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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES / CENTRAL DISTRICT**

9 JEFF SMOROWSKI on behalf of
10 himself and all similarly situated persons,
11 and the general public,

12 Plaintiff,

13 v.

14 ARC HOME LLC, a New Jersey
15 Corporation; and DOES 1–50, inclusive,

16 Defendants.
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Case No.: 23STCV22716

*Assigned for all purposes to the
Honorable Stuart M. Rice, Dept. 1*

**DECLARATION OF JOHN GLUGOSKI IN
SUPPORT OF PLAINTIFF’S UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Hearing Date: December 5, 2024
Time: 10:30 a.m.

[Complaint filed: September 20, 2023]

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

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

5 **EDUCATION AND EXPERIENCE**

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

12 3. I have been practicing law full time for over twenty-six (26) years. My practice
13 has been devoted to complex class action and/or representative action litigation for the past
14 twenty-six years. Much of this litigation has involved class action and representative action
15 prosecution of wage and hour laws (state and federal), state and federal privacy laws (FCRA,
16 CCPA and CCCRA) and consumer laws. A sampling of some of the more significant
17 class/representative action cases (including wage and hour litigation) handled by Righetti
18 Glugoski, P.C., includes:

- 19 • Co-lead counsel in *Rocher v. Sav-On Drug Stores* (Hon. Victoria G. Chaney, Los
20 Angeles County Superior Court); *See, Sav-On Drug Stores, Inc. v. Superior Court*, (2004) 34
21 Cal.4th 319 (reversing the Second DCA, the California Supreme Court unanimously reinstated
22 the trial court's order granting class certification). The *Sav-On* litigation was settled after the
23 first phase of trial.
- 24 • Lead counsel in *Gentry v. Circuit City Stores, Inc.*, (2007) 42 Cal.4th 443 (reversing the
25 Court of Appeal, the California Supreme Court set forth the factors for trial courts to use in
26 determining whether or not to enforce bans on class actions in employment arbitration
27 agreements).

- 1 • Lead counsel in *Crab Addison v. Superior Court*, (2008) 169 Cal.App.4th 958 [affirming
2 the trial court, the Court of Appeal upheld an order compelling defendant to divulge names and
3 contact information of putative class members in wage and hour overtime action].
- 4 • Lead counsel in *Rutti v. Lojack Corp., Inc.* (2010) 596 F.3d 1046 [granting plaintiffs'
5 petition for rehearing, the Ninth Circuit reversed the district court's summary judgment order
6 setting parameters for the *de minimus* doctrine and compensable "hours worked" under both
7 state and federal law].
- 8 • Co-lead counsel in *In re Trans Union Privacy Litigation* (MDL, Northern District of
9 Illinois). We were appointed by the Hon. Marvin E. Aspen to serve as co-lead counsel in
10 multidistrict litigation against Trans Union. The litigation focused on Trans Union's use of its
11 vast database of financial information, which includes the confidential financial information of
12 most adults in the United States, to create and sell "target marketing" lists to advertisers in
13 violation of the FCRA. After nearly a decade of litigation the case resulted in a settlement with
14 Trans Union valued at more than \$100 million (including \$75 million in cash). The settlement
15 obtained final approval from the Hon. Robert Gettleman on September 17, 2008. In August
16 2009, all appeals of the order approving the settlement were dismissed and the settlement
17 became final. Pursuant to the terms of the settlement, credit monitoring relief was distributed
18 to class members as well as a cash payment to class members. We believe the Trans Union
19 certified class is the largest class of individuals ever certified in the United States.
- 20 • Counsel in *Elder v. Schwan Foods* (individual exemption misclassification) tried to a
21 jury verdict in the Los Angeles Superior Court. First Appeal: On May 12, 2011, the California
22 Court of Appeal reversed a trial court order that failed to award restitution and penalties
23 following a jury verdict in favor of our client. The Court of Appeal ordered the trial court to
24 reconsider the equitable remedies of restitution and civil penalties. Second Appeal: On
25 February 27, 2013, the employer contended it was deprived of its right to a statement of
26 decision because the trial court did not issue a tentative decision. The Court of Appeal rejected
27 the employer's appeal finding both that there was no prejudicial error and there was sufficient
28 evidence in the record to award restitution and civil penalties for violation of California's
overtime laws.

- 1 • Counsel in the matter *Roberto Martinez et al. v. Joe's Crab Shack Holdings et al.*, 231
2 Cal.App.4th 362 (2014) where the Court of Appeal reversed the trial court's denial of class
3 certification in an executive misclassification case.
- 4 • Co-counsel in cases against Home Depot and 99 Cent Only Stores where the trial courts
5 limited the California Private Attorney General Act (PAGA) only to claims under the Labor
6 Code and not to claims under the IWC Wage Orders. In both cases the Courts of Appeal
7 reversed in published decisions. *See, Home Depot v. Superior Court* (2011) 191 Cal.App.4th
8 210 (review denied March 16, 2011) (holding PAGA applicable to seating claims on grounds
9 that Labor Code §1198 incorporates IWC Wage Order protections); *Bright v. 99 Cents Only*
10 *Stores* (2010) 189 Cal.App.4th 1472 (review denied February 16, 2011) (same).
- 11 • Co-counsel in a PAGA action against Bank of America on behalf of California bank
12 tellers. The case was twice dismissed by Judge Real. Judge Real's orders were both reversed
13 by the Ninth Circuit – *Green v. Bank of America, N.A.* (9th Cir. 2013) __ Fed. Appx., 2013 WL
14 _____ and *Green v. Bank of America, N.A.* (9th Cir. 2015) 634 Fed.Appx. 188. On remand
15 the Ninth Circuit removed the case from the docket of Judge Real and re-assigned the case to
16 Judge Percy Anderson.
- 17 • Class counsel in the certified class action *Hall v. Rite Aid Corporation* in San Diego
18 County Superior Court. In 2014 the Fourth District Court of Appeal reversed the trial court's
19 decertification order. *See, Hall v. Rite Aid Corporation*, 226 Cal.App.4th 278 (2014, review
denied August 27, 2014). The case settled for \$18M on the day of trial.
- 20 • I was co-counsel in litigation against Wal-Mart, JPMorgan Chase Bank and CVS
21 Pharmacy Inc. (*Henderson v. JPMorgan Chase Bank* (C.D. Cal.), No. 2:11-CV-03428), *Brown*
22 *v. Wal-Mart, Inc.* (N.D. Cal.), No. 5:09-cv-03339-EJD, and *Kilby v. CVS Pharmacy, Inc.* (S.D.
23 Cal.), No. 09-CV-2051-MMA. The district court in *Wal-Mart* granted class certification based
24 on plaintiffs' construction of the law, while the district courts in *CVS* and *JPMorgan Chase*
25 denied class certification after rejecting plaintiffs' construction of the same law. All three cases
26 were then appealed and coordinated before the Ninth Circuit in December 2013. The Ninth
27 Circuit panel asked the California Supreme Court to accept certification of three questions of
28 statutory construction (739 F.3d 1192). More than two years later, after extensive briefing by

1 the parties and *amici*, the California Supreme Court in April 2016 issued its unanimous opinion
2 in *Kilby* setting forth its definitive construction of the law. *Kilby v. CVS* (2016) 63 Cal.4th 1.
3 Based on this construction by the California Supreme Court, the Ninth Circuit affirmed the
4 grant of class certification in *Wal-Mart* (2016 WL 3212265) and reversed the district court
5 orders in *CVS* and *JPMorgan Chase*. Wal-Mart settled for \$65M.

6 4. Righetti Glugoski, P.C. acted as trial counsel in what we believe are the only four
7 class action overtime cases ever to have been tried under the quantitative executive exemption
8 standard articulated in *Ramirez v. Yosemite Water Company*, (1999) 20 Cal.4th 785. I was trial
9 counsel in a class action tried in Los Angeles County Superior Court before the Hon. J. Stephen
10 Czuleger, resulting in a finding that U-Haul had misclassified all California salaried “General
11 Managers” as exempt from overtime. I was also trial counsel in a certified class action tried in
12 San Diego County Superior Court before the Honorable Patricia Cowett, resulting in a
13 judgment finding that Party City had misclassified salaried employees as exempt and an award
14 of class wide damages, fees, and costs. In the third case, I was trial counsel in the *Sav-on*
15 overtime litigation where, following remand after appeal, we completed the first phase of trial
16 before the Honorable Victoria G. Chaney in Los Angeles County Superior Court (complex).
17 The case was then settled before the second phase of trial. In the fourth trial I was class counsel
18 in a certified class action against Taco Bell alleging that its restaurant general managers were
19 misclassified as exempt under California law. The case was tried in the San Diego County
20 Superior Court before the Hon. Kevin Enright and settled after four weeks of trial.

21 5. I was awarded the Daily Journal 2010 CLAY Award (“California Lawyer of the
22 Year”) for my work on *Rutti v. Lojack*. I was also honored as one of the Daily Journal’s Top
23 Labor & Employment Lawyers for 2010. I regularly speak on panels that involve class action,
24 representative action and employment issues such as trial methodology, class certification,
25 discovery and privacy issues, arbitration agreements and releases, mediation and settlement
26 and recent developments in the field. Speaking engagements are typically for organizations
27 such as California Employment Lawyers Association, Bridgeport CEB, and a wide range of
28 Bar associations.

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

8 **INVESTIGATION AND RELEVANT LITIGATION HISTORY**

9 7. In or about February 2021, ARC hired Plaintiff SMOROWSKI as an exempt
10 employee in Los Angeles, California. Plaintiff suffered a stroke in August 2021 and his
11 employment with ARC ended on November 1, 2021. Plaintiff filed a discrimination claim in
12 response to his separation from his employment with ARC with the Department of Fair
13 Employment and Housing on or about February 2022.

14 8. While the claim before the DFEH was pending, Plaintiff filed this proposed class
15 action alleging various wage and hour violations (including failure to pay all wages, reimburse
16 all business expenses, denied meal and rest breaks, and related relief).

17 9. Plaintiff alleged, among other things, that he and the Class Members were not
18 paid all wages owed, including overtime, because he and the Class Members did not meet the
19 criteria for overtime exemption. Plaintiff alleged that he and all Class Members identified herein
20 were regularly scheduled as a matter of uniform company policy to work and in fact worked in
21 excess of eight hours per workday and/or in excess of forty hours per workweek without
22 receiving straight time or overtime compensation for such regular hours and overtime hours
23 worked in violation of California Labor Code Section 1194 and the applicable California
24 Industrial Welfare Commission wage order(s). Plaintiff also alleged that Plaintiff and the Class
25 Members were improperly and illegally mis-classified originally by Defendant as "exempt"
26 outside sales employees when, in fact, they were "non-exempt" employees according to
27 California law. Plaintiff and Class Members have the right to be compensated by Defendant at
28 the appropriate compensatory wage rate (no less than minimum wage) for said work heretofore
performed, consisting of the straight time rate plus the appropriate overtime premium as

1 mandated by California law. Also, Plaintiff contends that Defendant neither provided Plaintiff
2 and Class Members the required meal periods during the relevant time period as required under
3 the IWC Wage Orders and Labor Code nor paid the one hour of pay required by the Labor Code
4 and thus are entitled to such pay.

5 10. Plaintiff also alleged that at all relevant times, Defendant required the Plaintiff
6 and the Class Members they employed to work from their home, requiring their work location to
7 be in the home they live in. Defendant has required and continues to require the same from its
8 current and former similarly situated employees. Plaintiff contends that the Plaintiff and Class
9 Members incurred expenses related to the required business-related trips, telephone/cell phone,
10 electricity, home office space, water, gas, and stationery expenses while discharging duties under
11 their employment agreement with the Defendant who employed them. Plaintiff contends
12 Defendant has not reimbursed Plaintiff and Class Members for their expenses incurred while
13 discharging their duties for Defendant.¹ Further, Plaintiff contends that Plaintiff and Class
14 Members' wage statements are inaccurate in violation of California Labor Code Section 226.2.

15 11. The Class Period is from September 20, 2019 to the date of preliminary approval
16 and covers approximately 5,010 workweeks. *See*, Settlement Agreement and Release. This
17 workweek number was an estimate. Plaintiff understands that Defendant subsequently re-ran the
18 numbers and the workweeks up to November 30, 2023 is about 500 workweeks less (i.e.,
19 approximately 4500 workweeks).

20 12. On September 20, 2023, Plaintiff initiated the action by filing a Class Action
21 Complaint in this Court against Defendant asserting the following claims: (1) failure to reimburse
22 business expenses; (2) failure to provide accurate wage statements; (3) failure to provide minimum
23 and overtime wages; (4) failure to pay all wages upon separation of employment; and (5) unfair
24

25 ¹ Defendant provided discovery showing that in 2023, Arc began paying \$105 per month to its employees that work
26 remotely (\$65 per month for internet reimbursement and \$40 in monthly cell phone reimbursement).

27 ² The California decision in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056 (2024) states: "if an employer
28 reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with
the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement
law." Here, ARC argues that its belief that the employees were exempt from overtime would satisfy the standard of
a good faith dispute.

1 business practices in violation of California Business & Professions Code Sections 17200, *et seq.*
2 Plaintiff filed his First Amended Complaint on August 1, 2024, which, among other items, added
3 claims for failure to provide meal periods, failure to provide rest periods, reporting time pay
4 violations, and violation of the California Private Attorney General Act (“PAGA”), and clarified
5 the scope of the class members covered by the alleged claims. On May 14, 2024, Plaintiff provided
6 written notice to the LWDA and Defendant of the specific provisions of the Labor Codes he
7 contends were violated, and the theories supporting his contention. On July 15, 2024, Plaintiff
8 submitted an amended notice to the LWDA and Defendant.

9 13. On February 16, 2024, the parties participated in private mediation conducted by
10 Anthony Pantoni, an experienced and respected mediator in the area of wage and hour class
11 actions. The settlement discussions were conducted at arm’s length. The parties reached an
12 impasse at mediation, but the Mediator successfully assisted the parties to agree on a resolution of
13 the action through post-mediation discussions and negotiations. The Settlement is the result of an
14 informed and detailed analysis of the risks facing all parties in litigating this case, including but
15 not limited to, careful consideration of the legal and factual obstacles to Plaintiff’s prospects of
16 obtaining class certification and on the merits, and Defendant’s defenses, as well as Defendant’s
17 potential exposure and the additional costs of litigating the action.

18 14. Upon the filing of this action and following extensive litigation before the
19 Department of Fair Employment and Housing, Plaintiff and Defense Counsel met and conferred
20 about the allegations set forth in this wage and hour class action to determine how best to proceed.
21 In the interest of judicial economy and to avoid incurring unnecessary litigation costs, the parties
22 agreed to mediate the case. The agreement to mediate was premised on ARC providing the data
23 information necessary to evaluate the claims in this case. Specifically, Plaintiff’s counsel sought
24 and received information about the number of employees, the number of pay periods, the number
25 of workweeks, dates of employment, the average pay rate, and any meal and rest break premiums
26 paid. Further, It is Plaintiff’s understanding that for employees working from home, ARC began
27 reimbursing employees for internet and cell phone as much as \$105 per month.

28 15. All of Plaintiff’s counsel’s pre-filing investigation and discovery during litigation
including review of class member data aided Plaintiff in evaluating this case. Plaintiff was thus

1 able to enter settlement negotiations armed with the information required to settle this matter for
2 a fair and reasonable amount, having thoroughly assessed the risks and prepared an estimated
3 class-wide damages model.

4 16. Furthermore, Plaintiff's counsel is very familiar with wage and hour class actions
5 that arise in the context of the mortgage industry with similar claims alleged herein. Plaintiff's
6 counsel have been counsel of record and settled numerous cases that involve the same groups of
7 employees, issues, and industry against some of the largest mortgage lenders in the country,
8 including, but not limited to Loan Depot, Nationstar, Guaranteed Rate, and Home Point.

9 17. Each of the classes in these other cases involved a significant number of
10 employees (i.e., around 1,000-1,500 employees). As of November 30, 2023, there were 92
11 employees.

12 18. Plaintiff's counsel's experience in litigating and settling similar cases in the
13 mortgage industry provided Plaintiff with a strong foundation to not only appreciate the strengths
14 and the weaknesses of each side's position but also how to value the claims for purposes of a
15 settlement. During the course of the parties' settlement discussions, ARC was forthcoming with
16 all the necessary information to evaluate the claims in this case.

17 19. The parties negotiated the terms of the Memorandum of Understanding, followed
18 by the signing of the Settlement Agreement, and the Class Notice. Ex. 1 attached hereto. The
19 parties worked together as best they could to finalize the settlement terms, which are
20 memorialized in the Settlement Agreement and the Class Notice. A true and correct copy of the
21 Settlement Agreement and Release is attached as Exhibit 1 hereto. The Class Notice is attached
22 as Exhibit 2 hereto. They are also attached to the Proposed Order as Exhibits 1-2.

23 20. The negotiations were conducted at more than arm's-length and the resulting
24 settlement was the outcome of an informed and educated analysis regarding certification and
25 liability issues and the total exposure in relation to the costs and risks affecting Plaintiff and the
26 Class. This settlement was accomplished after discovery and investigation, with Plaintiff having
27 invested in extensive factual and legal research, engaged in numerous discussions and exchanges
28 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

1 the parties thoroughly assessed the risks that they entered into a well-reasoned settlement.

2 21. There were risks and uncertainty regarding a number of factors in the case, which
3 gave the parties the perspective and the incentive to thoroughly assess the risks of the case. It is
4 possible that ARC could establish that the Class Members met the criteria for overtime exemption,
5 which would have wiped out most if not all the potential claims as to the time employees were
6 classified as exempt. Further, a significant period of the class involved the COVID shutdown,
7 which raised the issue that the employees were not working many hours per week due to the
8 shutdown. It is possible that Plaintiff would not be able to certify all of the claims. Plaintiff
9 believed it would be straightforward to certify the claim for reimbursement of expenses for cell
10 phones/internet, however, evidence of a reimbursement policy created significant challenges for
11 the claim. The off-the-clock claim would likely prove more challenging to certify since the payroll
12 records and wage statements on their face appear accurate and employees logged out of the system.
13 Further, meal and rest break policies appeared to be facially compliant, which would present
14 challenges. Even if Plaintiff succeeded in certifying some or all of the claims, there was no
15 guarantee that Plaintiff would win on the merits, and surviving any post-trial motions or appeals
16 would have come at great litigation costs and expenses to the Class. These factors also support a
17 finding that the settlement is fair and reasonable.

18 22. Plaintiff's counsel thoroughly analyzed all of the available information and
19 documents to evaluate the strength of each claim and prepare a class-wide damages analysis,
20 taking into account the strengths and weaknesses of the parties' positions, the risks of litigation,
21 and ARC's financial position to arrive at this settlement.

22 23. The Settlement Amount is \$925,000.00, which is inclusive of the PAGA Payment
23 (75% of which will be paid to the LWDA (\$41,250.00) and 25% will be distributed to PAGA
24 Members (\$13,750.00), the Settlement Administration Costs, the Service Award to Plaintiff, an
25 individual settlement to Plaintiff to resolve Plaintiff's discrimination claim before the DFEH and
26 for a general release of any other potential claims, as well as Class Counsel's Attorneys' Fees
27 and Litigation Costs and Expenses. Sett. Agmt. ¶ 10.4. The employer-side payroll taxes on the
28 wage portion of the settlement will be paid separately and in addition to the Settlement Amount.
Sett. Agmt. ¶ 10.4. The participating Class Members will be paid pursuant to an allocation

1 formula based on the number of workweeks they worked for Defendant during the Class Period.
2 Sett. Agmt. ¶ 10.2. Each Class Member's Individual Settlement Payment will be calculated by
3 dividing each Participating Class Member's respective Workweeks by the Total Workweeks, and
4 multiplying the resulting figure by the Net Settlement Amount. Sett. Agmt. ¶ 10.2. For tax
5 purposes, the Individual Settlement Payments will be allocated as follows: twenty percent (20%)
6 as wages ("wage portion"), and eighty percent (80%) as penalties, any other non-taxable items,
7 and interest. Sett. Agmt. ¶ 10.10. Each PAGA Member will be paid pursuant to a similar formula
8 that is based on the number of pay periods worked by the PAGA Member during the PAGA
9 Period. Sett. Agmt. ¶ 10.5. This is a non-reversionary settlement. To make the relief provided by
10 the Settlement as accessible to Class Members as possible, the parties have agreed to eliminate
11 the claims process. Sett. Agmt. ¶ 52. Each Class Member who does not submit a timely and valid
12 opt-out request within 45 days after the Notice Packet is first mailed will be automatically mailed
13 a check for his or her pro rata portion of the Settlement. Sett. Agmt. ¶¶ 7.2 and 10.2. Each PAGA
14 Member shall receive his or her proportionate share of the PAGA Payment and shall be bound
15 by the release of the PAGA claims regardless of whether they submit an opt-out request. Sett.
16 Agmt. ¶ 7.4.

17 24. The Settlement Agreement provides that the Participating Class Members shall
18 have one-hundred eighty (180) calendar days from the postmark date of the checks to deposit or
19 otherwise cash their settlement checks. Sett. Agmt. ¶ 10.2. If an Individual Settlement Payment
20 check is not cashed within one hundred and eighty (180) calendar days from the date of issuance,
21 and if said check represents a sum that is five (5) or more times greater than the cost of sending
22 an additional check to Participating Class Members, then the uncashed Individual Settlement
23 Payment checks will be redistributed to Participating Class Members on a pro-rata basis. If the
24 uncashed Individual Settlement Payment checks represent a sum that is less than five (5) times
25 greater than the cost of sending an additional check to Participating Class Members, the
26 Individual Settlement Payment checks will be cancelled and funds associated with said cancelled
27 check will be transmitted to the State Controller's Unclaimed Property Fund in the name of the
28 Participating Class Members, as an alternative distribution for which there is good cause, under
California Code of Civil Procedure Section 384(b).

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The time period covered by the release is September 20, 2019 through the date the Court grants preliminary approval. Sett. Agmt. ¶ 1.6. The released parties are defined as:

The PAGA Members will release all claims for PAGA penalties that were alleged or could have been alleged by Plaintiff based on the facts alleged in the action or in Plaintiff's LWDA letter during the PAGA period. Sett. Agmt. ¶ 6.2

-11-

**DECLARATION OF JOHN GLUGOSKI IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

1 at the same time as the Motion for Final Approval. To the extent the Court awards less than the
2 requested amounts, the difference in such amounts will be added to the Net Settlement Amount.
3 Sett. Agmt. ¶¶ 10.1 and 10.7.

4 27. The Settlement Agreement provides for Class Members to receive direct notice
5 of the Settlement by mail. The notice administration plan will ensure that substantially all of the
6 Class Members will receive notice of the Settlement and will be adequately apprised of and able
7 to exercise their rights and options thereunder. ILYM Group, Inc., an experienced third-party
8 claims administrator, will handle all aspects of the notice process and settlement administration.
9 ILYM's CV and proposal detailing their work in this case are marked and attached as Exhibit 3
10 hereto. Class Counsel will also be available to the Class Members to answer their questions.

11 28. Here, as of November 30, 2023, the class consists of 92 individuals.

12 29. Here, the common questions include but are not limited to whether Plaintiff and
13 the Class Members: (1) were suffered and/or permitted to work time for which they were not
14 compensated; (2) met the criteria for overtime exemption; (3) were reimbursed for all expenses
15 incurred while performing work for Defendant from home; (4) were provided with accurate,
16 itemized wage statements; and (5) engaged in unlawful business practices; (6) were provided
17 meal periods; (7) were authorized and permitted to take rest periods; and (8) were paid reporting
18 time pay when due. These questions are based on alleged policies and practices that apply to the
19 entire class and discrete subclasses. This is sufficient to satisfy the commonality requirement for
20 settlement purposes. *See, Stonehocker v. Kindred Healthcare Operating LLC*, 2021 WL 1643226
21 (N.D. Cal. Apr. 27, 2021) (granting final approval of a settlement involving allegations of off-
22 the-clock work and failure to provide meal and rest breaks).

23 30. Here, the named Plaintiff who seeks to represent the proposed Class satisfies the
24 typicality requirement because they assert the same types of injury arising from the same conduct
25 by Defendant as Plaintiff.

26 31. Plaintiff has no conflict of interest with the class members. He performed the
27 similar work and was subject to the same policies and practices as the Class Members. Plaintiff's
28 claims are identical to the claims of the other class members and arise from the same course of

1 conduct by Defendant. Plaintiff has embraced his responsibilities as the class representative by
2 actively participating in this case, providing documents, identifying potential witnesses,
3 providing valuable information regarding the policies and practices at issue in this case and
4 Defendant's business structure, engaging in the settlement process, and consulting with counsel
5 throughout the litigation. Plaintiff has devoted considerable time to this litigation and is prepared
6 to continue to do so, demonstrating his commitment to achieving the best possible result for the
7 class.³ *Id.* Further, Plaintiff is represented by qualified and competent counsel, who have the
8 experience and resources necessary to vigorously pursue this action. The firm representing
9 Plaintiff has certified many class actions in state and federal court, for both litigation and
10 settlement purposes, and has recovered many millions of dollars on behalf of class members.

11 32. Here, the legality of the challenged policies and practices involve common
12 questions that can be decided with common proof and will generate an answer common to the
13 entire class. The common questions include, but are not limited to: (1) whether Plaintiff and the
14 class members performed work off the clock; (2) whether employees were denied compliant rest
15 breaks; (3) whether the employees were exempt from overtime; (4) whether employees were
16 reimbursed for expenses paid by employees while performing work for Defendants; and (5)
17 whether wage statements were non-compliant. If the case were to be litigated, the common proof
18 would include, among other things, employee handbooks, standalone policy documents,
19 performance reviews that reflect productivity rules, and Plaintiff's and the Class Members' time
20 and payroll records, as well as documents reflecting when employees logged into and out of their
21 phones. The Class Members would have to individually prove their damages, but "damage
22 calculations alone cannot defeat certification." *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594
23 F.3d 1087, 1094 (9th Cir. 2010); *Leyva v. Medline Indus., Inc.*, 716 F.3d 510, 513 (9th Cir. 2013)
24 ("damages determinations are individual in nearly all wage-and-hour class actions").
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28 ³ Further details regarding Plaintiff's work on the case will be presented in a declaration with the motion for final approval.

POTENTIAL EXPOSURE

33. 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 Defendant's industry. The reasonable potential value of the claims at issue in this case assuming Plaintiff prevailed on all claims is around \$1.25 million. The Total Settlement Amount is not only within the range of possible approval but is an excellent result given Defendant's financial position.

34. The proposed settlement provides a total non-reversionary settlement amount of \$925,000.00. As of November 30, 2023, this results in Class Members receiving approximately \$5,000.00 after deduction for fees and costs, etc. As of November 30, 2023, the 92 employees that worked during the Class Period collectively worked approximately 4,500 workweeks. Based on data through November 30, 2023, on a per week basis, the employees will receive approximately \$90.00 per workweek.

With respect to the failure to reimburse business expenses claim, Plaintiff alleged that Defendant failed to reimburse for home office expenses, including business-related trips, telephone/cell phone, electricity, home office space, water, gas, and stationery expenses. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See*, Cal. Lab. Code § 2802(a), providing that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...."). Defendant denied any liability for this claim. Defendant argued, for example, that they had a reimbursement policy in place providing for reimbursement. Based on investigation and research, Plaintiff estimates the potential total exposure to be: 800 months x \$105 = \$84,000.

35. Regarding the claims of the failure to pay all wages owed, rest and meal breaks and related relief, particularly as to the exempt employees, Plaintiff alleged that exempt employees were misclassified and alleged that exempt Class Members did not spend 50% of their time outside of the office engaged in outside sales. ARC contends that these employees met the criteria for the outside sales exemption because they spent more than 50% of their time out of the

1 office. The question of exempt status has been found in some situations to require individual
2 inquiries and ARC raised this issue. Even if Plaintiff could establish misclassification, Plaintiff
3 would still have to prove that significant overtime was worked and given the COVID shutdown,
4 that would be an uphill battle. Moreover, particularly as to non-exempt employees, Plaintiff
5 alleged that Defendant required its employees to perform work off-the-clock which was not
6 compensated and that Defendant rounded time entries, among other theories, thus resulting in
7 employees not being paid for all hours actually worked. Defendant denied liability and asserted
8 that employees were paid all wages and that all work performed by non-exempt employees was
9 performed on-the-clock.

10 36. Based on Plaintiff counsel's research, Plaintiff estimated Defendant's exposure
11 for these claims at \$751,500.00. The average hourly overtime for the Class Members was around
12 \$30.00. Plaintiff estimates the total exposure to be around \$751,500.00 (\$30.00 x 5 hours of pay
13 x 5,010 weeks).

14 37. With respect to the meal and rest break claims, Plaintiff alleged that Defendant
15 failed to provide compliant meal and rest periods. As to exempt employees, if the Class Members
16 were found to be exempt then the claim has zero value. Moreover, Defendant argued, among
17 other things, that they provided all of their employees with the opportunity to take compliant
18 meal and rest periods. Defendant also argued that they maintained facially compliant meal and
19 rest period policies. Further, since the employees were working from home, the ability to obtain
20 class certification would be challenging given the fact that unlike working at the company
21 headquarters, the Class Members would be susceptible to daily home life interruptions and
22 activities that could be argued constituted meal periods and/or rest breaks. Plaintiff believes that
23 at most, Plaintiff would be able to establish two (2) missed meal periods and two (2) missed rest
24 breaks per week. Based on Plaintiff counsel's research and interviews, Plaintiff estimates the
25 total exposure to be around \$400,800.00.

26 38. With respect to Plaintiff's wage statement and waiting time penalties claims,
27 Plaintiff alleged that such claims were derivative of Plaintiff's other Labor Code violations,
28 including, as to exempt employees, derivative of whether there was misclassification. Defendant

1 argued that Plaintiff could not prove the “willful” prong to obtain waiting time penalties and that
2 Plaintiff could not show that Class Members suffered “injury” because of wage statement
3 violations. Moreover, Defendant argued a “good faith” defense applicable to these claims. ARC’s
4 claim that it had a good faith defense would be seen as reasonable and thus this claim has very
5 little to no value.

6 39. Further, 6% of the Total Settlement Amount (\$55,000.00) was allocated to the
7 PAGA claim. Sett. Agmt. ¶ 10.4. As required by statute, 75% (\$41,250.00) will be paid to the
8 LWDA. The remaining 25% (\$13,750.00) will be distributed to the PAGA Members. There are
9 approximately 725 PAGA pay periods during the PAGA Period. The employees will receive
10 \$18.00 per pay period. Under the PAGA, Courts have considerable discretion to reduce the
11 penalty award below the maximum. In *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist.
12 LEXIS 154590, a federal court reduced PAGA penalties by 82.2%, because the court found
13 maximum penalties “unjust.” Some trial courts have awarded no civil penalties, even when Labor
14 Code violations were established. The LWDA received notice of this settlement and this motion.
15 Marked and attached hereto as Exhibit 4 is a true and correct copy from the LWDA confirming
16 submission of this settlement and motion.

17 40. This represents an excellent recovery for the Class Members, particularly
18 considering the risks of further litigation. There is no guarantee that Plaintiff could certify the
19 overtime, off the clock, reporting time pay, waiting time, wage statement, rest break, meal period,
20 or reimbursement claim or prevail on the merits. To the extent the claim applies, Plaintiff could
21 potentially compare employees’ time records against data showing when they logged into and
22 out of the computer system to determine how much unpaid time may have occurred during the
23 process of clocking in and out. There is a chance that the amounts of time could be small and/or
24 infrequent. More importantly, for at least the exempt employees they could be found to be exempt
25 from overtime that would render the claims worthless. To the extent Plaintiff alleged that
26 employees were required or pressured to work off the clock to complete their work, this would
27 likely be difficult to prove. With regard to the meal/rest breaks, the written policies appeared to
28 be compliant, which would make certification significantly more challenging. Plaintiff believes

1 that the claims for wage statement penalties are strong to the extent they are derivative of the
2 wage claims, but Defendant could succeed in arguing that they acted in good faith and not
3 wilfully.

4 **CLASS MEMBER RECOVERY**

5 41. The Settlement does not give preferential treatment to any Class Members. The
6 settlement provides for the funds to be allocated to each participating Class Member
7 proportionally based on the number of weeks they worked for Defendants, as shown by
8 Defendants' records. Sett. Agmt. ¶ 10.2. The settlement class is cohesive because it consists of
9 employees subject to the same relevant wage-and-hour policies, including policies regarding
10 work schedules and hours worked, meal periods, rest breaks and reimbursement policies.

11 42. Pursuant to the Settlement Agreement, Plaintiff's counsel will seek attorneys' fees
12 not to exceed \$308,302.50 (33.33% of the Settlement Amount) and actual litigation costs and
13 expenses not to exceed \$6,500.00. Sett. Agmt. ¶ 10.6. Class counsel appreciate that this Court
14 will utilize the period of time before the hearing on final approval to consider any comments
15 from Class Members and inform itself of all aspects of the settlement. Further, at the final
16 approval stage, this Court will rule upon the reasonableness of any attorney's fees, the class
17 representative enhancement request, and repayment of costs advanced by Plaintiff's counsel. In
18 preparation for final approval, Plaintiff will provide this Court with further briefing pertaining to
19 those requests. However, at this preliminary stage the requested fee award is less than Class
20 Counsel's lodestar and in line with the market rate. *Lealao v. Beneficial California, Inc.*, (2000)
21 82 Cal. App. 4th 19. The awarded fees and costs will be paid after the settlement has been finally
22 approved and the deadline to file appeals has passed, assuming that no appeals are filed. To the
23 extent the Court awards less than the requested amount of fees and costs, the difference will be
24 added to the Net Settlement Amount. Sett. Agmt. ¶ 10.1.

25 43. As set forth above in Section III.B.4, the release is tailored to track the definition
26 of the settlement class and the PAGA group. The Class Members will release all claims arising
27 from the same set of facts alleged in the operative Complaint and in Plaintiff's LWDA letters.
28 Sett. Agmt. ¶ 6.1, 6.2, and 6.3. The release period for class claims is from September 20, 2019
through the date the Court grants preliminary approval.

1 44. The Class Members will be identified from Defendant's records and the Notice
2 Packet will be mailed to them using the last known mailing address in Defendant's records. Sett.
3 Agmt. ¶ 5, 52. Prior to mailing, the Settlement Administrator will perform a search in the National
4 Change of Address database to update the addresses. Sett. Agmt. ¶ 35. If a notice is returned with
5 a forwarding address, it will be re-mailed to the new address. Sett. Agmt. ¶ 50(a). If a notice is
6 returned without a forwarding address, the Settlement Administrator will perform a further
7 investigation and will re-mail the notice if a new address is found. *Id.* There will be a 45-day
8 period to opt out of and object to the settlement, and this deadline will be extended by 10 calendar
9 days for those individuals whose notice is re-mailed. *Id.*

10 45. The Class Notice (also attached to the Proposed Order) will describe the nature of
11 the action; the definition of the settlement class; the total settlement amount and the proposed
12 deductions for the payment to the LWDA, class representative service award, attorneys' fees and
13 costs, and settlement administration costs; the scope of the release; the formula for calculating
14 individual settlement payments and how to challenge the number of workweeks and pay periods
15 used to calculate the payments; how to participate in, object to, and opt out of the Settlement,
16 and the deadlines for doing so; that Class Members may enter an appearance through an attorney
17 if desired; the binding effect of the judgment on Class Members; information about when and
18 where the final approval hearing will be held, and how to check if the hearing date has changed;
19 and how to obtain further information about the lawsuit and the Settlement. The notice will be
20 sent in English only. The employees are loan officers who must be proficient in the English
21 language. The parties are informed and believe that the Class Members in this case are proficient
22 in English, so that a translation is not necessary. A true and correct copy of the Class Notice is
23 marked and attached hereto as Exhibit 2.

24 46. The Class Notice explains that in order to request exclusion from the Settlement,
25 Class Members must send a written request for exclusion to the Settlement Administrator. To
26 assert an objection to the Settlement, a Class Member must submit an objection to the Settlement
27 Administrator. The deadline to request exclusion or submit an objection is no later than the
28 Response Deadline, or in the instance of a re-mailed Class Notice, the Extended Response

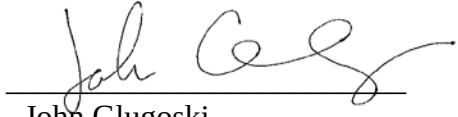
1 Deadline. The Class Notice also explains that objecting class members may obtain their own
2 counsel and appear at the hearing on Final Approval where their objection will be ruled upon.

3 **NO OTHER SIMILAR CASES**

4 47. Plaintiff and his counsel of record are unaware of any class, representative or other
5 collective action in any other court and/or forum that asserts similar claims to those asserted in
6 this action on behalf of a class or group of individuals some or all of whom would also be
7 members of the class defined in this action. Counsel made reasonable efforts and inquiries of
8 other members of the law firm and associated law firms to determine whether any of them were
9 aware of any other actions known to exist and all confirmed that they too did not know of any
10 other cases.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed this 21st day of August, 2024 at San Francisco, CA.

13 **RIGHETTI GLUGOSKI, P.C.**

14
15 By: 

John Glugoski

16 Attorneys for Plaintiff, JEFF SMOROWSKI

EXHIBIT 1

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Attorneys for Defendant
14 ARC HOME LLC

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF LOS ANGELES / CENTRAL DISTRICT

17 JEFF SMOROWSKI, on behalf of himself and
all others similarly situated,

18 Plaintiff,

19 v.

20 ARC HOME LLC, a New Jersey Corporation;
21 and DOES 1–50, inclusive,

22 Defendants.
23
24
25
26
27
28

Case No. 23STCV22716

Assigned for All Purposes to:
The Hon. Stuart M. Rice
Dept. 1

Complaint Filed: September 20, 2023
Trial Date: None Set

SETTLEMENT AGREEMENT

1 This Settlement Agreement (the “Settlement”) is made by and between Plaintiff Jeff
2 Smorowski (“Plaintiff”), on behalf of himself and each of the Class Members as defined herein, and
3 Defendant Arc Home LLC (“Arc”), and is intended to resolve and settle the pending action entitled
4 Jeff Smorowski v. Arc Home LLC, Case No. 23STCV22716 (Los Angeles County Superior Court).

5 **1. DEFINITIONS**

6 1.1 The term “Action” is defined collectively to include the Class Action Complaint
7 filed in the action entitled Jeff Smorowski v. Arc Home LLC, Case No. 23STCV22716 (Los
8 Angeles County Superior Court) (the “Complaint”) and any operative complaint and amended
9 complaints filed in the Class Action by Plaintiff.

10 1.2 The term “Agreement” or “Settlement Agreement” refers to this Settlement
11 Agreement.

12 1.3 The terms “Class” or “Class Members” means all current and former exempt and
13 non-exempt employees who worked for Defendant in California during any portion of the Class
14 Period.

15 1.4 The term “Class Counsel” means Righetti Glugoski, PC.

16 1.5 The term “Class List and Data” means the name, last known mailing address, Social
17 Security number, number of Workweeks for each Class Member during the Class Period, and
18 number of PAGA Pay Periods for each PAGA Member during the PAGA Period.

19 1.6 The term “Class Period” means the time from September 20, 2019 through the date
20 on which the Court issues the Preliminary Approval Order.

21 1.7 The term “Court” as used herein means the Superior Court of California, County of
22 Los Angeles.

23 1.8 The term “Defendant” or “Arc” means Defendant Arc Home LLC.

24 1.9 The “Effective Date” of the Settlement will be the last to occur of the following: (a)
25 the 61st day after service of notice of entry of the Final Approval Order and Judgment; or (b) if
26 an appeal, review, or writ is sought from the Final Approval Order and Judgment, the day after
27 the Final Approval Order and Judgment is affirmed or the appeal, review, or writ is dismissed or
28 denied, and the Final Approval Order and Judgment is no longer subject to further judicial

1 review. Prior to the Effective Date, Defendant will not be required to fund the Settlement, in
2 whole or in part, through the Settlement Administrator or any third party.

3 1.10 The term “Final Approval Order” means the order of the Court that grants final
4 approval of the Settlement.

5 1.11 The term “Final Judgment” means the final judgment entered by the Court based
6 upon the Settlement.

7 1.12 The term “Individual PAGA Payment” means the PAGA Member’s pro-rata share of
8 the portion of the PAGA Payment allocated to PAGA Members pursuant to Section 10.2 below.

9 1.13 The term “Individual Settlement Payment” means the amount to be paid to a
10 Participating Class Member from the Net Settlement Amount pursuant to Section 10.4 below.

11 1.14 The term “Mediator” means Anthony F. Pantoni.

12 1.15 The term “Net Settlement Amount” means the Settlement Amount minus the Court-
13 approved Attorneys’ Fees, Litigation Costs and Expenses, Service Award to Plaintiff, Plaintiff’s
14 Individual Settlement Payment, Settlement Administration Costs, and PAGA Payment.

15 1.16 The term “PAGA Member(s)” means all current and former exempt and non-exempt
16 employees who worked for Defendant in California during any portion of the PAGA Period.

17 1.17 The term “PAGA Payment” means the payment made to the LWDA and PAGA
18 Members for civil penalties pursuant to PAGA and the terms of this Agreement.

19 1.18 The term “PAGA Period” means the time from September 20, 2022 through the date
20 on which the Court issues the Preliminary Approval Order.

21 1.19 The term “PAGA Pay Period(s)” refers to the number of pay periods during the
22 PAGA Period in which a PAGA Member worked for Defendant.

23 1.20 The term “Participating Class Members” mean Class Members who have not timely
24 requested exclusion from the Settlement.

25 1.21 The term “Parties” means Plaintiff and Defendant, collectively.

26 1.22 The term “Party” means Plaintiff or Defendant, individually.

27 1.23 The term “Plaintiff” means Plaintiff Jeff Smorowski.
28

1 1.24 The term “Preliminary Approval Order” means the order of the Court that grants
2 preliminary approval of the Settlement.

3 1.25 The term “Settlement Administrator” means ILYM, Inc. (“ILYM”), the third-party
4 settlement administrator agreed upon by Parties to administer this Settlement.

5 1.26 The term “Settlement Amount” means the amount of Nine Hundred Twenty-Five
6 Thousand Dollars and Zero Cents (\$925,000.00), inclusive of the Attorneys’ Fees and Litigation
7 Costs and Expenses incurred by Class Counsel, the Settlement Administration Costs, the Service
8 Award to Plaintiff, and the PAGA Payment, but excluding employer portion of any applicable
9 payroll taxes.

10 1.27 The term “Workweek(s)” refers to the week(s) during the Class Period in which a
11 Class Member worked for Defendant. The parties estimate that, during the Class Period, and as of
12 November 30, 2023, the approximate total number of workweeks for the Class was 5,010
13 workweeks.

14 **2. SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT**

15 2.1 On September 20, 2023, Plaintiff initiated the Action by filing a Class Action
16 Complaint in this Court against Defendant asserting the following claims: (1) failure to reimburse
17 business expenses; (2) failure to provide accurate wage statements; (3) failure to provide minimum
18 and overtime wages; (4) failure to pay all wages upon separation of employment; and (5) unfair
19 business practices in violation of California Business & Professions Code Sections 17200, *et seq.*

20 2.2 On February 16, 2024, the Parties participated in private mediation conducted by the
21 Mediator, an experienced and respected former judge. The settlement discussions were conducted
22 at arm’s length. The Parties reached an impasse at mediation, but the Mediator successfully
23 assisted the Parties to agree on a resolution of the Action through post-mediation discussions and
24 negotiations. The Settlement is the result of an informed and detailed analysis of the risks facing all
25 Parties in litigating this case, including but not limited to, careful consideration of the legal and
26 factual obstacles to Plaintiff’s prospects of obtaining class certification and on the merits, and
27 Defendant’s defenses, as well as Defendant’s potential exposure and the additional costs of
28 litigating the Action.

1 2.3 This Agreement is intended to and does effectuate the full, final, and complete
2 resolution of the Action.

3 2.4 The Parties believe that continued litigation would be protracted, expensive, and
4 uncertain, and that this Settlement is in the best interests of the Class, PAGA Members, and
5 Defendant. In light of these realities, the Parties believe that this Settlement is the best way to
6 resolve the disputes between them.

7 **3. JURISDICTION, ENFORCEMENT, AND INTERPRETATION**

8 The Court has jurisdiction over the Parties and the subject matter of the Action. The Action
9 includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the
10 Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the
11 Court will retain jurisdiction with respect to the interpretation, implementation, and enforcement of
12 the terms of this Agreement and all orders and judgments entered in connection therewith, pursuant
13 to California Rules of Court Rule 3.769, et seq. and California Code of Civil Procedure Section
14 664.6, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting,
15 implementing, and enforcing the Settlement embodied in this Agreement and all orders and
16 judgments entered in connection therewith. The Parties and their counsel agree that a court, upon
17 motion, may enter judgment pursuant to the Agreement and California Code of Civil Procedure
18 Section 664.6 and the Agreement is admissible in evidence for purposes of enforcement pursuant to
19 California Evidence Code Section 1123. The Agreement will be interpreted and enforced under the
20 laws of the State of California without regard to its conflict of laws provisions. Any dispute arising
21 out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and
22 exclusively in the Court, and the Parties hereby consent to the jurisdiction of the Court over them
23 solely in connection therewith.

24 **4. NO ADMISSION WITH RESPECT TO LIABILITY**

25 4.1 The Parties agree that this Agreement reflects their good faith compromise of the
26 Action, based upon their assessment of the mutual risks and costs of further litigation and the
27 assessments of their respective counsel. This Agreement does not constitute, is not intended to
28 constitute, and will not be deemed to constitute, an admission of liability or lack of liability by the

1 Parties as to the merits, validity, or accuracy of any of the allegations or claims made against
2 Defendant in the Action or the appropriateness of class certification. Defendant denies each of
3 Plaintiff's allegations in their entirety, and alleges that Plaintiff and all other Class Members were
4 provided compensation and treated in all respects in accordance with California law with regard to
5 the claims and facts alleged in the Action.

6 4.2 Nothing in this Agreement, nor any action taken or made in implementation thereof,
7 including, without limitation, any statements, discussions, communications, or any materials
8 prepared, exchanged, issued, or used during the course of the negotiations leading up to the
9 Agreement, is intended by the Parties to or will constitute, be introduced, or be submitted in any
10 way in the Action or any other judicial, arbitral, administrative, investigative or other forum or
11 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
12 regulation, rule, or executive order, or any obligation or duty at law or in equity. Notwithstanding
13 the foregoing, the Agreement may be used in any proceeding in the Court that has as its purpose the
14 interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the
15 Court entered into in connection therewith. Additionally, insofar as any of the foregoing material is
16 required to be filed by any Court by Court order, the Parties will comply with such order but will
17 notify the other Party of such an order at least ten (10) days prior to filing of the documents.

18 4.3 The Parties agree that Plaintiff's forthcoming motion for preliminary approval of the
19 Settlement, which will, among other things, seek certification of the Class, is for purposes of the
20 Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification
21 will have no force or effect. The Parties agree that certification for purposes of the Settlement is in
22 no way an admission that class certification is proper under the standard applied to contested
23 certification motions and that this Agreement will not be submitted in this or any other proceeding
24 as evidence that (i) the Class should be certified, or (ii) Defendant is liable to Plaintiff or any of the
25 Class Members. Further, neither this Agreement nor the Court's actions with regard to this
26 Agreement will be submitted in any court or other tribunal regarding the propriety of class
27 certification or collective treatment for purposes other than the settlement of the Action. In the
28 event that this Agreement is not approved by the Court or any appellate court, is terminated, or

1 otherwise fails to be enforceable, Defendant will not be deemed to have waived, limited, or affected
2 in any way, any of its objections or defenses in the Action, including, but not limited to, its defenses
3 in opposition to class certification.

4 **5. CLASS CERTIFICATION**

5 For the purposes of this Agreement only, the Parties agree to the certification of the Class.
6 As set forth above, Defendant expressly reserves its right to oppose class certification should the
7 Court decide to not approve this Settlement.

8 **6. RELEASE AND WAIVER**

9 6.1 Release and Waiver of Claims by Participating Class Members

10 As of the Effective Date, Participating Class Members, on behalf of themselves and their
11 respective past, present, and future spouses, representatives, agents, attorneys, heirs, administrators,
12 successors, and assigns, shall fully and finally release and discharge Defendant and each of its past,
13 present, and future agents, employees, servants, officers, directors, partners, trustees,
14 representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related
15 companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers,
16 consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and
17 all of their respective past, present, and future employees, directors, officers, agents, attorneys,
18 stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them (collectively, the
19 “Released Parties”), from the Released Claims. For purposes of this Agreement, the “Released
20 Claims” are defined as all claims, debts, liabilities, demands, actions, or causes of action pleaded or
21 asserted in the Action or that could have been pleaded or asserted based upon the facts alleged in
22 the Action, including but not limited to state and/or federal wage and hour claims, failure to pay all
23 wages due, including minimum wages, straight time compensation, overtime compensation, double-
24 time compensation, reporting time compensation, and interest; the calculation of the regular rate of
25 pay; wages related to alleged illegal rounding; misclassification; failure to provide meal periods
26 and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay;
27 payment for all hours worked, including off-the-clock work; failure to provide accurate itemized
28 wage statements; failure to reimburse business expenses; failure to timely pay all wages during

1 employment; failure to timely pay all wages due at separation of employment; failure to provide
2 one day's rest in a seven-day workweek; unauthorized or improper deductions; failure to maintain
3 accurate records, including payroll records; unfair business practices; declaratory relief; penalties,
4 including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage
5 penalties, and waiting-time penalties; interest; and attorneys' fees and costs. The Released Claims
6 also expressly include all claims arising under the California Labor Code (including but not limited
7 to Sections 200-204, 210, 218, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197,
8 1197.1, 1197.2, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.*); the Wage Orders of the
9 California Industrial Welfare Commission; the California Private Attorneys General Act of 2004;
10 California Business and Professions Code Section 17200, *et seq.*; the California Civil Code,
11 including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11040; California
12 Code of Civil Procedure, including but not limited to Section 1021.5; and the FLSA, 29 U.S.C.
13 Section 201, *et seq.* This release excludes the release of claims not permitted by law. The time
14 frame of the Released Claims shall be the Class Period.

15 6.2 Release and Waiver of Claims By PAGA Members

16 As of the Effective Date, Plaintiff, the LWDA, and each and all PAGA Members, on
17 behalf of themselves and their respective past, present, and future spouses, representatives, agents,
18 attorneys, heirs, administrators, successors, and assigns, will be deemed to have fully and finally
19 released and discharged the Released Parties, and each of them, of all Released Claims arising
20 during the PAGA Period that may be asserted under PAGA.

21 6.3 General Release and Waiver of Claims by Plaintiff

22 As of the Effective Date, and in exchange for the Service Award, Plaintiff, on behalf of
23 himself and his respective past, present, and future spouses, representatives, agents, attorneys, heirs,
24 administrators, successors, and assigns, fully and finally release the Released Parties, and each of
25 them, from any and all claims, whether asserted or unasserted, known and unknown, under federal,
26 state and/or local law, statute, ordinance, regulation, common law, or other source of law, including
27 but not limited to claims arising from or in any way related to his employment with Defendant and
28 his compensation while an employee of Defendant ("Plaintiff's Released Claims"). Plaintiff's

1 Released Claims include, but are not limited to, all claims arising from or related to the Action; all
2 claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time
3 compensation, overtime compensation, double-time compensation, reporting time compensation,
4 and interest; the calculation of the regular rate of pay; wages related to alleged illegal rounding;
5 misclassification; failure to provide meal periods and/or rest periods; failure to pay proper meal
6 and/or rest period penalties; failure to reimburse business expenses; payment for all hours worked,
7 including off-the-clock work; failure to provide accurate wage statements; unauthorized or
8 improper deductions; failure to keep accurate records; failure to timely pay all wages during
9 employment; failure to timely pay all wages due at separation of employment; failure to provide
10 one day's rest in a seven-day workweek; failure to maintain accurate records, including payroll
11 records; failure to provide paid sick leave; unfair business practices; penalties, including, but not
12 limited to, meal/rest period penalties, recordkeeping penalties, wage statement penalties, minimum-
13 wage penalties, and waiting-time penalties; interest; and attorneys' fees and costs. Plaintiff's
14 Released Claims also expressly include all claims arising under the California Labor Code
15 (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206,
16 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8,
17 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1194,
18 1194.2, 1197, 1197.1, 1197.2, 1198, 2802, 2698 et seq., and 2699 et seq.); all claims arising under
19 the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys
20 General Act of 2004 ("PAGA"); California Business and Professions Code section 17200, et seq.,
21 the California Civil Code, including but not limited to Sections 3287, 3336 and 3294; 8 CCR §
22 11040; California Code of Civil Procedure, including but not limited to Section 1021.5; the
23 California common law of contract; the FLSA, 29 U.S.C. § 201, et seq.; federal common law; and
24 the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq.; all claims for lost wages
25 and benefits, emotional distress, retaliation, punitive damages, other damages, and attorneys' fees
26 and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and
27 wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title
28 VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in

1 Employment Act, and the California Fair Employment and Housing Act; and the law of contract
2 and tort. This release excludes the release of claims not permitted by law.

3 Plaintiff's Released Claims also includes the pending action before the Civil Rights
4 Department of the Department of Fair Employment and Housing, Case No. 202203-16287002,
5 entitled Smorowski/ARC Home LLC for alleged discrimination, wrongful termination, and
6 retaliation.

7 Plaintiff's Released Claims include all claims, whether known or unknown. Even if
8 Plaintiff discovers facts in addition to or different from those that he now knows or believes to be
9 true with respect to the subject matter of Plaintiff's Released Claims, those claims will remain
10 released and forever barred. Thus, Plaintiff expressly waives and relinquishes the provisions, rights
11 and benefits of California Civil Code Section 1542, which reads:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
13 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
14 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
15 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
16 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
17 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

18 Further, this Agreement constitutes a knowing and voluntary waiver of any and all rights or
19 claims that Plaintiff or may have under the Federal Age Discrimination In Employment Act, as
20 amended by the Older Workers' Benefit Protection Act of 1990, 29 U.S.C. §§ 621 et seq. This
21 paragraph and this Agreement are written in a manner calculated to be understood by Plaintiff.
22 Plaintiff is hereby advised in writing to consult with an attorney before signing this Agreement.
23 Plaintiff has had a reasonable time of up to 21 days in which to consider signing this Agreement. If
24 Plaintiff decides not to use all 21 days, Plaintiff knowingly and voluntarily waives any claims that
25 Plaintiff was not given the 21-day period or did not use the entire 21 days to consider this
26 Agreement. Plaintiff may revoke this Agreement at any time within the 7-day period following the
27 date Plaintiff signs this Agreement by providing written notice of revocation to Defendant's counsel
28 of record. The Agreement shall not become effective or enforceable until after this 7-day

1 revocation period has expired. If Plaintiff revokes the Agreement, Plaintiff will not receive the
2 consideration set forth in the Agreement.

3 **7. NOTICE AND OPPORTUNITY TO OPT OUT OR OBJECT**

4 7.1 Notice to the Class

5 The Parties submit a Notice of Class Action Settlement (“Class Notice”), in the form
6 attached hereto as “Exhibit 1,” to the Court for approval. The Class Notice will include,
7 nonexclusively, information regarding the nature of the Action; a summary of the substance of the
8 Settlement; the definition of the Class; the formula used to determine the Individual Settlement
9 Payments for the Class Members and Individual PAGA Payments for PAGA Members; the number
10 of Workweeks and PAGA Pay Periods credited to each Class Member and PAGA Member,
11 respectively; the estimated Individual Settlement Payment and/or Individual PAGA Payment; the
12 procedures and deadlines for objecting to the Settlement, seeking exclusion from the Settlement
13 (except PAGA Members shall have no right to exclude themselves from the PAGA portion of the
14 Settlement), and/or disputing the number of Workweeks or PAGA Pay Periods credited to them;
15 and the date for the Final Approval Hearing.

16 7.2 Mailing of the Class Notice

17 Within thirty (30) calendar days following notice by Plaintiff or the Court of the Preliminary
18 Approval Order, Defendant shall provide the Settlement Administrator with the Class List and Data
19 in readable Microsoft Excel spreadsheets. In no event will Class List and Data ever be shared with
20 or provided to Class Counsel.

21 Within fifteen (15)) calendar days after the Settlement Administrator’s receipt of the Class
22 List and Data, the Settlement Administrator shall mail the Class Notice to the Class Members via
23 first-class regular U.S. mail. Class Members will have forty-five (45) calendar days from the
24 mailing of the Class Notice (“Response Deadline”) to submit a Request for Exclusion (as defined
25 below), dispute, or objection. The date of initial mailing of the Class Notice by the Settlement
26 Administrator to the Class Members is the “Initial Mailing.” Prior to mailing the Class Notice to
27 Class Members, the Settlement Administrator will perform one search based on the National
28

1 Change of Address Database information to update and correct the Class List and Data for any
2 known or identifiable address changes.

3 If, within thirty (30) calendar days of the Initial Mailing, a Class Notice is returned with a
4 forwarding address, then within five (5) calendar days of receiving the undeliverable Class Notice,
5 the Settlement Administrator shall forward the original Class Notice to the updated address via
6 first-class regular U.S. mail indicating on the Class Notice the date of such re-mailing. If a Class
7 Notice is returned within thirty (30) calendar days of the Initial Mailing as undeliverable without a
8 forwarding address, then within five (5) calendar days of receiving the undeliverable Class Notice,
9 the Settlement Administrator will promptly attempt to determine the correct address using a skip-
10 trace search, and will perform a single re-mailing to any addresses located indicating the date of the
11 re-mailing on the Class Notice. Those Class Members who receive a re-mailed Class Notice (as a
12 result of the Settlement Administrator locating an updated address by way of skip-trace search,
13 forwarding address provided by the post office, or request from the Parties or Class Members), will
14 have the later of (a) fifteen (15) calendar days from the date the Class Notice is re-mailed or (b) the
15 Response Deadline to postmark a Request for Exclusion, objection, or dispute regarding
16 Workweeks or PAGA Pay Periods to the Settlement Administrator (“Extended Response
17 Deadline”).

18 In the event that the procedures in this Section are followed and the intended recipient of a
19 Class Notice still does not receive the Class Notice, the intended recipient shall be bound by all
20 terms of the Settlement and any Final Approval Order and Final Judgment entered by the Court if
21 the Settlement is approved by the Court. In the event the procedures in this Section are followed
22 and a Class Member does not ultimately return a Request for Exclusion and/or the Request for
23 Exclusion is rejected by the Settlement Administrator, the Class Member shall be deemed a
24 Participating Class Member and will be bound by all terms of the Settlement and any Final
25 Approval Order and Final Judgment entered by the Court if the Settlement is approved by the
26 Court.

1 7.3 Objection to the Settlement

2 A Participating Class Member may object to the Settlement. To assert an objection to the
3 Settlement, a Participating Class Member must submit an objection to the Settlement Administrator
4 by first class U.S. mail at the address specified on the Class Notice, not later than the Response
5 Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline. The date
6 of the postmark will be the exclusive means for determining whether an objection has been timely
7 submitted. All objections must be in writing, which includes: (1) the objector's full name, address,
8 last four digits of his or her Social Security number, and signature; (2) the case name and number;
9 (3) the factual and legal basis, with supporting documents, if any, on which the objection is based;
10 (4) whether the objector is represented by an attorney and providing the contact information of any
11 such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. The
12 Parties agree that the Settlement Administrator shall not disclose the last four digits of any Class
13 Member's Social Security number to anyone but the Parties, that such information will be securely
14 held, and that the disclosure of those last four digits to the Parties shall not be used for any purpose
15 except to ascertain the identity of the objector for administration of this Settlement. Any person
16 who fails to timely submit their written objections in the manner specified above may still appear
17 and object at the Final Approval Hearing. Participating Class Members who fail to object in the
18 manners specified above shall be deemed to have waived any objections and shall be foreclosed
19 from making any objection (whether by appeal or otherwise) to the Settlement. If a Participating
20 Class Member objects to this Settlement, the Participating Class Member will remain a member of
21 the Class, and if the Court grants final approval of the Settlement, he or she will be bound by the
22 terms of the Settlement and any Final Approval Order and Final Judgment. Within three (3)
23 business days of receipt of an objection, the Settlement Administrator shall provide counsel for the
24 Parties with a copy of the objection. No later than thirty (30) calendar days before the Final
25 Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a
26 complete list of Participating Class Members who have submitted an objection. Prior to the Final
27 Approval Hearing, the Settlement Administrator shall submit copies of the objections that it has
28 received, to the Court by way of declaration.

1 7.4 Request for Exclusion from the Settlement

2 Class Members who wish to exclude themselves from the Settlement must submit a valid
3 and timely request for exclusion (“Request for Exclusion”) to the Settlement Administrator by mail,
4 postmarked on or before the Response Deadline or, in the instance of a re-mailed Class Notice, the
5 Extended Response Deadline. The date of the postmark on the return mailing envelope will be the
6 exclusive means for determining whether a Request for Exclusion has been timely submitted. A
7 Request for Exclusion must be in writing which contains: (1) the Class Member’s full name, current
8 address, last four digits of his/her Social Security number; (2) the case name and number; (3) a clear
9 statement that the Class Member wishes to be excluded from the Settlement; and (4) the Class
10 Member’s signature and the date of signature. The Parties agree that the Settlement Administrator
11 shall not disclose the last four digits of any Class Member’s Social Security number to anyone but
12 the Parties, that such information will be securely held, and that the disclosure of those last four
13 digits to the Parties shall not be used for any purpose except to ascertain the identity of the
14 individual who wishes to exclude himself or herself from the Settlement for administration of this
15 Settlement. The name and last four digits of the Social Security number provided by the Class
16 Member on the Request for Exclusion must match Defendant’s records as provided to the
17 Settlement Administrator, or match Defendant’s records for that particular Class Member. The
18 name and Social Security number provided by the Class Member will be deemed to match
19 Defendant’s records only if: (1) both the first name and the last name and the last four digits of the
20 Social Security number provided by the Class Member match Defendant’s records; (2) the first
21 name and the last four digits of the Social Security number provided by the Class Member match
22 Defendant’s records and it appears the last name has been changed as a result of a change in marital
23 status or is a shortened or lengthened version of the name that appears in Defendant’s records; or
24 (3) the last four digits of the Social Security number and last name match Defendant’s records and
25 the first name provided is either a nickname or a shortened or lengthened version of the name that
26 appears in Defendant’s records. Each Class Member who does not submit a Request for Exclusion
27 in compliance with this paragraph will be deemed to be a Participating Class Member. Participating
28 Class Members will be bound by all terms of the Settlement Agreement and the Final Approval

1 Order and Final Judgment. Any Class Member who submits a timely, valid Request for Exclusion
2 will not be a Participating Class Member, will not be entitled to receive any Individual Settlement
3 Payment, and will not be bound by this Agreement or have any right to object, appeal, or comment
4 thereon.

5 Notwithstanding the foregoing, the Parties agree there is no statutory or other right for any
6 Class Member to opt out or otherwise exclude himself or herself from the PAGA portion of the
7 Settlement. A Class Member who submits a valid and timely Request for Exclusion and who is
8 also a PAGA Member shall still receive his or her proportionate share of the PAGA Payment and
9 shall be bound by the release of the PAGA claims during the PAGA Period.

10 No later than thirty (30) calendar days before the Final Approval Hearing, the Settlement
11 Administrator shall provide counsel for the Parties with a complete list of all Class Members who
12 have submitted a valid and timely Request for Exclusion.

13 If a Class Member submits both a Request for Exclusion and written objection to the
14 Settlement Administrator prior to the Response Deadline, the Settlement Administrator will first
15 attempt to contact the Class Member(s) to determine if they intended to submit only the Request for
16 Exclusion or written objection. If the Settlement Administrator is unable to contact the Class
17 Member(s) within ten (10) calendar days of receiving both the Request for Exclusion and written
18 objection or if the Class Member(s) fails to respond to the Settlement Administrator within ten (10)
19 calendar days of being contacted, then only the Request for Exclusion will be deemed valid. The
20 Class Member(s)' written objection will be invalid, and the Class Member will no longer be
21 considered a Participating Class Member, will not receive his or her Individual Settlement Payment,
22 and will not be bound by the Released Claims (but will still have fully and finally released and
23 discharged the Released Parties of all Released Claims arising during the PAGA Period that may be
24 asserted under PAGA).

25 7.5 No Solicitation of Objections to or Exclusions from the Settlement

26 The Parties agree to use their best efforts to carry out the terms of this Agreement. At no
27 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
28 to submit Requests for Exclusion, objections to the Settlement, or appeal from or seek review of the

1 Court's Preliminary Approval Order, Final Approval Order, or Final Judgment, provided, however,
2 that Class Counsel may respond to any questions received from Class Members regarding the
3 Settlement and the Settlement Agreement.

4 **8. DEFENDANT'S RIGHT TO RESCIND**

5 If either (i) 5% or more of the Class Members, or (ii) a number of Class Members whose
6 Individual Settlement Payments in the aggregate are 5% or more of the Settlement Amount, either
7 opt out of and/or object to the Settlement, or if both (i) and (ii) occur, Defendant may, at its
8 election, rescind the Settlement and all actions taken in its furtherance of it will be thereby null
9 and void. If Defendant exercises this right of recession, it must do so in writing, that is sent to
10 Class Counsel. If the option to rescind is exercised, then Defendant shall be solely responsible for
11 all Settlement Administration Costs accrued to that point. If such provision is exercised, the
12 Action will return to its pre-settlement litigation posture.

13 **9. DISPUTES REGARDING WORKWEEKS/PAY PERIODS**

14 The Class Notice mailed to each Class Member will indicate the Workweeks and PAGA
15 Pay Periods credited to each Class Member and the estimated Individual Settlement Payment and/or
16 Individual PAGA Payment that he/she is to receive based upon Defendant's records and the
17 formula set forth in Sections 10.2 and 10.4 below. If a Class Member objects to the Workweeks
18 and/or PAGA Pay Periods credited to him or her, as stated in the Class Notice, the Class Member
19 must submit written correspondence to the Settlement Administrator that is postmarked no later
20 than the Response Deadline, or in the instance of a re-mailed Class Notice, the Extended Response
21 Deadline, explaining the basis for the dispute and including any supporting documentation showing
22 that the Workweeks and/or PAGA Pay Periods credited to him or her is inaccurate. Defendant's
23 records will be presumed determinative, absent credible evidence to rebut the accuracy of the
24 Workweeks and/or PAGA Pay Periods credited to a Class Member based thereon. The Settlement
25 Administrator will evaluate the evidence submitted by the Class Member and make a
26 recommendation to the Parties as to which figures should be applied. If the Parties disagree with
27 the Settlement Administrator's recommendation, the dispute will be presented to the Court for
28 determination.

1 **10. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

2 10.1 Settlement Amount

3 The Settlement Amount has been agreed to by the Parties, based on analysis and assessment
4 of the value of the claims of the Class. It is expressly understood that if the Court awards less than
5 the total amounts requested to be awarded for Attorneys' Fees, Litigation Costs and Expenses,
6 PAGA Payment, Settlement Administration Costs, and Service Award to Plaintiff, or as otherwise
7 provided herein, the difference in any such amounts will be added to the Net Settlement Amount.

8 10.2 Distribution to the Participating Class Members

9 Individual Settlement Payments will be determined as follows: Defendant will provide the
10 Settlement Administrator with the number of Workweeks credited to each Participating Class
11 Member during the Class Period, as indicated in the Class List and Data. The Settlement
12 Administrator will then calculate the total number of Workweeks worked by all Participating Class
13 Members during the Class Period ("Total Workweeks"). To determine the Individual Settlement
14 Payment for each Participating Class Member, the Settlement Administrator will (1) divide each
15 Participating Class Member's respective Workweeks by the Total Workweeks, and (2) multiply the
16 resulting figure by the Net Settlement Amount. The Individual Settlement Payment will be reduced
17 by any required legal deductions for each Participating Class Member, provided that such legal
18 deductions will not include the employer's share of any payroll taxes, as set forth in Section 1.26
19 above. Any residual amounts of the Settlement Amount that are not distributed in full as
20 contemplated by this Agreement shall be distributed pro rata to Participating Class Members.

21 Participating Class Members will have one hundred and eighty (180) calendar days from the
22 date on which the Individual Settlement Payment check is issued, to cash or deposit the Individual
23 Settlement Payment check. If an Individual Settlement Payment check is not cashed within one
24 hundred and eighty (180) calendar days from the date of issuance, if said check represents a sum
25 that is five (5) or more times greater than the cost of sending an additional check to Participating
26 Class Members, then the uncashed Individual Settlement Payment checks will be redistributed to
27 Participating Class Members on a pro-rata basis. If the uncashed Individual Settlement Payment
28 checks represent a sum that is less than five (5) times greater than the cost of sending an additional

1 check to Participating Class Members, the Individual Settlement Payment checks will be cancelled
2 and funds associated with said cancelled check will be transmitted to the State Controller's
3 Unclaimed Property Fund in the name of the Participating Class Members, as an alternative
4 distribution for which there is good cause, under California Code of Civil Procedure Section 384(b).

5 10.3 Service Award to Plaintiff

6 Plaintiff will apply to the Court for a service award of no more than \$5,000.00 for Plaintiff
7 (the "Service Award"), to be paid out of the Settlement Amount. Defendant will not oppose such
8 an application, so long as it is consistent with the provisions of this Agreement. Any amount
9 awarded for the Service Award to Plaintiff that is less than the amount listed above will result in the
10 non-awarded funds being part of the Net Settlement Amount available for distribution to the
11 Participating Class Members. Plaintiff shall be solely and legally responsible to pay any and all
12 applicable taxes on the Service Award and shall hold harmless the Released Parties from any claim
13 or liability for taxes, penalties or interest arising as a result of the payment. Plaintiff is solely
14 responsible for providing a completed IRS W-9 form to the Settlement Administrator prior to
15 distribution. The Settlement Administrator will issue to Plaintiff an IRS Form 1099 reflecting the
16 Service Award.

17 10.4 PAGA Payment

18 The Parties agree to allocate the amount of \$55,000.00 from the Settlement Amount
19 pursuant to PAGA as the PAGA Payment. Seventy-five percent (75%) of this amount, or
20 \$41,250.00, will be paid to the LWDA and twenty-five percent (25%) of this amount, or
21 \$13,750.00, will be distributed to PAGA Members. The portion of the PAGA Payment
22 (\$13,750.00) distributed to PAGA Members shall be calculated and distributed on a pro rata basis
23 based on PAGA Members' respective number of PAGA Pay Periods during the PAGA Period. The
24 Settlement Administrator will (1) divide each PAGA Member's PAGA Pay Periods by the total
25 number of Pay Periods worked by all PAGA Members during the PAGA Period, and (2) multiple
26 the resulting figure by the portion of the PAGA Payment (\$13,750.00) allocated to PAGA Members
27 in order to yield each PAGA Member's Individual PAGA Payment.

1 Upon the Effective Date and payment by Defendant of the Settlement Amount to the
2 Settlement Administrator, as well as its employer's share of taxes on funds allocated as wages
3 herein, Defendant will be released of any liability for any penalties pursuant to PAGA in
4 connection with the claims and factual allegations alleged in the Action to the extent permitted by
5 law. In the event that the Court finds the Parties' allocation of proceeds from the Settlement
6 Amount to PAGA to be insufficient, the Parties expressly reserve the right to amend this
7 Agreement to increase the allocated amount to a level that satisfies the Court's discretion, but
8 provided that such increase does not increase the Settlement Amount.

9 10.5 Payment to Plaintiff To Resolve Pending DFEH Claim and 1542 Release

10 The Parties agree to allocate \$75,000.00 to resolve the pending action before the Civil
11 Rights Department of the Department of Fair Employment and Housing, Case No. 202203-
12 16287002, entitled Smorowski/ARC Home LLC based on Plaintiff's allegations that he was
13 discriminated against, wrongfully terminated, and retaliated against by Defendant due to his
14 medical condition ("Plaintiff's Individual Settlement Payment"). This payment also covers any
15 claims Plaintiff may have that are unknown at this time. Even if Plaintiff discovers facts in addition
16 to or different from those that he now knows or believes to be true, those claims will remain
17 released and forever barred. Thus, Plaintiff expressly waives and relinquishes the provisions, rights
18 and benefits of California Civil Code Section 1542. Plaintiff agrees to request a stay of his pending
19 DFEH action within 15 days of execution of this Agreement.

20 10.6 Attorneys' Fees and Litigation Costs and Expenses

21 Class Counsel shall be entitled to apply to the Court for attorneys' fees payable to Class
22 Counsel in the amount of up to 33.33% of the Settlement Amount, which is \$308,302.50
23 ("Attorneys' Fees"), and litigation costs and expenses in an amount not to exceed \$6,500.00
24 ("Litigation Costs and Expenses"). The amounts set forth above for Attorneys' Fees and Litigation
25 Costs and Expenses will cover all work performed and all fees and costs incurred by Class Counsel
26 to date, and all work to be performed and all fees to be incurred in connection with the litigation of
27 the Action, seeking preliminary and final approval by the Court of this Settlement and Agreement,
28 the administration of the Settlement, seeking and obtaining a Preliminary Approval Order and Final

1 Approval Order, and obtaining Final Judgment. Class Counsel is solely responsible for providing
2 completed IRS W-9 forms to the Settlement Administrator prior to distribution. The Settlement
3 Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded Attorneys'
4 Fees and Litigation Costs and Expenses. Should Plaintiff and/or Class Counsel request a lesser
5 amount for Attorneys' Fees and/or the Court approves a lesser amount, the difference between the
6 lesser amount and \$308,302.50 will be a part of the Net Settlement Amount. Should Plaintiff
7 and/or Class Counsel request a lesser amount for its Litigation Costs and Expenses and/or the Court
8 approves a lesser amount, the difference between the lesser amount and \$6,500.00 will be added to
9 the Net Settlement Amount. Class Counsel will not be permitted to petition the Court for, or
10 accept, any additional payments from Defendant for attorneys' fees, costs, or expenses in
11 connection with the Action. Class Counsel shall assume full responsibility and liability for the
12 payment of taxes due on such awards.

13 Defendant's payment of the Attorneys' Fees and Litigation Costs and Expenses awarded to
14 Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person,
15 attorney, or law firm for attorneys' fees, costs, or expenses in the Action incurred by any attorney
16 on behalf of the Plaintiff, the Class Members, and the PAGA Members, and shall relieve
17 Defendant, the Settlement Administrator, and Defendant's counsel of any other claims or liability to
18 any other attorney or law firm for any attorneys' fees, costs, and expenses to which any of them
19 may claim to be entitled on behalf of Plaintiffs and/or the Class Members and PAGA Members.

20 10.7 Settlement Administrator

21 Subject to approval by the Court, the Parties agree that the fees and expenses of the
22 Settlement Administrator in relation to services rendered in administration of the Settlement of the
23 Action shall be deducted from the Settlement Amount, not to exceed \$15,000.00 ("Settlement
24 Administration Costs"), absent approval of the Court for a greater amount. If the Settlement
25 Administrator's actual costs are lower than, or the Court awards less than the total amount allocated
26 for Settlement Administration Costs, the difference in any such amounts will be a part of the Net
27 Settlement Amount.

28 The Settlement Administrator shall have the authority to mail the Class Notice; establish a

1 qualified settlement fund account and administer the Settlement Amount; and disburse funds from
2 the Settlement Amount in accordance with this Agreement. The Settlement Administrator shall
3 calculate the Individual Settlement Payments to be paid to the Participating Class Members in
4 accordance with the terms and provisions of this Agreement; calculate the Individual PAGA
5 Payments to be paid to PAGA Members in accordance with the terms and provisions of this
6 Agreement; distribute the Class Notice; determine eligibility for payment to a Class Member or
7 PAGA Member; resolve any disputes regarding the Workweeks and/or PAGA Pay Periods credited
8 to each Class Member and/or PAGA Member; keep track of those Class Members requesting to be
9 excluded from the Settlement, and provide information regarding objections and Requests for
10 Exclusion to the Parties' counsel; mail the Individual Settlement Payment checks to Participating
11 Class Members and Individual PAGA Payment checks to PAGA Members; undertake require tax
12 withholdings and reporting; and perform such other tasks necessary to effectuate the terms of this
13 Agreement or as the Parties mutually agree or the Court orders the Parties to perform. The
14 Settlement Administrator shall regularly report to the Parties, in written form, the substance of the
15 work performed.

16 The Settlement Administrator will submit to the Court, in conjunction with the motion for
17 final approval, a declaration providing, among other things, the number of Class Notices it mailed
18 to the Class Members, the number of Class Notices that it re-mailed, the number of Class Notices
19 that were ultimately undeliverable, the number of Requests for Exclusion and objections that it
20 received, the number of defective Requests for Exclusion and objections that it received, the total of
21 its charges for services rendered, and the anticipated future charges contemplated in order to bring
22 the administration of the Settlement and distribution of payments to completion.

23 Any disputes relating to the Settlement Administrator's ability and need to perform its
24 duties shall be referred to the Court.

25 10.8 Time for Funding of the Settlement

26 Prior to the Effective Date of the Settlement, Defendant will not be required to fund the
27 Settlement, in whole or in part, through the Settlement Administrator or any third party. Within
28 thirty (30) calendar days after the Effective Date or by January 20, 2025, whichever is later,

1 Defendant shall provide the Settlement Administrator with sufficient funds to make all the
2 payments required under this Settlement.

3 10.9 Time for Distribution

4 Within 30 calendar days after receipt of the Settlement Amount from Defendant, the
5 Settlement Administrator shall make the following payments as approved by the Court:
6 (1) Individual Settlement Payments to Participating Class Members; (2) Individual PAGA
7 Payments to PAGA Members; (3) the Service Award; (4) Plaintiff's Individual Settlement
8 Payment; (5) the Attorneys' Fees; (6) the Litigation Costs and Expenses; (7) the portion of the
9 PAGA Payment to the LWDA; and (8) the Settlement Administration Costs.

10 10.10 Allocation

11 All Individual Settlement Payments will be allocated as follows: 20% as wages ("wage
12 portion") and 80% as penalties, any other non-taxable items, and interest. The wage portion of each
13 Individual Settlement Payment will be subject to W-2 reporting and, therefore, normal employee's
14 share of payroll taxes and withholdings will be deducted pursuant to applicable state and federal
15 law. Defendant shall be responsible for paying employer-side taxes separately from the Settlement
16 Amount. Participating Class Members will be issued an IRS Form 1099 for the portion of their
17 Individual Settlement Payments that is treated as interest and penalties and any other non-taxable
18 items, and will assume full responsibility and liability for the payment of taxes due on such awards,
19 if any. All Individual PAGA Payments will be allocated as 100% penalties and interest and PAGA
20 Members will be issued an IRS Form 1099 for their Individual PAGA Payment, and will assume
21 full responsibility and liability for the payment of taxes due on such awards, if any. The Parties
22 make no representations about the tax consequences to the portion of the Individual Settlement
23 Payments representing interest and penalties.

24 **11. INTEREST**

25 The Settlement Amount includes any and all interest accruals and no additional interest shall
26 be due under any circumstances.

1 **12. TAXATION**

2 12.1 Plaintiff, Participating Class Members, and PAGA Members represent and warrant
3 that they understand that it is their sole obligation to pay appropriate federal, state, and local
4 income taxes on any amounts they receive under this Agreement that lawfully qualify as taxable
5 income.

6 12.2 CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR
7 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
8 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
9 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
10 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
11 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
12 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
13 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
14 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
15 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
16 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
17 ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
18 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
19 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
20 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
21 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
22 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
23 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
24 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
25 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
26 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
27 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
28

1 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
2 AGREEMENT.

3 **13. COURT APPROVAL**

4 13.1 The Parties agree that no later than ten (10) days after signing this Agreement,
5 Plaintiff will submit a PAGA letter to the LWDA as necessary to comport with and include all
6 claims set forth in the Release and Waiver of Claims by PAGA Members as defined herein in
7 Section 6.2. Further, Plaintiff will file with the Court an amended complaint to add a cause of
8 action under the Private Attorneys' General Act of 2004 ("PAGA"), which shall include all
9 claims set forth in the Release and Waiver of Claims by PAGA Members as defined herein in
10 Section 6.2, to the extent they are not already included.

11 13.2 Following the Preliminary Approval Order, if Defendant does not exercise its right
12 to cancel the Settlement solely as provided for herein, a motion for final approval of the
13 Settlement will be filed by Class Counsel, which, if not separately filed by Class Counsel, will
14 include a request for Attorneys' Fees, Litigation Costs and Expenses, and Service Award as
15 provided for herein, which Defendant will not oppose. The Parties agree to take all steps as may
16 be reasonably necessary to secure final approval of the Settlement as quickly as possible, to the
17 extent not inconsistent with the terms of this Agreement, and will not take any action adverse to
18 each other in obtaining Court approval, and, if necessary, appellate approval, of the Agreement in
19 all respects.

20 13.3 If the Court does not grant preliminary approval and/or final approval of the
21 Settlement, or if the Court's Final Approval Order and Final Judgement are reversed or materially
22 modified on appeal, then this Settlement will become null and void.

23 13.4 In the event the Court declines to enter the Final Approval Order and Final
24 Judgment, this Agreement shall be null and void and any order or judgment entered by the Court
25 in furtherance of this Agreement shall be treated as void. In such a case, the Parties and any funds
26 to be awarded under this Settlement shall be returned to their respective statuses as of the date and
27 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
28

1 respects as if this Agreement had not been executed, except that any fees and expenses already
2 reasonably incurred by the Settlement Administrator shall be paid by Defendant.

3 **14. MISCELLANEOUS PROVISIONS**

4 14.1 No Effect on Regular Rate or Overtime Compensation. Participating Class Members
5 and PAGA Members will receive payment under the Settlement, as determined by the Settlement
6 Administrator in accordance with this Agreement. The Parties agree that this payment is not
7 viewed as additional compensation for purposes of calculating a “regular rate” of pay under
8 California or federal law for the period during which it is received, and no additional overtime
9 compensation is required as a result of such payment; further, any claim to entitlement to any
10 additional overtime compensation is expressly waived under the terms of this Agreement. No
11 person or entity shall have any claim against Defendant, Defendant’s Counsel, Plaintiff, any Class
12 Members or PAGA Members, Class Counsel, or the Settlement Administrator based upon
13 distributions and payments made in accordance with this Agreement.

14 14.2 No Effect on Employee Benefits. The Individual Settlement Payments and/or
15 Individual PAGA Payments to be paid to Plaintiff, Participating Class Members, and PAGA
16 Members, and the Service Award to be paid to Plaintiff shall be deemed not to be pensionable
17 earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee
18 benefits (e.g., vacations, holiday pay, retirement plans, 401k plans, sick leave plans, PTO plans,
19 etc.) of Plaintiff, any Participating Class Members or any PAGA Members. Such payments do not
20 represent any modification of Plaintiff’s, Participating Class Members’, or PAGA Members’
21 previously credited hours of service or other eligibility criteria under any employee pension benefit
22 plan or employee welfare benefit plan sponsored by Defendant. Further, any Individual Settlement
23 Payment, Individual PAGA Payment, or Service Award shall not be considered “compensation” in
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1 any year for purposes of determining eligibility for, or benefit accrual within, an employee pension
2 benefit plan or employee welfare benefit plan sponsored by Defendant.

3 14.3 Headings. The descriptive headings of any paragraphs or sections of this Agreement
4 are inserted for convenience of reference only and do not constitute a part of this Agreement.

5 14.4 Final Agreement. This Agreement constitutes the exclusive and final understanding
6 and expression of all agreements between the Parties with respect to the resolution of the Action,
7 and supersedes all prior agreements and understandings between the Parties relating to the subject
8 matter hereof. Plaintiff, on behalf of himself and on behalf of the Class Members, PAGA
9 Members, and LWDA, and Defendant enter into this Agreement based solely upon its terms and not
10 in reliance upon any representations or promises other than those contained in this Agreement.

11 14.5 Amendment or Modification. This Agreement may be amended or modified only by
12 a written instrument signed by counsel for the Parties, or their successors, and approved by the
13 Court.

14 14.6 Counterparts/Facsimile. This Agreement may be executed in one or more actual or
15 telecopied counterparts, all of which will be considered one and the same instrument and all of
16 which will be considered duplicate originals. A signature by facsimile on this Agreement shall be as
17 legally binding as an original signature.

18 14.7 Authority. Counsel for all Parties represent and warrant they are expressly
19 authorized by the Parties whom they represent to negotiate this Agreement and to take all
20 appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to
21 effectuate its terms, and to execute any other documents required to effectuate the terms of this
22 Agreement. The Parties and their counsel will cooperate with each other and use their best efforts
23 to effectuate the implementation of the Settlement. In the event that the Parties are unable to reach
24 agreement on the form or content of any document needed to implement the Settlement, or on any
25 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
26 Parties shall seek the assistance of the Court to resolve such disagreement. The person signing this
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1 Agreement on behalf of Defendant represents and warrants that he is authorized to sign this
2 Agreement on its behalf.

3 14.8 Binding on Successors and Assigns. This Agreement shall be binding upon, and
4 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

5 14.9 Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in the
6 Action in abeyance, except such proceedings necessary to implement and complete the Settlement,
7 pending the Final Approval Hearing to be conducted by the Court.

8 14.10 Fair, Adequate, and Reasonable Settlement. The Parties and their respective counsel
9 believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the
10 Action and have arrived at this Agreement through arm's-length negotiations, considering all
11 relevant factors, current and potential.

12 14.11 Cooperation and Drafting. Each of the Parties has cooperated in the drafting and
13 preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall
14 not be construed against any of the Parties.

15 14.12 Invalidity of Any Provision. Before declaring any provision of this Agreement
16 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
17 consistent with applicable precedents so as to define all provisions of this Agreement as valid and
18 enforceable.

19 14.13 Plaintiff's Waiver of Right to Be Excluded. By signing this Agreement, Plaintiff is
20 bound by the terms herein stated and further agrees not to submit a Request for Exclusion from the
21 Settlement. Any such Request for Exclusion shall therefore be void and of no force or effect.
22 Plaintiff also agrees to not disparage the Settlement to Class Members or PAGA Members or
23 encourage, in any way, Class Members to submit or not to submit a Request for Exclusion. In
24 addition, neither Plaintiff nor Class Counsel will initiate any contact with Class Members or PAGA
25 Members about the amount or terms of the Settlement.

26 14.14 Publicity. Plaintiff and Class Counsel agree that they will not issue any press
27 releases, initiate any contact with the press, respond to any press inquiry or have any
28 communication with the press about the amount or terms of the Settlement. Class Counsel may

1 respond to press inquiries by stating the matter has been resolved and refer the press to court
2 filings. In addition, Plaintiff and Class Counsel agree that they will not engage in any advertising
3 or distribute any marketing materials specifying any material terms relating to the Settlement of
4 the Action, including but not limited to any postings on any websites maintained by Class Counsel
5 and including but not limited to the identity of Defendant and/or any information that identifies
6 Defendant. The Settlement Administrator shall not create nor maintain any separate website
7 regarding this Settlement at any time. Any communication about the Settlement to Class
8 Members prior to the Court-approved mailing of the Class Notice will be limited to a statement
9 that a settlement has been reached and the details will be communicated in a forthcoming Court-
10 approved notice. Plaintiff is prohibited from discussing the terms or the fact of the settlement with
11 third parties other than (1) his spouse, and/or (2) his accountants or lawyers as necessary for tax
12 purposes.

13 14.15 Defense. To the extent permitted by law, this Settlement may be plead as a full and
14 complete defense to, and may be used as the basis for an injunction against, any action, suit, or
15 other proceeding that may be instituted, prosecuted, or attempted with respect to the Released Class
16 Claims against the Released Parties in breach of or contrary to the Settlement.

17 14.16 Final Judgment. The Parties agree that, upon final approval of the Settlement, a
18 Final Judgment will be made and entered, resolving the Action in its entirety.

19
20 WHEREFORE, Plaintiff, on behalf of himself and the Participating Class Members,
21 PAGA Members, and LWDA, and Defendant, have executed this Agreement as of the dates set
22 forth below.

23
24 Executed on: 5/20/2024


PLAINTIFF JEFF SMOROWSKI

25
26
27 Executed on: _____

DEFENDANT ARC HOME LLC

1 respond to press inquiries by stating the matter has been resolved and refer the press to court
2 filings. In addition, Plaintiff and Class Counsel agree that they will not engage in any advertising
3 or distribute any marketing materials specifying any material terms relating to the Settlement of
4 the Action, including but not limited to any postings on any websites maintained by Class Counsel
5 and including but not limited to the identity of Defendant and/or any information that identifies
6 Defendant. The Settlement Administrator shall not create nor maintain any separate website
7 regarding this Settlement at any time. Any communication about the Settlement to Class
8 Members prior to the Court-approved mailing of the Class Notice will be limited to a statement
9 that a settlement has been reached and the details will be communicated in a forthcoming Court-
10 approved notice. Plaintiff is prohibited from discussing the terms or the fact of the settlement with
11 third parties other than (1) his spouse, and/or (2) his accountants or lawyers as necessary for tax
12 purposes.

13 14.15 Defense. To the extent permitted by law, this Settlement may be plead as a full and
14 complete defense to, and may be used as the basis for an injunction against, any action, suit, or
15 other proceeding that may be instituted, prosecuted, or attempted with respect to the Released Class
16 Claims against the Released Parties in breach of or contrary to the Settlement.

17 14.16 Final Judgment. The Parties agree that, upon final approval of the Settlement, a
18 Final Judgment will be made and entered, resolving the Action in its entirety.

19
20 WHEREFORE, Plaintiff, on behalf of himself and the Participating Class Members,
21 PAGA Members, and LWDA, and Defendant, have executed this Agreement as of the dates set
22 forth below.

23
24 Executed on: _____

PLAINTIFF JEFF SMOROWSKI

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27 Executed on: May 20, 2024

Stuart Kepler

DEFENDANT ARC HOME LLC

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Executed on: 5/28/2024

RIGHETTI GLUGOSKI, PC



JOHN GLUGOSKI
For Plaintiff Jeff Smorowski

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP



Executed on: 5/29/2024

GREG S. LABATE
FRANCES M.K. HERNANDEZ
LAUREN J. BLAES
For Defendant Arc Home LLC

EXHIBIT 2

NOTICE OF CLASS ACTION SETTLEMENT

JEFF SMOROWSKI, PLAINTIFF, V. ARC HOME LLC, DEFENDANT.

**SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES
CASE NO. 23STCV22716 (“ACTION”)**

A court authorized this notice. This is not a solicitation from a lawyer.

If you are or were employed by Arc Home LLC in California as an exempt or non-exempt employee at some time between September 20, 2019, through [insert date of preliminary approval of settlement], you may be eligible to receive a settlement payment.

A judge of the Los Angeles Superior Court has ordered that this Notice be sent to you. A class and representative action settlement (the “Settlement”) has been reached in the above-referenced lawsuit (the “Action”) between Jeff Smorowski (“Plaintiff” or “Class Representative”) and Defendant Arc Home LLC (“Defendant” or “Arc”), which may affect your legal rights. On [date of preliminary approval], the Court granted preliminary approval of the Settlement.

Because your rights may be affected by this Settlement, it is important that you read this Notice carefully. If you still have questions, or if you wish to update your mailing information, please contact the settlement administrator, [redacted], at (xxx) xxx-xxxx.

YOUR LEGAL RIGHTS & OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND GET AUTOMATIC PAYMENT	If you do nothing, you will <u>automatically</u> receive your share of the settlement if the Court finally approves the settlement. You will release all claims covered by the settlement. You do not have to do anything to receive a payment.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement, you can opt-out of the Class portion of the Settlement by sending the Administrator a written Request for Exclusion by [redacted], 2024. If you opt-out, you (1) will not be a Participating Class Member; (2) will not receive an Individual Settlement Payment; and (3) will be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement.
OBJECT	Class Members who do not opt out of the proposed settlement (“Participating Class Members”) may object to the settlement. The deadline to file objections with the Court is [redacted], 2024.

1. Why did I get this notice?

You received this notice because Arc’s records show that you worked as an exempt or non-exempt employee for Arc in California for some time during the period of September 20, 2019 through [PA Date] (the “Class Period”). This means you are a potential “Class Member,” which consists of all current and former exempt and non-exempt employees who worked for Arc in California during any portion of the Class Period. In addition, you are also a “PAGA Member” if you are currently or were formerly employed as an exempt or non-exempt employee of Arc who worked for Arc in California at any time between September 20, 2022 through [PA Date] (“PAGA Period”).

This notice tells you how you can a) participate in the Settlement and receive your share of the settlement proceeds, b) object to the Settlement, or c) exclude yourself from the Settlement.

2. What is the Action and Settlement about?

On September 20, 2023, Plaintiff filed a complaint against Defendant, which alleges that Arc failed to pay minimum and overtime wages, wage statement violations, failed to reimburse for business expenses and losses incurred, , among other claims. Arc denies each and every allegation in the Action, denies any liability or wrongdoing of any kind, and believes that it treated, and continues to treat, its employees fairly and in full compliance with the law.

The parties participated in mediation with a respected mediator and, as a result, the parties reached a settlement, subject to Court approval, to resolve all claims asserted in the Action. Plaintiff believes the Settlement is fair, adequate, and reasonable, and is in the best interest of Class Members. By agreeing to settle, Arc is not admitting liability on any of the factual allegations or claims in the Action or that the Action can or should proceed as a class or representative action. The Court has not ruled on the merits of the Plaintiff's claims or Arc's defenses (which means the court has not decided who is right or wrong).

On **DATE**, the Court issued an order preliminarily approving the Settlement, approving this Notice, and setting a hearing on **[hearing date]** at **[hearing time]** ("Final Approval Hearing") to decide whether to give final approval to the Settlement. See below for details.

3. What does the settlement provide?

Subject to the Court's final approval, the terms of the Settlement are as follows:

- A. Arc will pay the gross settlement amount of \$925,000.00 (the "Settlement Amount"). The portion of the Settlement Amount that is available for payment to Class Members who did not submit a valid and timely Request for Exclusion ("Participating Class Members") is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Settlement Amount less the following payments:: attorneys' fees of not more than 33.33% of the Settlement Amount (\$308,302.50) and costs incurred for representing Plaintiff and the Class in the Action not to exceed \$6,500.00; class representative service payment to Plaintiff for his services as Class Representative of not more than \$5,000.00; payment of \$75,000.00 to Plaintiff to resolve his pending action before the Civil Rights Department of the Department of Fair Employment and Housing; payment of \$55,000.00 allocated toward civil penalties under the California Private Attorneys General Act of 2004 (the "PAGA Settlement"), of which 75% (\$41,250.00) will be paid to the California Labor and Workforce Development Agency ("LWDA") and 25% (\$13,750.00) will be paid to PAGA Members, pursuant to PAGA; and an administrator expenses payment not to exceed \$15,000.00 to the Settlement Administrator. Each of these sums will be paid from the Settlement Amount.
- B. Each Participating Class Member will be allocated an "Individual Settlement Payment," that will be calculated based on the number of "Workweeks" the Participating Class Member worked for Arc in California as an exempt or non-exempt employee during the Class Period, as follows: (1) divide each Participating Class Member's respective Workweeks by the Total Workweeks, and (2) multiply the resulting figure by the Net Settlement Amount. Each Individual Settlement Payment will be allocated as 20% taxable wages ("Wage Portion") and 80% penalties, interest, and any other non-taxable items ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on an IRS W-2 Form. (Arc will separately pay employer payroll taxes it owes on the Wage Portion.) The Administrator will report the Non-Wage Portion of the Individual Settlement Payment on an IRS 1099 Form.
- C. In addition to the Individual Settlement Payment, each PAGA Member will be allocated an "Individual PAGA Payment," which will be calculated based on the number of "Pay Periods" the PAGA Member worked for Arc in California as an exempt or non-exempt employee during the PAGA Period ("PAGA Pay Periods"), as follows: (1) dividing each PAGA Member's PAGA Pay Periods by the total number of Pay Periods worked by all PAGA Members during the PAGA Period, and (2) multiplying the resulting figure by the portion of the

PAGA Payment allocated to PAGA Members (\$13,750.00). The Administrator will report the full amount of the Individual PAGA Payment on an IRS 1099 Form.

According to Arc's records, you worked for Arc as an exempt or non-exempt employee in California for a total of [REDACTED] Workweeks during the Class Period. According to Arc's records, you worked for Arc as an exempt or non-exempt employee in California for a total of [REDACTED] Pay Periods during the PAGA Period. Based on the above methodology, your estimated Individual Settlement Payment is \$ [REDACTED] and your estimated Individual PAGA Payment is \$ [REDACTED].

Although the parties have agreed to the above allocations, neither side is giving you any advice on whether your Individual Settlement Payment or Individual PAGA Payment are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement. None of the above payments will be eligible for benefit contributions or employee matching.

4. What am I giving up in exchange for the settlement benefits?

Those Class Members who do not submit a timely and valid Request for Exclusion to the Settlement Administrator as explained below (i.e. Participating Class Members), on behalf of themselves and their respective past, present, and future spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, upon the Effective Date of the Settlement, shall fully and finally release and discharge Arc and each of its past, present, and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of their respective past, present, and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them (collectively, the "Released Parties"), from the Released Claims. The "Released Claims" are defined as all claims, debts, liabilities, demands, actions, or causes of action pleaded or asserted in the Action or that could have been pleaded or asserted based upon the facts alleged in the Action, including but not limited to state and/or federal wage and hour claims, failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal rounding; misclassification; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to provide one day's rest in a seven-day workweek; unauthorized or improper deductions; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; interest; and attorneys' fees and costs. The Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Sections 200-204, 210, 218, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2800, 2802, 2698 et seq., and 2699 et seq.); the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004; California Business and Professions Code Section 17200, et seq.; the California Civil Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11040; California Code of Civil Procedure, including but not limited to Section 1021.5; and the FLSA, 29 U.S.C. Section 201, et seq. This release excludes the release of claims not permitted by law. The time frame of the Released Claims shall be the Class Period. This is referred to herein as the "Released Class Claims."

In addition, as of the Effective Date of the Settlement, Plaintiff, the LWDA, and each and all PAGA Members, on behalf of themselves and their respective past, present, and future spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of all Released Claims arising during the PAGA Period that may be asserted under PAGA. This is referred to herein as the "Released PAGA Claims."

5. Who are the attorneys representing the parties?

Class Counsel

John Glugoski – jglugoski@righettilaw.com
RIGHETTI GLUGOSKI, P.C.
2001 Union Street, Suite 400
San Francisco, CA 94123
Telephone: (415) 983-0900

Defendant's Counsel

Greg S. Labate – glabate@sheppardmullin.com
Lauren J. Blaes – Lblaes@sheppardmullin.com
Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 10th Floor
Costa Mesa, CA 92626-1993
Telephone: (714) 513-5100

6. How do I participate in the settlement?

You are not required to take any action to receive your individual settlement share under the Settlement. If you do nothing, your share of the settlement proceeds will be mailed to you by check after the Court grants “final approval” of the Settlement, and after time for appeals has ended or any appeals have been resolved, if applicable.

7. How do I opt-out (request exclusion) of the Settlement Class?

If you wish to exclude yourself from the Settlement, you must submit a valid and timely request for exclusion (“Request for Exclusion”) to the Settlement Administrator by mail, postmarked on or before **[Response Deadline]** to the following:

SETTLEMENT ADMIN INFO

Your Request for Exclusion must be in writing and include the following: (1) the Class Member’s full name, current address, last four digits of his/her Social Security number; (2) the case name and number; (3) a clear statement that the Class Member wishes to be excluded from the Settlement in the matter of *Smorowski v. Arc Home LLC*; and (4) the Class Member’s signature and the date of signature.

Your Request for Exclusion will not be valid if it does not comply with the above requirements. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Class Members who do not submit a valid and timely written Request for Exclusion shall be deemed to be a Participating Class Member and bound by all terms of the Settlement and any final judgment entered in the Action if the Settlement is approved by the Court.

Any Class Member who submits a valid and timely Request for Exclusion will not be a Participating Class Member, will not receive an Individual Settlement Payment, and will not be bound by the Class portion of the Settlement, including the Released Class Claims of the Settlement, or have any right to object, appeal, or comment thereon.

There is no statutory right or other right for any Class Member to opt out, request exclusion or otherwise exclude themselves from the PAGA portion of the Settlement and the associated PAGA Released Claims. A Class Member who submits a valid and timely Request for Exclusion and who is also a PAGA Member shall still receive his or her Individual PAGA Payment and shall be bound by the PAGA Released Claims.

8. What happens with any uncashed settlement checks?

Participating Class Members, and all PAGA Members, will have one hundred and eighty (180) calendar days from the date on which the Individual Settlement Payment and/or Individual PAGA Payment check is issued, to cash or deposit the check. The check will be void after 180 days from the date of issuance, and the Settlement provides that

money will either be redistributed or transmitted to the State Controller's Unclaimed Property Fund, depending on the amount of the uncashed check.

9. What if I dispute the number of Workweeks/PAGA Pay Periods allocated to me?

If a Class Member objects to the Workweeks and/or PAGA Pay Periods credited to him or her, as stated herein, the Class Member must submit written correspondence to the Settlement Administrator that is postmarked no later than [Response Deadline], explaining the basis for the dispute and including any supporting documentation showing that the Workweeks and/or PAGA Pay Periods credited to him or her is inaccurate. Arc's records will be presumed determinative, absent credible evidence to rebut the accuracy of the Workweeks and/or PAGA Pay Periods credited to a Class Member based thereon. The Settlement Administrator will evaluate the evidence submitted by the Class Member and make a recommendation to the Parties as to which figures should be applied. If the Parties disagree with the Settlement Administrator's recommendation, the dispute will be presented to the Court for determination.

10. How do I object to the Settlement?

If you do not file a Request for Exclusion, you may object to the Settlement before final approval of the Settlement by the Court. To assert an objection to the Settlement, a Participating Class Member must submit an objection to the Settlement Administrator by first class U.S. mail at the address specified on the Class Notice, not later than [Response Deadline]. The date of the postmark will be the exclusive means for determining whether an objection has been timely submitted. All objections must be in writing, which includes: (1) the objector's full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number; (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the objector is represented by an attorney and providing the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing.

If you do not send a written objection, you may still appear at the final approval hearing or through an attorney you hire, at your own expense, to object. If you fail to object, you shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement.

If a Participating Class Member objects to this Settlement, the Participating Class Member will remain a member of the Class, and if the Court grants final approval of the Settlement, he or she will be bound by the terms of the Settlement and any Final Approval Order and Final Judgment.

11. When and where is the final approval hearing?

The Court will hold a Final Approval Hearing in Department X of the Los Angeles County Superior Court, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, on XXX at __:00 a.m. If there are objections, the Court will consider them at the Final Approval Hearing. The Court will also be asked to approve Attorneys' Fees, Litigation Costs and Expenses for Class Counsel, Service Award to Plaintiff, PAGA Payment, and Settlement Administration Costs. The Final Approval Hearing may be moved to another date without further notice to the Class Members. It is your responsibility to monitor the Court's docket. It is not necessary for you to appear at this hearing.

ADDITIONAL INFORMATION

This Notice is only a summary of the Action and the Settlement. For the precise terms and conditions of the Settlement, you may refer to the settlement agreement and other papers which are on file with the Court. You may view the Settlement Agreement and other court records, including the Final Approval Order and Judgment, in the Action at the Los Angeles County Superior Court, 111 N. Hill Street, Los Angeles, CA 90012, during court business hours, Monday through Friday (except court holidays) or by online by visiting the following website: <https://www.lacourt.org>.

PLEASE DO NOT CONTACT THE COURT OR THE OFFICE OF THE CLERK WITH INQUIRIES.

**IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE
FOLLOWING TOLL-FREE NUMBER: [INSERT].**

EXHIBIT 3

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Overview of Our Firm:

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

AREAS OF EXPERTISE:

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

Ramirez v JC Penney.

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

Kruger, et al. v. Novant Health

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

Abbott, et al. v. Lockheed Martin Corp.

- ERISA Case with \$62 million.

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

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

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

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

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

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

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

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

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

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

PRE-SETTLEMENT CONSULTATION

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

MAILING AND NOTIFICATION

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

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MEDIA & INTERNET BANNER ADS

Notice Publication

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

PROJECT MANAGEMENT

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

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SETTLEMENT ADMINISTRATION EXPERTS

DATA ADMINISTRATION AND NETWORK SECURITY

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

DISTRIBUTION AND SETTLEMENT FUNDING

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

CASE CONCLUSION

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

Case Name: Arc Home

Tuesday, June 18, 2024

Requesting Attorneys Name:	John Glugoski
E-Mail:	jglugoski@righettilaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

Estimate For Administrative Solutions: Class & PAGA

KEY ASSUMPTIONS	
Total Number of Class Members	92
Estimated Percentage of Remails	15%
Certified Spanish Translation	No
ILYM Group Static Website	No
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$650.00
Project Management & Noticing:	\$860.00
Notification & Mailing:	\$335.32
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$3,089.68
Case Conclusion:	\$1,015.00
Total ILYM Fees & Expenses:	\$5,950.00

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SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Arc Home

Tuesday, June 18, 2024

Requesting Attorneys Name: John Glugoski

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

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

Subtotal \$650.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Flat Rate	\$30.00	1	\$30.00
Toll Free Customer Service Representative	Flat Fee	\$50.00	1	\$50.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$860.00

NOTIFICATION/MAILING				
Fulfillment of Notice, English only	Per Piece	\$1.50	92	\$138.00
USPS First Class Postage	Per Piece	\$0.64	92	\$58.88
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	14	\$27.60
Storage, Photocopies, Deliveries	Flat Fee	\$110.84	1	\$110.84

Subtotal \$335.32

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SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Arc Home

Tuesday, June 18, 2024

Requesting Attorneys Name: John Glugoski

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Check, Stub & Release - Print & Mail (W-2/1099)	Per Check	\$1.00	92	\$92.00
USPS First Class Postage	Per Piece	\$0.64	92	\$58.88
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	9	\$13.80
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$3,089.68

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$1,015.00

Total Case Estimate: \$5,950.00

Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 4

PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

Case Information

Case Number: LWDA-CM-1028750-24
Plaintiff for PAGA Case: Jeff Smorowski
Filer/Attorney for PAGA Case: John Glugoski
Law Firm for PAGA Plaintiff: Righetti Glugoski, P.C.
Employer: Arc Home LLC
Date Case Received:
Filer for Employer:
Employer Filer Firm:
Court Type:
Court Name:
PAGA Court Case Number:
Violation Type:
Related BOFE Case:

Attachments

Attachment Name	Description	Date Submitted	Type
Amended Notice Submitted on 07/15/2024 02:54:00 PM by John Glugoski	24.07.15.Smorowski.Amended PAGA Letter [FINAL].pdf	7/15/2024 9:54 PM	Amended Notice
PAGA Notice Submitted on 05/16/2024 11:32:43 AM by John Glugoski	24.05.14.Smorowski.Final PAGA Letter.pdf	5/16/2024 6:32 PM	PAGA Notice