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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MADERA

14
15 BRANDY HALE, an individual, on behalf of
16 herself, and on behalf of all persons similarly
17 situated,

18 Plaintiff,

19 vs.

20 PALEOWEST, LLC, a Limited Liability
21 Company; and DOES 1 through 50, inclusive,
22 Defendants.
23

CASE NO.: **MCV088135**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: March 12, 2024

Hearing Time: 8:30 a.m.

Judge: Hon. Brian W. Enos

Dept: 45

Date Filed: December 1, 2022

Trial Date: Not set

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25 This matter came before the Honorable Brian W. Enos of the Superior Court of the State of
26 California, in and for the County Madera, on March 12, 2024, for hearing on the unopposed
27 motion by Plaintiff Brandy Hale ("Plaintiff") for preliminary approval of the Settlement with
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PRELIMINARY APPROVAL ORDER

1 Defendant PaleoWest, LLC (“Defendant”). The Court, having considered the briefs, argument of
2 counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
3 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

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5 **IT IS HEREBY ORDERED:**

6 1. The Court preliminarily approves the Class Action and PAGA Settlement
7 Agreement (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
8 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based
9 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
10 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
11 Procedure and California Rules of Court, rule 3.769.

12 2. This Order incorporates by reference the definitions in the Agreement, and all
13 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

14 3. The Gross Settlement Amount that Defendant shall pay is Eight Hundred Thousand
15 Dollars (\$800,000). It appears to the Court on a preliminary basis that the settlement amount and
16 terms are fair, adequate and reasonable as to all potential Class Members when balanced against
17 the probable outcome of further litigation and the significant risks relating to certification, liability
18 and damages issues. It further appears that investigation and research have been conducted such
19 that counsel for the Parties are able to reasonably evaluate their respective positions. It further
20 appears to the Court that the Settlement will avoid substantial additional costs by all Parties, as
21 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
22 It further appears that the Settlement has been reached as the result of serious and non-collusive,
23 arm’s-length negotiations.

24 4. The Court preliminarily finds that the Settlement appears to be within the range of
25 reasonableness of a settlement that could ultimately be given final approval by this Court. The
26 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
27 preliminarily finds that the monetary settlement made available to the Class is fair, adequate, and
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1 reasonable when balanced against the probable outcome of further litigation and the significant
2 risks relating to certification, liability, and damages issues.

3 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$30,000, and
5 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
6 \$12,500. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
7 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
8 supporting these requests, including lodestar, prior to final approval.

9 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to
10 representative treatment and certification of a class for settlement purposes only. This stipulation
11 will not be deemed admissible in this or any other proceeding should this Settlement not become
12 final. For settlement purposes only, the Court conditionally certifies the Class which consists of
13 "all individuals who were employed by Defendant in California and classified as a non-exempt
14 employee at any time during the Class Period." The "Class Period" is December 1, 2018 to
15 November 23, 2023.

16 7. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
22 the Plaintiff will fairly and adequately protect the interests of the members of the Class; (e) a class
23 action is superior to other available methods for the efficient adjudication of this controversy; and
24 (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
25 representative of the Class.

26 8. The Court provisionally appoints Plaintiff as the representatives of the Class. The
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
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1 Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug
2 Bhowmik De Blouw LLP as Class Counsel for the Class.

3 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
4 Amount of \$20,000, which shall be allocated \$15,000 to the Labor & Workforce Development
5 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
6 Agreement pursuant to the PAGA and \$5,000 to the Aggrieved Employees. “Aggrieved
7 Employees” are all individuals who were employed by Defendant in California and classified as a
8 non-exempt employee at any time during the PAGA Period (June 30, 2021 through November 23,
9 2023). Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA will be provided
10 notice of the Agreement and these settlement terms. The Court finds the PAGA Penalties to be
11 reasonable.

12 10. The Court hereby approves, as to form and content, the Class Notice attached to the
13 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
14 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
15 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
16 and opportunity to object to the Settlement. The Court further finds that the distribution of the
17 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
18 the requirements of due process, is the best notice practicable under the circumstances, and shall
19 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
20 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
21 Notice Packet is returned because of an incorrect address, the Administrator will promptly search
22 for a more current address for the Class Member and re-mail the Class Notice Packet to any new
23 address for the Class Member no later than seven (7) days after the receipt of the undelivered
24 Class Notice.

25 11. The Court hereby appoints Apex Class Action LLC as the Administrator. No later
26 than fifteen (15) days after this Order, Defendants will provide the Class Data to the
27 Administrator. The Administrator will perform address updates and verifications as necessary
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1 prior to the first mailing. Using best efforts to mail it as soon as possible, and in no event later
2 than fourteen (14) days after receiving the Class Data, the Administrator will mail the Class Notice
3 Packet to all Class Members via first-class regular U.S. Mail to their last known address.

4 12. The Court hereby preliminarily approves the proposed procedure for exclusion
5 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
6 from the Class as provided in the Class Notice by following the instructions for requesting
7 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
8 postmarked or received no later than sixty (60) calendar days after the date of the mailing of the
9 Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline
10 for requests for exclusion will be extended an additional fourteen (14) days. A Request for
11 Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
12 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
13 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
14 any right to object, appeal or comment thereon. Pursuant to Section 8.5(d) of the Agreement,
15 Class Members who submit a Request for Exclusion will nevertheless be bound by the settlement
16 and release of PAGA claims and will be mailed their Individual PAGA Payment. Class Members
17 who have not requested exclusion shall be bound by all determinations of the Court, the
18 Agreement and the Judgment. A request for exclusion may only opt out that particular individual,
19 and any attempt to effect an opt-out of a group, class, or subclass of individuals is not permitted
20 and will be deemed invalid.

21 13. Any Class Member who has not opted out may appear at the final approval hearing
22 and may object or express the Member’s views regarding the Settlement and may present evidence
23 and file briefs or other papers that may be proper and relevant to the issues to be heard and
24 determined by the Court as provided in the Class Notice. Class Members will have until the
25 Response Deadline to submit their written objections to the Administrator. Written objections
26 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
27 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
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1 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
2 Hearing to make an oral objection.

3 14. A final approval hearing shall be held before this Court on July 30, 2024 at 8:30
4 a.m. in Department 45 at the Madera County Superior Court to hear the motion for final approval
5 and the motion for attorneys' fees and costs, and to determine all necessary matters concerning the
6 Settlement, including: whether the proposed settlement of the Action on the terms and conditions
7 provided for in the Agreement is fair, adequate and reasonable and should be finally approved by
8 the Court; whether the Final Approval Order and Judgment should be entered herein; whether the
9 plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
10 to the Class Members; and to finally approve attorneys' fees and costs, service award, and the fees
11 and expenses of the Administrator. All papers in support of the motion for final approval and the
12 motion for attorneys' fees, costs and service award shall be filed with the Court and served on all
13 counsel no later than sixteen (16) court days before the hearing and both motions shall be heard at
14 this final approval hearing.

15 15. Pending the Fairness Hearing, all proceedings in this action, other than proceedings
16 necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this
17 Order, are stayed.

18 16. Neither the Settlement nor any exhibit, document, or instrument delivered
19 thereunder shall be construed as a concession or admission by Defendant in any way that the
20 claims asserted have any merit or that this Action was properly brought as a class or representative
21 action, and shall not be used as evidence of, or used against Defendant as, an admission or
22 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
23 omission by Defendant or with respect to the truth of any allegation asserted by any person.
24 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
25 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
26 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
27 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
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1 evidence of a presumption, concession, indication or admission by Defendant of any liability,
2 fault, wrongdoing, omission, concession or damage.

3 17. In the event the Settlement does not become effective in accordance with the terms
4 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
5 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
6 and the Parties shall revert to their respective positions as of before entering into the Agreement,
7 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
8 including all available defenses and affirmative defenses, and arguments that any claim in the
9 Action could not be certified as a class action and/or managed as a representative action . In such
10 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
11 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
12 the Agreement with respect to the effect of the Agreement if it is not approved.

13 18. The Court reserves the right to adjourn or continue the date of the final approval
14 hearing and all dates provided for in the Agreement without further notice to Class Members and
15 retains jurisdiction to consider all further applications arising out of or connected with the
16 proposed Settlement.

17 **IT IS SO ORDERED.**

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19 Dated: _____

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21 HON. BRIAN W. ENOS
22 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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