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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARY BETH HUGHES, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

JEFFREY LEE GALITZ, MD, A
PROFESSIONAL MEDICAL
CORPORATION, a California corporation,
DBA WOUNDTECH OF CALIFORNIA;
PODICARE SERVICES, INC., a Delaware
Corporation; WOUND TECHNOLOGY
NETWORK, INC., a Florida Corporation, and
DOES 1 through 25,

Defendants.

Case No.: 21STCV30732

*Assigned for all purposes to Hon. Yvette
M. Palazuelos, SSC-9*

**NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

[Filed concurrently with Declarations of
Aaron Gundzik, Daniel Holzman, Mary
Beth Hughes and Jarrod Salinas of
Phoenix Settlement Administrators;
[Proposed] Order]

Date: September 13, 2023

Time: 10:00 a.m.

Dept.: 9

Complaint Filed: August 19, 2021

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 13, 2023, at 10:00 a.m. in Department
3 9 of the above-entitled Court, located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff
4 Mary Beth Hughes will, and by this Notice of Motion and Motion, hereby does, move for an
5 Order as follows:

6 1. Granting final approval of a class action and Private Attorneys' General Act
7 ("PAGA") settlement in the gross amount of four million dollars (\$1,675,000);

8 2. Approving a service and release payment in the amount of \$10,000 to the
9 named plaintiff, Mary Beth Hughes;

10 3. Approving of the payment of settlement administration costs of \$6,750 to the
11 third-party settlement administrator, Phoenix Class Action Settlement Administrators
12 ("Phoenix" or "Settlement Administrator");

13 4. Approving of a payment to the California Labor Workforce Development
14 Agency ("LWDA") in the amount of \$37,500, which is 75% of the \$50,000 amount
15 allocated to settle the PAGA claims, with the other 25% (\$12,500) being distributed to the
16 PAGA employees;

17 5. Approving the payment of attorneys' fees of \$558,333, which is one-third of
18 the gross settlement amount, and costs and expenses of \$13,958.36 to Class Counsel; and

19 6. Entering final judgment implementing the release of participating Class
20 Members' claims.

21 Plaintiff's motion is made pursuant to California Rule of Court 3.769 and is based on
22 this Notice of Motion and Motion and Memorandum of Points and Authorities submitted
23 herewith, the [Proposed] Final Approval order and [Proposed] Judgment, the Declaration of
24 Class Counsel Aaron C. Gundzik, the Declaration of Class Counsel Daniel Holzman, the
25 Declaration of named Plaintiff Mary Beth Hughes, the Declaration of Jarrod Salinas, on
26 behalf of the Settlement Administrator, Phoenix, the pleadings and other papers filed in this
27 action, and such further argument or evidence as may be considered at the hearing on the
28 motion.

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As this Motion will be unopposed, Plaintiff respectfully requests relief from the page
limit requirement set by California Rules of Court, Rule 3.1113(d).

DATED: August 10, 2023

GUNDZIK GUNDZIK HEEGER LLP

By: 
Rebecca G. Gundzik
Attorneys for Plaintiff Mary Beth Hughes,
individually and on behalf of all others
similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On March 21, 2023, this Court granted preliminary approval to the wage and hour
4 class and Private Attorneys' General Act ("PAGA") action settlement of one million six
5 hundred seventy-five thousand dollars (\$1,675,000) that is the subject of this Motion. In
6 doing so, the Court preliminarily concluded that the proposed settlement is fair and
7 reasonable, preliminarily appointed the named Plaintiff as the Class Representative, and
8 preliminarily appointed Aaron C. Gundzik of Gundzik Gundzik Heeger LLP and Daniel
9 Holzman of Caskey & Holzman as Class Counsel. As ordered, notice of the proposed
10 settlement has been distributed to all 86 Class Members.¹ Declaration of Jarrod Salinas
11 ("Salinas Decl."), ¶¶ 7-10. No Class Members have opted out of the settlement and no
12 objections have been received. Salinas Decl., ¶¶ 11-12.

13 As this Court is aware, this is a putative wage and hour class action filed by Plaintiff
14 Mary Beth Hughes against Defendants Jeffrey Lee Galitz, M.D., Podicare Services, Inc
15 ("Podicare"), and Wound Technology Network, Inc. ("WTN") (collectively "Defendants")
16 on behalf of a class consisting of all individuals who were employed by Galitz and allegedly
17 employed by Podicare and WTN in California as non-exempt employees during the Class
18 Period (August 19, 2017 through July 19, 2022). Generally, the terms of the parties'
19 settlement require Defendants to pay the sum of \$1,675,000. By this Motion, Plaintiff seeks
20 approval for the distribution of these funds to the Class, less a service and release payment
21 to the named Plaintiff, attorneys' fees and costs, a payment to the LWDA, a payment to the
22 aggrieved employees and settlement administration expenses. If this Motion is granted in
23 full, 86 Class Members will receive a settlement payment resulting in individual gross
24 payments to Class Members ranging between \$45.27 and \$40,563.28, and the average
25 settlement payment will be in the amount of approximately \$11,743.22. Salinas Decl., ¶ 16.

26
27 ¹ Upon receipt of the Class Data from Defendant, Plaintiff learned that the class size is 86,
28 instead of 89, as reported to the Court in Plaintiff's Motion for Preliminary Approval.

1 Nothing material concerning the proposed settlement has changed since the Court's
2 preliminary approval order. The Court should grant final approval.

3 **II. FACTUAL BACKGROUND**

4 **A. Plaintiff's Factual Allegations**

5 As discussed in Plaintiff's Motion for Preliminary Approval, based upon their
6 investigation, Plaintiff made the following contentions: Defendants provide telehealth and
7 in-home wound care to patients in California and elsewhere. Plaintiff Mary Hughes worked
8 as a Woundtech clinician in the Los Angeles area from April 2019 until October of 2021.
9 Declaration of Aaron C. Gundzik ("Gundzik Decl."), ¶ 10.

10 While working, Plaintiff and the Class Members were based at home and travelled
11 using their own vehicles to see multiple patients at different locations and provide wound
12 care. Gundzik Decl., ¶ 11. In addition, they participated in meetings and prepared required
13 paperwork for which they were not separately compensated. *Id.*

14 Plaintiff and Class Members made approximately 30-50 patient visits per week,
15 some of which were as far as 50 miles from a class member's home. Gundzik Decl., ¶ 12.
16 Because of this, Plaintiff and the Class Members often left home early in the morning for the
17 first appointment and did not return home to finish their days until late in the evening. *Id.*

18 Plaintiff contended that during the time that they worked for Defendants, Ms.
19 Hughes and the Class Members were incorrectly classified as exempt employees and as a
20 result, were never paid overtime. Gundzik Decl., ¶ 13. Instead, they were paid per patient
21 visit as piece-rate employees. *Id.* Plaintiff also contended that because Class Members were
22 only paid a fixed amount for each visit, they were not paid hourly for the many additional
23 duties that they were required to perform, including driving to appointments, meetings, on-
24 line harassment training, telephone calls, ordering, unpacking and stocking supplies,
25 preparing bi-weekly pay sheets, and other nonproductive activities. Gundzik Decl., ¶ 14.
26 Plaintiff further contended that she and the Class Members also did not receive paid rest
27 breaks and any rest or meal breaks that they were able to take were necessarily non-
28 compliant because they were not off duty, as Class Members were required to carry their

1 company-provided telephones at all times, even on nights and weekends. Gundzik Decl., ¶
2 15.

3 **B. Procedural History and Investigation and Discovery Prior to Settlement**

4 Plaintiff Mary Beth Hughes filed her initial complaint against Defendant Jeffrey Lee
5 Galitz, MD, a Professional Medical Corporation on August 19, 2021. Plaintiff filed a First
6 Amended Complaint on November 1, 2021, and pursuant to a stipulation of the parties filed
7 a Second Amended Complaint on June 13, 2022. The Second Amended Complaint added as
8 Defendants Podicare Services, Inc. and Wound Technology Network, Inc. (referred to
9 collectively with Defendant Jeffrey Lee Galitz, MD, a Professional Medical Corporation as
10 “Woundtech” or “Defendants”) and asserted causes of action for: (1) failure to pay overtime,
11 (2) violation of Labor Code section 226.2, (3) failure to pay wages for all work performed,
12 (4) failure to provide compliant meal and rest breaks, (5) inaccurate wage statements, (6)
13 failure to reimburse necessary expenses, (7) unfair business practices; (8) failure to pay
14 unpaid wages at separation, and (9) recovery of civil penalties pursuant to the Private
15 Attorneys General Act, Cal. Lab. Code §§2698-2699.5. Gundzik Decl., ¶ 5.

16 On May 19, 2022, Plaintiff’s counsel, co-counsel Daniel Holzman, their client Mary
17 Beth Hughes, Defendants and Defendants’ counsel attended a mediation session with well-
18 respected mediator, Gig Kyriacou, via Zoom. Gundzik Decl., ¶16. Plaintiff participated in
19 the mediation via Zoom and was available to answer questions for the entire day. The case
20 settled after a full day of negotiation pursuant to a mediator’s proposal. case did not settle at
21 the mediation. *Id.*

22 In connection with Plaintiff’s investigation and discovery, Plaintiff and Plaintiff’s
23 counsel extensively investigated Plaintiff’s claims against Defendants. They engaged in
24 informal discovery and reviewed and analyzed numerous pay documents, including records
25 and information produced by Defendants, and worked to develop information on potential
26 damages. In connection with the mediation, Defendants produced anonymized driving
27 records and pay records for approximately 20% of the proposed class members, including
28 Plaintiff, in addition to personnel records, handbooks and policies. Defendants did not

1 maintain time records for Class Members. Plaintiff's counsel has investigated and compiled
2 publicly available information about Defendants and their businesses and engaged in
3 informal discovery in connection with the mediation, and negotiated extensively with
4 Defendants regarding the mediation, its scope, and the information to be exchanged in
5 connection with the mediation. Gundzik Decl., ¶ 6.

6 As a result of these negotiations, Defendants provided additional information
7 including, the number of Class Members and PAGA Aggrieved Employees, total Class
8 Member workdays, total PAGA Aggrieved Employee pay periods, number of separated
9 Class Members, number of separated PAGA Aggrieved Employees, number of shifts
10 worked, the number of training days, the number of shifts in excess of five hours, the
11 number of pay periods in the class, the number of pay periods in the PAGA period, and the
12 average hourly pay rates. Gundzik Decl., ¶ 7. Based on this information, as well as
13 information provided by the Plaintiff, Plaintiff's counsel created an extensive damages
14 model. Gundzik Decl., ¶ 8.

15 **C. Plaintiff's Counsel's Estimate of Potential Recovery**

16 In order to determine whether the sample provided by Defendants was statistically
17 relevant, Plaintiff's counsel used an on-line calculator at www.raosoft.com/samplesize. The
18 sample consisted of 688 pay periods out of a total of 3,980. Given the size of the population
19 (3,980), a sample of 351 pay periods provides a confidence level of 95% with a margin of
20 error of 5%. Gundzik Decl., ¶ 24. Additionally, the information regarding damages obtained
21 from the sample corresponds with the information obtained from Plaintiff and other putative
22 class members. *Id.*

23 The following calculations—made prior to the mediation—are based upon the
24 following data points which were as provided by Defendants prior to mediation:

- 25 a. Class members – 89
- 26 b. Average regular rate - \$85
- 27 c. Shifts greater than 5 hours – 18,042
- 28 d. Shifts greater than 3.5 hours – 20,299

- e. Workweeks – 7,960
- f. Two-week pay periods – 3,980
- g. PAGA period wage statements issued – 1,274
- h. PAGA period employees - 61

Gundzik Decl., ¶ 25.

The First Cause of Action is for failure to pay overtime. This claim was based on Defendants' policy of classifying Plaintiff and the Class Members as exempt employees. Gundzik Decl., ¶ 26. Plaintiff contended that she and the Class did not qualify for any exemption to California's overtime requirements because they were paid by the piece and did not earn a salary. *Id.* Although Plaintiff and the Class Members worked in excess of eight hours on many days, their wage statements show that they were not paid for their overtime work at overtime rates of pay. *Id.* Based on the pay data and driving records produced by Defendants, Plaintiff's counsel determined that class members worked about .7 hours of 1.5x overtime each shift and about .04 hours of 2x overtime per shift. *Id.* Class Members were paid on a piece-rate basis. *Id.* Pursuant to the DLSE Manual, § 49.2.1.2, the piece-rate pay received by Class Members is presumed to cover all hours worked in a day—straight and overtime. *Id.* As a result, such employees are entitled to be paid an additional half of the presumed hourly straight time rate of \$85 for each hour of 1.5x overtime and an additional hour at the presumed \$85 per hour straight time rate for each hour of 2.0x overtime. *Id.* Using these amounts, Plaintiff's counsel calculated the unpaid overtime as follows: $(18,042 \text{ shifts} \times .7 \text{ hrs} \times \$85 \times .5) + (18,042 \text{ shifts} \times .04 \text{ hours} \times \$85) = \$724,930$. *Id.* However, because Defendants could successfully contend that there are manageability issues and individualized issues as to whether and to what extent Class Members worked overtime hours and whether that work was included in their piece-rate, Plaintiff's counsel determined that the minimum value of this claim is \$0.

The Second Cause of Action is for violation of Labor Code section 226.2. This claim was based on Defendants' failure to separately pay Plaintiff and the other Class Members, all of whom were paid by the piece, for their non-productive time and rest breaks. Gundzik

Decl., ¶ 27. Plaintiff contended that she and the Class Members were required to perform a great deal of work that did not directly involve being with a patient and attending to their injuries. *Id.* This non-productive time is to be compensated at no less than the minimum wage, which averaged \$12.54 during the class period. *Id.* Based on driving time records and information provided by Class Members, Plaintiff's counsel determined that nonproductive tasks and time consisted of the following:

- a. Driving time, estimated at 2.5 hours per day;
- b. Preparation for the day's appointments, estimated at 1 hour per day with 50% as 1.5x overtime;
- c. Phone calls to patients and others, estimated at 2 hours per week with 50% as 1.5x overtime;
- d. Managing supplies, estimated at 2 hours per week with 50% as 1.5x overtime;
- e. Make up visits to patients, estimated at 2 hours per week at straight time rates;
- f. Weekly administrative calls with employer, estimated at 1 hour per week with 50% at 1.5x overtime;
- g. Initial orientation, including travel to Florida and "homework," estimated at 25 hours per class member;
- h. Watching training videos, estimated at 5 hours per class member; and
- i. Preparing pay sheets (to get paid), estimated at .5 hours per week, 50% at overtime rates.

Id. Applying the forgoing estimates, Plaintiff's counsel calculated the unpaid non-productive time as follows²:

Non-productive Task	Calculation	Total
Driving	2.5 x 21,868 days x \$12.54/hr.	\$685,736.61

² These estimates were based on a Class size of 89, which was the number provided to Plaintiff's counsel in connection with the mediation. After the mediation, upon the receipt of the Class Data by Phoenix, Plaintiff's counsel learned that the Class size is 86.

1	Prepare for day's appointments	$((.5 \text{ hrs.} \times \$12.54/\text{hr.}) + (.5 \text{ hrs.} \times \$12.54/\text{hr.} \times 1.5)) \times 21,868 \text{ work days}$	\$342,868.30
2	phone calls	$((.5 \text{ hrs.} \times \$12.54/\text{hr.}) + (.5 \text{ hrs.} \times \$12.54/\text{hr} \times 1.5)) \times 7,960 \text{ weeks}$	\$249,598.60
3	Supplies	$((.5 \text{ hrs.} \times \$12.54/\text{hr.}) + (.5 \times \$12.54/\text{hr} \times 1.5)) \times 7,960 \text{ weeks}$	\$249,598.60
4	unpaid visits	$2 \text{ hrs.} \times \$12.54/\text{hr.} \times 7,960 \text{ weeks}$	\$199,678.88
5	weekly admin calls	$((.5 \text{ hrs.} \times \$12.54/\text{hr.}) + (.5 \text{ hrs.} \times \$12.54 \times 1.5)) \times 7,960 \text{ weeks}$	\$24,959.86
6	orientation travel/homework	$25 \text{ hrs.} \times 89 \text{ class members} \times \$12.54/\text{hr.}$	\$27,908.41
7	training videos	$5 \text{ hrs.} \times 89 \text{ class members} \times \$12.54/\text{hr.}$	\$5,581.68
8	prepare pay sheet	$((.25 \text{ hrs.} \times \$12.54/\text{hr.}) + (.25 \text{ hrs.} \times \$12.54/\text{hr.} \times 1.5)) \times 7,960 \text{ weeks}$	\$24,959.86
9			\$1,810,890.80

Gundzik Decl., ¶ 28.

The Second Cause of Action was also based on Defendants' failure to pay Plaintiff and the Class Members for rest breaks that were taken, pursuant to Labor Code section 226.2(a)(3). Gundzik Decl., ¶ 29. This time is to be paid at the higher of the employee's regular rate during the pay period or minimum wage. *Id.* However, given Defendants' requirement that Class Members take on-call rest breaks, the amount owed for rest break premiums is already accounted for in the damages due on the Fourth Cause of Action. *Id.* Because Plaintiff's counsel concluded that all rest breaks were noncompliant, no additional monetary value was added to this portion of the Second Cause of Action. *Id.*

The Third Cause of Action is for failure to pay for all hours worked. This claim was based on Defendants' failure to pay Class Members for their non-productive time, rest breaks taken, and overtime work. Gundzik Decl., ¶ 30. Because these damages are duplicative of other causes of action analyzed above, Plaintiff's counsel did not allocate any additional monetary value to this claim. *Id.*

The Fourth Cause of Action is for failure to provide compliant meal and rest periods. This claim was based on Plaintiff's contention that because Defendants incorrectly classified the Class Members as exempt, they did not make any attempt to provide Class Members with rest or meal breaks. Gundzik Decl., ¶ 31. This claim was also based on Defendants' written policies, that required Class Members to take on-call rest breaks, which are

1 prohibited pursuant to *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 261 (2016).
2 *Id.* Because Defendants did not keep track of meal or rest breaks, did not schedule any meal
3 break time for class members, and required Class Members to take on-call rest breaks,
4 Plaintiff's counsel estimated that Class Members never received compliant rest or meal
5 breaks. *Id.* Plaintiff's counsel therefore determined that the maximum value of the meal
6 break claim is \$1.5 million and that the maximum value of the rest break claim is about
7 \$1.75 million, for a total of \$3.25 million. *Id.*

8 These amounts were calculated as follows: For rest breaks, 20,299 shifts greater than
9 3.5 hours x \$85 per hour = \$1,725,450. For meal periods, 18,042 shifts greater than 5 hours
10 x \$85 per hour = \$1,533,588. \$1,533,588 + \$1,725,450 = \$3,259,038. Gundzik Decl., ¶ 31.
11 Thus, Plaintiff's counsel determined that Defendants' total maximum exposure on this claim
12 is \$4,984,488. *Id.* However, because of the lack of documentary evidence regarding rest and
13 meal break violations and the possibility that Defendants could successfully contend that
14 these were individualized incidents which did not support a class award, Plaintiff's counsel
15 determined that the minimum value of this claim is \$0.

16 The Fifth Cause of Action is for failure to provide compliant wage statements. The
17 statute of limitations on such a claim is one year. This claim is based on the fact that the
18 wage statements issued to Plaintiff and the Class are incorrect in that they do not accurately
19 record (1) the number of hours class members worked, at the applicable straight time and
20 overtime rates, or the weekly regular rate and overtime rate thereon, and gross wages earned
21 at each applicable rate of pay; (2) the total hours of compensable rest and recovery periods,
22 (3) the rate of compensation and the gross wages paid for rest periods during the pay period,
23 (4) the total hours of other non-productive time worked, (5) the rate of compensation paid
24 for non-productive work, or (6) the gross wages paid for non-productive work. Gundzik
25 Decl., ¶ 32. At the time of the mediation, the ability to state a derivative claim for wage
26 statement penalties was uncertain, as the Second District ruled in *Naranjo v Spectrum*
27 *Services, Inc.*, 40 Cal.App.5th 444 (2019) that actions to recover unpaid meal period
28 premiums under Labor Code section 226.7 do not entitle employees to derivative wage

1 statement penalties. *Id.* While the court of appeal’s decision in *Naranjo* was overturned by
2 the California Supreme Court, *see Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th
3 93 (May 23, 2022), the Supreme Court’s decision was entered a few days after the mediation
4 and after the parties had signed a settlement Memorandum of Understanding. *Id.* The
5 penalties for inaccurate wage statements are \$50 per employee for the first violation and
6 \$100 per employee per violation for all subsequent violations. *Id.* Penalties per employee are
7 limited to \$4,000. *Id.* Based upon the number of wage statements issued to each employee
8 and applying the \$50/\$100 penalty rates and \$4,000 cap, Plaintiff’s counsel estimated that
9 the maximum value of this claim is approximately \$124,000. *Id.* This amount was calculated
10 as follows: (1,274 wage statements x \$100) – (61 employees x \$50) = \$124,379.20. *Id.* At
11 the same time, Plaintiff’s counsel estimated that this claim has a minimum value of \$0. *Id.*

12 The Sixth Cause of Action is for failure to reimburse employees for all necessary
13 expenditures. Gundzik Decl., ¶ 33. This claim was based upon Plaintiff’s contention that
14 Class Members were not reimbursed for 25 miles of driving per workday. *Id.* At \$.585 per
15 mile and approximately 21,868 workdays, Plaintiff’s counsel estimated that the amount of
16 unreimbursed expenses owed to Class Members is approximately \$320,000 (25 miles per
17 day x \$.585 per mile x 21,868 workdays = \$319,821.90.) *Id.* However, Defendants
18 contended that unpaid 25 miles per day represented “commuting” miles for which Class
19 Members were not entitled to reimbursement. *Id.* In light of this argument, Plaintiff’s
20 counsel determined that the minimum recovery on this claim is nothing. *Id.*

21 The Seventh Cause of Action is for violation of Business & Professions Code section
22 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of limitations that
23 is available under the UCL for the meal period violations. Gundzik Decl., ¶ 34. This cause
24 of action is derivative of the other claims that have already been analyzed. Accordingly, the
25 damages available under this cause of action have already been analyzed or are duplicative
26 of the damages discussed. *Id.*

27 The Eighth Cause of Action is for failure to pay separated employees all wages due
28 at the time of separation. Gundzik Decl., ¶ 35. This claim is based on Defendants’ alleged

failure to pay Class Members all wages due when they separated, as their final pay did not include amounts due for meal or rest period premiums, non-productive time or for all of their overtime work. *Id.* Because there are 45 putative Class Members who separated during the relevant statutory period, and the average daily rate is \$670, Plaintiff's counsel estimated that the maximum value of this claim is approximately \$905,000 (\$670 per day x 30 days x 45 employees = \$904,500.) *Id.* However, in light of the concerns identified above, and others, the minimum value of this claim is also \$0. *Id.*

The Ninth Cause of Action is for violations of the Private Attorneys General Act (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl., ¶ 36. Based on recent PAGA decisions, Plaintiff's counsel concluded that even if Plaintiff was successful on this claim through trial, the Court may well have exercised its discretion under PAGA and significantly reduced the penalties. *Id.*; Cal. Labor Code §2699(e)(2). In addition, the settlement was primarily directed at recovering wages and unpaid premiums owed to Class Members and the bulk of the settlement funds were intended to compensate for these wages. *Id.* Based on these factors, Plaintiff's counsel estimated that the maximum reasonable value of the PAGA claim is approximately \$1.2 million. *Id.* This amount was calculated as follows:

Labor Code Violation	Penalty calculation	Maximum Penalties
Wage statements	\$250 per pay period x 1274 pay periods	\$318,573
Non-productive Time Pay	(\$200 per pay period x 1274 pay periods) – (\$100 per pay period x 61 employees)	\$248,758.40
Missed rest breaks	(\$200 per pay period x 1274 pay periods) – (\$100 per pay period x 61 employees)	\$248,758.40
Missed meal periods	(\$100 per pay period x 1274 pay periods) – (\$50 per pay period x 61 employees)	\$124,379.20
Time Records	(\$200 per pay period x 1274 pay periods) – (\$100 per pay period x 61 employees)	\$248,758.40
Total		\$1,189,227.40

1 Gundzik Decl., ¶ 36.

2 Based upon the forgoing, Plaintiff’s counsel determined that the class claims in this
3 case had a minimum value of \$0 and a maximum estimated value of about \$8.869 million,
4 not including the PAGA penalties. Gundzik Decl., ¶ 37. Based on a Class size of
5 approximately 89, prior to the mediation Plaintiff’s counsel determined that the reasonable
6 estimate of the average amount that Class Members could have obtained if Plaintiff
7 prevailed at trial on behalf of the entire Class, if the Class was certified, would be a
8 minimum of \$0 and a maximum of about \$99,651. *Id.* However, the maximum amount is
9 almost never recovered at trial and never in a settlement. Settlements, by their nature, must
10 account for the weaknesses in a plaintiff’s case, which are discussed above. Indeed, because
11 Defendants raised a colorable legal or factual defense to each of the claims Plaintiff alleged,
12 it is possible that, after trial, the Class would recover nothing. *Id.*

13 The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.* 72 Cal.
14 App. 5th 56, 77 (2021), because “it is fair, reasonable, and adequate in view of PAGA’s
15 purposes to remediate present labor law violations, deter future ones, and to maximize
16 enforcement of state labor laws.” Gundzik Decl., ¶ 38. In the settlement, \$50,000 is
17 allocated to Plaintiff’s PAGA claim, which is approximately 3% of the Gross Settlement
18 Amount. *Id.* In conjunction with the class settlement, pursuant to which Class Members will
19 each receive, on average, \$11,743.22, not including the PAGA payment, this settlement will
20 serve to remediate Defendants’ labor law violations. *Id.* Given that Defendants will be
21 paying \$1,675,000 as a result of the alleged violations, the Class and PAGA settlement is a
22 large disincentive for Defendants to engage in similar Labor Code violations in the future.
23 *Id.* In fact, Defendants changed their compensation practices as a result of this lawsuit. And,
24 because all Class Members will receive a notice of settlement with contact information for
25 Plaintiff’s counsel, those employees will know to contact them in the future if Defendants
26 attempt to engage in similar practices. *Id.* These factors—the payment of a large sum and
27 employee notice of violations and potential violations—serve to maximize enforcement of
28 state labor laws. *Id.* Also, unlike in *Moniz*, here there is no unsubstantiated and

disproportionate allocation of civil penalties between different groups of employees. *Id.* All aggrieved employees will receive an allocation of PAGA civil penalties based on the number of qualifying pay periods that they worked for Defendants. *Id.*

D. The Settlement Negotiations

On May 19, 2022, I, Rebecca Gundzik, their co-counsel, Daniel Holzman and Plaintiff Mary Beth Hughes, as well as Defendants and Defendants' counsel, attended a mediation session with Gig Kyriacou. Gundzik Decl., ¶ 16. Mr. Kyriacou has substantial experience mediating wage and hour class actions like this one. *Id.* The case settled after a full day of negotiation pursuant to a mediator's proposal. *Id.*

The terms of the Settlement were memorialized in the Stipulation of Class Action and PAGA Settlement, which were thereafter amended by the parties' First Amended Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"). Gundzik Decl., ¶ 21, and Ex. 1 thereto. Among other things, the settlement requires Defendants to pay \$1,675,000 in full settlement of the action. Gundzik Decl., ¶¶ 21-22, and Ex. 1 thereto. The settlement was negotiated at arms' length and was in no sense collusive. Gundzik Decl., ¶ 16.

Plaintiff and Plaintiff's counsel have concluded, after taking into account the sharply disputed factual and legal issues involved in the lawsuit, the risks attending further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the action, that the settlement is in the best interests of Plaintiff and the Class and is fair and reasonable. Gundzik Decl., ¶¶ 39-41. Plaintiff and Plaintiff's counsel also considered the possibility that the Class would not be certified, that even if certified Plaintiff might not prevail at trial, as well as the additional delay in recovery for Class Members if the settlement were rejected and the case went to trial. Gundzik Decl., ¶¶ 39-40.

E. The Representative Plaintiff's Involvement and Release

Both before and after deciding to become class representatives and take on the lawsuit, Plaintiff Mary Beth Hughes met with and engaged in lengthy conversations with Class Counsel about all aspects of the case, her employment, and her job and job duties for

1 Defendant. Declaration of Mary Beth Hughes (“Hughes Decl.”), ¶ 19. She was prompt and
2 responsive and spoke with Class Counsel’s office many times regarding the case, the
3 mediation and the settlement. Hughes Decl., ¶¶ 19-20. She identified relevant witnesses to
4 Class Counsel and provided Class Counsel with relevant documents. *Id.* She spoke with
5 other employees regarding their treatment while employed by Defendants and provided this
6 information to Class Counsel. *Id.* She was proactive and requested regular updates from
7 Class Counsel and inquired as to how class actions worked so she could understand the
8 process. *Id.*

9 To assist Class Counsel, Plaintiff reviewed and collected all of her documents in
10 connection with her employment for Defendants. Hughes Decl., ¶ 20. She spent a great deal
11 of time assisting Class Counsel identifying witnesses, consulting with Class Counsel in
12 advance of the mediation, and she spent a full day attending and participating in the
13 mediation. *Id.* And, she had several meetings with Class Counsel to discuss the proposed
14 settlement, the initial settlement agreement and the amended settlement agreement. *Id.* In all,
15 Plaintiff spent in excess of 80 hours on the lawsuit. *Id.*

16 Filing the lawsuit posed risks for Ms. Hughes. Hughes Decl., ¶ 17. She understood
17 that if the class action was unsuccessful, she could be responsible for Defendants’ litigation
18 costs, which could have been substantial. *Id.* She was concerned that she could be treated
19 poorly by her employer because she was still employed by Defendants when she initially
20 filed the action. *Id.* She was also concerned about the attention a publicly-filed lawsuit, and
21 especially a class action, would attract, as her name would be associated with a lawsuit that
22 she has filed against her employer. *Id.* She was aware that it is possible and relatively easy to
23 perform background checks of publicly-filed documents on the internet and was concerned
24 that future prospective employers and others might find out that she had sued Defendants,
25 which could hurt her future job prospects and business relationships. *Id.*

26 In addition, the settlement agreement required Ms. Hughes to sign a broad general
27 release which is broader than the release that will bind other Class Members and requires her
28 to waive Section 1542 of the California Civil Code. Gundzik Decl., ¶¶ 23, 82, Ex. 1, ¶ VII.

1 **F. The Preliminarily-Approved Settlement**

2 On March 21, 2023, the Court granted preliminary approval to the settlement of this
3 matter. See Gundzik Decl., ¶ 44, Ex. 2. The terms of the settlement are more specifically set
4 forth in the parties' Settlement Agreement. Gundzik Decl., ¶ 21, Ex. 1.

5 The provisionally-certified settlement class is defined as "all individuals who were
6 employed by Galitz and allegedly employed by Podicare and WTN in California as non-
7 exempt employees during the Class Period (August 19, 2017 to July 19, 2022)." Gundzik
8 Decl., ¶ 21, and Ex. 1, ¶¶ II.(C),(I). There are 86 Class members. Salinas Decl., ¶¶ 6, 11.

9 The Settlement Agreement provides that Defendants will pay a gross settlement
10 amount of \$1,675,000 ("Gross Settlement Amount"). Gundzik Decl., ¶ 21, Ex. 1, ¶ I.
11 Defendants are required to deliver the Gross Settlement Amount to Phoenix within ten (10)
12 calendar days after the Effective Date (which is the date of entry of the order of the Final
13 Approval Order if no objection is filed). Gundzik Decl., ¶ 21, Ex. 1, ¶¶ II(N), IV(N).

14 **G. Notice of Preliminary Settlement Provided to the Settlement Class and**
15 **the Claims Process**

16 Pursuant to the time-table established in the Settlement Agreement and previously
17 approved by this Court, Phoenix mailed the Notice of Proposed Class Action Settlement
18 ("Notice of Settlement") to 86 Class Members on May 4, 2023. Salinas Decl., ¶ 8. As a
19 result of this mailing, Phoenix has provided all of the Class Members with a notice of the
20 settlement which calculates the approximate value of their settlement payment and
21 information on how to opt out of and object to the proposed settlement. Salinas Decl., ¶¶ 7-
22 9.

23 ➤ On April 14, 2023, Phoenix received from Defendants complete information
24 including the names, last known addresses, applicable employment information
25 and Social Security numbers for 86 class members.

26 Salinas Decl., ¶ 6.

27 ➤ On April 20, 2023, Phoenix completed a National Change of Address (NCOA)
28 search for new addresses.

1 Salinas Decl., ¶ 7.

2 ➤ On May 4, 2023, the Notices of Settlement were mailed to the 86 Class Members
3 at the most recent addresses available to Phoenix. The notices provided
4 information about the action, the proposed settlement and instructions on how to
5 opt out, object, or obtain further information. The notices advised Class Members
6 that any objections or opt outs had to be postmarked within 45 days of the notice
7 date.

8 Salinas Decl., ¶ 8, and Ex. A thereto.

9 ➤ Subsequent to these mailings, 5 notices were returned after the initial mailing, all
10 of those were re-mailed, and 1 was determined to be undeliverable.

11 Salinas Decl., ¶¶ 8-10, and Ex. A thereto.

12 ➤ Phoenix has received no opt-out requests and no objections. Class Counsel has
13 not received any opt-out requests or objections to the proposed settlement.

14 Salinas Decl., ¶¶ 11-12; Gundzik Decl., ¶ 47.

15 **H. Proposed Distributions from Gross Settlement Amount**

16 Based upon the Settlement Agreement and this Court’s preliminary approval order,
17 Plaintiff proposes that within ten (10) days of the receipt of the Gross Settlement Amount
18 from Defendants, the Gross Settlement Amount be disbursed as follows:

- 19 • Settlement administration costs, in the amount of \$6,750, to Phoenix;
- 20 • A service and release payment in the amount of \$10,000 to Plaintiff Mary
21 Beth Hughes;
- 22 • An allocation of \$50,000 to Plaintiff’s PAGA claims (the “PAGA Amount”),
23 \$37,500 of which will be paid to the California Labor and Workforce
24 Development Agency, and the remaining \$12,500 of which will be
25 distributed to the Aggrieved Employees.
- 26 • Class Counsel’s attorneys’ fees, in the amount of \$558,333, which is one-
27 third of the gross settlement amount;
- 28 • Class counsel’s costs of \$13,958.36;

- 1 • The remainder of the gross settlement amount (the “Net Settlement
2 Amount”), in the amount of approximately \$1,035,958.64, will be distributed
3 to Class Members based on the formula contained in the Settlement
4 Agreement (which is based on the number of Qualifying Workdays that they
5 were employed by Defendants during the Class Period).

6 Gundzik Decl., ¶ 21, Ex. 1, ¶¶ I, IV.(L)(1).

7 **I. Determination of Settlement Payments to Individual Class Members and**
8 **PAGA Employees**

9 The Settlement Agreement provides that all payments to Class Members shall be
10 made by the Settlement Administrator, based on the number of Qualifying Workdays that
11 each Class Member worked during the Class Period. Gundzik Decl., ¶ 21, and Ex. 1, ¶
12 IV(L)(1).

- 13 ➤ Phoenix determined each Settlement Class Member’s individual Qualifying
14 Workdays by adding the total number of Qualifying Workdays in which he or she
15 was employed in a Class Member position by Defendants during the Class Period.

16 Salinas Decl., ¶ 14.

- 17 ➤ Phoenix then determined the total of all of the Qualifying Workdays of all the
18 Settlement Class Members (the “Aggregate Qualifying Workday Number.”) Each
19 Class Member’s “Payout Ratio” was determined by dividing his or her Individual
20 Qualifying Workday Number by the Aggregate Qualifying Workday Number. The
21 “Total Potential Settlement Award” for each Class Member was then calculated
22 by multiplying the Payout Ratio by the Net Settlement Amount. The amount of the
23 individual settlement payment was then indicated on each Class Member’s Notice.

24 Salinas Decl., ¶ 14.

- 25 ➤ Based on these calculations, Phoenix determined the estimated amount of the
26 class settlement payment due to each Class Member. The approximate range of
27 class settlement pay-outs is expected to be between \$45.27 and \$40,563.28, and
28

1 the average settlement payment will be in the amount of approximately
2 \$11,743.22.

3 Salinas Decl., ¶ 16.

4 The Settlement Agreement also provides that all payments to Aggrieved Employees
5 shall be made by the Settlement Administrator, based on the number of Qualifying
6 Workdays that each Aggrieved Employee worked during the PAGA Period. Those payments
7 were calculated by:

8 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of
9 \$12,500 by the total number of PAGA Pay Periods for all Aggrieved Employees
10 during the PAGA Period and multiplying the result by each Aggrieved Employee's
11 PAGA Pay Periods.

12 Salinas Decl., ¶ 15.

13 ➤ Based on these calculations, Phoenix determined the estimated amount of the
14 PAGA settlement payment due to each Aggrieved Employee. The approximate
15 range of PAGA settlement pay-outs is expected to be between \$4.10 and
16 \$318.75, and the average PAGA settlement payment will be in the amount of
17 approximately \$204.92

18 Salinas Decl., ¶ 16.

19 ➤ The payments to Settlement Class Members will be characterized as 20% wages,
20 to be reports on a W-2 form, and 80% as interest, unreimbursed expenses and
21 penalties. The amount of unreimbursed expenses, interest and penalties will be
22 reported on IRS 1099 Forms.

23 Salinas Decl., ¶ 16.

24 **J. Proposed Release of Defendants by Class Members**

25 If the Court gives final approval to the proposed settlement, the Settlement
26 Agreement provides that the Court shall enter a final approval Order ("Final Approval
27 Order") and a judgment implementing the release of the released claims as described in the
28 Settlement Agreement. Gundzik Decl., ¶ 21, Ex. 1, ¶ VI. As part of the Final Approval

Order and judgment, Class Members who do not opt out will be deemed to have released the specific Released Claims. Gundzik Decl., ¶ 21, Ex. 1, ¶ VI. The release applicable to the Class Members provides:

Upon entry of the Final Approval Order and Judgment and Defendants' payment of the Gross Settlement Amount and Employer's Withholding Share, and except as to such rights or claims as may be created by this Settlement Agreement, the Settlement Class Members, on behalf of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the final judgment shall have, fully released and discharged the Released Parties from any and all Released Claims.

Gundzik Decl., ¶¶ 21; Ex. 1, ¶ IV(A). The Settlement defines "Released Class Claims" as:

all wage-and-hour claims asserted in the Action or that arise from the facts alleged in the Complaint, including claims for: (1) violation of Labor Code section 510; (2) failure to pay for nonproductive time and rest breaks in violation of Labor Code section 226.2; (3) failure to pay wages for all work performed in violation of Labor Code sections 204 and 1197; (4) unpaid meal and rest period premiums in violation of Labor Code section 226.7(c); (5) non-compliant wage statements in violation of Labor Code section 226(a); (6) unreimbursed business expenses in violation of Labor Code section 2802; (7) final wages not timely paid in violation of Labor Code sections 201 and 202; and (8) violation of California Business & Profession Code Sections 17200, et seq., in relation to the forgoing Labor Code violations and violations of Labor Code sections 246, 247.5 and 2810.5. This release shall also include releases for claims under California Labor Code sections: 201-204, 226, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, 1198, 2802, and 2810.5 arising from the facts alleged in the Complaint. The time period of this release is from August 19, 2017, through the earlier of July 19, 2022 and the Preliminary Approval Date.

Gundzik Decl., ¶ 21, Ex. 1, ¶ II(GG). This release does not include any claims that are outside of the scope of the facts alleged in the operative pleadings and does not include the PAGA Released Claims. *Id.*

The release applicable to the Aggrieved Employees provides:

Upon entry of the Final Approval Order and Judgment and Defendants' payment of the Gross Settlement Amount, and except as to such rights or claims as may be created by this Settlement Agreement, all PAGA Employees, on behalf of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the final judgment shall have, fully released and discharged the Released Parties from any and all PAGA Released Claims arising during the PAGA Period.

Gundzik Decl., ¶ 21, Ex. 1, ¶ VI(B).

1 The Settlement Agreement defines PAGA Released Claims as:

2 all claims for California Labor Code violations under PAGA that are
3 alleged in Plaintiff's August 19, 2021 letter to the Labor Workforce
4 Development Agency ("LWDA") LWDA and/or in the Complaint,
5 specifically for: (1) failure to pay overtime in violation of Labor Code
6 section 510; (2) failure to pay for nonproductive time and rest breaks in
7 violation of Labor Code section 226.2; (3) failure to pay wages for all
8 work performed in violation of Labor Code sections 204 and 1197; (4)
9 failure to provide meal and rest breaks and failure to pay wage premiums
10 for such violations in violation of Labor Code section 226.7 and 512; (5)
11 non-compliant wage statements in violation of Labor Code section 226(a);
12 (6) unreimbursed business expenses in violation of Labor Code section
13 2802; (7) failure to maintain time records in violation of Labor Code
14 section 1174(d); (8) final wages not timely paid in violation of Labor Code
15 sections 201 and 202; and (9) failure to provide sick leave and notice
16 thereof, in violation of Labor Code sections 246, 247.5 and 2810.5. The
17 time period of this release shall be the PAGA Period.

18 Gundzik Decl., ¶ 21, Ex. 1, ¶ II(BB).

19 The Settlement Agreement defines "Released Parties" as:

20 Defendants Jeffrey Lee Galitz, M.D., a Professional Medical Corporation dba
21 Woundtech of California; Podicare Services, Inc.; and Wound Technology Network,
22 Inc., as well as Defendants' current and former agents, officers, employees, directors,
23 owners, subsidiaries, affiliates, parent companies, insurers, attorneys, shareholders,
24 investors, related management companies and any other related parties but only as to
25 the Released Claims and PAGA Released Claims.

26 Gundzik Decl., ¶ 21, Ex. 1, ¶ II(HH).

27 The Settlement Agreement does not constitute an admission of the merits of any
28 claim by Plaintiff or the Class or address any defense of Defendants. Gundzik Decl., ¶ 21,
Ex. 1, ¶ VI(A).

29 **III. THE COURT SHOULD GIVE FINAL APPROVAL TO THE SETTLEMENT.**

30 The law favors settlement, particularly in class actions and other complex cases in
31 which substantial resources can be conserved by avoiding the time, cost and rigors of formal
32 litigation. *Potter v Pacific Coast Lumber Company*, 37 Cal.2d. 592, 602-603 (1951); *Class*
33 *Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1991). When faced with a motion for
34 final approval of a class action settlement under Code of Civil Procedure § 382, the
35 appropriate inquiry is whether the settlement is "fair, adequate, and reasonable." *See*
36 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 244-245 (2001); *Dunk v. Ford Motor*
37

1 Co., 48 Cal.App.4th 1794, 1801 (1996). If so, the settlement should be approved. *Id.* And, “a
2 presumption of fairness exists where: (1) the settlement is reached through arm's-length
3 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
4 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
5 objectors is small.” *Dunk v Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996).

6 **A. Nothing Has Occurred in the Interim That Should Affect This Court's**
7 **Preliminary Findings.**

8 Before granting preliminary approval of a class and PAGA action settlement, this
9 Court was required to find—and did find—that there is sufficient evidence that the proposed
10 settlement would be fair, reasonable, and adequate, and not a product of fraud, overreaching,
11 or collusion. See Gundzik Decl., ¶ 44, Ex. 2; Cal. Rules of Court, Rule 3.769 (g); Cal. Civ.
12 Proc. § 382; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. In order to preliminarily
13 determine that the proposed settlement was fair, reasonable, and adequate, and thus
14 appropriate for preliminary approval, the Court was required to find that the following three
15 factors were satisfied: (1) the parties reached settlement after arms-length negotiations;
16 (2) counsel conducted sufficient investigation and discovery to allow themselves and the
17 court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802. *See*
18 *also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146
19 (2000). In applying this determination for the purpose of granting final approval, as
20 discussed below, although not determinative, the Court may also consider the percentage of
21 objectors in determining whether a presumption of fairness exists. *Id.*

22 All of these considerations are satisfied here. The parties conducted significant
23 informal discovery and investigation and participated in a full-day mediation, and thereafter
24 continued to negotiate regarding the Settlement Agreement which is the subject of this
25 motion. Gundzik Decl., ¶¶ 6-37. Moreover, not one Class Member has opted out of or
26 objected to the settlement. Salinas Decl., ¶¶ 11-12.

1 **B. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations.**

2 There was no collusion between the parties in this case. After informal discovery and
3 exchange of information and voluminous pages of documents, the parties engaged in
4 mediation with a well-respected and highly knowledgeable wage and hour mediator, Gig
5 Kyriacou. Gundzik Decl., ¶¶ 6-16. The involvement of a neutral third-party mediator is a
6 factor that favors approval and evidences the presumptive fairness of the arms-length
7 negotiations. Indeed, the California Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*
8 expressed that courts should give considerable weight to the competency and integrity of
9 counsel and the involvement of a neutral mediator in assuring themselves that a settlement
10 agreement represents an arms-length transaction entered without self-dealing or other
11 potential misconduct. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008).

12 **C. The Settlement is Supported by Substantial Investigative and Discovery**
13 **Efforts.**

14 As set forth in the Declaration of Aaron Gundzik, Class Counsel engaged in
15 substantial investigation and discovery. This investigation included (1) preparing pleadings
16 and other documents filed with the Court, (2) extensively investigating Plaintiff's claims, (3)
17 engaging in informal discovery and reviewing and analyzing numerous handbooks, policies
18 and documents regarding Class Member reimbursements, including records and information
19 produced by Defendants, (4) reviewing and analyzing anonymized mileage records and pay
20 records for the proposed Class Members, including Plaintiff, as well as records for the
21 PAGA Aggrieved Employees, (5) investigating and compiling publicly available
22 information about Defendants and their business, (6) negotiating extensively with
23 Defendants regarding the mediation, its scope, and the information to be exchanged in
24 connection with the mediation, and (7) working to develop information on potential
25 damages. Gundzik Decl., ¶¶ 6-9, 24-36, 53-62, and Ex. 4.

26 Class Counsel's analysis enabled them to pinpoint the relevant issues and claims and
27 to assess potential liability and damages. These efforts resulted in the parties having a clear
28

view of the strengths and weaknesses of their respective cases and achieving a resolution on favorable terms. Gundzik Decl., ¶¶ 6-9, 24-36.

D. As Previously Found by this Court, Class Counsel is Experienced in Similar Litigation.

The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1802; *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). As discussed in the motion for preliminary approval papers and the declarations supporting both that motion and the instant motion, Class Counsel have represented, litigated, mediated and settled many other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendants and the benefits of the proposed settlement under the circumstances of the case. Gundzik Decl., ¶¶ 24-36, 49-52. Class Counsel helped develop the law regarding an employee's right to be separately paid for their nonproductive time, which is one of the bases for Labor Code section 226.2. Gundzik Decl., ¶ 49. Class Counsel believes that the settlement is fair, adequate, reasonable and in the best interests of the Class as a whole. Gundzik Decl., ¶ 41.

E. The Class Members' Positive Reaction to the Settlement Favors Final Approval.

The reaction of the Class to proposed settlement to date has been extremely positive. Not one of the Class Members has opted out of or objected to the proposed settlement, which is a 100% participation rate. Salinas Decl., ¶¶ 11-12.

Although a court may appropriately infer that a class action settlement is fair, adequate, and reasonable even when a significant percentage of class members object to it (*See Boyd v Betchel Corp.*, 485 F. Supp. 610, 624 (C. D. Cal 1976); *see also Reed v. General Motors*, 703 F.2d 170, 174 (5th Cir. 1983)), the fact that none have opted out or objected to it provides much stronger grounds for granting final approval. In this action, the Court should construe the lack of exclusions and objections as a further indication of Class Members' support for the settlement as being fair, adequate, and reasonable.

1 **F. The Proposed Service and Release Payment to the Named Plaintiff is**
2 **Reasonable and Should be Approved.**

3 The Settlement Agreement provides for a service and release payment in the amount
4 of \$10,000 to class representative Mary Hughes. The purpose of this payment is to provide
5 additional compensation to Plaintiff for the time and effort that she put into the litigation and
6 the settlement of this matter, as well as the risks she undertook by agreeing to sue her former
7 employer.

8 “In determining whether to make an incentive award, the court may consider (1) the
9 risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the
10 notoriety and personal difficulties encountered by the class representative; (3) the amount of
11 time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
12 personal benefit received by the class representative as a result of the litigation.” *Golba v.*
13 *Dick's Sporting Goods, Inc.*, 238 Cal. App. 4th 1251, 1272 (2015). Additional factors to be
14 considered include “the actions the plaintiff has taken to protect the interests of the class, the
15 degree to which the class has benefitted from those actions, and the amount of time and
16 effort the plaintiff expended in pursuing the litigation.” *Clark v. American Residential*
17 *Services LLC*, 175 Cal. App. 4th 785, 804 (2009).

18 The factors enunciated in both *Golba* and *Clark* favor the approval of the requested
19 service and release payment to Plaintiff. She undertook significant risks in getting involved
20 in the lawsuit, knowing that it could impact her current employment. Hughes Decl., ¶ 17.
21 She understood that if the class action was unsuccessful, she could be responsible for
22 Defendants’ litigation costs, which could have been substantial. *Id.* She was concerned by
23 the attention of a publicly-filed lawsuit, and especially a class action, would attract, as her
24 name would be associated with a lawsuit that she had brought against her employer. She was
25 reasonably concerned about the notoriety that would attend her involvement, as she knew
26 that it is possible and relatively easy to perform background checks of publicly-filed
27 documents on the internet and was concerned that it could hurt her future employment
28 prospects and her position with Defendants. *Id.*

1 Plaintiff spent a significant amount of time on the lawsuit. She had many telephone
2 and Zoom conferences with Class Counsel regarding the case and the mediation. Hughes
3 Decl., ¶¶ 19-20. And, she had conferences to discuss the proposed settlement with Class
4 Counsel, and to discuss the two versions of the Settlement Agreement and related motions.
5 *Id.*

6 To assist Class Counsel, Ms. Hughes reviewed and collected all of her documents in
7 connection with her employment for Defendants. Hughes Decl., ¶ 20. And she spent a great
8 deal of time assisting Class Counsel identifying witnesses, consulting with Class Counsel in
9 advance of the mediation, and she missed a full day of work to attend and participate in the
10 mediation. *Id.* In all, Plaintiff spent in excess of 80 hours on the lawsuit. *Id.*

11 Had she been unwilling to step up, none of the Class Members would have received
12 any amounts whatsoever. By agreeing to serve as the class representative, Ms. Hughes has
13 taken significant action to protect the interests of the Class, and the Class has significantly
14 benefitted from those actions. *Clark v. American Residential Services LLC*, 175 Cal. App.
15 4th at 804. Although she could have filed a claim with the Department of Labor and possibly
16 received more money, instead of acting in her own self-interest she got involved in this
17 lawsuit to protect the interests of the Class. And as a result of those efforts, all 86 Class
18 Members will be receiving settlement payments in an amount averaging \$11,743.22.

19 The additional payment proposed for the named Plaintiff is also intended to
20 compensate her for the broader release that Defendants have demanded of her. While all
21 other Class Members will only be releasing the Released Claims, Plaintiff will also be
22 releasing any and all known or unknown claims that she might have against Defendants.
23 Gundzik Decl., ¶ 21, Ex. 1, ¶ VII.

24 Awarding larger amounts to class representatives is permissible and is often
25 approved by the courts. See, e.g., *Bell v Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726
26 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing class
27 case). As explained by the court in the *Cellphone Termination Fee Cases*, incentive awards
28 are “intended to compensate class representatives for work done on behalf of the class, to

1 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
2 to recognize their willingness to act as a private attorney general.” *Cellphone Termination*
3 *Fee Cases*, 186 Cal.App.4th 1380, 1393-1394 (2010).

4 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. West*
5 *Publication Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 Newberg on Class Actions
6 (4th ed. 2002) § 11:38, p. 81); Eisenberg & Miller, Incentive Awards to Class Action
7 Plaintiff: An Empirical Study (2006) 53 UCLA L.Rev. 1303. “Since without a named
8 plaintiff there can be no class action, such compensation as may be necessary to induce him
9 to participate in the suit could be thought the equivalent of the lawyers' nonlegal but
10 essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”
11 *Clark v. American Residential Services LLC*, 175 Cal.App.4th at 804 (fn. omitted), citing
12 *Matter of Continental Illinois Securities Litigation*, 962 F.2d 566, 571 (7th Cir. 1992).

13 Compared to the Net Settlement Amount of \$2,566,450.34 (after deducting the proposed
14 \$10,000 service and release payment), the requested amount of \$10,000 each will not
15 appreciably diminish the amount available for distribution to the Settlement Class Members.

16 The additional payment to the named Plaintiff also takes into account the additional
17 risks that she incurred in acting on behalf of the Class. These risks included the potential of
18 a judgment against her if this case had been unsuccessful, as class representatives are
19 deemed the losing party that is liable for the prevailing party’s costs. *Earley v. Superior*
20 *Court*, 79 Cal.App.4th 1420, 1433-1434 (2000). Taking that risk here resulted in substantial
21 benefit to the Class. Plaintiff also took the very real risk that this lawsuit would have a
22 negative impact on her future employment. Hughes Decl., ¶ 17; see, e.g., *Staton v. Boeing*,
23 327 F.3d 938, 977 (9th Cir 2003) (fear of workplace retaliation is one justification behind
24 reasonable class representative incentive payments).

25 If Plaintiff had not come forward, or had not agreed to take on the risks of stepping
26 up and taking on the class action, Plaintiff may have recovered compensation for herself, but
27 no compensation would have been received by 86 current and former employees who will
28 be receiving an average of \$11,743.22 as a result of the settlement. Because Plaintiff has

1 advanced California’s public policy goal of enforcing wage and hour laws (*See Sav-On*
2 *Drug Stores, Inc. v. Super.Ct.*, 34 Cal.4th 319, 340 (2004)), the Court should approve of the
3 proposed service and release payments to the Representative Plaintiff.

4 **G. The Court Should Approve the Request for Class Counsel’s Fees.**

5 Subject to Court approval, the settlement amount of \$1,675,000 includes Class
6 Counsel’s attorneys’ fees of \$558,333. Gundzik Decl., ¶¶ 21, 48, Ex. 1, ¶¶ I, II(B), IV(Q);
7 Declaration of Daniel Holzman (“Holzman Decl.”), ¶¶ 6-9. It is well-settled that
8 representative plaintiffs and class members are entitled to recover their attorneys’ fees and
9 costs in wage and hour class action disputes. California Labor Code § 218.5; Cal. Code Civ.
10 Proc. § 1021.5(a); *Earley v. Super. Ct.*, 79 Cal. App. 4th at 1420.

11 A fee award is justified when benefits are obtained for the class irrespective of
12 whether there is a final judgment in its favor, such as when those benefits are the result of a
13 settlement. *See Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-353
14 (1983). “Courts recognize two methods for calculating attorney fees in civil class actions:
15 the lodestar/multiplier method and the percentage of recovery method.” *Wershba v. Apple*
16 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *See Lealao v. Beneficial California, Inc.*,
17 82 Cal.App.4th 19, 27 (2000). In California, both methods are proper, although courts often
18 use a lodestar-multiplier method as a check against the reasonableness of a percentage fee
19 award. *See, e.g., Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 48-49, at fn. 23 (1977);
20 *People ex rel. Dept. of Transportation v. Yuki*, 31 Cal.App.4th 1754, 1769-1772 (1995);
21 *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal.App.3d 914, 954 (1985).

22 **1. Class Counsel’s Requested Fee Award is Within California’s**
23 **Benchmark Awards and Thus Reasonable Under the Percentage of**
24 **The Benefit or Common Fund Method.**

25 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California
26 Supreme Court approved the use of “percentage of the benefit” attorney fee awards in class
27 actions. “[W]hen class action litigation establishes a monetary fund for the benefit of the
28 class members, and the trial court in its equitable powers awards class counsel a fee out of

1 that fund, the court may determine the amount of a reasonable fee by choosing an
2 appropriate percentage of the fund created.” The *Laffitte* court explained that “[t]he
3 percentage method ‘is easy to calculate; it establishes reasonable expectations on the part of
4 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
5 avoids protracted litigation.” 1 Cal. 5th at 490 (quoting *Rawlings v. Prudential-Bache*
6 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Pursuant to the “percentage of the benefit”
7 doctrine, “a litigant or lawyer who recovers a common fund for the benefit of persons other
8 than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”
9 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “The ultimate goal ... is the award of a
10 reasonable fee to compensate counsel for their efforts, irrespective of the method of
11 calculation. It is not an abuse of discretion to choose one method over another as long as the
12 method chosen is applied consistently using percentage figures that accurately reflect the
13 marketplace.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-558 (2009).

14 Class Counsel’s request for one-third of the monetary fund recovered is California’s
15 standard benchmark and well within the range customarily approved by the California
16 courts in comparable class actions and other class actions, as well as the standard
17 contingency contracts negotiated by plaintiffs and their counsel. “Empirical studies also
18 show that regardless [of] whether the percentage method or the lodestar method is used, fee
19 awards in class actions average around one-third of the recovery.” See e.g., *Chavez v.*
20 *Netflix, Inc.*, 162 Cal.App.4th 43, 66, at fn. 11 (2008); *In re California Indirect Purchases*
21 (October 22, 1998) WL 1031494 at * 9; *Romero v. Producers Dairy Food, Inc.*, WL
22 3492841 at * 4 (E.D. Cal. Nov. 14, 2007), quoting Newberg on Class Actions § 14.6 (4th
23 ed.2007) (“fee awards in class actions average around one-third of the recovery.”); See also
24 T. Cohelan, *On California Class Actions* (2016), § 10.5 at 481 (“nearly all common fund
25 awards fall into the neighborhood of 30%.”)

26 Class Counsel seek \$558,333, which is one third of the \$1,675,000 Gross Settlement
27 Amount. This request is reasonable and justified considering the superb settlement secured
28 for the Class Members. It is also consistent with both the Settlement Agreement (See

1 Gundzik Decl., ¶¶ 21, 48, Ex. 1, ¶¶ I, II(B), IV(Q)) and the engagement agreements the
2 named Plaintiff entered into with Class Counsel. In those agreements, Plaintiff agreed that
3 Class Counsel would be paid the greater of 1) one-third of all amounts obtained or received
4 in the lawsuit, or 2) the hours worked multiplied by the hourly rates of the attorneys working
5 on the case, plus any additional multiplier awarded by the Court. Gundzik Decl., ¶ 72.

6 Thus, as per the Settlement Agreement, Plaintiff respectfully requests that this Court
7 award Class Counsel's requested attorneys' fees.

8 **2. Class Counsel's Requested Fees Are Reasonable Under the**
9 **Lodestar/Multiplier Method.**

10 Under the lodestar/multiplier method of determining an attorneys' fee award, "the
11 lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly
12 rate. The court may then enhance the lodestar with a multiplier, if appropriate." *Wershba v.*
13 *Apple Computer, Inc.*, 91 Cal.App.4th at 254; *Rebney v. Wells Fargo Bank*, 232 Cal.App.3d
14 1344, 1347 (1991). "California case law permits fee awards in the absence of detailed time
15 sheets." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Sommers v. Erb*, 2
16 Cal.App.4th 1644, 1651 (1992). And, "[m]ultipliers can range from 2 to 4 or even higher."
17 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Coalition for L.A. County*
18 *Planning etc. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (1977); accord, *In re*
19 *Lugo* 164 Cal.App.4th 1522, 1546 (2008); *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d
20 1043, 1050 (9th Cir. 2002) (multiplier of 3.65); *Craft v. Cnty. of San Bernardino*, 624 F.
21 Supp. 2d 1113, 1125 (C.D. Cal. 2008) (multiplier of 5.2); *See also Galeener v. Source*
22 *Refrigeration & HVAC, Inc.*, 2015 U.S. Dist. LEXIS 193096 (N.D. Cal. Aug. 21, 2015)
23 (multiplier of 2.67 approved in granting award of \$3,000,000 in attorneys' fees from a \$10
24 million common fund); *See also Lazarin v. Pro Unlimited, Inc.*, 2013 U.S. Dist. LEXIS
25 97213 (N.D. Cal. July 11, 2013, *28-29) (multiplier of 3.36 approved in granting attorneys'
26 fee award of \$312,500 where loadstar was \$92,824).

27 California courts often increase the base lodestar with a multiplier after considering:
28 (1) the continuing obligation of plaintiff's counsel to devote time and effort to the litigation;

(2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing an award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation, (5) the amount involved and the results obtained on behalf of the class by plaintiffs' counsel, and (6) the reaction of the class members. *Serrano v. Priest*, 20 Cal.3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810, at n.21. However, no rigid formula applies, and each factor should be considered "where appropriate." *See Dept. of Transp. v. Yuki*, 31 Cal.App.4th at 1771; *see also, Serrano v. Priest*, 20 Cal.3d at 49.

Here, the base loadstar is dependent on the time spent by Class Counsel and the reasonable hourly compensation for Aaron Gundzik, Rebecca Gundzik and Daniel Holzman. Class Counsel's hourly rates of \$825 (Aaron Gundzik and Rebecca Gundzik), and \$750 (Daniel Holzman) for this matter are reasonable based upon their qualifications and experience. Gundzik Decl., ¶¶ 49-52, 68-71; Holzman Decl., ¶¶ 1-9. Both Aaron Gundzik and Rebecca Gundzik have been practicing law in Southern California for over 30 years, and Mr. Holzman has been practicing for over 27 years. Gundzik Decl., ¶¶ 49-50; Holzman Decl., ¶¶ 2-3. Aaron Gundzik worked for many years at and was an equity partner of the international law firm formerly known as LeBoeuf, Lamb, Greene & MacRae, and has been involved in the litigation of complex cases throughout his career. Gundzik Decl., ¶ 49. Rebecca Gundzik also worked at well-respected law firms and handled complex litigation matters for many years. Gundzik Decl., ¶ 50. Aaron Gundzik has served as Class Counsel on many wage and hour class action matters, and he and Rebecca Gundzik tried and prevailed on appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013), which helped establish the law regarding an employee's right to be paid for all time under an employer's control. ¶¶ 49-50. Mr. Holzman also has significant experience with wage and hour class actions. Holzman Decl., ¶¶ 2-5.

Class Counsel's rates for this case are consistent with prevailing market rates. Gundzik Decl., ¶¶ 68-71. In *Xu v. Yamanaka*, No. 13-CV-3240 YGR, 2014 WL 3840105, at

1 *4 (N.D. Cal. Aug. 1, 2014), the court discussed the range of rates at the country's largest
2 firms, based on the National Law Journal, which is provided in the Gundzik Declaration and
3 which demonstrates that the average rates for commercial work at large firms are
4 considerably above the rates being requested (as of 2012, hourly rates for partners at top
5 firms ranged between \$927 and \$1040). Gundzik Decl., ¶ 71. These rates are also in line
6 with hourly rates approved by other courts and the 2020 Class Action Hourly Rate Survey
7 conducted by the National Association of Legal Fee Analysis (NALFA) and those reported
8 by the National Law Journal's sampling of billing rates for partners in the Southern
9 California area. Gundzik Decl., ¶¶ 69-70, and Ex. 5. The NALFA survey shows that the
10 average hourly rate for partners who have more than 20 years of experience ranges between
11 \$801-\$900 for plaintiff's attorneys. Gundzik Decl., ¶ 69, and Ex. 5.

12 Class Counsel will expend over 478 hours prosecuting this case. This work included
13 (1) preparing pleadings and other documents filed with the Court, (2) extensively
14 investigating Plaintiff's claims, (3) engaging in informal discovery and reviewing and
15 analyzing numerous handbooks, policies and documents regarding Class Member
16 reimbursements, including records and information produced by Defendants, (4) reviewing
17 and analyzing anonymized mileage records and pay records for the proposed Class
18 Members, including Plaintiff, as well as records for the PAGA Aggrieved Employees, (5)
19 investigating and compiling publicly available information about Defendants and their
20 business, (6) negotiating extensively with Defendants regarding the mediation, its scope,
21 and the information to be exchanged in connection with the mediation, (7) working to
22 develop information on potential damages, (8) preparing for and engaging in the mediation,
23 (9) arriving at a settlement and then negotiating and drafting the initial long-form settlement
24 agreement and class notice and amended settlement agreement and class notice, (10)
25 drafting the motion for preliminary approval of the settlement and related documents, (11)
26 drafting supplemental papers in support of the motion for preliminary approval, and (12)
27 drafting the motion for final approval and related documents. Gundzik Decl., ¶¶ 6-9, 24-36,
28 53-62, and Ex. 4.

1 These efforts required a significant amount of time and labor. Through July 22,
2 2023, Class Counsel collectively worked 478.5 hours on the case (374.9 hours incurred by
3 GGH, 25 additional hours to be incurred by GGH, and 78.6 hours incurred by C&H).
4 Gundzik Decl., ¶¶ 62-63, and Ex. 4 thereto; Holzman Decl., ¶¶ 7-8, and Ex. 1 thereto. At
5 Class Counsel's hourly rates, this equates to \$388,867.50 in fees. *Id.*³

6 The *Serrano* factors applied to this figure justify a multiplier of 1.4, which would
7 permit an award of \$558,333, which is one-third of the Gross Settlement Amount.

8 **a. The Lawsuit Involved Novel and Complex Legal and Factual**
9 **Issues.**

10 This case raised a number of complex and contested issues such as an employer's
11 liability for nonproductive time, whether an employer can alter the law for payment of
12 nonproductive time by expanding the definition of an employee's services to include
13 nonproductive pay, how mileage is to be calculated when an employee is commuting from
14 their home to see patients, and to what extent an employer may require employees to
15 perform clerical and paperwork on days when they are not seeing patients without paying
16 those employees an additional amount for that work. Gundzik Decl., ¶ 73. Class Counsel
17 had to research and analyze these and other issues presented in this case. Because of their
18 experience trying and pursuing wage and hour class action lawsuits, they were able to
19 recognize these types of violations and look for and analogize recent cases and other
20 authorities to support their contention that Defendants' practices did not comply with the
21 legal requirements. *Id.*

22 The case was also factually complex. Gundzik Decl., ¶ 74. Class Counsel had to
23 review and analyze hundreds of pages of policies, analyze complex driving records and
24

25
26 ³ This sum includes an additional 25 hours which Class Counsel estimates will be expended
27 finalizing this Motion and the related declarations, preparing for and attending the hearing
28 on the Motion, working with the settlement administrator and Defendants to implement the
settlement, fielding calls and conferring with Class Members, and reporting to the Court on
such activities. Gundzik Decl., ¶ 63.

1 implement a complicated formula to determine the amount of unreimbursed expenses
2 incurred by the class members. *Id.*

3 **b. Class Counsel Displayed Skill in Presenting the Issues.**

4 Class Counsel's past experience gave them knowledge as to how medical personnel
5 perform their jobs, as well as the ancillary time that these employees need to spend on other
6 tasks necessary to perform their work. Gundzik Decl., ¶ 75. Their past experience also gave
7 them knowledge as to how to find additional sources of evidence. *Id.* And, they knew how to
8 seek and calculate the amount of unreimbursed mileage and nonproductive time at issue.
9 They were able to do so because of their creative approach in the seeking, sampling and
10 review of records, as well as their proactive approach to handling the case. *Id.*

11 Class Counsel also had to be creative in their approach to settlement. Gundzik Decl.,
12 ¶ 76. They were well-aware of the value of the case and relied upon the damages assessment
13 they created based on their investigation. *Id.* And, they risked the possibility of not arriving
14 at a settlement and Defendants not being able to pay a judgment, as the settlement was
15 reached only after a lengthy full-day mediation. *Id.*

16 By means of their approach and hard work, Class Counsel were able to obtain a very
17 successful outcome for the Class. As a result of the settlement, if approved, all of the Class
18 Members will be receiving a settlement payment in an average amount of \$11,743.22.
19 Salinas Decl., ¶ 16.

20 **c. The Litigation Precluded Other Employment.**

21 Despite the risks presented by Defendants' various arguments and defenses, Class
22 Counsel invested substantial time and expense in the lawsuit, with no guarantee of
23 compensation or reimbursement. Gundzik Decl., ¶¶ 65-66. That investment precluded them
24 from spending time on other matters so that Class Counsel could devote attention to this
25 case. *Id.* Class Counsel took this case on a contingent-fee basis against a large business
26 represented by a reputable defense firm. Class Counsel are both small firms with few
27 attorneys and staff. *Id.*

1 **d. The Contingent Nature of the Fee Award.**

2 Class Counsel agreed to work on this case on a contingency basis. If they had not
3 successfully settled the case, they would not have earned any fees or recouped the
4 substantial litigation expenses that they incurred. Gundzik Decl., ¶ 64, and Ex. 4 thereto.
5 The courts have recognized that higher attorneys' fees are justified in contingency matters
6 because of the contingent nature of their recovery. *See Ketchum v. Moses*, 24 Cal.4th 1122,
7 1132 (2001).

8 Class action contingency cases are inherently risky. Upon retention, class counsel
9 makes a commitment to litigate the case through trial. These types of cases can take years,
10 hundreds of hours of work and cost an enormous amount of money—risks which are
11 unknown upon retention. Here, there were significant risks because a settlement of the type
12 Class Counsel achieved was by no means a forgone conclusion at the time Class Counsel
13 agreed initiate the lawsuit.

14 To date, Class Counsel has not received any compensation and has expended
15 significant litigation costs on behalf of the Class. The risks involved, coupled with the
16 contingency basis of this case, further support Class Counsel's request for attorneys' fees
17 and costs.

18 **e. Experience, Reputation, and Ability of Plaintiff's Counsel.**

19 As set forth above and in the Declarations of Aaron Gundzik and Daniel Holzman,
20 Class Counsel's skill and experience in litigating wage and hour class actions and
21 employment matters, in state and federal forums, contributed to the results obtained on
22 behalf of the putative Class Members. They have significant experience litigating wage and
23 hour class actions, have significant experience working at well-respected law firms, and
24 have been practicing law for many decades. Gundzik Decl., ¶¶ 49-52; Holzman Decl., ¶¶ 2-
25 5.

26 **f. Results Obtained on Behalf of the Class.**

27 An award of attorneys' fees should reflect the successful outcome of the case.
28 *Hensley v Eckerhart*, 461 U.S. 424, 440 (1983), abrogated in part as stated in *McKee v.*

1 *Comm'r of Soc. Sec.*, 2008 U.S. Dist. LEXIS 86793 (M.D. Fla. 2008), superseded by statute
2 as stated in *Laube v. Allen*, 506 F. Supp. 2d 969 (M.D. Ala. 2007). As already discussed
3 herein and in the Motion for Preliminary Approval, this case involves numerous and
4 difficult issues requiring a highly technical analysis and largely precluding a clear-cut
5 outcome as to liability. There also were significant issues regarding Defendants' ultimate
6 liability, as Defendants consistently denied that they violated California's labor laws. In fact,
7 Defendants raised a colorable legal or factual defense to each claim Plaintiff alleged.
8 Gundzik Decl., ¶ 37.

9 Nevertheless, despite these obstacles, Class Counsel obtained significant financial
10 compensation for the Class Members. Defendants will pay a gross settlement amount of
11 \$1,675,000. Gundzik Decl., ¶ 21, Ex. 1, at ¶ I. After payment of attorneys' fees and costs,
12 claims administration, and the service and release payment, the remainder of the Net
13 Settlement Amount that will be paid out to Class Members will be approximately of
14 \$1,035,958.36. Gundzik Decl., ¶ 22. Despite the complexity of the case, Class Counsel
15 have, through the investment of substantial effort, and the resources of their law firm, been
16 able to secure an outstanding settlement on behalf of the Class Members.

17 **g. Reaction of Putative Class Members.**

18 As already discussed herein, the reaction of the Class Members has been very
19 positive. Specifically, none of the Class Members objected to Class Counsel's request for
20 attorneys' fees, which also provide compelling evidence that the request is fair, adequate
21 and reasonable. Salinas Decl., ¶ 12.

22 In sum, based on the six factors discussed above, Class Counsel's requested fees
23 should be awarded.

24 **H. Class Counsel's Requested Costs are Reasonable.**

25 The settlement provides for repayment of Class Counsel's actual and reasonable
26 costs of litigation in an amount not to exceed \$40,000. Gundzik Decl., ¶ 21, Ex. 1, ¶ I. Class
27 Counsel incurred reasonable litigation costs in bringing this matter to a resolution before
28 trial. The total out-of-pocket costs incurred and to be incurred by Class Counsel in this

1 litigation are \$13,958.36. Gundzik Decl., ¶ 64, and Ex. 4; Holzman Decl., ¶ 10, and Ex. A.
2 Class Counsel are therefore seeking an award of their costs in the amount of \$13,958.36.

3 **I. The Settlement Administrator's Requested Expenses are Reasonable.**

4 Plaintiff retained a neutral third-party administrator, Phoenix, to administer the
5 notice and claims process. Phoenix's duties included and include, among other things: (a)
6 printing and mailing the Notice of Settlement to all Class Members; (b) locating updated
7 addresses for Class Members; (c) receiving other communications about the settlement; (d)
8 preparing weekly reports notifying the parties of the number of class members who filed
9 objections or requests for exclusion; and (e) notifying the parties of the number of Class
10 Members who filed untimely or deficient requests for exclusion, and taking steps to cure the
11 deficiencies. Salinas Decl., ¶ 3. Phoenix will be charging \$6,750 to perform this work,
12 which is the amount it estimated in connection with the Motion for Preliminary Approval.
13 Salinas Decl., ¶ 17. Because this amount is reasonable in light of the administrator's
14 significant duties, it should be approved.

15 **IV. CONCLUSION**

16 For the foregoing reasons, Plaintiff, on behalf of herself and the Class, respectfully
17 requests that the Court grant final approval of the settlement, award a service and release
18 payment to the named Plaintiff in the amount of \$10,000, approve of the payment to the
19 LWDA in the amount of \$37,500 and \$12,500 to the Aggrieved Employees, award
20 attorneys' fees in the amount of \$558,333 and Class Counsel's costs in the amount of
21 \$13,958.36, and award the Settlement Administrator its fees in the amount of \$6,750, all of
22 which will be paid from the Gross Settlement Amount.

23
24 DATED: August 10, 2023

GUNDZIK GUNDZIK HEEGER LLP

25
26 By: 

Rebecca G. Gundzik
Attorneys for Plaintiff Mary Beth Hughes,
individually and on behalf of all others
similarly situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On August 10, 2023, I served the following document described as

- **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served to the names and email addresses listed on the Service List attached hereto.

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on August 10, 2023, at Sherman Oaks, California.



Nicole Salazar

Case Anywhere Electronic Service List

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Case Info: **21STCV30732, Los Angeles Superior Court**

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