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7 Attorneys for Plaintiff MANDISA AIN LYONS, as an
8 individual and on behalf of all employees similarly
situated

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **CONTRA COSTA COUNTY**

12 MANDISA AIN LYONS,

13 Plaintiff,

14 v.

15 PALECEK IMPORTS, INC.; and DOES 1
16 through 50, inclusive,

17 Defendants.

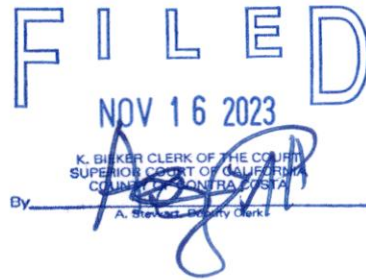
Case No.: C21-01222

FINAL APPROVAL ORDER

Assigned for all purposes to:
Hon. Charles S. Treat, Dept. 12

Date: September 21, 2023
Time: 9 am
Dept.: 12

Complaint Filed: June 14, 2021
Trial Date: None Yet Set



1 **FINAL APPROVAL ORDER**

2 WHEREAS, this matter has come before the Court for hearing pursuant to the Preliminary
3 Approval Order dated March 24, 2023, for final approval of the Settlement as set forth in the Joint
4 Stipulation of Class Action Settlement (the "Settlement" or "Settlement Agreement") filed on October
5 14, 2022, as Exhibit "A" to the Declaration of Kevin Mahoney in Support of Plaintiff's Motion for
6 Preliminary Approval of Class Action Settlement, and the Court having considered all papers filed
7 and the proceedings had and otherwise being fully informed.

8 **THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:**

9 1. This Order incorporates by reference the definitions in the Settlement Agreement and
10 all terms defined therein shall have the same meaning in this Order as set forth in the Settlement
11 Agreement.

12 2. This Court has jurisdiction over the subject matter of this litigation and over all Parties
13 to this litigation, including the Plaintiff and Class Members.

14 3. Plaintiff Mandisa Lyons moves for final approval of her class action and PAGA
15 settlement with defendant Palacek Imports, Inc., which operates a furniture manufacturing and
16 wholesale business. She also moves for approval of plaintiff's attorney's fees, litigation costs,
17 administration costs, and representative payment. Since preliminary approval was granted, the
18 administrator has mailed notices to 317 class members. 6 packets were returned by the post office.
19 Follow up resulted in 3 new addresses, leaving 3 non-deliverable. No objections or requests to opt out
20 have been received. The motions are **granted**.

21 **Background and Settlement Terms**

22 The original complaint was filed on June 14, 2021, raising class action claims on behalf of
23 non-exempt employees, alleging that defendant violated the Labor Code in various ways, including
24 failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to provide
25 proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages
26 due on separation. The complaint included PAGA claims, based on notices previously provided to the
27 LWDA. A First Amended Complaint was filed on August 10, 2022.

1 The settlement will create a gross settlement fund of \$900,000. The class representative
2 payment to the plaintiff will be \$5,000. Attorney's fees will be \$300,000 (one-third of the settlement).
3 Litigation costs are \$15,007, significantly less than the \$20,000 previously estimated. The settlement
4 administrator's (Phoenix's) costs are \$7,500, less than half of the previously estimated \$20,000. PAGA
5 penalties will be \$10,000, resulting in a payment of \$7,500 to the LWDA. The net amount paid directly
6 to the class members will be about \$565,00. The fund is non-reversionary. Despite the reduced cost
7 amounts, the average payment per class member will be somewhat lower than previously estimated
8 because it turned out that the class size was significantly larger, though not large enough to trigger the
9 escalator. The average will be about \$1,774.

10 The entire settlement amount will be deposited with the settlement administrator within 30
11 days after the effective date of the settlement (which is specifically defined to account for
12 contingencies such as objections and appeals).

13 The proposed settlement will certify a class of all current and former hourly employees in
14 California at any time between June 1, 2017 and the date of preliminary approval "excluding any
15 persons who were represented by counsel, and had a civil action pending as of July 1, 2022."

16 The class members will not be required to file a claim. Funds will be apportioned to class
17 members based on the number of workweeks worked during the class period. Checks undelivered or
18 uncashed 180 days after mailing will be voided, and will be provided to the State Controller's
19 unclaimed property fund.

20 The settlement contains release language covering "any and all claims that were asserted in the
21 Action, or that arise from or could have been asserted based on the facts ... alleged in Plaintiff's
22 complaint or First Amended Complaint," as well as a number of specifically identified claims. Under
23 recent appellate authority, the limitation to those claims with the "same factual predicate" as those
24 alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* {2021} 69 Cal.App.5th 521,
25 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint."])

26 "Put another way, a release of claims that goes beyond the scope of the allegations in the
27 operative complaint' is impermissible." *Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D.
28 Cal.2020) 469 F.Supp.3d 942, 949.)

1 Informal discovery was undertaken, resulting in the production of substantial documents,
2 including a 20% sampling of certain records. (What records were subject to sampling, and why there
3 would be sampling at all in a class with only 285 members, is not clear.) Counsel retained an expert
4 to review the material. The matter settled after arms-length negotiations, which included a session with
5 an experienced mediator on June 28, 2022. The First Amended Complaint was filed on August 10,
6 2022. The court docket indicates that the stipulation was signed by counsel on June 8, 2022, and
7 approved June 9, with both documents officially filed June 10, 2022. (Plaintiff's motion states that the
8 filing was based on a stipulation submitted on June 30, 2022, but that appears to be an inadvertent
9 error.) Plaintiff's briefing in support of the motion does not specify just what was added in the First
10 Amended Complaint, or why the stipulation was reached so close to the mediation date, or why the
11 First Amended Complaint was not actually filed until after the mediation, even though the stipulation
12 said it would be filed within twenty days. The entire sequence raises the issue of whether the new
13 claims were the subject of adequate discovery and investigation.

14 Counsel also has provided an analysis of the case, broken down by each type of claim and how
15 the settlement compares to the potential value of the case, after allowing for various risks and
16 contingencies. This includes an estimate of the maximum value of each claim, with a "reasonable
17 estimated value" of the claim at a percentage of the maximum (20% for the meal and rest break
18 claims, 30% for the wage statement claims, 50% for waiting time penalties, and 50% for
19 reimbursement claims. These percentages presumably reflect various risk-based contingencies,
20 including problems of proof.

21 Similarly, an estimate of PAGA penalties is provided, starting at a theoretical maximum of \$10
22 million. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other
23 violations, they include "stacking" of violations, the law may only allow application of the "initial
24 violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See
25 Labor Code, § 2699(c)(2) [PAGA penalties may be reduced where "based on the facts and
26 circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary
27 and oppressive, or confiscatory."])
28

1 Counsel attest that notice of the proposed settlement was transmitted to the LWDA
2 immediately before filing the motion.

3 **Legal Standards**

4 The primary determination to be made is whether the proposed settlement is "fair, reasonable,
5 and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "the
6 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the
7 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
8 discovery completed and the state of the proceedings, the experience and views of counsel, the
9 presence of a governmental participant, and the reaction ... to the proposed settlement." (See also
10 *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

11 Because this matter also proposes to settle PAGA claims, the Court also must consider the
12 criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA,*
13 *Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the
14 "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*,
15 at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation
16 of civil penalties between the affected aggrieved employees." (*Id.*, at 64-65.)

17 California law provides some general guidance concerning judicial approval of any settlement.
18 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992)
19 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public
20 policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106
21 Cal.App.4th 1121, 1127.) Moreover, "the court cannot surrender its duty to see that the judgment to be
22 entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto.*
23 *Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have
24 specifically noted that *Neary* does not always apply, because "where the rights of the public are
25 implicated, the additional safeguard of judicial review, though more cumbersome to the settlement
26 process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
27 *America* (2006) 141 Cal.App.4th 48, 63.)

1 **Attorney Fees and Other Costs**

2 Plaintiffs seek one-third of the total settlement amount as fees, relying on the "common fund"
3 theory, or \$300,000. Even a proper common fund-based fee award, however, should be reviewed
4 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the
5 Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the
6 percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar
7 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
8 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court
9 is not necessarily required to make such an adjustment." (Id., at 505.)

10 Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They
11 estimate the lodestar at \$177,033, representing an implied multiplier of 1.69. They based this amount
12 on a total of 269 hours. No adjustment from the one-third fee is necessary. The attorney's fees are
13 reasonable and are approved.

14 The requested representative payment of \$5,000 for the named plaintiff was deferred until this
15 final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American*
16 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in
17 support of her request. She points out that she executed a broader release than the class as a whole,
18 but does not identify any particular claims of value that she may have. She also risks damage to her
19 reputation and more difficulty in obtaining employment. The representative payment is approved.
20 Litigation costs of \$15,007 (mostly mediation fees) are reasonable and are approved.
21 The settlement administrator's costs of \$7,500 are reasonable and are approved.

22 **Discussion and Conclusion**

23 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and
24 adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees
25 (based on pay periods) is reasonable.

26 The motion is **granted**.

27 4. Pursuant to the Preliminary Approval Order, the appointed Settlement Administrator,
28 Phoenix Class Action Administration Solutions, mailed a Notice of Settlement to all known Class

1 Members by First Class U.S. Mail. The Notice of Settlement fairly and adequately informed Class
2 Members of the terms of the proposed Settlement and the benefits available to Class Members
3 thereunder. The Notice of Settlement further informed Class Members of the pendency of the Action,
4 of the proposed Settlement, of Class Members' right to receive their share of the Settlement (if
5 approved), of the scope and effect of the Released Claims, of the preliminary Court approval of the
6 proposed Settlement, of exclusion and objection timing and procedures, of the date of the Final
7 Approval Hearing, and of the right to file documentation in support of or in opposition to the
8 Settlement and to appear in connection with the Final Approval Hearing. Class Members had adequate
9 time to consider this information and to use the procedures identified in the Notice. The Court finds
10 and determines that this notice procedure afforded adequate protections to Class Members and
11 provides the basis for the Court to make an informed decision regarding approval of the Settlement
12 based on the responses of Class Members. The Court finds and determines that the Notice provided
13 in the Action was sufficient, which satisfied the requirements of law and due process.

14 5. In response to the Notice of Settlement, there are zero (0) Class Member objections to
15 the Settlement, and zero (0) Class Members submitted a timely Request for Exclusion from the
16 Settlement, and there are zero (0) workweek disputes.

17 6. The Court finds that the Settlement offers significant monetary recovery to Class
18 Members and finds that such recovery is fair, adequate and reasonable when balanced against further
19 litigation related to liability and damages issues. The Court further finds that the Parties have
20 conducted extensive and costly investigation, formal and informal discovery, research and litigation
21 such that Class Counsel and Defense Counsel are able to reasonably evaluate their respective positions
22 at this time. The Court finds that the proposed Settlement, at this time, will avoid substantial additional
23 costs by all Parties, as well as avoid the risks and delay inherent to further prosecution of the Action.
24 The Court further finds that the Parties reached the Settlement as the result of intensive, serious and
25 non-collusive, arms-length negotiations. Thus, the Court approves the Settlement set forth in the
26 Settlement Agreement and finds that the Settlement is, in all respects, fair, adequate and reasonable
27 and directs the Parties to effectuate the Settlement according to its terms.
28

1 7. The Court hereby orders the Settlement Administrator to distribute the Individual
2 Settlement Award payments to Settlement Class Members who did not submit a timely Request for
3 Exclusion in accordance with the provisions of the Settlement Agreement. The envelopes transmitting
4 the Settlement Award checks shall include the notation, "YOUR CLASS ACTION SETTLEMENT
5 CHECK IS ENCLOSED" and shall remain valid for a period of 180 calendar days.

6 8. The Settlement Administrator shall arrange with Defendants to have their payments
7 delivered to their employees at the place of their employment if (i) any of the Participating Class
8 Members are current employees of the Defendant, and (ii) the payment mailed to those employees is
9 being returned as undeliverable and the Settlement Administrator is unable to locate a valid mailing
10 address.

11 9. All Participating Class Members, regardless of whether or not they cash their Individual
12 Settlement Award check(s), will be bound by the releases detailed in this Settlement Agreement.
13 Participating Class Members must cash or deposit their Individual Settlement Share checks within one
14 hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not
15 redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator
16 will send a reminder postcard indicating that unless the check is redeemed or deposited in the next
17 ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if
18 it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 180-
19 day period, or ninety (90)-day period after mailing the reminder notice, whichever is earlier, the
20 Settlement Administrator will, within two hundred (200) calendar days after the checks are initially
21 mailed, submit to the amount of the uncashed or not deposited payments to California State Controller
22 as unclaimed property in the name of the Class Member who did not cash his or her check.

23 10. For purposes of this Final Approval Order and this Settlement only, the Court hereby
24 confirms the appointment of Plaintiff Mandisa Ain Lyons as the class representative for the Class
25 Members. Further, the Court finally approves a Class Representative Incentive Payment to Plaintiff,
26 as fair and reasonable, in the total amount of five thousand dollars (\$5,000.00). The Court hereby
27 orders the Settlement Administrator to distribute the Incentive Award to the Plaintiff Mandisa Ain
28

1 Lyons in accordance with the provisions of the Settlement. No other individual or former named
2 Plaintiff in this action shall receive an Incentive Award.

3 11. For purposes of this Final Approval Order and this Settlement only, the Court hereby
4 confirms the appointment of The Mahoney Law Group as Class Counsel for the Class Members.
5 Further, the Court finally approves a Class Counsel Fees and Costs Award, as fair and reasonable, of
6 three hundred thousand dollars (\$300,000.00) for attorneys' fees and fifteen thousand seven dollars
7 and zero cents (\$15,007.00) for costs. Class Counsel's receipt of the Class Counsel Fees and Costs
8 Award shall fully satisfy all fees and litigation costs incurred by Class Counsel that represented
9 Plaintiff and Class Members in the Action. Defendant's payment of the Court-awarded attorneys' fees
10 and costs shall constitute full satisfaction of Defendant's obligation to pay any person, attorney, or law
11 firm for attorneys' fees, costs, and expenses incurred on behalf of the Plaintiff and the Class Members.
12 The Court hereby orders the Settlement Administrator to distribute the Class Counsel Fees and Costs
13 Award payment to Class Counsel in accordance with the provisions of the Settlement Agreement.

14 12. Pursuant to a valid "Fee-Split Agreement," executed on June 6, 2023, by Plaintiff
15 Mandisa Lyson and Plaintiff Crystal Saruca (*Crystal Saruca v. Palecek Imports, Inc.*, Contra Costa
16 County Superior Court, Case No., CIVMSC21-02538), the awarded attorney's fees shall be awarded
17 as follows: Mahoney Law Group, APC shall receive seventy percent (70%), and GrahamHollis, APC,
18 shall receive thirty percent (30%).

19 13. For purposes of this Final Approval Order and this Settlement only, the Court hereby
20 confirms the appointment of Phoenix Class Action Administration Solutions as the Settlement
21 Administrator to administer the Settlement of this matter as more specifically set forth in the
22 Settlement Agreement and further finally approves Settlement Administration Costs, as fair and
23 reasonable, of seven thousand five hundred dollars (\$7,500.00).

24 14. As of the Response Deadline, all Settlement Class Members who did not submit a
25 timely and valid Request for Exclusion shall be deemed to have released the Released Parties from all
26 Released Claims, as defined in the Settlement Agreement.

27 15. After Settlement administration has been completed in accordance with the Settlement
28 Agreement, the Parties shall file a report with this Court certifying compliance with the terms of the

1 Settlement.

2 16. Neither this Final Approval Order, the Settlement Agreement, nor any document
3 referred to herein, nor any action taken to carry out the Settlement Agreement is, may be construed as,
4 or may be used by Plaintiff as an admission by or against Defendant or any of the other Released
5 Parties of any fault, wrongdoing or liability whatsoever. Nor is this Final Approval Order a finding
6 of the validity of any claims in the Action or of any wrongdoing by Defendant or any of the other
7 Released Parties. The entering into or carrying out of the Settlement Agreement, and any negotiations
8 or proceedings related thereto, shall not in any event be construed as an admission or concession with
9 regard to the denials or defenses by Defendant or any of the other Released Parties and shall not be
10 offered in evidence by Plaintiff against Defendant or any of the Released Parties in any action or
11 proceeding in any court, administrative agency or other tribunal for any purpose whatsoever other than
12 to enforce the provisions of this Final Approval Order, the Settlement Agreement, or any related
13 agreement or release. Notwithstanding these restrictions, any of the Released Parties may file in the
14 Action or in any other proceeding this Final Approval Order, the Settlement Agreement, or any other
15 papers and records on file in the Action as evidence of the Settlement and to support a defense of res
16 judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion or
17 similar defense.

18 17. If the Settlement does not become final and effective in accordance with the terms of
19 the Settlement Agreement, resulting in the return and/or retention of the Settlement funds to Defendant
20 consistent with the terms of the Settlement, then this Final Approval Order and all orders entered in
21 connection herewith, shall be rendered null and void and shall be vacated.

22 18. The Court hereby enters judgment, with prejudice, for the reasons set forth above, and
23 in accordance with the terms set forth in the Settlement Agreement. The Settlement Administrator
24 shall provide notice of this judgement by posting a copy of this order on the website specified in the
25 Class Notice.

26 19. Without affecting the finality of this Final Approval Order in any way, this Court
27 hereby retains continuing jurisdiction over the interpretation, implementation and enforcement of the
28 Settlement and all orders and judgments entered in connection therewith.

20. A Final Report (~~Nonappearance~~) Hearing is hereby set for June 20, 2024, at 9:00 a.m., or a date more convenient for the Court. A report pursuant to Code of Civil Procedure section 384, subdivision (b), shall be filed within 5 court days of the nonappearance hearing and shall be in the form of a declaration from the Settlement Administrator or other declarant with personal knowledge of the facts. The report shall be in the form of a declaration from the Settlement Administrator or other declarant with personal knowledge of the facts, and to describe (i) the date the checks were mailed, (ii) the total number of checks mailed to class members, (iii) the average amount of those checks, (iv) the number of checks that remained uncashed and were redistributed, (v) the total value of those uncashed checks, (vi) the average amount of the uncashed checks, and (vii) the nature and date of the disposition of those unclaimed funds. If applicable, the proposed amended judgment shall require counsel for Plaintiff to send a copy of any amended judgment which distributes funds to a *cy pres* recipient to the Judicial Council in compliance with CCP Section 384.5. Further the correspondence by counsel shall include a cover letter providing the Judicial Council with the information required pursuant to Government Code Section 68520. Proof of Service shall be filed with the court within fifteen (15) days of the filing of the judgment.

21. Five percent (5%) of the attorney's fees are to be withheld by the Settlement Administrator pending satisfactory compliance as found by the Court.

22. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h).

IT IS SO ORDERED.

Dated: NOV 15 2023


Hon. Charles S. Treat
Contra Costa Superior Court Judge

PROOF OF SERVICE

Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **November 8, 2023**, I served [X] true copies [] originals of the following document(s): ~~FINAL APPROVAL ORDER~~ **FINAL APPROVAL ORDER** I served the document(s) on the person(s) below as follows:

John V. Ricca, Esq. Sat Sang Khalsa, Esq. GORDON & REES LLP 275 Battery Street, 2 Ste. 2000 San Francisco, CA 94111	Attorneys for Defendant PALECEK IMPORTS, INC. Telephone: (415) 986-5900 Facsimile: (415) 986-8054 Emails: jricca@grsm.com jvernon@grsm.com skhalsa@grsm.com
Graham S.P. Hollis, Esq. Vilmaric Cordero, Esq. Hali Anderson, Esq. Nathan J. Reese, Esq. GRAHAMHOLLIS APC 3555 Fifth Ave. Ste. 200 San Diego, CA 92103	Attorneys for Plaintiff CRYSTAL SARUCA Telephone: (619) 692-0800 Facsimile: (619) 692-0822 Emails: ghollis@grahamhollis.com vcordero@grahamhollis.com handerson@grahamhollis.com nreese@grahamhollis.com

The document(s) were served by the following means:

☒ **By e-mail:** Based upon court order or an agreement of the parties to accept service by e-mail, I caused the document(s) to be sent to the persons at the electronic service addresses listed above from the email address npicerson@mahoney-law.net. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **November 8, 2023**, at Long Beach, California.



Nicole Picerson