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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12 **(UNLIMITED JURISDICTION)**

13 ANRIKA MILLS, on behalf of herself and all
14 others similarly situated;

15 Plaintiff,

16 v.

17 CORE ANALYTICS LABORATORY, INC.,
18 a California corporation; CERF
19 DIAGNOSTICS, INC., a California
20 Corporation; MICHELLE YEREKHMANN, an
21 individual, and DOES 1 through 50, inclusive,

22 Defendants.
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Case No. 20CV363836

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 21, 2021

Time: 1:30 p.m.

Judge: Hon. Patricia M. Lucas

Dept.: 03

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INTRODUCTION

Representative Plaintiff Anrika Mills (“Plaintiff”), by and through the instant unopposed Motion, requests this Court enter an Order:

1. Preliminarily approving the Parties’ Joint Stipulation Regarding Class Action Settlement and Release (the “Settlement”);¹
2. Granting Conditional Certification of the Settlement Class;
3. Appointing Class Counsel, Class Representative and Settlement Administrator;
4. Scheduling a Final Approval Hearing; and,
5. Approving the Notice of Proposed Class Action Settlement and Final Approval Hearing Date.

For purposes of settlement Plaintiff seeks to represent a putative Class of all individuals who were employed by Defendants Core Analytics Laboratory, Inc. or Cerf Laboratories² as a non-exempt mobile phlebotomist in California (“Class Members”) at any time between February 20, 2016 and April 6, 2021 (“Class Period”).

In her Complaint, Plaintiff alleges Defendants failed to properly compensate Class Members for all hours worked, provide timely meal or rest periods, pay all due wages on separation of employment, reimburse for all business expenses, provide accurate itemized wage statements, and that Defendants committed unfair business practices under California law.

Through this lawsuit, Plaintiff sought damages for unpaid wages (including overtime), meal and rest period violations, expense reimbursements, and derivative penalties including inaccurate wage statement penalties, late payment penalties, and penalties under the Private Attorneys General Act (“PAGA”). Plaintiff also sought associated interest, as well as attorneys’ fees and costs.

The present settlement provides for a **non-reversionary** payment of Four Hundred and Thirty-Five Thousand Dollars (\$435,000.00) that will be used to pay settlement awards to the

¹ See **Exhibit “1”** [Joint Stipulation Regarding Class Action Settlement and Release] (the “Settlement”). All numerical exhibits cited herein are attached to the accompanying Declaration of Kevin R. Allen in Support of the instant Motion (“Allen Decl.”). All alphanumeric exhibits cited herein are attached to the Settlement.

² According to the California Secretary of State website Cerf amended its articles of incorporation in July 2018 to rename the company Core Diagnostics Laboratory, Inc. Allen Decl., ¶ 4.

1 approximately 215 class members, attorney's fees and costs, settlement administration costs, a
2 service award to the named Plaintiff, and to pay the Labor and Workforce Development Agency
3 ("LWDA") under PAGA.³

4 In exchange for this settlement payment, Defendants will be provided a limited release of
5 the causes of action alleged in the Complaint or that could have been asserted based on the factual
6 allegations of the Complaint and/or the Plaintiff's February 2020 Notice to the LWDA. The named
7 Plaintiff, Anrika Mills, will further release all individual claims, known and unknown, against
8 Defendants to the extent allowed by law.

9 Viewed in relation to the risks and uncertainty, including the risk that Plaintiff would not
10 have been able to recover any sizable judgment due to finances, the proposed Settlement falls well
11 within the range of reasonableness and is worthy of preliminary approval and conditional class
12 certification.

13 **I. BACKGROUND⁴**

14 Defendant Core Analytics Laboratory Services (formerly known as Cerf Laboratories) is
15 "an independently owned and operated, full service clinical laboratory providing comprehensive
16 laboratory services in post-acute care settings, healthcare facilities and physician's offices for over
17 10 years."⁵ Amongst the other laboratory related services being offered, Core advertises "mobile
18 phlebotomy staff available 24 hours a day, 7 days a week."⁶

19 Plaintiff Anrika Mills was hired as a nonexempt phlebotomist by Core and started work on
20 October 7, 2019. Ms. Mill's pay rate was \$27 an hour.⁷

21 During her employment Ms. Mills alleged that she typically worked a shift started at 3:00
22 a.m. and lasted until 11:30 a.m. Ms. Mills alleged that she typically handled about 15 to 35 blood
23 draws at the first site and often performed blood draws at two or three different sites in a single
24 shift. Once Ms. Mills finished all of the blood draws for the day she was required to transport/ship

25
26 ³ The Parties have entered into a separate general release which provides for a modest settlement payment to
27 Ms. Mills in exchange for a release which includes her DLSE claim No. RCI-CM-81810 arising from allegations that
she was terminated for complaining about late paychecks and/or expense reimbursements. Allen Decl., ¶ 15.

⁴ Allen Decl., ¶¶ 4-9.

⁵ <http://cerfdx.com> [last visited June 27, 2021].

⁶ See <http://cerfdx.com/ourservices.html> [last visited June 27, 2021].

⁷ During the entirety of her employment Ms. Mills' manager was Michelle Yerekhman. Allen Decl., ¶ 5.

1 the samples to the appropriate testing facilities in California.

2 Ms. Mills used her personal vehicle to drive from site to site, and to the airport and back,
3 during her shift. She alleged she was not paid a sufficient amount per mile to reimburse her for
4 travel expenses and that her expense reimbursements were not issued in a timely manner.

5 Ms. Mills alleged she was required to remain available via her personal cell phone
6 throughout her shift and, because of this, she did not receive compliant *off duty* rest breaks or meal
7 periods.

8 During her employment Ms. Mills also alleged that Core often failed to issued paychecks
9 on the established pay day.

10 Ms. Mills' employment was terminated on January 7, 2020. Ms. Mills alleges that she was
11 terminated for complaining repeatedly about late paychecks and mileage reimbursements.

12 **II. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS**⁸

13 On February 20, 2020, Plaintiff filed a Complaint in the Santa Clara County Superior Court
14 which was assigned Case No. 20CV363836. The Complaint alleged the following claims on behalf
15 of all Plaintiff:

- 16 1. Failure to Pay Wages Owed Including Overtime Pay (Cal. Lab. Code §§ 226.2, 510,
17 1194, 1197 and California Wage Orders);
- 18 2. Failure to Provide Meal Periods (Cal. Lab. Code § 226.7);
- 19 3. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code § 226.7);
- 20 4. Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226, 226.2);
- 21 5. Waiting Time Penalties (Cal. Lab. Code §§ 201, 202, 203);
- 22 6. Failure to Reimburse Business Expenses (Cal. Lab. Code § 2802); and,
- 23 7. Unfair Competition (Cal. Bus. & Prof. Code §§ 17200 et seq.).

24 On the same date as the Complaint was filed Plaintiff also served a notice of violation on
25 the Labor and Workforce Development Agency (LWDA).

26 On July 2, 2020, Plaintiff filed a First Amended Complaint to add her manager (Michelle
27 Yerekhman) as a named defendant and to add an eighth cause of action for Civil Penalties Under
28

⁸ See Allen Decl., ¶¶ 10-15.

1 Private Attorney General Act (Cal. Lab. Code §§ 2698 et seq).

2 The Parties met and conferred regarding early mediation. They agreed to attend a mediation
3 session with Jeffrey K. Winikow of Winikow Mediation preceded by an informal data exchange, in
4 an attempt to resolve the individual and class claims alleged in the Complaint.

5 The Parties supplied the mediator with extensive mediation briefs containing summaries of
6 evidence, law, and analysis of damages. The matter did not resolve at the session, which took place
7 on February 20, 2021, and Mr. Winikow continued to work with the Parties in an attempt to
8 resolve the matter on a class wide basis. Following several months of additional negotiations⁹ Mr.
9 Winikow made a mediator's proposal made a mediator's proposal which was accepted by the
10 Parties on April 6, 2021. The agreement was subsequently memorialized in a Memorandum of
11 Understanding ("MOU") executed April 27, 2021.

12 On or around June 24, 2021, the Parties executed their Joint Stipulation Regarding Class
13 Action Settlement and Release, which is attached to the Allen Decl. as **Exhibit "1"**.

14 **III. SUMMARY OF SETTLEMENT**

15
16 The proposed Settlement is within the range of reasonableness and in the best interest of the
17 class members in light of all facts and circumstances, including the risk of significant delay and
18 Defendants' substantive and procedural defenses and its financial condition. Allen Decl., ¶¶ 28-36.

19 **A. THE SETTLEMENT CLASS**

20 The Settlement proposes conditional certification of "*all individuals who were employed by*
21 *Defendants CORE ANALYTICS LABORATORY, INC. or CERF DIAGNOSTICS, INC. as a non-*
22 *exempt mobile phlebotomist in California at any time during the Class Period.*¹⁰

23 The Class Period is defined from February 20, 2016 through April 6, 2021, inclusive.
24 Settlement, ¶ 1.7. There are approximately 215 such Class Members.¹¹

25
26 ⁹ The additional negotiations included an exchange of Defendants' financial information such as balance sheets
27 and tax returns. Allen Decl., ¶ 35.

¹⁰ Settlement, ¶ 1.2.

28 ¹¹ Settlement, ¶ 3.42. The actual class size is expected to exceed this estimate since the data was provided
through January 14, 2021 and the Class Period ends just over three months later, i.e., on April 6, 2021. Allen Decl., ¶
29 and fn 4.

1 **B. THE SETTLEMENT TERMS**

2 The proposed settlement provides Defendants shall pay a non-reversionary \$435,000.00
3 (referred to as the “Maximum Settlement Amount”) to compensate Plaintiff and Settlement Class
4 Members. *See* Settlement, ¶1.17.¹² Due to its financial condition Defendants are being permitted to
5 fund the Settlement in two equal installment payments, one year apart. Settlement, ¶ 3.8.¹³

6 All required payments and disbursements from the Maximum Settlement Amount will be
7 issued in two equal payments, with the first half issued within 14 days of the first installment
8 payment being received and the second half issued within 14 days of the second and final
9 installment being received. *See* Settlement, ¶¶ 3.9, 3.10, 3.12, 3.14, and 3.15.

10 The settlement fund will be used to pay a modest incentive award to the named Plaintiff for
11 her service to the Class (up to \$5,000); Plaintiff’ attorneys’ fees (up to 33% of the Maximum
12 Settlement Amount, i.e., \$145,000) and actual litigation costs subject to Court determination and
13 approval; a PAGA payment to the California Labor and Workforce Development Agency (75% of
14 \$10,000, i.e., \$7,500); and actual administration expenses to Phoenix Class Action Administration
15 Solutions (\$8,500 flat fee). *Settlement*, ¶¶ 1.34-1.35. The amount remaining from the Maximum
16 Settlement Amount after paying for these items, referred to as the Net Settlement Amount, will be
17 distributed in its entirety to participating Class Members. *Id.*, ¶¶ 1.18, 3.8.1, 3.9, 3.10, *et seq.*

18 Each Class Member’s Individual Settlement Payment amount will be calculated *pro rata*
19 based upon each Class Members’ individual number of workweeks worked during the Class Period
20 relative to the workweeks worked by all participating Class Members. Settlement, ¶ 3.10.

21 Class Members will also be eligible to receive a pro rata portion of the amount allocated to
22 PAGA (“PAGA Payment”¹⁴) based on the number of workweeks worked during the period
23 covered by the PAGA claims, i.e., February 20, 2019 through April 6, 2021, inclusive. Settlement,
24 ¶¶ 1.23, 1.37.

26 ¹² Defendants will pay employer’s payroll tax burden in addition to, and separately from the Maximum
27 Settlement Amount. Settlement, ¶ 3.8.

28 ¹³ If Defendants do not fund the Settlement in a timely manner, then the entire Maximum Settlement Amount
shall become due and owing immediately. Settlement, ¶ 3.8. The Court will retain jurisdiction to enforce the
Settlement terms. Settlement, ¶ 3.21.

¹⁴ *See* Settlement, ¶ 3.10.2.

1 Class Members do not need to submit a claim form or do anything else in order to receive
2 their Individual Settlement Payment or PAGA Payment. Class Members who do not wish to
3 receive their Individual Settlement Payment and wish to retain their claims may submit a Request
4 for Exclusion. *See* Settlement, ¶ 3.5. Class Members cannot opt out of the receiving the PAGA
5 payment or the release of PAGA claims set forth in the Settlement. *Id.*

6 Inevitably, some Class Members will not cash their Individual Settlement Payment or
7 PAGA Payment checks. Checks not cashed within 180 days of mailing will be voided. The funds
8 from voided checks in the first distribution shall be reissued and sent to the same Settlement Class
9 Member alongside or in addition to their second check (i.e., after the second installment payment).
10 Settlement, ¶ 3.11. Funds from uncashed checks sent in the second distribution shall be turned over
11 to the California State Controllers Unclaimed Property Fund to be held in the name of the
12 individual for whom the funds were designated, and the Participating Class Member and/or PAGA
13 Employee shall remain bound by the Settlement. *Id.*

14 For tax purposes, twenty percent of each Class Member's Individual Settlement Payment
15 shall be treated as wages (and reported on a W-2 Form) and eighty-percent shall be treated as
16 expense reimbursement, penalties and interest (reported on a 1099-MISC Form). Settlement, ¶ 3.2.
17 The Settlement Administrator shall deduct employee side payroll taxes from the portion of the
18 settlement check allocated to wages. *Id.* Employer's payroll taxes are to be paid in addition to and
19 the Maximum Settlement Amount. Settlement, ¶ 3.2 ("Defendant shall be responsible for its
20 employer side payroll and employment taxes in addition to and outside of the Maximum
21 Settlement Amount.")

22 The settlement provides that the Court shall retain jurisdiction over the matter following
23 final approval to enforce the settlement terms. Settlement, ¶ 3.21.

24 **C. THE RELEASE**

25 The Settlement provides Defendants with a limited and narrow release of claims from Class
26 Members who do not opt out. Such will release causes of action that "were alleged in the operative
27 Complaint" or that "could have been asserted based on the factual allegations in the Action or the
28 factual/legal allegations contained in Plaintiff's February 20, 20220 Notice to the LWDA."

Settlement, ¶¶ 1.29, 3.1. The named Plaintiff is also providing a broader General Release of all known and unknown claims with an express waiver Civil Code Section 1542. Settlement, 1.2, 3.13.¹⁵

D. PROPOSED SCHEDULE AND SEQUENCE OF EVENTS¹⁶

The Settlement provides for a comprehensive notice program to ensure Class Members are informed of the proposed terms of settlement and allowed the opportunity to opt out or object to the settlement. The Parties propose Phoenix Class Action Administration Solutions to be appointed as the Settlement Administrator for this settlement.¹⁷

Within seven (7) calendar days of preliminary approval Defendants will provide Phoenix with a Class List that contains the Class Members' full name, last known mailing address, last known telephone number, social security number, as well as their start and end dates in a covered position, as determined from Defendant's records.¹⁸ Settlement, ¶¶ 1.6, 3.3.1.

Prior to mailing the Notice, the Settlement Administrator will use the National Change of Address (NCOA) database to update Class Member addresses and ensure notices have the best chance of reaching each Class Member. Settlement, ¶ 3.3.3.

Within fourteen (14) days of receiving the Class List, the Settlement Administrator will send each member, via First Class United States Mail, the Notice of Settlement.¹⁹ Settlement, ¶ 3.3.3. The Notice was drafted in plain English so as to clearly explain the recipients' options, how their settlement payment will be calculated, as well as what claims they are giving up if they do not opt-out. The Notice informs Class Members how they can dispute the information which is being used to calculate their individual settlement awards. *See* Exhibit "A" [Notice] to Settlement.

Class Members will have 30 days to request exclusion or object in writing. *Settlement*, ¶

¹⁵ Plaintiff is also entering into a General Release which provides for a very modest settlement payment to Plaintiff in exchange for a release of her individual retaliation claims. It is conditioned on the Court approving the proposed class settlement. Allen Decl., ¶ 15. The amount of the General Release payment is confidential but can be shared with the Court for in camera review upon request. Settlement, ¶ 3.13.

¹⁶ A chart reflecting the dates for performance of events under the Settlement is included in Allen Decl. *See* Allen Decl., ¶ 49.

¹⁷ Phoenix has ample experience administering class action settlements similar to this one. *See* **Exhibit "2"**. Class Counsel has used them on prior cases and finds them to be honest and well qualified. Allen Decl., ¶¶ 37-39.

¹⁸ The Class List will also indicate if a Class Member left Defendants' employment for thirty days or more. Settlement, ¶ 1.6.

¹⁹ The proposed class notice is attached to the Settlement as **Exhibit "A."**

1.32 [defining “Response Deadline”]. The Notice states that a Class Member or their representative may appear at the final approval hearing even if they do not file an objection. *See* Exhibit “A” to Settlement.

If any Notice is returned as undeliverable prior to the Response Deadline, the Settlement Administrator will promptly mail to any forwarding address affixed to the envelope or, if none, shall run a skip trace to locate a new address before remailing the Notice. Settlement, ¶ 3.3.4.

IV. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE

A class action may not be dismissed, compromised or settled without Court approval. Civil Code section 1781(f); California Rules of Court [hereinafter C.R.C.] Rule 3.769(a). This requirement is intended to prevent fraud, collusion, and/or unfairness to the class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01. The decision to approve or reject a proposed settlement is committed to the Court’s sound discretion. Therefore, judicial review is “limited to a determination whether the record shows ‘a clear abuse of discretion.’” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. In general, courts have discretion to determine whether a settlement is within the range of reasonableness, whether notice to the class is adequate, whether class certification is proper, and whether the attorney fee award is proper. *Id.*; *see also*, *Dunk, supra*, 48 Cal.App.4th at 1802. “Commonly accepted procedure calls for (1) preliminary approval of the proposed settlement at an informal hearing, (2) notice to class members of the proposed settlement and of their rights with respect thereto, and (3) a formal hearing on the fairness of the proposed settlement, where class members voice their support for or objection to the settlement, also known as a final approval hearing or “final fairness” hearing.” *Manual for Complex Litigation, Fourth*, § 21.63, 447, 447-50 (4th ed. 2004) [hereinafter “MCL”].

With this Motion, Plaintiff requests the Court take the first step in the approval process and grant preliminary approval of the proposed Settlement. A preliminary evaluation of the proposed Settlement aims to determine whether it is within the “range of reasonableness,” and whether sending the Class Notice containing Settlement terms and scheduling a formal fairness hearing would be worthwhile. 4 *Newberg on Class Actions* § 11:25.

Plaintiff further requests the Court provisionally certify the proposed Class. Provisional

1 class certification is appropriate at the preliminary approval stage where the proposed settlement
2 class meets certification requirements but has not previously been certified by the Court. 4
3 *Newberg* § 11:22.1.

4 If this Court grants preliminary approval of the Settlement and conditionally certifies the
5 class, “its order must include the time, date, and place of the final approval hearing; the notice to
6 be given to the class; and any other matters deemed necessary for the proper conduct of a
7 settlement hearing.” C.R.C. Rule 3.769(e). The Proposed Order accompanying this Motion
8 considers these requirements and includes the requisite language.

9 **V. PLAINTIFF’S SUBSTANTIVE CLAIMS AND THEORIES OF LIABILITY**

10 Plaintiff alleges Defendants’ common wage and hour policies, including meal and rest
11 period and expense reimbursement policies, gave rise to unpaid wages and meal and rest break
12 premiums, inaccurate wage statements, and various penalties under the Labor Code.

13 **A. FAILURE TO PAY ALL WAGES OWED**

14 Labor Code section 1194(a), in pertinent part, provides: “Notwithstanding any agreement to
15 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
16 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
17 balance of the full amount of this minimum wage or overtime compensation, including interest
18 thereon, reasonable attorney’s fees, and costs of suit.”

19 Labor Code Section 510, in pertinent part, provides: “Any work in excess of eight hours in
20 one workday and any work in excess of 40 hours in any one workweek [...] shall be compensated
21 at the rate of no less than one and one-half times the regular rate of pay for any employee[.]”

22 Plaintiff alleges Defendants failed to compensate Class Members for all hours worked,
23 including overtime premiums, due to Defendants’ policy of automatically deducting time for meal
24 periods even though employees were required to remain available on their mobile devices at all
25 times throughout their shifts.

26 **B. MEAL AND REST BREAK VIOLATIONS**

27 Employers must relieve non-exempt employees of all duty during a 30-minute meal period
28

1 for each work-day of at least five hours, and must provide the employee a second meal period for
2 each work-day of 10 hours or more. Labor Code Section 512. “If an employer fails to provide an
3 employee a meal period ... the employer shall pay the employee one additional hour of pay at the
4 employee's regular rate of compensation for each work day that the meal ... period is not
5 provided.” Labor Code Section 226.7. Plaintiff allege Defendants did not provide timely off-duty
6 meal periods and failed to pay Class Members an additional hour pay as required by law.

7 “Every employer shall authorize and permit all employees to take rest periods, which
8 insofar as practicable shall be in the middle of each work period. The authorized rest period time
9 shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four
10 (4) hours or major fraction thereof.” California Code of Regulations, Title 8 Section 11050, section
11 12(A). “If an employer fails to provide an employee a ... rest period ... the employer shall pay the
12 employee one additional hour of pay at the employee's regular rate of compensation for each work
13 day that the ... rest period is not provided.” Labor Code Section 226.7.

14 Plaintiff contends that Defendants did not provide legally compliant off-duty meal or rest
15 breaks due to scheduling practices and its requirement that Class Members remain available on
16 their mobile devices at all times throughout their shift.

17 **C. INACCURATE WAGE STATEMENT PENALTIES**

18 Plaintiff contends Defendants failed to provide accurate wage statements which itemized
19 the correct rates of pay, gross wages earned, hours worked, net wages earned, or the appropriate
20 deductions, as required under Labor Code Section 226. Each violation renders an employer liable
21 for the greater of actual damages or \$50 for the initial pay period in which the violation occurred,
22 and \$100 per employee for each subsequent violation, up to \$4,000 per employee.

23 **D. WAITING TIME PENALTIES**

24 Labor Code Section 203 provides that any severed employee who is not timely paid for
25 their earned wages upon termination is entitled to “waiting time” penalties. Bad faith and/or intent
26 to defraud the employee of wages is not required in order for waiting time penalties to be assessed.
27 *Barnhill v. Saunders* (1981) 125 Cal.App.3d 1. Instead, an employer’s violation of this law is
28 “willful” if “the employer intentionally failed or refused to perform an act which was required to

1 be done.” *Id.* at 7. Penalty wages accrue based on the employee’s daily wage for each day that they
2 are due for a maximum of 30 working days, including on non-workdays. *Mamika v. Barca* (1998)
3 68 Cal. App. 4th 487, 493. Under *Aubry v. Goldhor* (1988) 201 Cal.App.3d 399, waiting time
4 penalties should be imposed for failure to pay overtime compensation.

5 Plaintiff contends Defendants failed to pay Class Members all wages owed in a timely
6 manner at the conclusion of their employment. As a result, Plaintiff alleges Defendants are liable
7 for waiting time penalties.

8 **E. PREJUDGMENT INTEREST ON WAGES**

9 Labor Code Section 218.6 provides for an award of interest on all due and unpaid wages at
10 the interest rate specified in Civil Code section 3289(b). Civil Code section 3289(b) was amended,
11 effective January 1, 2001, to mandate a 10 percent rate of interest. Said interest accrues on a pay-
12 period basis and is computed from the date on which the wage comes due. *See Olso v. Cory* (1983)
13 35 Cal.3d 390, 402; *Espinoza v. Classic Pizza* (2003) 114 Cal. App. 4th 968, 975. Under *Espinoza*,
14 interest accrues from the day the wages were due. Therefore, prejudgment interest is computed
15 from the date on which each wage payment was due, but not fully paid, following each pay period
16 during the Class Period.

17 **F. FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 Pursuant to California Labor Code section 2802, Defendants were required to indemnify
19 Representative Plaintiff and other Class Members for the expenses and losses incurred during the
20 performance of their job duties. The purpose of this statute is to prevent employers from passing
21 their operating expenses on to their employees. *See Gattuso v. Harte-Hanks, Shoppers, Inc.* (2007)
22 42 Cal.4th.554, 562. Plaintiff alleges that Defendants required Plaintiff and other Class Members
23 to use their personal vehicles and mobile devices for business use without reimbursing them fully
24 for all costs incurred therefrom.²⁰ Class Members are entitled to reimbursement regardless of
25 whether or not the additional business usage of their vehicle or mobile device increased their
26 monthly cost or not. *See Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144

27
28 ²⁰ For example, Defendants reimbursed Class Members at \$0.40 per mile for using their personal vehicles. Allen
Decl., ¶ 7. The IRS reimbursement rate, which is presumed to cover expenses for business use of a personal vehicle,
ranged between \$0.54/mile in 2016 and \$0.56/mile in 2021.

1 (“If an employee is required to make work-related calls on a personal cell phone, then he or she is
2 incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid
3 for by a third person, or at all... It is irrelevant whether the employee changed plans to
4 accommodate work-related cell phone usage. Also, the details of the employee's cell phone plan do
5 not factor into the liability analysis.”).

6 **G. PAGA PENALTIES**

7 The Private Attorneys General Act of 2004 (the “PAGA”), Labor Code Section 2698, *et*
8 *seq.*, provides employees with a private right of action against an employer in order to collect
9 penalties on behalf of the state’s Labor and Workforce Development Agency (“LWDA”). PAGA
10 requires 75% of any penalties collected be paid to the LWDA, with the remaining 25% distributed
11 to the aggrieved employees. Labor Code section 2699(i). PAGA provides for attorneys’ fees and
12 costs to the employee who successfully brings the suit. *See Id.*, section 2699(g). PAGA claims,
13 however, are subject to a one-year statute of limitations. Code of Civil Procedure section 340(a).
14 PAGA penalties are calculated differently depending on the predicate violation. If the Labor Code
15 provision underlying the PAGA claim already provides for a civil penalty then an employee can
16 seek to collect that penalty on behalf of other aggrieved employees. *See Id.*, section 2699(a).
17 Where the underlying Labor Code section does not already provide a civil penalty, the PAGA
18 penalty is equal to one-hundred dollars per employee per pay period for the initial violation and
19 two-hundred dollars for each employee per pay period for each subsequent violation. *See id.*
20 section 2699(f)(1)-(2).

21 Plaintiff alleges Defendants are liable for PAGA penalties to Class Members for the causes
22 of action alleged in the operative Complaint including unpaid wages and failure to provide proper
23 meal and rest periods. *Id.*^{21, 22}

26 ²¹ Defendant entered into a court-approved PAGA settlement in *Rubalcava v. Core Analytics Laboratory, Inc.*
27 (Los Angeles Sup. Ct. No. BC719167). Allen Decl., ¶ 36, and fn 5. The release purported to extinguish certain PAGA
28 claims arising between June 19, 2017 and January 16, 2020. *Id.* The settlement did not release expense reimbursement
claims or claims that arose after January 16, 2020.

²² Plaintiff also alleged a claim for unfair business practices in violation of Business & Professions Code Section
17200, *et seq.*, arising from the specific factual allegations of the Complaint.

1 **VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

2 Plaintiff seek provisional certification of the proposed Class pursuant to California Code of
3 Civil Procedure Section 382. Plaintiff’ substantive claims arise from Defendants’ failure to comply
4 with multiple provisions of the Labor Code and the applicable IWC Wage Order. *See* Complaint,
5 *generally*. Defendants have agreed not to oppose provisional class certification for settlement
6 purposes only. *See* Settlement, ¶¶ 2.1, 3.3.

7 The Settlement proposes conditional certification of the following Class for purposes of
8 settlement: *All individuals who were employed by Defendants CORE ANALYTICS LABORATORY,*
9 *INC. or CERF DIAGNOSTICS, INC. as a non-exempt mobile phlebotomist in California at any*
10 *time during the Class Period.*²³

11 The Class Period is defined as the period from February 20, 2016 through April 6, 2021,
12 inclusive. Settlement, ¶ 1.7.

13 As reflected below, the proposed settlement class meets the requirements for provisional
14 class certification.

15 **A. CLASS CERTIFICATION IS APPROPRIATE UNDER CCP SECTION**
16 **382**

17 “As a general rule, California courts are not bound by the federal rules of procedure but
18 may look to them and to the federal cases interpreting them for guidance or where California
19 precedent is lacking.” *Wershba*, 91 Cal.App.4th at 239-40. Thus, California trial courts may adopt
20 federal procedures and standards to the extent that California law is silent on matters relating to
21 provisional class certification and settlement approval. *Vasquez v. Superior Court* (1971) 4 Cal.3d
22 800, 820-21; *see also La Sala v. American Savings & Loan Assn.* (1971) 5 Cal.3d 864, 872
23 (internal citations omitted) (“trial courts, in the absence of controlling California authority, utilize
24 the class action procedures of the federal rules”). When the class has not been certified prior to the
25 settlement agreement – as here – parties may stipulate that a class be conditionally (or
26 “provisionally”) certified for settlement purposes only. *County of Suffolk v. Long Island Lighting*
27 *Co.* (E.D.N.Y. 1989) 710 F.Supp. 1422, 1425 (“The proposed settlement may also include a
28

²³ Settlement, ¶ I.H. The Class Period is defined as June 23, 2016 to March 18, 2021, inclusive. *Id.*, ¶ I.I.

1 provision that conditions settlement of the suit on certification by the court of a class for settlement
2 purposes.”); *see also Hernandez v. Vitamin Shoppe Industries Inc.* (2009) 174 Cal.App.4th 1441,
3 1457 (“The Court unquestionably [has] the authority to conditionally certify a class for settlement
4 purposes.”).

5 Courts apply the traditional certification prerequisites to determine whether it grants
6 conditional certification. *See Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620. Class
7 actions are appropriate whenever “the question [in a case] is one of a common or general interest,
8 of many persons, or when the parties are numerous, and it is impracticable to bring them all before
9 the court” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 (internal
10 citations omitted). The provisional class must be ascertainable and sufficiently numerous, have a
11 well-defined community of interest, and substantial benefits must result from certification, making
12 proceeding as a class superior to the alternatives. *Id.* (citing Cal. Code Civ. Proc. § 382; *Fireside*
13 *Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th
14 429, 435; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 459). “The ‘community of
15 interest requirement embodies three factors: (1) predominant common questions of law or fact; (2)
16 class representatives with claims or defenses typical of the class; and (3) class representatives who
17 can adequately represent the class.” *Brinker*, 53 Cal.4th. at 1021.

18 Thus, provisional class certification is appropriate where: (1) the proposed class is
19 numerous yet ascertainable; (2) common issues of law or fact predominate; (3) the claims of the
20 proposed class representative(s) are typical of the class; (4) the proposed class representative(s)
21 will adequately represent the class; and (5) the class action mechanism is the superior means of
22 resolving the litigation.

23 **1. The Proposed Class is Ascertainable and Sufficiently Numerous**

24 There are approximately 215 persons in the proposed Class. Settlement, ¶ 3.42. This
25 satisfies the numerosity requirement. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
26 934. The class is ascertainable as Defendants have identified its members by reference to records
27 kept in the ordinary course of business.
28

2. Common Issues of Law and Fact Predominate

“The predominance requirement presents an ‘ultimate question’ of whether ‘the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.’” *Brinker*, 53 Cal.4th at 1021. “The answer hinges on ‘whether the theory of recovery advanced by the proponents of certification [sic] is, as an analytical matter, likely to prove amenable to class treatment.’” *Brinker*, 53 Cal.4th at 1021 (citing *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327).

A court must examine the complaint’s allegations and supporting declarations...and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding is both desirable and feasible ... “[I]f the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.”

Brinker, 53 Cal.4th at 1021-22 (citing *Hicks* 89 Cal.App.4th at 916).

Plaintiff has alleged Defendants applied certain uniform policies to members of the proposed Class in violation of wage and hour laws. The primary questions in the case - whether Defendants’ nonexempt mobile phlebotomists were properly compensated for their hours worked and missed breaks and properly reimbursed for business expenses - are common ones applicable to all Class Members. Plaintiff also contends Defendants had uniform formal policies and procedures pertaining to the calculation and payment of wages, scheduling, meal and rest periods, the issuance of wage statements, and final pay at termination.

These types of wage and hour claims are “of the sort routinely, and properly, found suitable for class treatment.” *Brinker*, 53 Cal.4th at 1033. *See, e.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299-1305; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 9 Cal.App.4th 1524, 1533-38; *Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1205–08.

3. Plaintiff’s Claims are Typical of the Claims of the Class

A class representative’s claims need only be “significantly similar” to other members, not “identical.” *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1247; *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473. A “typical” claim arises from

1 the same events, practices, or courses of conduct that give rise to the claims of other class
2 members, and is based on the same legal theories. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46;
3 *see also City of San Diego v. Haas* (2012) 207 Cal.App.4th 472, 501 (“Typicality is present when
4 the named class representative's interest in the action is significantly similar to that of the other
5 class members.”).

6 Here, Plaintiff’s claims are based on the same allegedly violative policies, procedures and
7 conduct by Defendants, i.e., failure to pay all wages owed including overtime and meal and rest
8 period premiums and the failure to reimburse Class Members for all business expenses. Because
9 Plaintiff’s claims are based on the same conduct, they share the same legal theories as proposed
10 Settlement Class Members and seek the same types of damages for unpaid wages, meal and rest
11 period premium pay, inaccurate wage statement penalties, waiting time penalties, and penalties
12 under PAGA.

13 **4. The Class Will be Adequately Represented by Plaintiff and Class Counsel**

14 To be “adequate,” Class Representatives must have counsel “qualified to conduct the
15 proposed litigation” and no disabling conflict of interest. *McGhee v. Bank of Am.* (1976) 60
16 Cal.App.3d 442, 450. This case meets both requirements. “[O]nly a conflict that goes to the very
17 subject matter of the litigation will defeat a party’s claims of representative status.” *Richmond v.*
18 *Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. In this case, Plaintiff’s claims present no such
19 conflict and they, and their counsel, are experienced in wage and hour class action litigation and
20 able and willing to prosecute this case and protect the interests of the class.²⁴

21 **5. A Class Action is the Superior Method of Adjudication**

22 Class actions play an important role in enforcing California’s wage and hour laws.²⁵ “It
23 would be neither efficient nor fair to anyone, including Defendants, to force multiple trials to hear
24 the same evidence and decide the same issues.” *Sav-on*, 34 Cal.4th at 340 (citing *Boggs v. Divested*
25 *Atomic Corp.* (S.D. Ohio 1991) 141 F.R.D. 58, 67). Class certification is a superior means of
26 adjudicating employment claims where “[d]oing so would further judicial economy by avoiding
27

28 ²⁴ See Allen Decl., ¶¶ 40-48.

²⁵ See *Gentry v. Superior Court* (2007) 42 Cal.4th 443 [summarizing the policy considerations favoring class action usage].

1 repetitious suits, would unify what would otherwise be a series of small claims so as to enhance the
2 class members' access to redress, and would put to rest any current employee concerns about
3 retaliation.” *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1308. Here, the only
4 available enforcement alternative to a class action would be potentially dozens of trials, each
5 covering the same factual grounds and legal issues. As such, class-wide adjudication (which, in
6 light of this Settlement, will provide prompt and significant relief) is the superior means by which
7 to effectively redress these claims.

8 **VII. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

9 **A. THE SETTLEMENT SHOULD BE PRESUMED FAIR**

10
11 At final approval, the Court will be permitted to presume that the Settlement is fair where
12 (1) the settlement is reached through arm's-length bargaining, (2) investigation and discovery are
13 sufficient to allow counsel and the Court to act intelligently, (3) counsel is experienced in similar
14 litigation, and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802; *see also*
15 *Wershba*, 91 Cal.App.4th at 245.

16 This settlement is a product of arms' length negotiations (*i.e.*, the first factor). The parties
17 spent months preparing before attending the January 12, 2021 full-day mediation session with
18 experienced mediator Jeffrey Winikow of Winikow Mediation. Allen Decl., ¶¶ 13-15, 47. The
19 Parties then spent months negotiating an MOU and then several additional months flushing out the
20 terms of the proposed long form Settlement agreement submitted herein. *Id.*, ¶ 14.

21 Plaintiff conducted sufficient investigation (*i.e.*, the second factor). As part of the Parties'
22 pre-mediation data exchange Plaintiff's counsel obtained evidence necessary to evaluate
23 Defendants' exposure for the alleged illegal employment practices. This production included
24 Defendant's relevant wage and hour policies and procedures and memorandum, the named
25 Plaintiff's personnel files, and time and payroll records for the putative Class. Plaintiff's counsel
26 was also provided with class metrics including but not limited to the class size, number of
27 workweeks worked by the class, and the average pay rates. Allen Decl., ¶ 131; *see* Settlement,
28 ¶ 3.42. The extent of the informal discovery and independent investigation permits the Court to

1 find that all parties were sufficiently informed. *See 7-Eleven Owners for Fair Franchising v.*
2 *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150; *see also Dunk*, 48 Cal.App.4th at 1802.

3 This case also satisfies the third factor of the presumption of fairness as Class Counsel has
4 significant experience in the prosecution of wage and hour class actions. Allen Decl., ¶¶ 40-48.
5 This experience allowed Class Counsel to tailor their informal discovery and investigation properly
6 and to accurately assess Defendant's exposure.

7 The fourth factor (*i.e.*, number of objectors and opt-outs) can only be addressed after the
8 Class Notice has been sent out and each class member is afforded the opportunity to request
9 exclusion or file an objection. However, the three factors that are possible to review at this time
10 strongly suggest that the Settlement meets the presumption of fairness. Thus, the record before this
11 Court affords ample grounds upon which to conclude that the legal presumption of fairness will
12 apply to the Settlement.

13 **B. THE SETTLEMENT IS WITHIN THE RANGE OF**
14 **REASONABLENESS**

15 In determining whether the Settlement is within the "range of reasonableness" the Court
16 must consider several factors including: (1) the strengths of plaintiff's case, (2) the risks, expenses,
17 complexity, and likely duration of further litigation, (3) the risk of maintaining class action status
18 throughout trial, (4) the Settlement amount, (5) the extent of completed discovery, (6) the stage of
19 the proceedings, (7) counsel's experience and views of the Settlement, and (8) the reaction of the
20 class members to the Settlement. *Alberto v. GMRJ Inc.* (E.D.Cal. 2008) 252 F.R.D. 652, 664-65
21 (quoting *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026); *see also* 5 James Wm.
22 Moore, *et al.*, *Moore's Federal Practice*, § 23.85(3) (3d ed. 1997) 23.353-4. "It is the settlement
23 taken as a whole, rather than the individual component parts, that must be examined for overall
24 fairness." *Hanlon*, 150 F.3d at 1026 (citing *Officers for Justice v. Civ. Serv. Comm'n of SF* (9th Cir.
25 1982) 688 F.2d 615, 682).

26 "[T]he court bears the ultimate responsibility to ensure the reasonableness of the settlement
27 terms. Although many factors must be considered in making this determination, and the court is
28 not required to decide the ultimate merits of the class members' claims before approving a

1 proposed settlement, an informed evaluation cannot be made without an understanding of the
2 amount that is in controversy and the realistic range of outcomes of the litigation.” *Kullar v. Foot*
3 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.

4 Class Counsel has satisfied the so called “*Kullar* standard” through providing the Court
5 with a detailed evaluation of the realistic ranges of outcomes in this lawsuit. Allen Decl., ¶¶ 28-36.
6 Class Counsel weighed the ranges of recovery against the risks associated with not settling the case
7 including the real risk of not being able to collect any sizable judgment. Allen Decl., ¶ 30-35.

8 When weighed against these risks, the Settlement’s ability to secure a sizeable money
9 payment to Class Members for a limited release of wage and hour claims strongly supports
10 approval. *Id.* Based on the totality of the circumstances, Class Counsel believes that the settlement
11 is a fair, adequate, and reasonable resolution of Plaintiff’s claims on behalf of the Settlement Class.
12 Allen Decl., ¶ 36.

13 **C. THE CLASS-WIDE RELEASE IS APPROPRIATELY LIMITED**

14 The released claims share a reasonable nexus with the alleged violations in both substance
15 and time. “Any attempt to include in a class settlement terms which are outside the scope of the
16 operative complaint should be closely scrutinized by the trial court to determine if the plaintiff
17 genuinely contests those issues and adequately represents the class.” *Trotsky v. Los Angeles Fed.*
18 *Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.

19 Here, the class-wide release is anchored in the operative complaint and narrowly tailored in
20 scope, both in terms of the governed claims and time period. It only releases wage and hour causes
21 of action that were alleged in the Complaint or that “could have been asserted based on the factual
22 allegations” in the action. *See* Settlement, ¶ 1.29

23 **D. PLAINTIFF’ ATTORNEYS’ FEES AND COSTS ARE** 24 **REASONABLE**

25 This Court has discretion to approve an appropriate fee award. Moreover, public policy
26 promotes approval of reasonable fee requests since “[t]he function of an award of attorney’s fees is
27 to encourage the bringing of meritorious ... claims which might otherwise be abandoned because of
28

1 the financial imperatives surrounding the hiring of competent counsel.” *City of Riverside v. Rivera*
2 (1986) 477 U.S. 561, 578 (internal quotation marks and citations omitted). In this Settlement,
3 Defendants agreed to pay Class Counsel reasonable attorneys’ fees in the amount of up to 33 1/3%
4 of the Maximum Settlement Amount for work performed for the class. Settlement, ¶ 1.4

5 The California Supreme Court has affirmed the propriety of awarding class counsel fees as
6 a percent of a settlement fund the firm creates for the benefit of the class. *Lafitte v. Robert Half*
7 *International, Inc.* (2016) 1 Cal.5th 480, 573: “[T]he court may determine the amount of a
8 reasonable fee by choosing an appropriate percentage of the fund created. The recognized
9 advantages of the percentage method-including relative ease of calculation, alignment of incentives
10 between counsel and the class, a better approximation of market conditions in a contingency case,
11 and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily
12 prolonging the litigation.” *Id.*

13 *Lafitte* is just one of the more recent in a long line of judicial authority supporting the use of
14 the “common fund” method of determining fees. The common fund doctrine refers to the trial
15 courts’ equitable power to award attorneys’ fees and costs when a litigant proceeding in a
16 representative capacity secures a substantial benefit for a group. *See also Serrano v. Priest* (1977)
17 20 Cal.3d 35, 38; *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1435-36. The U.S.
18 Supreme Court has specifically endorsed using a percentage of the fund method in paradigmatic
19 common fund cases such as this one. *Blum v. Stenson* (1984) 465 U.S. 886, 900 n.16 (“ . . . under
20 the “common fund doctrine,” . . . a reasonable (attorneys’) fee is based on a percentage of the fund
21 bestowed on the class . . .”). Similarly, the California Supreme Court previously upheld the
22 propriety of employing the “common fund” doctrine to class actions where representative Plaintiff
23 have secured a monetary settlement or judgment for the class. *Serrano*, 20 Cal.3d at 35-40.

24 The Court is not requested to approve the fee award until final approval, when it has the
25 benefit of seeing how the class responds to the requested amount and additional briefing and
26 evidence on the subject. At final approval, Class Counsel believes the Court will find that the
27 requested amount is warranted in light of the results obtained for the class as well as the amount of
28 work performed by class counsel, the costs invested, the size of the settlement, as well as the future

1 commitment of time Class Counsel will be required to invest to ensure that the Settlement terms
2 are fulfilled and that Class Members have their questions about the settlement answered in a timely
3 manner.

4 The Settlement also provides for Plaintiff's counsel's reimbursement for up to \$10,000 of
5 their actual costs expended in this litigation. Settlement, ¶ 1.5. Class Counsel will provide evidence
6 to support its requested costs prior to Final Approval.

7 **E. NAMED PLAINTIFF SEEKS REASONABLE ENHANCEMENT**
8 **AWARDS**

9 The Settlement also provides for a modest enhancement award to the representative
10 Plaintiff of up to \$5,000. Settlement, ¶ 1.8.²⁶ Enhancement awards, or service payments, to
11 representative Plaintiff in class action settlements compensate them for their "efforts in bringing
12 the lawsuit." *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726. "Since without a
13 named plaintiff there can be no class action, such compensation as may be necessary to induce him
14 to participate in the suit." *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th
15 785, 804. "[T]he rationale for making enhancement or incentive awards to named Plaintiff is that
16 they should be compensated for the expense or risk they have incurred in conferring a benefit on
17 other members of the class." *Id.* at 806. "An incentive award is appropriate 'if it is necessary to
18 induce an individual to participate in the suit.'" *Cellphone Termination Fee Cases* (2010) 186 Cal.
App. 4th 1380, 1394 quoting, *Clark, supra*, at 804.

19 "Criteria courts may consider in determining whether to make an incentive award include:
20 (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the
21 notoriety and personal difficulties encountered by the class representative; (3) the amount of time
22 and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal
23 benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.'" *Id.*
24 quoting, *Van Vranken v. Ad. Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299.

25 Class Counsel will provide detailed declarations from the class representatives addressing
26

27 ²⁶ Plaintiff also filed a retaliation claim against Defendants with the DLSE (State Case No. RCI-CM-81810). If
28 this Settlement is approved then Plaintiff will also provide Defendants a General Release that includes those claims
and, in exchange, receive a modest settlement payment under the General Release. The amount of that payment is
confidential but may be disclosed to the Court for in camera review upon request. Settlement, ¶ 3.13.

1 the above elements at Final Approval. For purposes of preliminary approval, Class Counsel notes
2 that the class representative was *very* actively engaged in this lawsuit, to the point of checking in
3 with Class Counsel several times per week. Allen Decl., ¶ 26. She also assisted in Plaintiff's
4 investigation including putting counsel in touch with several former coworkers whose
5 collaborating testimony was important at mediation. *Id.* She is also providing Defendants with a
6 broader general release of all known and unknown claims which includes a retaliation claim she
7 filed with the DLSE. Allen Decl., ¶ 26; *Settlement*, ¶ 3.13 Class Counsel believes that such factors
8 help support the requested enhancement award.

9 **VIII. THE CLASS NOTICE PROGRAM IS CONSTITUTIONALLY SOUND**

10 The Court may fashion an appropriate notice program. *See* Civil Code Section 1781; *Cartt*
11 *v. Superior Court* (1975) 50 Cal.App.3d 960, 970-74; Civil Code Section 1781. At a minimum, the
12 notice should inform the class members of the date for the Final Approval Hearing, explain the
13 proposed settlement, and outline procedures for filing a written objection and/or making a personal
14 appearance at the hearing. C.R.C. Rule 3.769(f).

15 The proposed Notice (which is attached to the Settlement as **Exhibit "A"**) provides
16 information on the meaning and nature of the Settlement, the key terms and provisions of the
17 Settlement, the manner in which payments to class members will be calculated, Plaintiff's
18 counsel's application for reimbursement of costs and attorneys' fees, the Representative Plaintiff's
19 incentive awards, the date, time and place of the final approval/fairness hearing, the procedures and
20 deadlines for requesting exclusion from and/or objecting to the Settlement, and counsel's contact
21 information.

22 In addition, with a class of over 215 persons, it is likely that some Class Members may be
23 difficult to locate. Accordingly, the Settlement Administrator will diligently apply standard
24 methods (e.g., NCOA search, skip trace techniques) to determine class members' current
25 addresses. *Settlement*, ¶ 3.3.4.

26 Prior to the Final Approval Hearing, Plaintiff will file a motion for final approval of the
27 Settlement and an application for attorneys' fees and costs and the Representative Plaintiff's
28 enhancement awards. Class Counsel also will file a declaration from the Settlement Administrator

1 showing its efforts to mail the Class Notice, process class members' disputes of their workweeks as
2 shown in Defendant's records, as well as any requests for exclusions.

3 **IX. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE**

4 The final step in the settlement approval process is a Final Fairness Hearing, at which the
5 Court may hear all evidence and arguments necessary to evaluate the Settlement. Proponents of the
6 Settlement may explain the terms and conditions of the Settlement and offer argument in support
7 of or in opposition to the Settlement. Plaintiff request this Court set a date for a Final Approval
8 Hearing at a time convenient for the Court and consistent with the class notice provisions in the
9 Settlement.²⁷

10 **X. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff respectfully request this Court enter an order
12 granting Plaintiff's motion for preliminary approval of the Settlement, conditionally certifying the
13 proposed settlement Class, appointing Class Counsel and Plaintiff as the Class Representative and
14 Phoenix as Settlement Administrator, approving the Class Notice and setting a date for the Final
15 Approval Hearing.

16 Dated: June 14, 2021

ALLEN ATTORNEY GROUP

17 By: Kevin Allen
18 KEVIN R. ALLEN
19 Attorneys for Representative Plaintiff and the Plaintiff
20 Class
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28 ²⁷ Plaintiff's counsel estimates that the earliest the Final Approval Hearing could take place is approximately 90
days after preliminary approval. See Chart entitled "Dates of Performance Under Settlement."