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MATTHEW RIGHETTI, ESQ. {121012}
JOHN GLUGOSKI, ESQ. {191551}
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Attorneys for Plaintiff

ENDORSED
FILED
ALAMEDA COUNTY

JAN 04 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson
Deputy

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

CHARLES LINDSEY, an individual, and)
JONATHAN WALTON, an individual, on)
behalf of themselves and all persons similarly)
situated,)

Plaintiffs,

v.

SIZEWISE RENTALS, LLC and DOES 1)
through 100, inclusive,)

Defendant.)

Case No. RG15761762

CLASS ACTION

**NOTICE OF FILING STIPULATION
AND SETTLEMENT AGREEMENT**

Hon. George C. Hernandez, Jr.

Date: January 6, 2016

Time: 2:30 p.m.

Dept: 17


Reservation #: R1665488

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Pursuant to the proposed class action settlement, Plaintiffs submit the final executed settlement agreement attached hereto for consideration by the Court at the Preliminary Approval hearing scheduled for January 6, 2016 at 2:30 p.m.

DATED: January 4, 2016

RIGHETTI • GLUGOSKI, P.C.



Matthew Righetti
Attorneys for Plaintiffs

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MATTHEW RIGHETTI (SBN#: 121012)
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Attorneys for Defendant
SIZEWISE RENTALS, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CHARLES LINDSEY, an individual, and
JONATHAN WALTON, an individual, on
behalf of themselves and all persons similarly
situated,

Plaintiffs,

vs.

SIZEWISE RENTALS, LLC, and DOES 1
through 100, inclusive,

Defendant.

ENDORSED
FILED
ALAMEDA COUNTY

JAN 04 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson Deputy

Case No. RG15761762
[Assigned for all purposes to The Honorable
George Hernandez, Jr., Dept. 17]

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT**

Action Filed: February 10, 2015
Trial Date: None Set

- 1 1.7 The term "**Court**" means the Superior Court of California for the County of Alameda, and
2 any appellate court which may review any orders entered by the Superior Court related to
3 this Settlement.
- 4 1.8 The term "**Superior Court**" means the Superior Court of California for the County of
5 Alameda.
- 6 1.9 The term "**Eligible Workweek**" means any week where at least one (1) day was worked.
- 7 1.10 The term "**Execution**" refers to the signing of this Agreement by all signatories hereto.
- 8 1.11 The term "**Final Judgment**" refers to the final judgment entered by the Court.
- 9 1.12 The term "**Litigation**" means *Charles Lindsey and Jonathan Walton, et. al. v. Sizewise*
10 *Rentals, LLC*, now pending before the Honorable George Hernandez, Jr. of the Superior
11 Court of California for the County of Alameda.
- 12 1.13 The term "**Maximum Settlement Amount**" means One Million, Two Hundred and Fifty
13 Thousand Dollars (\$1,250,000.00), including the payment to the Labor and Workforce
14 Development Agency ("LWDA") pursuant to the Private Attorneys General Act
15 ("PAGA"), and employer-side payroll related taxes. The total of any Attorneys' Fees and
16 Costs approved by the Court, any Incentive Award approved by the Court to the named
17 Plaintiff, Settlement Administration Costs approved by the Court, the payment to the
18 LWDA, the payment for employer-side payroll taxes, and the amounts paid to Settlement
19 Class Members shall combined not exceed the Maximum Settlement Amount.
- 20 1.14 The term "**Named Plaintiffs**" means the named plaintiffs in the Litigation, Mr. Charles
21 Lindsey and Jonathan Walton. The Named Plaintiffs will seek to be designated as
22 Settlement Class Representatives for the Settlement Class.
- 23 1.15 The term "**Net Settlement Amount**" means the Class Settlement Amount minus the
24 combined total of any attorneys' fees and costs sought to be approved by the Court, the
25 amount sought to be allocated for settlement administration, the payment to the LWDA, the
26 payment of employer-side payroll taxes, and the incentive award sought to be approved by
27 the Court.
- 28 ///

1 1.16 The term "**Notice**" means a document substantially in the form of the Notice attached
2 hereto as **Exhibit 1** which has been agreed to by the Parties and subject to Superior Court
3 approval and which the Claims Administrator will mail to each Settlement Class Member
4 explaining the terms of the Settlement, the claims process, the opt-out procedure, and the
5 objection procedure.

6 1.17 The term "**Notice and Administration Costs**" or "**Settlement Administration Costs**" means
7 the cost to compare the class list against the National Change of Address ("NCOA")
8 database maintained by the United States Postal Service, typeset, print, and mail the Notice,
9 Claim Information Form, return envelope, perform skip-tracing of returned mailings,
10 payment of postage required to comply with this Agreement, and all other expenses,
11 including tax reporting and fees to be paid to the Claims Administrator, necessary to
12 administer the Settlement in accordance with this Agreement.

13 1.18 The term "**Opt-Out Letter**" refers to a written request to "opt-out" or "exclude" oneself
14 from the Settlement sent by any Settlement Class Member who elects to be excluded from
15 the Settlement Class. A Settlement Class Member must submit an opt-out letter to the
16 Claims Administrator to exclude himself or herself from the Settlement and from the
17 release of claims pursuant to this Settlement. Those who submit a valid and timely "opt-out
18 Letter" will no longer be considered part of the Settlement Class after their valid and timely
19 "opt-out Letter" is received by the Claims Administrator.

20 1.19 The term "**PAGA Payment**" means an amount not to exceed \$10,000.00, subject to the
21 approval of the Court. Twenty-five percent (25%) of the PAGA Payment shall be paid to
22 the Settlement Class Members as provided herein. Seventy-five percent (75%) of the
23 PAGA Payment shall be paid to the LWDA.

24 1.20 The term "**Parties**" means the Named Plaintiffs, the Settlement Class, and Sizewise.

25 1.21 The term "**Released Claims**" means the claims, rights, penalties, demands, damages, debts,
26 accounts, duties, costs (other than those costs required to be paid pursuant to this
27 Agreement), liens, charges, complaints, causes of action, obligations, or liabilities that are
28

1 set forth in Section 2.1 and released, acquitted and discharged pursuant to Section 7 of this
2 Agreement.

3 1.22 The term "**Settlement**" means the compromise and settlement of the Litigation as
4 contemplated by this Agreement.

5 1.23 The term "**Settlement Class**" means the class to be certified for settlement purposes in
6 accordance with this Agreement.

7 1.24 The term "**Settlement Class Member**" means any member of the Settlement Class.

8 1.25 The term "**Settlement Class Period**" means the period of time from February 10, 2011, up
9 through and including the date of preliminary approval of this class action settlement,
10 which is the period of time applicable to the claims being released pursuant to Section 7
11 hereafter.

12 1.26 The term "**Settlement Class Representatives**" means Charles Lindsey and Jonathan Walton,
13 who Class Counsel shall request be appointed by the Court as class representatives for
14 purposes of the Settlement Class.

15 1.27 The term "**Settlement Effective Date**" as used herein means the first day following the last
16 of the following occurrences:

17 1.34.1 If no objection to the settlement is made, the date the Court enters an Order granting
18 Final Approval; or

19 1.34.2 If an objection to the settlement is made but no appeal is filed, then within thirty
20 (30) days of the Final Approval Order being entered.

21 1.34.3 If an appeal is filed, within 30 days of the date the judgment is final and no longer
22 subject to appeal.

23 1.28 The term "**Settlement Disbursement Payment**" means the disbursements made by the
24 Claims Administrator to Settlement Class Members, Class Counsel, Class Representative,
25 the LWDA and the Claims Administrator pursuant to the Settlement within 10 days of the
26 Settlement Effective Date.

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1 **2. RECITALS**

2 2.1 On February 10, 2015, plaintiffs Charles Lindsey and Jonathan Walton filed suit in the
3 Superior Court of the State of California, County of Alameda (Case No. RG 15761762).
4 On April 13, 2015, the Superior Court designated this matter as “complex.” On April 27,
5 2015, Sizewise filed an Answer to the Complaint. The Complaint alleges seven (7) causes
6 of action on behalf of a proposed class for damages and penalties for: (1) failure to provide
7 meal periods; (2) failure to provide rest periods; (3) failure to pay minimum wage and
8 overtime (4) inaccurate wage statements; (5) failure to pay all wages owed upon
9 termination under Labor Code §§ 201, 202, and 203; (6) violation of Business and
10 Professions Code § 17200; (7) violations of the Private Attorneys General Act.

11 2.2 On July 15, 2015, the Parties participated in a full-day private mediation with mediator
12 Hon. William Cahill (Ret.) in San Francisco, California. At the conclusion of the mediation
13 session, the parties reached a settlement in the total amount of One Million, Two Hundred
14 and Fifty Thousand Dollars (\$1,250,000.00).

15 2.3 Named Plaintiffs and their counsel believe this Litigation is meritorious based on applicable
16 law or an extension thereof. Class Counsel represents that they have conducted a thorough
17 investigation into the facts of this case, and have diligently pursued an investigation of the
18 claims against Sizewise. Based on their own independent investigation and evaluation,
19 Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is
20 in the best interest of the Settlement Class Members in light of all known facts and
21 circumstances, including the risk of significant delay, the defenses asserted by Sizewise,
22 class certification risk, trial risk, and appellate risk.

23 2.4 Sizewise has also actively investigated the facts surrounding the claims brought by
24 Plaintiffs on behalf of the putative class, and actively and aggressively defended itself from
25 said claims. Sizewise denies any liability or wrongdoing of any kind associated with the
26 claims alleged. Sizewise further asserts that it has complied with all applicable provisions
27 of California statutory and common law and had a good faith belief based on existing law
28 that its practices were and are in compliance.

1 2.5 The entry of Final Judgment in this Litigation shall resolve all claims which were alleged in
2 the Complaint filed in the Litigation, or which could have been alleged based upon the facts
3 set forth in the Complaint, with the exception of any claims which might be retained by
4 Settlement Class Members who exclude themselves from the Settlement. The Parties agree
5 to cooperate and take all steps necessary and appropriate to obtain preliminary and final
6 approval of this Settlement, and to effectuate its terms.

7 2.6 Each of the forgoing Recitals are incorporated into this Agreement as if fully set forth in the
8 body of the Agreement.

9 **3. CERTIFICATION OF SETTLEMENT CLASS**

10 3.1 The Settlement Class shall consist of all individuals who are or previously were employed
11 by Sizewise Rentals, LLC, in the State of California as Medical Equipment Delivery
12 Technician or Account Associate (Account Associate being the former name of Medical
13 Equipment Delivery Technician) at any time since February 10, 2011 through the date the
14 Court grants preliminary approval of this stipulation and class action settlement

15 3.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class
16 is a conditional certification for settlement purposes only, and if for any reason the Superior
17 Court does not grant final approval of the Settlement, or if final approval is not given
18 following the appeal of any order by the Superior Court, or if for any reason the Settlement
19 Effective Date does not occur, the certification of the Settlement Class for settlement
20 purposes shall be deemed null and void without further action by the Court or any of the
21 Parties, each Party shall retain all of their respective rights and shall be returned to their
22 relative legal positions as they existed prior to execution of this Agreement, and neither this
23 Agreement, nor any of its accompanying exhibits or any orders entered by the Court in
24 connection with this Agreement, shall be admissible or used for any purpose in this
25 Litigation or any other legal proceeding except for the enforcement of same.

26 3.3 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class
27 for settlement purposes is in no way an admission by Sizewise that class certification is
28 proper in any other wage and hour litigation, or any other litigation, against Sizewise.

1 **4. TERMS OF SETTLEMENT**

2 4.1 Subject to the other terms and conditions of this Agreement, and in consideration of the
3 contemplated pleadings, releases and dismissals set forth in this Agreement, and subject to
4 Superior Court approval, Sizewise agrees that the Class Settlement Amount shall be One
5 Million, Two Hundred and Fifty Thousand Dollars (\$1,250,000.00).

6 4.2 The Net Settlement Amount shall be allocated as set forth below:

7 4.2.1.1 Each member of the Settlement Class shall be awarded credit for each
8 eligible workweek he or she worked while employed by Sizewise as a
9 Class Member during the Settlement Class Period.

10 4.2.1.2 The share of each member of the Settlement Class in the Net Settlement
11 Amount shall be calculated by multiplying the Net Settlement Amount by
12 a fraction, the numerator of which is the individual class member's total
13 number of eligible workweeks, and the denominator of which is the total
14 of all eligible workweeks for all members of the Settlement Class during
15 the Settlement Class Period. The resulting number shall be the amount
16 that each member of the Settlement Class is eligible to claim.

17 4.2.1.3 The share of each member of the Settlement Class that elects to "opt-out"
18 of the Settlement shall be re-distributed on a *pro rata* basis to all
19 participating Settlement Class Members.

20 4.2.1 Class Counsel may request that, subject to Court approval, the Settlement Class
21 Representatives each be paid a maximum Incentive Award of Ten Thousand Dollars
22 (\$10,000.00), which shall be paid from the Class Settlement Amount.

23 4.2.2 Class Counsel shall apply to the Superior Court for an award of Attorneys' Fees and
24 Costs, which shall be paid from the Class Settlement Amount. Sizewise will not
25 oppose Class Counsel's application for an award of Attorneys' Fees in an amount
26 equal to thirty-three percent of the Class Settlement Amount comprising Four
27 Hundred and Twelve Thousand, Five Hundred Dollars (\$412,500.00), plus Costs
28 not to exceed Ten Thousand Dollars (\$10,000).

1 4.2.3 The Parties agree that the Court's approval or denial of any request for Attorneys'
2 Fees and Costs or the Named Plaintiffs' Incentive Award are not conditions to this
3 Agreement, and are to be considered by the Court separately from the fairness,
4 reasonableness, adequacy, and good faith of the settlement. Any order or
5 proceeding relating to the application by Class Counsel of an award for Attorneys'
6 Fees and Costs or for Settlement Class Representative Incentive Award shall not
7 operate to terminate or cancel this Agreement.

8 4.2.4 Class Counsel agree that they are responsible for allocating the Attorneys' Fees and
9 Costs approved by the Court among themselves and any other counsel that may
10 have any other agreement with them. If a lien is asserted, the Claims Administrator
11 will tender the Attorneys' Fees and Costs award to the Court and shall thereafter be
12 released from any claim related to those payments. Class Counsel warrant and
13 represent that there are no liens on the amounts to be paid pursuant to the terms of
14 this Agreement and that no assignments of the claims to be released or the
15 Attorneys' Fees and Costs to be paid pursuant to this agreement have been made or
16 attempted. Class Counsel agrees to defend, indemnify and hold harmless Sizewise
17 from any liability resulting from a breach of these representations and/or any lien or
18 assignment.

19 4.2.5 The Parties agree that subject to Court approval, payment to the Claims
20 Administrator shall not exceed eight thousand five hundred dollars (\$8,500.00).
21 The Claims Administration Costs shall be paid from the Class Settlement Amount.
22 In the event the Settlement Effective Date does not occur, any portion of the
23 Settlement Administration Costs already incurred by the Claims Administrator shall
24 be allocated so that Class Counsel and Sizewise will each be responsible for one-
25 half of said expenses. However, if Sizewise elects to "blow-up" the Settlement
26 pursuant to Section 12.3 below, then Sizewise shall solely be responsible for all
27 Claims Administration Costs incurred by the Claims Administrator as of that date.
28 Any dispute relating to the Claims Administrator's ability and need to perform its

1 duties shall be referred to the Superior Court if it cannot be resolved by the Parties.
2 The Claims Administrator shall regularly and accurately report to the Parties, in
3 written form when requested, on the substance of the work performed. To the
4 extent that the Claims Administrator Costs exceed \$8,500.00 and are approved by
5 the Court, any additional amount will be deducted from the Maximum Settlement
6 Amount.

7 4.2.6 The Parties agree that Claims paid to Settlement Class Members from the Net
8 Settlement Amount shall be correctly and appropriately allocated as follows: 1/3
9 allocated to wages and 2/3 allocated to penalties and interest; such that 1/3 shall be
10 characterized as W-2 income and 2/3 shall be characterized as 1099 income.

11 4.2.7 The payments made to Settlement Class Members pursuant to this Agreement are
12 not being made for any other purpose and shall not be construed as compensation
13 for purposes of determining eligibility for any health and welfare benefits or
14 unemployment compensation, and no benefit, including but not limited to pension
15 and/or 401(k), shall increase or accrue as a result of any payment made as a result of
16 this Settlement or Agreement.

17 4.2.8 Checks issued to Settlement Class Members pursuant to this Agreement shall
18 remain negotiable for a period of one hundred eighty (180) days from the date of
19 mailing by the Claims Administrator. Thereafter, the Claims Administrator shall
20 void any such check. If any Settlement Class Member does not receive (i.e., it is
21 returned as undeliverable with no forwarding address) or cash his or her settlement
22 payment check(s) within that one hundred eighty (180) days from the date of
23 mailing the check by the Claims Administrator his or her settlement check(s) will be
24 void and a stop payment will be placed on it. The Settlement Administrator shall
25 determine if distribution to such class members is feasible and if not, then the
26 Settlement Administrator, shall distribute all remaining funds to the "Legal Aid
27 Society – Employment Rights Center".

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1 **5. NOTICE OF THE SETTLEMENT**

2 5.1 Within 10 business days after the Superior Court grants preliminary approval of this
3 Settlement, Sizewise shall provide to the Claims Administrator a listing of all Settlement
4 Class Members, including the following information/data: 1) full name; 2) last known
5 home mailing address; 3) telephone number (if available); 4) e-mail address (if available);
6 5) Social Security Number; 6) dates of employment in a class position; 7) the applicable
7 number of eligible workweeks for each Settlement Class Member during the Settlement
8 Class Period in order for the Claims Administrator to be able to calculate each Settlement
9 Class Member's respective settlement share (hereinafter the "Class List"). The "Class List"
10 shall be based on the data kept in the ordinary course of business in Sizewise's business
11 records. The Parties agree that the contents of the Class List are confidential and shall not
12 be shared with third parties other than the Claims Administrator and Class Counsel, who
13 shall also agree to maintain the confidentiality of the Class List. The Claims Administrator
14 shall immediately provide the Parties the name and contact information of any Settlement
15 Class Member who files an objection.

16 5.2 Subject to Court approval, a "Notice" substantially in the form attached as **Exhibit 1** shall
17 be sent by the Claims Administrator to all Settlement Class Members by first class mail.
18 The Notice shall describe the manner in which the settlement amount shall be distributed,
19 the opt-out process, and shall advise Settlement Class Members of their right and the
20 process by which to object to the Settlement, and the date set by the Court for a hearing on
21 final approval of the Settlement.

22 5.3 Prior to mailing the "Notice Packet" (*i.e.* Notice, Claim Information Form, and Return
23 Envelope), the Claims Administrator shall process the Class List against the National
24 Change of Address ("NCOA") Database maintained by the United States Postal Service
25 ("USPS") and perform a "skip trace." It shall be conclusively presumed that if the Notice
26 Packet is not returned as "undeliverable," the Settlement Class Member received the Notice
27 Packet. With respect to Notice Packets that are returned as undeliverable, if a forwarding
28 address is provided by the USPS, the Claims Administrator shall re-mail the Notice Packet

1 within three (3) business days. If a Notice Packet is “undeliverable” and no forwarding
2 address is provided, the Claims Administrator shall employ a more substantive skip-tracing
3 procedure in order to obtain updated address information and shall re-mail the Notice
4 Packet to those Settlement Class Members whom a new address is located. All re-mailings
5 to skip traced Settlement Class Members shall be performed periodically during the claims
6 filing period and must be completed no later than 10 days prior to the claims filing
7 deadline. If the Notice Packet is returned after skip-tracing and re-mailing occurs, there
8 shall be no further skip-tracing and it shall be presumed that the Settlement Class Member
9 cannot be located.

10 **6. OPT-OUT, OBJECTION, AND DISTRIBUTION PROCESS**

11 6.1 The “Claim Information Form” as agreed to by the Parties and subject to Court approval is
12 attached hereto as **Exhibit 2**.

13 6.2 The amount that each Settlement Class Member is eligible to receive under this Settlement
14 shall be determined in accordance with the formula set forth in Subsection 4.2.

15 6.3 Sizewise will provide the Claims Administrator with sufficient funds via wire transfer to
16 pay the Class Settlement Amount within three (3) business days of the Settlement Effective
17 Date. The Claims Administrator shall then disburse the funds as approved per this
18 Agreement.

19 6.4 Three (3) business days before the Settlement Distribution, Class Counsel shall deliver to
20 the Claims Administrator both written instructions signed by Class Counsel that describe
21 the manner and mode of payment of such attorneys’ fees and costs (and, in the absence of
22 such instructions, such attorneys’ fees and costs shall be sent by U.S. Mail), and a fully-
23 executed Form W-9 with respect to the entity to whom the attorneys’ fees and costs shall be
24 paid. The Claims Administrator will issue to Class Counsel an IRS Form 1099 for such
25 amounts paid for attorneys’ fees under this Settlement. If for any reason there is reduction
26 in the amount of attorneys’ fees and/or costs sought by or awarded to Class Counsel, any
27 such reduction shall be re-distributed on a pro rata basis to the Settlement Class Members.
28 Notwithstanding the foregoing, Class Counsel shall not apply for, and shall not be awarded,

1 attorneys' fees and/or costs in any amounts that are in excess of the amounts set forth in this
2 Agreement.

3 6.5 Opt-Out Letters.

4 6.5.1 A Settlement Class Member who wishes to exclude himself or herself from this
5 Settlement, and from the release of claims pursuant to this Settlement, shall submit
6 an "Opt-Out Letter" directly to the Claims Administrator. The Claims
7 Administrator shall promptly send a copy of any Opt-Out Letter to both Class
8 Counsel and Defense Counsel. For an Opt-Out Letter to be accepted it must be
9 timely and valid. To be timely, it must be postmarked by the date indicated in the
10 Notice, which shall be 60 calendar days after the Notice is first mailed to the
11 Settlement Class Members. To be valid, the Opt-Out Letter shall contain a
12 statement that clearly conveys the Settlement Class Member's request to be
13 excluded from the Settlement Class, their full name, mailing address, and must be
14 signed and dated.

15 6.5.2 A Settlement Class Member who submits an Opt-Out Letter is not eligible to
16 recover a share of the Net Settlement Amount.

17 6.5.3 The Claims Administrator shall maintain a list of persons who have excluded
18 themselves and shall provide such list to the Parties upon request. The Claims
19 Administrator shall retain the originals of all Opt-Out Letters (including the
20 envelopes with the postmarks) received from Settlement Class Members, and shall
21 make copies or the originals available to Sizewise's Counsel or Class Counsel upon
22 request.

23 6.6 Objection to Settlement. A Settlement Class Member, who has not opted-out of the
24 Settlement and who wishes to object to the Settlement may notify the Superior Court of
25 their objection, in writing, on or before the date which is 60 calendar days after the Notice
26 is first mailed to the Settlement Class Members. A Settlement Class Member may also
27 appear at the Final Approval hearing, either in person or through their own attorney, if they
28 wish to object to the Settlement. Instructions regarding how to object are found in "**Section**

1 **D**” of the Notice (*see Exhibit 1*). Any Settlement Class Member who opts out of the
2 Settlement shall not have standing to object to the Settlement or appear at the Final
3 Approval hearing.

4 6.7 In the event that Final Approval of this Settlement Agreement is not granted by the
5 Superior Court, neither the Settlement Agreement, nor any documents related to this
6 Settlement or negotiations leading to the Settlement may be used as evidence for any
7 purpose, and Sizewise shall retain the right to challenge all claims and allegations in the
8 Litigation, including filing a motion for decertification, and assert all applicable defenses.

9 6.8 Should the Superior Court decline to approve this Agreement in any material respect,
10 except for approval of the award of Class Counsel’s Attorneys’ Fees and Costs or the class
11 representative’s Incentive Award, Sizewise shall have no obligation to make any payment
12 under this Agreement, and in the event that Sizewise has made any such payment, such
13 monies shall be returned promptly by the Claims Administrator to Sizewise (minus
14 Sizewise’s one-half share of any Administration Costs already reasonably incurred by the
15 Claims Administrator; the other one-half share of any Administration Costs to be paid by
16 Class Counsel). However, if Sizewise elects to “*blow-up*” the Settlement pursuant to
17 Section 12.3, then Sizewise shall solely be responsible for all Claims Administration Costs
18 incurred by the Claims Administrator as of that date.

19 **7. COMPREHENSIVE WAIVER AND RELEASE**

20 7.1 Subject to final approval by the Court of the Settlement and upon the Settlement Effective
21 Date, , Named Plaintiff and Settlement Class Members, other than those who submit timely
22 and valid Opt-Out Letters (collectively, “*Releasing Settlement Class Members*”), will be
23 deemed to have, and by operation of the Order of Final Approval will have, expressly and
24 irrevocably released, acquitted, and forever discharged Sizewise, its parents, subsidiaries,
25 and affiliated corporations and entities, and each of their respective shareholders, officers,
26 directors, agents, employees, partners, attorneys, insurers, ERISA plan administrators, and
27 their respective predecessors, successors, and assigns (collectively referred to as the
28 “Released Parties”) from any and all claims, rights, penalties, demands, damages, debts,

1 accounts, duties, costs (other than those costs required to be paid pursuant to this Settlement
2 Agreement), liens, charges, complaints, obligations, liabilities, or causes of action that were
3 alleged in the Class Action Complaint or which could have been alleged based upon the
4 facts set forth in the Class Action Complaint filed on February 10, 2015 ("Released
5 Claims"), including, but not limited to, claims under California Labor Code sections 201,
6 202, 203, 204, 218, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1194, and 1197, as well as the
7 applicable California Industrial Welfare Commission Wage Order, the Business and
8 Professions Code sections 17200-17208 *et seq.*, and the Private Attorneys General Act, Cal.
9 Labor Code § 2698, *et seq.* The Releasing Settlement Class Members will be deemed to
10 have specifically acknowledged that this Release reflects a compromise of disputed claims.

11 7.1.1 With regard to the Released Claims, the Releasing Settlement Class Members also
12 waive and release all claims for attorneys' fees and costs incurred by Releasing
13 Settlement Class Members or by Class Counsel in connection with the Litigation
14 and the Settlement of the Litigation.

15 7.1.1.1. As a material term of this Agreement, Named Plaintiffs Charles Lindsey
16 and Jonathan Walton hereby agree that as of the Effective Date of this
17 Agreement, all their rights under Section 1542 of the Civil Code of the
18 State of California are waived as to any claims against Sizewise, its
19 parents, subsidiaries, and affiliated corporations and entities, and each of
20 their respective shareholders, officers, directors, agents, employees,
21 partners, attorneys, insurers, ERISA plan administrators, and their
22 respective predecessors, successors, and assigns. Section 1542 provides as
23 follows: **A general release does not extend to claims which the creditor
24 does not know or suspect to exist in his or her favor at the time of
25 executing this release, which if known by him or her must have
26 materially affected his or her settlement with the debtor.**

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1 **8. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

2 8.1 Upon execution of this Agreement, Class Counsel shall apply to the Superior Court for the
3 entry of an order granting preliminary approval of the Settlement, substantially in the
4 following form:

5 8.1.1 Scheduling a Final Approval hearing on the question of whether the proposed
6 Settlement should be finally approved as fair, reasonable, and adequate as to the
7 proposed Settlement Class;

8 8.1.2 Approving as to form and content the proposed "Notice;"

9 8.1.3 Approving as to form and content the proposed "Claim Information Form;"

10 8.1.4 Directing the mailing of the Notice Documents by first class mail to the Settlement
11 Class Members;

12 8.1.5 Preliminarily approving the Settlement;

13 8.1.6 Approving Crosner Legal, P.C. and Righetti Glugoski, P.C as Class Counsel,
14 approving Charles Lindsey and Jonathan Walton as Settlement Class
15 Representatives, and approving Simpluris as the Claims Administrator; and

16 8.1.7 Sizewise and its counsel shall cooperate with Class Counsel as necessary to obtain
17 preliminary approval and final approval.

18 **9. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

19 9.1 Following preliminary approval by the Court of the Settlement, Class Counsel will submit a
20 proposed Final Judgment. The proposed Final Judgment shall:

21 9.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and
22 adequate and directing consummation of its terms and provisions;

23 9.1.2 Approve an award of attorneys' fees and reimbursement of costs to Class Counsel;

24 9.1.3 Approve any Incentive Award to the Settlement Class Representative;

25 9.1.4 Certify the Settlement Class for settlement purposes in accordance with Section 3 of
26 this Agreement; and,

27 9.1.5 Permanently bar the Settlement Class Representative, and all Releasing Settlement
28 Class Members from further prosecuting any of the Released Claims against

1 Sizewise. Named Plaintiffs shall have been deemed to have executed a full and
2 final release pursuant to Civil Code Section 1542.

3 9.2 Sizewise and its counsel shall cooperate with Class Counsel as necessary to obtain final
4 approval and the Court's final judgment.

5 **10. MUTUAL FULL COOPERATION**

6 10.1 The Parties agree to cooperate fully with each other to accomplish the terms of this
7 Settlement, including, but not limited to, execution of all necessary documents and to take
8 such other action as may be reasonably necessary to implement the terms of this Settlement.
9 The Parties shall use their best efforts, including all efforts contemplated by this Settlement
10 and any other efforts that may become necessary by order of the Court, or otherwise, to
11 effectuate the terms of this Settlement. As soon as practicable after execution of this
12 Settlement, Class Counsel shall, with the assistance and cooperation of Sizewise and its
13 counsel, take all necessary steps to secure the Court's Final Judgment.

14 10.2 If a Party cannot reasonably comply with an obligation under this Agreement by the
15 deadline set forth herein applicable to that obligation, that Party may apply to the Court for
16 a reasonable extension of time to fulfill that obligation. Consent to such a request for an
17 extension will not be unreasonably withheld by the other Party.

18 **11. STATEMENT OF NO ADMISSION**

19 11.1 Nothing contained in this Agreement shall be construed or deemed an admission of
20 liability, culpability, or wrongdoing on the part of Sizewise and Sizewise denies liability
21 therefor. Nor shall this Agreement constitute an admission by Sizewise as to any
22 interpretation of laws or as to the merits, validity, or accuracy of any claims made against it
23 in the Litigation. Likewise, nothing in this Agreement shall be construed or deemed an
24 admission with regards to the validity of any of Sizewise's defenses or affirmative defenses.
25 Each of the Parties has entered into this Settlement with the intention to avoid further
26 disputes and litigation with the attendant inconvenience and expenses.

27 11.2 This Agreement, and all related documents, and all other actions taken in implementation of
28 the Settlement, including any statements, discussions, or communications, and any

1 materials prepared, exchanged, issued, or used during the course of the negotiations leading
2 to this Agreement are settlement documents and shall be inadmissible in evidence and shall
3 not be used for any purpose in any judicial, arbitral, administrative, investigative, or other
4 court, tribunal, forum, or proceeding, including any wage and hour or other litigation
5 against Sizewise for any purpose, except in an action or proceeding to approve, interpret, or
6 enforce the terms of this Agreement.

7 11.3 The Claim Information Forms, Opt-Out Letters, and any other evidence produced or created
8 by any Settlement Class Member in connection with the claims procedures pursuant to this
9 Settlement, and any actions taken by Sizewise in response to such Claim Information
10 Forms, Opt-Out Letters, the calculations by the Claims Administrator, or other evidence, do
11 not constitute, are not intended to constitute, and will not be deemed to constitute an
12 admission by Sizewise of any violation of any federal, state, or local law, statute, ordinance,
13 regulation, rule, or executive order, or any obligation or duty at law or in equity.

14 11.4 In the event that this Agreement is not approved by the Superior Court, any appellate court,
15 or otherwise fails to become effective and enforceable, or is terminated, Sizewise will not
16 be deemed to have waived, limited, or affected in any way any of its objections or defenses
17 in the Litigation.

18 **12. VOIDING THE AGREEMENT**

19 12.1 In the event that this Settlement is not approved, or if for any reason the Settlement
20 Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable
21 and shall not be used nor shall it be admissible in any subsequent proceedings either in this
22 Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal,
23 forum, or other proceeding, including without limitation any wage and hour, or other
24 litigation against Sizewise.

25 12.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount
26 requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by
27 Class Counsel is reduced, that finding shall not be a basis for rendering the entire
28

1 Settlement Agreement null, void, or unenforceable. Class Counsel retains their right to
2 appeal any decision by the Court regarding the Attorneys' Fees and Costs.

3 12.3 If more than ten percent (10%) of the Settlement Class Members submit Opt-Out Letters,
4 Sizewise, at its sole option, may withdraw from this Settlement by giving notice to Class
5 Counsel and the Claims Administrator within three (3) business days of receipt by
6 Sizewise's counsel of the final report of the number of opt-outs from the Claims
7 Administrator after the Form Submission Deadline.

8 **13. PARTIES' AUTHORITY**

9 13.1 The respective signatories to this Agreement each represent that they are fully authorized to
10 enter into this Settlement and bind the respective Parties to its terms and conditions.

11 **14. NO PRIOR ASSIGNMENTS**

12 14.1 The Parties represent, covenant, and warrant that they have not directly or indirectly,
13 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
14 person or entity any portion of any liability, claim, demand, action, cause of action, or right
15 released and discharged in this Settlement.

16 **15. NOTICES**

17 15.1 Unless otherwise specifically provided herein, all notices, demands, or other
18 communications given hereunder shall be in writing and shall be deemed to have been duly
19 given as of: (i) the date given, if given by hand delivery; (ii) within one (1) business day, if
20 sent by overnight delivery services such as Federal Express or similar courier; or (iii) the
21 third business day after mailing by United States registered or certified mail, return receipt
22 requested. All notices given under this Agreement shall be addressed as follows:

23 **15.1.1 To the Class:**

24 Matthew Righetti
25 John Glugoski
26 Michael Righetti
27 RIGHETTI GLUGOSKI, P.C.
28 456 Montgomery Street, Suite 1400
San Francisco, CA 94104
Tel: (415) 983-0900
Fax: (415) 397-9005

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15.1.2 To Sizewise:

Kevin D. Reese
Danielle A. Hinton
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
One Market Plaza, Suite 1300
San Francisco, CA 94105
Tel: (415) 536-3407
Fax: (415) 442-4870

16. CONFIDENTIALITY

16.1 Any confidentiality associated with the terms of this Settlement shall expire upon the filing by Class Counsel of the Motion for Preliminary Approval with the Superior Court, except that the negotiations and discussions preceding submission of the Settlement to the Court for preliminary approval, shall remain strictly confidential, unless otherwise agreed to by the Parties or unless otherwise ordered by the Court.

16.2 Plaintiffs and their counsel agree not to issue a press release or otherwise notify the media about the terms of the settlement or advertise any of the terms of the settlement through written, recorded or electronic communications. Plaintiffs and their counsel further agree that if contacted regarding this case, they will state only that the lawsuit exists and has been resolved. This provision shall not prohibit class counsel from communicating with class members after preliminary approval is granted.

17. MISCELLANEOUS PROVISIONS

17.1 Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Agreement.

17.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Agreement is contractual and not merely a recital.

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- 1 17.3 Modification. This Settlement may not be changed, altered, or modified, except in writing
2 signed by the Parties, and approved by the Superior Court. Notwithstanding the foregoing,
3 the Parties agree that any dates contained in this Agreement may be modified by agreement
4 of the Parties without Court approval if the Parties agree and cause exists for such
5 modification. This Settlement may not be discharged except by performance in accordance
6 with its terms or by a writing signed by the Parties.
- 7 17.4 Integration Clause. This Agreement, the Exhibits hereto, and any other documents
8 delivered pursuant hereto contain the entire agreement between the Parties relating to the
9 resolution of the Litigation, and all prior or contemporaneous agreements, understandings,
10 representations, and statements, whether oral or written and whether by a Party or such
11 Party's legal counsel, are merged in this Agreement. No rights under this Settlement may
12 be waived except in writing and signed by the Party against whom such waiver is to be
13 enforced.
- 14 17.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the
15 Parties and their respective heirs, trustees, executors, administrators, successors, and
16 assigns.
- 17 17.6 Class Counsel and Settlement Class Representative Signatories. It is agreed that because
18 the Settlement Class Members are so numerous, it is impossible or impractical to have each
19 Settlement Class Member execute this Settlement. The Notice will provide all Settlement
20 Class Members with a summary of the Settlement, and will advise all Settlement Class
21 Members of the binding nature of the release. Excepting only those Settlement Class
22 Members who timely submit an Opt-Out Letter, the Notice shall have the same force and
23 effect as if this Settlement were executed by each Settlement Class Member.
- 24 17.7 Counterparts and Electronic Signatures. This Agreement may be executed by facsimile
25 signature, PDF signature, or signature in compliance with the Uniform Electronic
26 Transaction Act, and in any number of counterparts, and when each party has signed and
27 delivered at least one such counterpart, each counterpart shall be deemed an original, and,
28

1 when taken together with other signed counterparts, shall constitute one and the same
2 Agreement, which shall be binding upon and effective as to all Parties.

3 17.8 Applicable Law. This Agreement shall be governed by California law without regard to its
4 choice of law or conflicts of law principles or provisions.

5 **Individually and on behalf of the Class**

6
7 Dated: _____ Charles Lindsey

8
9 Dated: _____ Jonathan Walton

10
11 **On Behalf of Plaintiffs and the Class**

12
13 Dated: _____ RIGHETTI GLUGOSKI, P.C.
14
15 By: _____
16 Michael Righetti, Esq.

17 **On Behalf of Defendant**

18
19 Dated: _____ SIZEWISE RENTALS, LLC
20
21 By: _____
22 Brad Frickey

23 Dated: 12-17-15 OGLETREE, DEAKINS, NASH, SMOAK, &
24 STEWART, PC
25 By: _____
26 Kevin D. Reese, Esq.
27 Counsel for Defendant
28 SIZEWISE RENTALS, LLC

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when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

17.8 Applicable Law. This Agreement shall be governed by California law without regard to its choice of law or conflicts of law principles or provisions.

Individually and on behalf of the Class

Dated: 12/30/15 Charles Lindsey
Charles Lindsey

Dated: _____
Jonathan Walton

On Behalf of Plaintiffs and the Class

Dated: 12/17/15 RIGHETTI GLUGOSKI, P.C.
By: Michael Righetti, Esq.
Michael Righetti, Esq.

On Behalf of Defendant

Dated: _____ SIZEWISE RENTALS, LLC
By: _____
Brad Frickey

Dated: _____ OGLETREE, DEAKINS, NASH, SMOAK, &
STEWART, PC
By: _____
Kevin D. Reese, Esq.
Counsel for Defendant
SIZEWISE RENTALS, LLC

1 when taken together with other signed counterparts, shall constitute one and the same
2 Agreement, which shall be binding upon and effective as to all Parties.

3 17.8 Applicable Law. This Agreement shall be governed by California law without regard to its
4 choice of law or conflicts of law principles or provisions.

5 **Individually and on behalf of the Class**

6
7 Dated: _____

_____ Charles Lindsey

8
9 Dated: 12/26/15

_____ Jonathan P. Walton
Jonathan Walton

10
11 **On Behalf of Plaintiffs and the Class**

12
13 Dated: 12/17/15

RIGHETTI GILGOSKI, P.C.

14
15 By: [Signature]
16 Michael Righetti, Esq.

17 **On Behalf of Defendant**

18
19 Dated: _____

SIZEWISE RENTALS, LLC

20
21 By: _____
Brad Frickey

22
23 Dated: _____

OGLETREE, DEAKINS, NASH, SMOAK, &
STEWART, PC

24
25 By: _____
26 Kevin D. Reese, Esq.
27 Counsel for Defendant
28 SIZEWISE RENTALS, LLC