

AARON C. GUNDZIK (State Bar No. 132137)
REBECCA G. GUNDZIK (State Bar No. 138446)
GUNDZIK GUNDZIK HEEGER LLP
14011 Ventura Blvd., Suite 206E
Sherman Oaks, CA 91423
Telephone: (818) 290-7461
Facsimile: (818) 918-2316

MARSHALL A. CASKEY (State Bar No. 65410)
DANIEL M. HOLZMAN (State Bar No. 176663)
N. CORY BARARI (State Bar No. 295306)
CASKEY & HOLZMAN
24025 Park Sorrento, Ste. 400
Calabasas, CA 91302
Telephone: (818) 657-1070
Facsimile: (818) 297-1775

Attorneys for Plaintiff Todd Altschuler, individually,
on behalf of all others similarly situated

**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,

Defendants.

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

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

[Filed concurrently with Declarations of
Aaron Gundzik, Daniel Holzman, Todd
Altschuler and Jodey Lawrence of
Phoenix Settlement Administrators;
[Proposed] Order]

Date: November 28, 2022
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 November 28, 2022, at 10:30 a.m. in Department
3 1 of 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 preliminary approval of a class action settlement pursuant to Rules
7 of Court 3.766 and 3.769;

8 2. Provisionally certifying the proposed class for settlement purposes only as an
9 opt-out class action under Section 382 of the Code of Civil Procedure, with the Class
10 defined as all employees of Defendant Sedgwick Claims Management Services, Inc.
11 (“Defendant” or “Sedgwick”) who have worked from home in California at any time during
12 the Class Period (from February 23, 2017, through preliminary approval);

13 3. Appointing Plaintiff Todd Altschuler as the class representative for the Class;

14 4. Appointing Aaron C. Gundzik, Rebecca G. Gundzik and Daniel Holzman as
15 Class Counsel;

16 5. Approving Phoenix Settlement Administrators (“Phoenix”) as the third-party
17 settlement administrator;

18 6. Approving the form of the Court Approved Notice of Proposed Class Action
19 Settlement and Hearing Date for Final Court Approval (“Class Notice”) to be sent to the
20 Class and authorizing its dissemination;

21 7. Scheduling a subsequent hearing for final approval of the settlement
22 including approval of a Class Representative Service Payment in an amount not to exceed
23 \$10,000, an Administration Expenses Payment in an amount not to exceed \$26,000, a Class
24 Counsel Litigation Expenses Payment in an amount not to exceed \$25,000, and a Class
25 Counsel Fees Payment in any amount not to exceed \$1,333,333; and

26 8. Granting such other and further relief as the Court may deem just and proper.

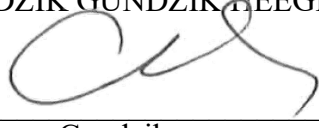
27 Plaintiff’s motion is based on this Notice of Motion and Motion, the attached
28 Memorandum of Points and Authorities, the [Proposed] Preliminary Approval Order, the

1 Declarations of the proposed Class Counsel, Aaron C. Gundzik and Daniel Holzman, the
2 Declaration of the proposed Class Representative, Todd Altschuler, the Declaration of Jodey
3 Lawrence of Phoenix Settlement Administrators, the pleadings and other papers filed in this
4 action, and such further argument or evidence as may be considered at the hearing on the
5 motion.

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

8 DATED: November 1, 2022

GUNDZIK GUNDZIK HEEGER LLP

9
10 By: 

Aaron Gundzik

11 Attorneys for Plaintiff Todd Altschuler,
12 individually and on behalf of all others
13 similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a class action filed by Plaintiff Todd Altschuler against his employer
4 Defendant Sedgwick Claims Management Services, Inc. (“Defendant” or “Sedgwick”) on
5 behalf of a class consisting of Defendant’s work from home employees. Plaintiff’s operative
6 complaint alleges causes of action against Defendant for: (1) failure to reimburse necessary
7 expenditures; (2) violation of the Unfair Practices Act, Cal. Bus. & Prof. Code §§ 17200, et
8 seq.; and (3) recovery of civil penalties under the California Labor Code Private Attorneys’
9 General Act (“PAGA”), Cal. Lab. Code §§ 2698-2699.5. No class has yet been certified by
10 the Court.

11 Defendant denies that it has violated California law and denies that it owes Plaintiff
12 and the other employees on whose behalf the lawsuit was filed any additional
13 reimbursements, penalties, or other relief.

14 Plaintiff and Defendant have reached a proposed settlement of Plaintiff’s Class and
15 PAGA claims whereby Defendant will pay a gross settlement amount of \$4 million. As
16 explained below, although Defendant denies that it has any liability whatsoever, this gross
17 settlement value is within the range of Defendant’s potential liability, as estimated by
18 Plaintiff’s Counsel. The settlement is advantageous to Plaintiff and the Class in that it
19 provides them prompt compensation and eliminates the uncertainty and risk of continued
20 litigation against Defendant. The proposed settlement is memorialized in the “Class Action
21 and PAGA Settlement Agreement”¹ (hereafter referred to as the “Settlement Agreement”), a
22 true and correct copy of which is attached as Ex. 1 to the Declaration of Aaron C. Gundzik
23 (“Gundzik Decl.”), ¶ 34.

24 Under the terms of the Settlement Agreement, the proposed Class consists of
25 approximately 3,740 of Defendant’s employees who worked from home in California at any
26

27 ¹ The parties used the Court’s model form to create the Settlement Agreement. A red-lined
28 comparison of the model form to the parties’ Settlement Agreement is attached to the
Gundzik Declaration as Exhibit 2.

1 time during the Class Period (“Class”), which is from February 23, 2017, to the date of
2 preliminary approval (“Class Period”). Gundzik Decl., ¶ 34, Ex. 1, ¶¶ 1.5, 1.12. Pursuant to
3 the terms of the proposed settlement, Defendant will pay a Gross Settlement Amount of
4 \$4,000,000. After proposed deductions, as approved by the Court, the Net Settlement
5 Amount of approximately \$2,555,667 will be available to distribute to Participating Class
6 Members, Gundzik Decl., ¶ 50, resulting in an average payment of about \$683.33 per class
7 member.

8 Given the comparative strengths and weaknesses of Plaintiff’s claims and
9 Defendant’s defenses, as well as the inherent uncertainties of litigation, this settlement is
10 well within the scope of what is fair, reasonable and adequate for the Class and should be
11 approved by the Court. Accordingly, Plaintiff, on behalf of himself and the Class, now seeks
12 an order:

- 13 • Granting preliminary approval of the settlement as being fair, reasonable and
14 adequate;
- 15 • Provisionally certifying the Class on an opt-out basis and for settlement purposes
16 only, and appointing Plaintiff Todd Atlschuler as the Class Representative and
17 Aaron C. Gundzik, Rebecca G. Gundzik and Daniel Holzman as Class Counsel;
- 18 • Entering the proposed Preliminary Approval Order, which is filed concurrently
19 herewith, and directing that the Class Notice be mailed to the Class Members;
- 20 • Appointing Phoenix Settlement Administrators (“Phoenix”) as the Administrator;
- 21 • Finding that the proposed form and method of the Class Notice constitutes the
22 best notice practicable under the circumstances and complies with the
23 requirements of Code of Civil Procedure Section 382 and due process;
24 and
- 25 • Scheduling a final approval hearing approximately 150 days after the preliminary
26 approval hearing to decide, among other things, (i) whether the settlement should
27 be granted final approval; (ii) whether the proposed Order and Final Judgment
28 should be entered; (iii) the amount of Class Counsel Fees Payment and Class

Counsel Litigation Expenses Payment; (iv) the amount of the Class Representative Service Payment; (v) approving the Administrator’s proposed fee; and (vi) approving the proposed PAGA Penalties and the distribution of 75% of such amount to the LWDA and 25% to the Aggrieved Employees.

II. RELEVANT AND KEY FACTS

A. Relevant Facts Showing Settlement is Fair, Adequate and Reasonable

1. Investigation and Discovery

Plaintiff’s counsel have been directly involved in all aspects of this case on behalf of Plaintiff. They have thoroughly investigated Plaintiff’s claims, reviewed and analyzed records and information produced by Defendant, and worked to develop information on potential damages. Gundzik Decl., ¶¶ 7-10. They engaged in formal discovery and informally exchanged additional information and documents for the mediation. Gundzik Decl., ¶ 8. In connection with the mediation, Defendant provided information on the number of Class Members and PAGA Aggrieved Employees, total Class Member work from home months, total PAGA Aggrieved Employee work from home months and the types and amounts of expense reimbursements made to the class during the class period. *Id.* Plaintiff’s counsel also investigated and compiled publicly available information about Defendant and its business. Gundzik Decl., ¶ 7. Finally, Plaintiff’s counsel obtained class contact information and interviewed 90 class members about their work from home experiences. Based on this information, as well as information provided by the Plaintiff, Plaintiff’s counsel was able to assess Defendant’s potential liability and create an extensive damages model. Gundzik Decl., ¶ 9.

2. Summary of Settlement Negotiations

On June 9, 2022, Plaintiff Todd Altschuler, Plaintiff’s counsel, Defendant and Defendant’s counsel attended a mediation session with well-respected mediator, Gig Kyriacou, via Zoom. Mr. Altschuler participated fully in the mediation. The case did not settle at the mediation. However, the mediator continued to engage the parties and their counsel. On June 17, 2022, the mediator issued a settlement proposal to the parties. The

1 proposal, which is the settlement currently before the Court, was accepted by the parties in
2 early July 2022. Gundzik Decl., ¶ 11.

3 **3. Summary of Class Counsel’s Experience**

4 Plaintiff’s counsel, Aaron Gundzik, graduated from the University of Southern
5 California Law School in 1987 and has been a member of the California bar since 1987.
6 Gundzik Decl., ¶ 13. He has been involved in the litigation of complex cases, including
7 securities, consumer and wage and hour class actions, and is currently plaintiff’s counsel in
8 approximately fifteen class and representative actions in various stages of litigation. He has
9 served as class counsel in numerous wage and hour class actions that have already settled
10 and successfully represented a class of service technicians at trial and through appeal in
11 *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶¶ 13,
12 15-16. Many of these cases involve wage and hour issues similar to the legal and factual
13 issues involved in this case. Gundzik Decl., ¶ 16. His partner, Rebecca Gundzik, graduated
14 from the University of Southern California Law School in 1988, has been a member of the
15 California bar since 1988, and was co-counsel at the trial of *Gonzalez v. Downtown LA*
16 *Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶ 14.

17 **4. Summary of Legal and Factual Bases for Plaintiff’s Claims**

18 Based upon counsel’s investigation and discovery, Plaintiff contends as follows.
19 During the Class Period, Sedgwick has been in the business of providing claims
20 management services to its customers in California and elsewhere. Plaintiff is currently
21 employed by Sedgwick as a Senior Disability Analyst. He has worked for Sedgwick since
22 2009. He has worked from home since about 2013. Gundzik Decl., ¶ 17; Declaration of
23 Todd Altschuler (“Altschuler Decl.”), ¶ 2.

24 During most of the Class Period, which begins on February 23, 2017, Plaintiff
25 contends Defendant did not reimburse him and other class members at all for their home
26 internet and telephone and other expenses. Altschuler Decl., ¶ 3; Gundzik Decl., ¶ 18. In or
27 about March 2020, most Sedgwick employees in California began working from home due
28 to the pandemic. Gundzik Decl., ¶ 18. In about March 2021, Sedgwick adopted a policy that

1 provides for reimbursement of work-from-home employees' home internet and telephone at
2 a rate of up to \$40 per month. Altschuler Decl., ¶ 3; Gundzik Decl., ¶ 18. This policy was
3 not retroactive, and employees could not seek reimbursement for such expenses incurred
4 prior to February 2021. *Id.* Notwithstanding this policy, Plaintiff contends, that the time-
5 consuming process for seeking reimbursement discourages many employees from doing so
6 and as a result, the vast majority of work-from-home employees still did not receive expense
7 reimbursements from Sedgwick. Gundzik Decl., ¶ 18.

8 **5. Risks, Expenses, Complexity and Duration if Settlement Not**
9 **Approved**

10 After taking into account the sharply disputed factual and legal issues involved in the
11 lawsuit, the risks attending further prosecution, and the substantial benefits to be received
12 pursuant to the compromise and settlement of the action, Plaintiff's counsel concluded that
13 the settlement is in the best interests of the Class and is fair and reasonable. Gundzik Decl., ¶
14 19; Declaration of Daniel Holzman ("Holzman Decl."), ¶ 8. They also considered the
15 possibility that the Class would not be certified and factored in the additional delay in
16 recovery for Class members if the settlement were rejected and the case went to trial. *Id.*

17 If the settlement is not approved, Plaintiff would need to move forward with
18 discovery and then move for class certification. Gundzik Decl., ¶ 20. Defendant will oppose
19 certification on the grounds that numerous individualized fact issues exist. *Id.* Defendant
20 will argue and could succeed in claiming that these individualized issues overwhelm
21 common issues, and/or that the action is not manageable on a class wide basis. *Id.* The result
22 could be that the case would not be certifiable as a class action. *Id.*

23 **6. Risks of Maintaining Class Action Status**

24 Even if Plaintiff proceeded with the case and the Class was certified, significant risks
25 would remain. At trial Defendant could interpose a successful defense which could either
26 cause the jury to reject Plaintiff's claims or award the Class only a small amount of the
27 damages sought. Gundzik Decl., ¶ 21. And, even if the Class ultimately prevailed, Class
28 Members would have to wait years before they received any payment from the lawsuit. *Id.*

1 Plaintiff's counsel concluded that the settlement of \$4 million represents a fair and
2 reasonable discount from the realistic recovery. Gundzik Decl., ¶ 22. The settlement
3 provides a significant benefit for the Class which would not otherwise have been available
4 unless a settlement was reached. Plaintiff's counsel, who have significant experience
5 litigating these types of claims, are of the opinion that a gross settlement of \$4 million is
6 within the "ballpark" of a fair, reasonable and adequate settlement. *Id.*; Holzman Decl., ¶ 8.

7 **7. Information Regarding Strengths, Weaknesses, and Range of**
8 **Value of Each Claim**

9 The First Cause of Action is for failure to reimburse employees for necessary
10 expenses in violation of Labor Code section 2802. Gundzik Decl., ¶ 23. That section
11 provides, in part: "An employer shall indemnify his or her employee for all necessary
12 expenditures or losses incurred by the employee in direct consequence of the discharge of
13 his or her duties, or of his or her obedience to the directions of the employer." Cal. Lab.
14 Code § 2802(a). Plaintiff contends that all class members have worked from home for
15 Defendant at some point during the Class Period, that they worked from home at the
16 direction of Defendant and that they incurred certain expenses that were necessary for them
17 to perform their jobs. *Id.* There are five components to this claim: (1) internet and telephone;
18 (2) supplies and equipment; (3) home power; (4) home rent; and (5) mileage. *Id.* Prior to
19 mediation, Defendant represented that during the class period, approximately 3,740
20 employees worked from home at some point during the class period and that the total
21 number of work from home months was 81,729. *Id.* Defendant also advised that during the
22 class period, it has provided some internet/phone reimbursements to employees and that the
23 average amount paid for a month was \$64.07. *Id.* Based upon these figures, Plaintiff
24 contends Defendant should have paid class members a total of \$5,236,377 during the class
25 period (81,729 months x \$64.07 per month = \$5,236,377). *Id.* The claim for equipment and
26 supplies encompasses furniture, electronic equipment and office supplies. In interviews,
27 class members reported purchasing desks, chairs and other equipment at the cost of about
28 \$150 per class member. Accordingly, the maximum value of this claim was estimated to be

1 \$561,000 ($\$150 \times 3,740$ class members = \$561,000). *Id.* Employees also had to use
2 electricity to power their computers and other devices while they worked from home. To
3 estimate the value of this claim, based upon information obtained from class members,
4 Plaintiff's counsel assumed an average power bill of about \$300 and assumed that
5 approximately 5% of the monthly power usage was necessary for work. *Id.* Thus, the
6 maximum total owed on this part of the claim is estimated to be \$1,225,935 ($\$300 \times 5\% \times$
7 $81,729$ months). *Id.* The First Cause of Action also sought reimbursement for the rental
8 value of class members' home offices. *Id.* To estimate the potential value of this claim, it
9 was assumed that class members worked from home in a 50 square foot area. *Id.* According
10 to Zillow, the average rental rate in California as of December 2020 was \$2.015 per square
11 foot. *Id.* Thus, the estimated monthly value per class member is \$100.75 ($\2.015 per sq. ft. $\times$
12 50 sq. ft. = \$100.75) and the total value to the class is estimated to be about \$8.2 million
13 ($\$100.75 \times 81,729$ months = \$8,234,196.75). *Id.* The final aspect of the reimbursement claim
14 is for vehicle mileage. *Id.* Most Class Members reported that they were usually reimbursed
15 for mileage. Based thereon, Plaintiff's counsel concluded that the maximum value of this
16 claim is about \$100,000 and that the minimum value is nothing. *Id.* Plaintiff's estimate of
17 damages also considered that Defendant had made some reimbursements to employees for
18 some expenses incurred during the class period. Such reimbursements total \$1,024,960
19 ($\$429,878.13$ for supplies and equipment and $\$595,082.16$ for internet and telephone) and
20 must be subtracted from the estimated maximum value. *Id.* Accordingly, based upon the
21 forgoing, the estimated maximum value of the First Cause of Action is \$14,332,550
22 ($\$5,236,377 + \$8,234,198 + \$561,000 + \$1,225,935 + \$100,000 - \$1,024,960 =$
23 $\$14,332,550$). *Id.*

24 In assessing the value of this cause of action, Plaintiff's counsel also considered the
25 strength of Sedgwick's defenses. Gundzik Decl., ¶ 24. Plaintiff's counsel was particularly
26 concerned about the legal viability of the claims for power and home office rental value, as
27 they were unable to find any precedent supporting these aspects of the claim. *Id.* Moreover,
28 all aspects of this claim, and in particular the claims to entitlement for reimbursement of

1 power, rent and supplies and equipment might require the determination of too many
2 individual issues to justify class certification. *Id.* As a result, we believe that this cause of
3 action has a minimum value of about \$2 million. *Id.*

4 The Second Cause of Action is for violation of Business & Professions Code section
5 17200, *et seq.* The purpose of this cause of action is to extend the statute of limitations for
6 Plaintiff's First Cause of Action from three years to four years. Thus, because this cause of
7 action is derivative of Plaintiff's First Cause of Action, the damages available under this
8 cause of action have already been analyzed or are duplicative of the damages discussed
9 above. Gundzik Decl., ¶ 25.

10 The Third Cause of Action is for recovery of civil penalties under PAGA for the
11 forgoing alleged Labor Code violations. The PAGA claim is limited in time to one year. The
12 strength of the PAGA claim would be impacted by the factors discussed above for the non-
13 PAGA claims. Gundzik Decl., ¶ 26. Unlike the Labor Code's requirements for timing of
14 wage payments, Labor Code section 2802 does not specify when reimbursement payments
15 are due. Thus, while there is a possibility of a higher PAGA recovery, Plaintiff's counsel
16 believes it to be most likely that the Court would find one violation per employee. *Id.*
17 Moreover, even if Plaintiff was successful on this claim through trial, the Court may well
18 have exercised its discretion under PAGA and significantly reduced the penalties. Cal.
19 Labor Code §2699(e)(2). *Id.* In addition, the settlement was primarily directed at recovering
20 unpaid expense reimbursements and associated penalties and interest and the bulk of the
21 settlement funds were intended to compensate for these unpaid amounts. *Id.* Based on these
22 factors, the maximum reasonable value of the PAGA claim is \$358,600. *Id.* This amount
23 assumes a \$100 penalty for each employee (\$100 x 3,586 PAGA employees = \$358,600). *Id.*
24 And the minimum value of the PAGA cause of action is nothing. *Id.* Therefore, the \$50,000
25 that the parties allocated to PAGA, \$37,500 of which will be paid to the LWDA, is a
26 reasonable settlement of that claim. *Id.*

27 Based upon the forgoing, the class claims in this case have a minimum value of \$2
28 million and a maximum estimated value of about \$14.2 million, not including the PAGA

1 penalties. Gundzik Decl., ¶ 27. A reasonable estimate of the average amount that Class
2 members could have obtained if Plaintiff prevailed at trial on behalf of the entire Class, if
3 the Class was certified, would be a minimum of about \$534.75 and a maximum of about
4 \$3,832.23. *Id.* However, the maximum amount is almost never recovered at trial and never
5 in a settlement. *Id.* Settlements, by their nature, must account for the weaknesses in a
6 plaintiff’s case, which are discussed above. *Id.* Indeed, because Defendant raised a colorable
7 legal or factual defense to each of the claims Plaintiff alleged, it is possible that, after trial,
8 the Class would recover nothing. *Id.*

9 The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.* 72 Cal.
10 App. 5th 56, 77 (2021), because “it is fair, reasonable, and adequate in view of PAGA’s
11 purposes to remediate present labor law violations, deter future ones, and to maximize
12 enforcement of state labor laws.” The settlement allocates \$50,000 to Plaintiff’s PAGA
13 claim. Gundzik Decl., ¶ 28. In conjunction with the class settlement, this settlement will
14 serve to remediate Defendant’s alleged Labor Code violations. *Id.* Given that Defendant will
15 be paying \$4,000,000 as a result of the alleged violations, the class and PAGA settlement is
16 a large disincentive for Defendant to engage in similar Labor Code violations in the future.
17 *Id.* And, because Defendant is aware that Plaintiff’s counsel has been in contact with class
18 members and aggrieved employees as a result of the litigation and because all class
19 members will receive a Class Notice with our contact information, those employees will
20 know to contact us in the future if Defendant attempts to engage in similar practices. *Id.*
21 These factors—the payment of a large sum and employee notice of violations and potential
22 violations—serve to maximize enforcement of state labor laws. *Id.* Also, unlike in *Moniz*,
23 here there is no unsubstantiated and disproportionate allocation of civil penalties between
24 different groups of employees. *Id.* All aggrieved employees will receive an allocation of
25 PAGA civil penalties based on the number of qualifying months that they worked for
26 Defendant. *Id.*

1 **B. Facts Relevant to Class Certification (Numerosity, Ascertainability and**
2 **Community of Interest)**

3 There are approximately 3,740 Class Members. Gundzik Decl., ¶ 29. The exact
4 number and identity of Class Members will be provided by Defendant in connection with its
5 duty to provide Class Data to the Administrator within 30 days after the Court preliminarily
6 approves the settlement. Gundzik Decl., ¶ 30, Ex. 1, ¶ 4.2. And, a community of interest
7 exists, as in the pleading, Plaintiff is claiming the same injuries based upon the same alleged
8 wage and hour policies as are the Class Members. Gundzik Decl., ¶ 31.

9 **C. Facts Relevant to Other Concerns**

10 Plaintiff’s counsel has conferred with Defendant’s counsel, and Defendant has
11 indicated that all Class Members are fluent in English because work-related communications
12 are in English. Gundzik Decl., ¶ 31. For that reason, the Class Notice will be printed only in
13 English. *Id.*

14 Gundzik Gundzik Heeger LLP (“GGH”) and Caskey & Holzman have entered into a
15 written retention agreement with the Class Representative and have agreed therein to divide
16 any attorney’s fees awarded in this case. Gundzik Decl., ¶ 33, Ex. 3. Plaintiff has consented
17 to the division of fees. *Id.*

18 **III. The Settlement Agreement**

19 **A. Class Definition and Class and Release Period**

20 The Class consists of all employees of Defendant who have worked from home in
21 California at any time during the Class Period. Gundzik Decl., ¶ 35, Ex. 1, ¶ 1.5. The Class
22 Period and the class release period both begin on February 23, 2017, and end on the date of
23 preliminary approval. Gundzik Decl., ¶ 36, Ex. 1, ¶¶ 1.12, 5.2. The Settlement Agreement
24 includes an escalator clause whereby the gross settlement amount will increase if total Class
25 Work From Home Months is more than 110% of the number of Work From Home Months
26 reported prior to the mediation. Gundzik Decl., ¶ 36, Ex. 1, ¶ 8.

1 **B. Release of Claims**

2 Members of the Class, Plaintiff and the Aggrieved Employees will provide releases
3 to Defendant and its related entities. Gundzik Decl., ¶¶ 37-40, Ex. 1, ¶¶ 5.1, 5.2, 5.3. All
4 releases will be effective “on the date when Sedgwick fully funds the entire Gross
5 Settlement Amount.” Gundzik Decl., ¶ 41, Ex. 1, ¶ 5. The scope of the release will be
6 disclosed to the Class in the proposed Class Notice. See Gundzik Decl., ¶ 37, Ex. 1, pp. 24-
7 33. Any member of the Class who does not like the scope of the release (or the Settlement in
8 general) can preserve his or her individual claims by timely submitting a written request to
9 be excluded from the Settlement and class.

10 The Release applicable to the Class Members provides:

11 All Participating Class Members, on behalf of themselves and their respective
12 former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns and estates, release Released Parties from any and all
14 claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,
15 attorneys’ fees, damages, interest, restitution, penalties, action or causes of
16 action, and liabilities of any nature whatsoever, including costs, expenses,
17 penalties, and attorneys’ fees, in law or equity, for causes of action alleged in
18 the operative complaint and for any other claims or causes of action that could
19 have been alleged based upon the facts alleged in the operative complaint
20 (“Released Claims”). The Released Claims include, without limitation, claims
21 for failure to reimburse for necessary business expenses, including but not
22 limited to mileage, home internet, home telephone, cellular telephone, home
23 utilities, office supplies and equipment, and cost of space for home office, and
24 claims for unfair business practices for the forgoing alleged violations, as well
25 as any other state or federal law, statute, regulation, or ordinance imposing
26 liability and/or obligations that could be brought based on the factual
27 allegations in the Operative Complaint. This release shall run through the
28 Class Period. Except as set forth in Section 5.3 of this Agreement,

1 Participating Class Members do not release any other claims, including claims
2 for vested benefits, wrongful termination, violation of the Fair Employment
3 and Housing Act, unemployment insurance, disability, social security,
4 workers' compensation, or claims based on facts occurring outside the Class
5 Period.

6 Gundzik Decl., ¶ 38, Ex. 1, ¶ 5.2.

7 The Release applicable to Aggrieved Employees provides:

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

21 Gundzik Decl., ¶ 40, Ex. 1, ¶ 5.3.

22 The release to be provided by the named Plaintiff will be broader and encompass
23 most claims that he might have against Defendant and will include a waiver of Civil Code
24 section 1542. Gundzik Decl., ¶ 37, Ex. 1, ¶ 5.1.

25 **C. Class Data.**

26 Within 30 days following the Court's order granting preliminary approval of the
27 Settlement, Defendant will provide the Administrator with the Class Data and at the same
28 time, will provide the Class Data, without Class Member names, contact information or

1 social security numbers, to Class Counsel. Gundzik Decl., ¶ 42, Ex. 1, ¶ 4.2. This
2 information will remain confidential. *Id.* Because Plaintiff’s counsel will be provided
3 anonymized Class Data, they will be able to confirm that the Net Settlement Amount has
4 been divided correctly, based on the data provided by Defendant. Gundzik Decl., ¶ 42.

5 **D. Monetary Terms**

6 Defendant will pay a Gross Settlement Amount of \$4 million to the Administrator.
7 Defendant is not required to contribute any employer’s side withholding taxes because no
8 portion of the Individual Class Payments will be wages. Gundzik Decl., ¶ 43, Ex. 1, ¶
9 3.2.4.1. An escalator clause provides that the Gross Settlement Amount will increase pro
10 rata if total Class Work From Home Months exceed 110% of 81,729.60. Gundzik Decl., ¶
11 43, Ex. 1, ¶ 8.

12 After proposed deductions, as approved by the Court, and assuming that the escalator
13 clause is not triggered, the Net Settlement Amount will be approximately \$2,555,667, all of
14 which will be available to distribute to Participating Class Members. Gundzik Decl., ¶¶ 43,
15 50.

16 If the Court grants final approval of the Settlement, within no more than 20 calendar
17 days of the Effective Date (which is the date of entry of the Court’s Final Approval Order if
18 there are no objections to the Settlement), Defendant will deposit the Gross Settlement
19 Amount with the Administrator. Gundzik Decl., ¶ 44, Ex. 1, ¶¶ 1.18 (“Effective Date”), 4.3.
20 Within ten calendar days of Defendant’s deposit of funds, the Administrator will pay
21 settlement payments to Participating Class Members and Aggrieved Employees, the Court-
22 approved Class Representative Service Payment, the Court-approved Class Counsel Fees
23 Payment and Class Counsel Litigation Expenses Payment, the LWDA PAGA Payment, and
24 the Administration Expenses Payment. Gundzik Decl., ¶ 44, Ex. 1, ¶ 4.4.

25 At the final approval hearing, the Court will be asked to grant final approval to the
26 settlement and approve the following deductions from the Gross Settlement Amount: (a)
27 Class Counsel Fees Payment of \$1,333,333; (b) Class Counsel Litigation Expenses Payment
28 not to exceed \$25,000; (c) a Class Representative Service Payment of \$10,000; (d)

1 Administration Expenses Payment not to exceed \$26,000²; (e) An allocation of \$50,000 to
2 PAGA Penalties, seventy-five percent (75%) of which will be paid to the California Labor
3 and Workforce Development Agency (the “LWDA Payment”), and the remaining twenty-
4 five percent (25%) of which will be distributed to the Aggrieved Employees. See Ex. 1, ¶¶
5 3.2.1, 3.2.2, 3.2.3, 3.2.5; Declaration of Jodey Lawrence (“Lawrence Decl.”), ¶ 17.

6 The Settlement Agreement provides for up to a \$10,000 Class Representative
7 Service Payment. Gundzik Decl., ¶ 46, Ex. 1, ¶ 3.2.1. This requested award is in recognition
8 of the significant time that Plaintiff Todd Altschuler expended pursuing this action and
9 assisting our efforts with the case, the risks he took in agreeing to file this action and in
10 recognition of the expanded general release that he is required to provide, as part of the
11 Settlement. Gundzik Decl., ¶ 46. Plaintiff is required to provide Defendant with a broad
12 general release which includes a waiver of Section 1542 of the California Civil Code.
13 Gundzik Decl., Ex. 1, ¶ 5.1.

14 Plaintiff will be supporting the request for attorneys’ fees in several ways. Plaintiff’s
15 counsel will include actual billing records and will also provide a chart which will specify
16 the number of hours spent on each type of task that was required in connection with the
17 case. Gundzik Decl., ¶ 47. Plaintiff’s counsel will be applying the percentage method and
18 supporting it with a lodestar cross-check. *Id.* And, if Plaintiff’s counsel are requesting a
19 multiplier, they will provide sufficient grounds for the application of the multiplier being
20 requested. *Id.*

21 The Net Settlement Amount of approximately \$2,555,667 will be distributed to
22 Participating Class Members based on the number of Work From Home Months they
23 worked for Defendant. The following formula will be used to calculate the settlement
24 payments to be made to Participating Class Members: (Net Settlement Amount ÷ All
25 Participating Class Members’ Work From Home Months) x (Individual Participating Class

26 ² The Settlement Agreement provides for an Administrative Expense Payment of up to
27 \$27,500. Gundzik Decl., Ex. 1, ¶ 3.2.3. However, as set forth in the Administrator’s
28 declaration, the not-to-exceed fee of the Administrator will be \$26,000. Lawrence Decl., ¶ 17.

Member's Work from Home Months). Gundzik Decl., ¶ 50, Ex. 1, ¶ 3.2.4. Based on a Class size of 3,740, the Participating Class Members will be paid, on average, about \$683.33. Individual Class Payments and Individual PAGA Payments will be paid to the Class Members within 10 days of Defendant's deposit of the Gross Settlement Amount with the Administrator. Gundzik Decl., Ex. 1, ¶ 4.3.

Participating Class Member's Individual Class Payments will be allocated as follows: 50% as unreimbursed expenses, 25% as interest and 25% as penalties. No portion of the Individual Class Payments shall be subject to wage withholdings. The interest and penalty portions will be reported on IRS 1099 Forms. Gundzik Decl., ¶ 51, Ex. 1, ¶ 3.2.4.1.

\$50,000 of the Net Settlement Amount will be allocated to Plaintiff's PAGA claims (the "PAGA Penalties"), 75% (\$37,500) of which will be paid to the LWDA (the "LWDA PAGA Payment"), and the remaining 25% (\$12,500) of which will be distributed to the Aggrieved Employees based upon the number of Work From Home Months that they worked during the PAGA Period ("PAGA Work From Home Months"). The following formula will be used to calculate the Individual PAGA Payments to be made Aggrieved Employees: $(\$12,500 \div \text{All Aggrieved Employees' PAGA Work From Home Months}) \times \text{Individual Aggrieved Employee's PAGA Work From Home Months}$. Gundzik Decl., ¶ 52, Ex. 1, ¶ 3.2.5.1. Participating Class Members who are also Aggrieved Employees may receive their Individual PAGA Payment included in the same checks as their Individual Class Payment. Class Members who exclude themselves from the Class Settlement will still receive their Individual PAGA Payment and such Class Members will still be bound by the Released PAGA Claims, notwithstanding their exclusion from the Class. Gundzik Decl., ¶ 52, Ex. 1, ¶¶ 5.3, 7.5.4. Individual PAGA Payments will be treated as penalties and reported on an IRS Form 1099. Gundzik Decl., ¶ 52, Ex. 1, ¶ 3.2.5.2.

E. Notice Administration

The settlement will be administered by Phoenix Settlement Administrators ("Phoenix" or "Administrator"). Gundzik Decl., ¶ 53, Ex. 1, 1.2; Lawrence Decl., ¶¶ 2-16. If the Court grants preliminary approval of the settlement, within 30 calendar days Defendant

1 will provide the Administrator with the names, social security numbers, last known
2 addresses for each Class Member and the number of Class Work From Home Months and
3 PAGA Work From Home Months. Gundzik Decl., ¶ 54, Ex. 1, ¶¶ 1.8, 4.2. The
4 Administrator will check all addresses against the National Change of Address database and
5 update the Class list as appropriate. Gundzik Decl., ¶ 55, Ex. 1, ¶ 7.4.2. Within 14 days of
6 receiving the Class Data, the Administrator will send to each Class Member's most recent
7 address via First-Class United States mail an English version of the Class Notice. Gundzik
8 Decl., ¶ 56, Ex. 1, ¶ 7.4.2. No submission of a claim form is necessary, and all Class
9 members are eligible to receive a settlement payment except those who follow the procedure
10 for requesting an exclusion. Gundzik Decl., ¶ 56, Ex. 1, ¶ 3.1.

11 The proposed form of the Class Notice discloses the pendency of this litigation,
12 summarizes the allegations against Defendant, defines the Class, describes the consideration
13 that Defendant will provide in settlement along with an estimate of each Class Member's
14 estimated recovery they participate in the settlement. Gundzik Decl., ¶ 57, 67, Ex. 1 at pp.
15 24-33. The Class Notice also describes the claims that will be released and explains the
16 procedures to be used by members of the class to be excluded from or object to the
17 settlement. *Id.* Because this is an opt-out settlement and Class Members who do nothing will
18 still receive a settlement payment, the notice provisions agreed to by the parties will
19 adequately serve the interests of the individual Class Members in receiving the relief
20 provided by the settlement and adequately comply with California Rules of Court, Rule
21 3.766(e). Gundzik Decl., ¶ 58.

22 All settlement checks will be valid for 180 days from issuance. The funds
23 represented by all uncashed checks will be transmitted by the Administrator to the California
24 State Controller's Office Unclaimed Property Fund. Gundzik Decl., ¶ 59, Ex. 1, ¶ 4.4.3.

25 For any Class Notice that is returned as undeliverable, the Administrator will
26 perform a skip trace. Gundzik Decl., ¶ 60, Ex. 1, ¶¶ 4.4.2, 7.4.2, 7.4.3. The returned Class
27 Notices will be re-mailed to the new addresses obtained for such Class Members. *Id.* Such
28

1 searching and re-mailing will be completed within three business days of the date that Class
2 Notices were originally returned as undeliverable. Gundzik Decl., ¶ 60, Ex. 1, ¶ 7.4.3.

3 The Administrator will establish a website for this settlement and will post the
4 settlement agreement and other relevant documents. Gundzik Decl., ¶ 61, Ex. 1, ¶ 7.8.1.
5 Additionally, in their individual Class Notices, Class Members will be provided with the
6 phone number and email address for the Administrator, as well as the website specific to the
7 Settlement. Gundzik Decl., Ex. 1 at p. 33. If there is a change in the date or location of the
8 Final Approval hearing, the Administrator will post this information on the website.
9 Gundzik Decl., ¶ 61, Ex. 1, ¶ 7.8.1. Notice of the Final Judgment and Final Approval Order
10 will also be posted on the Administrator's website. Gundzik Decl., ¶ 62, Ex. 1, ¶ 7.8.1.

11 **F. Responses to Notice**

12 Any member of the Class who wishes to be excluded from the settlement must
13 submit by mail a written request to be excluded to the Administrator, which must be
14 postmarked no later than forty-five (45) days after the Class Notice is mailed by the
15 Administrator. Gundzik Decl., ¶ 63, Ex. 1, ¶ 7.5.1. Any Class Member wishing to object to
16 the approval of the Settlement must send a written statement of objection to the
17 Administrator no later than forty-five (45) days after the Class Notice is mailed by the
18 Administrator. Gundzik Decl., ¶ 63, Ex. 1 at ¶¶ 7.7.1, 7.7.2.

19 All Class Notices returned as being undeliverable will be re-mailed within three
20 business days of the date that Class Notices were originally returned as undeliverable.
21 Gundzik Decl., ¶ 64, Ex. 1, ¶ 7.4.3. For Class Notices that are re-mailed to a different
22 address, the 45-day opt-out and objection deadline will be extended by an additional 14
23 calendar days. Ex. 1, ¶ 7.4.4.

24 **G. Proposed Schedule of Events**

25 Based on the terms of the Settlement Agreement, the following sets forth the
26 proposed schedule of events to occur with respect to the effectuation of the settlement:
27
28

Event	Date
Deadline for Defendant to provide Class data to Administrator	within 30 calendar days of preliminary approval
Deadline to mail Class Notice to Class Members	within 14 calendar days of receipt of class data from Defendant
Deadline to challenge Work From Home Months, opt out of or object to settlement	within forty-five (45) calendar days of mailing Class Notice
Deadline to file motion for final approval of the settlement and award of attorneys' fees and costs	16 court days before final approval hearing
Hearing on motion for final approval of the settlement, granting of final approval, and entry of judgment	TBD
Deadline for Defendant to deliver funds to Administrator	Within 20 calendar days after the Effective Date
Deadline for Administrator to distribute settlement funds	within 10 calendar days of Defendant's delivery of funds to Administrator

IV. ARGUMENT

A. The Class Should be Certified for Settlement Purposes.

The proposed class satisfies the criteria for certification of a settlement class under California law. Section 382 of the Code of Civil Procedure “authorizes class suits in California when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000). “To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class members. *Id.*, at 435, citing *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981); also citing *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). The community of interest requirement will be met when the following three factors exist: “(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th at 435.

1 **1. An Ascertainable Class Exists that can easily be Determined from**
2 **Defendant’s Records.**

3 “An ascertainable class exists when, based upon the class definition, it is possible to
4 give adequate notice to class members or to determine after the litigation has concluded who
5 is barred from re-litigating. (Citation omitted.) The goal in defining the class is to use
6 terminology that will convey sufficient meaning to enable persons hearing it to determine
7 whether they are members of the class plaintiff wishes to represent.” *Marler v. E.M.*
8 *Johansing, LLC*, 199 Cal. App. 4th 1450, 1459-1460 (2011). Thus, a class is generally
9 considered ascertainable when (i) under the class definition the members are clearly
10 identifiable and (ii) the members can be located and notified through a reasonable
11 expenditure of time and money. *See Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263,
12 1274-1275 (1987). Here, the Class definition is clear. The Class is defined as “all employees
13 of Sedgwick who have worked from home in California at any time during the Class Period.
14 Gundzik Decl., ¶ 35, Ex. 1, ¶ 1.5. The Class Period is defined as the period beginning on
15 February 23, 2017 and ending on the date of preliminary approval. Gundzik Decl., ¶ 36, Ex.
16 1, ¶ 1.12.

17 **2. There is a Well-Defined Community of Interest among the Class**
18 **Members.**

19 The community of interest requirement is met with respect to the Class and the
20 claims asserted in the pleading. There are common issues regarding Defendant’s treatment
21 of their work from home employees as to expense reimbursements. Further, the claims of
22 the named Plaintiff are typical of the claims of all Class Members, and he can and does
23 adequately represent the Class. Gundzik Decl., ¶¶ 18, 23, 24, 31; Declaration of Todd
24 Altschuler (“Altschuler Decl.”), ¶¶ 2-3.

25 **3. Common Issues of Law and Fact Predominate over any**
26 **Individual Issues.**

27 To determine whether common issues predominate in a class action matter, “a court
28 must examine the plaintiff’s theory of recovery and assess the nature of the legal and factual

1 disputes *likely to be presented*...As a general rule if the defendant's liability can be
2 determined by facts common to all members of the class, a class will be certified even if the
3 members must individually prove their damages.” *Benton v. Telecom Network Specialists,*
4 *Inc.*, 220 Cal. App. 4th 701, 716 (2013) (emphasis in original).

5 Here, Plaintiff maintains that common issues exist with respect to Defendant’s
6 policies and practices regarding expense reimbursements for work from home employees,
7 including entitlement to reimbursement, the types of expenses reimbursed, the maximum
8 amount of such reimbursements and the period for which reimbursements may be provided.
9 Gundzik Decl., ¶¶ 18, 23, 24, 31. Plaintiff maintains that the only individualized differences
10 between Class members relate to the amount of compensation each Class member would be
11 entitled to receive. However, it is well-settled that mere differences as to the amount of
12 damages among Class members are not sufficient to prevent certification. *Id.*; *Acree v.*
13 *General Motors Acceptance Corp.*, 92 Cal. App. 4th 385, 387 (2001) (“A class action may
14 be maintained even if each class member must at some point individually show his or her
15 eligibility for recovery or the amount of his or her damages...”)

16 **4. Plaintiff’s Claims are typical of the Claims of the Class.**

17 “To maintain a class action, the representative plaintiff must adequately represent
18 and protect the interests of other members of the class. (Citation omitted.) Therefore, a
19 class representative plaintiff must be situated similarly to the other class members united by
20 a common interest.” *CashCall, Inc. v. Superior Court*, 159 Cal. App. 4th 273, 284 (2008).
21 Thus, the typicality requirement focuses on whether the proposed representative’s claims are
22 typical of the claims of the rest of the class. *Id.*; *see Classen v. Weller*, 145 Cal. App. 3d 27,
23 47 (1983).

24 Here, Plaintiff is seeking relief for the same wage and hour violations as are the rest
25 of the Class Members. Gundzik Decl., ¶ 31; Altschuler Decl., ¶¶ 2-3. He seeks to impose
26 liability on Defendant based on the same claims and theories, as well as the same alleged
27 injuries, which apply to the Class as a whole. Thus, the claims of the Class Representative
28 are typical of the claims of the Class.

1 **5. The Class Representative and Class Counsel Will Adequately**
2 **Protect the Interests of the Class.**

3 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
4 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
5 interests of the class.” *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450
6 (1976). Here, the Class Representative retained attorneys with extensive experience in
7 prosecuting wage and hour class actions. Gundzik Decl., ¶¶ 13-16; Declaration of Daniel
8 Holzman (“Holzman Decl.”), ¶¶ 2-4

9 Nor is there any conflict between the interests of the Class Representative and the
10 members of the Class. The Class Representative and the Class are claiming the same injuries
11 based upon the same alleged wage and hour policies existing while they were employed by
12 Defendant. Gundzik Decl., ¶ 31; Altschuler Decl., ¶¶ 2-3.

13 **B. Preliminary Approval is Appropriate Because the Settlement is Fair and**
14 **Reasonable.**

15 A trial court should approve a class action settlement agreement if it determines that
16 the agreement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
17 1794, 1801 (1996). In making this decision, a court “should consider relevant factors, which
18 may include, but are not limited to the strength of the plaintiffs’ case, the risk, expense,
19 complexity and duration of further litigation as a class action, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, the
21 experience and views of counsel, the presence of a governmental participant, and the
22 reaction of class members to the proposed settlement.” *In re Microsoft I-V Cases*, 135 Cal.
23 App. 4th 706, 723 (2006).

24 “At the same time, the trial court should give due regard to what is otherwise a
25 private consensual agreement between the parties.” *Id.* Thus, the Court “limits its inquiry to
26 the extent necessary to reach a reasoned judgment that the agreement is not the product of
27 fraud or overreaching by, or collusion between, the negotiating parties, and that the
28 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *In re*

1 *Microsoft I-V Cases*, 135 Cal. App. 4th at 723, citing *Dunk v. Ford Motor Co.*, 48 Cal. App.
2 4th at 1801; also citing *Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d 615, 625
3 (9th Cir. 1982). Whether the settlement was reached through arms-length negotiations is
4 also a strong factor which weighs in favor of presuming that the settlement is fair and
5 reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801.

6 These factors, as applied to this matter and as set forth below, strongly favor granting
7 preliminary approval of the Settlement Agreement:

8 **The Strength of Plaintiff's Case.** As set forth in the Section II above and the
9 Declaration of Aaron Gundzik, the parties have vigorously advocated the parties' respective
10 positions in this matter, and Defendant has consistently disputed that they violated
11 California's wage and hour laws. In fact, Defendant raised a colorable legal or factual
12 defense to each claim Plaintiff has alleged. Gundzik Decl., ¶¶ 22-27.

13 **The Risk, Expense, Complexity and Likely Duration of Further Litigation.** If the
14 settlement is not approved, the Class Representative would need to move forward with
15 discovery and then move for class certification. Defendant will oppose certification on the
16 grounds that numerous individualized fact issues allegedly exist. It will argue and could
17 succeed in claiming that these individualized issues overwhelm common issues and will also
18 argue that the action is not manageable on a class wide basis. The result could be that the
19 case would not be certifiable as a class action. Gundzik Decl., ¶¶ 19-20.

20 **The Risk of Maintaining Class Action Status Through Trial.** If the settlement is
21 not approved, and the Class Representative is successful on his motion for certification of
22 the class, the Class would still be faced with significant risks in continuing with the
23 litigation. Defendant could interpose a successful defense which could either cause the jury
24 to reject Plaintiff's claims or award the Class only a small amount of the unpaid wages and
25 other amounts due to them. And, even if the Class ultimately prevailed, most of the Class
26 Members would have to wait years or more before they received any payment from the
27 lawsuit. Gundzik Decl., ¶ 21. Further, the Court would still retain authority to de-certify the
28

1 case in the event the trial showed that common issues did not predominate. *See* Cal. Rule of
2 Court 3.764. *Id.*

3 **The Amount Offered in Settlement.** In the experience of Class counsel, a gross
4 settlement of \$4 million for a class of approximately 3,740, with the claims described above,
5 with \$50,000 allocated to Plaintiff’s PAGA claim, is within the “ballpark” of a fair,
6 reasonable and adequate settlement. Gundzik Decl., ¶ 22; Holzman Decl., ¶ 8. Taking into
7 account the serious risks associated with proceeding— that the case might not be certified as
8 a class action, that Plaintiff might not succeed on the merits at trial or, if Plaintiff succeed at
9 trial, that the case is reversed on appeal – it becomes apparent that a settlement in this range
10 is fair to the Class.

11 **The Extent of Investigation and Discovery Completed and the Stage of the**
12 **Proceedings.** As set forth in Section II.A above and the Declaration of Aaron Gundzik, the
13 parties have engaged in extensive formal and informal discovery and factual investigation.
14 Gundzik Decl., ¶¶ 7-10.

15 **The Experience and Views of Counsel.** As set forth in the declaration of Aaron
16 Gundzik, Class Counsel has significant experience in wage and hour class actions. Gundzik
17 Decl., ¶¶ 13-16; Holzman Decl., ¶¶ 2-4. Aaron Gundzik and Rebecca Gundzik have
18 practiced law and been members of the California State Bar collectively for over 60 years.
19 *Id.* Daniel Holzman has been practicing law for more than 25 years. *Id.* Based upon their
20 vast experience in the area, when they arrived at a settlement with Defendant, Class Counsel
21 had sufficient information to assess the strengths and weaknesses of the claims against
22 Defendant, and the benefits of the settlement in light of the significant risks of continuing
23 with the litigation.

24 **Whether the Settlement Was Reached Through Arm’s-Length Bargaining or**
25 **was a Product of Fraud or Overreaching.** It is undisputed that the parties negotiated the
26 settlement at arm’s length during and after a mediation before a well-respected neutral third-
27 party mediator who had significant experience settling wage and hour class action lawsuits.
28

1 Gundzik Decl., ¶ 11. The settlement was negotiated at arms' length and was in no sense
2 collusive. *Id.*

3 **C. The Proposed Class Notice Fairly Apprises the Class of the Terms of the**
4 **Settlement and Their Right to Object.**

5 "The principal purpose of notice to the class is the protection of the integrity of the
6 class action process, one of the functions of which is to prevent burdening the courts with
7 multiple claims where one will do." *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal.
8 App. 4th 734, 745-746 (2009). Thus, an appropriate notice is one which has a reasonable
9 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
10 50 Cal. App. 3d 960, 974 (1975).

11 The proposed Class Notice addresses these concerns. It identifies the Class
12 Representative and Defendant, provides a description of the lawsuit, the settlement amounts,
13 the proposed plan of allocation and the attorneys' fees and expense payments that Class
14 counsel may receive. The proposed Class Notice provides information as to how to opt out
15 of the Class and be excluded, how to object to the settlement, as well as the date of the final
16 approval hearing. It also describes the Settlement Agreement with sufficient detail to allow
17 Class Members to make an informed decision as to whether to accept or object to it. The
18 proposed Class Notice further provides that it will bind all Class Members who do not
19 request exclusion. Gundzik Decl., ¶ 57, Ex. 1 at pp. 24-33. As such, the proposed Class
20 Notice describes the settlement with enough specificity to allow Class Members to make an
21 informed decision as to whether to participate in it. See California Rule of Court 3.766(d).

22 Further, the manner of giving notice is to be done in such a way as to maximize its
23 reach. The Class Notice will be sent to members of the Class by First Class regular U.S.
24 mail by the Administrator. Gundzik Decl., ¶ 56, Ex. 1, ¶ 7.4.2. Prior to mailing, the
25 Administrator shall check all addresses against the National Change of Address (NCOA)
26 database. *Id.* The Administrator will mail the Class Notice to the most current mailing
27 address identified through such means. Gundzik Decl., ¶ 55, Ex. 1, ¶ 7.4.2.

1 Pursuant to California Rules of Court, Rule 3.766(e), in determining whether the
2 manner of giving notice is sufficient, a court considers (1) the interests of the class; (2) the
3 type of relief requested; (3) the stake of the individual class members; (4) the cost of
4 notifying class members; (5) the resources of the parties; (6) the possible prejudice to class
5 members who do not receive notice; and (7) the res judicata effect on class members. Here,
6 the interests of the Class members are in receiving notice of the lawsuit and settlement.
7 Class Counsel and Defendant's counsel have conferred and determined that disseminating
8 the Class Notice by mail to the Class Members is the best way to maximize its reach.
9 Gundzik Decl., ¶ 58.

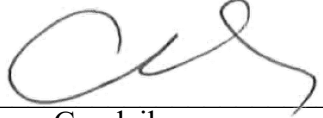
10 Delivering the Notice by mail complies with California Rules of Court, Rule
11 3.766(e) and the purpose of the Notice. An appropriate notice is one which has a reasonable
12 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
13 50 Cal. App. 3d 960, 974 (1975). Because this is an opt-out settlement and Class Members
14 who do nothing will still receive a settlement payment, the notice provisions agreed to by
15 the parties will adequately serve the interests of the individual Class Members in receiving
16 the relief provided by the settlement.

17 **V. CONCLUSION**

18 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
19 requests that the Court grant preliminary approval of the settlement and set a final approval
20 hearing to take place within approximately 150 days.

21 DATED: November 1, 2022

GUNDZIK GUNDZIK HEEGER LLP

22
23 By: 

Aaron Gundzik
Attorneys for Plaintiff Todd Altschuler,
individually and on behalf of all others
similarly situated