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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]

**AMENDED [PROPOSED] ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Complaint Filed: November 1, 2022
FAC Filed: March 7, 2023
Trial Date: None Set

1 The Motion for Preliminary Approval of the Class Settlement came before this Court on
2 March 28, 2024, the Honorable Charles Treat, presiding. The Court issued a Ruling, granting
3 preliminary approval of the class and PAGA settlement, a true and correct copy of which is
4 attached hereto as Exhibit “1”.

5 The Court, having considered the papers submitted in support of the motion of the parties,
6 **HEREBY ORDERS THE FOLLOWING:**

7 1. The Court grants preliminary approval of the proposed settlement based upon the
8 terms set forth in the Class Action and PAGA Settlement Agreement (“Agreement”) filed
9 herewith. The Agreement appears to be fair, adequate, and reasonable to the Class. The Court
10 finds that: (a) the Agreement resulted from extensive arm’s length negotiations; and (b) the
11 Agreement is sufficient to warrant notice of the Agreement to persons in the Class and a full
12 hearing regarding final approval of the Agreement.

13 2. For purposes of this Order, the proposed Class is defined as follows:

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

17 3. The Class Period is the period from May 7, 2018 to September 28, 2023.

18 4. For purposes of this Order, the Aggrieved Employees or PAGA Members are
19 defined as follows:

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

24 5. The PAGA Period is the period from March 7, 2022 through September 28, 2023.

25 6. The Agreement falls within the range of reasonableness and appears to be
26 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
27 and final approval by this Court.

28 7. The Court makes the following preliminary findings for settlement purposes only:

- 1 A. The Class, which consists of approximately 262 persons, is so numerous that
2 joinder of all members is impracticable;
- 3 B. There appear to be questions of law or fact common to the Class for purposes
4 of determining whether this Settlement should be approved;
- 5 C. Plaintiff's claims appear to be typical of the claims being resolved through
6 the proposed settlement;
- 7 D. Plaintiff appears to be capable of fairly and adequately protecting the
8 interests of the Settlement Class Members in connection with the proposed
9 settlement;
- 10 E. Common questions of law and fact appear to predominate over questions
11 affecting only individual persons in the Class. Accordingly, the Class
12 appears to be sufficiently cohesive to warrant settlement by representation;
13 and
- 14 F. Certification of the Class appears to be superior to other available methods
15 for the fair and efficient resolution of the claims of the Class.

16 8. The Court approves, as to form and content, the Notice of Class Action Settlement
17 to Settlement Class Members in substantially the form attached to the Agreement as Exhibit "A".

18 9. The Court approves the procedure for Settlement Class Members to opt out to the
19 Agreement as set forth in the Agreement and the Notice of Class Action Settlement.

20 10. The Court approves the procedure for Settlement Class Members to object to the
21 Agreement as set forth in the Agreement and the Notice of Class Action Settlement.

22 11. The Court directs the mailing of the Notice of Class Action Settlement and related
23 documents to members of the Class by first class mail in accordance with the Agreement and the
24 implementation schedule set forth below. The Court finds that the dates selected for the mailing
25 and distribution of the notice, as set forth in the following implementation schedule, meet the
26 requirements of due process and provide the best notice practicable under the circumstances and
27 shall constitute due and sufficient notice to all persons entitled thereto.

28 12. It is ordered that the Class is preliminarily certified for settlement purposes only.

13. The Court confirms Eric B. Kingsley and Liane Katzenstein Ly of Kingsley &
Kingsley, APC as Class Counsel.

14. The Court confirms Nicole Paris as Class Representative.

15. The Court approves Apex as the Administrator.

16. The Court orders that pursuant to the California Private Attorneys General Act, Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Agreement has been and will continue to be given to the Labor & Workforce Development Agency.

17. A final fairness hearing on the question of whether the proposed Agreement, attorneys' fees and costs to Class Counsel, the PAGA payment, and the claims administration costs should be finally approved as fair, adequate, and reasonable as to the members of the Class is scheduled for September 12, 2024 at 9:00 A.M. (Pacific Time), in Department 12.

18. The Court orders the following Implementation Schedule for further proceedings:

a.	Preliminary Approval Granted	March 28, 2024
b.	Deadline for Defendant to Provide Settlement Class Members' Information to Administrator	15 calendar days from Entry of Preliminary Approval
c.	Administrator Shall Mail Notice to Settlement Class Members	14 calendar days from receipt of the Class List from Defendant
d.	Deadline for Postmark of Any Request for Exclusion	60 Days from Mailing of Notices
e.	Deadline for Postmark of Any Objection	60 Days from Mailing of Notices
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	August 20, 2024
g.	Deadline for Class Counsel to file Motion for Attorneys' Fees	August 20, 2024
h.	Final Approval Hearing	September 12, 2024 at 9:00 A.M.

19. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the "Agreement, does not occur for any reason, the Agreement and the proposed Settlement that is the

1 subject of this Order shall become null, void, unenforceable and inadmissible in any judicial,
2 administrative or arbitral proceeding for any purpose, and all evidence, court orders and
3 proceedings had in connection therewith, shall be without prejudice to the status quo ante rights
4 of the Parties to the litigation, as more specifically set forth in the (“Agreement”).

5 20. IT IS FURTHER ORDERED that, pending further Order of this Court, all
6 proceedings in this matter except those contemplated herein and in the Agreement are hereby
7 stayed.

8 21. The Court expressly reserves the right to adjourn or continue the Final Fairness
9 Hearing from time to time without further notice to members of the Class.

10
11 **DATED:** _____

12 **JUDGE OF THE SUPERIOR COURT**
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EXHIBIT "A"

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
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DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 03/28/2024

GENERAL INSTRUCTIONS FOR CONTESTING TENTATIVE RULINGS IN DEPT. 12

NOTE PROCEDURE CAREFULLY

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule 3.43(2).*)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 12's email address is: dept12@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 12 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Courtroom Clerk's Calendar

1. 9:00 AM CASE NUMBER: MSC16-02404

CASE NAME: ACOSTA VS REMINGTON LODGING

*FURTHER CASE MANAGEMENT CONFERENCE

FILED BY:

TENTATIVE RULING:

This hearing is **continued** to April 11, 2024, at 9:00 a.m. The Court has only this morning become aware of last Monday's Supreme Court decision in *Herta v. CSI Electrical Contractors* and thinks it necessary to take the time to read and consider that case.

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approval.

Counsel will be directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. 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: C22-02212
CASE NAME: DOUGLAS RYAN VS. DONALD RYAN
HEARING ON DEMURRER TO: FIRST AMENDED COMPLAINT
FILED BY: RYAN, DONALD
TENTATIVE RULING:

This demurrer is **continued** to May 16, 2024 at 9:00 a.m. so that it may be heard together with the other defendant's demurrer and motion to strike.

6. 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: PRELIMINARY APPROVAL OF CLASS ACTION**
FILED BY: PARIS, NICOLE
TENTATIVE RULING:

The Court draws the parties' attention to the point that the Judge has in the past been a patient of defendant, and some members of his family remain so. His contact with the Group and its employees has been entirely clinical, however, not involving any issues of staffing or employee relations. For that reason the Court does not view this as cause for recusal.

Plaintiff Nicole Paris moves for preliminary approval of her class action and PAGA settlement with defendant Allergy & Asthma Medical Group of the Bay Area, Inc.. The motion is **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

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amendment on March 7, 2023.

The settlement would create a gross settlement fund of \$480,000. The class representative payment to the plaintiff would be \$10,000. Attorney's fees would be \$160,000 (one-third of the settlement). Litigation costs would not exceed \$17,000. The settlement administrator's costs are estimated at \$7,500. PAGA penalties would be \$5,000, resulting in a payment of \$3,750 to the LWDA. The net amount paid directly to the class members would be about \$281,750, not including PAGA penalties. The fund is non-reversionary. There are an estimated 262 class members. Based on the estimated class size, the average net payment for each class member is approximately \$1,075. 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 will be 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 would 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.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 15 days after preliminary approval. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. 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

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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

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*, 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

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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.)

The settlement agreement includes an escalator provision, to be triggered in the event that the number of covered employees or work weeks turns out to be materially higher than now estimated. If the clause is triggered and the defendant elects to increase the total payment, no further approval will be needed.

C. Attorney Fees

Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. 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.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation and administration costs and the requested representative payment of \$10,000 for the plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07.

D. Discussion and Conclusion

The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

Counsel will be directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. 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.

(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 April 1, 2024, I served all interested parties in this action the following documents described as: **AMENDED [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Matthew Wayne
Amber A. Eklof
Melanie Frakes
Ryan Greenspan
Stacey Drucker
GORDON RESS SCULLY MANSUKHANI
275 Battery Street, Suite 2000
San Francisco, CA 94111
mwayne@grsm.com
aecklof@grsm.com
mfrakes@grsm.com
rgreenspan@grsm.com
sdrucker@grsm.com

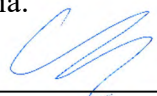
☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware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

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

☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be sent 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 above email address(es).

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

Executed on April 1, 2024, at Woodland Hills, California.



Michelle Tanzer