC
c/o Agent for Service of Process
Registered Agent Solutions
1220 S ST STE 150
SACRAMENTO CA 95811

SIZEWISE Rentals, LLC
HR/Legal Dept.
204 W 2ND ST
ELLIS KS 67637

Re: TYLER NUNALEY
NOTICE OF LABOR CODE VIOLATIONS AND DEMAND PURSUANT TO
CALIFORNIA LABOR CODE SECTION 2698 ET. SEQ. AS TO THE
INDIVIDUAL AND SIMILAR SITUATED EMPLOYEES

To Whom It May Concern,

PLEASE TAKE NOTICE that pursuant to the procedure specified in California Labor Code 2699.3, Tyler Nunaley (hereinafter "EMPLOYEE"), claims that **SIZEWISE Rentals, LLC**, (hereafter referred to as "EMPLOYER" or "YOU" and/or referred to as "YOUR" and "YOURS") violated California Labor Code Sections as delineated herein in addition to Sections 3, 4, 5, 7, 11 and 12 of the applicable Wage Order (violations actionable under Labor Code 558).

INTRODUCTION:

The facts of the above-named matter include, but are not limited to, the facts set forth, identified or reference herein. As discovery is ongoing, EMPLOYEE and the similar situated employees reserve the right to present and/or reference further evidence as it is discovered.

EMPLOYEE worked for YOU in California as a Warehouse Technician from January 10, 2019 until he was let go in April 2020 after complaining to YOU Human Resource Department about some of the issue raised in this letter and was classified by YOU as an hourly employee. Pursuant to the job duties, obligations and policies YOU set forth for EMPLOYEE

and those similarly situated (collectively referred to as "EMPLOYEES"), YOU violated the labor codes and regulations set forth above as more particularly set forth herein.

EMPLOYEES at YOUR work sites are not routinely authorized and permitted to take ten consecutive minutes of off duty rest break time. As to meal breaks, YOU fail to provide YOUR EMPLOYEES with their required and timely off duty meal periods. Further, for both meal and rest breaks YOU have failed to pay one hour of pay in all instances of non-compliance with the meal/rest break laws.

YOU failed to correctly calculate and pay regular wages and overtime wages to EMPLOYEES. YOU did not accurately keep track of all hours worked by EMPLOYEES thereby failing to pay any wages for time worked in violation of the minimum wage laws. YOU used an "auto-deduct" meal period calculation whereby YOU automatically deducted a meal period from time worked despite the fact that an off-duty meal period was not taken and/or records show the employee to be working what you deduct as a meal period. YOU also failed to adhere to the reporting time pay requirements of California law.

YOU failed to accurately itemize on EMPLOYEES wage statements the information required by Labor Code 226 by not providing an accurate itemized statement containing in compliance with Labor Code 226(a).

YOU failed to timely pay all wages to EMPLOYEES upon termination of their employment.

YOU failed to pay all wages to the EMPLOYEES as required by Labor Code 558(a) by YOUR auto-deduct meal period policy and YOUR consequent incorrect calculation of time worked and wages owed to EMPLOYEES.

YOU failed to comply with the requirements of Labor Code 2802. In particular, you failed to indemnify and/or reimburse EMPLOYEES for all necessary expenditures and losses incurred by the employee in direct consequence of the discharge of his or her duties for YOU.

YOU failed to comply with the requirements of Labor Code Section 245 and 246. In particular, YOU failed to provide EMPLOYEES with at least one hour of accrued paid leave for every 30 hours worked.

LEGAL THEORIES:

Labor Code Section 2698, et seq.:

EMPLOYER has engaged in Labor Code violations including but not limited to as described herein. Therefore, EMPLOYEES will be bringing a representative action to prosecute Labor Code violations and seek penalties pursuant to the Private Attorneys General Act. Labor Code Section 2699 states: (f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: (1) If, at the time of the alleged violation, the person does not employ one

or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." For all violations not directly provided for herein by other penalty, by distinction of intent or lack thereof of or by other means, EMPLOYEES request penalties pursuant to this provision and will prosecute accordingly for said penalties in a representative action.

Labor Code Section 201-203:

EMPLOYER willfully failed to pay, without abatement, EMPLOYEES upon discharge or quit. YOUR policy and practice is to refuse to timely pay EMPLOYEES all money due to them upon discharge or resignation. YOUR pay policies and practices violate Labor Code Section 203. Specifically, by failing to pay EMPLOYEES for time worked (i.e. reporting time unpaid and improper deductions of meal periods not taken) YOU failed to timely pay all wages due. YOUR subsequent failure to include those wages in the final paycheck is a violation of Labor Code Section 203.

Labor Code Sections 204 and 210:

Section 204 of the California Labor Code states that all wages, other than those mentioned in 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. In addition, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

YOUR policies and practices fail to provide full pay to EMPLOYEES in a timely manner by failure to pay all wages owed, failure to pay any wages for all time worked and thereby failing to account for and pay all overtime wages owed under California law. Each pay period, YOU failed/fail to pay timely and full payment to YOUR EMPLOYEES in violation of Labor Code Section 210. YOU therefore owe penalties accordingly.

Labor Code Section 226.7 and 512:

YOUR policies and practices are to refuse to provide/authorize EMPLOYEES meal and/or rest periods as detailed above. Labor Code Section 512 and Cal. Code Reg., Tit. 8, Section 11050(11) require YOU to provide an uninterrupted off duty meal break of no less than thirty minutes to EMPLOYEES who work more than five hours per day and a second thirty minute meal break to those working more than ten hours per day. YOU regularly failed to provide such meal breaks as required by law. Therefore, YOUR policies and practices violate Labor Code Section 512 and Cal. Code Reg., Tit. 8, Section 11050(11).

Similarly, Cal. Code Reg., Tit. 8, Section 11050(12) and Labor Code Section 512 provide that YOU must authorize and permit an off duty consecutive ten minutes of paid rest break for four every hours of work or fraction thereof. It is YOUR policy and practice to fail to authorize and permit EMPLOYEES with the required uninterrupted and off duty consecutive ten (10) minute rest period per four (4) hours or major fraction thereof.

YOUR policies and practices of refusing to provide/authorize meal and/or rest periods for EMPLOYEES and YOUR failure to pay one hour of pay for instances where the rest/meal breaks were noncompliant, according to law, places you in violation of these Labor Code and California Code Regulation provisions. Labor Code 226.7 states that, "[i]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided." YOU failed and refused to pay such amounts when due and YOU failed to investigate situations where such amounts could be owed. Rather, YOU did not make such payments under any circumstances as a matter of policy and practice.

Thus, EMPLOYER owes meal period and rest period premiums -- and penalties in addition -- to its EMPLOYEES. We therefore intend to file claims for violations of Labor Code Sections 226.7, 512 and 8 Cal. Code Reg. Sections 11050(11) & (12).

Labor Code Sections 510, 1182.12, 1194, 1197, 1197.1, 1198:

EMPLOYER failed to pay wages for all hours worked.

Labor Code Section 510 defines what constitutes time worked in California. Pursuant to Labor Code Section 1182.12, the State of California has adopted a minimum wage standard which shall be no less than the federal standard. Labor Code Section 1182.12 set the minimum wage standards. Labor Code Section 1198 generally prohibits EMPLOYERS from having employees work beyond the hours fixed by the commission or under conditions prohibited by the commission. Labor Code Section 1197 prohibits paying less than minimum wage. Labor Code Section 1194 requires the payment of overtime wages as specified.

YOUR policies and practices are to refuse to pay all wages owed for all time worked, refuse to pay any wages for time worked, and failure to pay wages for all hours worked at the overtime rate as required by Labor Code Sections 510, 1182.12, 1197, 1194 and 1198. YOUR policies and practices of failing to pay wages for all hours worked, according to law, place you in violation of Labor Code Sections 1182, 1182.12, 1194, 1197 and 1198.

Labor Code Section 1194 states "(a) Notwithstanding any agreement to work for a lesser wage, 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 attorney's fees, and costs of suit."

Labor Code Section 558 states: "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." The requirements set forth herein are also confirmed in the wage order applicable to YOUR industry.

Pursuant to Labor Code Section 1197.1, "(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages."

As stated herein above, Labor Code Section 1194 allows for a civil suit for minimum wage compensation, interest, reasonable attorney fees, and costs of suit. We therefore intend to file civil claims for violations of Labor Code Sections 1182, 1182.12, 1194, 1197, 1197.1, and 1198 for compensation, penalties, attorney fees, interest, and costs of suit. Included in such recovery of penalties will be a request for confirmation that the above referenced conduct also violates Labor Code Section 558 for which penalties will be sought including wages owed as penalties as allowed by that statute.

Labor Code Section 226:

EMPLOYER failed to furnish, at the time of each payment of wages, to EMPLOYEES, an accurate itemized wage statement for all hours worked by the EMPLOYEES and to do all things required by this statute. YOUR policy and practice is to refuse to furnish to each of YOUR EMPLOYEES, at the time of each payment of wages, an accurate itemized wage statement for all hours worked by the EMPLOYEES.

YOUR policy and practice violates Labor Code Section 226. Labor Code Section 226 requires YOU to provide an accurate statement with each payment of wages that includes: 1) Gross earnings, 2) Total hours worked, 3) Number of piece rate units earned, 4) Deductions, 5) Net wages, 6) inclusive dates paid for, 7) Name of employee and last four digits of employee's Social Security number, 8) Name and address of the legal entity of the employer, and 9) a list of all hourly rates worked by the employee, up to and exceeding 40 hours per week, in the corresponding period.

YOUR policy and practice fails to furnish to each EMPLOYEE an accurate itemized wage statement setting for the information required by Labor Code Section 226 and places YOU in violation of Labor Code Section 226. Further, Labor Code Section 226.3 states: Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the

amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. YOU are in violation of Labor Code Section 226 and therefore EMPLOYEES will be pursuing penalties allowed by and pursuant to the Labor Code.

Labor Code Section 245 and 246, 246.5 and 248.5:

Section 246 provides that EMPLOYEES are to accrue at least one hour of paid leave for every 30 hours worked. YOUR policies and procedures fail to comply with this section and thus EMPLOYEES are denied the accrual of paid seek leave time they are entitled to. Section 248.5 provides if 1paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty. If a violation of this article results in other harm to the employee or person, such as discharge from employment, or otherwise results in a violation of the rights of the employee or person, the administrative penalty shall include a sum of fifty dollars (\$50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

The purpose of this letter is to satisfy the requirement created by the PAGA prior to seeking penalties allowed by law for the aforementioned statutory violations. Our client intends to seek penalties on behalf of all similarly situated and aggrieved EMPLOYEES who were employed by YOU for a time period dating back one year from the date of this letter.

We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

Please do not hesitate to contact the undersigned if you wish to confer with respect to these claims. Thank you for your attention to this matter.

Very truly yours,

RIGHETTI • GLUGOSKI, P.C.

s/ John Glugoski
John Glugoski

EXHIBIT 3

Katherine Acosta

From: John Glugoski
Sent: Tuesday, September 12, 2023 11:22 AM
To: Katherine Acosta
Subject: FW: Thank you for your Proposed Settlement Submission

-----Original Message-----

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, September 12, 2023 11:02 AM
To: John Glugoski <jglugoski@righettilaw.com>
Subject: Thank you for your Proposed Settlement Submission

09/12/2023 11:00:12 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 4

Case Name: Sizewise

Thursday, September 7, 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 - Import and Formatting of Data*	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
				Subtotal
				\$384.66

*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.

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
				Subtotal
				\$2,620.34

*Additional Bank fees may apply

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Declaration	Hourly	\$125.00	1	\$125.00
				Subtotal
				\$245.00

TOTAL CASE ESTIMATE: \$3,250.00

DISCOUNTED 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.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification, and direct media outlets firm. With over 20 years of combined experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and has become the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- ERISA
- TCPA
- Antitrust
- Securities

Ramirez v JC Penney.

- ERISA Case with a class size of 26,000.

Kruger, et al. v. Novant Health

- ERISA Case with a class size of \$32 million.

Abbott, et al. v. Lockheed Martin Corp.

- ERISA Case with \$62 million.

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Robert Stone, et al. v. Universal Protection Services, LP, et al.

- Wage & Hour Case with a class size of 75,351.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

MEDIA & INTERNET BANNER ADS

Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.
- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID’s. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages. All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ’s) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels’ no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

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SETTLEMENT ADMINISTRATION EXPERTS

DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID's to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- **Distribution and Management:** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- **Check Printing and Mailing:** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- **Preparation, Filing and Reporting of Taxes:** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- **Data Manager Final Report:** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- **Project Manager Final Report:** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- **Affidavits:** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- **Document Retention:** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.