

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

Attorneys for Plaintiff JEFF SMOROWSKI

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

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

Plaintiff,

v.

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

Defendants.

Case No.: 23STCV22716

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

**PLAINTIFF’S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR FINAL
APPROVAL OF:**

- **CLASS ACTION AND PAGA SETTLEMENT;**
- **CLASS REPRESENTATIVE ENHANCEMENT AWARDS;**
- **ADMINISTRATOR’S EXPENSES;**
- **ATTORNEYS’ FEES AND COSTS**

Hearing Date: May 2, 2025
Time: 10:30 a.m.

[Complaint filed: September 20, 2023]

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT on May 2, 2025 at 10:30 a.m. in Department 1 of the above-
3 captioned court located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Jeff Smorowski
4 will, and hereby does, move for an order granting: 1) final approval of the class action and PAGA
5 settlement provisionally approved by this Court on December 12, 2024; 2) class representative
6 enhancement award; 3) settlement administrator's expenses; 4) attorneys' fees and costs; and 5) entry
7 of final judgment pursuant to Code of Civil Procedure § 382 and California Rule of Court, Rule 3.769.

8 This motion is made on the grounds that the settlement is fair, reasonable, and adequate
9 because it is the product of arm's-length, good-faith negotiations after significant litigation, given the
10 relative strengths and weaknesses of the claims and defenses, as well as the risks involved in pursuing
11 further litigation. This motion will be based upon this Notice, the accompanying Memorandum of
12 Points and Authorities, Declaration of John Glugoski, Declaration of Makenna Snow on behalf of
13 ILYM Group, Inc., and Declaration of Plaintiff Jeff Smorowski, as well as the pleadings and papers
14 on file herein and upon any other matters that may be presented to the Court at the hearing.

15
16 Dated: April 10, 2025

Respectfully submitted,

17 **RIGHETTI GLUGOSKI, P.C.**

18 By: /s/ John Glugoski
19 John Glugoski
20 Attorney for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 This case, styled as a class action, asserts a variety of wage and hour and Private Attorney
4 General Act (“PAGA”) claims against Defendant ARC HOME LLC (“Defendant” or “ARC”).
5 ARC is a mortgage provider. From May 2021 to November 2021, ARC employed Plaintiff, Jeff
6 Smorowski. Plaintiff worked from home in Los Angeles County. On December 12, 2024, the
7 Court granted Preliminary Approval and certified the following class:

8 All current and former exempt and non-exempt employees
9 who worked for Defendant in California during any portion of
the Class Period.

10 Pursuant to the Amended Order Granting Motion for Preliminary Approval of Class
11 Action and PAGA Settlement, the Settlement Administrator ILYM Group Inc, sent the Class
12 Notice to the proposed settlement class. Pursuant to California Rules of Court, rule 3.769,
13 Plaintiff now asks the Court to grant this unopposed motion for final approval of the Settlement.
14 As explained herein, Plaintiff believes the Settlement is fair, reasonable and in the best interests
15 of the Class Members.

16 The proposed Settlement before this Court is a full and complete settlement of the claims
17 asserted against Defendant in this action. The proposed Settlement requires Defendant to pay Nine
18 Hundred Twenty-Five Thousand Dollars and No Cents (\$925,000.00) to settle the claims raised in the
19 operative Complaint filed by Plaintiff on August 1, 2024, including payment of \$41,250.00 to the
20 California Labor and Workforce Development Agency (i.e., 75% of the \$55,000 amount allocated to
21 resolve the PAGA allegations). The Settlement proposes a fair and reasonable allocation of the Net
22 Settlement Amount amongst the Class Members comprised of 120 individuals. Participating Class
23 Members (i.e., Class Members who have not timely requested exclusion from the Settlement) will
24 receive an average net payment of approximately of \$3,942.36 per Class Member. The highest Class
25 Member award is \$18,825.85 and the lowest award is \$137.92 for an employee employed for a total of
26 2 weeks. (See Declaration of Settlement Administrator ILYM Group Inc.) This is an excellent result
27
28

1 for the class.¹

2 On December 12, 2024, this Court entered the Amended Order Granting Motion for Preliminary
3 Approval of Class Action and PAGA Settlement (“MPA Order”) and directed Class Notice to be sent
4 to the Class Members. The opt out and objection deadline was April 4, 2025.² As set forth below, the
5 settlement is fair, reasonable, and adequate, and Plaintiff respectfully requests granting final approval
6 and approving the requests for costs, attorney fees and class representative enhancement– all as
7 explained below.

8 **II. SUMMARY OF THE CLAIMS**

9 In or about May 2021, ARC hired Plaintiff as an exempt employee in Los Angeles, California.
10 Plaintiff suffered a stroke in August 2021 and his employment with ARC ended on or about November
11 1, 2021. Soon thereafter, Plaintiff filed a discrimination claim with the Department of Fair Employment
12 and Housing Department of Fair Employment and Housing against ARC in connection with his
13 separation from his employment with ARC. See Declaration of J. Glugoski in support of Preliminary
14 Approval ¶ 7.

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

18 Plaintiff alleged, among other things, that he and the Class Members were not paid all
19 wages owed, including overtime. 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 receiving
22 straight time or overtime compensation for such regular hours and overtime hours worked in
23 violation of California Labor Code Section 1194 and the applicable California Industrial Welfare
24

25 ¹ For the 66 PAGA Members who also worked during the shorter PAGA Period, the PAGA Members will receive on
26 average an additional gross payment of \$208.33.

27 ² Pursuant to the Court’s MPA Order, the Parties are ordered to file this motion no later than April 10, 2025. Class
28 Counsel and the settlement administrator will file supplemental declarations after the filing of this motion to notify the
court of any opt-outs and/or objections that were postmarked by April 4, 2025 but not received by the settlement
administrator by the date of this filing.

Commission wage order(s). Plaintiff also alleged that Plaintiff and the Class Members were improperly and illegally mis-classified originally by Defendant as "exempt" outside sales employees when, in fact, they were "non-exempt" employees according to California law. Plaintiff and Class Members have the right to be compensated by Defendant at 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 mandated by California law. Also, Plaintiff contends that Defendant did not provide Plaintiff and Class Members the required meal periods during the relevant time period as required under the IWC Wage Orders and Labor Code nor paid the one hour of pay required by the Labor Code and thus are entitled to such pay. Prelim App. Decl. of J. Glugoski ¶ 9.

Plaintiff also alleged that at all relevant times, Plaintiff and the Class Members worked from their home, requiring their work location to be in the home they live in. Plaintiff contends that the Plaintiff and Class Members incurred expenses related to the business-related trips, telephone/cell phone, electricity, home office space, water, gas, and stationery expenses while discharging their duties. Plaintiff contends Defendant has not reimbursed Plaintiff and Class Members for their expenses incurred while discharging their duties for Defendant.³ Plaintiff also contends that Plaintiff and Class Members' wage statements are inaccurate in violation of California Labor Code Section 226. (Prelim App. Decl. of J. Glugoski ¶ 10).

III. RELEVANT PROCEDURAL HISTORY

On September 20, 2023, Plaintiff initiated the action by filing a Class Action Complaint in this Court against Defendant asserting the following claims: (1) failure to reimburse business expenses; (2) failure to provide accurate wage statements; (3) failure to provide minimum and overtime wages; (4) failure to pay all wages upon separation of employment; and (5) unfair business practices in violation of California Business & Professions Code Sections 17200, *et seq.* Plaintiff filed his First Amended Complaint on August 1, 2024, which, among other items, added claims for failure to provide meal periods, failure to provide rest periods, reporting time pay violations, and violation of the California

³ It is Plaintiff's understanding that for employees working from home, ARC began reimbursing employees for internet and cell phone as much as \$105 per month. Prelim App. Decl. of J. Glugoski ¶ 14.

1 Private Attorney General Act (“PAGA”), and clarified the scope of the class members covered by the
2 alleged claims. Prelim App. Decl. of J. Glugoski ¶ 12.

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

12 On May 14, 2024, Plaintiff provided written notice to the LWDA and Defendant of the specific
13 provisions of the Labor Codes he contends were violated, and the theories supporting his contention.
14 On July 15, 2024, Plaintiff submitted an amended notice to the LWDA and Defendant. Prelim App.
15 Glugoski Decl. ¶ 12.

16 Defendant denies all of Plaintiff’s claims and denies that any of Plaintiff’s claims are
17 appropriate for class or representative treatment.

18 **IV. DISCOVERY AND INVESTIGATION**

19 Upon the filing of this action, Plaintiff and Defense Counsel met and conferred about the
20 allegations set forth in this wage and hour class action to determine how best to proceed. In the
21 interest of judicial economy and to avoid incurring unnecessary litigation costs, the parties agreed
22 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. Prelim App. Glugoski Decl. ¶ 14.

27 **V. TERMS AND CONDITIONS OF THE SETTLEMENT**

28 The material terms and conditions of the Settlement are summarized below.

1 1. Class Definition. The Parties’ Amended Settlement Agreement (“Settlement
2 Agreement”)⁴, consistent with the preliminary approval order, provides for a settlement Class defined
3 as:

4 All current and former exempt and non-exempt employees who
5 worked for Defendant in California during any portion of the Class
6 Period

7 2. Settlement Amount. The Settlement Amount is \$925,000.00, which is inclusive of
8 the PAGA Payment (75% of which will be paid to the LWDA (\$41,250.00) and 25% will be
9 distributed to PAGA Members (\$13,750.00)), the Settlement Administration Costs, the Service
10 Award to Plaintiff, an individual settlement to Plaintiff to resolve Plaintiff’s discrimination claim
11 before the DFEH and for a general release of any other potential claims, as well as Class Counsel’s
12 Attorneys’ Fees and Litigation Costs and Expenses. Sett. Agmt. ¶ 10.6. The employer-side payroll
13 taxes on the wage portion of the settlement will be paid separately and in addition to the Settlement
14 Amount. Sett. Agmt. ¶ 10.2. Prelim App. Glugoski Decl. ¶ 23.

15 3. Settlement Class Information. The court’s preliminary approval order appointed ILYM
16 Group Inc. (“ILYM”) as the notice/claim administrator. IYLM reports that, upon receiving Class
17 Member information from Defendant, IYLM mailed the court approved notice to 120 Class Members.
18 ILYM further reports that to date it has received one (1) opt-out, no objections and no work week
19 disputes. See Declaration of Makenna Snow of IYLM Group Inc. (“Decl. Makenna Snow”) ¶¶ 7-14.
20 Since Plaintiff’s deadline to this final approval motion is just days after the closing of the opt out and
21 objection period (April 4, 2025), Plaintiff will obtain an updated declaration from ILYM in advance
22 of the final approval hearing to advise the Court of any additional opt outs and/or any objections
23 postmarked before the deadline that may trickle in after the filing of this motion.

24 4. Gross Recovery Payouts. The Settlement Amount will provide real benefit to the Class
25 Members. The highest gross recovery for a Class Member will be approximately \$18,825.85 for the
26 class portion of the settlement. The average gross recovery per Class Member under the class portion
27 of the settlement will be approximately \$3,942.26. (Suppl. Decl. Glugoski ¶ 3; See also Makenna

28 ⁴ The Parties’ Settlement Agreement is attached as Exhibit B to the Declaration of John Glugoski in Support
of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action and PAGA Settlement.

1 Snow Decl. ¶ 16).

2 5. Agreed Upon Payments from the Settlement Amount. Subject to Court approvals the
3 following payments will be made from the Settlement Amount: 1. Service Award to Plaintiff of
4 \$5,000.00; 2. Plaintiff's Individual Settlement Payment to Plaintiff of \$75,000.00; 3. PAGA Payment
5 of \$55,000.00 allocated per the PAGA; 4. an award of not more than \$308,302.50 (33.3333% of the
6 Settlement Amount) to Class Counsel for Attorneys' Fees; 5. Litigation Costs and Expenses not to
7 exceed \$6,500.00; and 6. Settlement Administration Costs of \$6,068.44. Of the \$55,000.00 allocated
8 to the PAGA Payment, \$41,250.00 will be allocated to the California Labor and Workforce
9 Development Agency and the remaining \$13,750.00 shall be distributed on a pro rata basis amongst
10 approximately 66 PAGA Members who worked 2,406 pay periods.⁵

11 6. Notice Process and Approval Rate. The Settlement Administrator mailed the Class
12 Notice to Class Members on February 18, 2024. (Decl. Makenna Snow ¶ 7). Class Members did not
13 have to submit a claim form to participate in the Settlement; however, the Class Notice contained
14 personalized calculations and Class Members were given an opportunity to confirm or dispute
15 workweeks credited by Defendant. As of the date of this Motion, there are zero (0) disputes about
16 workweeks credited or objections to the settlement and one (1) Class Member opted out of the
17 Settlement. (Decl. Makenna Snow ¶¶ 7-14; Suppl. Decl. Glugoski ¶3-5).

18 7. Net Settlement Payout. If the Court grants final approval of the Settlement, the entire
19 Settlement Amount will be paid out with no reversion to Defendant. Participating Class Members will
20 receive an estimated average net recovery of approximately \$3,942.26 for the class portion of the
21 settlement. (Supp. Decl. Glugoski ¶ 3-5). The Settlement provides Defendant will pay the Settlement
22 Amount of \$925,000.00, and the employer's share of any payroll taxes, within thirty (30) calendar days
23 of the Effective Date. (Settlement Agreement § 10.9) (Ex. 1 to Prelim App. Decl. Glugoski).

24 8. Unclaimed Funds. If any settlement checks remain uncashed 180 days after they are
25 mailed by the Settlement Administrator, the uncashed funds will be distributed to the State Controller's
26

27
28 ⁵ Of the 120 Class Members, 66 individuals were also employed during the shorter PAGA
Period. These 66 employees will receive a PAGA payment as well.

Unclaimed Property Fund. (Settlement Agreement § 10.2) (Ex. 1 to Prelim App. Decl. Glugoski).

9. Settlement Administrator's Fees. The Settlement Administrator's charges are expected to be approximately \$6,068.44. See Decl. of Makenna Snow ¶ 18.

10. Release. As part of the Settlement, the release is tailored to track the definition of the Participating Class Members and the PAGA Members. The Participating Class Members will release all claims identified in Paragraph 6.1 of the Settlement. (Supp. Decl. Glugoski ¶ 6). The PAGA Members will release all claims identified in Paragraph 6.2 of the Settlement.

VI. NOTICE TO THE CLASS WAS PROVIDED; AS OF THE DATE OF THIS MOTION, THERE ARE NO OBJECTIONS AND ONE REQUEST FOR EXCLUSION

In its December 12, 2024, Amended Order Granting Motion for Preliminary Approval of Class Action and PAGA Settlement, the Court ordered the approved Class Notice to be mailed to all Class Members. The Settlement Administrator caused the Class Notice to be mailed on February 18, 2025. The deadline to file objections or to opt-out is through April 4, 2025. As of the date of filing of this Motion, there are no objections and one (1) exclusion. (Decl. of Makenna Snow of ILYM Group Inc. ¶¶ 7-14) The Settlement has been met with overwhelming approval and support from the Class Members.

VII. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AS THE REQUIREMENTS FOR CLASS CERTIFICATION HAVE BEEN MET

The Class was preliminarily certified based upon the showing in the Motion for Preliminary Approval that the requirements for class certification were met. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 237-238). Code of Civil Procedure § 382 provides that a party seeking class certification must show “(1) the existence of an ascertainable class and (2) a well-defined community of interest among the class members.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469; *Occidental Land v. Superior Court* (1976) 18 Cal.3d 355, 360; *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 471). The class representative must also show that (3) maintenance of a class action will result in a substantial benefit to the litigants and to the Court. (*Richmond, supra*, 29 Cal.3d at 477; *Occidental Land, supra*, 18 Cal.3d 355, 360). The community of interest requirement embodies three factors: (1) predominant

1 common questions of law or fact; (2) class representatives with claims or defenses typical of the class;
2 and (3) a class representative who can adequately represent the class.” (*Richmond, supra*, 29 Cal.3d at
3 470).

4 The parties have agreed that subject to final approval of the Settlement Agreement and for the
5 purpose of settling their dispute, there is sufficient basis for the Court to find that these requirements
6 have been met regarding the Class.

7 **1. Ascertainable and Numerous Class**

8 Defendant identified through their records 120 persons who qualify as Class Members. (Decl.
9 ILYM ¶ 14). This amount is “numerous,” and it would be impracticable to try to bring each of those
10 Class Members before the Court.

11 **2. Predominating Common Questions of Law and Fact**

12 Plaintiff contends – and believes that all Class Members share the same community of interest
13 in recovering damages for alleged wage and hour violations under the California Labor Code arising
14 from their employment with a common employer. Plaintiff alleges the right to recover wages, interest,
15 penalties and attorneys’ fees is common to all Class Members and depends upon the same theories,
16 namely that Plaintiff and the Class Members were not paid the correct minimum wage, overtime and
17 double time rate, worked off the clock, were not paid premiums for meal and rest breaks that were
18 missed, interrupted, cut short, had wages deducted, were not provided accurate wage statements, were
19 not reimbursed for business expenses, and were not paid all wages at separation. *Brinker Restaurant*
20 *Corp. v. Superior Court (Brinker)* (2012) 53 Cal.4th 1004, 1021 [The “ultimate question” the element
21 of predominance presents is whether “the issues which may be jointly tried, when compared with those
22 requiring separate adjudication, are so numerous or substantial that the maintenance of a class action
23 would be advantageous to the judicial process and to the litigants. . . accord. *Sav-On Drug Stores, Inc.*
24 *v. Superior Court*, (2004) 34 Cal.4th 319, 326. The answer hinges on “whether the theory of recovery
25 advanced by the proponents of certification is, as an analytic matter, likely to prove amenable to class
26 treatment.”].

27 **3. Class Representatives’ Claims Are Typical**

28 Plaintiff asserts and believes that his claims are typical of those of the Class in that Plaintiff and

Class Members were subject to the same type of employment practices and policies during the Class Period and make the same claims for damages. *Classen v. Weller*, (1983) 145 Cal.App.3d 27, 45; *Sav-On*, 34 Cal.4th at 326.

4. The Class Representatives and Class Counsel Are Adequate

Plaintiff contends he is an adequate class representatives and have no conflicts of interest with other Class Members. By actively prosecuting the case through Settlement, Plaintiff believes he has shown that he has no interests antagonistic to the Class and have adequately served the Class. Plaintiff Smorowski submitted a detailed declaration in support of the Motion for Preliminary Approval. Plaintiff submits another copy of Plaintiff's declaration as Exhibit 1 to the Suppl. Decl. of J.Glugoski filed with this Motion.

Finally, Class Counsel have adequately represented Plaintiff and the Class Members. Proposed Class Counsel John Glugoski has substantial experience in employment law and class action procedure. (Prelim App. Glugoski Decl. ¶¶2-6). Mr. Glugoski has been approved by courts to serve as Class Counsel on numerous prior occasions and has never been rejected from serving as class counsel. (Prelim App. Glugoski Decl. ¶¶2, Suppl. Decl. Glugoski Decl. ¶ 7).

5. There Will Be Substantial Benefit to the Court and Litigants by Certification

As explained above, the Class Members will benefit by receiving meaningful compensation for their back wages as part of a representative action rather than being required to pursue individual actions which cost would outweigh the benefits. However, those who believed they could recover a greater amount of damages were free to opt out and pursue their own actions. The benefit to the Court is that protracted litigation of depositions, class certification, cross-summary judgment motions, then weeks of trial and related docket work can be avoided.

Generally, a class suit is appropriate "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385; see *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 808).

VIII. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT AS IT REPRESENTS A FAIR AND REASONABLE COMPROMISE OF THE DISPUTED CLAIMS

In California, the ultimate test for approval of a proposed class action settlement is well established. Among the inter-related factors that the court is to consider are: (1) whether the settlement was reached through arm's length bargaining; (2) the strength of Plaintiffs' case; (3) the risk, expense, complexity and likely duration of further litigation; (4) the benefits conferred by the settlement; (5) the experience and views of counsel; (6) the extent of discovery completed and the stage of the proceedings and whether they are sufficient to allow counsel and the court to act intelligently; (7) the presence of a governmental participant and (8) the reaction of the class members to the proposed settlement including the percentage of objectors. *Wershba, supra*, 91 Cal. App. 4th at 244-45; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-02. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. As courts have explained, "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." (*Id.* at 246).

Courts presume the absence of fraud or collusion in negotiation of the settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (*Newberg on Class Actions*, § 11.51; *In re Chicken Anti-Trust Litigation* (M.D. GA 1980) 560 F. Supp 957, 962; *Pridd v. Edelman* (6th Circuit 1989) 883 F.2d 438, 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987) 834 F.2d 677, 681). Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F. Supp 1087, 1093; *Steinberg v. Carey* (S.D. NY 1979) 470 F. Supp 471, 474; *In re Armored Car Anti-Trust Litigation* (ND GA 1979) 472 F.Supp. 1357; *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (ED PA 1978) 79 F.R.D. 571).

Plaintiff believes both sides appreciated that compromise was inherent and necessary in the settlement process. Each side made a good faith attempt to "give and take" to reach a fair compromise.

1 Plaintiff believes both sides appreciated that “the public interest may indeed be served by a voluntary
2 settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* at 250, quoting,
3 *Air Line Stewards, Loc. 550 v. American Airlines, Inc.* (7th Cir.1972) 455 F.2d 101, 109.

4 Pursuant to *Kullar*, the Settlement overwhelmingly satisfies the requirements for final approval.
5 *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th at 128. (Prelim App. Glugoski Decl. ¶ 33-40).

6 **1. Settlement Negotiations Were Conducted At “Arm’s Length,” And Resulted In A Fair**
7 **Compromise, The Strength of Plaintiff’s Case, The Expense, Complexity And Likely**
8 **Duration Of Further Litigation, Financial Condition of Defendant, And The Benefits**
9 **Conferred By The Settlement**

10 The Settlement is the product of serious, informed, and non-collusive negotiations. The parties
11 reached an impasse at mediation, but the Mediator successfully assisted the parties to agree on a
12 resolution of the action through post-mediation discussions and negotiations. The Settlement is the
13 result of an informed and detailed analysis of the risks facing all parties in litigating this case, including
14 but not limited to, careful consideration of the legal and factual obstacles to Plaintiff’s prospects of
15 obtaining class certification and on the merits, and Defendant’s defenses, as well as Defendant’s
16 potential exposure and the additional costs of litigating the action. (Prelim App. Decl. Glugoski ¶ 13).

17 Class Counsel reviewed extensive data and obtained and reviewed thousands of pages of
18 employee/policy documents prior to resolving the case. The detailed data was sufficient to evaluate
19 potential exposure and was in fact extensively evaluated by Plaintiffs. (Prelim App. Decl. Glugoski ¶
20 20).

21 During all settlement discussions the parties conducted their negotiations at arms’ length, and,
22 in spite of a mutual desire to resolve the case, always in an adversarial manner. The parties have been
23 able to construct a settlement that, given the constraints and realities of the case, is fair, reasonable,
24 adequate, and is in the best interests of the Class. (Prelim App. Glugoski Decl. ¶ 15).

25 Arriving at a settlement acceptable to all parties was no small achievement. Defendant and their
26 counsel felt strongly about their ability to prevail on the issue of class certification and believed that
27 Defendant had defenses to all individual claims within the Class. In their defense, Defendant contended
28 that this action could not properly be maintained as a class or PAGA action; that Class Members were

properly paid minimum, regular, overtime and double time wages; that Defendant did not fail to pay Class Members, who are former employees, any wages allegedly due at the time of their separation; that Defendant provided accurate, itemized wage statements to Class Members; that Defendant provided meal and rest periods to the Class Members; that Defendant did not fail to reimburse employees for business expenses necessarily incurred in the performance of their duties; that Defendant did not unlawfully deduct wages from Class Members; that Defendant did not violate California Business and Professions Code § 17200 *et seq.*, and that Defendant (a) is not liable for any of the penalties claimed or that could be claimed in the Complaint, and/or (b) penalties would be substantially reduced by the Court.

The negotiations considered the strengths and weaknesses of the opposition's positions. (Prelim App. Glugoski Decl. ¶ 22 and 40). Negotiations were protracted, but always cordial and professional. As litigation progressed the parties' discussions involved the gradual narrowing of opposing positions. The proposed Settlement Agreement was reached at the end of a process that was neither fraudulent nor collusive. If settlement is not approved then the case will proceed to a class certification hearing and then to trial.

The proposed Settlement will guarantee that the Class Members receive compensation for their claims and that payments will be received now rather than years in the future. A settlement will also allow Class Members to receive payment without the risk of a contested motion for class certification and trial on the merits that would including all the extra time and expense involved in that process. Importantly, the proposed settlement provided Class Members with a choice by preserving for them the right to opt out.

2. Class Counsel Is Experienced and Recommend Settlement

Proposed Class Counsel John Glugoski has substantial experience in employment law and employment class actions. He and his firm have been approved as Class Counsel on numerous prior occasions and have never been deemed inadequate as class counsel. Proposed Class Counsel have worked diligently to advance the interests of the class with no unnecessary duplication of effort. Proposed Class Counsel recommends settlement on the proposed terms. Such recommendations should be given a presumption of reasonableness. (*Cellphone Termination Fee Cases*, (2009) 180 Cal.App.4th

1 1110, 1117-18; *Williams v. Vukovich* (6th Cir. 1983) 720 F.2d 909, 922-23 [The court should defer to
2 the judgment of experienced counsel who has competently evaluated the strength of his proofs]].

3 **3. No Government Participant**

4 No government agency is directly involved in this case; *however*, Plaintiff has been authorized
5 to prosecute the PAGA claims on behalf of the LWDA. The Settlement includes a PAGA Payment
6 of \$55,000.00. Per PAGA, 75%, or \$41,250.00, of which will be paid to the Labor Workforce
7 Development Agency (if this Motion is approved as requested). The remaining portion due to the
8 PAGA Members will be distributed to the PAGA Members on a pro rata basis and paid out as
9 Individual PAGA Payments. As required, Plaintiff provided the LWDA with requisite notice of this
10 proposed settlement. As of the date of this filing, Plaintiff has not received any response from the
11 LWDA. (Suppl. Glugoski Decl. ¶ 5).

12 Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount
13 was the result of self-interest at the expense of other Class Members,” such amounts are generally
14 considered reasonable. *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL,
15 2009 U.S. Dist. LEXIS 33900, at *24. Moreover, the amount allocated to the LWDA is well within
16 the range of reasonable PAGA settlement amounts approved by courts. (*Nordstrom Com. Cases* (2010)
17 186 Cal. App. 4th 576, 579 [“[T]rial court did not abuse its discretion in approving a settlement which
18 does not allocate any damages to the PAGA claims.”]; *Hopson, supra* [approving PAGA settlement]

19 **4. The Investigation And Discovery Completed And The Stage Of Proceedings Is** 20 **Sufficient**

21 There has been a sufficient and necessary amount of investigation and discovery in this case.
22 Over the course of this litigation, the parties have obtained the required information to assist them in
23 properly analyzing their respective positions. Both sides have had ample opportunity to investigate the
24 veracity and scope of the class claims. Plaintiffs believe that the investigation and research discovered
25 through the date of settlement has supported their main contentions. (Prelim App. Glugoski Decl. ¶ 15
26 and 20).

27 **5. The Reaction of the Class Members**

28 “A favorable reception by the Class constitutes ‘strong evidence’ of the fairness of a proposed

1 settlement and supports judicial approval.” (*In re: Paine Webber Ltd. Pships. Litig.* (2d Cir. 1997) 171
2 F.R.D. 104, 126, *aff’d*, 117 F.3d 721; *see also*, *Wal-Mart Stores, Inc. v. Visa USA, Inc.* (2d Cir. 2005)
3 396 F.3d 96, 119). “By any standard, the lack of objection of the Class Members favors approval of
4 the Settlement.” (*In re Omnivision*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008) at 1043; *see also*, *Ross v.*
5 *A.H. Robins* (S.D.N.Y. 1988) 700 F. Supp. 682, 684 - “The absence of objectants may itself be taken
6 as evidencing the fairness of a settlement”; *In Re Warner Communications Securities Litigation*
7 (S.D.N.Y. 1985) 618 F. Supp. 735, 746 - noting that two objections to settlement was very low; *Milstein*
8 *v. Huck* (E.D.N.Y. 1984) 600 F. Supp. 254, 267 - explaining that the reaction of the class was
9 “overwhelmingly favorable” because no objections to the settlement had been filed). The reaction of
10 the Class Members to the Settlement has been overwhelmingly positive.

11 **IX. THE COURT SHOULD GRANT AN INCENTIVE AWARD TO CLASS**
12 **REPRESENTATIVE**

13 The proposed award to Plaintiff are within the range approved by courts in this district.
14 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266-267 (N.D. Cal. 2015) (noting that incentive
15 awards compensate wage-and-hour plaintiffs for a “significant reputational risk” and higher awards are
16 appropriate when the average class member payment is high); *Chu v. Wells Fargo Investments, LLC*,
17 2011 WL 672645 at *5 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000 each to two plaintiffs in a
18 \$1,725,000 settlement).

19 Moreover, class members who step forward to serve as class representatives sometimes expose
20 themselves to financial risk with respect to a costs award should defendant prevail in the action. Finally,
21 class members who serve as class representatives sometimes expose themselves to retaliation, such as
22 in the form of a cross-complaint, in which case enhanced compensation may be in order. (*Staton v.*
23 *Boeing Co.*, 327 F.3d 938 at p. 977).

24 The Settlement Agreement provides that Plaintiff may seek a Service Award of up to \$5,000.00
25 to compensate Plaintiff for his service to the class. As detailed in his accompanying declaration,
26 Plaintiff’s participation was instrumental in bringing the lawsuit and obtaining the Settlement on behalf
27 of the Class. Plaintiff’s counsel has firsthand knowledge of some of the efforts he expended. Plaintiff
28 requested counsel file the lawsuit and consulted with Class Counsel prior to the filing of the case and

1 throughout the case, including, but not limited to engaging in discovery, assisting counsel contact class
2 members, assisting Class Counsel review documents, consulted with Class Counsel regarding the
3 MOU, Settlement Agreement and prepared declarations in support of the approval of the Settlement.
4 (Suppl. Glugoski Decl. ¶ 6).

5 Without hi efforts, the Class Members are unlikely to have obtained any recovery. Notably, the
6 proposed Service Award was presented to the Class Members through the notice and no one objected
7 to it. (ILYM Decl. ¶¶ 7-14).

8 **X. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD**
9 **BE APPROVED.**

10 Should there be any additional opt outs beyond the single opt out to date and/or any objections
11 to the settlement, ILYM will provide an updated declaration. The total costs incurred is estimated to
12 be approximately \$6,068.44, which is half of the amount allocated for the cost of administration. The
13 costs incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and
14 mailing the Notice Packet to the Class Members in English; performing skip-trace searches on
15 undeliverable Notice Packets and re-mailing the Notice Packet to any updated addresses located;
16 handling inquiries from Class Members regarding the Settlement; calculating Settlement Awards and
17 preparing the associated tax forms; and transmitting payments, among other things.

18 Accordingly, the Court should grant final approval of payment to ILYM, a necessary third-
19 party for handling of the notice and settlement process, in the amount of approximately \$6,068.44. A
20 final number will be included in an updated ILYM declaration prior to final approval.

21 **XI. THE COURT SHOULD GRANT THE MOTION FOR ATTORNEY'S FEES OF**
22 **\$308,302.50 AND REIMBURSEMENT OF COURT COSTS AND EXPENSES OF**
23 **\$6,500.00**

24 Consistent with the scope of this action and nature of the relief granted to the Class, and the
25 amount of time expended in prosecution of the case, Plaintiff and Class Counsel hereby move for an
26 award of attorney's fees of \$308,302.50 and \$6,500.00 in costs to Righetti Glugoski, PC. See Glugoski
27 Decl. ¶¶ 7-14).

1 **1. Attorneys Fees Award of \$308,302.50 Is Justified.**

2 The requested fee is fair compensation for undertaking complex, risky, expensive, and time-
3 consuming litigation on a contingent fee basis, especially considering the benefits achieved by Class
4 Counsel for the Class Members. As outlined above and set forth in the accompanying declaration of
5 John Glugoski, Class Counsel diligently litigated and investigated this case.

6 Courts recognize two methods for calculating attorney’s fees in class action cases. The first
7 calculates attorney fees based on a percentage of the common benefit bestowed on the class. The second
8 uses a “lodestar” as the basis-determined by multiplying the hours counsel reasonably expended by
9 reasonable hourly rates-which may be enhanced by a multiplier. *Lealao v. Beneficial California, Inc.*
10 (2000) 82 Cal.App.4th 19, 26. The requested attorneys’ fees is justified under either approach.

11 **a. Percentage of Common Fund Approach**

12 California courts have recognized that an appropriate method for awarding attorney’s fees in
13 class actions is to award a percentage of the “common fund” created as a result of the settlement. (*City*
14 *& County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d
15 162, 168; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270; *Lealao,*
16 *supra*, 82 Cal.App.4th at 26). The basis of the common fund is fairness to the successful litigant, who
17 might otherwise receive no benefit because his recovery might be consumed by expenses; correlative
18 prevention of an unfair advantage to others who are entitled to share in the fund and who should bear
19 their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who
20 will be more willing to undertake and diligently prosecute proper litigation for the protection or
21 recovery of the fund if he is assured that he will be properly and directly compensated should his efforts
22 be successful. *Sweet, supra*, 12 Cal. 4th at 111). In *Quinn*, the California Supreme Court stated: “[O]ne
23 who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits
24 may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Quinn, supra*, 15
25 Cal. 3d at 167). Similarly, in *Sweet*, the California Supreme Court recognized that the common fund
26 doctrine has been applied “consistently in California when an action brought by one party creates a
27 fund in which other persons are entitled to share.” (*Sweet, supra*, 12 Cal. 4th at 110).

28 Several courts have expressed frustration with the alternative “lodestar” approach for deciding

1 fee awards, which usually involves wading through voluminous and often indecipherable time records.
2 (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5, citing, *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F.
3 Supp. 1373, 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the
4 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
5 litigation by providing an incentive for early, yet reasonable settlement; and (3) it reduces the demands
6 on judicial resources. (*In re Activision Sec. Litig., supra*, 723 F. Supp. at 1378-79).

7 Plaintiff's counsel's request for fees of one-third of the Settlement Amount is within the range
8 of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%,
9 depending on the circumstances of the case. (*See, In re: Activision Sec. Litig., supra*, 723 F. Supp. at
10 1378.) According to Professor Newberg: "No general rule can be articulated on what is a reasonable
11 percentage of a common fund...Usually 50 percent of the fund is the upper limit on a reasonable fee
12 award from a common fund, in order to assure that fees do not consume a disproportionate part of the
13 recovery obtained for the class, though somewhat larger percentages are not unprecedented." *Newberg*,
14 *supra*, § 14.6 at 550.

15 Courts in the Ninth Circuit look to the following factors when determining what a proper
16 percentage is for an award of attorneys' fees: (1) the results achieved; (2) the risks of litigation; (3)
17 whether there are benefits to the class beyond the immediate generation of a cash fund; (4) whether the
18 percentage rate is above or below the market rate; (5) the contingent nature of the representation and
19 the opportunity cost of bringing the suit; (6) reactions from the class; and (7) a lodestar cross-check.
20 (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048. Here, Class Counsel has met each
21 and every *Vizcaino* factor such as (1) making sure each Class Member gets a monetary award without
22 having to file a claim; (2) assuming great risk in more than three years of litigation while having to turn
23 down other cases; (3) ensuring Defendant is enforcing policies that will comply with the requirements
24 of the Labor Code which serves to benefit members of both the Class and the general public; (4) seeking
25 a percentage rate that is consistent with the market rate; (5) taking the matter wholly on a contingent
26 basis at great opportunity cost; (6) virtually no negative class reaction; and (7) meeting the lodestar
27 reasonableness check. *See also, Cifuentes v. CEVA Logistics U.S., Inc.* (S.D. Cal. October 23, 2017)
28 2017 WL 4792425; *Good Morning to You Prods. Corp. v. Warner/Chappell Music, Inc.* (C.D. Cal.

Aug. 16, 2016). No. CV 13-4460-GHK (MRWx), 2016 WL 6156076, at *2–5; *Bautista v. Harvest Management Sub LLCs* (C.D. Cal. July 14, 2014) 2014 WL 12579822 at *13-14.

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this case on a pure contingency basis. The factual and legal issues posed in this case were highly disputed, and there were also risks as to whether or not a class would be certified, leaving a large number of putative class members unlikely to receive any recovery. Even after approval of the Settlement Agreement, Class Counsel will be called upon to expend additional amounts of time fielding calls from Class Members, interviewing them, and resolving issues that may arise, administering the settlement and reporting finality of the Settlement. The Court should finally approve the requested attorney’s fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risks undertaken by Class Counsel. The requested attorneys’ fees and costs are not opposed by Defendant and are well within established guidelines.

b. Lodestar Calculation Approach

The trial court also has broad authority to calculate the lodestar. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095 - [T]he fee setting inquiry in California ordinarily begins with the “lodestar,” i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate). “California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys’ fee award.” The reasonable hourly rate is that prevailing in the community for similar work, The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. (*Id.* at 1095).

c. Reasonable Hourly Rate

In calculating the lodestar, a billing rate of \$900 per hour was used for John Glugoski of Righetti Glugoski, P.C. and \$225 for paralegal Katherine Acosta. These rate are equivalent to their current billing rates on a non-contingency fee basis. (Glugoski Decl. ¶ 17-18) This amount is also supported by his considerable experience and is consistent with hourly rates that have been approved by other courts, as set forth in the accompanying declarations. (Glugoski Decl. ¶¶ 18) .

d. Number of Hours Expended

1 In determining the number of hours expended by counsel, compensable hours include services
2 provided prior to the filing of the complaint that were reasonably required. (*Stokus v. Marsh* (1990)
3 217 Cal.App.3d 647, 655). Moreover, detailed time records are not required. “Testimony of an attorney
4 as to the number of hours worked on a particular case is sufficient evidence to support an award of
5 attorney fees, even in the absence of detailed time records.” (*Martino v. Denevi* (1986) 182 Cal.App.3d
6 553, 559; *see also, Wershba., supra*, 91 Cal.App.4th at 255).

7 As of the filing of this motion, attorney John Glugoski of Righetti Glugoski, P.C. have expended
8 339.70 hours, and paralegal Katherine Acosta has expended 63.40 hours, which equates to a lodestar
9 of \$321, 580.00. (Glugoski Decl. ¶ 26). Class Counsel has broken down the hours expended into various
10 categories of work performed. (See Ex. 2 to Suppl. Glugoski Decl.) Plaintiff’s total attorney fee of
11 \$308,302.50 equates to Plaintiff’s lodestar of \$321,580.00 times a multiplier of 0.958.

12 It is estimated that Class Counsel will expend (in total) an additional 15 hours of time preparing
13 and attending the final approval hearing and overseeing the completion of administration of this
14 Settlement including communicating with numerous Class Members, resolving claims disputes,
15 preparing pleadings for and attending the later hearings, monitoring the distribution of proceeds,
16 following up on missing payments, etc. (Suppl. Glugoski Decl. ¶ 27).

17 **e. Reimbursement of Court Costs and Expenses of \$6,500.00 Is Justified**

18 Righetti Glugoski, P.C. has expended \$6,694.40 in litigation costs (See Ex. 3, breakdown of
19 costs attached to Suppl. Decl. of J. Glugoski and Suppl. Glugoski Decl. ¶¶ 11), however, the terms of
20 the Settlement Agreement caps the recovery of costs at \$6,500.00. Thus, pursuant to the terms of the
21 parties’ agreement, Plaintiff requests reimbursement of the costs of \$6,500.00.

22 **XII. CONCLUSION**

23 The proposed Settlement is fair, reasonable, and, adequate. It resolves the case favorably to the
24 Class by providing substantial cash payments to Class Members. It is non-collusive and was achieved
25 as the result of informed, extensive, and arms-length negotiations conducted by counsel for respective
26 parties who are experienced in wage and hour class action litigation. All Class Members have tacitly
27 approved the Settlement by participating in the Settlement and as of the date of this motion, zero
28 objections and one (1) exclusion to the Settlement have been submitted. For the reasons set forth herein,

1 Plaintiff respectfully requests that this Court grant final approval to the proposed Settlement and enter
2 the Order and Judgment in the form submitted concurrently herewith.

3 Dated: April 10, 2025

Respectfully submitted,

4 **RIGHETTI GLUGOSKI, P.C.**

5 By: /s/ John Glugoski
6 John Glugoski
7 Attorney for Plaintiffs
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