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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

LYDELL BURSTON, QUINTIN BAKER,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

Sekisui Diagnostics, LLC,

Defendants.

Case No.: 37-2024-00006729-CU-OE-
NC

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
ATTORNEY'S FEES AND COSTS
AND INCENTIVE AWARD; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: October 3, 2025
Time: 1:30 p.m.
Dept.: N-28

*[Filed concurrently with Declaration of
Thomas Wheeler; Declaration of
Quintin Baker; and Declaration of
Lydell Burston]*

Complaint filed: February 14, 2024

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

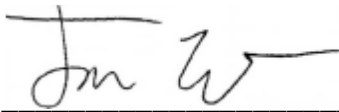
PLEASE TAKE NOTICE that on October 3, 2025 at 1:30 p.m., in Department N-28 of the above-captioned Court, located at 325 South Melrose Drive, Vista, CA 92081, Plaintiffs Lydell Burston ("Burston") and Quintin Baker ("Baker," and with Burston, "Plaintiffs") will and hereby does move for an order granting Plaintiffs' attorneys fees and costs, administration

1 costs, and an incentive awards for Plaintiffs against Defendant Sekisui Diagnostics, LLC
2 (“Defendant”).

3 This Motion is based on this Notice of Motion and Motion, the attached Memorandum
4 of Points and Authorities, the Declaration of Thomas Wheeler in support thereof, including
5 all exhibits thereto, the Declaration of Quintin Baker, the Declaration of Lydell Burston, all
6 papers and pleadings on file with the Court in this action, all matters judicially noticeable,
7 and such oral and documentary evidence as may be presented in connection with the hearing
8 on the Motion.

9
10 Dated: July 16, 2025

Southern California Attorneys, APC

11 By: 
12 Thomas Wheeler – *Of Counsel*
13 Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Quintin Baker (“Baker”) and Lydell Burston (“Burston,” and with Baker, “Plaintiffs”) seek attorneys’ fees, costs and an incentive awards as a result of the final approval of the proposed class action settlement with Defendant Sekisui Diagnostics, LLC (“Defendant”), who does not oppose this Motion. In the proposed settlement, Defendant has agreed to pay \$182,500.00 (“Gross Settlement Amount”) to the members of the Class. The Settlement resolves the labor claims brought against Defendant in this action.

The Settlement is the result of the hard work performed by Class Counsel, over the period this case has been pending, including researching Defendant, interviewing Plaintiffs, reviewing and analyzing the employment records during the Class Period, drafting a complaint, conducting mediation discovery, and negotiating the settlement. As such, Plaintiffs should be awarded their fees and costs, the Claims Administrator should be paid for providing its services, and the Class Representatives should receive incentive awards for expending considerable time and effort actively pursuing this matter to resolution and in light of the negative stigma in the industry they will face as a result.

Specifically, Southern California Attorneys, PC (“Class Counsel”) brings this instant Motion for Attorneys’ Fees, Costs and Incentive Awards based upon the share of the Gross Settlement Amount calculated to compensate Class Members with claims factually similar to their client Plaintiffs, which accounts for \$60,833 in fees plus \$8,159.92 in costs from the \$185,000.00 in the Gross Settlement Amount.

II. FACTUAL BACKGROUND

On February 14, 2024, Plaintiffs filed a complaint in the San Diego County Superior Court on behalf of themselves and the Class. Plaintiffs’ complaint alleged cause of actions against Defendant under al. Lab. Code §§ 201-203, 218.6, 226, 226.7, 512, 558, 1194, 1197.1, 1198, 1199, 2698, and 2802. On March 15, 2024, Defendant removed the matter to the United States District Court for the Southern District of California. The Parties attended an early

1 neutral evaluation conference with Judge Steve Chu, at which all individual claims against
2 Defendant Aerotek, Inc. and former plaintiff Joshua Ahlstrom's claims in full were resolved.¹

3 Thereafter, the Parties agreed to attend mediation. Prior to mediation, Plaintiffs
4 obtained, through informal discovery, a 50% sample of the paystubs and time records for the
5 Class, a copy of Defendant's policies and procedures, and summary information about the
6 Class, including workweeks, pay periods, and average wage. On October 24, 2024, the Parties
7 participated in an all-day mediation presided over by the Honorable Jan M. Adler (ret.) which
8 led to this Agreement to settle the Action.

9 Plaintiffs and Class Counsel concluded, after taking into account the sharply disputed
10 factual and legal issues involved in this Action, the risks attendant to further litigation, the
11 discovery conducted to date, and the substantial benefits to be received, that settlement as set forth
12 herein was in all Class Members' best interests. After the lengthy negotiation with Judge Adler
13 (ret.)'s assistance, the Parties reached a settlement, the terms of which are embodied in this
14 Agreement.

15 Plaintiffs filed for preliminary approval, which was granted by the Court and set for Final
16 Approval on October 3, 2025 to provide time for the Parties to give notice. Plaintiffs were also to
17 file their motion for attorney's fees, costs, and incentive award by July 18, 2025.

18 **III. THE SETTLEMENT**

19 The Settlement provides that Defendant will pay \$182,500 to compensate Plaintiffs and the
20 Class. Before distribution to the Class, certain sums will be deducted from the Gross Settlement
21 Amount, including payment of Class Counsel's attorneys' fees and costs, payment to the Claims
22 Administrator, and payment of \$12,500 to Plaintiff Baker and \$7,500 to Plaintiff Burston so as to
23 compensate them for their services to the Class. As part of the Settlement, Class Members will
24 release claims against Defendant arising from alleged violations of the Labor Code. If the Court
25 awards the full amount of requests costs, attorney's fees, and incentive awards, a Class Member
26

27 ¹ The following was also set forth in Plaintiffs' Motion for Preliminary Approval.
28

1 will receive \$3,166.71 on average.²

2 IV. ARGUMENT

3 A. THIS COURT SHOULD AWARD CLASS COUNSEL FEES AND COSTS

4 Both the United States Supreme Court and the California Supreme Court have long
5 recognized the need for class actions in consumer cases where recoveries are too small to warrant
6 individual prosecution. Over a quarter of a century ago, the California Supreme Court explained:

7 Modern society seems increasingly to expose men to ... group injuries for which
8 individually they are in a poor position to seek legal redress, either because they do
9 not know enough or because such redress is disproportionately expensive. If each is
10 left to assert his rights alone if and when he can, there will at best be a random and
11 fragmentary enforcement, if there is any at all. This result is not only unfortunate in
12 the particular case, but it will operate seriously to impair the deterrent effect of the
13 sanctions which underlie much contemporary law.

14 *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 807; see also *Linder v. Thrifty Oil Co.* (2000) 23
15 Cal. 4th 429, 434 (“Courts long have acknowledged the importance of class actions as a means to
16 prevent a failure of justice in our judicial system.”).

17 The concerns articulated by the Court in *Vasquez* apply precisely to this action. Individual
18 Class Members could, or would, not have undertaken the burden of investigation and litigation
19 necessary to prosecute individual claims against it. A class action was necessary to vindicate their
20 rights. As the United States Supreme Court explained in *Amchem Prods. Co. v. Windsor* (1997)
21 521 U.S. 591:

22 The policy at the very core of the class action mechanism is to overcome the problem
23 that small recoveries do not provide the incentive for any individual to bring a solo
24 action prosecuting his or her rights. A class action solves this problem by
25 aggregating the relatively paltry potential recoveries into something worth
26 someone’s (usually an attorney’s) labor.

27 *Id.* at 617.

28 The reality is that appropriate awards of attorneys’ fees are absolutely necessary in order to
ensure that consumer rights are protected and vindicated. One of the fundamental axioms of class
action law is that a plaintiff who obtains a settlement on behalf of absentee class members is allowed
to recover reasonable attorneys’ fees and costs incurred in the litigation. See, e.g., *Mills v. Electric*

² \$182,500 - \$60.933 attorney’s fees - \$10,000 administration costs - \$8,165.92 costs -
\$7,500 LWDA portion of PAGA - \$20,000 incentive awards = \$76,001.08 / 24 class
members = \$3,166.71.

1 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-92 (recognizing the right of class action plaintiffs who
2 have obtained a settlement to recover attorneys' fees and costs because, "[t]o allow the others to
3 obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses
4 would be to enrich the others unjustly at the plaintiff's expense.").

5 Contingency fee litigation is always risky. Despite this risk, Class Counsel have secured
6 an excellent result in this litigation, and Class Counsel respectfully submit that the award of \$60,833
7 in fees and \$8,159.92 in litigation costs as well as a service payment of \$12,500 to Baker and \$7,500
8 to Burston is therefore appropriate. As explained below, the requested fee reflects a negative
9 lodestar multiplier, after almost two years of work on this litigation, of Class Counsel's actual fees
10 of \$81,922.50. Plaintiffs are entitled to recover reasonable attorneys' fees, expenses and costs
11 under Code of Civil Procedure § 1021.5, PAGA (Cal. Lab. C. sec. 2698), as well as various
12 provisions of the Cal. Lab. C.. Moreover, when a party is entitled to statutory fees, "the fee should
13 ordinarily include compensation for all hours reasonably spent, including those relating solely to
14 the fee". See *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 624 ("*Serrano IV*"). California courts, in
15 exercising their broad discretion to determine the appropriate fee pursuant to a fee-shifting statute,
16 may base their calculations on the "lodestar" and "multiplier" method. See *Press v. Lucky Stores,*
17 *Inc.* (1983) 34 Cal. 3d 311, 322; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48-49 ("*Serrano III*").
18 That said, it is submitted that the fee award sought herein is reasonable under both the
19 lodestar/multiplier and common fund approaches in determining reasonable attorney's fees. Class
20 Counsel's costs are also fully documented, necessarily incurred and otherwise reasonable.

21 The reaction of the Class to the Settlement terms relating to fees and costs must also be
22 recognized. As of July 16, 2025, no Class Members out of the 24 have opted out and zero Class
23 Members have objected to the Fee request. Courts have interpreted that response as evidence that
24 the Settlement warrants final approval. See, e.g., *7-Eleven Owners for Fair Franchising v.*
25 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1152-53 (finding response of class members to be
26 "overwhelmingly positive" where "a mere 80 of the 5,454 absent class members elected to opt out
27 of the settlement."). Moreover, Class Members do not need to opt in to receive settlement payments
28 and will automatically be entitled to receive the benefits of this settlement.

1. **The requested attorney's fees are reasonable, fair and appropriate under**

1 **the lodestar/multiplier approach**

2 Under the lodestar/multiplier approach, the court computes the “lodestar” amount by
3 multiplying the number of hours reasonably expended by each attorney or legal staff member by
4 their reasonable hourly rates. *See Serrano III*, 20 Cal. 3d at 48. However, “the lodestar formula
5 does not limit consideration to hours expended and hourly rate, though that is the foundation of the
6 calculation.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 40. The court then
7 enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty
8 and difficulty of the case, its contingent nature, and the degree of success achieved. *See Serrano*
9 *III*, 20 Cal. 3d at 49; *see also Lealao*, 82 Cal. App. 4th at 26; *Thayer v. Wells Fargo Bank* (2001)
10 92 Cal. App. 4th 819, 834 (“[t]here is no hard-and-fast rule limiting the factors that may justify an
11 exercise of judicial discretion to increase or decrease a lodestar calculation”). Class Counsels’ fee
12 demand is justified based upon the lodestar method of calculating fees.

13 ***a. The number of hours claimed is reasonable***

14 Counsel for prevailing parties are entitled to be compensated “for all time reasonably
15 expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally
16 is compensated by a fee-paying client for all time reasonably expended on a matter.” *Hensley v.*
17 *Eckerhart* (1983) 461 U.S. 424, 431 (internal quotes and citation omitted); *see also Serrano IV*, 32
18 Cal. 3d at 633 (parties “should recover for all hours reasonably spent”). The amount of time Class
19 Counsel estimates was spent on this case (101.1 hours), which culminated in the very favorable
20 Settlement, is entirely reasonable given the complexity of the issues involved, Defendant’s vigorous
21 defense, the length of time the litigation has been pending, and the exceptional results obtained.
22 Declaration of Thomas Wheeler In Support of Motion For Attorney’s Fees and Costs (“Wheeler
Decl.”) ¶¶ 22-24.

23 Further, all of Class Counsel’s time is supported by the declarations submitted concurrently
24 with this Motion which themselves are based on a review of the maintained in the normal course
25 of Class Counsel’s practice. *See, In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App.
26 4th 495, 511-12 (“We see no reason why [the court] could not accept the declarations of counsel
27 attesting to the hours worked, particularly as he was in the best position to verify those claims by
28 reference to the various proceedings in the case.”); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.

1 App. 4th 224, 254-55.

2 **b. *The hourly rates requested are reasonable***

3 Class Counsel are entitled to be compensated at hourly rates that reflect the reasonable
4 market value of their legal services, based on their experience and expertise. *See Serrano IV*, 32
5 Cal. 3d at 640 n.31; *San Bernardino Valley Audubon Soc’y, Inc. v. County of San Bernardino* (1984)
6 155 Cal. App. 3d 738, 755. “The reasonable hourly rate is that prevailing in the community for
7 similar work.” *PCLM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095. Payment at full market
8 rates is essential to entice well-qualified counsel to undertake difficult cases such as this one. *See*
9 *Audubon Soc’y*, 155 Cal. App. 3d at 755. Class Counsel’s hourly rates are fully supported by their
10 experience and reputation in handling complex class action litigation. *See Wheeler Decl.* ¶¶ 6-22.
11 Further, Class Counsel charge rates commensurate with the prevailing market rates for attorneys of
12 comparable experience and skill handling complex litigation and Class Counsel made all reasonable
13 attempts to assign tasks to timekeepers at the appropriate billing rates.

14 **2. The requested attorneys’ fees and costs are reasonable, fair and**
15 **appropriate under the Common Fund Doctrine.**

16 While the lodestar method set forth above weighs in favor of granting this Motion, a
17 percentage of the common fund calculation supports the requested fee as well. The concept of
18 awarding attorneys’ fees from a common fund such as at issue here was stated in the following
19 manner by the California Supreme Court: “[W]hen a number of persons are entitled in common to
20 a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the
21 creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out
22 of the fund.” *Serrano III*, 20 Cal. 3d at 34; *see also Lealao*, 82 Cal. App. 4th at 26 (observing that
23 “Fee spreading occurs when a settlement or adjudication results in the establishment of a separate
24 or so-called common fund for the benefit of the class. Because the fee awarded class counsel comes
25 from this fund, it is said that the expense is borne by the beneficiaries.”). In addition to spreading
26 the litigation fees among all beneficiaries, awards of common fund fees are essential to furthering
27 the important societal goal of attracting competent counsel to handle these often complex
28 contingency cases “who will be more willing to undertake and diligently prosecute proper litigation
for the protection or recovery of the fund if [the attorneys are] assured that [they] will be promptly

1 and directly compensated should [their] efforts be successful.” *Melendres v. City of Los Angeles*
2 (1975) 45 Cal. App. 3d 267, 273 (quoting *In re Stauffer’s Estate* (1959) 53 Cal. 2d 124, 132). In
3 California, trial courts have inherent equitable power to award attorney’s fees on a common fund
4 basis when counsel’s efforts “have resulted in the preservation or recovery of a certain or easily
5 calculable sum of money.” *Serrano III*, 20 Cal. 3d at 35. The traditional method for calculating a
6 common fund fee is to award a percentage of the total fund. *See, e.g., Lealao*, 82 Cal. App. 4th at
7 26. Fee awards from a common fund can “average around one-third of the recovery.” *Consumer*
8 *Privacy Cases* (2009) 175 Cal. App. 4th 545, 558 n.13; *see also Chavez v. Netflix, Inc.* (2008) 162
9 Cal. App. 4th 43, 66 n.11.

10 The determination of the proper quantum of attorneys’ fees in this case is not a complicated
11 matter, given the Gross Settlement Amount of \$182,500. Thus, the fees sought by Class Counsel
12 represent a third of that amount, which is well within the realm of fees for such work on a
13 contingency basis. *Lealao*, 82 Cal. App. 4th at 47 (“As many courts have noted ... the amount of
14 attorney fees typically negotiated in comparable litigation should be considered in the assessment
15 of a reasonable fee in representative actions in which a fee agreement is impossible.”).

16 In sum, the fees requested herein are more than reasonable due to the result achieved, the
17 reaction of the Class to the Settlement, as well as the entirely contingent nature of the work
18 undertaken by Class Counsel, for which they have yet to be paid one cent for their work.

19 **3. The requested costs are fully documented, necessarily incurred and**
20 **reasonable.**

21 To date, Class Counsel have documented and verified a total of \$8,005.30 in expenses and
22 costs incurred through the time of this Motion and anticipate \$154.62 more before this matter is
23 fully resolved. *See Wheeler Decl.* ¶ 18. The costs and expenses for which counsel seeks
24 reimbursement include filing fees, service of process, and mediation expenses. *Id.* Plaintiffs’
25 counsel has not billed for miscellaneous expenses such as legal research expenses, printing
26 expenses and postage. All of these costs were necessarily incurred in the course of this litigation
27 and should be reimbursed. *Id.* Thus, Plaintiffs’ request for up to \$8,159.92 in costs is reasonable.

28 **B. THE COURT SHOULD AWARD PLAINTIFFS THEIR REQUESTED INCENTIVE**
AWARDS

1 In *Cellphone Termination Cases* (2010) 186 Cal. App. 4th 1380, 1396, the appellate court
2 upheld the trial's court approval of \$10,000 in incentive awards to each class representative. The
3 court reasoned, "[T]he rationale for making enhancement or incentive awards to named plaintiffs
4 is that they should be compensated for the expense or risk they have incurred in conferring a benefit
5 on other members of the class." *Id.* at 1394 (quoting *Clarke v. American Residential Servs. LLC*
6 (2009) 175 Cal. App. 4th 785, 806).

7 Here, the Settlement Agreement calls for Plaintiff Baker to receive a \$12,500 incentive
8 award and Plaintiff Burston to receive a \$7,500 incentive award. This incentive award is well
9 deserved and justified by the fact that Plaintiffs took action on behalf of themselves for unpaid
10 wages. Declaration of Quintin Baker at ¶¶ 4-13 ("Baker Decl."); Declaration of Lydell Burston
11 ("Burston Decl.") at ¶¶ 4-12. Moreover, Plaintiffs faced substantial financial risk by bringing this
12 claim because Plaintiffs had to give up their rights to pursue Defendant on any other basis. *Ids.* at
13 ¶¶ 10-11. By bringing this action, Plaintiffs furthered the public policy goals of fair wages for
14 employees. Plaintiffs were active during the discovery process as well as mediation and approval
15 process, with Baker spending more than 40 hours and Burston spending between 30 hours. *Ids.* ¶¶
16 7-8. Additionally, there is now a public record of Plaintiffs having sued Defendant for wage
17 violations which may impact Plaintiffs' ability to find similar work in the recreation area industry,
18 which is a small community where such information would likely become widespread. Finally, as
19 both Plaintiffs note, they have each experienced some adversity in seeking promotions since
20 bringing this action to advocate on their fellow employees behalf. *Ids.* at ¶¶ 10-11.

21 Plaintiffs also forewent bringing other claims and agreed to a broader release than the rest
22 of the Class in order to promote the goals of fellow employees. Therefore, their time and effort
23 made resolution of this case possible for the members of the Class. Furthermore, the Plaintiffs have
24 served as model class representative since the inception of this case. By bringing this action, the
25 Plaintiffs also furthered the well-established public policy goals of protecting employees from
26 allegedly abusing wage practices.

26 V. CONCLUSION

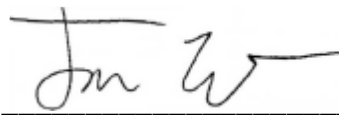
27 For the reasons stated above, Plaintiffs respectfully submit that this Motion should be
28 granted in its entirety. Specifically, Plaintiffs seek:

- \$60,833 for Class Counsel's fees;
- \$8,159.92 for Class Counsel's costs;
- \$10,000 for the actual costs of Claims Administration³; and
- A \$12,500 incentive award to Plaintiff Quintin Baker and \$7,500 incentive award to Plaintiff Lydell Burston.

Dated: July 16, 2025

Respectfully submitted,
Southern California Attorneys, APC

By:



Thomas Wheeler – *Of Counsel*
Kambiz Drake
Siamak Nehoray
Attorneys for Plaintiffs

³ This amount will be supported by a declaration filed by the Settlement Administrator prior to final approval.

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I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is Southern California Attorneys, APC, 24007 Ventura Boulevard, Suite 200, Calabasas, California 91302.

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