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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TODD ALTSCHULER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., an Illinois corporation; and
DOES 1 through 25,

Defendant.

Case No.: 21STCV06933
Assigned to Hon. Stuart M. Rice
Department SSC-1

**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, Todd
Altschuler and Jarrod Salinas of Phoenix
Settlement Administrators; [Proposed]
Order and [Proposed] Judgment]

Date: May 3, 2023
Time: 10:30 a.m.
Place: Department SSC-1

Complaint Filed: February 23, 2021

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

2 **PLEASE TAKE NOTICE** that on May 3, 2023, at 10:30 a.m. in Department 1 of
3 the above-entitled Court, located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff
4 Todd Altschuler 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 (\$4,000,000);

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

10 3. Approving of the payment of settlement administration costs of \$26,000 to
11 the third-party settlement administrator, Phoenix Settlement Administrators ("Phoenix" or
12 "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 aggrieved employees;

17 5. Approving the payment of attorneys' fees of \$1,333,333, which is one-third
18 of the gross settlement amount, and costs and expenses of \$14,216.66 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 Todd Altschuler, the Declaration of Jarrod Salinas, on behalf
26 of the Settlement Administrator, Phoenix, the pleadings and other papers filed in this action,
27 and such further argument or evidence as may be considered at the hearing on the 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: April 10, 2023 GUNDZIK GUNDZIK HEEGER LLP

By: 
Rebecca G. Gundzik
Attorneys for Plaintiff Todd Altschuler,
individually and on behalf of all others
similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On November 28, 2022, this Court granted preliminary approval to the wage and
4 hour class and Private Attorneys' General Act ("PAGA") action settlement of four million
5 dollars (\$4,000,000) that is the subject of this Motion. In doing so, the Court preliminarily
6 concluded that the proposed settlement is fair and reasonable, preliminarily appointed the
7 named Plaintiff as the Class Representative, and preliminarily appointed Aaron C. Gundzik
8 and Rebecca Gundzik of Gundzik Gundzik Heeger LLP and Daniel Holzman of Caskey &
9 Holzman as Class Counsel. As ordered, notice of the proposed settlement has been
10 distributed to all 3,861 Class Members.¹ Declaration of Jarrod Salinas ("Salinas Decl."), ¶¶
11 8-9. Only three class members have opted out of the settlement, and no objections have been
12 received. Salinas Decl., ¶¶ 11-12.

13 As this Court is aware, this is a putative wage and hour class action filed by Plaintiff
14 Todd Altschuler against Defendant Sedgwick Claims Management Services, Inc.
15 ("Defendant" or collectively "Sedgwick") on behalf of a class consisting of Defendant's
16 work from home employees. Generally, the terms of the parties' settlement require
17 Defendant to pay the sum of \$4,000,000. By this Motion, Plaintiff seeks approval for the
18 distribution of these funds to the Class, less a service and release payment to the named
19 Plaintiff, attorneys' fees and costs, a payment to the LWDA, a payment to the aggrieved
20 employees and settlement administration expenses. If this Motion is granted in full,
21 approximately 3,858 Class Members will receive a class settlement payment resulting in
22 individual gross class settlement payments to Class Members ranging between \$0.99 and
23 \$2,080.02, and the average class settlement payment will be in the amount of approximately
24 \$665.23 Salinas Decl., ¶ 17.

25
26
27 ¹ Upon receipt of the Class Data from Defendant, Plaintiff learned that the class size is 3,861
28 instead of 3,740, 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 allegations: During the Class Period, Sedgwick has
7 been in the business of providing claims management services to its customers in California
8 and elsewhere. Declaration of Aaron C. Gundzik ("Gundzik Decl."), ¶ 11. Plaintiff is currently
9 employed by Sedgwick as a Disability Representative Senior. He has worked for Sedgwick
10 since 2009. *Id.* He has worked from home since about 2013. *Id.*

11 Plaintiff alleged that during most of the Class Period, which begins on February 23,
12 2017, Defendant did not reimburse him and other class members at all for their home
13 internet and telephone and other expenses. Gundzik Decl., ¶ 12. In or about March 2020,
14 most Sedgwick employees in California began working from home due to the pandemic. *Id.*
15 In about March 2021, Sedgwick adopted a policy that provides for reimbursement of work-
16 from-home employees' home internet and telephone at a rate of up to \$40 per month. *Id.*
17 This policy was not retroactive, and employees could not seek reimbursement for such
18 expenses incurred prior to February 2021. *Id.* Notwithstanding this policy, Plaintiff contends
19 that the time-consuming process for seeking reimbursement discourages many employees
20 from doing so and as a result, the vast majority of work-from-home employees still did not
21 receive expense reimbursements from Sedgwick. *Id.*

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

23 Plaintiff Todd Altschuler filed his initial complaint against Defendant on February
24 23, 2021. Gundzik Decl., ¶ 5. On May 21, 2021, Plaintiff filed his First Amended
25 Complaint, which is the operative complaint and which asserts causes of action for: (1)
26 failure to reimburse necessary expenditures; (2) violation of the Unfair Practices Act, Cal.
27 Bus. & Prof. Code §§ 17200, et seq.; and (3) recovery of civil penalties under the California
28 Labor Code Private Attorneys' General Act ("PAGA"). Gundzik Decl., ¶ 6.

1 On June 9, 2022, Plaintiff’s counsel, co-counsel Daniel Holzman, their client Todd
2 Altschuler, Defendant and Defendant’s counsel attended a mediation session with well-
3 respected mediator, Gig Kyriacou, via Zoom. Gundzik Decl., ¶13. Plaintiff participated in
4 the mediation via Zoom and was available to answer questions for the entire day. The case
5 did not settle at the mediation. On June 17, 2022, the mediator issued a settlement proposal
6 to the parties, which was accepted by the parties in early July 2022. *Id.*

7 In connection with formal discovery and as a result of the dissemination of a *Belaire-*
8 *West* notice to a sample of the putative class members, Plaintiff has been able to extensively
9 investigate his claims against Defendant. Gundzik Decl., ¶ 7. Plaintiff’s counsel obtained
10 from Defendant and then reviewed and analyzed numerous handbooks and policies and
11 other documents and information on class member reimbursements. *Id.* They also obtained
12 class member contact information and interviewed approximately 90 class members. *Id.* And
13 they investigated and compiled publicly available information about Defendant. *Id.* And
14 they negotiated extensively with Defendant regarding the mediation, its scope, and the
15 information to be exchanged in connection with the mediation. Gundzik Decl., ¶ 8.

16 As a result of these negotiations, Defendant provided additional information
17 including, the number of Class Members and PAGA Aggrieved Employees, total Class
18 Member work from home months, total PAGA Aggrieved Employee work from home
19 months, and the types and amounts of expense reimbursements made to the Class during the
20 Class Period. Gundzik Decl., ¶ 8. Based on this information, as well as information provided
21 by the Plaintiff, Plaintiff’s counsel created an extensive damages model. Gundzik Decl., ¶ 9.

22 **C. Plaintiff’s Counsel’s Estimate of Potential Recovery**

23 The First Cause of Action is for failure to reimburse employees for necessary
24 expenses in violation of Labor Code section 2802. Gundzik Decl., ¶ 21. That section
25 provides, in part: “An employer shall indemnify his or her employee for all necessary
26 expenditures or losses incurred by the employee in direct consequence of the discharge of
27 his or her duties, or of his or her obedience to the directions of the employer.” Cal. Lab.
28 Code § 2802(a). Plaintiff contends that all class members have worked from home for

1 Defendant at some point during the Class Period, that they worked from home at the
2 direction of Defendant and that they incurred certain expenses that were necessary for them
3 to perform their jobs. *Id.* There are five components to this claim: (1) internet and telephone;
4 (2) supplies and equipment; (3) home power; (4) home rent; and (5) mileage. *Id.* Prior to
5 mediation, defense counsel advised us that during the Class Period, approximately 3,740
6 employees worked from home at some point during the class period and that the total
7 number of work from home months was 81,729. *Id.* Defendant also advised that during the
8 Class Period, it has provided some internet/phone reimbursements to employees and that the
9 average amount paid for a month was \$64.07. *Id.* Based upon these figures, Plaintiff
10 contended Defendant should have paid class members a total of \$5,236,377 during the Class
11 Period for internet and telephone expenses. *Id.*

12 The claim for equipment and supplies encompasses furniture, electronic equipment
13 and office supplies. Gundzik Decl., ¶ 21. In interviews, class members reported having to
14 purchase desks, chairs and other equipment at the cost of about \$150 per class member. *Id.*
15 Accordingly, Plaintiff estimated the maximum value of the reimbursements owed for
16 supplies and equipment is \$561,000 ($\$150 \times 3,740$ class members = \$561,000). *Id.*

17 Employees also had to use electricity to power their computers and other devices
18 while they worked from home. Gundzik Decl., ¶ 21. To estimate the value of this portion of
19 the claim, based upon information obtained from Class Members, Plaintiff's counsel
20 assumed an average power bill of about \$300 and assumed that approximately 5% of the
21 monthly power usage was necessary for work. *Id.* Thus, the maximum total owed on this
22 part of the claim was estimated to be \$1,225,935 ($\$300 \times 5\% \times 81,729$ months).

23 Plaintiff contended that the Class should be reimbursed for the cost of their home
24 offices. Gundzik Decl., ¶ 21. To estimate the potential value of this claim, Plaintiff's counsel
25 assumed that Class Members worked from home in a 50 square foot area. *Id.* According to
26 Zillow, the average rental rate in California as of December 2020 was \$2.015 per square
27 foot. *Id.* Thus, the estimated monthly value per Class Member is \$100.75 ($\2.015 per sq. ft.
28

1 x 50 sq. ft. = \$100.75) and the total value to the Class was estimated to be about \$8.2
2 million (\$100.75 x 81,729 months = \$8,234,196.75). *Id.*

3 The final aspect of the reimbursement claim is for vehicle mileage. Gundzik Decl., ¶
4 21. Because most Class Members reported that they were reimbursed for mileage, Plaintiff
5 estimated that this claim has a maximum value of about \$100,000 and the minimum value is
6 zero. *Id.*

7 Plaintiff's damages analysis also considered that Defendant had made some
8 reimbursements to employees for some expenses incurred during the class period. Gundzik
9 Decl., ¶ 21. Such reimbursements total \$1,024,960 (\$429,878.13 for supplies and equipment
10 and \$595,082.16 for internet and telephone) and must be subtracted from the estimated
11 maximum value. *Id.* Accordingly, based upon the forgoing, the estimated maximum value of
12 the First Cause of Action was estimated to be \$14,332,550 (\$5,236,377 + \$8,234,198 +
13 \$561,000 + \$1,225,935 + \$100,000 - \$1,024,960 = \$14,332,550). *Id.*

14 In assessing the value of this cause of action, Plaintiff's counsel also considered the
15 strength of Sedgwick's defenses to this claim. Gundzik Decl., ¶ 22. They were particularly
16 concerned about the legal viability of claims for power and home office rental value, as they
17 were unable to find any precedent supporting these aspects of the claim. *Id.* Moreover, all
18 aspects of this claim, and in particular the claims to entitlement for reimbursement of power,
19 rent and supplies and equipment, might require the determination of too many individual
20 issues to justify class certification. *Id.* As a result, Plaintiff's counsel estimates that this
21 cause of action has a minimum value of about \$2 million.

22 The Second Cause of Action is for violation of Business & Professions Code section
23 17200, *et seq.* Gundzik Decl., ¶ 23. The purpose of this cause of action is to extend the
24 statute of limitations for Plaintiff's First Cause of Action from three years to four years. *Id.*
25 Thus, because this cause of action is derivative of Plaintiff's First Cause of Action, the
26 damages available under this cause of action have already been analyzed or are duplicative
27 of the damages discussed above. *Id.*

1 The Third Cause of Action is for recovery of civil penalties under PAGA for the
2 forgoing alleged Labor Code violations. Gundzik Decl., ¶ 24. The PAGA claim is limited in
3 time to one year. The strength of the PAGA claim would be impacted by the factors
4 discussed above for the non-PAGA claims. *Id.* Unlike the Labor Code's requirements for
5 timing of wage payments, Labor Code section 2802 does not specify when reimbursement
6 payments are due. *Id.* Thus, while there is a possibility of a higher PAGA recovery,
7 Plaintiff's counsel believes it to be most likely that the Court would find one violation per
8 employee. *Id.* Moreover, Plaintiff's counsel concluded that even if Plaintiff was successful
9 on this claim through trial, the Court may well have exercised its discretion under PAGA
10 and significantly reduced the penalties. *Id.*; Cal. Labor Code §2699(e)(2). In addition, the
11 settlement was primarily directed at recovering unpaid expense reimbursements and
12 associated penalties and interest and the bulk of the settlement funds were intended to
13 compensate for these unpaid amounts. *Id.* Based on these factors, Plaintiff's counsel
14 estimated that the maximum reasonable value of the PAGA claim is \$358,600. *Id.* This
15 amount assumes a \$100 penalty for each employee (\$100 x 3,586 PAGA employees =
16 \$358,600). And Plaintiff's counsel estimates that the minimum value of the PAGA cause of
17 action is nothing. Plaintiff's counsel therefore concluded that the \$50,000 that the parties
18 allocated to PAGA, \$37,500 of which will be paid to the LWDA, is a reasonable settlement
19 of that claim. *Id.*

20 Based upon the forgoing, Plaintiff's counsel determined that the class claims in this
21 case had a minimum value of \$2 million and a maximum estimated value of about \$14.3
22 million, not including the PAGA penalties. Gundzik Decl., ¶ 25. Assuming a class of 3,861,
23 the reasonable estimate of the average amount that Class members could have obtained if
24 Plaintiff prevailed at trial on behalf of the entire Class, if the Class was certified, would be a
25 minimum of about \$534.75 and a maximum of about \$3,832.23. *Id.* However, the maximum
26 amount is almost never recovered at trial and never in a settlement. *Id.* Settlements, by their
27 nature, must account for the weaknesses in a plaintiff's case, which are discussed above. *Id.*

1 Indeed, because Defendant raised a colorable legal or factual defense to each of the claims
2 Plaintiff alleged, it is possible that, after trial, the Class would recover nothing. *Id.*

3 The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.*, 72 Cal.
4 App. 5th 56, 77 (2021), because “it is fair, reasonable, and adequate in view of PAGA’s
5 purposes to remediate present labor law violations, deter future ones, and to maximize
6 enforcement of state labor laws.” Gundzik Decl., ¶ 26. In the settlement, \$50,000 is
7 allocated to Plaintiff’s PAGA claim. In conjunction with the class settlement, this settlement
8 will serve to remediate Defendant’s alleged Labor Code violations. *Id.* Given that Defendant
9 will be paying \$4,000,000 as a result of the alleged violations, the class and PAGA
10 settlement is a large disincentive for Defendant to engage in similar Labor Code violations
11 in the future. *Id.* And, because Defendant is aware that Plaintiff’s counsel have spoken with
12 many Class Members and aggrieved employees as a result of the litigation and because all
13 Class Members will receive a Class Notice with contact information for Plaintiff’s counsel,
14 those employees will know to contact Plaintiff’s counsel in the future if Defendant attempts
15 to engage in similar practices. *Id.* These factors—the payment of a large sum and employee
16 notice of violations and potential violations—serve to maximize enforcement of state labor
17 laws. *Id.* Also, unlike in *Moniz*, here there is no unsubstantiated and disproportionate
18 allocation of civil penalties between different groups of employees. *Id.* All Aggrieved
19 Employees will receive an allocation of PAGA civil penalties based on the number of
20 qualifying months that they worked for Defendant. *Id.*

21 **D. The Settlement Negotiations**

22 On June 9, 2022, Plaintiff’s Counsel (Aaron Gundzik and Rebecca Gundzik), co-
23 counsel Daniel Holzman and Plaintiff Todd Altschuler, as well as Defendant and
24 Defendant’s counsel, attended a mediation session with Gig Kyriacou. Mr. Kyriacou has
25 substantial experience mediating wage and hour class actions like this one. The case did not
26 settle at the mediation. However, the mediator continued to engage the parties and their
27 counsel. On June 17, 2022, the mediator issued a settlement proposal to the parties. The
28

1 proposal, which is the settlement currently before the Court, was accepted by the parties in
2 early July 2022. Gundzik Decl., ¶ 13.

3 The terms of the Settlement were memorialized in the Class Action and PAGA
4 Settlement Agreement and Class Notice, which were thereafter amended by the parties' First
5 Amended Class Action and PAGA Settlement Agreement and Class Notice ("Settlement
6 Agreement"). Gundzik Decl., ¶ 18, and Ex. 1 thereto. Among other things, the settlement
7 requires Defendant to pay \$4,000,000 in full settlement of the action. Gundzik Decl., ¶¶ 18-
8 19, and Ex. 1 thereto. The settlement was negotiated at arms' length and was in no sense
9 collusive. Gundzik Decl., ¶ 14.

10 Plaintiff and Plaintiff's counsel have concluded, after taking into account the sharply
11 disputed factual and legal issues involved in the lawsuit, the risks attending further
12 prosecution, and the substantial benefits to be received pursuant to the compromise and
13 settlement of the action, that the settlement is in the best interests of Plaintiff and the Class
14 and is fair and reasonable. Gundzik Decl., ¶¶ 27-29. Plaintiff and Plaintiff's counsel also
15 considered the possibility that the Class would not be certified, that even if certified Plaintiff
16 might not prevail at trial, as well as the additional delay in recovery for Class Members if
17 the settlement were rejected and the case went to trial. Gundzik Decl., ¶¶ 27-28.

18 **E. The Representative Plaintiff's Involvement and Release**

19 Both before and after deciding to become class representatives and take on the
20 lawsuit, Plaintiff Todd Altschuler met with and engaged in lengthy conversations with Class
21 Counsel about all aspects of the case, his employment, and his job and job duties for
22 Defendant. Declaration of Todd Altschuler ("Altschuler Decl."), ¶ 15. He was prompt and
23 responsive and spoke with Class Counsel's office many times regarding the case, the
24 mediation and the settlement. Altschuler Decl., ¶¶ 15-16. He identified relevant witnesses to
25 Class Counsel and provided Class Counsel with relevant documents. *Id.* He spoke with other
26 employees regarding their treatment while employed by Defendant and provided this
27 information to Class Counsel. *Id.* He was proactive and requested regular updates from
28

1 Class Counsel and inquired as to how class actions worked so he could understand the
2 process. *Id.*

3 To assist Class Counsel, Plaintiff reviewed and collected all of his documents in
4 connection with his employment for Defendant. Altschuler Decl., ¶ 16. He spent a great
5 deal of time assisting Class Counsel identifying witnesses, consulting with Class Counsel in
6 advance of the mediation, and he missed a full day of work to attend and participate in the
7 mediation. *Id.* And he had several meetings with Class Counsel to discuss the proposed
8 settlement, the initial settlement agreement and the amended settlement agreement. *Id.* In all,
9 Plaintiff spent in excess of 80 hours on the lawsuit. *Id.*

10 Filing the lawsuit posed risks for Mr. Altschuler. Altschuler Decl., ¶ 13. He
11 understood that if the class action was unsuccessful, he could be responsible for Defendant's
12 litigation costs, which could have been substantial. *Id.* He was concerned that he could be
13 treated poorly by his employer because he is still employed by Defendant. *Id.* He was also
14 concerned about the attention a publicly-filed lawsuit, and especially a class action, would
15 attract, as his name would be associated with a lawsuit that he has filed against his
16 employer. *Id.* He was aware that it is possible and relatively easy to perform background
17 checks of publicly-filed documents on the internet and was concerned that future
18 prospective employers and others might find out that he had sued Sedgwick, which could
19 hurt his future job prospects and business relationships. *Id.*

20 In addition, the settlement agreement required Mr. Altschuler to sign a release which
21 is broader than the release that will bind other Class Members and requires him to waive
22 Section 1542 of the California Civil Code. Gundzik Decl., ¶¶ 20, 80, Ex. 1, ¶ 5.1.1.

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

24 On November 28, 2022, the Court granted preliminary approval to the settlement of
25 this matter. See Gundzik Decl., ¶ 32, Ex. 2. The terms of the settlement are more specifically
26 set forth in the parties' Settlement Agreement. Gundzik Decl., ¶ 21, Ex. 1.

27 The provisionally-certified settlement class is defined as "all employees of
28 SEDGWICK who have worked from home in California at any time during the Class Period

1 (February 23, 2017 to November 28, 2022).” Gundzik Decl., ¶ 18, and Ex. 1, ¶¶ 1.5, 1.112.

2 There are 3,858 participating Class members. Salinas Decl., ¶¶ 6, 11.

3 The Settlement Agreement provides that Defendant will pay a gross settlement amount
4 of \$4,000,000 (“Gross Settlement Amount”). Gundzik Decl., ¶ 18, Ex. 1, ¶ 3.1. Defendant is
5 required to deliver the Gross Settlement Amount to Phoenix within twenty (20) days after
6 the Effective Date (which is the date of entry of the order of the Final Approval Order if no
7 objection is filed). Gundzik Decl., ¶ 18, Ex. 1, ¶¶ 1.18, 4.3.

8 **G. Notice of Preliminary Settlement Provided to the Settlement Class and**
9 **the Claims Process**

10 Pursuant to the time-table established in the Settlement Agreement and previously
11 approved by this Court, Phoenix mailed the Notice of Proposed Class Action Settlement
12 (“Notice of Settlement”) to 3,861 Class Members on January 6, 2023. Salinas Decl., ¶ 8. As
13 a result of this mailing, Phoenix has provided all of the Class Members with a notice of the
14 settlement which calculates the approximate value of their settlement payment and
15 information on how to opt out of and object to the proposed settlement. Salinas Decl., ¶¶ 7-
16 9.

17 ➤ On or about December 28, 2022, Phoenix received from Defendant complete
18 information including the names, last known addresses, work from home months
19 Social Security numbers for 3,861 class members.

20 Salinas Decl., ¶ 6.

21 ➤ On December 30, 2022, Phoenix completed a National Change of Address
22 (NCOA) search for new addresses.

23 Salinas Decl., ¶ 7.

24 ➤ On January 6, 2023, the Notices of Settlement were mailed to the 3,861 Class
25 Members at the most recent addresses available to Phoenix. The notices provided
26 information about the action, the proposed settlement and instructions on how to
27 opt out, object, or obtain further information. The notices advised Class Members
28 that any objections or opt outs had to be postmarked within 45 days of the notice

1 date.

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

3 ➤ Subsequent to these mailings, 68 notices were returned after the initial mailing,
4 65 of those were re-mailed, and 10 were determined to be undeliverable.

5 Salinas Decl., ¶¶ 8-10, 14, and Exs. A and C thereto.

6 ➤ Phoenix has received three opt-out requests but no objections. Class Counsel has
7 not received any opt-out requests or objections to the proposed settlement.

8 Salinas Decl., ¶¶ 11-12; Gundzik Decl., ¶ 35.

9 ➤ During the notice process, there were 17 disputes from Class Members regarding
10 the number of their Work From Home Months. All but one of those disputes was
11 accepted. There are no outstanding disputes regarding the settlement.

12 Salinas Decl., ¶ 13.

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

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

- 17 • Settlement administration costs, in the amount of \$26,000, to Phoenix;
- 18 • A service and release payment in the amount of \$10,000 to Plaintiff Todd
19 Altschuler;
- 20 • An allocation of \$50,000 to Plaintiff’s PAGA claims (the “PAGA Amount”),
21 \$37,500 of which will be paid to the California Labor and Workforce
22 Development Agency, and the remaining \$12,500 of which will be
23 distributed to the Aggrieved Employees.
- 24 • Class Counsel’s attorneys’ fees, in the amount of \$1,333,333, which is one-
25 third of the gross settlement amount;
- 26 • Class counsel’s costs of \$14,216.66;
- 27 • The remainder of the gross settlement amount (the “Net Settlement
28 Amount”), in the amount of approximately \$2,566,450.34, will be distributed

1 to Class Members based on the formula contained in the Settlement
2 Agreement (which is based on their number of Work From Home Months
3 during the Class Period).

4 Gundzik Decl., ¶ 18, Ex. 1, ¶ 3.2.4.

5 **I. Determination of Settlement Payments to Individual Class Members and**
6 **PAGA Employees**

7 The Settlement Agreement provides that all payments to Class Members shall be
8 made by the Settlement Administrator, based on the number of Work From Home Months
9 that each Class Member worked during the Class Period. Gundzik Decl., ¶ 18, and Ex. 1, ¶
10 3.2.4.

11 ➤ Phoenix determined each Class Member's "Payout Ratio" by dividing his or her
12 Individual Work From Home Month Number by the Aggregate Work From Home
13 Month Number. The "Total Potential Settlement Award" for each Class Member
14 was then calculated by multiplying the Payout Ratio by the Net Settlement
15 Amount. The amount of the individual settlement payment was then indicated on
16 each Class Member's Notice.

17 Salinas Decl., ¶ 15.

18 ➤ Based on these calculations, Phoenix determined the estimated amount of the
19 class settlement payment due to each Class Member. The approximate range of
20 class settlement pay-outs is expected to be between \$0.99 and \$2,080.02, and the
21 average class settlement payment will be in the amount of approximately
22 \$665.23.

23 Salinas Decl., ¶ 17.

24 The Settlement Agreement also provides that all payments to Aggrieved Employees
25 shall be made by the Settlement Administrator, based on the number of Work From Home
26 Months that each Aggrieved Employee worked during the PAGA Period. Those payments
27 were calculated by:

28

1 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of
2 \$12,500 by the total number of PAGA Period Work From Home Months for all
3 Aggrieved Employees during the PAGA Period and multiplying the result by each
4 Aggrieved Employee's PAGA Period Work From Home Months.

5 Salinas Decl., ¶ 16.

6 ➤ Based on these calculations, Phoenix determined the estimated amount of the
7 PAGA settlement payment due to each Aggrieved Employee. The approximate
8 range of PAGA settlement pay-outs is expected to be between \$.01-and \$5.97.

9 Salinas Decl., ¶ 17. PAGA

10 ➤ The payments to Settlement Class Members will be characterized as 50%
11 unreimbursed expenses, 25% interest and 25% penalties. No portion of the
12 Individual Class Payments shall be subject to wage withholdings. The interest and
13 penalty portions will be reported on IRS 1099 Forms.

14 Salinas Decl., ¶ 17.

15 As determined by Phoenix, the Aggregate Work From Home Month total is 85,303.06.

16 Salinas Decl., ¶ 15. The Settlement Agreement includes an escalator clause that is triggered if
17 the Aggregate Work From Home Months is greater than 89,902. Gundzik Decl., Ex. 1, ¶ 8.
18 Accordingly, the escalator clause was not triggered.

19 **J. Proposed Release of Defendant by Class Members**

20 If the Court gives final approval to the proposed settlement, the Settlement
21 Agreement provides that the Court shall enter a final approval Order ("Final Approval
22 Order") and a judgment implementing the release of the released claims as described in the
23 Settlement Agreement. Gundzik Decl., ¶ 18, Ex. 1, ¶ 5. As part of the Final Approval Order
24 and judgment, Class Members who do not opt out will be deemed to have released the
25 specific Released Claims. Gundzik Decl., ¶ 18, Ex. 1, ¶ 5. The release applicable to the
26 Class Members provides:

27 All Participating Class Members, on behalf of themselves and their respective
28 former and present representatives, agents, attorneys, heirs, administrators,

1 successors, and assigns and estates, release Released Parties from any and all
2 claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,
3 attorneys' fees, damages, interest, restitution, penalties, action or causes of action,
4 and liabilities, including costs, expenses, penalties, and attorneys' fees, in law or
5 equity, for causes of action alleged in the operative complaint and for any other
6 claims or causes of action that could have been alleged based upon the facts
7 alleged in the operative complaint ("Released Claims"). The Released Claims
8 include, without limitation, claims for failure to reimburse for necessary business
9 expenses, including but not limited to mileage, home internet, home telephone,
10 cellular telephone, home utilities, office supplies and equipment, and cost of space
11 for home office, and claims for unfair business practices for the forgoing alleged
violations, as well as any other state or federal law, statute, regulation, or
ordinance imposing liability and/or obligations that could be brought based on the
factual allegations in the Operative Complaint. This release shall run through the
Class Period. Except as set forth in Section 5.3 of this Agreement, Participating
Class Members do not release any other claims, including claims for vested
benefits, wrongful termination, violation of the Fair Employment and Housing
Act, unemployment insurance, disability, social security, workers' compensation,
or claims based on facts occurring outside the Class Period.

12 Gundzik Decl., ¶¶ 18; Ex. 1, ¶ 5.2. The Settlement defines "Released Class Claims" as "the
13 claims being released as described in Paragraph 5.2 below." Gundzik Decl., ¶¶ 18, Ex. 1, ¶
14 1.39. This release does not include any claims that are outside of the scope of the claims and
15 facts alleged in the operative pleadings and does not include the Released PAGA Claims. *Id.*

16 The release applicable to the Aggrieved Employees provides:

17 All Participating Class Members and Non-Participating Class Members who are
18 Aggrieved Employees are deemed to release, on behalf of themselves and their
19 respective former and present representatives, agents, attorneys, heirs,
20 administrators, successors, and assigns and estates, the Released Parties from any
21 and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,
22 penalties, attorneys' fees, damages, action or causes of action, and liabilities that
23 could have been recovered under PAGA for violations of Labor Code section
2802 as alleged in Plaintiff's letter to the LWDA dated February 23, 2021 and the
operative complaint, including claims for failure to reimburse for necessary
business expenses, including but not limited to mileage, home internet, home
telephone, cellular telephone, home utilities, office supplies and equipment. This
release shall run through the PAGA Period.

24 Gundzik Decl., ¶¶ 18, Ex. 1, ¶ 5.3.

25 The Settlement Agreement defines "Released Parties" as:

26 SEDGWICK and any of its former or present parents, subsidiaries, affiliates,
27 investors, partners, owners, related organizations, predecessors or successors, and
28 all agents, employees, officers, directors, shareholders, members, managers,
holding companies, insurers, and attorneys thereof, including but not limited to

1 York Risk Services Group, Inc.

2 Gundzik Decl., ¶¶ 18, Ex. 1, ¶ 1.41.

3 The Settlement Agreement does not constitute an admission of the merits of any
4 claim by Plaintiff or the Class or address any defense of Defendant. Gundzik Decl., ¶ 18,
5 Ex. 1, ¶ 12.1.

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

7 The law favors settlement, particularly in class actions and other complex cases in
8 which substantial resources can be conserved by avoiding the time, cost and rigors of formal
9 litigation. *Potter v Pacific Coast Lumber Company*, 37 Cal.2d. 592, 602-603 (1951); *Class*
10 *Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1991). When faced with a motion for
11 final approval of a class action settlement under Code of Civil Procedure § 382, the
12 appropriate inquiry is whether the settlement is “fair, adequate, and reasonable.” *See*
13 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 244-245 (2001); *Dunk v. Ford Motor*
14 *Co.*, 48 Cal.App.4th 1794, 1801 (1996). If so, the settlement should be approved. *Id.* And, “a
15 presumption of fairness exists where: (1) the settlement is reached through arm's-length
16 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
17 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
18 objectors is small.” *Dunk v Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996).

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

21 Before granting preliminary approval of a class and PAGA action settlement, this
22 Court was required to find—and did find—that there is sufficient evidence that the proposed
23 settlement would be fair, reasonable, and adequate, and not a product of fraud, overreaching,
24 or collusion. *See* Gundzik Decl., ¶ 32, Ex. 2; Cal. Rules of Court, Rule 3.769 (g); Cal. Civ.
25 Proc. § 382; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. In order to preliminarily
26 determine that the proposed settlement was fair, reasonable, and adequate, and thus
27 appropriate for preliminary approval, the Court was required to find that the following three
28

1 factors were satisfied: (1) the parties reached settlement after arms-length negotiations;
2 (2) counsel conducted sufficient investigation and discovery to allow themselves and the
3 court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802. *See*
4 *also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146
5 (2000). In applying this determination for the purpose of granting final approval, as
6 discussed below, although not determinative, the Court may also consider the percentage of
7 objectors in determining whether a presumption of fairness exists. *Id.*

8 All of these considerations are satisfied here. The parties conducted significant
9 formal and informal discovery and investigation and participated in a full-day mediation,
10 and thereafter continued to negotiate before arriving at the Settlement Agreement which is
11 the subject of this motion. Gundzik Decl., ¶¶ 7-15, 21-29. Moreover, only three out of 3,861
12 Class Members have opted out of the settlement, and not one Class Member objected to it.
13 Salinas Decl., ¶¶ 11-12.

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

15 There was no collusion between the parties in this case. After discovery and
16 exchange of information and voluminous pages of documents, the parties engaged in
17 mediation with a well-respected and highly knowledgeable wage and hour mediator, Gig
18 Kyriacou. Gundzik Decl., ¶¶ 7-15. The involvement of a neutral third-party mediator is a
19 factor that favors approval and evidences the presumptive fairness of the arms-length
20 negotiations. Indeed, the California Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*
21 expressed that courts should give considerable weight to the competency and integrity of
22 counsel and the involvement of a neutral mediator in assuring themselves that a settlement
23 agreement represents an arms-length transaction entered without self-dealing or other
24 potential misconduct. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008).

25 **C. The Settlement is Supported by Substantial Investigative and Discovery**
26 **Efforts.**

27 As set forth in the Declaration of Aaron Gundzik, Class Counsel engaged in
28 substantial investigation and discovery. This investigation included (1) preparing pleadings

1 and other documents filed with the Court, (2) drafting comprehensive formal discovery, (3)
2 extensively investigating Plaintiff's claims, (4) determining the evidence needed to proceed
3 towards certification, (5) engaging in informal discovery and reviewing and analyzing
4 numerous handbooks, policies and documents regarding Class Member reimbursements,
5 including records and information produced by Defendant, (6) extensively interviewing 90
6 Class Members and obtaining personnel and pay records for some of them, (7) reviewing
7 and analyzing anonymized work from home month information for the proposed Class
8 Members, including Plaintiff, as well as records for the PAGA Aggrieved Employees, (8)
9 investigating and compiling publicly available information about Defendant and its business,
10 (9) negotiating extensively with Defendant regarding the mediation, its scope, and the
11 information to be exchanged in connection with the mediation, (10) working to develop
12 information on potential damages, (11) preparing for and engaging in the mediation, (12)
13 continuing to negotiate with Defendant and the mediator for nearly one month after the day-
14 long mediation, (13) arriving at a settlement and then negotiating and drafting the initial
15 long-form settlement agreement and class notice and amended settlement agreement and
16 class notice, (14) drafting the motion for preliminary approval of the settlement and related
17 documents, (15) drafting supplemental declarations in support of the motion for preliminary
18 approval, and (16) drafting the motion for final approval and related documents. Gundzik
19 Decl., ¶¶ 7-10, 21-29, 46-61, and Ex. 4.

20 Class Counsel's analysis enabled them to pinpoint the relevant issues and claims and
21 to assess potential liability and damages. These efforts resulted in the parties having a clear
22 view of the strengths and weaknesses of their respective cases and achieving a resolution on
23 favorable terms. Gundzik Decl., ¶¶ 7-10, 21-29.

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

26 The endorsement of qualified and well-informed counsel of the settlement as fair is
27 entitled to significant weight. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1802; *Ellis v.*
28 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). As discussed in the motion

1 for preliminary approval papers and the declarations supporting both that motion and the
2 instant motion, Class Counsel have represented, litigated, mediated and settled many other
3 employee class actions in wage and hour litigation and have knowledge of the strengths and
4 weaknesses of the claims against Defendant and the benefits of the proposed settlement
5 under the circumstances of the case. Gundzik Decl., ¶¶ 21-29, 39-42. Class Counsel helped
6 develop the law regarding an employee's right to be separately paid for their nonproductive
7 time, which is one of the bases for Labor Code section 226.2. Gundzik Decl., ¶ 39. Class
8 Counsel believes that the settlement is fair, adequate, reasonable and in the best interests of
9 the Class as a whole. Gundzik Decl., ¶ 29.

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

12 The reaction of the Class to the proposed settlement to date has been extremely
13 positive. Only three of 3,861 Class Members have opted out of the proposed settlement,
14 which is more than 99% participation rate. Salinas Decl., ¶¶ 11-12. Not one Class Member
15 has objected to the proposed settlement. Salinas Decl., ¶ 12.

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

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

25 The Settlement Agreement provides for a service and release payment in the amount
26 of \$10,000 to class representative Todd Altschuler. The purpose of this payment is to
27 provide additional compensation to Plaintiff for the time and effort that he put into the
28 litigation and the settlement of this matter, as well as the risks he undertook by agreeing to

1 sue his former employer.

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

12 The factors enunciated in both *Golba* and *Clark* favor the approval of the requested
13 service and release payment to Plaintiff. He undertook significant risks in getting involved
14 in the lawsuit, fearing that it could impact his current employment. Altschuler Decl., ¶ 13.
15 He understood that if the class action was unsuccessful, he could be responsible for
16 Defendant’ litigation costs, which could have been substantial. *Id.* He was concerned by the
17 attention of a publicly-filed lawsuit, and especially a class action, would attract, as his name
18 would be associated with a lawsuit that he had brought against his employer. He was
19 reasonably concerned about the notoriety that would attend his involvement, as he knew that
20 it is possible and relatively easy to perform background checks of publicly-filed documents
21 on the internet and was concerned that others who he deals with in his business and others
22 with whom he associates might find out that he had sued Defendant. *Id.*

23 Plaintiff spent a significant amount of time on the lawsuit. He had many telephone
24 and Zoom conferences with Class Counsel regarding the case and the mediation. Altschuler
25 Decl., ¶¶ 15-16. And, he had conferences to discuss the proposed settlement with Class
26 Counsel, and to discuss the two versions of the Settlement Agreement and related motions.
27 *Id.*

1 To assist Class Counsel, Mr. Altschuler reviewed and collected all of his documents
2 in connection with his employment for Defendant. Altschuler Decl., ¶ 16. And he spent a
3 great deal of time assisting Class Counsel identifying witnesses, consulting with Class
4 Counsel in advance of the mediation, and he missed a full day of work to attend and
5 participate in the mediation. *Id.* In all, Plaintiff spent in excess of 80 hours on the lawsuit. *Id.*

6 Had he been unwilling to step up, none of the Class Members would have received
7 any amounts whatsoever. By agreeing to serve as the class representative, Mr. Altschuler
8 has taken significant action to protect the interests of the Class, and the Class has
9 significantly benefitted from those actions. *Clark v. American Residential Services LLC*, 175
10 Cal. App. 4th at 804. Although he could have filed a claim with the Department of Labor and
11 possibly received more money, instead of acting in his own self-interest he got involved in
12 this lawsuit to protect the interests of the Class.

13 The additional payment proposed for the named Plaintiff is also intended to
14 compensate him for the broader release that Defendant have demanded of him. While all
15 other Class Members will only be releasing the Released Claims, Plaintiff's release will be
16 broader and will include a Civil Code section 1542 waiver. Gundzik Decl., ¶ 18, Ex. 1, ¶
17 5.1.

18 Awarding larger amounts to class representatives is permissible and is often
19 approved by the courts. See, e.g., *Bell v Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726
20 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing class
21 case). As explained by the court in the *Cellphone Termination Fee Cases*, incentive awards
22 are "intended to compensate class representatives for work done on behalf of the class, to
23 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
24 to recognize their willingness to act as a private attorney general." *Cellphone Termination*
25 *Fee Cases*, 186 Cal.App.4th 1380, 1393-1394 (2010).

26 "Incentive awards are fairly typical in class action cases." *Rodriguez v. West*
27 *Publication Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 Newberg on Class Actions
28 (4th ed. 2002) § 11:38, p. 81); Eisenberg & Miller, Incentive Awards to Class Action

1 Plaintiff: An Empirical Study (2006) 53 UCLA L.Rev. 1303. “Since without a named
2 plaintiff there can be no class action, such compensation as may be necessary to induce him
3 to participate in the suit could be thought the equivalent of the lawyers' nonlegal but
4 essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”
5 *Clark v. American Residential Services LLC*, 175 Cal.App.4th at 804 (fn. omitted), citing
6 *Matter of Continental Illinois Securities Litigation*, 962 F.2d 566, 571 (7th Cir. 1992).
7 Compared to the Net Settlement Amount of \$2,566,450.34 (after deducting the proposed
8 \$10,000 service and release payment), the requested amount of \$10,000 will not appreciably
9 diminish the amount available for distribution to the Settlement Class Members.

10 The additional payment to the named Plaintiff also takes into account the additional
11 risks that he incurred in acting on behalf of the Class. These risks included the potential of a
12 judgment against him if this case had been unsuccessful, as class representatives are deemed
13 the losing party that is liable for the prevailing party's costs. *Earley v. Superior Court*, 79
14 Cal.App.4th 1420, 1433-1434 (2000). Taking that risk here resulted in substantial benefit to
15 the Class. Plaintiff also took the very real risk that this lawsuit would have a negative impact
16 on his future employment. Altschuler Decl., ¶ 13; see, e.g., *Staton v. Boeing*, 327 F.3d 938,
17 977 (9th Cir 2003) (fear of workplace retaliation is one justification behind reasonable class
18 representative incentive payments).

19 If Plaintiff had not come forward or had not agreed to take on the risks of stepping
20 up and taking on the class action, Plaintiff may have recovered compensation for himself,
21 but no compensation would have been received by 3,858 current and former employees who
22 will be receiving an average of \$665.23 as a result of the settlement. Because Plaintiff has
23 advanced California's public policy goal of enforcing wage and hour laws (*See Sav-On*
24 *Drug Stores, Inc. v. Super.Ct.*, 34 Cal.4th 319, 340 (2004)), the Court should approve of the
25 proposed service and release payments to the Representative Plaintiff.

26 **G. The Court Should Approve the Request for Class Counsel's Fees.**

27 Subject to Court approval, the settlement amount of \$4,000,000 includes Class
28 Counsel's attorneys' fees of \$1,333,333. Gundzik Decl., ¶¶ 18, 38, Ex. 1, ¶ 3.2.2;

1 Declaration of Daniel Holzman (“Holzman Decl.”), ¶¶ 6-9. It is well-settled that
2 representative plaintiffs and class members are entitled to recover their attorneys’ fees and
3 costs in wage and hour class action disputes. California Labor Code § 218.5; Cal. Code Civ.
4 Proc. § 1021.5(a); *Earley v. Super. Ct.*, 79 Cal. App. 4th at 1420.

5 A fee award is justified when benefits are obtained for the class irrespective of
6 whether there is a final judgment in its favor, such as when those benefits are the result of a
7 settlement. *See Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-353
8 (1983). “Courts recognize two methods for calculating attorney fees in civil class actions:
9 the lodestar/multiplier method and the percentage of recovery method.” *Wershba v. Apple*
10 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *See Lealao v. Beneficial California, Inc.*,
11 82 Cal.App.4th 19, 27 (2000). In California, both methods are proper, although courts often
12 use a lodestar-multiplier method as a check against the reasonableness of a percentage fee
13 award. *See, e.g., Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 48-49, at fn. 23 (1977);
14 *People ex rel. Dept. of Transportation v. Yuki*, 31 Cal.App.4th 1754, 1769-1772 (1995);
15 *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal.App.3d 914, 954 (1985).

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

19 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California
20 Supreme Court approved the use of “percentage of the benefit” attorney fee awards in class
21 actions. “[W]hen class action litigation establishes a monetary fund for the benefit of the
22 class members, and the trial court in its equitable powers awards class counsel a fee out of
23 that fund, the court may determine the amount of a reasonable fee by choosing an
24 appropriate percentage of the fund created.” The *Laffitte* court explained that “[t]he
25 percentage method ‘is easy to calculate; it establishes reasonable expectations on the part of
26 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
27 avoids protracted litigation.” 1 Cal. 5th at 490 (quoting *Rawlings v. Prudential-Bache*
28 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Pursuant to the “percentage of the benefit”

1 doctrine, “a litigant or lawyer who recovers a common fund for the benefit of persons other
2 than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”
3 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “The ultimate goal ... is the award of a
4 reasonable fee to compensate counsel for their efforts, irrespective of the method of
5 calculation. It is not an abuse of discretion to choose one method over another as long as the
6 method chosen is applied consistently using percentage figures that accurately reflect the
7 marketplace.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-558 (2009).

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

20 Class Counsel seek \$1,333,333, which is one third of the \$4,000,000 Gross
21 Settlement Amount. This request is reasonable and justified considering the superb
22 settlement secured for the Class Members. It is also consistent with both the Settlement
23 Agreement (See Gundzik Decl., ¶ 18, Ex. 1, ¶ 3.2.2) and the engagement agreements the
24 named Plaintiff entered into with Class Counsel. In those agreements, Plaintiff agreed that
25 Class Counsel would be paid the greater of 1) one-third of all amounts obtained or received
26 in the lawsuit, or 2) the hours worked multiplied by the hourly rates of the attorneys working
27 on the case, plus any additional multiplier awarded by the Court. Gundzik Decl., ¶ 70.

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

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

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

22 California courts often increase the base lodestar with a multiplier after considering:
23 (1) the continuing obligation of plaintiff's counsel to devote time and effort to the litigation;
24 (2) the extent to which the litigation precluded other employment by the attorneys; (3) the
25 contingent nature of the fee agreement, both from the point of view of eventual success on
26 the merits and securing an award; (4) the experience, reputation, and ability of the attorneys
27 who performed the services, and the skill they displayed in litigation, (5) the amount
28 involved and the results obtained on behalf of the class by plaintiffs' counsel, and (6) the

1 reaction of the class members. *Serrano v. Priest*, 20 Cal.3d at 49; *Dunk v. Ford Motor Co.*,
2 48 Cal.App.4th at 1810, at n.21. However, no rigid formula applies, and each factor should
3 be considered “where appropriate.” *See Dept. of Transp. v. Yuki*, 31 Cal.App.4th at 1771;
4 *see also, Serrano v. Priest*, 20 Cal.3d at 49.

5 Here, the base lodestar is dependent on the time spent by Class Counsel and the
6 reasonable hourly compensation for Aaron Gundzik, Rebecca Gundzik and Daniel
7 Holzman. Class Counsel’s hourly rates of \$825 (Aaron Gundzik and Rebecca Gundzik), and
8 \$750 (Daniel Holzman) for this matter are reasonable based upon their qualifications and
9 experience. Gundzik Decl., ¶¶ 39-42, 66-69; Holzman Decl., ¶¶ 1-9. Both Aaron Gundzik
10 and Rebecca Gundzik have been practicing law in Southern California for over 30 years,
11 and Mr. Holzman has been practicing for over 27 years. Gundzik Decl., ¶¶ 39-40; Holzman
12 Decl., ¶¶ 2-3. Aaron Gundzik worked for many years at and was an equity partner of the
13 international law firm formerly known as LeBoeuf, Lamb, Greene & MacRae, and has been
14 involved in the litigation of complex cases throughout his career. Gundzik Decl., ¶ 39.
15 Rebecca Gundzik also worked at well-respected law firms and handled complex litigation
16 matters for many years. Gundzik Decl., ¶40. Aaron Gundzik and Rebecca Gundzik have
17 served as Class Counsel on many wage and hour class action matters, and he and Rebecca
18 Gundzik tried and prevailed on appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.
19 App. 4th 36 (2013), which helped establish the law regarding an employee’s right to be paid
20 for all time under an employer’s control. ¶¶ 39-40. Mr. Holzman also has significant
21 experience with wage and hour class actions. Holzman Decl., ¶¶ 2-5.

22 Class Counsel’s rates for this case are consistent with prevailing market rates.
23 Gundzik Decl., ¶¶ 66-69. In *Xu v. Yamanaka*, No. 13-CV-3240 YGR, 2014 WL 3840105, at
24 *4 (N.D. Cal. Aug. 1, 2014), the court discussed the range of rates at the country’s largest
25 firms, based on the National Law Journal, which is provided in the Gundzik Declaration and
26 which demonstrates that the average rates for commercial work at large firms are
27 considerably above the rates being requested (as of 2012, hourly rates for partners at top
28 firms ranged between \$927 and \$1040). Gundzik Decl., ¶ 69. These rates are also in line

1 with hourly rates approved by other courts and the 2020 Class Action Hourly Rate Survey
2 conducted by the National Association of Legal Fee Analysis (NALFA) and those reported
3 by the National Law Journal's sampling of billing rates for partners in the Southern
4 California area. Gundzik Decl., ¶¶ 67-68, and Ex. 5. The NALFA survey shows that the
5 average hourly rate for partners who have more than 20 years of experience ranges between
6 \$801-\$900 for plaintiff's attorneys. Gundzik Decl., ¶ 67, and Ex. 5.

7 Class Counsel will expend over 900 hours prosecuting this case. This work included
8 (1) extensively interviewing Plaintiff, (2) investigating and researching his potential claims,
9 (3) investigating Defendant Sedgwick Claims Management Services, Inc. and the nature and
10 status of other cases filed against Defendant, (4) drafting the Complaint and amended
11 pleadings, (5) negotiating and drafting reports for the Court, (5) negotiating and drafting a
12 *Belaire-West* notice, (6) negotiating and drafting stipulations and notices, (7) drafting formal
13 discovery, (8) responding to discovery and engaging in extensive meet and confer
14 communications with Sedgwick's counsel (9) reviewing and analyzing 10 voluminous
15 policy handbooks and numerous other documents and policies, (10) negotiating regarding
16 the parameters of the mediation, and then negotiating to continue the mediation, (11)
17 interviewing 90 Class Members, following up with them regarding their records and
18 documenting those interviews, (12) creating a detailed damages analysis based on the
19 records and Class Member interviews, (13) preparing for and attending the mediation, (14)
20 drafting and negotiating an extensive settlement stipulation and class notice, (15) drafting
21 the motion for preliminary approval, (16) drafting the amended settlement agreement and
22 amended class notice, and (17) conferring with class members regarding the class notice and
23 their Work From Home Month disputes. Gundzik Decl., ¶¶ 44-58.

24 Because Defendant was initially unwilling to mediate the case and in light of the
25 class certification deadline set at the Initial Status Conference, Plaintiff's counsel started
26 doing the initial work to prepare a class certification motion and trial management plan.
27 Gundzik Decl., ¶¶ 48, 53. To do so, Plaintiff's counsel researched class certification
28 decisions involving reimbursement for expenses and particularly those which involved

1 situations in which employees worked all of part of their workweeks from home. Gundzik
2 Decl., ¶ 48. Plaintiff's counsel also researched how the pandemic and stay at home orders
3 impacted employees' home office expenses and reviewed numerous articles regarding
4 whether those expenses were reimbursable. *Id.* Plaintiff's counsel conferred regarding
5 potential experts who could opine regarding manageability and they strategized about how
6 to obtain the most reliable damages estimates from class members (whether it be by surveys,
7 random depositions or other methods). *Id.*

8 These efforts required a significant amount of time and labor. Through March 24,
9 2023, Class Counsel collectively worked 955 hours on the case (858.7 hours incurred by
10 GGH and 97 hours incurred by C&H). Gundzik Decl., ¶¶ 60-61, and Ex. 4 thereto; Holzman
11 Decl., ¶¶ 7-8, and Ex. 1 thereto. Plus, Class Counsel anticipates it will spend approximately
12 25 hours finalizing this Motion, preparing for and attending the hearing on the Motion, and
13 working with Phoenix and Defendant to implement the settlement and communicate with
14 Class Members regarding the disbursement of the settlement funds, which equates to an
15 additional amount of \$20,625. At Class Counsel's hourly rates, this equates to \$708,327.50
16 in fees. Gundzik Decl., ¶ 61.

17 The *Serrano* factors applied to this figure justify a multiplier of 1.88, which would
18 permit an award of \$1,333,333, which is one-third of the Gross Settlement Amount.

19 **a. The Lawsuit Involved Novel and Complex Legal and Factual**
20 **Issues.**

21 This case raised a number of complex and contested issues such as an employer's
22 liability for expenses incurred by employees in order to perform their jobs during the
23 pandemic, expenses incurred as a result of an employer's decision to down-size office space,
24 what portion of home utility and maintenance expenses are reimbursable in light of
25 Sedgwick's policies regarding the segregation of employee working materials from
26 nonemployees, and to what extent employee expenses are reimbursable if they are also used
27 for non-work purposes. Gundzik Decl., ¶ 71. Class Counsel had to research and analyze
28 these and other issues presented in this case. Because of their experience trying and pursuing

1 wage and hour class action lawsuits, they were able to recognize these types of violations
2 and look for and analogize recent cases and other authorities to support their contention that
3 Defendant's practices did not comply with the legal requirements. *Id.*

4 The case was also factually complex. Gundzik Decl., ¶ 72. Class Counsel had to
5 review and analyze hundreds of pages of policies, interview and analyze the information
6 obtained from 90 class members, and devise and implement a complicated formula to
7 determine the amount of unreimbursed expenses incurred by the class members. *Id.*

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

9 Class Counsel's past experience gave them knowledge as to the claims management
10 industry, how claims managers and others within Sedgwick performed their work and the
11 equipment, utilities and supplies they needed to do so. Gundzik Decl., ¶ 73. Their past
12 experience also gave them knowledge as to how to find additional sources of evidence. *Id.*
13 And, they knew how to seek and calculate the amount of unreimbursed expenses at issue.
14 They were able to do so because of their creative approach in the seeking, sampling and
15 review of records, as well as their proactive approach to handling the case. *Id.*

16 Class Counsel also had to be creative in their approach to settlement. Gundzik Decl.,
17 ¶ 74. They were well-aware of the value of the case and relied upon their extensive review
18 of class member records and the damages assessment they created based on that
19 investigation. *Id.* And, they risked the possibility of not arriving at a settlement, as the
20 settlement was reached only after a lengthy full-day mediation and subsequent negotiations.
21 *Id.*

22 By means of their approach and hard work, Class Counsel were able to obtain a very
23 successful outcome for the Class. As a result of the settlement, if approved, 3,858 people
24 will be receiving a settlement payment in an average amount of \$665.23. Salinas Decl., ¶ 17.

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

26 Despite the risks presented by Defendant's various arguments and defenses, Class
27 Counsel invested substantial time and expense in the lawsuit, with no guarantee of
28 compensation or reimbursement. Gundzik Decl., ¶¶ 60-63. That investment precluded them

1 from spending time on other matters so that Class Counsel could devote attention to this
2 case. *Id.* Class Counsel took this case on a contingent-fee basis against a large business
3 represented by a reputable defense firm. Class Counsel are both small firms with few
4 attorneys and staff. *Id.*

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

6 Class Counsel agreed to work on this case on a contingency basis. If they had not
7 successfully settled the case, they would not have earned any fees or recouped the
8 substantial litigation expenses that they incurred. Gundzik Decl., ¶ 60, and Ex. 4 thereto.
9 The courts have recognized that higher attorneys' fees are justified in contingency matters
10 because of the contingent nature of their recovery. *See Ketchum v. Moses*, 24 Cal.4th 1122,
11 1132 (2001).

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

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

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

23 As set forth above and in the Declarations of Aaron Gundzik and Daniel Holzman,
24 Class Counsel's skill and experience in litigating wage and hour class actions and
25 employment matters, in state and federal forums, contributed to the results obtained on
26 behalf of the putative Class Members. They have significant experience litigating wage and
27 hour class actions, have significant experience working at well-respected law firms, and
28

1 have been practicing law for many decades. Gundzik Decl., ¶¶ 39-42; Holzman Decl., ¶¶ 2-
2 5.

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

4 An award of attorneys' fees should reflect the successful outcome of the case.
5 *Hensley v Eckerhart*, 461 U.S. 424, 440 (1983), abrogated in part as stated in *McKee v.*
6 *Comm'r of Soc. Sec.*, 2008 U.S. Dist. LEXIS 86793 (M.D. Fla. 2008), superseded by statute
7 as stated in *Laube v. Allen*, 506 F. Supp. 2d 969 (M.D. Ala. 2007). As already discussed
8 herein and in the Motion for Preliminary Approval, this case involves numerous and
9 difficult issues requiring a highly technical analysis and largely precluding a clear-cut
10 outcome as to liability. There also were significant issues regarding Defendant's ultimate
11 liability, as Defendant consistently denied that they violated California's labor laws. In fact,
12 Defendant raised a colorable legal or factual defense to each claim Plaintiff alleged.
13 Gundzik Decl., ¶ 25.

14 Nevertheless, despite these obstacles, Class Counsel obtained significant financial
15 compensation for the Class Members. Defendant will pay a gross settlement amount of
16 \$4,000,000. Gundzik Decl., ¶ 18, Ex. 1, at ¶ 3.1. After payment of attorneys' fees and costs,
17 claims administration, and the service and release payment, the remainder of the Net
18 Settlement Amount that will be paid out to Class Members will be approximately
19 \$2,566,450.34. Gundzik Decl., ¶ 19. Despite the complexity of the case, Class Counsel
20 have, through the investment of substantial effort, and the resources of their law firm, been
21 able to secure an outstanding settlement on behalf of the Class Members.

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

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

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

1 **H. Class Counsel’s Requested Costs are Reasonable.**

2 The settlement provides for repayment of Class Counsel’s actual and reasonable
3 costs of litigation in an amount not to exceed \$25,000. Gundzik Decl., ¶ 18, Ex. 1, ¶¶ 3.2.2.
4 Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution
5 before trial. The total out-of-pocket costs incurred and to be incurred by Class Counsel in
6 this litigation are \$14,216.66. Gundzik Decl., ¶ 62, and Ex. 4; Holzman Decl., ¶ 10, and Ex.
7 A. Class Counsel are therefore seeking an award of their costs in the amount of \$14,216.66.

8 **I. The Settlement Administrator’s Requested Expenses are Reasonable.**

9 Plaintiff retained a neutral third-party administrator, Phoenix, to administer the
10 notice and claims process. Phoenix’s duties included and include, among other things: (a)
11 printing and mailing the Notice of Settlement to all Class Members; (b) locating updated
12 addresses for Class Members; (c) receiving other communications about the settlement; (d)
13 preparing weekly reports notifying the parties of the number of class members who filed
14 objections or requests for exclusion; and (e) notifying the parties of the number of Class
15 Members who filed untimely or deficient requests for exclusion, and taking steps to cure the
16 deficiencies. Salinas Decl., ¶ 3. Phoenix will be charging \$26,000 to perform this work,
17 which is the amount it estimated in connection with the Motion for Preliminary Approval.
18 Salinas Decl., ¶ 18. Because this amount is reasonable in light of the administrator’s
19 significant duties, it should be approved.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
3 requests that the Court grant final approval of the settlement, award a service and release
4 payment to the named Plaintiff in the amount of \$10,000, approve of the payment to the
5 LWDA in the amount of \$37,500 and \$12,500 to the Aggrieved Employees, award
6 attorneys' fees in the amount of \$1,333,333 and Class Counsel's costs in the amount of
7 \$14,216.66, and award the Settlement Administrator its fees in the amount of \$26,000, all of
8 which will be paid from the Gross Settlement Amount.

9
10 DATED: April 10, 2023

GUNDZIK GUNDZIK HEEGER LLP

11
12 By: 

13 Rebecca G. Gundzik
14 Attorneys for Plaintiff Todd Altschuler,
15 individually and on behalf of all others
16 similarly situated
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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 April 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 through Case Anywhere pursuant to the Court's Order Authorizing Electronic Service dated April 30, 2021, 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 April 10, 2023, at Sherman Oaks, California.



Nicole Salazar

Electronic Service List

Case: **Altschuler, et al. v. Sedgwick Claims Management Services, Inc.**

Case Info: **21STCV06933, Los Angeles Superior Court**

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