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SUPERIOR COURT OF THE STATE OF CALIFORNIA
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] FINAL JUDGMENT

Date: October 19, 2023

Time: 9:00 a.m.

Dept.: 12

Complaint Filed: October 26, 2021

Trial Date: None Set

1 This matter came on for hearing upon the application of the Plaintiff for approval of the
2 settlement set forth in the Class Action and PAGA Agreement (“Agreement” or “Settlement”) in
3 this matter. On October 19, 2023, the Court issued a Tentative Ruling granting final approval of
4 the Agreement, a true and correct copy of which is attached hereto as Exhibit “1”.

5 Due and adequate notice having been given to the Class, and the Court having considered
6 the Settlement, all papers filed and proceedings had herein, and all oral and written comments
7 received regarding the proposed settlement, and having reviewed the record in this litigation, and
8 good cause appearing for issuance of this order,

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

10 1. The Court, for purposes of this Judgment, adopts all defined terms as set
11 forth in the Settlement.

12 2. The Court has jurisdiction over the subject matter of the Action and the
13 named Plaintiff, the Class Members, and Defendant.

14 3. The Court finds that the distribution of the Notice as provided for in the
15 Order Granting Preliminary Approval constituted the best notice practicable under the
16 circumstances to all persons within the definition of the Settlement Class, and fully met the
17 requirements of due process under California law. Based on evidence and other material submitted
18 in conjunction with the settlement hearing, the actual notices to the Settlement Class were
19 adequate.

20 4. The Court finds that the Action presented a good faith dispute over the
21 payment of wages, and the Court finds in favor of settlement approval.

22 5. The Court approves the settlement of the above-captioned action, as set
23 forth in the Settlement, including the releases and other terms set forth in the Settlement, as fair,
24 just, reasonable, and adequate as to the settling Parties. The settling Parties are directed to perform
25 in accordance with the terms set forth in the Settlement. The settling Parties are to bear their own
26 costs, except as otherwise provided in the Settlement.

27 6. There is one (1) valid request for exclusion from the Settlement and this
28 person shall not be bound by the terms of this Judgment.

1 7. Solely for purposes of effectuating this settlement, this Court has certified a
2 class consisting of all Settlement Class Members, as that term is defined the Settlement
3 Agreement, and the Court deems this definition sufficient for purposes of due process and
4 California Code of Civil Procedure section 382 as well as California Rules of Court rule 3.764.

5 8. For purposes of approving this settlement only, this Court finds and
6 concludes that: (a) Settlement Class Members are ascertainable and so numerous that joinder of all
7 members is impracticable; (b) there are questions of law or fact common to the Settlement Class,
8 and there is a well-defined community of interest among Settlement Class Members with respect
9 to the subject matter of the Action; (c) the claims of the Class Representative are typical of the
10 claims of the Settlement Class; (d) the Class Representative has fairly and adequately protected the
11 interests of the Settlement Class; (e) a class action is superior to other available methods for an
12 efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel
13 for the plaintiff in their individual and representative capacities and for the Settlement Class.

14 9. By this Judgment, subject to the occurrence of the Effective Date as defined
15 in the Settlement, the Class Representative shall release, relinquish, and discharge, and each of the
16 Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have,
17 fully, finally, and forever released, relinquished, and discharged all Released Claims.

18 10. Neither the stipulation nor the Settlement contained therein, nor any act
19 performed or document executed pursuant to or in furtherance of the stipulation or Settlement: (i)
20 is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any
21 Released Claim, or of any wrongdoing or liability of Defendant; or (ii) is or may be deemed to be
22 or may be used as an admission of, or evidence of, any fault or omission of Defendant in any civil,
23 criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In the
24 event that the Effective Date does not occur, Defendant shall not be estopped or otherwise
25 precluded from contesting class or collective action certification in the Litigation on any grounds.
26 Defendant may file the Settlement Agreement and/or the Judgment from the Litigation in any other
27 action that may be brought against it or any Released Parties in order to support a defense or
28 counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement,

1 judgment bar, or reduction or any theory of claim preclusion or issue preclusion or similar defense
2 or counterclaim.

3 11. All Settlement Class Members are entitled to payment pursuant to this
4 Judgment. Any checks that remain uncashed after 180 days shall be cancelled and the funds
5 associated with such checks shall be distributed to the State Controller's Office Unclaimed
6 Property Fund in the name of the Settlement Class Member. Settlement Class Members who fail
7 to negotiate their settlement checks in a timely fashion shall remain subject to the terms of this
8 Judgment.

9 12. As contemplated by the Settlement, Class Counsel have filed a motion for
10 approval of certain fees, costs, and enhancement payment, and the Court has approved the
11 following payments: (a) total attorneys' fees of \$50,000.00 in this matter; (b) total allowable costs
12 in this matter in the amount of \$15,000.00; (c) an enhancement award in the total amount of
13 \$5,000.00 to the Class Representative, to reimburse Plaintiff for his unique services and execution
14 of general release; (d) claims administration fees to Phoenix Settlement Administrators in the total
15 amount of \$10,000.00; and (e) an award of civil penalties recovered under the Private Attorneys'
16 General Act in the amount of \$10,000.00, of which 75% or \$7,500.00 shall be distributed to the
17 California Labor and Workforce Development Agency as set forth in Cal. Lab. Code § 2699(i) and
18 25% or \$2,500.00 shall be allocated to the Net Settlement Amount for distribution to the
19 Settlement Class Members. The Court finds that such amounts, and Defendant's agreement to pay
20 such amounts, are fair and reasonable. Defendant, through the Administrator, is directed to make
21 such payments out of the Gross Settlement Amount in accordance with the terms of the Settlement.

22 13. The Court reserves exclusive and continuing jurisdiction over the Litigation,
23 the Class Representatives, the Class, and Defendant for the purposes of supervising the
24 implementation, enforcement, construction, administration and interpretation of the Settlement
25 Agreement and this Judgment.

26 14. The above-entitled Court sets a compliance hearing for July 11, 2024 at 9:00
27 a.m. in Department 12. Plaintiff's Counsel shall file a compliance statement within seven (7) days
28 prior to the Compliance hearing.

1 15. This document shall constitute a judgment for purposes of California Code
2 of Civil Procedure section 577.

3
4 IT IS SO ORDERED.

5
6 **DATED:** _____
7 _____ **JUDGE OF THE SUPERIOR COURT**

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.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where "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.")) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

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 salutatory 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] FINAL JUDGMENT** 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
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11846 Ventura Blvd., Suite 100
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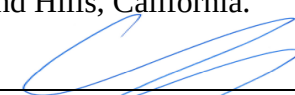
[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that 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.

[XX] 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.

[XX] 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).

[XX] (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