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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

KAMLESH KRISHNA, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

v.

CEPHEID, a Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. 22CV397316

[Assigned for all purposes to the Hon. Charles F.
Adams, Dept. 7]

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

Date: July 18, 2024
Time: 1:30 P.M.
Dept.: 7

Complaint Filed: April 26, 2022
FAC Filed: June 29, 2022
SAC Filed: January 5, 2023
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on July 18, 2024, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Charles F. Adams, judge presiding, in Department 7 of
4 the above referenced Court located at 161 North First Street, San Jose, California 95113, Plaintiffs
5 Kamlesh Krishna and Rex Servania (“Plaintiffs”) will and hereby does move this Court for the
6 following relief with respect to the Class and Representative Action Settlement Agreement
7 (“Agreement”) entered into by Plaintiff and Defendant Cepheid (“Defendant”) (together with
8 Plaintiff, the “Parties”):

9 1. That the Court approve the Agreement referenced above;

10 2. That the Court conditionally certify the following Class for settlement purposes only:
11 all non-exempt California employees of Cepheid who were paid non-discretionary incentive wages
12 covering any periods in which sick pay was paid to the employee between April 25, 2019 and
13 December 22, 2022, and whose employment ended, either voluntarily or involuntarily, at any time
14 from April 25, 2019 to February 6, 2024 excluding those individuals who executed a severance
15 agreement releasing the claims herein (“Class Members” or the “Class”);

16 3. That Plaintiffs Kamlesh Krishna and Rex Servania be appointed as the Class
17 Representatives and Larry W. Lee of Diversity Law Group, P.C.; William L. Marder of Polaris Law
18 Group; Edward W. Choi of Law Offices of Choi & Associates; and Dennis S. Hyun of Hyun Legal,
19 APC be appointed as Class Counsel;

20 4. That the Court preliminarily approve the Agreement and the total Gross Settlement
21 Amount in the amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00);

22 5. That the Court finds on a preliminary basis that the Agreement appears to be within
23 the range of reasonableness of a settlement, including the amount of the PAGA penalties, the service
24 award to the Class Representatives, Class Counsel’s award of attorneys’ fees and costs, settlement
25 administration costs, and the allocation of individual payments to Class Members, that could
26 ultimately be given final approval by this Court;

27 6. That the Court approve the mailing of the proposed Notice of Settlement to be sent to
28 Class Members;

1 7. That the Court appoint CPT Group as the Settlement Administrator; and

2 8. That the Court schedule the matter for a Final Fairness and Final Approval hearing.

3 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides
4 for court approval of the settlement of a purported class action and allows the Court to preliminarily
5 certify a class for settlement purposes.

6 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
7 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of
8 Class Members to participate in, opt-out of, or object to the settlement. This Motion is based on the
9 attached Memorandum of Points and Authorities, the Agreement and the proposed Notice of
10 Settlement, and the supporting Declarations of Larry W. Lee, William L. Marder, Edward W. Choi
11 and Dennis S. Hyun and Plaintiffs Kamlesh Krishna and Rex Servania, upon the oral arguments of
12 counsel (should there be any), and on the complete records and file herein.

13
14 DATED: June 25, 2024

DIVERSITY LAW GROUP

15 By: 

Larry W. Lee

16 Attorneys for PLAINTIFF and the CLASS

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I. INTRODUCTION

This is a wage and hour class and representative Private Attorneys General Act (“PAGA”) action seeking statutory and civil penalties under the California Labor Code. Plaintiffs Kamlesh Krishna and Rex Servania (“Plaintiffs”) alleges that Defendant Cepheid (“Defendant”) failed to pay sick pay at the regular rate of pay, and provide accurate itemized wage statements, in violation of Labor Code §§ 201-203, 233, 246, and 2698, *et seq.* Based on these violations, Plaintiffs assert class and PAGA claims for violation of Labor Code §§ 201-203, 233, 246, and 2698, *et seq.* The Parties have reached a class and PAGA action settlement, the terms of which are reflected in the Parties’ Class and Representative Action Settlement Agreement (“Agreement”).

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the class and PAGA claims alleged in this lawsuit and engaged in a thorough study of the legal principles applicable to the claims asserted against Defendant. Moreover, as this Court may recall, this case was heavily litigated through motion practice and an application for writ relief to the Court of Appeal by Defendant. Through the exchange of formal and informal discovery in connection with mediation, Defendant provided necessary data pertaining to the number of putative class members, a sampling and time and payroll records, as well as information pertaining to Defendant's commission pay and wage statement policies and practices. The information provided by Defendant allowed Plaintiffs to review and analyze the liability and potential exposure. Thereafter, the Parties attended a full day of mediation with private mediator Daniel Turner, Esq. While the Parties were unable to reach an agreement at mediation, they continued arm's-length negotiations facilitated by Mr. Turner and ultimately reached the current settlement.

The terms of the Agreement provide that Defendant pay a Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) to resolve the class and PAGA claims. Significantly, the entire Gross Settlement Amount will be distributed to the class on a **non-reversionary** basis, such that no remaining monies will revert to Defendant. Further, no claim forms are required. The following represents the key terms of the settlement:

- Gross Settlement Amount of \$750,000.00;

- Estimated class size of 415 individuals in the Class;¹
- Service Award to the Class Representatives of up to \$10,000.00 each;
- Class Counsel’s attorneys’ fees of one-third of the Gross Settlement Amount, up to \$250,000.00;
- Class Counsel’s costs of up to \$30,000.00;
- Settlement administration costs of up to \$11,000.00;
- Payment to the California Labor & Workforce Development Agency (“LWDA”) of \$56,250.00, representing 75% of the total PAGA Payment of \$75,000;
- Net Settlement Amount of approximately \$382,750.00, which will be apportioned among the Class Members on a pro rata basis, based on the number of credited pay periods; and
- Raw average of approximately \$922.29 (\$382,750.00/415 class members) (to each Settlement Class Member (or Class Member who does not opt out of the settlement)).

The Parties and their respective counsel believe that the settlement for the consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate, in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiffs and their counsel are confident that they can prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that the Class might not be certified and/or that Plaintiffs could fail to establish liability.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On April 25, 2022, Plaintiff Kamlesh Krishna filed his written notice with the California Labor & Workforce Development Agency, alleging violations of Labor Code §§ 201-204, 226, and

¹ “Class Members” are defined as all non-exempt California employees of Cepheid who were paid non-discretionary incentive wages covering any periods in which sick pay was paid to the employee between April 25, 2019 and December 22, 2022, and whose employment ended, either voluntarily or involuntarily, at any time from April 25, 2019 to February 6, 2024 excluding those individuals who executed a severance agreement releasing the claims herein.

1 246 pursuant to the Private Attorneys General Act, Labor Code § 2699 (“PAGA”). Declaration of
2 Larry W. Lee (“Lee Decl.”) ¶ 2. Thereafter, on April 26, 2022, Plaintiff filed his Class action
3 Complaint (“Action”) against Defendant in the Superior Court of California, County of Santa Clara.
4 *Id.* ¶ 3. On June 29, 2022, Krishna filed a first amended complaint adding a claim under California’s
5 Private Attorneys General Act and adding Rex Servania as a plaintiff. On January 5, 2023, Plaintiffs
6 filed a second amended complaint dismissing their Labor Code § 204 claim. *Id.* ¶ 3.

7 On October 5, 2022, Cepheid filed a demurrer to the FAC, arguing, among other things, that
8 all three of Plaintiffs’ claims failed as a matter of law because sick pay is not a “wage.” Lee Decl. ¶
9 4. On January 3, 2023, this Court issued its order overruling Cepheid’s demurrer. *Id.*

10 On March 3, 2023, Defendant filed its Petition for Peremptory Writ to the Court of Appeal,
11 seeking an order reversing this Court’s Order Overruling Defendant’s Demurrer. Lee Decl. ¶ 5. On
12 March 8, 2023, Plaintiffs filed their Preliminary Opposition to Defendant’s Petition for Peremptory
13 Writ. *Id.* On March 20, 2023, Defendant filed its Reply in Support of its Petition for Peremptory
14 Writ. *Id.* On March 11, 2023, the Court of Appeal denied Defendant’s Petition for Peremptory
15 Writ. *Id.* After the Court of Appeal’s order was issued, the Parties agreed to mediate the matter and
16 in connection therewith, Defendant produced necessary data to Plaintiffs to conduct a damage
17 analysis. *Id.*

18 On November 2, 2023 the Parties engaged in a full-day mediation with mediator Daniel J.
19 Turner, Esq. Lee Decl. ¶ 6. The Parties did not reach an agreement at mediation. *Id.* Instead, Mr.
20 Turner issued a Mediator’s Proposal, which was subsequently accepted by the Parties. *Id.* In
21 resolution of Plaintiffs’ class and PAGA claims, the Parties entered into Agreement, a true and
22 correct copy of which is being filed herewith. *Id.*

23 The Parties recognize the risk, expense, and delay in continuing litigation with the class and
24 PAGA claims, and believe the settlement to be fair, reasonable, and adequate. Lee Decl. ¶ 7.
25 Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising
26 from or relating to the class and PAGA claims as set forth in the Agreement.

27 **III. DISCUSSION**

28 Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is

1 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
2 notice has been distributed to the class members for their comment or objections. The *Manual for*
3 *Complex Litigation, Third* § 30.41 states:

4 Approval of class action settlements involves a two-step process. First,
5 counsel submits the proposed terms of settlement and the court makes
6 a preliminary fairness evaluation. If the preliminary evaluation of the
7 proposed settlement does not disclose grounds to doubt its fairness or
8 other obvious deficiencies, such as unduly preferential treatment of
9 class representatives or of segments of the class, or excessive
10 compensation for attorneys, and appears to fall within the range of
11 possible approval, the court should direct that notice...be given to the
12 class members of a formal fairness hearing, at which arguments and
13 evidence may be presented in support of and in opposition to the
14 settlement.

15 (Fed. Jud. Ctr., 3rd ed. 1995).

16 Thus, the preliminary approval by the trial court is simply a conditional finding that the
17 settlement appears to be within the range of acceptable settlements. As Professor Newberg
18 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
19 concerning a tentative settlement proposal may vary. The court may find that the settlement proposal
20 contains some merit, is within the range of reasonableness required for a settlement offer, or is
21 presumptively valid subject only to any objections that may be raised at a final hearing.” Alba Conte
22 & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002).

23 The procedures for the parties’ submission of a proposed settlement for preliminary approval
24 by the court also are discussed in *4 Newberg on Class Actions*:

25 When the parties to an action reach a monetary settlement, they will
26 usually prepare and execute a joint Agreement of settlement, which is
27 submitted to the court for preliminary approval. The Agreement should
28 set forth the central terms of the agreement, including but not limited
29 to, the amount of settlement, form of payment, manner of determining
30 the effective date of settlement and any recapture clause.

31 *Id.* § 11.24.

32 Here, the Parties have reached such an agreement and have submitted to this Court in
33 connection with this Motion a copy of the Agreement fully setting forth the agreement reached by
34 the Parties. The Agreement sets forth all terms of the agreement reached by the Parties as to
35 settlement of the class and PAGA claims. Said terms in the Agreement include, among other things,

1 the method for calculating the Class Members' individual portions of the settlement payment.

2 The parties also may, at the preliminary approval stage, request that the court provisionally
3 approve certification of the class for settlement purposes – conditional upon final approval of the
4 settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”
5 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); *accord Dunk v. Ford Motor*
6 *Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any “adversary
7 certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-*
8 *United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in
9 the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”). As
10 further explained by Professor Newberg:

11 The strength of the findings made by a judge at a preliminary hearing
12 or conference concerning a tentative settlement proposal...may be set
13 out in conditional orders granting tentative approval to the various
14 items submitted to the court. Three basic rulings are often
15 conditionally entered at this preliminary hearing. These conditional
16 rulings may approve a temporary settlement class, the proposed
17 settlement, and the class counsel's application for fees and expenses.

18 4 *Newberg on Class Actions* § 11.26.

19 In addition to such terms as class identification, settlement amount, and payment procedures,
20 the Agreement reached by the Parties contains a provision pursuant to which the Parties stipulate to
21 the Court's provisional certification of the Class for the purposes of this settlement only. *See*
22 Agreement ¶ 2.7.

23 **A. Proposed Class Definition**

24 The current settlement is being settled on behalf of a Class of “all non-exempt California
25 employees of Cepheid who were paid non-discretionary incentive wages covering any periods in
26 which sick pay was paid to the employee between April 25, 2019 and December 22, 2022, and
27 whose employment ended, either voluntarily or involuntarily, at any time from April 25, 2019 to
28 February 6, 2024 excluding those individuals who executed a severance agreement releasing the
claims herein.” *See* Agreement ¶ 1.6. Pursuant to the Agreement, Defendant has represented that
there are approximately 415 individuals that comprise the Class. *Id.* ¶ 7.6.1.

1 **B. Settlement Terms and Evaluation**

2 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
3 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
4 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re*
5 *Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980).) Courts do not substitute their
6 judgment for that of the proponents, particularly where, as here, settlement has been reached with the
7 participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v.*
8 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087
9 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust*
10 *Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan*
11 *Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

12 While the recommendations of counsel proposing the settlement are not conclusive, the
13 Court can properly take them into account, particularly where, as here, they have been involved in
14 informal discovery and negotiations for some period of time, appear to be competent, have
15 experience with this type of litigation, and have exchanged substantial evidence from the opposing
16 party. *See Newberg on Class Actions, supra* § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at p.
17 528 (“[s]o long as the integrity of the arm’s length negotiation process is preserved, however, a
18 strong initial presumption of fairness attaches to the proposed settlement...[citations] and ‘great
19 weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the
20 facts of the underlying litigation”).

21 Here, both Plaintiffs’ and Defendant’s counsel have a great deal of experience in wage and
22 hour class action litigation. Plaintiffs’ counsel has been approved as class counsel in a number of
23 wage and hour class actions and has extensive litigation experience. Lee Decl. ¶¶ 27-29; Declaration
24 of William L. Marder (“Marder Decl.”) ¶¶ 4-10; Declaration of Edward W. Choi (“Choi Decl.”) ¶¶
25 3-4; Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶¶ 3-6. Each side has apprised the other of their
26 respective factual contentions, legal theories and defenses, resulting in negotiations taking place
27 between the Parties. Lee Decl. ¶ 8.

28 Based on the class data provided by Defendant, Plaintiffs estimated that Defendant would

face potential liability of up to approximately \$4.482 million for Plaintiffs' underpayment of sick pay and wage statement class and PAGA claims if Plaintiffs succeeded at trial. Lee Decl. ¶¶ 9-10. Plaintiffs was able to estimate the potential penalties based on data provided by Defendant, including a spreadsheet that contained a 10% sampling of the pay records for employees. *Id.* ¶ 9. Utilizing the raw payroll data, Plaintiffs' expert witness calculated the total damages and extrapolated the damages for the entire class. *Id.* Defendant's maximum exposure is as follows:

Class Claims

1. Underpaid Sick Pay	\$ 58,725.52
2. 226 Penalties	\$ 131,948.72
3. 203 Penalties	\$3,038,656.10
Total for the Class Claims	\$3,229,330.34

PAGA Penalties

1. Underpaid Sick Pay	\$346,800.00
2. 226 Penalties	\$867,000.00
3. 203 Penalties	\$39,300.00
Total PAGA Penalties	\$1,253,100.00

Total Class and PAGA Exposure \$4,482,430.34

Lee Decl. ¶ 10.

However, even assuming Plaintiffs ultimately prevails on the PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at p. 539.

1 Although Plaintiffs believe in the merits of the alleged claims and maintains that there is no
2 reason for reducing PAGA penalties, Plaintiffs are aware that Defendant may raise defenses to the
3 claims and further with respect to the reduction of PAGA penalties and that it could be persuasive to
4 the Court. Lee Decl. ¶¶ 11-13. Thus, even if Plaintiffs were to successfully prove their claims at trial,
5 there is a possibility that the Court may only award a small percentage of PAGA penalties, as the
6 Court has discretion to do so. The Gross Settlement Amount was premised with this risk in mind,
7 associated with the possibility of the Court significantly reducing Plaintiffs' PAGA penalties, along
8 with other attendant risks, even if Plaintiffs was to prevail at trial. *Id.*

9 Thus, the settlement for each Class Member is fair, reasonable, and adequate, given the
10 inherent risks of litigation, including the substantial risks relative to class certification and the merits
11 of the claims, the costs of pursuing such litigation, and the risks associated with the Court's
12 discretion to reduce PAGA penalties. The settlement is the result of extensive arm's-length
13 negotiations between the Parties and their counsel and was facilitated by an experienced and neutral
14 mediator.

15 Although Plaintiffs believe that the class can be certified, Plaintiffs also believes in the
16 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs involved
17 in not prevailing on one or more of the causes of action or theories alleged in the operative
18 Complaint, the possibility of non-certification, and the potential for appeals. Lee Decl. ¶ 14. These
19 risks on class certification are compounded by the California Supreme Court's holding in *Duran v.*
20 *U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and
21 subsequently prevailed at trial after eight years of litigation, but the judgment and the certification
22 ruling were reversed by the California Supreme Court after an additional five years of litigation. The
23 case was remanded back to superior court where class certification was denied and plaintiffs'
24 subsequent appeal also was denied.

25 Further, this Court may find that Defendant did not act knowingly and/or willfully to support
26 wage statement and waiting time penalties.

27 Indeed, numerous courts have held that **gross** settlements approximating between only 8 and
28 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*

1 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16%
2 of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement
3 amounting to only a fraction of the potential recovery does not per se render the settlement
4 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
5 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair and
6 adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor Supply Co.*,
7 No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D. Cal. Mar. 20, 2015) (holding that class
8 action settlement recovering between **8.5% and 25%** of the defendant’s potential exposure was
9 fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014)
10 (granting preliminary approval of wage and hour class settlement which obtained **only 9.1%** of
11 projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*,
12 No. CV 09-00261 SBA EMC, 2012 WL 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that
13 gross class action settlement of approximately 15% of the potential recovery was fair and
14 reasonable).

15 Here, the total amount of class and PAGA penalties amount to approximately \$4.4 million,
16 without discounting for potentially losing on any of the causes of action. Lee Decl. ¶ 12. The Gross
17 Settlement Amount is \$750,000.00, which is approximately **17%** of the maximum class and PAGA
18 penalties. *Id.* Thus, the settlement was negotiated at arm’s-length and the high settlement percentage-
19 to-recovery further supports that the settlement is fair and reasonable.

20 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class and
21 Representative Action Settlement (“Notice of Settlement”), should any Class Member wish to
22 pursue his or her own case for the claims being released herein, each Class Member has the right to
23 submit a Request for Exclusion (*i.e.*, opt-out) from the settlement. *See* Notice of Settlement, attached
24 as **Exhibit A** to Agreement. Moreover, as set forth in the Notice of Settlement, Class Members are
25 advised of their right to object to any of the terms contained in the Agreement and attend the final
26 approval hearing. *Id.*

27 //

28 //

1 **1. Amount and Manner of Distribution of the Compensation to be Provided**
2 **to Class Members Including the Amount, or an Estimate, of What Each**
3 **Class Member Will Receive**

4 The Agreement provides for Seven Hundred Fifty Thousand Dollars and Zero Cents
5 (\$750,000.00) as the Gross Settlement Amount. *See* Agreement ¶ 1.17. The Net Settlement Amount,
6 calculated after deduction of attorneys’ fees (up to \$250,000.00), litigation costs (up to \$30,000.00),
7 the service award to the Class Representatives (up to \$10,000.00 each), payment of PAGA penalties
8 to the LWDA (\$56,250.00) and Aggrieved Employees (\$18,750.00), and Administrative Costs (up to
9 \$11,000.00), is estimated to be approximately **\$382,750.00**. *Id.* ¶¶ 7.2, 7.3, 7.4.1, 7.6.

10 Based thereon, on a raw average, each Class Member may potentially recover approximately
11 \$922.29. *Lee Decl.* ¶ 15.

12 The Agreement also provides for Eighteen Thousand Seven Hundred Fifty Dollars and Zero
13 Cents (\$18,750.00) to be distributed to Aggrieved Employees (defined as “PAGA Members”) in
14 settlement of their claims for civil penalties under PAGA. *Id.* ¶ 7.5. PAGA Members are defined as
15 “all non-exempt California employees of Cepheid who were paid non-discretionary incentive wages
16 covering any period in which sick pay was were paid to the employees by Cepheid between April
17 25, 2021 and December 22, 2022, and whose employment ended, either voluntarily or involuntarily
18 at any time from April 25, 2021 to February 6, 2024.” *Id.* ¶ 1.25.

19 Finally, the terms of the settlement provide that uncashed checks (upon the expiration date)
20 shall be transmitted to the California Controller’s Office Unclaimed Property Fund.. *See* Agreement
21 ¶ 7.8; *see Lee Decl.* ¶ 17.

22 **2. Whether, and Under What Circumstances, Amounts Available for**
23 **Payment in Settlement Might Not Be Paid to Class Members or Might**
24 **Revert to the Defendants**

25 This settlement is non-reversionary, meaning that none of the settlement funds will revert to
26 Defendant.

27 **3. Scope of the Release of Class Members’ Claims**

28 As a condition of participating in this settlement, Class Members who do not opt out of the
Settlement (“Settlement Class Members”) will release the following claims (“Released Class

1 Claims”):

2 Any and all claims, debts, liabilities, demands, obligations, penalties,
3 guarantees, costs, expenses, attorney’s fees, damages, action or causes
4 of action of whatever kind or nature, whether known or unknown,
5 contingent or accrued, that were alleged or that reasonably could have
6 been alleged based on the facts alleged in the Action, including, but
7 not limited to, any claims for purported sick pay wages, “waiting time”
8 penalties, wage-statement penalties, claims under the applicable Wage
9 Orders, and claims under Labor Code sections 200, 201, 202, 203,
10 204, 218.5, 226, and 246, based on purported sick pay wages paid
11 between April 25, 2019 through December 22, 2022.

12 See Agreement ¶ 8.1.

13 Regardless of whether they opt out of the class portion of the settlement, Class Members who
14 are also PAGA Members will release the PAGA Claims. Agreement ¶¶ 1.33, 8.2. The PAGA Claims
15 include “all claims set forth in Section 8.2 that this Agreement will extinguish as to all PAGA
16 Members, upon the deposit of the Gross Settlement Amount in the Qualified Settlement Fund.” *Id.* ¶

17 1.33. The PAGA Claims are defined as:

18 any and all claims under the Private Attorneys General Act of 2004
19 (Labor Code §§ 2698 et seq.) that were or could have been asserted
20 based on the facts alleged in Plaintiff’s written notice submitted to the
21 LWDA, regardless of theory of liability, including claims for wages or
22 sick pay benefits, “waiting time” penalties, wage-statement penalties,
23 civil penalties, and claims predicated upon the applicable Wage Orders
24 or Labor Code sections 200, 201, 202, 203, 204, 226, 246. This release
25 is conditioned upon the release by all PAGA Employees as to the
26 released claims set forth above, and upon consents by all PAGA
27 Employees that they will not participate in any proceeding seeking
28 penalties as to the released claims set forth above based on purported
sick pay wages paid between April 25, 2021 through and December
22, 2022.

See Agreement ¶ 8.2.

Given that the releases are tailored to only claims pled in the operative Complaint, the
releases are appropriately limited.

4. Tax Treatment of Settlement Amounts

As this lawsuit seeks damages and penalties as recovery, the Parties have agreed that each
individual settlement class member payment to Class Members shall be characterized as 95% Form

1 1099 income for penalties and 5% Form W-2 for wages. *See* Agreement ¶ 7.7. Individual PAGA
2 Member's payment shall be characterized as 100% Form 1099 income. *Id.*

3 **5. Affirmative Obligations to be Undertaken by Class Members or Class**
4 **Counsel and the Reasons for Any Such Obligations**

5 As stated above, Class Members do **not** need to do anything should they wish to receive their
6 share of the settlement funds. In other words, because this is not a claims-made settlement, Class
7 Members will not be required to make a submission to participate in the settlement. No claim forms
8 are required. Thus, this substantially decreases the amount of burden each Class Member must bear
9 in order to receive their share of the settlement funds.

10 If a Class Member does not wish to take part in this settlement or be bound by the Released
11 Class Claims, the Class Member must submit a Request for Exclusion. *See* Agreement ¶¶ 1.31, 6.2.

12 **C. Notice to Class Members**

13 Should the Court grant the instant motion, Defendant will provide the Settlement
14 Administrator with a confidential list containing the names, employee ID numbers, last known street
15 address and telephone numbers, dates of employment, number of paid sick days each Class Member
16 took during periods where each earned purported non-discretionary incentive pay from April 25,
17 2019 through December 22, 2022 and the number of terminated Class Members during that period,
18 the number of pay periods which included a week during which a PAGA Member took a paid sick
19 day and received purported non-discretionary incentive pay from April 25, 2019 through December
20 22, 2022. Defendant shall also provide, when needed, social security numbers to facilitate the
21 administration of this Agreement. ("Confidential Data"). *See* Agreement ¶ 5.3. Pursuant to the
22 Agreement, Defendant will provide said Confidential Data within fifteen (15) calendar days of
23 preliminary approval. *Id.*

24 Within thirty (30) calendar days of Preliminary Approval, the Settlement Administrator will
25 mail the Notice of Settlement to Class Members via First Class U.S. Mail, using the last-known
26 mailing address. *See* Agreement ¶ 5.4. Any Notice of Settlement returned to the Settlement
27 Administrator as non-deliverable shall be sent within five calendar days via First Class U.S. Mail to
28 any available forwarding address. *Id.* ¶ 5.4. If no forwarding address is provided, the Settlement

1 Administrator will attempt to find the correct address using a skip-trace or other comparable search
2 to locate the most current address to re-mail the Notice. *Id.*

3 The Notice of Settlement will advise Class Members of what the litigation is about, their
4 rights under the settlement, the total settlement amount and other terms of the settlement, their
5 expected settlement payment share, their opportunity to and procedures to opt out or to object to the
6 settlement, and the release of claims. *See* Notice of Settlement. As set forth in the Notice of
7 Settlement, Class Members will be allowed to opt out of or object to the settlement by a certain
8 deadline, which is 45 calendar days after the initial mailing of the Notice of Settlement. *See*
9 Agreement ¶¶ 1.10, 6.1. Class Members who received a re-mailed Notice of Settlement will have
10 that deadline extended by 15 (fifteen) calendar days. *Id.* ¶ 5.4. With respect to objections, Class
11 Members are also informed in the Notice of Settlement that they may object in writing or appear at
12 the final approval hearing to present their objections to the Court. *Id.* ¶ 6.3.1; *see* Notice of
13 Settlement.

14 If Class Members need further information about the settlement and/or the lawsuit, Class
15 Counsel's contact information is provided in the Notice of Settlement. *See* Notice of Settlement, at
16 pp. 6. Class Members are also provided with the URL to the Court's website. *Id.*

17 **D. Typicality and Adequacy of Representation**

18 **1. Class Representative's Claims are Typical of the Class**

19 The commonality requirement is met when there are questions of law and fact common to the
20 class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared legal
21 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts
22 couple with disparate legal remedies within the class"). Commonality requires only that some
23 common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation
24 are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's
25 conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d
26 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's
27 conduct is uniformly directed at a class of employees, as Plaintiff alleges here, the class-wide impact
28 of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery*

1 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

2 In the present case, Plaintiffs alleges that Defendant is liable to the Class for failure to pay all
3 sick pay wages at the regular rate of pay, and failure to provide accurate itemized wage statements,
4 and failure to pay all wages owed upon separation of employment, in violation of Labor Code §§
5 201-204, 226, 246, and 2698, *et seq.* Like all Class Members, Plaintiffs were subjected to these same
6 policies and practices. Declaration of Kamlesh Krishna (“Krishna Decl.”) ¶ 3; Declaration of Rex
7 Servania (“Servania Decl.”) ¶ 3. In particular, Defendant miscalculated the rate of pay when paying
8 sick wages to Plaintiffs. *Id.* ¶ 3. Plaintiffs were also issued inaccurate wage statements that did not
9 comply with Labor Code § 226(a). *Id.* ¶ 3. In other words, Plaintiffs contend that they were
10 subjected to the same policies and practices as other Class Members and thus, the typicality
11 requirement is met.

12 Moreover, Plaintiffs do not have any interests adverse to the Class, nor have any such issues
13 been raised or presented. Servania Decl. ¶ 4; Krishna Decl ¶ 4. Plaintiffs have taken all necessary
14 steps to represent the interests of the Class, including by providing information and documents to
15 Plaintiffs’ counsel. *Id.* ¶ 4. For such reasons, Plaintiffs have adequately represented the Class
16 Members and will continue to do so.

17 **2. Class Counsel Has Adequately Represented the Class and Has**
18 **Experience with Wage and Hour Class Action**

19 From the inception of the case, Class Counsel has zealously represented the interests of the
20 Class. Class Counsel has exchanged written discovery and engaged in significant meet and confer
21 discussions with opposing counsel to obtain informal data and documents on behalf of the Class. Lee
22 Decl. ¶ 18. The settlement was obtained for the benefit of the Class, as opposed to the individual
23 Class Representative. Further, Class Counsel has been approved as class counsel on a number of
24 prior cases, have litigated numerous other class action cases, and are competent to represent the
25 Class. Lee Decl. ¶¶ 27-29; Marder Decl. ¶¶ 4-10; Choi Decl. ¶¶ 3-4; “Hyun Decl.” ¶¶ 3-6.

26 **E. Costs and Fees**

27 **1. Attorneys’ Fees and Costs**

28 California state and federal courts have recognized that an appropriate method for

1 determining award of attorneys' fees is based on a percentage of the total value of benefits to class
2 members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001);
3 *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980);
4 *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable
5 doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally
6 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
7 *Vincent*, 557 F.2d at p. 769.

8 The common fund doctrine is predicated on the principle of preventing unjust enrichment.
9 When a litigant's efforts create or preserve a fund from which others derive benefits, she may
10 require the passive beneficiaries to compensate those who created the fund. Both California state and
11 federal courts have embraced this doctrine. *Serrano III*, 20 Cal.3d at p. 35; *Vincent*, 557 F.2d at p.
12 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the
13 California Supreme Court recognized that the common fund doctrine has been applied "consistently
14 in California when an action brought by one party creates a fund in which other persons are entitled
15 to share." The reasons for applying the common fund doctrine include:

16 Fairness to the successful litigant, who might otherwise receive no
17 benefit because his recovery might be consumed by the expenses;
18 correlative prevention of an unfair advantage to the others who are
19 entitled to share in the fund and who should bear their share of the
20 burden of its recovery; encouragement of the attorney for the
21 successful litigant who will be more willing to undertake and
22 diligently prosecute proper litigation for the protection or recovery of
23 the fund if he is assured that he will be properly and directly
24 compensated should his efforts be successful.

25 *Id.*

26 Indeed, in 2016, the California Supreme Court has also now held that the award of attorneys'
27 fees in common fund wage and hour class action settlements should start with the percentage
28 method. See *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming
majority of federal and state courts in holding that when class action litigation establishes a
monetary fund for the benefit of the class members, and the trial court in its equitable powers awards
class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by

1 choosing an appropriate percentage of the fund created”).

2 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of
3 the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was based on a lodestar amount that required a
4 multiplier of 2.13. *Id.* at p. 487. As the Court held, only when the multiplier is “extraordinarily high
5 or low [should] the trial court [] consider whether the percentage method should be adjusted so as to
6 bring the imputed multiplier within a justifiable range.” *Id.* at p. 505.)

7 The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement
8 Amount, or \$250,000.00, for payment to Class Counsel as attorneys’ fees. *See* Agreement ¶ 7.3. The
9 Parties have agreed to a payment of the foregoing attorneys’ fees and, thus, this payment should be
10 presumed to be fair. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation
11 costs up to \$30,000.00. *Id.* Class Counsel has, at their own risk, expended costs, for example, to file
12 this instant action and other pleadings in the case, effect service of process, participate in mediation,
13 and advance other litigation-related costs. If Class Counsel’s actual costs are less than \$30,000.00,
14 the remainder will go to the Class for distribution.

15 Based on the foregoing, the Court should preliminarily approve the attorney’s fees and costs
16 as requested by the Parties.

17 2. Proposed Payment to the Class Representative

18 Class Representatives Kamlesh Krishna and Rex Servania request a modest enhancement of
19 \$10,000.00 each. *See* Agreement ¶ 7.4. The Class Representatives met and conferred with their
20 counsel on a number of occasions to discuss the case, provided documents and information to their
21 counsel, and reviewed pleadings and documents, including the Agreement. Krishna Decl. ¶ 5;
22 Servania Decl. ¶ 5. As part of their duties as the Class Representatives, Plaintiffs provided invaluable
23 information, evidence, and documents that resulted in this settlement. Furthermore, in consideration
24 for their service payments, Plaintiffs also executed an individual general release of all claims under
25 California Civil Code § 1542, which other members of the Class did not have to do. *See* Agreement
26 ¶ 8.3.

27 In addition to the invaluable services that they provided, Plaintiffs also took a significant risk,
28 both professionally and monetarily, in acting as the Class Representatives and seeking benefits on

1 behalf of the Class. Because the claims alleged by the Class Representatives involved the payment of
2 costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendant, had
3 they not prevailed in this action.

4 Furthermore, given that future employers are much less likely to hire individuals who have
5 filed suit against their prior employer, particularly cases of this nature, Plaintiffs may face prejudice
6 in the future from other potential employers. Plaintiffs took this risk upon themselves and the whole
7 Class benefited from these risks taken by Plaintiffs. Class Members did not have to file individual
8 lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the
9 potential for retaliation and not getting future employment had they filed a public lawsuit.

10 **3. Settlement Administration Fees**

11 The Parties have agreed to an estimated payment of no more than \$11,000.00 to the
12 Settlement Administrator, CPT Group, to send notices and to administer this settlement. *See*
13 Agreement ¶¶ 1.2, 7.1. CPT Group is a well-recognized class action settlement administrator. The
14 Parties believe that the administration fee is reasonable and should be approved.

15 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 16 **PRELIMINARY APPROVAL**

17 The settlement presented here is fair, adequate, and reasonable. The settlement will result in
18 both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the
19 result of informed, extensive, and arm's-length negotiations conducted by counsel for the respective
20 Parties who are experienced in wage and hour class action litigation and facilitated by an
21 experienced and neutral mediator.

22 For the foregoing reasons, Plaintiffs respectfully requests that the Court grant preliminary
23 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the
24 proposed Notice of Settlement, and set a date for a final approval hearing.

1 DATED: June 25, 2024

DIVERSITY LAW GROUP

2
3 By: 

4 Larry W. Lee
Attorneys for PLAINTIFFS and the CLASS