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Filed JAN 18 2023
BRANDON E. RILEY, CLERK

By 
 DEPUTY

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

EARL GANDIONCO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ALLERGAN, INC., a Delaware corporation;
ALLERGAN USA, INC., a Delaware
corporation; ALLERGAN SALES, LLC, a
Delaware limited liability company; ZELTIQ
AESTHETICS, INC., a Delaware corporation;
LANCESOFT, INC., a Virginia corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: STK-CV-UOE-2022-0003077

Assigned for All Purposes to:
Honorable Robert T. Waters
Department 11B

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: January 18, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 11B

Complaint Filed: April 27, 2022
Trial Date: None Set

DEC 16 2022

1 The Court, having read the papers filed regarding Plaintiff Earl Gandionco's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Joint Stipulation and Settlement Agreement ("Settlement
4 Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS:

5 Plaintiff and Defendants Allergan, Inc., Allergan USA, Inc., Allergan Sales, LLC, Zeltiq
6 Aesthetics, Inc., and LanceSoft, Inc. ("Defendants") entered the Settlement Agreement on or
7 about June 24, 2022, to settle this lawsuit.

8 The Court entered an Order dated August 17, 2022 preliminarily approving the settlement
9 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
10 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
11 scheduling a Final Approval Hearing on January 18, 2023, and providing Class Members with an
12 opportunity to object to the Settlement or exclude themselves from the Class.

13 The Court held a Final Approval Hearing on January 18, 2023 to determine whether to
14 give final approval to the Settlement of this lawsuit.

15 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
16 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
17 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
18 in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated and the Class been
20 given the opportunity to request exclusion, the Court has personal jurisdiction with respect to the
21 claims of all Class Members. The Court also has subject matter jurisdiction over this lawsuit,
22 including jurisdiction to approve the Settlement and grants final certification of the Class.

23 3. Final Class Certification. The Court finds the Class satisfies all applicable
24 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of all non-exempt or hourly employees of
26 LanceSoft, Inc. assigned by LanceSoft, Inc. to perform work, and who did perform work, for
27 Allergan, Inc.; Allergan USA, Inc.; Allergan Sales, LLC; or Zeltiq Aesthetics, Inc. (together,
28 "Allergan Entities") at any of the Allergan Entities' facilities or work locations in California at

any time from December 17, 2016 to July 1, 2022 ("Class," "Class Members," and "Class Period"). There are sixty-one (61) Class Members who did not submit valid and timely Exclusion Forms to request to exclude themselves from the Class Action Settlement ("Participating Class Members").¹

4. Adequacy of Representation. Class Counsel fully and adequately represented the Class for purposes of entering and implementing the Settlement and satisfied the requirements of Code of Civil Procedure section 382.

5. Notice Packet. The Court finds the Notice of Class Action Settlement ("Class Notice") and Election Not to Participate form ("Exclusion Form") (collectively, known as the "Notice Packet") and their distribution to Class Members were implemented pursuant to the Settlement and this Court's Preliminary Approval Order. The Court finds the Notice Packet:

a. constitutes notice reasonably calculated to apprise Class Members of: (i) pendency of this lawsuit; (ii) material terms and provisions of the Settlement and their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement; (v) their right to receive an Individual Settlement Share; (vi) their right to appear at the Final Approval Hearing; and (vii) binding effect of the orders and judgment in this lawsuit on all Participating Class Members;

b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process;

c. constitutes the best practicable notice to Class Members under the circumstances of this lawsuit; and

d. constitutes notice reasonable, adequate, and sufficient to Class Members.

6. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered in good faith and are the product of arm's-length negotiations by experienced counsel who have done a meaningful investigation of the claims. The Settlement Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,

¹ Phoenix mailed Notice Packets to sixty-two (62) Class Members and received one (1) request for exclusion. Thus, there are sixty-one (61) Participating Class Members.

adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

7. Binding Effect. The terms and provisions of the Settlement and this Order and Judgment are binding on Plaintiff, Participating Class Members, Eligible Aggrieved Employees, and their successors and assigns. In addition, those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in this lawsuit and are encompassed by the Released Claims and Private Attorneys General Act of 2004 ("PAGA") Released Claims. The Settlement will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have submitted timely requests for exclusion.

8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude any action to enforce the terms and provisions of the Settlement Agreement.

9. Release of Claims. As of the Effective Final Settlement Date, except as to such rights or claims as may be created by the Agreement, in exchange for the consideration set forth in the Agreement, Plaintiff and the Participating Class Members, on their own behalf, and on behalf of their respective current, former and future heirs, spouses, executors, administrators, agents, attorneys, and assigns fully release the Released Parties from the Released Claims for the Class Period. Plaintiff and Participating Class Members shall be deemed to have, and, upon Defendants' fully funding of the Agreement and by operation of the Final Approval, fully, finally, and forever settled and released all the Released Claims as defined in the Agreement.

a. PAGA Release. As of the Effective Final Settlement Date, Plaintiff, all Eligible Aggrieved Employees, and the State of California will be barred from prosecuting and will release the Released Parties from all PAGA claims, whether known or unknown, that were pled or could have been pled based on the factual allegations contained in the Complaint, amendments thereto, or any PAGA letters submitted by Plaintiff that occurred during the PAGA Period ("PAGA Released Claims").

1 The PAGA Released Claims include all penalties available under Labor Code
2 section 2698, *et seq.*, for the claims encompassed by the Released Claims.

3 b. Plaintiff's Release of Claims and General Release. Plaintiff provides and agrees
4 to a general release on behalf of himself and his heirs, spouses, executors,
5 administrators, attorneys, agents, and assigns of any and all claims of any nature,
6 known or unknown, contingent or accrued, against all Released Parties, whether
7 in tort, contract or equity, including, but not limited to, the Released Claims, and
8 any claims arising out of or relating to work performed by Plaintiff for the
9 Released Parties. Plaintiff further provides and agrees to a Civil Code section
10 1542 general release of claims.

11 c. Released Parties. The Released Parties include each of the Defendants, AbbVie
12 Inc., and each of their respective former, present, and future parents, subsidiaries,
13 affiliated corporations and entities, officers, directors, members, managers,
14 employees, consultants, partners, shareholders, joint venturers, and third-party
15 agents, and any successors, assigns, or legal representatives.

16 10. Class Representative Enhancement Payment. The Court finds the Class
17 Representative Enhancement Payment of \$10,000, to be paid by Defendants to Plaintiff out of
18 the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative
19 Enhancement Payment is to be paid pursuant to the terms and provisions set forth in the
20 Settlement Agreement.

21 a. The rationale for making enhancement payments is class representatives should
22 be compensated for the expense and risk they incurred in conferring a benefit on
23 the Class. Criteria courts consider include: (1) risk to the class representatives in
24 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
25 effort spent by the class representatives; (4) duration of the litigation; and (5)
26 personal benefit (or lack thereof) enjoyed by class representatives.

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b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the risks inherent in his services as the class representative, duration of the case and time involved, and benefits created for the Class, the Court approves the payment of the Class Representative Enhancement Payment of \$10,000 to Plaintiff.

11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award of \$113,750, to be paid out of the Gross Settlement Amount by Defendants to Class Counsel, to be reasonable and appropriate. The Court further finds the Cost Award as reimbursement for actual litigation costs incurred of \$16,893.81, to be paid by Defendants to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendants shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class Members. Defendants shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or related in any manner to this lawsuit, the Settlement Agreement, the settlement administration, and/or the Released Claims, and PAGA Released Claims.

a. The Court has an independent right and responsibility to review the requested Attorney Fee Award and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The Attorney Fee Award requested by Class Counsel of \$113,750 is thirty-five percent (35%) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken, novel and difficult nature of this litigation, skills required, percentage-fee awards in previous and other cases, and contingent fees charged in the marketplace, the Court finds the requested Attorney Fee Award is consistent with the marketplace, is reasonable, and is approved.

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b. The Court reviewed the declaration of Douglas Han regarding the costs expended in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class Counsel expended \$16,893.81 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of the Cost Award of \$16,893.81 from the common fund for the reimbursement of Class Counsel's litigation costs.

12. Administration Costs. The Court finds Administration Costs of \$6,250, to be paid by Defendants to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court reviewed the declaration of Taylor Mitzner from Phoenix Class Action Administration Solutions, the Court-approved Settlement Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, constitutes the best practicable notice to the Class, and satisfied due process. The Court approves the payment of the Administration Costs of \$6,250 for the Settlement Administrator's services in administering the Settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) will be paid to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$5,000) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding of the Settlement. No later than seven (7) business days after the Effective Final Settlement Date, Defendants shall provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share. No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendants shall deposit the Gross Settlement Amount of \$325,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator as well as any additional sums necessary to account for the employers' share of payroll taxes.

1 Within fourteen (14) calendar days after the deadline to fund of the Settlement, the Settlement
2 Administrator shall calculate and disburse all payments due under the Settlement.

3 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
4 Settlement is entitled to a presumption of fairness. In his moving papers, Plaintiff contends the
5 Settlement was the product of arm's-length negotiations following extensive litigation,
6 discovery, and exchange of documentation. The negotiations were facilitated with the aid of Gig
7 Kyriacou, an experienced wage-and-hour mediator.

8 a. The fairness of the Settlement is demonstrated by there being no objections to and
9 only one (1) request for exclusion from the Settlement.

10 b. The fairness of the Settlement is further illustrated by the gross *average*
11 Individual Settlement Share being approximately \$2,591.90, and the gross *highest*
12 Individual Settlement Share being about \$8,154.62.

13 16. Uncashed Checks. Participating Class Members and Eligible Aggrieved
14 Employees must cash or deposit their Individual Settlement Share and Individual PAGA
15 Payment checks within one hundred eighty (180) calendar days after the checks are mailed to
16 them. Any uncashed checks will be mailed to the California State Controller's Unclaimed
17 Property Fund in the name of and for the benefit of the individual who did not cash their check.

18 17. Modification of Settlement Agreement. The Participating Class Members are
19 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
20 modifications of the Settlement Agreement by an express written instrument signed by counsel
21 for all Parties or their successors-in-interest. Such amendments or modifications shall be
22 consistent with this Order and Judgment and cannot limit the rights of Participating Class
23 Members under the Settlement Agreement.

24 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
25 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
26 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
27 and for any other necessary purpose, including, without limitation:

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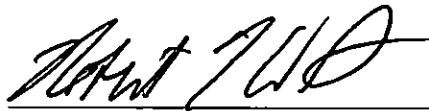
- 1 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
2 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
3 arise out of the Settlement or this Order and Judgment;
4 b. entering such additional orders as may be necessary or appropriate to protect or
5 effectuate this Order and Judgment approving the Settlement, and permanently
6 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
7 fair and orderly administration of the Settlement; and
8 c. entering any other necessary or appropriate orders to protect and effectuate this
9 Court's retention of continuing jurisdiction.

10 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
11 Award, and Class Representative Enhancement Payment is GRANTED. The Settlement
12 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

13 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
14 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
15 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
16 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
17 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
18 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
19 THE JUDGMENT THEREON.

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21 IT IS SO ORDERED.

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23 DATED: January 18, 2023



24 HONORABLE ROBERT T. WATERS
25 SUPERIOR COURT JUDGE
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