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10 Attorneys for Plaintiffs and the Proposed Class

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SAN FRANCISCO**

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14  
15 RICHARD DANIELE, RICHARD GOSS and  
16 STEVE LANDI, individually, and on behalf of a  
class of similarly situated persons,

17 Plaintiffs,

18 v.

19 10UP, INC., a California Corporation; and  
20 DOES 1-50 inclusive,

21 Defendants.

Case No.: CGC-20-586506

CLASS ACTION

**DECLARATION OF MATTHEW  
RIGHETTI IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
ATTORNEYS' FEES, LITIGATION  
COSTS AND CLASS  
REPRESENTATIVE  
ENHANCEMENTS**

Date: January 18, 2024

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Richard B. Ulmer

Case Filed: September 11, 2020

Trial Date: None

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**11/20/2023**  
Clerk of the Court  
BY: ERNALYN BURA  
Deputy Clerk

1 I, **MATTHEW RIGHETTI**, declare that:

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

4  
5

**EDUCATION AND EXPERIENCE**

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

12 2. I have been practicing law full time for the past thirty-five (35) years. My practice has  
13 been devoted to complex class action litigation for the past twenty-six years. Most of my career  
14 has involved prosecution of class actions in state and federal court. A sampling of some of the  
15 more significant class action cases handled by Righetti Glugoski, P.C., includes:

16 • Co-lead counsel in *Rocher v. Sav-On Drug Stores* (Hon. Victoria G. Chaney, Los  
17 Angeles County Superior Court); See, *Sav-On Drug Stores, Inc. v. Superior Court*, (2004) 34  
18 Cal.4th 319 (reversing the Second DCA, the California Supreme Court unanimously reinstated  
19 the trial court's order granting class certification). The *Sav-On* litigation was settled after the  
20 first phase of trial.

21 • Lead counsel in *Gentry v. Circuit City Stores, Inc.*, (2007) 42 Cal.4th 443 (reversing the  
22 Court of Appeal, the California Supreme Court set forth the factors for trial courts to use in  
23 determining whether to enforce bans on class actions in employment arbitration agreements).

24 • Lead counsel in *Crab Addison v. Superior Court*, (2008) 169 Cal.App.4th 958 (affirming  
25 the trial court, the Court of Appeal upheld an order compelling defendant to divulge names and  
26 contact information of putative class members in wage and hour overtime action).

27 • Lead counsel in *Rutti v. Lojack Corp., Inc.* (2010) 596 F.3d 1046 (granting plaintiffs'  
28 petition for rehearing, the Ninth Circuit reversed the district court's summary judgment order

1 setting parameters for the *de minimus* doctrine and compensable “hours worked” under both  
2 state and federal law).

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

15 • Counsel in *Elder v. Schwan Foods* (individual exemption misclassification) tried to a  
16 jury verdict in the Los Angeles Superior Court. First Appeal: On May 12, 2011, the California  
17 Court of Appeal reversed a trial court order that failed to award restitution and penalties  
18 following a jury verdict in favor of our client. The Court of Appeal ordered the trial court to  
19 reconsider the equitable remedies of restitution and civil penalties. Second Appeal: On  
20 February 27, 2013, the employer contended it was deprived of its right to a statement of  
21 decision because the trial court did not issue a tentative decision. The Court of Appeal rejected  
22 the employer's appeal finding both that there was no prejudicial error and there was sufficient  
23 evidence in the record to award restitution and civil penalties for violation of California's  
24 overtime laws.

25 • Counsel in the matter *Roberto Martinez et al. v. Joe's Crab Shack Holdings et al.*, 231  
26 Cal.App.4th 362 (2014) where the Court of Appeal reversed the trial court's denial of class  
27 certification in an executive misclassification case.

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- 1 • Co-counsel in cases against Home Depot and 99 Cent Only Stores where the trial courts  
2 limited the California Private Attorney General Act (PAGA) only to claims under the Labor  
3 Code and not to claims under the IWC Wage Orders. In both cases the Courts of Appeal  
4 reversed in published decisions. See *Home Depot v. Superior Court* (2011) 191 Cal.App.4th  
5 210 (review denied March 16, 2011) (holding PAGA applicable to seating claims on grounds  
6 that Labor Code §1198 incorporates IWC Wage Order protections); *Bright v. 99 Cents Only*  
7 *Stores* (2010) 189 Cal.App.4th 1472 (review denied February 16, 2011) (same).
- 8 • Co-counsel in a PAGA action against Bank of America on behalf of California bank  
9 tellers. The case was twice dismissed by Judge Real. Judge Real's orders were both reversed  
10 by the Ninth Circuit – *Green v. Bank of America, N.A.* (9th Cir. 2013) \_\_ Fed. Appx., 2013 WL  
11 \_\_\_\_\_ and *Green v. Bank of America, N.A.* (9th Cir. 2015) 634 Fed.Appx. 188. On remand,  
12 the Ninth Circuit removed the case from the docket of Judge Real and re-assigned the case to  
13 Judge Percy Anderson.
- 14 • Class counsel in the certified class action *Hall v. Rite Aid Corporation* in San Diego  
15 County Superior Court. In 2014 the Fourth District Court of Appeal reversed the trial court's  
16 decertification order. See, *Hall v. Rite Aid Corporation*, 226 Cal.App.4th 278 (2014, review  
17 denied August 27, 2014). The case settled for \$18M on the day of trial.
- 18 • Co-counsel in litigation against Wal-Mart, JPMorgan Chase Bank and CVS Pharmacy  
19 Inc. (*Henderson v. JPMorgan Chase Bank* (C.D. Cal.), No. 2:11-CV-03428), *Brown v. Wal-*  
20 *Mart, Inc.* (N.D. Cal.), No. 5:09-cv-03339-EJD, and *Kilby v. CVS Pharmacy, Inc.* (S.D. Cal.),  
21 No. 09-CV-2051-MMA. The district court in *Wal-Mart* granted class certification based on  
22 plaintiffs' construction of the law, while the district courts in *CVS* and *JPMorgan Chase* denied  
23 class certification after rejecting plaintiffs' construction of the same law. All three cases were  
24 then appealed and coordinated before the Ninth Circuit in December 2013. The Ninth Circuit  
25 panel asked the California Supreme Court to accept certification of three questions of statutory  
26 construction (739 F.3d 1192). More than two years later, after extensive briefing by the parties  
27 and *amici*, the California Supreme Court in April 2016 issued its unanimous opinion in *Kilby*  
28 setting forth its definitive construction of the law. *Kilby v. CVS* (2016) 63 Cal.4th 1. Based on

1 this construction by the California Supreme Court, the Ninth Circuit affirmed the grant of class  
2 certification in *Wal-Mart* (2016 WL 3212265) and reversed the district court orders in *CVS* and  
3 *JPMorgan Chase*. Wal-Mart settled for \$65M.

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

20 4. I was awarded the Daily Journal 2017 CLAY Award (“California Lawyer of the Year”)  
21 for my work on suitable seating litigation. I was also honored as one of the Daily Journal’s  
22 Top Labor & Employment Lawyers for 2017. I regularly speak on panels that involve class  
23 action and employment issues such as trial methodology, class certification, discovery and  
24 privacy issues, arbitration agreements and releases, mediation and settlement and recent  
25 developments in the field. Speaking engagements are typically for organizations such as the  
26 American Conference Institute, California Employment Lawyers Association, Bridgeport  
27 CEB, Industrial Relations Association, and a wide range of Bar associations.

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

8                           **INVESTIGATION AND RELEVANT LITIGATION HISTORY**

9           6. The relevant procedural history of this litigation is set forth in the concurrently  
10 filed Motion for Final Approval.

11                           **HOURLY RATES**

12           7. I believe the fees being sought here are reasonable considering the experience of  
13 counsel, the contingent nature of the fee, the particular risks involved in litigating this case, the  
14 amount and the quality of work performed.

15           8. I have become familiar with the market rates charged by attorneys in California.  
16 I have obtained this familiarity in several ways, including: (1) Researching fee rates; (2) Handling  
17 attorneys' fee litigation; (3) Discussing fees with other attorneys; (4) Reviewing declarations  
18 regarding prevailing market rates in cases seeking fees; (5) Reviewing attorneys' fee applications  
19 and court awards in other cases, as well as (6) Reviewing surveys and articles in legal newspapers  
20 and treatises on attorney's fees.

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

24           10. Litigating a case against a corporate defendant, represented by a top-tier defense  
25 firm, is not appealing to most lawyers. Heightening the risk is the fact that the plaintiffs' lawyers  
26 are called upon to finance the litigation. It is not a cause undertaken lightly.

27           11. One difficulty in determining the hourly rate of attorneys of similar skill and  
28 experience in the relevant community is the scarcity of hourly fee-paying clients in wage and

1 hour litigation. As a practical matter, few individual employees can afford to pay attorney fees  
2 on an hourly basis. This was certainly the case here. As a result, retainer agreements we negotiate  
3 with individual clients are based upon a contingency fee relationship. In contrast, corporate  
4 defendants typically pay their attorneys on an hourly basis.

5 12. I am knowledgeable about the hourly rates charged by attorneys of varying  
6 degrees of experience. During my fees practice, I have reviewed the hourly rates of dozens of  
7 law firms in California and elsewhere. I am also familiar with the hourly rates awarded in many  
8 other fees cases by state and federal courts in California and throughout the country. In addition,  
9 I have reviewed many published surveys of attorneys' billing rates.

10 13. The work in this case was taken on a contingency fee basis where we advanced  
11 all time and costs. The subject matter involved California privacy laws. This is a difficult area of  
12 law based on overlapping state and federal statutes and agency interpretations. Work of this type  
13 requires specialized learning, experience, and the willingness to take large risks. Working with  
14 our co-counsel, we attempted to efficiently litigate the claims in this matter using a high level of  
15 skill in the difficult questions that arose in this case.

16 14. A practice like ours can only properly litigate so many cases at one time. There is  
17 no question that we were required to assign out work in other cases to meet the demands of this  
18 case.

19 15. We did not receive any compensation for our services during the prosecution of  
20 this matter. In addition, Righetti Glugoski, P.C. incurred \$3,188.43 in out-of-pocket expenses (as  
21 detailed below) to achieve the settlement. The Nelson & Fraenkel firm incurred additional out of  
22 pocket costs as set forth in the Declaration of Gabriel Barenfeld.

23 16. My current hourly rate is \$1,050.00. Our hourly rate for paralegal work at \$250/hr.

24 17. The hourly rates charged by Righetti Glugoski, P.C. are supported by our  
25 specialized experience. I believe the rates set forth in the fee application are fully consistent with  
26 the market rate for attorneys with comparable expertise, experience, and qualifications.  
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1 18. I am aware of hourly rates (or their historical equivalents) for other plaintiff  
2 counsel approved by courts, including in *Carrillo v. Schneider Logistics Transloading &*  
3 *Distribution, Inc., et al.*, No. CV 11-8557 CAS (DTBx) (C.D. Cal.) (September 24, 2015 order  
4 approving 2015 rates of \$895/hr for partners, \$775/hr for a 1994 law graduate, \$650/hr for a 2000  
5 law graduate, \$630/hr for a 2001 law graduate, \$550/hr for a 2004 law graduate, and \$450/hr for  
6 a 2008 law graduate, and 2015 rates for Law Clerks (\$275/hr) and Paralegals (\$250/hr)); *Brooks*  
7 *v. U.S. Bank, N.A.*, Case No. C12-4935-EMC (N.D. Cal) (June 16, 2014 order approving 2014  
8 rate of \$895/hr for partner, and 2014 rates of \$775/hr for a 1992 law graduate, \$610/hr for a 2001  
9 law graduate, \$540/hr for a 2004 law graduate, \$275/hr for law clerks, and \$250/hr for  
10 paralegals); *Luquetta v. Regents of the University of California*, Case No. CGC-05-443007 (San  
11 Francisco County Superior Court) (October 31, 2012 Order approving 2012 rate of \$850/hr for  
12 partner, and 2012 rates of \$700/hr for a 1994 law graduate, \$570/hr for a 2000 law school  
13 graduate, \$250/hr for law clerks, and \$215/hr for paralegals); *Vasquez v. State of California*, Case  
14 No. GIC 740832 (San Diego County Superior Court) (October 1, 2012 Order approving 2012  
15 rate of \$850/hr for partner in civil rights case and 2012 rate of \$375/hr for 2008 law school  
16 graduate); *Div 15 Tech v. Sheet Metal Workers' International Association, Local 104*, Case Nos.  
17 No. C 10-05309 JSW, C 10-05312 JSW (approving 2011 rates, including \$545/hr for 2000 law  
18 school graduate and \$215/hr for paralegals); *Air Line Pilots Ass'n Int'l v. United Airlines, Inc.*,  
19 CGC-07-468937 (JAMS Ref. No. 1100061566) (San Francisco County Super. Ct.) (2011 rates  
20 of \$825/hr (partner)); *Zalua v. Tempo Research Corp.*, BC319156 (Los Angeles County Super.  
21 Ct.) (2011 rates of \$825/hr (partner)).

22 19. During my practice, I have reviewed the hourly rates of dozens of law firms in  
23 California and elsewhere. The rates in this fee application are consistent with the market rates for  
24 comparably qualified and experienced counsel handling similar civil litigation.

25 **LITIGATION EFFORTS**

26 20. Defendants strongly denied liability and contended that they had meritorious  
27 affirmative defenses on both procedural and substantive grounds.

28 21. The prosecution of this class action case involved a significant financial risk



1 because Class Counsel took this case on a pure contingency basis (meaning no guarantee of ever  
2 being paid, if the case is lost), at the same time advancing all litigation costs out of their own  
3 pockets, while incurring ongoing costs of paying overhead and salaries of employees who are  
4 working on this case.

5 22. In preparing this fee application, I reviewed the firm's time records, files and  
6 emails. Based on my review of these records, I can attest that all the time set forth was reasonably  
7 devoted to pursuing the Plaintiff's interests and otherwise would have been billed to a fee-  
8 paying client. To calculate the lodestar for the time spent on this case, I personally reviewed and  
9 summarized the billing records incurred in prosecuting the matter. I eliminated time entries that  
10 could be considered duplicative or inefficient. Righetti Glugoski's time records are detailed in  
11 the Time Report attached hereto as Exhibit 1. The amount of time spent on this case is  
12 reasonable given the complexity and novelty of the issues involved, the vigorous defense  
13 provided by the defense firm, the length and intensity of the litigation, and the results obtained.  
14 Since its inception, Plaintiffs faced a phalanx of defenses as outlined in Defendant's Answer.  
15 Class Counsel litigated this action with skill and efficiency reflecting the amount of work  
16 required to achieve the settlement. Once the settlement was consummated our work has not  
17 stopped. We continue to field inquiries from Class Members about the status of the case and  
18 their participation in the settlement. We also expect to work closely with the court appointed  
19 notice administrator to assure that notice is provided consistent with this Court's orders and due  
20 process. We intend to promptly respond to all Class Member inquiries, and we intend to  
21 continue our work until all responsibilities are discharged and all funds are dispersed.

22 23. I have reviewed the time and cost summaries submitted to the Court in the  
23 declaration of Mr. Barenfeld. I attest to the amount of work performed by the Nelson & Fraenkel  
24 firm as well as the high quality of work and professional standards of the Nelson & Fraenkel  
25 firm.

26 24. The benefits made available to the class have a value of \$1,900,000.00. The  
27 recovery for the class after the claim process (i.e., the cost to Defendant) is not fully known at  
28 this point, but will be approximately \$1,297,000.00, including the \$500,000 cost/fee request.  
See, Section IV, Administration Section of Motion for Final Approval.


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**COUNSEL’S COSTS**

Righetti Glugoski, P.C. incurred \$3,188,443 for expert witness fees and mediation (JAMS) fees. Added to the Nelson & Fraenkel firm’s costs, set forth in the Declaration of Mr. Barenfeld (\$12,928.38) the total costs incurred by Plaintiff’s counsel during this litigation is \$16,116.81. We do not seek recovery of these costs in addition to the fee request.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20<sup>th</sup> day of November, 2023 at San Francisco, California.

**RIGHETTI GLUGOSKI, P.C.**

By:   
Matthew Righetti  
Attorneys for Plaintiffs and the Proposed  
Class

# **EXHIBIT 1**

