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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MARK CHEN, on behalf of himself, the
STATE of CALIFORNIA, and all other
aggrieved employees, as defined herein,

Plaintiff,

v.

WALMART, INC.,

Defendant.

Case No. 20STCV43043

(Assigned for All Purposes to the
Honorable Timothy P. Dillon, Dept. 73)

**DECLARATION OF MATTHEW
RIGHETTI IN SUPPORT OF
PLAINTIFF'S MOTION FOR PAGA
APPROVAL**

Date: July 27, 2022

Time: 8:30 a.m.

I, Matthew Righetti, declare that:

I make this declaration of my personal knowledge and could testify thereto if called as
a witness.

EDUCATION AND EXPERIENCE

1. I graduated from the University of California at Berkeley in 1982 with a degree in
Economics. I then graduated from the University of San Francisco School of Law in 1985. I
am admitted to practice law before the following courts: A) United States Court of Appeal in
the Ninth Circuit, the Fourth Circuit and the Federal Circuit; B) United States District Courts
in the Northern, Central, Eastern, and Southern Districts of California, and the Northern District
of Illinois, and C) all of California's state courts.

2. I have been practicing law full time for the past thirty-five (35) years. My practice has been devoted to complex class action litigation for the past twenty-six years. Much of this litigation has involved class action prosecution of wage and hour laws (state and federal), state and federal privacy laws (FCRA, CCPA and CCCRA) and consumer laws. A sampling of some of the more significant class action cases (including wage and hour litigation) handled by Righetti Glugoski, P.C., includes:

- Co-lead counsel in *Rocher v. Sav-On Drug Stores* (Hon. Victoria G. Chaney, Los Angeles County Superior Court); See, *Sav-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal.4th 319 (reversing the Second DCA, the California Supreme Court unanimously reinstated the trial court's order granting class certification). The *Sav-On* litigation was settled after the first phase of trial.

- Lead counsel in *Gentry v. Circuit City Stores, Inc.*, (2007) 42 Cal.4th 443 (reversing the Court of Appeal, the California Supreme Court set forth the factors for trial courts to use in determining whether or not to enforce bans on class actions in employment arbitration agreements).

- Lead counsel in *Crab Addison v. Superior Court*, (2008) 169 Cal.App.4th 958 [affirming the trial court, the Court of Appeal upheld an order compelling defendant to divulge names and contact information of putative class members in wage and hour overtime action].

- Lead counsel in *Rutti v. Lojack Corp., Inc.* (2010) 596 F.3d 1046 [granting plaintiffs' petition for rehearing, the Ninth Circuit reversed the district court's summary judgment order setting parameters for the *de minimus* doctrine and compensable "hours worked" under both state and federal law].

- Co-lead counsel in *In re Trans Union Privacy Litigation* (MDL, Northern District of Illinois). We were appointed by the Hon. Marvin E. Aspen to serve as co-lead counsel in multidistrict litigation against Trans Union. The litigation focused on Trans Union's use of its vast database of financial information, which includes the confidential financial information of most adults in the United States, to create and sell "target marketing" lists to advertisers in violation of the FCRA. After nearly a decade of litigation the case resulted in a settlement with Trans Union valued at more than \$100 million (including \$75 million in cash). The settlement

1 obtained final approval from the Hon. Robert Gettleman on September 17, 2008. In August
2 2009, all appeals of the order approving the settlement were dismissed and the settlement
3 became final. Pursuant to the terms of the settlement, credit monitoring relief was distributed
4 to class members as well as a cash payment to class members. We believe the Trans Union
5 certified class is the largest class of individuals ever certified in the United States.

6 • Counsel in *Elder v. Schwan Foods* (individual exemption misclassification) tried to a
7 jury verdict in the Los Angeles Superior Court.

8 o First Appeal: On May 12, 2011, the California Court of Appeal reversed a trial
9 court order that failed to award restitution and penalties following a jury verdict
10 in favor of our client. The Court of Appeal ordered the trial court to reconsider
11 the equitable remedies of restitution and civil penalties.

12 o Second Appeal: On February 27, 2013, the employer contended it was deprived
13 of its right to a statement of decision because the trial court did not issue a
14 tentative decision. The Court of Appeal rejected the employer's appeal finding
15 both that there was no prejudicial error and there was sufficient evidence in the
16 record to award restitution and civil penalties for violation of California's
overtime laws.

17 • Counsel in the matter *Roberto Martinez et al. v. Joe's Crab Shack Holdings et al.*, 231
18 Cal.App.4th 362 (2014) where the Second DCA reversed the trial court's denial of class
19 certification in an executive misclassification case.

20 • Co-counsel in cases against Home Depot and 99 Cent Only Stores where the trial courts
21 held that PAGA does not apply to alleged violations of the IWC Wage Orders. In both cases
22 the Courts of Appeal reversed in published decisions. *See Home Depot v. Superior Court*
23 (2011) 191 Cal.App.4th 210 (review denied March 16, 2011) (holding PAGA applicable to
24 seating claims on grounds that Labor Code §1198 incorporates IWC Wage Order protections);
25 *Bright v. 99 Cents Only Stores* (2010) 189 Cal.App.4th 1472 (review denied February 16, 2011)
26 (same).

27 • Co-counsel in a PAGA action against Bank of America on behalf of California bank
28 tellers. The case was twice dismissed by Judge Real. Judge Real's orders were both reversed

1 by the Ninth Circuit – *Green v. Bank of America, N.A.* (9th Cir. 2013) __ Fed. Appx., 2013 WL
2 _____ and *Green v. Bank of America, N.A.* (9th Cir. 2015) 634 Fed.Appx.188. On remand
3 the Ninth Circuit removed the case from the docket of Judge Real and re-assigned the case.

4 • Class counsel in the certified class action *Hall v. Rite Aid Corporation* in San Diego
5 County Superior Court. In 2014 the Fourth District Court of Appeal reversed the trial court’s
6 decertification order. See, *Hall v. Rite Aid Corporation*, 226 Cal.App.4th 278 (2014, review
7 denied August 27, 2014). The case settled for \$18M on the day of trial.

8 • I was co-counsel in litigation against Wal-Mart, JPMorgan Chase Bank and CVS
9 Pharmacy Inc. (*Henderson v. JPMorgan Chase Bank* (C.D. Cal.), No. 2:11-CV-03428), *Brown*
10 *v. Wal-Mart, Inc.* (N.D. Cal.), No. 5:09-cv-03339-EJD, and *Kilby v. CVS Pharmacy, Inc.* (S.D.
11 Cal.), No. 09-CV-2051-MMA. The district court in *Wal-Mart* granted class certification based
12 on plaintiffs’ construction of the law, while the district courts in *CVS* and *JPMorgan Chase*
13 denied class certification after rejecting plaintiffs’ construction of the same law. All three cases
14 were then appealed and coordinated before the Ninth Circuit in December 2013. The Ninth
15 Circuit panel asked the California Supreme Court to accept certification of three questions of
16 statutory construction (739 F.3d 1192). More than two years later, after extensive briefing by
17 the parties and *amici*, the California Supreme Court in April 2016 issued its unanimous opinion
18 in *Kilby* setting forth its definitive construction of the law. *Kilby v. CVS* (2016) 63 Cal.4th 1.
19 Based on this construction by the California Supreme Court, the Ninth Circuit affirmed the
20 grant of class certification in *Wal-Mart* (2016 WL 3212265) and reversed the district court
21 orders in *CVS* and *JPMorgan Chase*. Wal-Mart settled for \$65M.

22 • Class Counsel in *Myers v. Raley’s* where the Third DCA reversed the trial court’s order
23 denying class certification filed on behalf of technicians who were not paid for time spent
24 driving company vehicles. *Myers v. Raley’s*, 32 Cal.App.5th 1239 (2019).

25 3. Righetti Glugoski, P.C. acted as trial counsel in what we believe are the only four class
26 action overtime cases ever to have been tried under the quantitative executive exemption
27 standard articulated in *Ramirez v. Yosemite Water Company*, (1999) 20 Cal.4th 785. I was trial
28 counsel in a class action tried in Los Angeles County Superior Court before the Hon. J. Stephen
Czuleger, resulting in a finding that U-Haul had misclassified all California salaried “General

1 Managers” as exempt from overtime. I was also trial counsel in a certified class action tried in
2 San Diego County Superior Court before the Honorable Patricia Cowett, resulting in a
3 judgment finding that Party City had misclassified salaried employees as exempt and an award
4 of class wide damages, fees and costs. In the third case, I was trial counsel in the *Sav-on*
5 overtime litigation where, following remand after appeal, we completed the first phase of trial
6 before the Honorable Victoria G. Chaney in Los Angeles County Superior Court
7 (complex). The case was then settled before the second phase of trial. In the fourth trial I was
8 class counsel in a certified class action against Taco Bell alleging that its restaurant general
9 managers were misclassified as exempt under California law. The case was tried in the San
10 Diego County Superior Court before the Hon. Kevin Enright and settled after four weeks of
11 trial.

12 4. I was awarded the Daily Journal 2017 CLAY Award (“California Lawyer of the Year”) for my work on
13 suitable seating litigation. I was also honored as one of the Daily Journal’s Top
14 Labor & Employment Lawyers for 2017. I regularly speak on panels that involve class action
15 and employment issues such as trial methodology, class certification, discovery and privacy
16 issues, arbitration agreements and releases, mediation and settlement and recent developments
17 in the field. Speaking engagements are typically for organizations such as the American
18 Conference Institute, California Employment Lawyers Association, Bridgeport CEB,
19 Industrial Relations Association, and a wide range of Bar associations.

20 5. Over the years litigating these kinds of cases, we have developed a good deal of appellate
21 experience. It is quite common for our class action cases to traverse through the appellate courts
22 during the course of proceedings. We have also represented plaintiffs in many other appellate
23 court decisions in state and federal court and at the NLRB. Righetti Glugoski also represents
24 various amicus groups on occasion in court of appeal proceedings. We have handled appeals
25 throughout California and in the federal courts of the Ninth Circuit, the Seventh Circuit, the
26 Fourth Circuit and the Federal Circuit.

27 **RELEVANT LITIGATION HISTORY AND DISCOVERY DISPUTE**

28 6. The relevant procedural history of this case is set forth in the Declaration of Charles
Jones at paragraphs 11-13. While the PAGA does not set forth any trial court responsibilities

1 to review fees – and I do not expect the LWDA to oppose this settlement -- I have no issue with
2 providing an explanation showing that the fee request is reasonable.

3 **REASONABLE HOURLY RATES**

4 7. The fees being sought here are reasonable in light of the contingent nature of the fee, the
5 particular risks involved in litigating this case, the amount of work performed and the quality of
6 work performed.

7 8. I have become familiar with the market rates charged by attorneys in California. I have
8 obtained this familiarity in several ways, including: (1) Researching fee rates; (2) Handling
9 attorneys' fee litigation; (3) Discussing fees with other attorneys; (4) Reviewing declarations
10 regarding prevailing market rates in cases seeking fees; (5) Reviewing attorneys' fee applications
11 and court awards in other cases, as well as (6) Reviewing surveys and articles in legal
12 newspapers and treatises on attorney's fees.

13 9. In my experience fee awards are almost always determined based on current rates, such
14 as the attorney's rate at the time a motion for fees is made rather than the historical rate at the
15 time the work was performed.

16 10. Litigating a high-stakes case against a corporate defendant, represented by a top-
17 notch law firm (Morrison Foerster), is not appealing to most lawyers.¹ Heightening the risk is
18 the fact that the plaintiffs' lawyers will have to finance the litigation. It is not a cause undertaken
19 lightly. This case was hard fought on nearly every issue. This non-reversionary settlement
20 totaling \$5,900,000 has been endorsed by our client, Mark Chen.

21 1 The Mofo.com website states: "Our team in the U.S., Europe, and Asia understands the
22 complex employment laws, client business needs, and unique personal relationships between
23 employer and employee that together drive the world of the workplace. At some firms,
24 employment lawyers do not litigate and litigators do not know employment law. At Morrison &
25 Foerster, our Employment + Labor lawyers have decades of experience as counselors, litigators,
26 and trial lawyers. This combination of experience allows us to achieve the best outcomes for our
27 clients in matters that are often fraught with high emotions and high risk of significant monetary
28 and reputational damage. Clients rely on us, as adept litigators and trial lawyers in court,
arbitration, and other forums, to obtain the best results for their high-stakes employment disputes
that cannot be resolved amicably." See, www.mofo.com

1 11. One difficulty in determining the hourly rate of attorneys of similar skill and
2 experience in the relevant community is the scarcity of hourly fee-paying clients in wage and
3 hour litigation where “rank and file” employees cannot afford to pay attorneys to recoup unpaid
4 wages.

5 12. As a practical matter, few if any employees can afford to pay attorney fees on an
6 hourly basis to recoup wages earned. This was certainly the case with Mark Chen. Thus,
7 attorneys working on such cases typically base their retainer agreements on a contingency fee
8 relationship. In contrast, corporate defendants typically pay their attorneys on an hourly basis.

9 13. I am knowledgeable about the hourly rates charged by attorneys of varying
10 degrees of experience. In the course of my fees practice, I have reviewed the hourly rates of
11 dozens of law firms in California and elsewhere. I am also familiar with the hourly rates
12 awarded in many other fees cases by state and federal courts in California and throughout the
13 country. In addition, I have reviewed many published surveys of attorneys’ billing rates. For
14 example, four years ago the rates charged by attorneys at Sidley Austin (a large defense firm
15 similar to Morrison & Foerster) for wage and hour class action litigation was between \$925-
16 \$1000 for partners and \$905-\$540 for associates. Attached hereto (Exhibit 1) is a true and
17 correct copy of the 2018 Sidley Austin hourly fee/rate sheet produced showing Southern
18 California rates.

19 14. The work in this case was taken on a contingency fee basis where we advanced
20 all time and costs. The subject matter involved California's wage and hour laws. This is a
21 difficult area of law and professionally litigating these cases to a successful conclusion is not
22 within the knowledge of many lawyers. Work of this type requires specialized learning,
23 experience and the willingness to take large risks. Working with the Jones Law Firm, we
24 attempted to efficiently litigate the claims in this matter using a high level of skill in the difficult
25 questions that arose in this case.

26 15. A practice like ours can only properly litigate so many cases at one time. There
27 is no question that we were required to farm out work in other cases in order to meet the
28 demands of this case.

 16. We did not receive any compensation for our services during the prosecution of

1 this matter. In addition, we incurred \$53,666.41 in out-of-pocket expenses as detailed herein to
2 achieve the Settlement. The Jones Law Firm similarly incurred out of pocket costs of
3 \$29,045.59 as set forth in the Declaration of Charles Jones, para. 19.

4 17. My current hourly rate is \$975.00. My rate is on par with the 2018 rates of \$925-
5 \$1000 charged by attorneys with similar experience and qualifications who represent
6 commercial and other full-rate clients on an hourly basis. See, e.g., the 2018 Sidley Austin rate
7 sheet referenced above. The hourly rate for attorney associate work billed by my firm is \$550/hr
8 for attorneys who have been practicing over ten years. We bill the time for paralegal work at
9 \$250/hr. These rates have been approved by numerous state and federal courts.

10 18. The hourly rates charged by Righetti Glugoski, P.C. are supported by our
11 extensive and specialized experience. I believe the rates set forth in the fee application are fully
12 consistent with, if not below, the market rate for attorneys with comparable expertise,
13 experience and qualifications. Five years ago, July of 2017, the Honorable Michael W.
14 Fitzgerald in the United States District Court for the Central District of California approved
15 my rate at that time of \$800 (*Bargas v. Rite Aid*, CV-13-03865-MWF (JEMx), Docket 161,
16 Order Re Motion for Attorney Fees). The *Bargas* case was an individual wage and hour matter
17 in which plaintiff prevailed against defendant Rite Aid Corporation (represented by Paul
Hastings) following a bench trial.

18 19. I am aware of hourly rates (or their historical equivalents) for other plaintiff
19 counsel approved by courts, including in *Carrillo v. Schneider Logistics Transloading &*
20 *Distribution, Inc., et al.*, No. CV 11-8557 CAS (DTBx) (C.D. Cal.) (September 24, 2015 order
21 approving 2015 rates of \$895/hr for partners, \$775/hr for a 1994 law graduate, \$650/hr for a
22 2000 law graduate, \$630/hr for a 2001 law graduate, \$550/hr for a 2004 law graduate, and
23 \$450/hr for a 2008 law graduate, and 2015 rates for Law Clerks (\$275/hr) and Paralegals
24 (\$250/hr)); *Brooks v. U.S. Bank, N.A.*, Case No. C12-4935-EMC (N.D. Cal) (June 16, 2014
25 order approving 2014 rate of \$895/hr for partner, and 2014 rates of \$775/hr for a 1992 law
26 graduate, \$610/hr for a 2001 law graduate, \$540/hr for a 2004 law graduate, \$275/hr for law
27 clerks, and \$250/hr for paralegals); *Luquetta v. Regents of the University of California*, Case
28 No. CGC-05-443007 (San Francisco County Superior Court) (October 31, 2012 Order

1 approving 2012 rate of \$850/hr for partner, and 2012 rates of \$700/hr for a 1994 law graduate,
2 \$570/hr for a 2000 law school graduate, \$250/hr for law clerks, and \$215/hr for paralegals);
3 *Vasquez v. State of California*, Case No. GIC 740832 (San Diego County Superior Court)
4 (October 1, 2012 Order approving 2012 rate of \$850/hr for partner in civil rights case and 2012
5 rate of \$375/hr for 2008 law school graduate); *Div 15 Tech v. Sheet Metal Workers’*
6 *International Association, Local 104*, Case Nos. No. C 10-05309 JSW, C 10-05312 JSW
7 (approving 2011 rates, including \$545/hr for 2000 law school graduate and \$215/hr for
8 paralegals); *Air Line Pilots Ass’n Int’l v. United Airlines, Inc.*, CGC-07-468937 (JAMS Ref.
9 No. 1100061566) (San Francisco County Super. Ct.) (2011 rates of \$825/hr (partner)); *Zalua*
10 *v. Tempo Research Corp.*, BC319156 (Los Angeles County Super. Ct.) (2011 rates of \$825/hr
11 (partner);

12 20. In the course of my practice, I have reviewed the hourly rates of dozens of law
13 firms in California and elsewhere. The rates in this fee application are consistent with the
14 market rates for comparably qualified and experienced counsel handling similar civil litigation.

15 **LITIGATION EFFORTS**

16 21. I am the principal attorney working on this case from start to finish. In preparing
17 this fee application, I reviewed the firm’s time records, files and emails. Based on my review of
18 these records, the time reasonably spent litigating this case by me and the attorneys and paralegals
19 at my firm (including all pleadings, discovery, expert consultation and trial preparation) is 721.8
20 hours. Of those hours, 592 hours is for my time, 136.5 hours is associate time and 205.8 is paralegal
21 time. I can attest that all of the time set forth was reasonably devoted to pursuing the Plaintiffs’
22 interests and otherwise would have been billed to a fee-paying client. The total lodestar for all
23 three categories (my time, associate time and paralegal time) is \$703,800.00.

24 22. The aggregate lodestar for the Jones Law Firm and Righetti Glugoski amounts
25 to \$1,355,200 (without future hours). This represents 1,542.75 hours of attorney work and
26 205.8 paralegal hours incurred from inception of the case through the present. I believe the
27 hourly rates for the Jones Law Firm and Righetti Glugoski are reasonable as set forth in his
28 declaration.

23. The amount of time spent by each of our firms on this case is reasonable given the complexity and novelty of the issues involved, the vigorous defense, the length and intensity of the litigation, and the results obtained. Since its inception seven years ago, Plaintiff faced a fierce defense at every stage. Plaintiff was in the final stages of preparing the case for trial when the matter settled. Class Counsel litigated this action with skill and efficiency reflecting the amount of work required to achieve the settlement. Once the settlement was consummated our work did not stop. We have fielded dozens of phone calls from Walmart employees who cooperated in our litigation efforts. We continued to communicate with Walmart aggrieved employees about the status of the litigation.

Counsel's Costs

24. Class Counsel requests that its costs be reimbursed – capped per agreement in the amount of \$85,000. Righetti Glugoski reasonably incurred \$53,666.41 in costs and the Jones Law Firm incurred \$29,045.59 in costs in the prosecution of this matter (Jones Decl., para. 19) – for a combined total of \$82,712. Righetti Glugoski's costs are itemized as follows:

COST	Amount
Court Costs (Filing fees, transcripts, Court Call, Subpoenas)	\$275.00
Process Service, Courier and Overnight Delivery	\$1,526.30
Court Reporting and Deposition Costs	\$34,245.56
Travel / Lodging	\$2,425.70
Group mailings, survey and skip tracing	\$1,876.45
Expert/Consultant Fees	\$6,275.50
Copy/Imaging at \$.15 per page	\$591.90
Mediation	\$6,450.00
TOTAL	\$53,666.41

General Release Payment For Mr. Chen

25. The success of this case is due in large part to the commitment of the Plaintiff, Mark Chen. Mr. Chen was extremely helpful to us throughout all stages of this litigation, including pre-filing investigation, discovery, and the settlement process. Mr. Chen expended

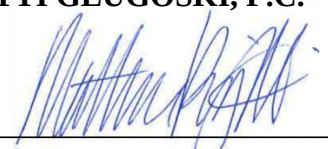
1 many hours towards the prosecution of this case. Mr. Chen provided us with numerous
2 documents describing Defendant's policies and procedures with respect to the issues in this
3 case. Mr. Chen assisted us in helping us understand the positions (beyond the front-end
4 registers litigated in the *Brown* case) and the tasks those positions were expected to be
5 performed. He provided contacts with other witnesses and co-employees and served as an
6 invaluable "sounding board" with respect to information we gathered throughout the case.
7 Moreover, Mr. Chen has agreed to a general release of all claims known and unknown against
8 Defendant. I fully support Mr. Chen's request for an enhancement for both his efforts and as
9 compensation for his general release.

10 **EXHIBITS**

11 26. Attached hereto as Exhibit 1 is a true and correct copy of Sidley Austin's 2018
12 rate sheet for partners and associates.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed this 15th day of July, 2022 at San Francisco, CA.

15
16 **RIGHETTI GLUGOSKI, P.C.**

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18 By: 

19 Matthew Righetti
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EXHIBIT 1

Andrew J. Prizler v. Charter Communications, Inc
Rate Sheet

<u>TK ID</u>	<u>Timekeeper</u>	<u>Title</u>	<u>2018 Standard Rate</u>	<u>2018 Billing Rate</u>	<u>2019 Standard Rate</u>	<u>2019 Billing Rate</u>
02943	Allen, Margaret H.	Partner	950	831	1,000	850
60970	Fischer, Max C.	Partner	925	809	975	829
43800	Lazerson, Wendy M.	Partner	950	831	975	829
12149	Roberts, Katherine A.	Partner	875	766	925	786
13696	Chao, Wesley	Associate	495	433	540	459
11257	Gonzalez, Anahi	Associate	495	433	540	459
14968	Hong, Alison H.	Associate	835	731	890	757
03043	Limbrick, Tiffanie N.	Associate	785	687	870	740
03170	Mackay, Aimee G.	Associate	860	753	905	769
10517	McDonough, Megan	Associate	495	433	635	540
19461	Miner, Katharine M.	Associate	495	433	635	540
03084	Wyson, Natali	Associate	785	687	870	740
95711	Brown, Denise D.	Paralegal	390	341	415	353
17840	L'Hoste, April K.	Paralegal	350	306	370	315
84271	O'Connell, Kathleen M.	Paralegal	360	315	380	323