Matthew Righetti, Esq. (SBN. 121012)
matt@righettilaw.com
John Glugoski, Esq. (SBN 191551)
jglugoski@righettilaw.com
RIGHETTI GLUGOSKI, P.C.
2001 Union Street, Suite 400
San Francisco, CA 94123
Telephone: (415) 983-0900

Reuben D. Nathan (SBN. 208436)
rnathan@nathanlawpractice.com
NATHAN & ASSOCIATES, APC
2901 West Pacific Coast Hwy, Suite 200
Newport Beach, California 92663
Tel: (949) 270-2798
Fax: (949) 209-0303

Attorneys for Plaintiffs Virginia Brew, Tony Grosbeier, Courtney Tolbert, D C Snyder, and Timothy Mellen

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

VIRGINA BREW, TONY GROSBEIER, COURTNEY TOLBERT, D C SNYDER, AND TIMOTHY MELLEN on behalf of themselves and all similarly situated persons, and the general public, Plaintiffs, v. ROCKET MORTAGE, LLC.; and DOES 1 through 25, inclusive, Defendants.	CASE NO. **24-CIV-00893** *Assigned for all purposes to the Honorable Nancy L. Fineman, Dept. 4* **PLAINTIFFS' NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Hearing Date: September 24, 2024 Time: 2:00 p.m. Dept: 4

TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 24, 2024 at 2:00 p.m. in Department 4 of the above-captioned court located at 400 County Center, Redwood City, CA 94063, Plaintiffs Virginia Brew, Tony Grosbeier, Courtney Tolbert, D C Snyder, and Timothy Mellen will, and hereby do, move for an order:

1. Granting preliminary approval of the proposed Joint Stipulation of Class Action Settlement;
2. Appointing Plaintiffs as Class Representatives;
3. Appointing Plaintiffs' counsel as Class Counsel;
4. Appointing Phoenix Settlement Administrators as the Settlement Administrator;
5. Approving the form of notice to the Class and Notice Procedures;
6. Setting the hearing date for a Motion for Final Approval and other related dates and deadlines.

This motion is made on the grounds that the settlement is fair, reasonable, and adequate because it is the product of arm's-length, good-faith negotiations after significant litigation, and given the relative strengths and weaknesses of the claims and defenses, as well as the risks involved in pursuing further litigation. This motion will be based upon this Notice, the accompanying Memorandum of Points and Authorities, Declaration of John Glugoski, Declaration of Reuben D. Nathan, as well as the pleadings and papers on file herein and upon any other matters that may be presented to the Court at the hearing.

Dated: July 3, 2024

Respectfully Submitted,

RIGHETTI GLUGOSKI, P.C.

John Glugoski
Attorneys for Plaintiffs Virginia Brew, Tony Grosbeier, Courtney Tolbert, D C Snyder, and Timothy Mellen

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Virginia Brew, Tony Grosbeier, D C Snyder, Courtney Tolbert, and Timothy Mellen ("Plaintiffs") and Defendant Rocket Mortgage, LLC ("Defendant" and/or "Rocket") have reached a proposed settlement that resolves this putative wage-and-hour class action and PAGA action. Plaintiffs seek preliminary approval of this settlement pursuant to California Code of Civil Procedure § 384 and California Rules of Court, Rule 3.769.

Rocket Mortgage, LLC is a privately held mortgage company and residential home lender. Plaintiffs were employed by Rocket in California. The parties have reached a settled of the claims alleged in the lawsuit on behalf of the following class ("Settlement Class" or "Class"):

> all current and former non-exempt individuals employed by Defendants in California, at any time from June 21, 2019 through the date of preliminary approval

It is estimated based on Rocket's records that there are approximately 644 class members, who worked 40,803 workweeks. The proposed settlement amount of $4,500,000.00 is expected to provide the settlement class members with an average individual payment of approximately $3,738.16 per class member (i.e., $59.00 per workweek) based on the formula set forth in Section III B. 1. below. The estimated average gross recovery per class member is $6,987.57.

The settlement will also provide a payment of $187,500.00 to the California Labor and Workforce Development Agency (i.e., 75% of the $250,000.00 amount allocated to resolve the PAGA allegations). The remaining $62,500.00 shall be distributed amongst approximately 545 PAGA Employees who worked 15,632 pay periods.[1] The settlement provides the settlement class members, who worked during the PAGA period (PAGA Employees), with an average PAGA payment of approximately $114.67 per PAGA Employee. The settlement PAGA Employees' individual PAGA Payments shall be based on the formula discussed in Section III B. 1. below.

[1] Of the 644 class members, 545 individuals were also employed during the shorter PAGA period of April 14, 2021 through the date of preliminary approval. These 545 employees will receive a PAGA payment as well.

This settlement will fully resolve the lawsuit in connection with the claims alleged in the First Amended Complaint ("FAC"). As set forth below, the settlement is fair, reasonable, and adequate, and Plaintiffs respectfully request that the Court grant preliminary approval.

II. RELEVANT FACTUAL BACKGROUND

A. The Parties and Plaintiffs' Allegations

The Plaintiffs in this action were all hired and worked for Rocket in California as non-exempt employees during the class period. Declaration of J. Glugoski ("Glugoski Decl.") ¶ 28 FAC ¶¶ 16 and 17. Plaintiffs' job duties included working with customers to facilitate the completion and approval of home loans and/or refinancing of existing home mortgages. Plaintiffs allege Defendants engaged in wage and hour violations and discussed the same with co-employees who corroborated to Plaintiffs that they had experienced the same violations that Plaintiffs complained of. Glugoski Decl. ¶21. The operative FAC alleges all the claims being resolved based on theories that Rocket failed to pay minimum, regular, and overtime wages, failed to provide employees with compliant meal and rest breaks, failed to reimburse business expenses, failed to timely pay wages, engaged in unfair competition, and is liable for PAGA penalties. FAC ¶ 2. Defendant filed an Answer denying all of Plaintiffs' allegations.

B. Relevant Procedural History[2]

On June 21, 2023, Plaintiff Courtney Tolbert ("Tolbert") filed a putative class action complaint against Rocket in Riverside County Superior Court (Case No.: CVRI2303158) alleging the following causes of action: (1) unpaid minimum wage; (2) unpaid overtime; (3) improper meal periods; (4) improper rest periods; (5) unlawful deductions; (6) inaccurate wage statements; (7) waiting time penalties; (8) failure to reimburse business expenses; and (9) unfair competition. Rocket subsequently removed Tolbert's complaint to the United States District Court for the Central District of California (Case No. 5:23-cv-01450 MCS (PVCx)). The parties fully briefed class certification and were set to appear for the hearing on the Motion for Class Certification on March 25, 2024, before the Hon. Mark C. Scarsi.

[2] This settlement seeks to resolve the claims from four separate lawsuits pending in four different actions throughout the state of California, which have been brought together in this action for purposes of settling all matters. See Decl. of J. Glugoski para 7-13, detailing the four consolidated actions.

A true and correct copy of the Docket from the Tolbert action before Judge Mark C. Scarsi is marked and attached as Exhibit 1 to the Declaration of J. Glugoski. The Motion for Class Certification, Opposition and Reply briefs, including the supporting Declarations of Plaintiffs' experts Arzumanyan and Ingersoll and Defendants' expert Crandall can be found at Docket No. 54 through 54-8 (Motion), 60 through 61-35 (Opposition), and 63 through 63-4 (Reply) in *Tolbert v. Rocket*, United States District Court, Central District of California (Case No. 5:23-cv-01450 MCS (PVCx)).

On March 7, 2024, while the motion for class certification was looming, Plaintiffs and Rocket, by and through Class Counsel and Defense Counsel respectively, participated in an all-day mediation presided over by Steven Mehta, Esq. While a resolution was not reached at the mediation, the Parties continued to engage in arms' length negotiations. On March 25, 2024, the Parties reached a global settlement which, subject to court approval, fully disposes of all claims alleged in the four actions that have been consolidated before this Court into one operative complaint: a) the instant action, b) the putative representation PAGA action filed in Los Angeles County Superior Court (*D C Snyder v. Rocket Mortgage, LLC*, et al., Case no. 22STCV20293), and c) the putative class action initially filed in the Riverside county Superior Court and later removed to the U.S. District Court for the Central District of California (*Courtney Tolbert v. Rocket Mortgage, LLC*, Case No. 5:23-cv-01450-MCS-PVC) (collectively, the "Actions").

The parties eventually signed a Settlement Agreement and agreed to the form of notice for the Notice of Class Action Settlement ("Class Notice"). A true and correct copy of the Settlement Agreement and proposed Class Notice are attached as Exhibits 2 and 3. The reminder postcard that will be mailed to class members with checks that remained uncashed is attached as Ex. 4. to the Declaration of J. Glugoski. Glugoski Decl. ¶ 23.

Plaintiffs now move for Preliminary Approval of the proposed settlement.

C. Discovery and Investigation

As noted above, on July 25, 2023, the *Tolbert* action was removed to the United States District Court for the Central District of California (Case No. 5:23-cv-01450 MCS (PVCx)) and assigned to the Honorable Mark C. Scarsi.

On September 19, 2023, Judge Scarsi issued a Scheduling Order setting the deadline of January 30, 2024 for Plaintiff Tolbert to file his Motion for Class Certification. Judge Scarsi set the Opposition deadline for February 20, 2024 and Plaintiff's Reply brief deadline for March 5, 2024. The hearing on the Motion was scheduled to take place on March 25, 2024.

To meet Judge Scarsi's breathtakingly fast class certification deadlines, the parties moved quickly to prepare for the class certification briefing and hearing. When the parties attempted to jointly request a short modification of the briefing schedule due to scheduling conflicts, Judge Scarsi immediately denied the request without explanation.

By March 5, 2024, the parties had fully briefed the class certification motion pursuant to Judge Scarsi's scheduling order. At the class certification hearing, the parties announced to Judge Scarsi that, subject to court approvals, they had reached a global resolution of the claims in the pending cases (See Decl. of J. Glugoski ¶¶ 8-13 detailing the four pending actions.).

The mountain of work performed in *Tolbert* to meet Judge Scarsi's deadlines was the catalyst for the parties' negotiations and eventual resolution of this case. (See Decl. of J. Glugoski ¶¶ 18-22 for a detailed explanation of the work performed, the discovery conducted, as well as the analysis and investigation performed leading to this proposed settlement). The sheer magnitude and volume of the discovery conducted in the *Tolbert* matter in a short timeframe is evident by the number of depositions taken (22), documents (13,387 pages of documents) and employment and payroll data (323 MB) produced by Rocket in response to *Tolbert* discovery efforts. The discovery conducted by counsel also demonstrates that Plaintiffs have and will continue to fairly and adequately represent the class.

1. Settlement Negotiations

Tolbert's work, referenced above, enabled Plaintiffs to enter settlement negotiations armed with the information necessary to evaluate and resolve this matter for a fair and reasonable amount, having thoroughly assessed the risks and prepared an estimated class-wide damages model. Glugoski Decl. ¶ 25.

Furthermore, Plaintiffs' counsel (Righetti Glugoski, P.C. and Nathan & Associates, APC) are very familiar with wage and hour class actions in general – and particularly those that arise in the context of the mortgage industry with similar claims alleged herein. Plaintiffs' counsel have been counsel of record and settled numerous cases that involve the same groups of employees, issues, and industry against some of the largest mortgage lenders in the country, including, but not limited to Loan Depot, Nationstar, Guaranteed Rate, and Home Point. Glugoski Decl. ¶ 24. Plaintiffs' counsel's experience in litigating and settling similar cases in the mortgage industry provided Plaintiffs with a strong foundation to not only appreciate the strengths and the weaknesses of each side's position but also how to value the claims for purposes of a settlement. Glugoski Decl. ¶ 25.

The negotiations were conducted at arm's-length and the resulting settlement was the outcome of an informed and educated analysis regarding certification and liability issues and the total exposure in relation to the costs and risks affecting Plaintiffs and the Class. Glugoski Decl. ¶ 25. This settlement was accomplished after discovery and investigation, with Plaintiffs having invested in extensive factual and legal research, engaged in numerous discussions and exchanges of correspondence, reviewed, and analyzed time and payroll records and data, policy documents, and other relevant documents, and conducted extensive negotiations thereafter. It was only after the parties thoroughly assessed the risks that they entered into a well-reasoned settlement. Glugoski Decl. ¶ 25.

There was considerable risk and uncertainty for both sides which gave the parties the perspective and the incentive to thoroughly assess the risks of the case. Glugoski Decl. ¶ 25. These factors also support a finding that the settlement is fair and reasonable.

Plaintiffs' counsel thoroughly analyzed all of the available information and documents to evaluate the strength of each claim and prepare a class-wide damages analysis, taking into account the strengths and weaknesses of the parties' positions, the risks of litigation -- and Rocket's financial position given the present challenges facing the mortgage industry to arrive at this settlement. Glugoski Decl. ¶ 25.

III. SUMMARY OF SETTLEMENT TERMS

A. The Proposed Settlement Class

Consistent with the operative pleading, the Settlement Class to be conditionally certified consists of all current and former non-exempt employees who were employed by Rocket in the State of California, at any time from June 21, 2019 through the date of preliminary approval. See

Settlement Agreement, Ex. 2 at ¶ 1.4 & 1.11.

B. Relief Provided by the Settlement Agreement

The total settlement amount is $4,500,000.00 which will be used to compensate Class Members, make a $187,500.00 payment to the LWDA (75% of the $250,000.00 PAGA allocation), pay the Settlement Administrator's Expenses, the Class Representatives' service payments, and Class Counsel's attorneys' fees and costs. See, Settlement Agreement, Ex. 2, ¶¶ 4.1-4.2.5.1. The employer-side payroll taxes on the wage portion of the settlement will be paid separately and in addition to the total settlement amount. Settlement Agreement, Ex. 2, ¶ 5.2.

1. Settlement Allocation Formula

The Participating Class Members (defined as Class Members who do not opt-out) will be paid pursuant to an allocation formula based on the number of workweeks they worked for Rocket during the class period. Settlement Agreement, Ex. 2 ¶ 4.2.4.[3] Each Participating Class Member's individual settlement payment will be calculated by: (a) dividing the net settlement amount by the total number of Workweeks worked by all Participating Class Members during the Class Period,[4] and (b) multiplying the result by each Participating Class Member's Workweeks. Every Participating Class Member will be entitled to receive an Individual Class Payment equal to at least one (1) Workweek. Settlement Agreement, Ex. 2 ¶ 4.2.4.

For tax purposes, the Individual Settlement Payments will be allocated as follows: 20% to the settlement of wage claims and 80% to settlement of claims for interest and penalties. Settlement Agreement, Ex. 2 ¶ 4.2.4.1.

The PAGA Employees ("PAGA Participants") will be paid pursuant to an allocation formula based on the number of pay periods they worked for Rocket during the PAGA period. Settlement Agreement, Ex. 2 ¶¶ 1.30, 4.2.4, 4.2.5.1.

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[3] **"Participating Class Member"** means a Class Member who does not submit a valid and timely Request for Exclusion from the Class Settlement.

"Workweek" means any week during the Class Period which a Class Member worked for Defendant in California for at least one day.

[4] "**Class Period**" means the four years preceding the initiation of these claims, i.e., from June 21, 2019 through the date of preliminary approval, and includes 644 individuals employed during this time period.

2. No Reversion and No Claim Form Required

This is a non-reversionary settlement. Settlement Agreement, Ex. 2 ¶ 4.1. To make the relief provided by the Settlement as accessible to Class Members as possible, the Parties have agreed to eliminate the claims process. Settlement Agreement, Ex. 2 ¶ 8.5.3. Each Class Member who does not submit a timely and valid opt-out request within 45 days after the Class Notice is first mailed will be automatically mailed a check for his or her pro rata portion of the Settlement. Settlement Agreement, Ex. 2 ¶¶ 8.5.1 & 8.5.3. Glugoski Decl. ¶ 26.

3. Distribution of Uncashed Settlement Checks

The Settlement Agreement provides that Class Members shall have one-hundred eighty (180) calendar days from the postmark date of the checks to deposit or otherwise cash their settlement checks. Settlement Agreement, Ex. 2 ¶ 5.3.1-5.3.4. As to the funds that remain in the Settlement Fund Account after 180 days due to Class Participants' failure to deposit or cash their settlement checks, those funds will be sent to the State of California's Unclaimed Property Fund in the Class Participants' names. *Id*. A postcard will be mailed by the Settlement Administrator to all Class Members with checks that remain uncashed ninety (90) days after issuance to notify those Class Members about the upcoming void date. Settlement Agreement, Ex. 2 ¶ 5.3.3.

4. Scope of the Release

Class Participants will release all claims arising from the same set of facts alleged in the FAC and the LWDA letters. Settlement Agreement, Ex. 2 ¶ 6.2.

The released parties are defined as:

> (i) Defendant and all its present and former parent companies, subsidiaries, divisions, related or affiliated companies (including, without limitation, Rocket Companies, Inc.), shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims, and Defense Counsel of record in the Action.

Settlement Agreement, Ex. 2 ¶ 1.41

The PAGA Employees will release all claims for PAGA penalties that were alleged or could have been alleged by Plaintiffs based on the facts alleged in the FAC and Plaintiffs' LWDA PAGA letters referenced above. Settlement Agreement, Ex. 2 ¶ 6.3.

C. Requested Attorneys’ Fees and Costs and Proposed Service Payments to the Class Representatives.

The Settlement Agreement allows Class Counsel to apply for an award of attorneys’ fees of 35% of the Total Settlement Amount ($4,500,000.00) plus costs not to exceed $200,000.00. Settlement Agreement, Ex. 2 ¶ 4.2.2. Plaintiffs may also apply to the Court for a Plaintiffs’ enhancement payment of up to $25,000.00 to compensate Plaintiffs for their service to the class as follows: Ten Thousand Dollars and Zero Cents ($10,000.00) to Tolbert; Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Snyder; and Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) each to Virginia Brew, Tony Grosbeier, and Timothy Mellen. In addition, the Court recognizes that in exchange for a general release (i.e., a release that is more broad than the Class Member release), the named Plaintiffs shall receive $30,000.00 to be allocated as follows: Fifteen Thousand Dollars and Zero Cents ($15,000.00) to Tolbert; Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Snyder; and Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) each to Virginia Brew, Tony Grosbeier, and Timothy Mellen. See Exhibit 2 to Declaration of John Glugoski, Settlement Agreement ¶ 4.2.1. [5]

These amounts are preliminarily reasonable and justified based on the work performed and the costs incurred by Plaintiffs and Plaintiffs’ counsel in order to obtain a successful result on behalf of the Class Members. Glugoski Decl. ¶ 28. Plaintiffs will file a Motion for Award of Class Representative Service Payments, General Release Payments, Settlement Administrator’s Expenses, and Class Counsel’s Attorneys’ Fees and Costs to be heard at the same time as the Motion for Final Approval. To the extent the Court awards less than the requested amounts, the difference will be added to the amount to be distributed to the Class Members. Settlement Agreement, Ex. 2 ¶ 4.2.1 & 4.2.2.

D. Settlement Administration.

As explained further in Section IV.B.7 below, the Settlement Agreement provides for each Class Member to receive notice of the Settlement by first class mail after skip tracing to ascertain any address changes. *Id*. ¶ 8.4.1. The notice administration plan will ensure that substantially all of

[5] The Plaintiffs have entered into General Releases and waived their rights under Civil Code Section 1542 in order to resolve any all potential claims the Plaintiffs have or may have, whether known or unknown against Rocket in exchange for general release payments not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00).

the Class Members receive notice of the Settlement and will be adequately apprised of and able to exercise their rights and options thereunder. Phoenix Settlement Administrators, an experienced third-party claims administrator, will handle all aspects of the notice process and settlement administration including running searches for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members. Settlement Agreement, Ex. 2 ¶¶ 1.9 & 5.3.1 and 5.3.2. Phoenix Settlement Administrators' CV and proposal detailing their work in this case are both marked and attached as Exhibit 5 to the Glugoski Declaration. See Glugoski Decl. ¶ 29. Class Counsel will also be available to the Class Members to answer their questions and encourage participation.

IV. ARGUMENT

A. The Settlement Class Should Be Provisionally Certified.

During the preliminary approval analysis, the Court determines whether certification of a provisional settlement class is appropriate and whether the settlement is fair. *Carlin v. DairyAmerica, Inc.*, 328 F.R.D. 393, 398-399 (E.D. Cal. 2018) (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). Pursuant to Federal Rule of Civil Procedure 23(a), the plaintiff must show that the requirements of numerosity, commonality, typicality, and adequacy of representation are met. The settlement class must also meet one of the requirements of Rule 23(b). Plaintiffs seek certification under Rule 23(b)(3), which requires that common questions of law or fact predominate over individual questions and that class treatment is a superior method of resolving the controversy. California adopts Federal Rule 23 in terms of the criteria that must be met for class certification. Each of the factors are discussed below. See *Sav-on Drug Stores v. Superior Court*, 34 Cal.4th 319, 326 (2004).

1. The Settlement Class Is Sufficiently Numerous.

The first requirement of Rule 23(a) is that the class be so numerous that joinder of all members would be "impracticable." *See* Fed. R. Civ. P. 23(a)(1). Numerosity is satisfied with as few as 40 class members. *See Welling v. Allexy*, 155 F.R.D. 654, 656 (N.D. Cal. 1994). Here, numerosity is satisfied because there are approximately 644 class members – all of whom are identifiable from

Rocket's records. Glugoski Decl. ¶ 33

2. There Are Common Issues of Law and Fact.

Rule 23(a) also requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The commonality requirement is permissively construed such that the "existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Plaintiffs meet the criteria of Rule 23(a)(2) because the Class Members' claims turn upon answers to overarching common questions regarding Rocket's policies and procedures that are capable of classwide resolution for settlement purposes.

Here, the common questions include whether Plaintiffs and the class members: (1) were properly compensated for all straight and overtime hours worked; (2) were provided with a duty-free rest break of at least 10 minutes for every 4 hours of work or major fraction thereof; (3) were provided with a duty-free meal period of at least 30 minutes before the end of the fifth hour of work; (4) were reimbursed for all expenses incurred while performing work for Rocket from home; (5) were provided with accurate, itemized wage statements; and (6) engaged in unlawful business practices. These questions are based on alleged policies and practices that apply to the entire class and discrete subclasses. This is sufficient to satisfy the commonality requirement.

3. Plaintiffs' Claims Are Typical of the Settlement Class.

Under Rule 23(a)(3), Plaintiffs must establish that the "claims or defense of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). This is a permissive standard that is met so long as the representative claims "are reasonably coextensive with those of absent class members." *Hanlon*, 150 F.3d at 1020.

Here, the named Plaintiffs satisfy the typicality requirement because they have held the same positions and assert the same types of injury arising from the same conduct by Rocket as Plaintiffs.

4. Plaintiffs and Their Counsel Will Adequately Represent the Settlement Class.

Rule 23 also requires that "the representative parties fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy this element, Plaintiffs must establish that: (1) the class representatives do not have a conflict of interest; and (2) class counsel will adequately represent the interests of the class. *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

Plaintiffs have no conflicts of interest with the class members. They performed similar work and were subject to the same policies and practices as the Class Members. Plaintiffs' claims are identical to the claims of the other class members and arise from the same course of conduct by Rocket. Plaintiffs have embraced their responsibilities as the class representatives by actively participating in this case, providing documents, identifying potential witnesses, providing valuable information regarding the policies and practices at issue in this case and Rocket business structure, engaging in the settlement process, and consulting with counsel throughout the litigation. Glugoski Decl. ¶ 31. Plaintiffs have devoted considerable time to this litigation and are prepared to continue to do so, demonstrating their commitment to achieving the best possible result for the class.[6] *Id*. Further, Plaintiffs are represented by qualified and competent counsel, who have the experience and resources necessary to vigorously pursue this action. Glugoski Decl. ¶¶ 1-6; Nathan Decl. ¶¶ 2-7. The firms representing Plaintiffs have certified many class actions in state and federal court, for both litigation and settlement purposes, and have recovered many millions of dollars on behalf of class members.

5. Common Issues Predominate Over Individualized Issues.

Rule 23(b)(3) certification is proper when common questions "predominate over any questions affecting only individual members" and class resolution is "superior to other available methods for the fair and efficient resolution of the controversy." Fed. R. Civ. P. 23(b)(3). Both Rule 23(b)(3)'s predominance and superiority requirements are satisfied for purposes of certifying the proposed Settlement Class. "The Rule 23(b)(3) predominance inquiry tests whether proposed class [is] sufficiently cohesive to warrant adjudication by representation." *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 623 (1997). This motion filed before the Hon. Mark Scarsi confirms that Plaintiffs

[6] Further details regarding the Plaintiffs' work on the case will be presented in a declaration with the motion for final approval.

satisfy this test. See Dkt. Nos. 54-5, 54-6, 63-2, and 63-3 of *Tolbert v. Rocket*, United States District Court, Central District of California (Case No. 5:23-cv-01450 MCS (PVCx)).

Here, the legality of the challenged policies and practices involve common questions that can be decided with common proof and will generate an answer common to the entire class. The common questions include: (1) whether Plaintiffs and the Class Members were properly paid all overtime compensation owed; (2) whether employees were denied compliant rest breaks and meal periods; (3) whether Rocket paid rest break and meal period premiums when required; (4) whether employees were reimbursed for expenses paid by employees while performing work for Rocket; and (5) whether wage statements were non-compliant in light of the alleged failure to pay wages and provide rest breaks. If the case were to be litigated, the common proof would include, among other things, employee handbooks, standalone policy documents, performance reviews, and Plaintiffs' and the Class Members' time and payroll records, as well as documents reflecting when employees logged into and out of their phones.

6. A Class Action Is Superior to Individual Actions.

Rule 23(b)(3)'s final requirement is "that the class action be superior to other methods of adjudication." This requirement is satisfied because there is no indication that Class Members seek to individually control their cases, that individual litigation is already pending in other forums, or that this particular forum is undesirable for any reason. Fed. R. Civ. P. 23(b)(3)(A)-(D). In addition, the alternative of hundreds of individual actions "is not realistic." *See Wren v. RGIS Inventory Specialists*, 256 F.R.D. 180, 210 (N.D. Cal. 2009). Accordingly, certification of a settlement class is superior to any other method of resolving this matter, since it will promote economy, expediency, and efficiency. California has a strong "public policy that encourages the use of the class action device." *Sav-On Drug*, *supra*, 34 Cal. 4th at 340. The superiority analysis also includes considerations of whether individual members are likely to come forward and claim a part of the recovery and whether a group action will serve to deter future wrongdoing. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 445.

Rocket does not object to certification of the class for purposes of this settlement. Settlement Agreement, Ex. 2 ¶ 13.1.

7. The Court Should Appoint Plaintiffs as the Class Representatives and Plaintiffs' Counsel as Class Counsel.

Plaintiffs should be appointed as the class representatives. Plaintiffs' counsel should also be appointed to represent the settlement class. The factors that apply in deciding whether to appoint class counsel are: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. FED. R. CIV. P. 23(g)(1)(A).

As set forth herein, Plaintiffs' counsel conducted a thorough investigation of the claims at issue before filing the complaint and during the three years and three months of litigation leading up to this settlement. Plaintiffs' counsel has extensive experience litigating wage-and-hour class actions and representative actions, is well-versed in the applicable law, and has ample resources to dedicate to the case. Glugoski Decl. ¶¶ 1-6; Nathan Decl. ¶¶ 4-7. The firms representing Plaintiffs have vigorously represented the Class Members' interests, and will continue to do so.

B. The Settlement Should Be Preliminarily Approved.

A class action settlement requires court approval upon a finding that the settlement is fair, reasonable, and adequate. FED. R. CIV. P. 23(e); *Hanlon*, 150 F.3d at 1026. There are two sources of factors for the fairness analysis: case law, and Federal Rule of Civil Procedure 23(e). The fairness factors established by case law provide that a settlement should be preliminarily approved if it: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to the class representatives or segments of the class; and (4) falls within the range of possible approval. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-1080 (N.D. Cal. 2007).

The relevant factors under Rule 23(e)(2) are whether: (1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) the relief provided for the class is adequate, taking into account (a) the costs, risks, and delay of trial and appeal; (b) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class members' claims; (c) the terms of any proposed award of attorney's fees, including the timing of the payment; (d) any agreement required to be identified under Rule 23(e)(3)[7]; and (4) the proposal treats class members equitably relative to each other.

1. The Settlement Was Negotiated at Arm's Length by Experienced Counsel After Extensive Discovery.

The settlement is the product of protracted arm's-length negotiation. Class Counsel advocated vigorously on behalf of the Class throughout the negotiations in order to negotiate a settlement that is in the best interest of the Class Members and provides adequate class-wide relief. Glugoski Decl. ¶ 25. The vigorous negotiations between the Parties resulted in a reasonable compromise that is the product of genuine give and take justified by the facts of this case. Plaintiffs are represented by highly experienced class action litigators, who believe that the settlement is an excellent result for the Class Members.

Further, there are no "subtle signs of collusion." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). The settlement is non-reversionary. The Settlement provides for an attorneys' fee award of up to 35% of the Total Settlement Amount, which is in line with the market rate. *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal. App. 4th 19. *Lealao* stands for the proposition that court-awarded attorney's fees should approximate what counsel could get on the free market for the same services. The settlement is an outstanding result for the Class. Similarly, the request for Plaintiffs' enhancement awards will be supported by evidence of the work they have done and the risks they have undertaken.

2. The Settlement Provides Excellent Relief for the Class.

The Settlement provides a significant monetary relief to the Class Members to compensate them for the alleged wage-and-hour violations at issue in this case, especially in light of the economic risks and downturn in Rocket's industry. Glugoski Decl. ¶ 32.

The proposed settlement provides a total non-reversionary settlement amount of $4,500,000.00 to 644 Class Members who worked a total of approximately 40,826 workweeks (9526.1 months equivalent to 785.1 years) and 15,632 pay periods.

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[7] There are no agreements to disclose under this rule.

Plaintiffs' experts (G. Arzumanyan and W. Ingersoll) conducted extensive damage calculations of the claims at issue in this lawsuit based on Rocket's records, and policies and procedures. See Dkt. Nos. 54-5, 54-6, 63-2, and 63-3 of *Tolbert v. Rocket*, United States District Court, Central District of California (Case No. 5:23-cv-01450 MCS (PVCx)).

With respect to the failure to reimburse business expenses claim, the 644 employees worked a total of 9526.1 months, which equates to 785.1 years (9526.1 months divided by 52 weeks). Plaintiffs' experts concluded that the employees' maximum potential recovery could be approximately $3,400.00 in home office expenses per year.[8] This would equate to $2,669,340.00 (785.1 years x $3,400). However, by March 2020, Rocket began providing $40 per month as a home internet reimbursement expense (i.e., $480 per year [$40 x 12]). That means that Rocket would be entitled to a credit of approximately $265,440.00 (553 years x $480). Thus, Plaintiffs estimate the potential total exposure is approximately **$2,403,900.00**. Glugoski Decl. ¶ 33.

Regarding the claims of the Class for failure to receive all wages owed, Plaintiffs' experts calculated the potential recovery for employee's underpayment in overtime wages to be approximately $1,300.00 per year per employee due to the failure to include all bonuses/commissions in the employees' regular rate. The class worked an aggregate of total of 785.1 years. Plaintiffs estimate the potential total exposure is approximately **$1,020,630.00** (785.1 years x $1,300.00). Glugoski Decl. ¶ 34.

With regards to the meal/rest breaks, Rocket's written policies appeared to be compliant, which would make certification significantly more challenging. The time records indicate that meal and rest breaks were, for the most part taken, provided, and/or authorized and permitted. Plaintiffs believe the exposure for meal and rest break violations to be very low; however, to put the meal and rest break claim in perspective, if the Class Members had viable claims for meal and rest breaks for the 9526.1 month of working from home, the conceivable value of the claim would be around **$1,066,923.20** ($14.00 x 8 hours of pay x 9526.1 months). Glugoski Decl. ¶ 35.

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[8] This is based on Plaintiffs' theory of the case that the Court could find Rocket liable for a variety of home office related expenses such as reimbursement to employees for home office space, utilities, cell phone, and furniture.

With respect to the waiting time penalties claim under California Labor Code Section 203, there are approximately 215 former employees who earned on average $14 per hour who were scheduled to work 8 hours per day. Assuming the failure to pay was *willful*, if we apply the 30 days of pay "waiting time penalty, Plaintiffs estimate the total potential exposure to be around **$722,400.00**. However, there is considerable risk over whether the willful standard could be proven. Glugoski Decl. ¶ 36.

Regarding inaccurate wage statements, Plaintiffs' experts determined that the records suggest potentially one half of the pay periods worked had a potential violation under California Labor Code Section 226. The eligible pay periods under California Labor Code Section 226(e) are 20,413. Assuming Rocket did not have an "objective reasonable" good faith belief in their policy and procedure position (see recent decision in *Naranjo v. Spectrum Security Service Inc.* (2019) 40 Cal.App.5th 444) the applicable rate per violation would be $50. Plaintiffs estimate the total potential exposure to be around **$1,020,650.00.** However, the practical/realistic exposure is much less – and perhaps zero – following the *Naranjo* decision. Glugoski Decl. ¶ 37.

Further, 5.5% of the Total Settlement Amount ($250,000.00) was allocated to the PAGA claim. Settlement Agreement, Ex. 2 ¶ 4.2.5. There are 15,632 pay periods eligible for an assessment of a PAGA penalty. This is a fair number in light of the discretionary nature of the penalty amount under the PAGA.

In total, if Plaintiffs were able to prevail on all claims, Plaintiffs estimate the total *potential* exposure to be between $7-8M. Thus, this settlement of $4,500,000.00 represents an excellent recovery for the Class Members, particularly considering the risks of further litigation and the financial difficulties facing Rocket and the mortgage industry. There is no guarantee that Plaintiffs could certify the off-the-clock, rest break, meal period, or reimbursement claim or prevail on the merits.

There has been extensive litigation to date, but litigating further through certification, summary judgment, and trial would be expensive and time-consuming, with the risk that: 1) Rocket's financial condition could deteriorate, and 2) Plaintiffs could lose at each step of the way and recover nothing, barring a successful appeal. For these reasons – and viewed in light of the amount offered -- the settlement value is fair, reasonable, and adequate.

3. The Settlement Is Non-Reversionary and Checks Will Be Mailed Automatically

The method for distributing relief to the Class Members is simple and effective. The Class Members have been identified from Rocket's employment records and will be mailed automatic payments unless they opt out. No part of the settlement will revert to Rocket.

4. There Is No Preferential Treatment of Class Members

The settlement does not give preferential treatment to any Class Members. The settlement provides for the funds to be allocated to each participating Class Member proportionally based on the number of weeks they worked for Rocket, as shown by Rocket's records. Settlement Agreement, Ex. 2 ¶ 4.2.4. The settlement Class is cohesive because it consists of employees subject to the same relevant wage-and-hour policies. Glugoski Decl. ¶ 41.

Further, the proposed awards to Plaintiffs are within the range approved by courts in this district. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266-267 (N.D. Cal. 2015) (noting that incentive awards compensate wage-and-hour plaintiffs for a "significant reputational risk" and higher awards are appropriate when the average class member payment is high); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645 at *5 (N.D. Cal. Feb. 16, 2011) (awarding $10,000 each to two plaintiffs in a $1,725,000 settlement). The requested award also accounts for both the risk that Plaintiffs took on by filing this lawsuit and the enhanced release applicable to only the Plaintiffs.

5. The Proposed Attorneys' Fee Award is Preliminarily Appropriate

Pursuant to the Settlement Agreement, Plaintiffs' counsel will seek attorneys' fees not to exceed $1,575,000.00 (35% of the Total Settlement Amount) and actual litigation costs not to exceed $200,000.00. Settlement Agreement, Ex. 2 ¶ 4.2.2. Class Counsel appreciate that this Court will utilize the period before the hearing on final approval to consider any comments from Class Members and inform itself of all aspects of the settlement. Further, at the final approval stage, this Court will rule upon the reasonableness of any attorney's fees, the class representative enhancement request, and repayment of costs advanced by Plaintiffs' counsel. In preparation for final approval, Plaintiffs will provide this Court with further briefing pertaining to those requests. However, at this preliminary stage the requested fee award is less that Class Counsel's lodestar and in line with the market rate. *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal. App. 4th 19.

The awarded fees and costs will be paid after the settlement has been finally approved and the deadline to file appeals has passed, assuming that no appeals are filed. To the extent the Court awards less than the requested amount of fees and costs, the difference will be distributed *pro rata* to the Class Members. Settlement Agreement, Ex. 2 ¶ 4.2.2.

6. The Release Is Narrowly Tailored

As set forth above in Section III.B.4, the release is tailored to track the definition of the settlement class and the PAGA group. The Class Members will release all claims arising from the same set of facts alleged in the operative FAC and in Plaintiffs' LWDA letters. Settlement Agreement, Ex. 2 ¶ 6-6.3. The release period for class claims is from June 20, 2019 through the date the Court grants preliminary approval and the PAGA period is April 14, 2021 through the date of preliminary approval. *Id*. See also Glugoski Decl. ¶ 27.

7. The Proposed Class Notice, Notice Plan, and Settlement Administrator Are Sufficient.

Under Rule 23(e), the Court must "direct notice in a reasonable manner to all Class Members who would be bound by a proposed settlement." FED. R. CIV. P. 23(e)(1)(B). The notice provided to members of a class certified under Rule 23(b)(3) must be the "best notice practicable under the circumstances." FED. R. CIV. P. 23(c)(2)(B). The notice is satisfactory "if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 962-963 (9th Cir. 2009) (quotations omitted). The notice is easy for the Class Members to understand and includes class counsel's contact information; the address for the settlement administrator's website with links to the settlement motions and other important documents; and information about how to access the case docket and when the final approval hearing will be held. The notice also includes information about how to opt out. FED. R. CIV. P. 23(c)(2)(B).

The Class Members have already been identified from Rocket's records and the approved Notice will be mailed to them using the last known mailing address in Rocket's records. Settlement Agreement, Ex. 2 ¶ 8.4.1. Prior to mailing, the Settlement Administrator will perform a skip search using an accurate and commercially available methodology to update the addresses. Settlement Agreement, Ex. 2 ¶ 8.4.1. If a notice is returned with a forwarding address, it will be re-mailed to the new address. Settlement Agreement, Ex. 2 ¶ 8.4.2. If a notice is returned without a forwarding address, the Settlement Administrator will perform a *further* investigation and will re-mail the notice if a new address is found. *Id*. There will be a 45-day period to opt out of and object to the settlement, and this deadline will be extended by 14 calendar days for those individuals whose notice is re-mailed. Settlement Agreement, Ex. 2 ¶¶ 8.4.3, 8.5.1, 8.6, 8.7.2.

The Class Notice accurately describes all the information necessary for Class Members to understand the nature of the action, the terms of the settlement and their options and deadlines. Glugoski Decl. ¶ 23.

To request exclusion from the Settlement or opt-out, the Notice explains that Class Members must make such an election by notifying the Administrator, by fax, email, or mail, within 45 days. Glugoski Decl. ¶ 26. Settlement Agreement, Ex. 2 ¶ 8.5.1.

V. PROPOSED IMPLEMENTATION SCHEDULE

Plaintiffs propose the following implementation schedule for further proceedings:

a.	Deadline for Defendant to Submit Class List and Data to Settlement Administrator	**Fourteen (14) calendar days after the Preliminary Approval Order**
b.	Deadline for Settlement Administrator to Mail the Class Notice to Class Members	**Fourteen (14) calendar days after Defendants provide the Settlement Administrator with the Class List and Data**
c.	Deadline for Class Members to Submit Opt-Out or Objections to Settlement Administrator	**Forty-five (45) calendar days after mailing of Class Notice to Class Members**
e.	Deadline for Class Counsel to file (1) Motion for Final Approval of Class Action Settlement and (2) Motion for Award of Class Representative Enhancement Award, Claims Administrator's Expenses and Attorneys' Fees and Costs	**___________, 2024**

f.	Hearing on: • Motion for Final Approval of Class Action Settlement; • Motion for Award of Class Representative Enhancement Award, Settlement Administrator's Expenses and Attorneys' Fees and Costs	**__________, 2024** **at _______ a.m.**

VI. CONCLUSION

The parties have successfully negotiated a settlement of claims that almost certainly would never have been brought, much less successfully so, but for the use of a class action as a procedural device. The efficient and fair resolution of this case was made possible by the combined efforts of dedicated and informed Class Representatives and experienced Plaintiffs' counsel who were able to realistically assess the costs and risks of continued protracted litigation. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the proposed settlement, certify the Settlement Class, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs' counsel as Class Counsel, appoint the Settlement Administrator, and approve the Class Notice and proposed implementation schedule.

Dated: July 3, 2024

Respectfully Submitted,

RIGHETTI GLUGOSKI, P.C.

John Glugoski
Attorneys for Plaintiffs Virginia Brew, Tony Grosbeier, Courtney Tolbert, D C Snyder, and Timothy Mellen