

1 John Glugoski, Esq. (SBN 191551)
jglugoski@righettilaw.com
2 **RIGHETTI GLUGOSKI, P.C.**
2001 Union Street, Suite 400
3 San Francisco, CA 94123
Telephone: (415) 983-0900
4

5 Attorneys for Plaintiff JEFF SMOROWSKI
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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,
and the general public,

11 Plaintiff,

12 v.

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

15
16 Defendants.
17

Case No.: 23STCV22716

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

**PLAINTIFF’S NOTICE OF MOTION AND
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 **TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE THAT** on December 5, 2024 at 10:30 a.m. in Department 1 of
4 the above-captioned court located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff
5 JEFF SMOROWSKI will, and hereby does, move for an order:

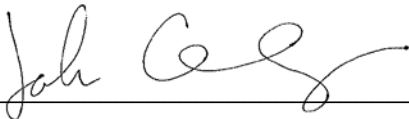
- 6 1. Granting preliminary approval of the proposed Settlement Agreement;
- 7 2. Appointing Plaintiff as the Class Representative;
- 8 3. Appointing Plaintiff's counsel as Class Counsel;
- 9 4. Appointing ILYM Group, Inc. as the Settlement Administrator;
5. Approving the form of notice to the Class and Notice Procedures; and
6. Setting the hearing date for a Motion for Final Approval.

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

17
18 Dated: August 21, 2024

Respectfully Submitted,

19 **RIGHETTI GLUGOSKI, P.C.**

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21 

22 John Glugoski

23 Attorneys for Plaintiff, JEFF SMOROWSKI
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff JEFF SMOROWSKI (“Plaintiff”) and Defendant Arc Home LLC. (“Defendant” or
4 “ARC”) have reached a proposed settlement that resolves this putative wage-and-hour class action
5 and PAGA action. The parties seek preliminary approval of this settlement pursuant to California
6 Code of Civil Procedure § 384 and California Rules of Court, Rule 3.769.

7 ARC is a mortgage provider. From May 2021 to November 2021, ARC employed Plaintiff,
8 Jeff Smorowski. Plaintiff worked from home in Los Angeles County. The parties have reached a
9 settlement of the claims alleged in the lawsuit on behalf of the following class:

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

12 As of November 2023, the settlement class consists of 92 employees and provides the
13 settlement class with an average payment of approximately \$5,000.00 per class member. The
14 Settlement will also provide a payment of \$41,250.00 to the California Labor and Workforce
15 Development Agency (i.e., 75% of the \$55,000.00 amount allocated to resolve the PAGA
16 allegations). The remaining \$13,750.00 will be distributed amongst the employees who worked
17 during the PAGA period. This is an excellent result for the class and the LWDA. This Settlement
18 will fully resolve the lawsuit in connection with the claims alleged in the operative First Amended
19 Complaint. As set forth below, the settlement is fair, reasonable, and adequate, and Plaintiff
20 respectfully requests that the Court grant preliminary approval.

21 **II. RELEVANT FACTUAL BACKGROUND**

22 **A. The Parties and Plaintiff’s Allegations**

23 In or about May 2021, ARC hired Plaintiff as an exempt employee in Los Angeles,
24 California. Plaintiff suffered a stroke in August 2021 and his employment with ARC ended on or
25 about November 1, 2021. Soon thereafter, Plaintiff filed a discrimination claim with the Department
26 of Fair Employment and Housing Department of Fair Employment and Housing against ARC in
27 connection with his separation from his employment with ARC. Declaration of J. Glugoski ¶ 7.
28

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

4 Plaintiff alleged, among other things, that he and the Class Members were not paid all wages
5 owed, including overtime. Plaintiff alleged that he and all Class Members identified herein were
6 regularly scheduled as a matter of uniform company policy to work and in fact worked in excess of
7 eight hours per workday and/or in excess of forty hours per workweek without receiving straight
8 time or overtime compensation for such regular hours and overtime hours worked in violation of
9 California Labor Code Section 1194 and the applicable California Industrial Welfare Commission
10 wage order(s). Plaintiff also alleged that Plaintiff and the Class Members were improperly and
11 illegally mis-classified originally by Defendant as "exempt" outside sales employees when, in fact,
12 they were "non-exempt" employees according to California law. Plaintiff and Class Members have
13 the right to be compensated by Defendant at the appropriate compensatory wage rate (no less than
14 minimum wage) for said work heretofore performed, consisting of the straight time rate plus the
15 appropriate overtime premium as mandated by California law. Also, Plaintiff contends that
16 Defendant did not provide Plaintiff and Class Members the required meal periods during the relevant
17 time period as required under the IWC Wage Orders and Labor Code nor paid the one hour of pay
18 required by the Labor Code and thus are entitled to such pay. Decl. of J. Glugoski ¶ 9.

19 Plaintiff also alleged that at all relevant times, Plaintiff and the Class Members worked from
20 their home, requiring their work location to be in the home they live in. Plaintiff contends that the
21 Plaintiff and Class Members incurred expenses related to the business-related trips, telephone/cell
22 phone, electricity, home office space, water, gas, and stationery expenses while discharging their
23 duties. Plaintiff contends Defendant has not reimbursed Plaintiff and Class Members for their
24 expenses incurred while discharging their duties for Defendant.¹ Decl. of J. Glugoski ¶ 10.

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28 ¹ 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. Decl. of J. Glugoski ¶ 14.

1 Further, Plaintiff contends that Plaintiff and Class Members' wage statements are inaccurate
2 in violation of California Labor Code Section 226.²

3 The Class Period is from September 20, 2019 to the date of preliminary approval. The parties
4 estimated that, during the Class Period, and as of November 30, 2023, the approximate total number
5 of workweeks during Class Period was approximately 5,010 workweeks.³ See, Class Action and
6 PAGA Settlement Agreement and Release (Ex. 1 to Decl. of J. Glugoski § 1.6, 1.27).

7 **B. Relevant Procedural History**

8 On September 20, 2023, Plaintiff initiated the action by filing a Class Action Complaint in
9 this Court against Defendant asserting the following claims: (1) failure to reimburse business
10 expenses; (2) failure to provide accurate wage statements; (3) failure to provide minimum and
11 overtime wages; (4) failure to pay all wages upon separation of employment; and (5) unfair business
12 practices in violation of California Business & Professions Code Sections 17200, *et seq.* Plaintiff
13 filed his First Amended Complaint on July 25, 2024, which, among other items, added claims for
14 failure to provide meal periods, failure to provide rest periods, reporting time pay violations, and
15 violation of the California Private Attorney General Act ("PAGA"), and clarified the scope of the
16 class members covered by the alleged claims. Decl. of J. Glugoski ¶ 12.

17 On February 16, 2024, the parties participated in private mediation conducted by Anthony
18 Pantoni, an experienced and respected mediator in the area of wage and hour class actions. The
19 settlement discussions were conducted at arm's length. The parties reached an impasse at mediation,
20 but the mediator successfully assisted the parties to agree on a resolution of the action through post-
21 mediation discussions and negotiations. The Settlement is the result of an informed and detailed
22 analysis of the risks facing all Parties in litigating this case, including but not limited to, careful
23 consideration of the legal and factual obstacles to Plaintiff's prospects of obtaining class certification

24 ² The California decision in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056 (2024) states "if an employer
25 reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the
26 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.

27 ³ This workweek number was an estimate. Plaintiff understands that Defendant subsequently re-ran the numbers and
28 the workweeks up to November 30, 2023 is about 500 workweeks less (i.e., approximately 4,500 workweeks). Decl. of
J. Glugoski ¶ 11.

1 and on the merits, and Defendant's defenses, as well as Defendant's potential exposure and the
2 additional costs of litigating the action. Decl. of J. Glugoski ¶ 13.

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

7 **C. Discovery and Investigation**

8 Upon the filing of this action and following extensive litigation before the Department of
9 Fair Employment and Housing, Plaintiff and Defense Counsel met and conferred about the
10 allegations set forth in this wage and hour class action to determine how best to proceed. In the
11 interest of judicial economy and to avoid incurring unnecessary litigation costs, the parties agreed
12 to mediate the case. The agreement to mediate was premised on ARC providing the data information
13 necessary to evaluate the claims in this case. Specifically, Plaintiff's counsel sought and received
14 information about the number of employees, the number of pay periods, the number of workweeks,
15 dates of employment, the average pay rate, and any meal and rest break premiums paid. Glugoski
16 Decl. ¶ 14.

17 **1. Settlement Negotiations**

18 All of Plaintiff's counsel's pre-filing investigation and discovery during litigation including
19 review of class member data aided Plaintiff in evaluating this case. Plaintiff was thus able to enter
20 settlement negotiations armed with the information required to settle this matter for a fair and
21 reasonable amount, having thoroughly assessed the risks and prepared an estimated class-wide
22 damages model. Glugoski Decl. ¶ 15.

23 Furthermore, Plaintiff's counsel is very familiar with wage and hour class actions that arise
24 in the context of the mortgage industry with similar claims alleged herein. Plaintiff's counsel has
25 been counsel of record and settled numerous cases that involve the same groups of employees,
26 issues, and industry against some of the largest mortgage lenders in the country, including, but not
27 limited to Loan Depot, Nationstar, Guaranteed Rate, and Home Point. Glugoski Decl. ¶ 16. Each of
28

1 the classes in these other cases involved a significant number of employees (i.e., around 1,000-1,500
2 employees). Here, as of November 30, 2023 there were 92 employees. Glugoski Decl. ¶ 17.

3 Plaintiff's counsel's experience in litigating and settling similar cases in the mortgage
4 industry provided Plaintiff with a strong foundation to not only appreciate the strengths and the
5 weaknesses of each side's position but also how to value the claims for purposes of a settlement.
6 Glugoski Decl. ¶ 18.

7 During the course of the parties' settlement discussions, ARC was forthcoming with all the
8 necessary information to evaluate the claims in this case. Glugoski Decl. ¶ 18.

9 The parties negotiated the terms of the Memorandum of Understanding, followed by the
10 signing of the Settlement Agreement, and the Class Notice. Glugoski Decl. ¶ 19, and Ex. 1 attached
11 thereto. The parties worked together as best they could to finalize the settlement terms, which are
12 memorialized in the Settlement Agreement and the Class Notice. A true and correct copy of the
13 Settlement Agreement and Release is attached as Exhibit 1 to Declaration of John Glugoski. The
14 Class Notice is attached as Exhibit 2 to the Declaration of J. Glugoski. They are also attached to the
15 Proposed Order as Exhibits 1-2. Glugoski Decl. ¶ 19.

16 The negotiations were conducted at more than arm's-length and the resulting settlement was
17 the outcome of an informed and educated analysis regarding certification and liability issues and the
18 total exposure in relation to the costs and risks affecting Plaintiff and the Class. Glugoski Decl. ¶ 20.
19 This settlement was accomplished after discovery and investigation, with Plaintiff having invested in
20 extensive factual and legal research, engaged in numerous discussions and exchanges of
21 correspondence, reviewed and analyzed time and payroll records and data, policy documents, and
22 other relevant documents, and conducted extensive negotiations thereafter. It was only after the
23 parties thoroughly assessed the risks that they entered into a well-reasoned settlement. Glugoski Decl.
24 ¶ 20.

25 There were risks and uncertainty regarding a number of factors in the case, which gave the
26 parties the perspective and the incentive to thoroughly assess the risks of the case. It is possible that
27 ARC could establish that the Class Members met the criteria for overtime exemption, which would
28 have wiped out most if not all the potential claims as to the time employees were classified as

1 exempt. Further, a significant period of the class involved the COVID shutdown, which raised the
2 issue that the employees were not working many hours per week due to the shutdown. Glugoski
3 Decl. ¶ 21.

4 It is possible that Plaintiff would not be able to certify all of the claims. Plaintiff believed it
5 would be straightforward to certify the claim for reimbursement of expenses for cell phones/internet,
6 however, evidence of a reimbursement policy created significant challenges for the claim. The off-
7 the-clock claim would likely prove more challenging to certify since the payroll records and wage
8 statements on their face appear accurate and employees logged out of the system. Further, meal and
9 rest break policies appeared to be facially compliant, which would present challenges. Even if
10 Plaintiff succeeded in certifying some or all of the claims, there was no guarantee that Plaintiff
11 would win on the merits, and surviving any post-trial motions or appeals would have come at great
12 litigation costs and expenses to the Class. These factors also support a finding that the settlement is
13 fair and reasonable. Glugoski Decl. ¶ 21.

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

18 **III. SUMMARY OF SETTLEMENT TERMS**

19 **A. The Proposed Settlement Class**

20 The Settlement Class to be conditionally certified shall consist of all current and former
21 exempt and non-exempt employees who worked for Defendant in the State of California, at any
22 time from September 20, 2019 through the date of preliminary approval. See, Settlement Agreement
23 at ¶ 1.3 which is attached to the Glugoski Decl. as Ex. 1.⁴

24 **B. Relief Provided by the Settlement Agreement**

25 The Settlement Amount is \$925,000.00, which is inclusive of the PAGA Payment (75% of
26 which will be paid to the LWDA (\$41,250.00) and 25% will be distributed to PAGA Members
27 (\$13,750.00), the Settlement Administration Costs, the Service Award to Plaintiff, an individual
28

⁴ All further references to the Settlement Agreement ("Sett. Agmt.") will cite to it directly.

1 settlement to Plaintiff to resolve Plaintiff's discrimination claim before the DFEH and for a general
2 release of any other potential claims, as well as Class Counsel's Attorneys' Fees and Litigation
3 Costs and Expenses. Sett. Agmt. ¶ 10.4. The employer-side payroll taxes on the wage portion of the
4 settlement will be paid separately and in addition to the Settlement Amount. Sett. Agmt. ¶ 10.4.
5 Glugoski Decl. ¶ 23.

6 **1. Settlement Allocation Formula**

7 The participating Class Members will be paid pursuant to an allocation formula based on the
8 number of workweeks they worked for Defendant during the Class Period. Sett. Agmt. ¶ 10.2. Each
9 Class Member's Individual Settlement Payment will be calculated by dividing each Participating
10 Class Member's respective Workweeks by the Total Workweeks, and multiplying the resulting
11 figure by the Net Settlement Amount. Sett. Agmt. ¶ 10.2. For tax purposes, the Individual Settlement
12 Payments will be allocated as follows: twenty percent (20%) as wages ("wage portion"), and eighty
13 percent (80%) as penalties, any other non-taxable items, and interest. Sett. Agmt. ¶ 10.10.

14 Each PAGA Member will be paid pursuant to a similar formula that is based on the number
15 of pay periods worked by the PAGA Member during the PAGA Period. Sett. Agmt. ¶ 10.5; Glugoski
16 Decl. ¶ 23.

17 **2. No Reversion and No Claim Form Required**

18 This is a non-reversionary settlement. To make the relief provided by the Settlement as
19 accessible to Class Members as possible, the parties have agreed to eliminate the claims process.
20 Sett. Agmt. ¶ 52. Each Class Member who does not submit a timely and valid opt-out request within
21 45 days after the Notice Packet is first mailed will be automatically mailed a check for his or her
22 pro rata portion of the Settlement. Sett. Agmt. ¶¶ 7.2 and 10.2. Glugoski Decl. ¶ 23.

23 Each PAGA Member shall receive his or her proportionate share of the PAGA Payment and
24 shall be bound by the release of the PAGA claims regardless of whether they submit an opt-out
25 request. Sett. Agmt. ¶ 7.4.

26 **3. Distribution of Uncashed Settlement Checks**

27 The Settlement Agreement provides that Participating Class Members shall have one-
28 hundred eighty (180) calendar days from the postmark date of the checks to deposit or otherwise

1 cash their settlement checks. Sett. Agmt. ¶ 10.2. If an Individual Settlement Payment check is not
2 cashed within one hundred and eighty (180) calendar days from the date of issuance, and if said
3 check represents a sum that is five (5) or more times greater than the cost of sending an additional
4 check to Participating Class Members, then the uncashed Individual Settlement Payment checks
5 will be redistributed to Participating Class Members on a pro-rata basis. If the uncashed Individual
6 Settlement Payment checks represent a sum that is less than five (5) times greater than the cost of
7 sending an additional check to Participating Class Members, the Individual Settlement Payment
8 checks will be cancelled and funds associated with said cancelled check will be transmitted to the
9 State Controller's Unclaimed Property Fund in the name of the Participating Class Members, as an
10 alternative distribution for which there is good cause, under California Code of Civil Procedure
11 Section 384(b). Glugoski Decl. ¶ 24.

12 **4. Scope of the Release**

13 Participating Class Members will release all claims pleaded or asserted in the action or that
14 could have been pleaded or asserted based upon the facts alleged in the action. Sett. Agmt. ¶ 6.1.
15 Glugoski Decl. ¶ 25.

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

18 Defendant and each of its past, present, and future agents, employees,
19 servants, officers, directors, partners, trustees, representatives,
20 shareholders, stockholders, attorneys, parents, subsidiaries, equity
21 sponsors, related companies/corporations and/or partnerships,
22 divisions, assigns, predecessors, successors, insurers, consultants, joint
23 venturers, joint employers, affiliates, alter-egos, and affiliated
24 organizations; and all of their past, present, and future employees,
25 directors, officers, agents, attorneys, stockholders, fiduciaries, parents,
26 subsidiaries, and assigns. Sett. Agmt. ¶ 6.1.

27 Glugoski Decl. ¶ 25.

28 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. Glugoski Decl. ¶ 25.

1 **C. Requested Attorneys’ Fees and Costs and Proposed Service Payments to the**
2 **Class Representative**

3 The Settlement Agreement allows Class Counsel to apply for an award of attorneys’ fees of
4 33.33% (\$308,302.50) of the Settlement Amount of \$925,000.00 and litigation costs not to exceed
5 \$6,500.00. Sett. Agmt. ¶ 10.6. Plaintiff will apply to the Court for a Service Award of \$5,000.00 to
6 compensate Plaintiff for his time and service to the class. Sett. Agmt. ¶ 10.3. These amounts are
7 preliminarily reasonable and justified based on the work performed and the costs incurred by
8 Plaintiff and Plaintiff’s counsel in order to obtain a successful result on behalf of the Class Members.
9 Glugoski Decl. ¶ 26. These amounts also serve as consideration for the general release to which the
10 named Plaintiff has agreed. *Id.* To provide further justification for awarding these amounts, Plaintiff
11 will file a Motion for Award of Class Representative Service Payments, Settlement Administrator’s
12 Expenses, and Class Counsel’s Attorneys’ Fees and Costs to be heard at the same time as the Motion
13 for Final Approval. To the extent the Court awards less than the requested amounts, the difference
14 in such amounts will be added to the Net Settlement Amount. Sett. Agmt. ¶¶ 10.1 and 10.7.

15 **D. Settlement Administration**

16 As explained further in Section IV.B.7 below, the Settlement Agreement provides for Class
17 Members to receive direct notice of the Settlement by mail. Glugoski Decl. ¶ 27. The notice
18 administration plan will ensure that substantially all of the Class Members will receive notice of the
19 Settlement and will be adequately apprised of and able to exercise their rights and options
20 thereunder. ILYM Group, Inc., an experienced third-party claims administrator, will handle all
21 aspects of the notice process and settlement administration. ILYM’s CV and proposal detailing their
22 work in this case are marked and attached as Exhibit 3 to the Glugoski Decl. See, Glugoski Decl. ¶
23 27. Class Counsel will also be available to the Class Members to answer their questions.

24 **IV. ARGUMENT**

25 **A. The Settlement Class Should Be Provisionally Certified**

26 During the preliminary approval analysis, the Court determines whether certification of a
27 provisional settlement class is appropriate and whether the settlement is fair. *Carlin v.*
28 *DairyAmerica, Inc.*, 328 F.R.D. 393, 398-399 (E.D. Cal. 2018) (citing *In re Bluetooth Headset*

1 *Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). Pursuant to Federal Rule of Civil Procedure
2 23(a), the plaintiff must show that the requirements of numerosity, commonality, typicality, and
3 adequacy of representation are met. The settlement class must also meet one of the requirements of
4 Rule 23(b) Plaintiff seeks certification under Rule 23(b)(3), which requires that common questions
5 of law or fact predominate over individual questions and that class treatment is a superior method
6 of resolving the controversy.

7 California adopts Federal Rule 23 in terms of the criteria that must be met for class
8 certification. Each of the factors are discussed below. *See, Sav-on Drug Stores v. Superior Court*,
9 34 Cal.4th 319, 326 (2004).

10 **1. The Settlement Class Is Sufficiently Numerous**

11 The first requirement of Rule 23(a) is that the class be so numerous that joinder of all
12 members would be “impracticable.” *See*, Fed. R. Civ. P. 23(a)(1). Numerosity is satisfied with as
13 few as 40 class members. *See, Welling v. Allexy*, 155 F.R.D. 654, 656 (N.D. Cal. 1994). Here,
14 numerosity is satisfied because, as of at least November 30, 2023, there were approximately 92 class
15 members – all of whom are identifiable from Defendant’s records. *See, e.g., Rose v. City of Hayward*
16 (1981) 126 Cal.App.3d 926, 934 (class of 42 is sufficiently numerous). “[T]he purpose of the
17 ascertainability requirement is to ensure notice to potential class members.” *Ghazaryan v. Diva*
18 *Limousine, Ltd.*, (2008) 169 Cal.App.4th 1524, 1533. A class is ascertainable when it is precise,
19 objective, and can be determined from defendants’ public records, or other existing records. *Wilner*
20 *v. Sunset Life* (2000) 78 Cal.App.4th 952, 960. “The class is ascertainable if it identifies a group of
21 unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of
22 that group to identify himself as having a right to recover based on the description.” *Estrada v.*
23 *FedEx Ground* (2007) 154 Cal.App.4th 1, 14. Here, the class consists of 92 individuals. Glugoski
24 Decl. ¶ 28

25 **2. There Are Common Issues of Law and Fact**

26 Rule 23(a) also requires “questions of law or fact common to the class.” Fed. R. Civ. P.
27 23(a)(2). The commonality requirement is permissively construed by the Ninth Circuit such that the
28 “existence of shared legal issues with divergent factual predicates is sufficient, as is a common core

1 of salient facts coupled with disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*,
2 150 F.3d 1011, 1019 (9th Cir. 1998). Plaintiff meets the criteria of Rule 23(a)(2) because the Class
3 Members’ claims turn upon answers to overarching common questions regarding Defendant’s
4 policies and procedures that are capable of class wide resolution for settlement purposes.

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

16 3. Plaintiff’s Claims Are Typical of the Settlement Class

17 Under Rule 23(a)(3), Plaintiffs must establish that the “claims or defense of the representative
18 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). This is a permissive
19 standard that is met so long as the representative claims “are reasonably coextensive with those of
20 absent class members.” *Hanlon*, 150 F.3d at 1020. The typicality requirement is met if the claims of
21 the representative plaintiff are typical of the claims of the class. (*See, Fireside Bank v. Superior Court*
22 (2007) 40 Cal. 4th 1069, 1090. Class representatives are not required to have identical interests with
23 the class members. The only requirements are that common questions of law and fact predominate
24 and that representatives be similarly situated. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987)
25 191 Cal. App. 3d 1341, 1347.

26 Here, the named Plaintiff who seeks to represent the proposed Class satisfies the typicality
27 requirement because they assert the same types of injury arising from the same conduct by
28 Defendant as Plaintiff. Glugoski Decl. ¶ 30.

1 **4. Plaintiff and His Counsel Will Adequately Represent the Settlement Class**

2 Rule 23 also requires that “the representative parties fairly and adequately protect the
3 interests of the class.” Fed. R. Civ. P. 23(a)(4). To satisfy this element, Plaintiffs must establish that:
4 (1) the class representatives do not have a conflict of interest; and (2) class counsel will adequately
5 represent the interests of the class. *See, Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512
6 (9th Cir. 1978). “Adequacy of representation depends on whether the plaintiff’s attorney is qualified
7 to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of
8 the class.” *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-451 (1976). “[A]n essential
9 concomitant of adequate representation is that the party’s attorney be qualified, experienced and
10 generally able to conduct the proposed litigation.” *Richmond v. Dart Industries, Inc.* (1981) 29
11 Cal.3d 462, 478-479.

12 Plaintiff has no conflict of interest with the class members. He performed the similar work
13 and was subject to the same policies and practices as the Class Members. Plaintiff’s claims are
14 identical to the claims of the other class members and arise from the same course of conduct by
15 Defendant. Plaintiff has embraced his responsibilities as the class representative by actively
16 participating in this case, providing documents, identifying potential witnesses, providing valuable
17 information regarding the policies and practices at issue in this case and Defendant’s business
18 structure, engaging in the settlement process, and consulting with counsel throughout the litigation.
19 Glugoski Decl. ¶ 31. Plaintiff has devoted considerable time to this litigation and is prepared to
20 continue to do so, demonstrating his commitment to achieving the best possible result for the class.⁵
21 *Id.* Further, Plaintiff is represented by qualified and competent counsel, who have the experience
22 and resources necessary to vigorously pursue this action. Glugoski Decl. ¶¶ 1-6. The firm
23 representing Plaintiff has certified many class actions in state and federal court, for both litigation
24 and settlement purposes, and has recovered many millions of dollars on behalf of class members.
25 Glugoski Decl. ¶ 31.

26 **5. Common Issues Predominate Over Individualized Issues**

27 _____
28 ⁵ Further details regarding Plaintiff’s work on the case will be presented in a declaration with the motion for final approval.

1 Rule 23(b)(3) certification is proper when common questions “predominate over any
2 questions affecting only individual members” and class resolution is “superior to other available
3 methods for the fair and efficient resolution of the controversy.” Fed. R. Civ. P. 23(b)(3). Both Rule
4 23(b)(3)’s predominance and superiority requirements are satisfied for purposes of certifying the
5 proposed Settlement Class. “The Rule 23(b)(3) predominance inquiry tests whether proposed class
6 [is] sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods. Inc. v.*
7 *Windsor*, 521 U.S. 591, 623 (1997). As *Brinker v. Superior Court* 53 Cal. 4th 1004 (2012) explained,
8 the core test for certification is whether “the issues which may be jointly tried, when compared with
9 those requiring separate adjudication, are so numerous or substantial that the maintenance of a class
10 action would be advantageous to the judicial process and to the litigants.” 53 Cal. 4th at 1021
11 (quoting *Collins v. Rocha*, 7 Cal. 3d 232, 238 (1972)). This motion confirms that Plaintiff satisfies
12 this test.

13 This inquiry tests whether the “proposed classes are sufficiently cohesive to warrant
14 adjudication by representation.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)
15 (quotations omitted). An individual question is defined as “one where members of a proposed
16 class will need to present evidence that varies from member to member.” *Id.* A common question,
17 on the other hand, is “one where the same evidence will suffice for each member to make prima
18 facie showing [or] the issue is susceptible to generalized, class-wide proof.” *Id.*

19 Here, the legality of the challenged policies and practices involve common questions that
20 can be decided with common proof and will generate an answer common to the entire class. The
21 common questions include, but are not limited to: (1) whether Plaintiff and the class members
22 performed work off the clock; (2) whether employees were denied compliant rest breaks; (3)
23 whether the employees were exempt from overtime; (4) whether employees were reimbursed for
24 expenses paid by employees while performing work for Defendant; and (5) whether wage statements
25 were non-compliant.

26 If the case were to be litigated, the common proof would include, among other things,
27 employee handbooks, standalone policy documents, performance reviews that reflect productivity
28 rules, and Plaintiff’s and the Class Members’ time and payroll records, as well as documents

1 reflecting when employees logged into and out of their phones. The Class Members would have to
2 individually prove their damages, but “damage calculations alone cannot defeat certification.”
3 *Yokoyama v. Midland Nat’l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010); *Leyva v. Medline*
4 *Indus., Inc.*, 716 F.3d 510, 513 (9th Cir. 2013) (“damages determinations are individual in nearly
5 all wage-and-hour class actions”). Glugoski Decl. ¶ 32.

6 **6. A Class Action Is Superior to Individual Actions**

7 Rule 23(b)(3)’s final requirement is “that the class action be superior to other methods of
8 adjudication.” This requirement is satisfied because there is no indication that class members seek
9 to individually control their cases, that individual litigation is already pending in other forums, or
10 that this particular forum is undesirable for any reason. Fed. R. Civ. P. 23(b)(3)(A)-(D). In addition,
11 the alternative of hundreds of individual actions “is not realistic.” *See, Wren v. RGIS Inventory*
12 *Specialists*, 256 F.R.D. 180, 210 (N.D. Cal. 2009). Accordingly, certification of a settlement class
13 is superior to any other method of resolving this matter, since it will promote economy, expediency,
14 and efficiency. California has a strong “public policy that encourages the use of the class action
15 device.” *Sav-On Drug, supra*, 34 Cal. 4th at 340. There, the Supreme Court counseled that in
16 circumstances such as those in the case at bar, class treatment is superior to individual trials:

17 Many of the issues likely to be most vigorously contested in this dispute, as noted,
18 are common ones. Absent class treatment, each individual plaintiff would present
19 in separate, duplicative proceedings the same or essentially the same arguments
20 and evidence, including....The result would be a multiplicity of trials conducted
21 at enormous expense to both the judicial system and the litigants. It would be
22 neither efficient nor fair to anyone...to force multiple trials to hear the same
23 evidence and decide the same issues.

24 *Id.* (internal citations omitted). The superiority analysis also includes considerations of whether
25 individual members are likely to come forward and claim a part of the recovery and whether a group
26 action will serve to deter future wrongdoing. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 445.

27 There is no better evidence that the case should proceed on a class-wide basis than the fact
28 that if absent class members were to bring their claim individually, they would each rely on the
same evidence of Defendant’s standard policy of non-payment of wages for all hours worked,

1 failure to reimburse for all business expenses, and provide meal and rest breaks pursuant to
2 California law.

3 Although ARC disagrees that the proposed class would satisfy the requirements for a
4 litigated class action, Defendant does not object to certification of the class for purposes of this
5 settlement. Sett. Agmt. ¶¶ 4.3 and 5.

6 **7. The Court Should Appoint Plaintiff as the Class Representative and**
7 **Plaintiff's Counsel as Class Counsel**

8 Because the commonality, typicality, and adequacy requirements of Rule 23(a) are met,
9 Plaintiff should be appointed as the class representative. Plaintiff's counsel should also be appointed
10 to represent the settlement class. The factors that apply in deciding whether to appoint class counsel
11 are: (1) the work counsel has done in identifying or investigating potential claims in the action; (2)
12 counsel's experience in handling class actions, other complex litigation, and the types of claims
13 asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that
14 counsel will commit to representing the class. FED. R. CIV. P. 23(g)(1)(A).

15 As set forth herein, Plaintiff's counsel conducted a thorough investigation of the claims at
16 issue before filing the complaint and during the three years and three months of litigation leading
17 up to this settlement. Plaintiff's counsel has extensive experience litigating wage-and-hour class
18 actions and representative actions, is well-versed in the applicable law, and has ample resources to
19 dedicate to the case. Glugoski Decl. ¶¶ 1-6. The firm representing Plaintiff has vigorously
20 represented the class members' interests, and will continue to do so.

21 **B. The Settlement Should Be Preliminarily Approved**

22 A class action settlement requires court approval upon a finding that the settlement is fair,
23 reasonable, and adequate. FED. R. CIV. P. 23(e); *Hanlon*, 150 F.3d at 1026. There are two sources
24 of factors for the fairness analysis: case law, and Federal Rule of Civil Procedure 23(e). The fairness
25 factors established by case law provide that a settlement should be preliminarily approved if it: (1)
26 appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious
27 deficiencies; (3) does not improperly grant preferential treatment to the class representatives or
28

1 segments of the class; and (4) falls within the range of possible approval. *In re Tableware Antitrust*
2 *Litig.*, 484 F. Supp. 2d 1078, 1079-1080 (N.D. Cal. 2007).

3 The relevant factors are under Rule 23(e)(2) are whether: (1) the class representatives and
4 class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length;
5 (3) the relief provided for the class is adequate, taking into account (a) the costs, risks, and delay of
6 trial and appeal; (b) the effectiveness of any proposed method of distributing relief to the class,
7 including the method of processing class members' claims; (c) the terms of any proposed award of
8 attorney's fees, including the timing of the payment; and (d) any agreement required to be identified
9 under Rule 23(e)(3)⁶; and (4) the proposal treats class members equitably relative to each other.

10 The relative degree of importance of a particular factor depends on "the unique facts and
11 circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n of City*
12 *& Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). In applying these factors, the Court
13 should also be guided by the "strong judicial policy" that favors the settlement of class actions."
14 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Hanlon*, 150 F.3d at 1027 (a
15 settlement is a "private consensual decision of the parties" and the approval analysis is limited to
16 considering whether the settlement is a product of collusion and is fair as a whole).

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

19 The Settlement is the product of protracted arm's-length negotiation. Class Counsel
20 advocated vigorously on behalf of the Class throughout the negotiations in order to negotiate a
21 settlement that is in the best interest of the Class Members and provides adequate class-wide relief.
22 Glugoski Decl. ¶ 20. The vigorous negotiations between the parties resulted in a reasonable
23 compromise that is the product of genuine give and take justified by the facts of this case. Plaintiff
24 is represented by highly experienced class action litigators, who believe that the Settlement is an
25 excellent result for the Class Members.

26 Further, there are no "subtle signs of collusion." *In re Bluetooth Headset Prods. Liab. Litig.*,
27 654 F.3d 935, 947 (9th Cir. 2011). The settlement is non-reversionary. The Settlement provides for

28 _____
⁶ There are no agreements to disclose under this rule.

an attorneys' fee award of up to 35% of the Total Settlement Amount, which is in line with the market rate. *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal. App. 4th 19. *Lealao* stands for the proposition that court-awarded attorney's fees should approximate what counsel could get on the free market for the same services. The Settlement is an outstanding result for the Class. Similarly, the request for Plaintiff's Service Award will be supported by evidence of the work he has done and the risk he has undertaken.

2. The Settlement Provides Excellent Relief for the Class

The Settlement provides a significant monetary relief to the Class Members to compensate them for the alleged wage-and-hour violations at issue in this case, especially in light of the economic risks and downturn in 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. Glugoski Decl. ¶ 33.

The proposed settlement provides a total non-reversionary settlement amount of \$925,000.00.⁷ 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

⁷ \$75,000.00 of the Settlement Amount is apportioned to Plaintiff's discrimination claim filed with the DFEH. \$55,000.00 is allocated to resolve the PAGA claim.

1 argued, for example, that they had a reimbursement policy in place providing for reimbursement.
2 Based on investigation and research, Plaintiff estimates the potential total exposure to be: 800
3 months x \$105 = \$84,000. Glugoski Decl. ¶ 34.

4 Regarding the claims of the failure to pay all wages owed, rest and meal breaks and related
5 relief, particularly as to the exempt employees, Plaintiff alleged that exempt employees were
6 misclassified and alleged that exempt Class Members did not spend 50% of their time outside of the
7 office engaged in outside sales. ARC contends that these employees met the criteria for the outside
8 sales exemption because they spent more than 50% of their time out of the office. The question of
9 exempt status has been found in some situations to require individual inquiries and ARC raised this
10 issue. Even if Plaintiff could establish misclassification, Plaintiff would still have to prove that
11 significant overtime was worked and given the COVID shutdown, that would be an uphill battle.
12 Glugoski Decl. ¶ 35.

13 Moreover, particularly as to non-exempt employees, Plaintiff alleged that Defendant
14 required its employees to perform work off-the-clock which was not compensated and that
15 Defendant rounded time entries, among other theories, thus resulting in employees not being paid
16 for all hours actually worked. Defendant denied liability and asserted that employees were paid all
17 wages and that all work performed by non-exempt employees was performed on-the-clock.
18 Glugoski Decl. ¶ 35.

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

23 With respect to the meal and rest break claims, Plaintiff alleged that Defendant failed to
24 provide compliant meal and rest periods. As to exempt employees, if the Class Members were found
25 to be exempt then the claim has zero value. Moreover, Defendant argued, among other things, that
26 they provided all of their employees with the opportunity to take compliant meal and rest periods.
27 Defendant also argued that they maintained facially compliant meal and rest period policies.
28 Further, since the employees were working from home, the ability to obtain class certification would

1 be challenging given the fact that unlike working at the company headquarters, the Class Members
2 would be susceptible to daily home life interruptions and activities that could be argued constituted
3 meal periods and/or rest breaks. Plaintiff believes that at most, Plaintiff would be able to establish
4 two (2) missed meal periods and two (2) missed rest breaks per week. Based on Plaintiff counsel's
5 research and interviews, Plaintiff estimates the total exposure to be around \$400,800.00. Glugoski
6 Decl. ¶ 37.

7 With respect to Plaintiff's wage statement and waiting time penalties claims, Plaintiff
8 alleged that such claims were derivative of Plaintiff's other Labor Code violations, including, as to
9 exempt employees, derivative of whether there was misclassification. Defendant argued that
10 Plaintiff could not prove the "willful" prong to obtain waiting time penalties and that Plaintiff could
11 not show that Class Members suffered "injury" because of wage statement violations. Moreover,
12 Defendant argued a "good faith" defense applicable to these claims. ARC's claim that it had a good
13 faith defense would be seen as reasonable and thus this claim has very little to no value. Glugoski
14 Decl. ¶ 38.

15 The Settlement Amount is not only within the range of possible approval but is an excellent
16 result given Defendant's financial position. Glugoski Decl. ¶ 33.

17 Further, 6% of the Total Settlement Amount (\$55,000.00) was allocated to the PAGA claim.
18 Sett. Agmt. ¶ 10.4. As required by statute, 75% (\$41,250.00) will be paid to the LWDA. The
19 remaining 25% (\$13,750.00) will be distributed to the PAGA Members. The LWDA received notice
20 of this settlement and this motion. *Id.* Glugoski Decl. ¶ 39 and Ex. 5. There are approximately 725
21 PAGA pay periods during the PAGA Period. The employees will receive \$18.00 per pay period.
22 Under the PAGA, Courts have considerable discretion to reduce the penalty award below the
23 maximum. In *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, a federal court
24 reduced PAGA penalties by 82.2%, because the court found maximum penalties "unjust." Some
25 trial courts have awarded no civil penalties, even when Labor Code violations were established.
26 Glugoski Decl. ¶ 39.

27 This represents an excellent recovery for the Class Members, particularly considering the
28 risks of further litigation. There is no guarantee that Plaintiff could certify the overtime, off the

1 clock, reporting time pay, waiting time, wage statement, rest break, meal period, or reimbursement
2 claim or prevail on the merits. To the extent the claim applies, Plaintiff could potentially compare
3 employees' time records against data showing when they logged into and out of the computer system
4 to determine how much unpaid time may have occurred during the process of clocking in and out.
5 There is a chance that the amounts of time could be small and/or infrequent. More importantly, for
6 at least the exempt employees they could be found to be exempt from overtime that would render
7 the claims worthless. To the extent Plaintiff alleged that employees were required or pressured to
8 work off the clock to complete their work, this would likely be difficult to prove. With regard to the
9 meal/rest breaks, the written policies appeared to be compliant, which would make certification
10 significantly more challenging. Plaintiff believes that the claims for wage statement penalties are
11 strong to the extent they are derivative of the wage claims, but Defendant could succeed in arguing
12 that they acted in good faith and not wilfully. Glugoski Decl. ¶ 40.

13 Moreover, litigating the case through certification, summary judgment, and trial would have
14 been expensive and time-consuming, with the risk that Plaintiff could lose at each step of the way
15 and recover nothing, barring a successful appeal. For these reasons, the settlement value is fair,
16 reasonable, and adequate.

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

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

22 **4. There Is No Unfair Preferential Treatment of Class Members**

23 The Settlement does not give preferential treatment to any Class Members. The settlement
24 provides for the funds to be allocated to each participating Class Member proportionally based on
25 the number of weeks they worked for Defendant, as shown by Defendant's records. Sett. Agmt. ¶
26 10.2. The settlement class is cohesive because it consists of employees subject to the same relevant
27 wage-and-hour policies, including policies regarding work schedules and hours worked, meal
28 periods, rest breaks, and reimbursement policies. Glugoski Decl. ¶ 41.

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

8 **5. The Proposed Attorneys’ Fee Award is Preliminarily Appropriate**

9 Pursuant to the Settlement Agreement, Plaintiff’s counsel will seek attorneys’ fees not to
10 exceed \$308,302.50 (33.33% of the Settlement Amount) and actual litigation costs and expenses
11 not to exceed \$6,500.00. Sett. Agmt. ¶ 10.6. Class counsel appreciate that this Court will utilize the
12 period of time before the hearing on final approval to consider any comments from Class Members
13 and inform itself of all aspects of the settlement. Further, at the final approval stage, this Court will
14 rule upon the reasonableness of any attorney's fees, the class representative enhancement request,
15 and repayment of costs advanced by Plaintiff’s counsel. In preparation for final approval, Plaintiff
16 will provide this Court with further briefing pertaining to those requests. Glugoski Decl. ¶ 42.
17 However, at this preliminary stage the requested fee award is less than Class Counsel’s lodestar and
18 in line with the market rate. *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal. App. 4th 19.

19 The awarded fees and costs will be paid after the settlement has been finally approved and
20 the deadline to file appeals has passed, assuming that no appeals are filed. To the extent the Court
21 awards less than the requested amount of fees and costs, the difference will be added to the Net
22 Settlement Amount. Sett. Agmt. ¶ 10.1.

23 **6. The Release Is Narrowly Tailored**

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

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

3 Under Rule 23(e), the Court must “direct notice in a reasonable manner to all Class Members
4 who would be bound by a proposed settlement.” FED. R. CIV. P. 23(e)(1)(B). The notice provided to
5 members of a class certified under Rule 23(b)(3) must be the “best notice practicable under the
6 circumstances.” FED. R. CIV. P. 23(c)(2)(B). The notice is satisfactory “if it generally describes the
7 terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and
8 to come forward and be heard.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 962-963 (9th
9 Cir. 2009) (quotations omitted). Reasonable efforts must be made to reach all class members, but it
10 is not required that each class member actually receive notice. FED. R. CIV. P. 23(c)(2)(B) (requiring
11 “individual notice to all members who can be identified through reasonable effort”); *Silber v.*
12 *Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994) (under Rule 23, the standard is “best practicable” notice,
13 not “actually received” notice). The notice is easy for the Class Members to understand and includes
14 class counsel’s contact information; the address for the settlement administrator’s website with links
15 to the settlement motions and other important documents; and information about how to access the
16 case docket and when the final approval hearing will be held. The notice also includes information
17 about how to opt out. FED. R. CIV. P. 23(c)(2)(B).

18 The Class Members will be identified from Defendant’s records and the Notice Packet will
19 be mailed to them using the last known mailing address in Defendant’s records. Sett. Agmt. ¶ 1.5.
20 Prior to mailing, the Settlement Administrator will perform a search in the National Change of
21 Address database to update the addresses. Sett. Agmt. ¶ 7.2. If a Class Notice is returned within
22 thirty (30) calendar days of the Initial Mailing as undeliverable without a forwarding address, then
23 within five (5) calendar days of receiving the undeliverable Class Notice, the Settlement
24 Administrator will promptly attempt to determine the correct address using a skip-trace search, and
25 will perform a single re-mailing to any addresses located indicating the date of the re-mailing on the
26 Class Notice. Those Class Members who receive a re-mailed Class Notice (as a result of the
27 Settlement Administrator locating an updated address by way of skip-trace search, forwarding
28 address provided by the post office, or request from the parties or Class Members), will have the

1 later of (a) fifteen (15) calendar days from the date the Class Notice is re-mailed or (b) the Response
2 Deadline to postmark a Request for Exclusion, objection, or dispute regarding Workweeks or PAGA
3 Pay Periods to the Settlement Administrator. Sett. Agmt. ¶ 7.2. Glugoski Decl. ¶ 44.

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

18 In order to request exclusion from the Settlement, the Class Notice explains that Class
19 Members must send a written request for exclusion to the Settlement Administrator. To assert an
20 objection to the Settlement, a Class Member must submit an objection to the Settlement
21 Administrator. The deadline to request exclusion or submit an objection is no later than the Response
22 Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline. The Class
23 Notice also explains that objecting class members may obtain their own counsel and appear at the
24 hearing on Final Approval where their objection will be ruled upon. Glugoski Decl. ¶ 46.

25 **V. PROPOSED IMPLEMENTATION SCHEDULE**

26 Plaintiff proposes the following implementation schedule for further proceedings:
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a.	Deadline for Defendants to Submit Class List and Data to Settlement Administrator	Thirty (30) calendar days after notice by Plaintiff or the Court of the Preliminary Approval Order
b.	Deadline for Settlement Administrator to Mail the Notice Packet to Class Members	Fifteen (15) calendar days after Defendant provides the Settlement Administrator with the Class List and Data
c.	Deadline for Settlement Administrator to Mail Reminder Post-Cards to Class Members	Not more than thirty (30) calendar days (nor fewer than twenty-five (25) days) after mailing of Notice Packets to Class Members
d.	Deadline for Class Members to Submit Requests For Exclusion or Objections to Settlement	Forty-five (45) calendar days after mailing of Notice Packets to Class Members
e.	Deadline for Class Counsel to file: (1) Motion for Final Approval of Class Action Settlement and (2) Motion for Award of Class Representative Service Award, Claims Administrator's Expenses and Attorneys' Fees and Costs	_____, 2024
f.	Hearing on: • Motion for Final Approval of Class Action Settlement; • Motion for Award of Class Representative Service Award, Settlement Administrator's Expenses and Attorneys' Fees and Costs	_____, 2024 at _____ a.m./p.m.

VI. CONCLUSION

The parties have successfully negotiated a settlement of claims that almost certainly would never have been brought, much less successfully so, but for the use of a class action as a procedural device. The efficient and fair resolution of this case was made possible by the combined efforts of a dedicated and informed Class Representative and experienced Plaintiff's counsel and Defendant's counsel, who were able to realistically assess the costs and risks of continued protracted litigation.

1 Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the
2 proposed settlement, certify the Settlement Class, appoint Plaintiff as the Class Representative,
3 appoint Plaintiff's counsel as Class Counsel, appoint the Settlement Administrator, and approve the
4 Class Notice, notice procedures and proposed implementation schedule.

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6 Dated: August 21, 2024

Respectfully Submitted,

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8 **RIGHETTI GLUGOSKI, P.C.**

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10 John Glugoski

11 Attorney for Plaintiff, JEFF SMOROWSKI
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