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Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

GILDARDO MOTA STEVENS, an
individual, on behalf of himself and others
similarly situated,

PLAINTIFF,

v.

PURPLE EAGLE LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. MSC21-02204

[Case Assigned for All Purposes to Hon.
Charles S. Treat in Dept. 12]

**[PROPOSED] AMENDED ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: October 19, 2023

Time: 9:00 a.m.

Dept.: 12

Complaint Filed: October 26, 2021

Trial Date: None Set

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

2 The above captioned Class Action is a class action lawsuit brought by Plaintiff
3 GILDARDO MOTA STEVEN (“Class Representative” or “Plaintiff”) against Defendant
4 PURPLE EAGLE LLC (“Defendant”). The Motion for Final Approval of Class Action Settlement
5 came before this Court, on October 19, 2023.

6 **WHEREAS**, the Court granted preliminary approval of the Class Action and PAGA
7 Agreement (“Agreement” or “Settlement”), attached to the concurrently-filed Declaration of Liane
8 Katzenstein Ly as Exhibit “1”, on July 6, 2023.

9 **WHEREAS**, Plaintiff has applied to the Court for an order granting final approval of the
10 Agreement.

11 **WHEREAS**, the Court’s October 19, 2023 Tentative Ruling (“TR”) reflecting its entire
12 ruling and other findings are incorporated herein. A true and correct copy of the Court’s TR is
13 attached hereto as Exhibit “1”.

14 **WHEREAS**, the Agreement sets forth the terms and conditions for the proposed
15 Settlement and for entry of an Order of Final Approval and entry of final judgment thereon. The
16 Court having read and considered Plaintiff’s Motion for Final Approval of Class Action
17 Settlement; Motion for Approval of Attorneys’ Fees and Costs; the Declarations of Liane
18 Katzenstein Ly; William Zev Abramson; and Jodey Lawrence of Phoenix Settlement
19 Administrators; and the supporting documents annexed thereto, now finds:

20 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

21 Plaintiff Gilardo Mota Stevens moves for preliminary approval of his class action and
22 PAGA settlement with defendant Purple Eagle LLC. The motion is **granted**.

23 Since preliminary approval was granted, the administrator has mailed notices to 388 class
24 members. 36 packets were returned by the post office. Follow up resulted in 32 new addresses,
25 leaving 4 non-deliverable. No objections out have been received, and only one class member has
26 opted out.

27 **A. Background and Settlement Terms**

28 Defendant is the parent of Hand & Stone Massage and Facial Spa. Plaintiff was employed

1 with defendant as a neuromuscular therapist in the spring of 2021, though only briefly.

2 The original complaint was filed on October 26, 2021. A PAGA claim was added by
3 amendment in January 2022.

4 The settlement will create a gross settlement fund of \$150,000. The class representative
5 payment to the plaintiff will be \$5,000. Attorney's fees will be \$50,000 (one-third of the
6 settlement). Litigation costs are requested at \$15,000. The settlement administrator's costs are
7 \$10,000. PAGA penalties will be \$10,000, resulting in a payment of \$7,500 to the LWDA. The
8 net amount paid directly to the class members will be \$62,500, not including distribution of the
9 PAGA penalty. The fund is non-reversionary. There are 387 class members not opting out, a little
10 more than previously estimated. Based on the estimated class size, the average net payment for
11 each class member is approximately \$155, not including PAGA. The individual payments will
12 vary considerably, however, because of the allocation formula prorating payments according to
13 the number of weeks worked during the relevant time. The number of aggrieved employees for
14 PAGA purposes is smaller, because the starting date of the relevant period is later.

15 The entire settlement amount will be deposited with the settlement administrator within 14
16 days after the effective date of the settlement.

17 The proposed settlement will certify a class of all current and former non-exempt employed
18 at Defendants' California facilities between October 26, 2017 and March 25, 2023. For PAGA
19 purposes, the period covered by the settlement is October 26, 2020 through March 25, 2023.

20 The class members will not be required to file a claim. Funds will be apportioned to class
21 members based on the number of workweeks worked during the class period.

22 Settlement checks not cashed within 180 days will be cancelled, and the funds will be
23 directed to the Controller's unclaimed property fund.

24 The settlement contains release language covering all claims and causes of action, alleged
25 or which could have reasonably been alleged based on the allegations in the operative pleading,
26 including a number of specified claims. Under recent appellate authority, the limitation to those
27 claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v.*
28 *Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court cannot release claims that

1 are outside the scope of the allegations of the complaint.”) “Put another way, a release of claims
2 that goes beyond the scope of the allegations in the operative complaint’ is impermissible.” (*Id.*,
3 quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

4 Formal discovery was undertaken, resulting in the production of substantial documents.
5 The matter settled after arms-length negotiations, which included a session with an experienced
6 mediator.

7 Counsel also has provided an analysis of the case, and how the settlement compares to the
8 potential value of the case, after allowing for various risks and contingencies. Plaintiff’s principal
9 claim centers on allegations that because therapy appointments are scheduled for the start of each
10 shift, it was necessary for employees to arrive early to prepare the spa rooms, resulting in unpaid
11 work time.

12 Defendant responded that employees could clock in, and begin getting paid, when they
13 arrived and started working. Plaintiff also asserted violations concerning rest breaks and meal
14 breaks, but can point to no stated policy in violation of the law; hence, defendant contended that
15 there is no documentation of any such violations, which are in any event difficult to prove and to
16 certify for class treatment. Plaintiff also contended that employees were required to use their
17 personal cell phones for clocking in and related purposes, but defendant contended that there is no
18 such requirement.

19 The potential liability needs to be adjusted for various evidence and risk-based
20 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number
21 of reasons: they derive from other violations, they include “stacking” of violations, the law may
22 only allow application of the “initial violation” penalty amount, and the total amount may be
23 reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be
24 reduced where “based on the facts and circumstances of the particular case, to do otherwise would
25 result in an award that is unjust arbitrary and oppressive, or confiscatory.”)) Moreover, recent
26 decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to
27 actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th
28 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

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

3 **B. Legal Standards**

4 The primary determination to be made is whether the proposed settlement is “fair,
5 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
6 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
7 further litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the state of the proceedings, the experience and
9 views of counsel, the presence of a governmental participant, and the reaction ... to the proposed
10 settlement.” (See also *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*
13 *USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found
14 that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA
15 settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the
16 settlement’s allocation of civil penalties between the affected aggrieved employees.” (*Id.*, at 64-
17 65.)

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

1 **C. Attorney Fees and Other Costs**

2 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common
3 fund” theory, or \$50,000. Even a proper common fund-based fee award, however, should be
4 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th
5 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine
6 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of
7 a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the
8 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,
9 but the court is not necessarily required to make such an adjustment.” (Id., at 505.)

10 Accordingly, plaintiffs have provided information concerning the lodestar fee amount.
11 They estimate the lodestar at \$28.045, representing an implied multiplier of 1.78. They based this
12 amount on a total of 38 hours. No adjustment from the one-third fee is necessary. The attorney’s
13 fees are reasonable and are approved.

14 The requested representative payment of \$10,000 for the named plaintiff was deferred until
15 this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v.*
16 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a
17 declaration in support of his request. He points out that he executed a broader release than the class
18 as a whole, but does not identify any particular claims of value that he may have. He also risks
19 damage to his reputation and more difficulty in obtaining employment. The representative payment
20 is approved.

21 Plaintiffs report incurring litigation costs of \$18,562 (mostly mediation and filing fees), As
22 provided in the settlement agreement and the preliminary approval, however, they seek recovery
23 of only \$15,000. These costs are reasonable and are approved.

24 The settlement administrator’s costs of \$10,000 are reasonable and are approved.

25 **D. Discussion and Conclusion**

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

1 The motion is granted.

2 The Court also hereby finds and Orders as follows:

3 1. The Court has personal jurisdiction over all Settlement Class Members and that the
4 Court has subject matter jurisdiction to approve the Agreement;

5 2. The terms of the Agreement are fair, just, reasonable, and adequate, consistent and
6 in compliance with California Code of Civil Procedure, the California and United States
7 Constitutions (including the due process clauses), the California Rules of Court and any other
8 applicable law, and in the best interest of each of the Parties and the Settlement Class Members
9 and is hereby finally approved in all respects.

10 3. The Parties are hereby directed to perform the terms of the Settlement as described
11 in the Agreement according to its terms and provisions.

12 4. The Agreement is binding on Plaintiff and all other Settlement Class Members,
13 except those who timely and properly filed Request for Exclusion, as well as their heirs, executors
14 and administrators, successors and assigns.

15 5. It is ordered that the Class is certified for settlement purposes only. The Court
16 finds that an ascertainable class exists and a well-defined community of interest exists in the
17 questions of law and fact involved because in the context of the Agreement: (i) there are questions
18 of law and fact common to the Settlement Class Members which, as to the Agreement and all
19 related matters, predominate over any individual questions; (ii) the Claims of Plaintiff are typical
20 of the Claims of the Settlement Class Members; and (iii) in negotiating, entering into and
21 implementing the Agreement, Plaintiff and Plaintiff's Attorneys have fairly and adequately
22 represented and protected the interest of the Settlement Class Members.

23 6. The Court finds that the Notice and notice methodology implemented pursuant to
24 this Agreement (i) constituted the best practicable notice; (ii) constituted notice that was
25 reasonably calculated, under the circumstances, to apprise Settlement Class Members of the
26 pendency of the Class Action, their right to object to or exclude themselves from the proposed
27 Agreement and their right to appear at the Final Settlement Hearing; (iii) were reasonable and
28 constituted due, adequate and sufficient notice to all persons entitled to receive notice; and (iv)

met all applicable requirements of the California Code of Civil Procedure, the California and United States Constitution (including the Due Process Clause), the California Rules of Court and any other applicable law.

7. There is one (1) valid request for exclusion.

8. There are no objectors to the Agreement.

9. The Class is hereby made final. The Class is defined as:

“all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period.” (the “Settlement Class Members” or “Settlement Class”).

10. The “Class Period” is October 26, 2017 through March 25, 2023.

11. The Aggrieved Employees are defined as:

all individuals who were employed by Defendant as non-exempt employees in California during the PAGA Period. (“Aggrieved Employees” or “PAGA Members”).

12. The PAGA Period is October 26, 2020 through March 25, 2023.

13. The Agreement is not an admission by Defendant, nor is this Final Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final Order, the Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.

14. Pursuant to the Agreement, upon entry of this Final Order, Plaintiff and each Settlement Class Member shall fully release, which provides:

“All claims arising out of or reasonably related to the allegations set forth in the Operative Complaint and/or PAGA notice to the LWDA that arose during the Class Period including, e.g., (a) any and all claims involving any alleged failure to pay wages; (b) failure to provide rest periods; (c) failure to reimburse expenses; (d) failure to provide accurate itemized wage statements; (e) failure to pay all wages due at termination; (f) unfair business practices; and all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.”

15. Pursuant to the Agreement, Plaintiff and each Aggrieved Employee shall fully

1 release and discharge the Released Parties pursuant to the following release:

2 “All claims for PAGA penalties that were alleged, or reasonably
3 could have been alleged, based on the PAGA Period facts stated in
4 the Operative Complaint and the PAGA Notice including any and
5 all claims involving any alleged failure to (a) pay overtime and
6 wages, (b) provide proper rest periods, (c) reimburse business
expenses, (d) provide proper wage statements, (e) pay all wages due
upon termination, and (e) engage in unfair business practices.”

7 16. Plaintiff and all Settlement Class Members who have not been timely and properly
8 excluded from the Class, and any person acting on their behalf, are permanently barred and
9 enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class
10 members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any
11 state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any
12 jurisdiction based on the Released Claims; and (ii) organizing such non-excluded Settlement Class
13 Members into a separate class for purposes of pursuing as a purported class action (including by
14 seeking to amend a pending complaint to include class allegations, or by seeking class certification
15 in a pending action) any lawsuit based on or relating to the Released Claims;

16 17. The Agreement provides that the Gross Settlement Amount is one million nine
17 hundred thousand dollars and zero cents (\$150,000.00). The Net Settlement Amount shall be
18 determined according to the terms of the Agreement.

19 18. The Court orders the calculations and the payments to be made and administered in
20 accordance with the terms of the Agreement.

21 19. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
22 Class for purposes of entering into and implementing the settlement. The Court hereby confirms
23 Kingsley & Kingsley, APC and Abramson Labor Group as Class Counsel in the Class Action.

24 20. The Court hereby finds the unopposed application of Class Counsel for a costs and
25 attorneys' fees award provided for under the proposed Agreement to be fair and reasonable in light
26 of all the circumstances and is hereby granted. Of the Gross Settlement Amount, \$50,000.00 shall
27 be paid for attorney fees and \$15,000.00 shall be paid for litigation costs. Five percent (5%) of
28 the attorneys' fees are to be withheld by the Administrator pending satisfactory compliance as

1 found by the Court.

2 21. The unopposed application of Class Counsel for an enhancement payment to
3 Plaintiff is hereby granted. Of the Gross Settlement Amount, \$5,000.00 shall be allocated to Class
4 Representative Gildardo Mota Stevens as a Class Representative Service Payment.

5 22. The unopposed application of Class Counsel for claims administration fees to
6 Phoenix Settlement Administrators is hereby granted. Of the Gross Settlement Amount,
7 \$10,000.00 shall be paid for settlement administration fees.

8 23. Defendant shall have no further liability for costs, expenses, interest, attorneys'
9 fees, or for any other charge, expense, or liability, except as provided for in the Agreement.

10 24. The Court approves the PAGA penalties in the amount of \$10,000.00. The Court
11 approves 75% of the PAGA penalties being allocated to the Labor and Workforce Development
12 Agency ("LWDA") in the amount of \$7,500.00. The Court further directs that the remaining 25%
13 of the PAGA penalties, in the amount of \$2,500.00 shall be allocated to the Net Settlement Amount
14 for distribution to the Settlement Class Members.

15 25. If a Settlement Class Member does not cash his or her settlement check within 180
16 days, the uncashed funds shall be transmitted by the Settlement Administrator to the State of
17 California Office of the Controller in the name of the class member who did not cash his or her
18 settlement check.

19 26. Defendant shall have no further liability for costs, expenses, interest, attorneys'
20 fees, or for any other charge, expense, or liability, except as provided for in the Agreement.

21 27. The Court hereby grants and authorizes the Parties, without further approval from
22 the Court, to agree to and to adopt such amendments, modifications and expansions of this
23 Settlement and all exhibits attached hereto as (i) are consistent with the Final Judgment; and (ii)
24 do not limit the rights of Settlement Class Members under the Settlement.

25 28. The Court hereby dismisses the action (including all individual claims and Released
26 Claims presented thereby) with prejudice, without fees or costs to any party except as provided in
27 the Agreement.

28 29. The above-entitled Court sets a compliance hearing for July 11, 2024 at 9:00 a.m.

1 in Department 12. Plaintiff's Counsel shall file a compliance statement within seven (7) days prior
2 to the Compliance hearing.

3
4 **DATED:** _____

5 **JUDGE OF THE SUPERIOR COURT**
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EXHIBIT "1"

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 10/19/2023

13. 9:00 AM CASE NUMBER: MSC21-02204
CASE NAME: GILDARDO STEVENS VS. PURPLE EAGLE LLC
***HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
FILED BY:
TENTATIVE RULING:

Plaintiff Gilardo Mota Stevens moves for preliminary approval of his class action and PAGA settlement with defendant Purple Eagle LLC. The motion is **granted**.

Since preliminary approval was granted, the administrator has mailed notices to 388 class members. 36 packets were returned by the post office. Follow up resulted in 32 new addresses, leaving 4 non-deliverable. No objections out have been received, and only one class member has opted out.

A. Background and Settlement Terms

Defendant is the parent of Hand & Stone Massage and Facial Spa. Plaintiff was employed with defendant as a neuromuscular therapist in the spring of 2021, though only briefly.

The original complaint was filed on October 26, 2021. A PAGA claim was added by amendment in January 2022.

The settlement will create a gross settlement fund of \$150,000. The class representative payment to the plaintiff will be \$5,000. Attorney's fees will be \$50,000 (one-third of the settlement). Litigation costs are requested at \$15,000. The settlement administrator's costs are \$10,000. PAGA penalties will be \$10,000, resulting in a payment of \$7,500 to the LWDA. The net amount paid directly to the class members will be \$62,500, not including distribution of the PAGA penalty. The fund is non-reversionary. There are 387 class members not opting out, a little more than previously estimated. Based on the estimated class size, the average net payment for each class member is approximately \$155, not including PAGA. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the relevant period is later.

The entire settlement amount will be deposited with the settlement administrator within 14 days after the effective date of the settlement.

The proposed settlement will certify a class of all current and former non-exempt employed at Defendants' California facilities between October 26, 2017 and March 25, 2023. For PAGA purposes, the period covered by the settlement is October 26, 2020 through March 25, 2023.

The class members will not be required to file a claim. Funds will be apportioned to class members based on the number of workweeks worked during the class period.

Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the

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Controller's unclaimed property fund.

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court cannot release claims that are outside the scope of the allegations of the complaint.") "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. Plaintiff's principal claim centers on allegations that because therapy appointments are scheduled for the start of each shift, it was necessary for employees to arrive early to prepare the spa rooms, resulting in unpaid work time. Defendant responded that employees could clock in, and begin getting paid, when they arrived and started working. Plaintiff also asserted violations concerning rest breaks and meal breaks, but can point to no stated policy in violation of the law; hence, defendant contended that there is no documentation of any such violations, which are in any event difficult to prove and to certify for class treatment. Plaintiff also contended that employees were required to use their personal cell phones for clocking in and related purposes, but defendant contended that there is no such requirement.

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Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

H. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the

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presence of a governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

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

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

I. Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$50,000. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$28,045, representing an implied multiplier of 1.78. They based this amount on a total of 38 hours. No adjustment from the one-third fee is necessary. The attorney’s fees are reasonable and are approved.

The requested representative payment of \$10,000 for the named plaintiff was deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of his request. He points out that he executed a broader release than the class as a whole, but does not identify any particular claims of value that he may have. He also risks damage to his

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reputation and more difficulty in obtaining employment. The representative payment is approved.

Plaintiffs report incurring litigation costs of \$18,562 (mostly mediation and filing fees), As provided in the settlement agreement and the preliminary approval, however, they seek recovery of only \$15,000. These costs are reasonable and are approved.

The settlement administrator's costs of \$10,000 are reasonable and are approved.

J. Discussion and Conclusion

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

The motion is granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

14. 9:00 AM CASE NUMBER: MSC21-02526

CASE NAME: PARK VS SHAH

***HEARING ON MOTION IN RE: TO VACATE DISMISSAL**

FILED BY: PARK, JEANIE CHAN JEAN

TENTATIVE RULING:

Plaintiff's second motion to vacate dismissal is **denied**.

This case was filed in December 2021. Now, approaching two years later, plaintiff still has taken no serious or substantial action to get it served on defendant, or otherwise move the case forward in any way.

The timeline is this:

- 12/3/21: Complaint filed, and summons issued.
- 2/25/22: OSC issued, why the case should not be dismissed for failure to serve or prosecute.
- 4/14/22: Response to OSC recited that plaintiff intentionally chose not to serve process, after the carrier tendered limits, because plaintiff wanted to investigate whether there was other

(PROOF OF SERVICE)

[CCP 1013(a)(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 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On November 17, 2023, I served all interested parties in this action the following documents described as: **[PROPOSED] AMENDED ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ann K. Smith
Sarkis A. Atoyan
**ATKINSON, ANDELSON,
LOYA, RUUD & ROMO**
12800 Center Court Driver South, Suite 300
Cerritos, CA 90703-9364
Sarkis.atoyan@aalrr.com
asmith@aalrr.com

ABRAMSON LABOR GROUP
William Zev Abramson
wza@abramsonlabor.com
11846 Ventura Blvd., Suite 100
Studio City, CA 91604

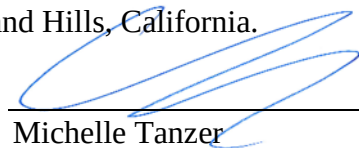
☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

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

Executed on November 17, 2023, at Woodland Hills, California.


Michelle Tanzer