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Attorneys for Plaintiff and the Proposed Class

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

NICOLE PARIS, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

ALLERGY & ASTHMA MEDICAL
GROUP OF THE BAY AREA, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. MSC22-02359

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

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

Date: September 12, 2024

Time: 9:00 A.M.

Dept.: 12

Complaint Filed: November 1, 2022

FAC Filed: March 7, 2023

Trial Date: None Set

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

2 The above captioned Action is a class action lawsuit brought by Plaintiff Nicole Paris
3 (“Class Representative” or “Plaintiff”) against Defendant ALLERGY & ASTHMA MEDICAL
4 GROUP OF THE BAY AREA, INC. (“Defendant”). The Motion for Final Approval of Class
5 Action Settlement came before this Court, on September 12, 2024.

6 **WHEREAS**, Judge Treat granted preliminary approval of the Class Action and PAGA
7 Settlement Agreement (“Agreement” or “Settlement”), attached to the concurrently-filed
8 Declaration of Liane Katzenstein Ly as Exhibit “1”, on April 9, 2024.

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

11 **WHEREAS**, the Court’s September 12, 2024 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 Agreement 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, Nicole Paris; and Madely Nava of Apex; and the supporting documents annexed
19 thereto, now finds:

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

21 Plaintiff Nicole Paris moves for final approval of her class action and PAGA settlement
22 with defendant Allergy & Asthma Medical Group of the Bay Area, Inc. She also moves for
23 approval of her attorney’s fees, litigation costs, administration costs, and representative payments.

24 Since preliminary approval was granted, the administrator has mailed notices to 262 class
25 members. 21 packets were returned by the post office. Follow up resulted in new addresses, leaving
26 6 nondeliverable. No objections have been received, and only 1 class member has opted out. The
27 motions are **granted**.

28 **A. Background and Settlement Terms**

1 Defendant is a medical group treating patients in the specialty of allergies. Plaintiff was
2 employed as a non-exempt employee, though her dates of employment and job duties are not
3 specified; the Court gathers she was in a clerical position.

4 The original complaint was filed on November 1, 2022 as a class action. PAGA claims
5 were added by amendment on March 7, 2023.

6 The settlement will create a gross settlement fund of \$480,000. The class representative
7 payment to the plaintiff will be \$10,000. Attorney's fees will be \$160,000 (one-third of the
8 settlement). Litigation costs are \$16,312. The settlement administrator's costs are \$7,490. PAGA
9 penalties will be \$5,000, resulting in a payment of \$3,750 to the LWDA. The net amount paid
10 directly to the class members will be about \$281,200, not including PAGA penalties. The fund is
11 non-reversionary. There are an 261 participating class members. Based on the estimated class size,
12 the average net payment for each class member is approximately \$1,077. The individual payments
13 will vary considerably, however, because of the allocation formula prorating payments according
14 to the number of weeks worked during the relevant time. The number of aggrieved employees for
15 PAGA purposes is smaller, because the starting date of the relevant period is later.

16 An initial payment of \$100,000 was deposited with the settlement administrator within 30
17 days after preliminary approval, and the entire remainder of the settlement amount will be
18 deposited with the settlement administrator within 30 days after the effective date of the settlement.

19 The proposed settlement will certify a class of all current and former non-exempt employed
20 at Defendants' California facilities between May 7, 2018 and September 28, 2023. For PAGA
21 purposes, the period covered by the settlement is March 7, 2022 to September 28, 2023.

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

24 Settlement checks not cashed within 180 days will be cancelled, and the funds will be
25 directed to the state's unclaimed property fund.

26 The settlement contains release language covering all claims and causes of action, alleged
27 or which could have reasonably been alleged based on the allegations in the operative pleading,
28 including a number of specified claims. Under recent appellate authority, the limitation to those

1 claims with the “same factual predicate” as those alleged in the complaint is critical. (*Amaro v.*
2 *Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 (“A court cannot release claims that
3 are outside the scope of the allegations of the complaint.”) “Put another way, a release of claims
4 that goes beyond the scope of the allegations in the operative complaint’ is impermissible.” (*Id.*,
5 quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

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

9 Counsel also has provided an analysis of the case, and how the settlement compares to the
10 potential value of the case, after allowing for various risks and contingencies. For example, much
11 of plaintiff’s allegations centers on possible off-the-clock work, including missed or skipped meal
12 breaks and rest breaks. Defendant, however, pointed out that its formal policies prohibit off-the-
13 clock work, and asserted that it would have had no knowledge of employees beginning work before
14 punching in or continuing after punching out. Further, it argued that it was required to make meal
15 and rest breaks available, but not required to ensure that they be taken, so long as no employer
16 policy prevented or discouraged taking such breaks. As to unreimbursed employee expenses (such
17 as cell phone use), plaintiff would have been called on to show that such expenses were in fact
18 incurred, were reasonably necessary to job performance, and were unreimbursed. Furthermore, the
19 fact-intensive character of such claims would have presented a serious obstacle to class
20 certification.

21 The potential liability needs to be adjusted for various evidence and risk-based
22 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number
23 of reasons: they derive from other violations, they include “stacking” of violations, the law may
24 only allow application of the “initial violation” penalty amount, and the total amount may be
25 reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be
26 reduced where “based on the facts and circumstances of the particular case, to do otherwise would
27 result in an award that is unjust arbitrary and oppressive, or confiscatory.”)) Moreover, recent
28 decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to

1 actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th
2 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

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

5 **B. Legal Standards**

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

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

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

1 *Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

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

3 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common
4 fund” theory, or \$160,000. Even a proper common fund-based fee award, however, should be
5 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th
6 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine
7 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of
8 a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the
9 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,
10 but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)

11 Accordingly, plaintiff has provided information concerning the lodestar fee amount. They
12 estimate the lodestar at \$76,050, representing an implied multiplier of about 2.1. No adjustment
13 from the one-third fee is necessary. The attorney’s 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 the request. Plaintiff points out that she executed a broader release than
18 the class as a whole, but does not identify any particular claims of value that she may have. She
19 also risks damage to her reputation and more difficulty in obtaining employment. The
20 representative payment is approved.

21 Litigation costs of \$16,312 (mostly mediation and filing fees) are reasonable and are
22 approved.

23 The settlement administrator’s costs of \$7,490 are reasonable and are approved.

24 **D. Discussion and Conclusion**

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

28 The motions are granted.

1 The Court also hereby finds and Orders as follows:

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

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

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

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

14 5. There is one (1) valid request for exclusion.

15 6. There are no objectors to the Agreement.

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

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

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

“all current and former employees who worked for Defendant in the State of California at any time from May 7, 2018 through September 28, 2023.” (“Settlement Class Members of “Class Members” or “Class”).

10. The “Class Period” is May 7, 2018 to September 28, 2023.

11. The Aggrieved Employees or PAGA Members are defined as:

“all current and former non-exempt employees who worked for Defendant in the State of California at any time from May 7, 2022 (one year prior from the March 7, 2023 filing of Plaintiff’s First Amended Complaint) through September 28, 2023.” (“Aggrieved Employee” or “PAGA Member”).

12. The PAGA Period is the period from March 7, 2022 through September 28, 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 Class Member shall fully release and discharge the Released Parties pursuant to the following release and expressly waive and relinquish any and all claims, rights or benefits that they may have under California Civil Code § 1542, which provides:

“any and all claims that were asserted in the Action, or could have been asserted in this Action during the Class Period for all claims that were asserted in the Action, or that arise from or could have been asserted based on the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in Plaintiff’s Complaint and operative First Amended Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Claims specifically include, but are not limited to Labor Code §§ 201, 202, 203, 226(a), 226.7,

510, 512, 2802, 2699, and the related IWC Wage Orders and Business & Professions Code §§ 17200, et seq., and include claims based on alleged violations of these Labor Code and Wage Order provisions and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) failure to provide meal breaks pursuant to Labor Code §§ 226.7 and 512; (2) failure to provide rest breaks pursuant to Labor Code § 226.7; (3) failure to reimburse expenses pursuant to Labor Code § 2802; (4) violation of Labor Code § 226(a) regarding inaccurate wage statements; (5) penalties pursuant to Labor Code § 203 regarding failure to timely pay wages upon separation of employment; (6) violation of Business & Professions Code § 17200 regarding unfair competition; (7) penalties pursuant to Labor Code § 2699, et seq.; and (8) interest, fees, and costs (collectively, the “Released Claims”). The enumeration of these specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.”

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

16. The Agreement provides that the Gross Settlement Amount is four hundred eighty thousand dollars and zero cents (\$480,000.00). The Net Settlement Amount shall be determined according to the terms of the Agreement.

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

1 18. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
2 Class for purposes of entering into and implementing the settlement. The Court hereby confirms
3 Kingsley Szamet & Ly as Class Counsel in the Action. The Court hereby finds the unopposed
4 application of Class Counsel for a costs and attorneys' fees award provided for under the proposed
5 Agreement to be fair and reasonable in light of all the circumstances and is hereby granted. Of the
6 Gross Settlement Amount, \$160,000.00 shall be paid for attorney fees and \$16,312.23 shall be
7 paid for litigation costs. Five percent of the attorney's fees are to be withheld by the claims
8 administrator pending satisfactory compliance as found by the Court.

9 19. The unopposed application of Class Counsel for an enhancement payment to
10 Plaintiff is hereby granted. Of the Gross Settlement Amount, a \$10,000.00 Class Representative
11 Service Payment shall be allocated to Class Representative Nicole Paris.

12 20. The unopposed application of Class Counsel for claims administration fees to Apex
13 is hereby granted. Of the Gross Settlement Amount, \$7,500.00 shall be paid for settlement
14 administration fees.

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

17 22. The Court approves the PAGA Penalties in the amount of \$5,000.00. The Court
18 approves 75% of the PAGA Penalties being allocated to the Labor and Workforce Development
19 Agency ("LWDA") in the amount of \$3,750.00. The Court further directs that the remaining 25%
20 of the PAGA Penalties, in the amount of \$1,250.00 shall be allocated to the Net Settlement Amount
21 for distribution to the Class Members.

22 23. If a Class Member does not cash his or her settlement check within 180 days, the
23 uncashed funds shall be transmitted by the Administrator to the State of California Office of the
24 Controller in the name of the class member who did not cash his or her Individual Class Payment
25 check.

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

28 25. The Court hereby grants and authorizes the Parties, without further approval from

1 the Court, to agree to and to adopt such amendments, modifications and expansions of this
2 Stipulation and all exhibits attached hereto as (i) are consistent with the Final Judgment; and (ii)
3 do not limit the rights of Class Members under the Stipulation.

4 26. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court
5 shall retain jurisdiction over the Action, the Parties, and the Class, as well as the administration
6 and enforcement of the terms of the Settlement of this action to enforce the terms of the judgment.
7 Without affecting the finality of the Final Judgment, the Court shall retain continuing jurisdiction
8 over the Action, the Parties, and the Class, as well as the administration and enforcement of the
9 Settlement. Any disputes or controversies arising with respect to the interpretation,
10 consummation, enforcement, or implementation of the Settlement shall be presented by motion to
11 the Court; provided however, that nothing in this Part shall restrict the ability of the Parties to
12 exercise their rights to terminate the Settlement pursuant to the terms of the Agreement.

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

16 28. The above-entitled Court sets a compliance hearing for July 3, 2025 at 9:00 a.m. in
17 Department 12. Plaintiff's Counsel shall file a compliance statement within seven (7) days prior
18 to the Compliance hearing.

19
20 **DATED:** _____

21 **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: 09/12/2024

4. 9:00 AM CASE NUMBER: C22-02359

CASE NAME: NICOLE PARIS VS. ALLERGY & ASTHMA MEDICAL GROUP OF THE BAY AREA, INC.

***HEARING ON MOTION IN RE: FINAL APPROVAL**

FILED BY:

TENTATIVE RULING:

Plaintiff Nicole Paris moves for final approval of her class action and PAGA settlement with defendant Allergy & Asthma Medical Group of the Bay Area, Inc. She also moves for approval of her attorney's fees, litigation costs, administration costs, and representative payments.

Since preliminary approval was granted, the administrator has mailed notices to 262 class members. 21 packets were returned by the post office. Follow up resulted in new addresses, leaving 6 non-deliverable. No objections have been received, and only 1 class member has opted out.

The motions are **granted**.

A. Background and Settlement Terms

Defendant is a medical group treating patients in the specialty of allergies. Plaintiff was employed as a non-exempt employee, though her dates of employment and job duties are not specified; the Court gathers she was in a clerical position.

The original complaint was filed on November 1, 2022 as a class action. PAGA claims were added by amendment on March 7, 2023.

The settlement will create a gross settlement fund of \$480,000. The class representative payment to the plaintiff will be \$10,000. Attorney's fees will be \$160,000 (one-third of the settlement). Litigation costs are \$16,312. The settlement administrator's costs are \$7,490. PAGA penalties will be \$5,000, resulting in a payment of \$3,750 to the LWDA. The net amount paid directly to the class members will be about \$281,200, not including PAGA penalties. The fund is non-reversionary. There are 261 participating class members. Based on the estimated class size, the average net payment for each class member is approximately \$1,077. 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.

An initial payment of \$100,000 was deposited with the settlement administrator within 30 days after preliminary approval, and the entire remainder of the settlement amount will be deposited with the settlement administrator within 30 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 May 7, 2018 and September 28, 2023. For PAGA purposes, the period covered by the settlement is March 7, 2022 to September 28, 2023.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 09/12/2024

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 state'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. For example, much of plaintiff's allegations centers on possible off-the-clock work, including missed or skipped meal breaks and rest breaks. Defendant, however, pointed out that its formal policies prohibit off-the-clock work, and asserted that it would have had no knowledge of employees beginning work before punching in or continuing after punching out. Further, it argued that it was required to make meal and rest breaks available, but not required to ensure that they be taken, so long as no employer policy prevented or discouraged taking such breaks. As to unreimbursed employee expenses (such as cell phone use), plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character of such claims would have presented a serious obstacle to class certification.

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.

B. Legal Standards

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
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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 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. 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.)

C. Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$160,000. 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, plaintiff has provided information concerning the lodestar fee amount. They estimate the lodestar at \$76,050, representing an implied multiplier of about 2.1. 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

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 09/12/2024

support of the request. Plaintiff points out that she executed a broader release than the class as a whole, but does not identify any particular claims of value that she may have. She also risks damage to her reputation and more difficulty in obtaining employment. The representative payment is approved.

Litigation costs of \$16,312 (mostly mediation and filing fees) are reasonable and are approved.

The settlement administrator's costs of \$7,490 are reasonable and are approved.

D. 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 motions are 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.

5. 9:00 AM CASE NUMBER: C22-02776
CASE NAME: JOHN RC ROE VS. DOES 4-100
HEARING ON DEMURRER TO: TO PLTFS 2ND AMENDED COMPLAINT
FILED BY: CALIFORNIA-NEVADA ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH
TENTATIVE RULING:

Before the Court is a demurrer brought by defendant California-Nevada Annual Conference of the United Methodist Church ("Conference") to the fifth through tenth causes of action in plaintiff's Second Amended Complaint ("SAC"). The demurrer is **sustained** in its entirety, without leave to amend.

I. Background

According to the SAC, from the early 1970s through about 1974 or 1975, defendant and perpetrator, Gary Carson-Hull, was assigned by defendants to work with minors in the Methodist Youth Fellowship program. (SAC, ¶ 5.) Carson-Hull was first at Walnut Creek United Methodist Church, then later at other Methodist churches, where he was transferred. (SAC, ¶ 5.) This church defendant was created and operated within the geographic boundaries of Conference, by Conference, under the authority of Conference. (SAC, ¶13.)

(Proof of Submission to Labor &
Workforce Development Agency)

EXHIBIT "2"

(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 September 16, 2024, 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:

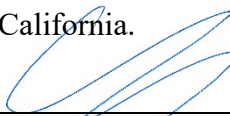
Matthew Wayne, Esq.
Amber A. Eklof, Esq.
Melanie Frakes, Esq.
GORDON REES SCULLY MANSUKHANI
275 Battery Street, Suite 2000
San Francisco, CA 94111
mwayne@grsm.com
aeklof@grsm.com
mfrakes@grsm.com

[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 September 16, 2024, at Woodland Hills, California.



Michelle Tanzer