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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

KATHERINE FRANK, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

CORE ANALYTICS LABORATORY, INC.,
a California corporation; CERF
DIAGNOSTICS INC., an unknown business
entity; and DOES 1 through 100, inclusive,

Defendant.

Case No. 21STCV31386

Honorable Stuart M. Rice
Department 1

CLASS ACTION

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

Date: December 30, 2024
Time: 10:30 a.m.
Department: 1

Complaint Filed: August 25, 2021
FAC Filed: June 28, 2024
Trial Date: None Set

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that on December 30, 2024, at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Stuart M. Rice in Department 1 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Katherine Frank (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement”, “Agreement” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Elizabeth Parker-Fawley, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Katherine Frank as Class Representative;
- Preliminarily appointing Arby Aiwarzian, Joanna Ghosh, Elizabeth Parker-Fawley, and Ryan Slinger of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Settlement Administrators. as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

This Motion is made pursuant to Rule 3.769, Rule 3.764, and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Elizabeth Parker-Fawley) and Proposed Class Representative (Katherine Frank) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: October 17, 2024

LAWYERS for JUSTICE, PC

By: _____


Elizabeth Parker-Fawley
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Katherine Frank (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Settlement”, “Agreement” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other PAGA Employees, on the one hand, and Defendant Core Analytics Laboratory (formerly known as CERF Diagnostics, Inc.) (“Defendant”) on the other hand. Subject to approval by the Court, Plaintiff and Defendant (together, the “Parties”) have agreed to settle this lawsuit for a Total Settlement Amount of \$525,000.00.¹

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose: collectively the “General Non-Exempt Class” (all current and former hourly-paid or non-exempt employees who worked for Defendant in positions other than mobile phlebotomists in California at any time between August 25, 2017 through April 18, 2023) and the “Mobile Phlebotomist Class” (all current and former hourly-paid or non-exempt employees who worked for Defendant as mobile phlebotomists in California at any time between April 7, 2021 through April 18, 2023) (“Class” or “Class Member”).² Class Members who do not submit a timely and valid request to opt-out of the Settlement (“Settlement Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the Class Member’s number of Workweeks.

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiff also moves for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Elizabeth Parker-Fawley (“Parker-Fawley Decl.”), ¶ 7(uu).

² Settlement Agreement, ¶ I(D). “Class Period” means the “General Non-Exempt Class Release Period” with respect to the General Non-Exempt Class and the “Mobile Phlebotomist Class Release Period” with respect to the Mobile Phlebotomist Class. ¶ 7(i).

“General Non-Exempt Class Release Period” means the time period from August 25, 2017, through April 18, 2023.

“Mobile Phlebotomist Class Release Period” means the time period from April 7, 2021, through April 18, 2023.

1 Defendant is an independently owned and operated, full service laboratory and radiology
2 clinic. Plaintiff is a former employee of Defendant who worked from approximately March 2021
3 to approximately June 2021.

4 On July 15, 2021, Plaintiff provided notice by online submission to the LWDA and written
5 notice by certified mail to Defendant of her intent to pursue civil penalties against Defendant under
6 PAGA for multiple alleged violations of California Labor Code (“PAGA Notice”).³

7 On August 25, 2021, Plaintiff filed her Class Action Complaint for Damages against
8 Defendant in Los Angeles County Superior Court (“Court”), thereby commencing the above-
9 captioned lawsuit (“Action”).

10 On September 21, 2021, Plaintiff filed her Complaint for Enforcement Under the Private
11 Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendant in Los Angeles
12 County Superior Court, Case No. 21STCV34823 (“PAGA Action”).

13 On June 25, 2024, the Parties filed a Joint Stipulation for Leave to File a First Amended
14 Complaint in the Action, which the Court granted on June 28, 2024. On June 28, 2024, Plaintiff
15 filed the First Amended Complaint. The First Amended Class Action Complaint for Damages &
16 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. will
17 be considered the “Operative Complaint.”

18 Plaintiff’s core allegation is that Defendant has violated the California Labor Code by
19 engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of,
20 *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and
21 rest periods and associated premium pay, failing to timely pay wages during employment and upon
22 termination of employment, failing to provide compliant wage statements, failing to maintain
23 requisite payroll records, and failing to reimburse necessary business expenses, and thereby
24 engaged in unfair business practices in violation of California Business and Professions Code
25 section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends
26 that he and the Class Members and PAGA Employees, are entitled to, *inter alia*, unpaid wages,
27 penalties (including and not limited to, penalties pursuant to PAGA), and attorneys’ fees.

28 ³ Parker-Fawley Decl, ¶ 27, Exh. 2.

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

Class Counsel has actively litigated the Action since it was commenced on August 25, 2021. On January 16, 2023, counsel for the Parties participated in a formal, full-day mediation conducted by Jeffery Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluations, the Parties agreed on monetary terms and some key elements of the Settlement described herein.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) and the Released PAGA Claims of the State of California and the PAGA Employees with respect to the Released Parties.⁴ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) the Attorneys' Fees and Costs, consisting of attorneys' fees in the amount of 35% of the Total Settlement Amount (i.e. \$183,750.00, if the Total Settlement Amount remains \$525,000.00), and reimbursement of actual costs and expenses in an amount not to exceed \$25,000.00 ("Attorneys' Fees and Costs")⁵; (2) Settlement Administration Costs, which are currently estimated not to exceed \$10,000.00 to the Settlement Administrator ("Settlement Administration Costs")⁶; (3) \$100,000.00 allocated to penalties under PAGA ("PAGA Amount")⁷; and (4) payment in the amount of up to \$7,500.00 to Plaintiff ("Enhancement Payment").⁸ The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or "Settlement Administrator") to handle the notice and settlement administration process.

⁴ Settlement Agreement, ¶ 7(uu).

⁵ *Id.*, ¶ 11.

⁶ *Id.*, ¶ 13.

⁷ *Id.*, ¶ 14.

⁸ *Id.*, ¶ 12.

1 The Parties have agreed that the Settlement Administrator will determine each Settlement
2 Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in
3 accordance with the Settlement Agreement on a pro rata per Workweek basis, which will be
4 adjusted after Final Approval to reflect the total Workweeks worked by the Settlement Class
5 Members.⁹ The Parties have agreed that the Settlement Administrator will determine each PAGA
6 Employees' share of the 25% share of the PAGA Allocation, in accordance with the Settlement
7 Agreement on a pro rata per PAGA Pay Period basis.¹⁰

8 Each Settlement Share will be allocated as follows: 20% as wages, which will be reported
9 on an IRS Form W-2; and 80% as penalties, interest, and non-wage damages, which will be
10 reported on an IRS Form 1099.¹¹ The Settlement Administrator will withhold the employee's share
11 of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares,
12 and issue checks to Settlement Class Members for their Individual Settlement Payments.¹² The
13 Employer Taxes will be paid separately and in addition to the Total Settlement Amount.¹³ Each
14 Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be
15 subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.¹⁴

16 Each Individual Settlement Payment and Individual PAGA Payment check will be valid
17 and negotiable for one hundred eighty (180) calendar days from the date the checks are issued, and
18 thereafter, shall be cancelled.¹⁵ All funds remaining in the Qualified Settlement Account in
19 connection with cancelled checks shall be distributed to the Controller of the State of California to
20 be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500
21 et seq. for the benefit of those Settlement Class Members and PAGA Employees who did not cash,
22 deposit, or otherwise negotiate their checks until such time that they claim their property.¹⁶

23
24
25 ⁹ *Id.*, ¶ 15.

26 ¹⁰ Settlement Agreement, ¶ 16.

27 ¹¹ *Id.*, ¶ 26.

28 ¹² *Ibid.*

¹³ *Id.*, ¶ 26.

¹⁴ *Ibid.*

¹⁵ *Id.*, ¶ 21.

¹⁶ *Ibid.*

Any Class Member wishing to be excluded from the Class Settlement must submit a written letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before the date that is 60 calendar days from the initial mailing of the Class Notice by the Settlement Administrator (“Response Deadline”).¹⁷ Any Class Member who submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will not be issued an Individual Settlement Payment.¹⁸ Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement and will be issued their Individual PAGA Settlement Share, irrespective of whether they submit an Request for Exclusion.¹⁹

Only Class Members who have not submitted a Request for Exclusion (i.e., Settlement Class Members) may object to the Class Settlement by submitting a Notice of Objection to the Settlement Administrator prior to the Response Deadline or by presenting their objection orally at the Final Approval Hearing, regardless of whether they submitted a Notice of Objection.²⁰

In order to dispute Workweeks and/or PAGA Pay Periods as reflected in their respective Class Notices, Class Members must submit a written letter to the Settlement Administrator by the Response Deadline and include copies of any information and/or attaches documentation demonstrating that the number of Workweeks and/or PAGA Pay Periods that he or she contends should be credited to him or her are correct.²¹ The Settlement Administrator’s decision on such disputes will be final and non-appealable.²²

Defendant will fund the Settlement in two installments: one installment of \$262,500.00 plus an amount sufficient to pay the Employer Taxes within 30 days of the Effective Date, and the second installment of \$262,500.00 within one year of the due date of the first installment.²³ The settlement will be disbursed after each installment. Within seven days of the funding of the First Installment, the Settlement Administrator will issue the Individual Settlement Payments,

¹⁷ Settlement Agreement, ¶¶ 7(pp) & 7(qq). In the event that the Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member will be extended by 15 calendar days from the original Response Deadline. *Id.*

¹⁸ *Id.*, ¶ 22.

¹⁹ *Id.*, ¶ 22.

²⁰ *Id.*, ¶ 23.

²¹ *Ibid.*

²² *Ibid.*

²³ *Id.*, ¶ 10(b).

Individual PAGA Payments, Enhancement Payment, and a portion of the LWDA Payment, and within seven days of the Second Installment, the Settlement Administrator will issue the remainder of the LWDA Payment, the Attorneys' Fees and Costs, and the Settlement Administration Costs.²⁴

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under

²⁴ *Id.*, ¶10(c).

the circumstances of the case. *Dunk*, 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s 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 view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement 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.” *Id.*; *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.

Class Counsel has actively litigated the Action since it was commenced on August 25, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.²⁵

Prior to reaching the Settlement, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis a large volume of documents and data obtained from Defendant, Plaintiff and other sources.²⁶ The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff’s employment records, Plaintiff’s time and pay data, time and pay data for a sampling of other Class Members, Defendant’s Employee Handbook, company

²⁵ Parker-Fawley Decl., ¶ 11.

²⁶ *Id.*, ¶ 12.

1 policy acknowledgments, forms, procedures and policies (including, but not limited to, Mutual
2 Agreement to Arbitrate Claims, Final Termination Checklist, Notice to Employee of Change of in
3 Employment Status) among other information and documents.²⁷ Class Counsel had the opportunity
4 to interview Plaintiff and to gather facts and to identify potential witnesses.²⁸ Counsel for the
5 Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the
6 pleadings, informal discovery, and the production of documents and data prior to the mediation.²⁹
7 Class Counsel also drafted Plaintiff's pleadings and the mediation brief, and prepared for and
8 attended court proceedings, settlement negotiations, and the mediation, among other tasks.³⁰

9 The Parties engaged in extensive settlement negotiations and participated in a formal, full-
10 day mediation conducted by Jeffery Krivis, Esq. (the "Mediator"), a well-respected mediator
11 experienced in mediating complex labor and employment matters.³¹ In the course of mediation
12 and settlement discussions, counsel for the Parties exchanged extensive information and engaged
13 in discussions regarding their evaluations of the case and various aspects of the case, including but
14 not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with
15 class certification and/or representative adjudication, the law relating to off-the-clock theory, meal
16 and rest periods, arbitration agreements, PAGA representative actions, and wage-and-hour law and
17 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among
18 other things.³² During all settlement discussions, both sides conducted their negotiations at arm's
19 length in an adversarial position.³³ Arriving at a settlement that was acceptable to both sides was
20 not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at
21 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
22 certification and prevail at trial.³⁴ After conducting extensive investigations, informal discovery,
23 exchange of information, and settlement negotiations, and with the aid of the Mediator's
24

25 ²⁷ Parker-Fawley Decl., ¶ 12.

26 ²⁸ Ibid.

27 ²⁹ Ibid.

28 ³⁰ Ibid.

³¹ *Id.*, ¶ 11.

³² Ibid.

³³ Ibid.

³⁴ Parker-Fawley Decl., ¶ 11.

1 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
2 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would
3 attend further litigation.³⁵

4 The Settlement takes into account the strengths and weaknesses of each side's position and
5 the uncertainty of how the case might have concluded at certification, trial, and/or appeals.³⁶
6 Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and
7 the Class Members' employment with Defendant and performed significant research into the law
8 concerning class certification, PAGA representative actions, off-the-clock theory, arbitration
9 agreements, meal and rest periods, wage-and-hour law and enforcement, Plaintiff's claims, and
10 Defendant's defenses thereto, as well as facts discovered.³⁷ The Settlement was based on this large
11 volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience
12 in employment class actions, including significant experience in California wage-and-hour
13 litigation.³⁸

14 **B. The Settlement Is Fair, Reasonable, and Adequate.**

15 The Settlement, which provides for a Total Settlement Amount of \$525,000.00, represents
16 a fair, adequate, and reasonable resolution of the matter.³⁹ The Settlement was calculated using the
17 information and data uncovered during litigation, case investigation, as well as the informal
18 exchange of information.⁴⁰ The Settlement takes into account the potential risks and rewards
19 inherent in any case and, in particular, in the case at issue.⁴¹ Moreover, considering all of the facts
20 and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate
21 recovery for the Class, PAGA Employees, and the State of California.⁴²

22 Assuming that the Attorneys' Fees and Costs, Enhancement Payment, Settlement
23 Administration Costs, and PAGA Amount are approved by the Court and paid in the full amounts
24

25 ³⁵ Ibid.

26 ³⁶ *Id.*, ¶ 18.

27 ³⁷ *Id.*, ¶¶ 12 & 13.

28 ³⁸ *Id.*, ¶¶ 2-7.

³⁹ *Id.*, ¶ 14.

⁴⁰ *Id.*, ¶ 18.

⁴¹ *Id.*, ¶ 11.

⁴² *Id.*, ¶¶ 11, 13, & 28.

provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be \$198,750.00.⁴³ Additionally, 25% of PAGA Amount, which is \$25,000.00 (“PAGA Employee Amount), will be distributed to PAGA Employees (“Individual PAGA Payments”). In addition, the funding and disbursement for **all** Individual Settlement Payments and Individual PAGA Payments will come from the First Installment payment.

The amount of each Settlement Class Member’s Individual Settlement Share will be calculated based on his or her Workweeks, and the amount of each PAGA Employees Individual PAGA Payment will be calculated based on his or her PAGA Pay Periods.⁴⁴ “An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, the State of California, and PAGA Employees.⁴⁵ Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁴⁶ The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant’s defenses thereto.⁴⁷ As outlined in the Declaration of Elizabeth Parker-Fawley, Class

⁴³ Parker-Fawley Decl., ¶ 14.

⁴⁴ Settlement Agreement, ¶¶ 15 & 16.

⁴⁵ Parker-Fawley Decl., ¶¶ 11, 13, & 28.

⁴⁶ Parker-Fawley Decl., ¶ 12.

⁴⁷ *Id.*, ¶¶ 21-26.

Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁴⁸

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only. California Code of Civil Procedure Section 382 “authorizes class actions 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.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This action involves a Class of approximately 439 individuals.⁴⁹ This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35. Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant’s employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. The Class Members Share a Well-Defined Community of Interest.

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) class representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class.” *Sav-On*, 34 Cal.4th at 326. “[T]he

⁴⁸ *Ibid.*

⁴⁹ Parker-Fawley Decl., ¶ 9.

community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiff renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal.4th at 333).

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.⁵⁰ Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.⁵¹ Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁵² As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁵³ Plaintiff maintains that the outcome of this litigation would be determined by Defendant’s alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees employed by Defendant in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

⁵⁰ Parker-Fawley Decl., ¶ 16.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.⁵⁴ Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.⁵⁵

Accordingly, the proposed Class shares a community of interest, and the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel has litigated the matter for three years and was actively preparing for class certification and trial.⁵⁶ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery. Class Counsel reviewed a large volume of documents and data and also had the opportunity to interview and obtain information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation.⁵⁷ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁵⁸ Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.⁵⁹

The Settlement establishes a Total Settlement Amount of \$525,000.00, and provides for Class Counsel to apply to the Court for Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed 35% of the Total Settlement Amount (i.e., \$183,750.00) and

⁵⁴ Declaration of Katherine Frank in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Frank Decl."), ¶ 2-4.

⁵⁵ Parker-Fawley Decl., ¶ 23-24.

⁵⁶ *Id.*, ¶ 11.

⁵⁷ Parker-Fawley Decl., ¶ 12.

⁵⁸ *Id.*, ¶ 11.

⁵⁹ *Id.*, ¶¶ 2-7.

1 reimbursement of litigation costs in an amount not to exceed \$25,000.00 for costs and expenses.⁶⁰
2 The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class
3 Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that
4 Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown,
5 (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the
6 Settlement that Class Counsel has achieved for the Class Members, State of California, and PAGA
7 Employees, and (6) the other cases that Class Counsel had to turn down in order to devote their
8 time and efforts to this matter. The proposed Class Notice provides Class Members with
9 information about the amount allocated toward the Attorneys' Fees and Costs, and that an award
10 of the Attorneys' Fees and Costs will be sought, as provided for by the Settlement.⁶¹

11 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
12 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
13 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
14 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
15 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should
16 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
17 incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 citing *Lealao*, 82 Cal.App.4th
18 at 48-49. In *Lealao*, the court held that, when an action leads to a recovery that can be "monetized"
19 with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within
20 the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao*, 82
21 Cal.App.4th at 50.

22 The California Supreme Court has confirmed the propriety of calculating and awarding
23 attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered
24 for the benefit of others. *Laffitte*, 1 Cal.5th 480 at 486 & 506. The Court has taken the position that
25 while "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they
26 also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the

27
28 ⁶⁰ Settlement Agreement, ¶ 11.

⁶¹ Settlement Agreement, Exh. A.

1 reasonably of a requested percentage fee[.]” and “[t]he percentage of fund method survives in
2 California.” *Id.* (internal quotation marks omitted).

3 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
4 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
5 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3
6 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
7 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California
8 courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the
9 recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40
10 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada*
11 *v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005)
12 (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept.
13 2006) (wage and hour).

14 Class Counsel has borne all of the risks and costs of litigation and will not receive any
15 compensation until recovery is obtained.⁶² Class Counsel will provide extensive evidence as to the
16 time worked, litigation efforts, and further argument at the time of filing Plaintiff’s Motion for
17 Final Approval of the Settlement. Considering the work performed and the risks incurred, the
18 attorneys’ fees provided for by the Settlement and to be requested by Class Counsel are well within
19 the range of reasonableness.

20 **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

21 California statutory and case law vests the Court with broad discretion in fashioning
22 appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50
23 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject
24 matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d
25 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177). “Sufficient
26 information about the case should be provided to enable class members to make an informed
27 decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004).

28 ⁶² Parker-Fawley Decl., ¶ 19.

The proposed Class Notice describes the Settlement, the deadlines and procedures to submit a Notice of Objection, Request for Exclusion, or dispute regarding Workweeks and/or PAGA Pay Periods, and provides the date and time set for the Final Approval Hearing.⁶³ The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁶⁴ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁶⁵ The proposed Class Notice also appraises the Class Members and PAGA Employees of, *inter alia*, how their Individual Settlement Share and Individual PAGA Payment are calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.⁶⁶ The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39.

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, 50 Cal.App.3d at 960. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF PHOENIX AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Phoenix to administer the Settlement. The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail in English and Spanish.⁶⁷ For any Class Notice returned prior to the Response Deadline as undeliverable, the Settlement Administrator will perform a single search for an alternate address by way of skip-trace and perform a single re-mailing the Class Notice within 5 calendar days.⁶⁸

The Settlement Administrator will calculate the amounts of the Individual Settlement Shares and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Shares; mail the Individual Settlement Payment checks to Settlement Class Members and Individual PAGA Payment checks

⁶³ Settlement Agreement, Exh. A

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Settlement Agreement, ¶ 19(a).

⁶⁸ *Id.*, ¶ 19(b).

to PAGA Employees; issue W-2 and 1099 forms; calculate and disburse the Attorneys' Fees and Costs, Enhancement Payment, and PAGA Amount; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁶⁹ The Settlement Administration Costs are currently estimated not to exceed \$10,000.00 and will be paid out of the Total Settlement Amount, subject to approval by the Court.⁷⁰ Plaintiff respectfully requests that the Court appoint Phoenix as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

**X. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR THE
ENHANCEMENT PAYMENT**

Plaintiff respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Payment in an amount up to \$7,500.00.⁷¹ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an Enhancement Payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.*

The Enhancement Payment is fair and appropriate. Plaintiff spent time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁷² Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of

⁶⁹ *Id.*, ¶ 13.

⁷⁰ *Ibid.*

⁷¹ *Id.*, ¶ III(E).

⁷² Parker-Fawley Decl., ¶ 20; Declaration of Katherine Frank in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Frank Decl."), ¶¶ 3-5.

the class and PAGA claims.⁷³ Additionally, Plaintiff provided a broader individual waiver and release of claims with a California Civil Code Section 1542 waiver.⁷⁴ Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Payment for her services on behalf of the Class, PAGA Employees, and the State of California, in addition to his Individual Settlement Payment and Individual PAGA Payment.

XI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Arby Aiwarzian, Elizabeth Parker-Fawley and Ryan Slinger of Lawyers for Justice, PC as Class Counsel; preliminarily appoint and designate Plaintiff Katherine Frank as Class Representative; appoint Phoenix as the Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Enhancement Payment, Settlement Administration Costs, and PAGA Amount; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately five (5) months; and permit the filing of this memorandum that exceeds the page limit.

Dated: October 17, 2024

LAWYERS for JUSTICE, PC

By: 
Elizabeth Parker-Fawley
Attorneys for Plaintiff

⁷³ Parker-Fawley Decl., ¶ 20; Frank Decl., ¶ 3-5.

⁷⁴ Settlement Agreement ¶ 33 & Frank Decl., ¶ 7.