

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

ANRIKA MILLER, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

CORE ANALYTICS LABORATORY, INC., a
California corporation; CERF DIAGNOSTICS,
INC., a California Corporation; MICHELLE
YEREKHMEN, an individual, and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV363836

**ORDER RE: MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; JUDGMENT**

The above-entitled matter came on for hearing on Wednesday, November 17, 2021, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered the written submissions filed by the parties and issued a tentative ruling on Tuesday, November 16, 2021. No party contested the tentative ruling; therefore, the court orders that the tentative ruling be adopted as the order of the court, and hereby orders, adjudges and decrees as follows:

I. INTRODUCTION

This is a putative class and representative action arising out various alleged wage and hour violations. The First Amended Complaint, filed on July 2, 2020, sets forth the following

causes of action: (1) Failure to Pay Wages Owed; (2) Failure to Provide Meal Periods or Pay Meal Period Premiums; (3) Failure to Authorize and Permit Paid Rest Breaks or Pay Rest Break Premiums; (4) Failure to Provide Accurate Itemized Wage Statements; (5) For Waiting Time Penalties; (6) Failure to Reimburse Business Expenses; (7) Violation of Labor Code Section 558; (8) Unfair Business Practices Under the Unfair Competition Law; and (9) Recovery Under Private Attorneys General Act (“PAGA”).

The parties have reached a settlement. On July 21, 2021, the court granted preliminary approval of the settlement, subject to modification of the class notice. Subsequently, the court approved the amended notice. Plaintiff Anrika Mills (“Plaintiff”)(incorrectly designated in the Complaint as Anrika Miller) now moves for final approval of the settlement.

II. LEGAL STANDARD

Generally, “questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

“The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

1 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk, supra*, 48
2 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

3 The burden is on the proponent of the settlement to show that it is fair and
4 reasonable. However “a presumption of fairness exists where: (1) the settlement
5 is reached through arm’s-length bargaining; (2) investigation and discovery are
sufficient to allow counsel and the court to act intelligently; (3) counsel is
experienced in similar litigation; and (4) the percentage of objectors is small.”

6 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

7 **III. DISCUSSION**

8 The case has been settled on behalf of the following class:

9 [A]ll individuals who were employed by Defendants CORE ANALYTICS
10 LABORATORY, INC. or CERF DIAGNOSTICS, INC. as a non-exempt mobile
phlebotomist in California at any time during the Class Period.

11 The class period is February 20, 2016 through April 6, 2021.

12 As discussed in connection with the motion for preliminary approval, defendants Core
13 Analytics Laboratory, Inc., Cerf Diagnostics, Inc., and Michelle Yerekhman (collectively,
14 “Defendants”) will pay a total non-reversionary amount of \$435,000. The total settlement
15 payment includes attorney fees of \$145,000, costs up to \$10,000, an incentive award of \$5,000
16 for the class representative, settlement administration costs of \$8,500, and a PAGA allocation of
17 \$10,000 (\$7,500 of which will be paid to the Labor Workforce Development Agency).

18 Settlement funds will be paid in two installments. Funds from checks not cashed within
19 180 days from the date of issuance will be paid to the same class members in the second
20 distribution. Funds from uncashed checks from the second distribution will be turned over to
21 Neighborhood Legal Services of Los Angeles County as a *cy pres* recipient. (Supplemental
22 Declaration of Kevin R. Allen in Support of Plaintiff’s Motion for Final Approval of Class
23 Action Settlement and Motion for Fees, Costs, and Service Awards, ¶¶ 3-6.)

24 On August 18, 2021, the settlement administrator mailed notice packets to 252 class
25 members. (Declaration of Kevin R. Allen in Support of Plaintiff’s Motion for Final Approval of
26 Class Action Settlement and Motion for Fees, Costs, and Service Awards (“Allen Dec.”), Ex. 2,
27 Declaration of Elizabeth Kruckenberg Regarding Notice and Settlement Administration
28 (“Kruckenberg Dec.”), ¶ 5.) No packets were returned as undeliverable or with forwarding

1 information. (Kruckenberg Dec., at ¶ 6.) No objections or requests for exclusion were received
2 by the settlement administrator. (*Id.* at ¶¶ 7-8.) The highest individual settlement payment will
3 be approximately \$4,111.21; the lowest individual settlement payment will be approximately
4 \$15.50; and the average individual settlement payment will be approximately \$1,033.01. (*Id.* at
5 ¶ 10.) Additionally, the 197 class members entitled to a share of the PAGA allocation will
6 receive an average payment of approximately \$12.69. (*Id.* at ¶ 11.)

7 The court previously found that the proposed settlement is fair and the court continues to
8 make that finding for purposes of final approval.

9 Plaintiff requests an incentive award of \$5,000.

10 The rationale for making enhancement or incentive awards to named plaintiffs is
11 that they should be compensated for the expense or risk they have incurred in
12 conferring a benefit on other members of the class. An incentive award is
13 appropriate if it is necessary to induce an individual to participate in the suit.
14 Criteria courts may consider in determining whether to make an incentive award
15 include: 1) the risk to the class representative in commencing suit, both financial
16 and otherwise; 2) the notoriety and personal difficulties encountered by the class
17 representative; 3) the amount of time and effort spent by the class representative;
18 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
19 enjoyed by the class representative as a result of the litigation. These “incentive
20 awards” to class representatives must not be disproportionate to the amount of
21 time and energy expended in pursuit of the lawsuit.

22 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,
23 brackets, ellipses, and citations omitted.)

24 Plaintiff submitted a declaration in which she estimates that she spent 100 hours assisting
25 with the prosecution of the action. (Declaration of Anrika Mills in Support of Plaintiff’s Motion
26 for Final Approval of Class Action Settlement and Motion for Fees, Costs, and Service Awards,
27 ¶ 12.) Plaintiff states that she met with class counsel on several occasions, spent several hours
28 searching for and collecting evidence, provided documents and other evidence to class counsel,
29 reviewed data produced by Defendants, participated in mediation, and reviewed the settlement
30 documents. (*Ibid.*)

31 The court finds that Plaintiff’s efforts in the case resulted in a benefit to the class.
32 Moreover, Plaintiff undertook risk by putting her name on the case because she may have been
33 responsible for costs if she lost the case and because it might impact her future employment.

1 (See *Covillo v. Specialtys Cafe* (N.D. Cal. 2014) 2014 WL 954516, at *8 [incentive awards are
2 particularly appropriate where a plaintiff undertakes a significant “reputational risk” in bringing
3 an action against an employer].) Accordingly, the court finds that the service award is warranted
4 and it is approved.

5 The court also has an independent right and responsibility to review the requested
6 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
7 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel
8 requests attorney fees in the amount of \$145,000 (33 1/3 percent of the total settlement fund).
9 This percentage is typical for wage and hour cases. (See *Laffitte v. Robert Half Intern. Inc.*
10 (2016) 1 Cal.5th 480, 488, 503-504 (*Laffitte*).) Plaintiff’s counsel provides evidence
11 demonstrating a total lodestar of \$87,300. (Allen Dec., ¶ 40 & Ex. 3.) This results in a
12 multiplier of 1.66. The attorney fees requested are reasonable as a percentage of the common
13 fund and are approved. (See *Laffitte, supra*, 1 Cal.5th at pp. 488, 503-504 [trial court did not
14 abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a
15 lodestar resulting in a multiplier of 2.03 to 2.13].)

16 Plaintiff’s counsel also provides evidence of incurred costs in the amount of \$8,682.04.
17 (Allen Dec., ¶ 41 & Ex. 4.) These costs are approved. The settlement administration costs of
18 \$8,500 are also approved. (Kruckenberg Dec., ¶ 12 & Ex. B.)

19 Accordingly, the motion for final approval of the class action settlement is GRANTED.

20 Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, the court retains
21 jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the final
22 Order and Judgment.

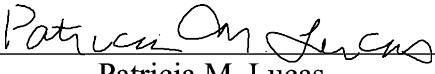
23 The court sets a compliance hearing for August 3, 2022, at 2:30 p.m. in Department 3. At
24 least ten court days before the hearing, class counsel and the settlement administrator shall
25 submit a summary accounting of the net settlement fund identifying distributions made as
26 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants,

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1 the status of any unresolved issues, and any other matters appropriate to bring to the court's
2 attention. Counsel may appear at the compliance hearing remotely.

3
4 Dated: November 18, 2021


Patricia M. Lucas
Judge of the Superior Court