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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

BRYANT HARRIS; individually, and on
behalf of other members of the general public
similarly situated, and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

vs.

TVI, INC. D/B/A SAVERS, VALUE
VILLAGE & VILLAGE DES VALEURS, an
unknown business entity; SAVERS, INC., an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: BC612403

Honorable Carolyn B. Kuhl
Department SSC12

CLASS ACTION

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

[Notice of Motion and Motion for Final
Approval of Class Action Settlement,
Attorneys' Fees, Costs, and Enhancement
Payment; Declaration of Class Counsel
(Edwin Aiwazian); Declaration of Class
Representative (Bryant Harris); Declaration of
Settlement Administrator (Tina Chiango); and
[Proposed] Final Approval Order and
Judgment filed concurrently herewith]

Date: December 10, 2019
Time: 11:00 a.m.
Department: SSC12

Complaint Filed: March 1, 2016
FAC Filed: May 31, 2016
SAC Filed: December 27, 2018
Trial Date: None Set

1 I, MATTHEW RIGHETTI, declare that:

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

4 **EDUCATION AND EXPERIENCE**

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

11 3. I have been practicing law full time for the past thirty-two (32) years. My practice has been
12 devoted to complex class action litigation for the past twenty-three years. Much of this litigation has
13 involved class action prosecution of wage and hour laws (state and federal), state and federal privacy
14 laws (FCRA and CCCRA) and consumer laws. A sampling of some of the more significant class
15 action cases (including wage and hour litigation) handled by Righetti Glugoski, P.C., includes:

16 • Co-lead counsel representing the employee-plaintiffs in *Kilby v. CVS Pharmacy, Inc.*:
17 Ruling on issues certified to the Court by the Ninth Circuit in several consolidated appeals
18 (See, 739 F.3d 1192, 1196–97 (9th Cir. 2013), *certified question accepted* (Mar. 12, 2014),
19 *certified question answered*, 63 Cal. 4th 1, 368 (2016)), the California Supreme Court agreed
20 with the employees' arguments -- rejecting the interpretations of California statutes made by
21 two federal court judges. The Supreme Court not only ruled that all working employees shall
22 be provided with suitable seats when the nature of the work reasonably permits the use of
23 seats, but also set forth the factors to help guide lower court decisions.

24 • Co-lead counsel representing the employee-plaintiffs in *Nisha Brown et al. v. Wal-*
25 *Mart Stores Inc.*, 651 Fed.Appx. 672 (2016): On June 8, 2016, the Ninth Circuit Court of
26 Appeals ruled in favor the employees when it upheld the district court's order granting class
27 certification in a wage and hour class action filed on behalf of over eighty thousand Wal-Mart
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1 cashiers who contended that Wal-Mart violated the California Labor Code by its policy of
2 refusing to provide seats to its cashiers. By rejecting Wal-Mart's arguments the case returned
3 to the district court where it resolved before trial for \$65,000,000.00.

4 • Co-lead counsel representing the employee-plaintiffs in ***Green v. Bank of America:***

5 ○ First Appeal: On May 30, 2013, the Ninth Circuit Court of Appeals ruled in
6 favor of the employees by reversing a dismissal ordered by the district court (Judge
7 Manuel Real) at the first status conference. The Court of Appeal held that Judge Real
8 erred when he found (a) the National Banking Act preempted California's wage and
9 hour regulations, and (b) employees must *request* a seat before the employer is
10 required to provide one. See, *Green v. Bank of America*, 2013 WL 4614122 (2013);

11 ○ Second Appeal: After returning to the district court following the first appeal,
12 the district judge (Judge Manuel Real) immediately dismissed the case. On October
13 13, 2015, the Ninth Circuit Court of Appeals *again* reversed the district court finding
14 that sufficient notice had been provided to the bank under the PAGA. The Court of
15 Appeal then took the unusual step of removing Judge Real from the case and
16 reassigning the case to a new judge. See, *Green v. Bank of America*, 634 Fed. Appx.
17 188 (2015). The Bank of America litigation later settled for \$15,000,000.00;

- 18 • Righetti Glugoski was also co-lead counsel representing the employee-plaintiffs in
- 19 ○ ***Home Depot v. Superior Court*** (2011) 191 Cal.App.4th 210 (review denied March
- 20 16, 2011) (holding PAGA applicable to seating claims on grounds that Labor Code
- 21 §1198 incorporates IWC Wage Order protections);
- 22 ○ ***Bright v. 99 Cents Only Stores*** (2010) 189 Cal.App.4th 1472 (review denied February
- 23 16, 2011) (same), and
- 24 ○ ***Hall v. Rite Aid Corporation***, 226 Cal.App.4th 278 (2014, review denied August 27,
- 25 2014)(reversing superior court order granting decertification of class action);
- 26
- 27

28 • Counsel in ***Elder v. Schwan Foods:***

1 Righetti Glugoski prevailed in a jury trial in Los Angeles Superior Court.

2
3 ○ First Appeal: On May 12, 2011, the California Court of Appeal reversed the trial court
4 order that failed to award restitution and penalties following the jury verdict. The Court
5 of Appeal ordered the trial court to reconsider the equitable remedies of restitution and
6 civil penalties.

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

12
13 • Co-lead counsel representing the employee-plaintiffs in *Rocher v. Sav-On Drug Stores*
14 (Hon. Victoria G. Chaney, Los Angeles County Superior Court); See, *Sav-On Drug Stores,*
15 *Inc. v. Superior Court*, (2004) 34 Cal.4th 319 (in a seminal decision, the California Supreme
16 Court unanimously overturned the Court of Appeal's decision to reverse certification). The
17 *Sav-On* litigation was settled after the first phase of trial.

18 • Counsel representing the employee-plaintiffs in *Gentry v. Circuit City Stores, Inc.*,
19 (2007) 42 Cal.4th 443 (reversing the court of appeal, the California Supreme Court set forth
20 the factors for trial courts to use in determining whether or not to enforce bans on class actions
21 in employment arbitration agreements).

22 • Counsel representing the employee-plaintiffs in *Crab Addison v. Superior Court*,
23 (2008) 169 Cal.App.4th 958 [representing plaintiffs in wage and hour litigation where court
24 of appeal affirms trial court decision compelling defendant to divulge names and contact
25 information of all putative class members in wage and hour overtime action]. The trial court's
26 subsequent order denying certification was reversed by the court of appeal on November 10,
27 2014 in a published decision. See, *Martinez v. Joe's Crab Shack Holdings*, (2014) 231
28 Cal.App.4th 362.

1 • Counsel representing the employee-plaintiffs in *Rutti v. Lojack Corp., Inc.* (2010) 596
2 F.3d 1046 [Ninth Circuit grants petition for rehearing reversing district court's summary
3 judgment order setting parameters for the *de minimus* doctrine and compensable "hours
4 worked" under both state and federal law].

5 • Co-lead counsel representing the plaintiffs in *In re Trans Union Privacy Litigation*
6 (MDL, Northern District of Illinois) [Righetti Glugoski was appointed by the Hon. Marvin E.
7 Aspen to serve as co-lead counsel in multidistrict litigation against Trans Union]. The
8 litigation focused on Trans Union's use of its vast database of financial information, which
9 includes the confidential financial information of most adults in the United States, to create
10 and sell "target marketing" lists to advertisers in violation of the FCRA. After nearly a decade
11 of litigation the case resulted in a settlement with Trans Union valued at more than \$100
12 million (including \$75 million in cash). The settlement obtained final approval from the Hon.
13 Robert Gettleman on September 17, 2008. In August 2009, all appeals of the order approving
14 the settlement were dismissed and the settlement became final. Pursuant to the terms of the
15 settlement, credit monitoring relief and a cash payment were distributed to class members.
16 We believe the Trans Union certified class is the largest class of individuals ever certified in
17 the United States.

18 4. We acted as trial counsel in what we believe are the only four class action overtime cases ever
19 to have been tried under the quantitative executive exemption standard articulated in *Ramirez v.*
20 *Yosemite Water Company*, (1999) 20 Cal.4th 785. First, I was trial counsel in a class action tried in
21 Los Angeles County Superior Court before the Hon. J. Stephen Czulger, resulting in a finding that
22 U-Haul had misclassified all California salaried "General Managers" as exempt from overtime.
23 Second, I was also trial counsel in a certified class action tried in San Diego County Superior Court
24 before the Honorable Patricia Cowett, resulting in a judgment finding that Party City had
25 misclassified salaried employees as exempt and an award of class wide damages, fees and costs. In
26 the third case, I was trial counsel in the *Sav-on* overtime litigation where, following remand the courts
27 of appeal, we completed the first phase of trial before the Honorable Victoria G. Chaney in Los
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1 Angeles County Superior Court (complex). The case was then settled before the second phase of
2 trial. In the fourth trial I was class counsel in a certified class action against Taco Bell alleging that
3 its restaurant general managers were misclassified as exempt under California law. The case was
4 tried in the San Diego County Superior Court before the Hon. Kevin Enright and settled at the end of
5 the liability phase.

6 5. I was awarded the Daily Journal 2017 CLAY Award ("California Lawyer of the Year") for
7 my work on suitable seating litigation. I was also honored as one of the Daily Journal's Top Labor
8 & Employment Lawyers and San Francisco Magazine's Top Attorneys in Northern California. I have
9 received Super Lawyer recognition for many years. I regularly speak on panels that involve class
10 action and employment issues such as trial methodology, class certification, discovery and privacy
11 issues, arbitration agreements and releases, mediation and settlement and recent developments in the
12 field. Speaking engagements are typically for organizations such as the American Conference
13 Institute, California Employment Lawyers Association, Bridgeport CEB, Industrial Relations
14 Association, and county Bar associations.

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

22 7. I believe that my education and experience qualify me to competently evaluate the claims,
23 defenses, and risks presented by this case. I am co-lead counsel in this case, and I am intimately
24 familiar with the facts and evidence.

25 **LITIGATION EFFORTS**

26 8. Before filing the seating claim against TVI, attorneys at Righetti Glugoski conducted an
27 investigation to substantiate the allegations.
28

1 9. After filing this lawsuit TVI denied all the allegations and asserted a wide variety of
2 affirmative defenses. TVI also contended that no class should be certified in this Action, and that
3 even if found liable, the available remedies were not substantial.

4 10. This matter has been heavily litigated including multiple rounds of written discovery,
5 numerous document requests and productions, and depositions. The parties engaged in extensive
6 rounds of meet and confer efforts regarding discovery.

7 11. The proposed Settlement Agreement represents a compromise and settlement of highly
8 disputed claims. Counsel for Plaintiff have conducted a thorough investigation into the facts of this
9 case, and we diligently pursued an investigation of the claims, including, but not limited to: (i)
10 reviewing voluminous documents and data productions; (ii) researching the applicable law and the
11 potential defenses; (iii) preparing for, conducting and defending depositions; (iv) interviewing,
12 hiring, preparing and consulting with consultants and experts. (v) interviewing and regularly
13 communicating with and advocating for the rights of the putative class members and aggrieved
14 employees; (vi) developing arguments and marshalling evidence in support of pre-trial motions and
15 trial; (vii) preparation for trial, including preparation of a detailed trial plan; (viii) mediation
16 preparation and settlement efforts, and (xi) formalizing the settlement documentation and approvals.

17 12. Based on independent investigation and evaluation, taking place over the course of this
18 litigation, I believe that the proposed Settlement is fair, reasonable, and adequate and is in the best
19 interest of the Plaintiff, the State of California and the Aggrieved Employees in light of all known
20 facts and circumstances, including the risk of further delay, the defenses asserted by TVI, trial risk,
21 and appellate risk.

22
23 **THE REQUEST FOR FEES AND COSTS IS REASONABLE**

24 13. While I am admittedly self-interested in this case – and I present this declaration as an
25 advocate not an expert – I believe the fees being sought here are reasonable in light of the
26 contingent nature of the fee, the risks presented by this litigation, the amount of work performed and
27 the quality of work performed. The attorneys who worked on this matter at our firm on behalf of the
28 Plaintiff billed their work at rates between \$850/hour and \$500/hr and \$165/hr for paralegal work. On

1 March 28, 2019, the Hon. Edward Davila recently approved of these rates in an Order and Final
2 Judgment. *See, Brown et al. v. Wal-Mart Stores, Inc.* Case No. 5:09-cv-03339-EJD (Order dated
3 March 28, 2019.) Also, on July 10, 2017, the United States District Court, Central District of
4 California, Honorable Michael W. Fitzgerald, approved my rate at that time at \$775 per hour and the
5 rate of Michael Righetti at \$450 per hour in a contested fee motion after trial in the wage and hour
6 matter of *Bargas v. Rite Aid*, Case No. 2:13-cv-03865-MWF-JEM. Associates at Righetti Glugoski,
7 P.C. charge an hourly rate between \$500 and \$700 depending on the level of experience.

8 14. I have become familiar with the non-contingent market rates charged by attorneys in
9 California, and the rates requested herein are in line with the market rates with other attorneys of
10 similar skill and experience. I have obtained a familiarity with market rates for California attorneys
11 in several ways, including: (1) researching fee rates; (2) handling attorneys' fee litigation; (3)
12 discussing fees with other attorneys; (4) reviewing declarations regarding prevailing market rates in
13 cases seeking fees; (5) reviewing attorneys' fee applications and court awards in other cases; and (6)
14 reviewing surveys and articles in legal newspapers and treatises on attorney's fees.

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

18 16. This Court can appreciate that litigating a high-stakes case against a corporate defendant,
19 represented by a top-notch law firm, in an unsettled area of law is not appealing to most lawyers.
20 Heightening the risk is the fact that the plaintiff's lawyer will have to finance the litigation. It is not
21 a cause undertaken lightly.

22 17. One difficulty in determining the hourly rate of attorneys of similar skill and experience in
23 the relevant community is the scarcity of hourly fee-paying clients in class action or PAGA litigation.
24 As a practical matter, few if any consumers or employees pay attorney's fees on an hourly basis for
25 such extensive litigation. Thus, in such cases attorneys base their retainer agreements on a
26 contingency fee relationship.

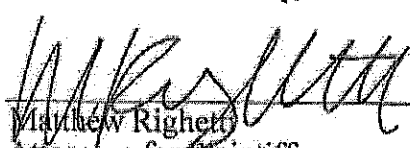
27 18. The work in this case involved a PAGA representative action and California's IWC Wage
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1 Order laws. Litigating this action took years and required the investment of cash to advance costs.
2 This is a very difficult area of law and not within the knowledge of many lawyers as it requires
3 knowledge of the substantive law, law under the PAGA, and enforcement positions of state and
4 federal agencies. Representative action work of this type requires specialized learning and the
5 willingness to take large risks. Counsel in this case used a high level of skill in the difficult questions
6 that arose.

7 19. I reviewed the firm's time records, files and emails in preparing this declaration regarding
8 our fee request. Based on my review of these records, I can attest that all of the time we spent on this
9 matter was reasonably devoted to pursuing prosecution of this case and would have been billed to a
10 fee-paying client. The efforts of this firm are set forth accurately on the Attorney Task and Time
11 Chart attached as an exhibit to the concurrently filed Declaration of Edwin Aiwarzian. As well, I can
12 attest to the time and efforts spent by co-counsel at Lawyers for Justice, PC. Under a strict lodestar,
13 the fees expended to date by Plaintiff's Counsel and paralegals who worked on this case using the
14 requested rates is very reasonable, and we expect to incur additional fees obtaining approval of and
15 administering the settlement.

16 20. In short, I believe the attorney-hours spent litigating the case, as set forth in the Attorney
17 Time and Task Chart, are reasonable. I personally reviewed the time records and edited them to
18 account for any duplicative work. In complex wage and hour litigation of this nature, it is not unusual
19 to have more than one attorney working on the same case, and this case was no exception.
20

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed this 12th Day of November at San Francisco, CA.
23

24
25 By: 
26 Matthew Righetti
27 Attorneys for Plaintiff
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