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By  DEPUTY

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7
8 FOR THE COUNTY OF SAN JOAQUIN

9 VICTOR H. CASTRO, an individual, on behalf
of the State of California,

10 Plaintiff,

11 v.

12 ASPEN SKILLED HEALTHCARE, INC., a
13 California corporation; ATBA, LLC, a
California limited liability company; and DOES
14 1 through 10, inclusive,

15 Defendants.

Case No.: STK-CV-UEO-2023-0010395

[Hon. George J. Abdallah, Dept. CX10A]

**[PROPOSED] AMENDED FINAL ORDER
AND JUDGMENT**

Action Filed: February 2, 2024
Trial Date: None Set

1 **[PROPOSED] AMENDED FINAL ORDER AND JUDGMENT**

2 On May, 21, 2025, the Court granted approval of the Parties' PAGA settlement as set forth in the
3 Court's Final Order and Judgment.¹ In the Final Order and Judgment, the Court determined that the
4 Settlement provides genuine and meaningful relief that benefits the public, is fair, adequate, reasonable.

5 The Court now has before it the Parties' Stipulation to Amend Settlement and Final Approval
6 Order and Judgment. The Parties' proposed amendment is based solely on the fact that the Escalator
7 Clause of the Settlement Agreement was triggered, which provides as follows:

8 Prior to the mediation, Defendant represented that there are 262 PAGA Employees who
9 have worked approximately 5,707 pay periods during the PAGA Period. This is a material
10 representation. If at the time Defendant provides the pay period information for PAGA
11 Employees to the Settlement Administrator it is discovered that PAGA Employees have worked
12 6,278 pay periods or more during the PAGA Period (a 10% increase), then Defendant may, at its
13 sole discretion, adjust the length of the PAGA Period by moving the end date so as to avoid
14 triggering this escalator clause (including, but not limited to, adjusting the PAGA Period end date
15 to one calendar day immediately prior to the date that 6,278th pay period threshold is met), or
16 increase the Gross Settlement Amount pro rata by the same percentage that the actual number of
17 Pay Periods exceeds the 10% buffer.

18 Settlement Agreement ¶ C.3.

19 The total number of pay periods worked by PAGA Employees during the PAGA Period is 8,652.
20 Thus, there are an additional 2,374 pay periods above the 10% buffer of 6,278 pay periods provided in
21 the Escalator Clause. Declaration of Jonathan Paul ¶¶ 4-5. Defendant, in its discretion under the
22 Settlement Agreement, has elected to increase the Gross Settlement Amount pro rata by the same
23 percentage that the actual number of Pay Periods exceeds the 10% buffer, which amounts to an additional
24 payment of \$51,049.70 ($2,374 / 6,278 = 37.8145906\%$] x \$135,000). Stipulation to Amend Settlement
25 and Final Approval Order and Judgment ¶ 3. The total Gross Settlement Amount is therefore
26 \$186,049.70. *Id.*

27 Other than this amendment to increase the Gross Settlement Amount based on the additional pay
28 periods, and its corresponding increase in the amounts that shall be paid to PAGA Employees, the
LWDA, and Counsel for attorneys' fees, the Settlement remains unchanged. Thus, the Court hereby
reaffirms its prior determination that the Settlement provides genuine and meaningful relief that benefits

¹ The Court has also reviewed and considered the records and files of this case, as well as all documents
submitted in connection with the Parties' Stipulation for Approval of PAGA Settlement.

1 the public, is fair, adequate, and reasonable. This Amended Final Order and Judgment supersedes the
2 Court's May 21, 2025 Final Order and Judgment.

3 Good cause appearing therefor, it is hereby ORDERED, ADJUDGED, AND DECREED AS
4 FOLLOWS:

5 1. Unless otherwise provided herein, all capitalized terms used herein shall have the same
6 meaning as defined in the Settlement Agreement and Release ("Settlement Agreement"), attached hereto
7 as Exhibit A. The Court has jurisdiction over the subject matter of this lawsuit and all matters relating
8 thereto, and over all parties to the action.

9 2. The Court finds that the Settlement has been reached as a result of serious and non-
10 collusive, arm's-length negotiations. The Court has considered the nature of the claims, the procedural
11 history of this case, the amounts to be paid under the Settlement, the involvement of an experienced
12 private mediator to facilitate the Settlement, the risks of continued litigation that Plaintiff would face, the
13 civil penalties recoverable if Plaintiff was to prevail at trial on his theories of liability under his PAGA
14 claim, the allocation of settlement proceeds among the PAGA Employees, and the fact that a settlement
15 represents a compromise of the Parties' respective positions rather than the result of a finding of liability
16 at trial.

17 3. The Court hereby finds the Settlement involves the resolution of a bona fide dispute, was
18 entered into in good faith, and is fair, reasonable, and adequate. The Court also finds that the Settlement
19 provides genuine and meaningful relief that benefits the public consistent with the purpose of the Private
20 Attorneys General Act of 2004, California Labor Code § 2699, *et seq.*

21 4. The Court finds that Plaintiff has exhausted all administrative remedies required to bring
22 the PAGA claims asserted in this Action and is authorized to act as private attorney general with respect
23 to the PAGA claims being released under the terms of the Settlement Agreement. The California Labor
24 and Workforce Development Agency ("LWDA") was provided with notice of the settlement and the
25 settlement approval papers via its online process in accordance with California Labor Code Section
26 2699(l)(2), and no objection has been received to the settlement or the approval papers from the LWDA.
27 Plaintiff's Counsel is ordered to provide the LWDA with an electronic copy of this order within 10 days
28 after the Court's entry of this order.

1 5. The Court therefore approves the Settlement as set forth in the Settlement Agreement and
2 directs the Parties to effectuate the Settlement according to the terms set forth in the Settlement
3 Agreement.

4 6. Neither the Settlement nor any of the terms set forth in the Settlement Agreement are
5 admissions by Defendants, or any of the other Released Parties, of liability on any of the allegations
6 alleged in the Action, nor is this Order a finding of the validity of any claims in the Action, or of any
7 wrongdoing by Defendants, or any of the other Released Parties.

8 7. The Court finds that Plaintiff's Counsel has adequately represented the Plaintiff, the
9 PAGA Employees, and the LWDA throughout the litigation and for purposes of entering into and
10 implementing the Settlement. The "PAGA Employees" are each and/or all current and former non-
11 exempt employees who worked for Defendant ATBA, LLC in California during the "PAGA Release
12 Period" beginning on July 27, 2022 and concluding on the earlier of May 1, 2025 or the date the Court
13 executes its Final Order and Judgment approving the Settlement.

14 8. The Court finds that the Settlement, and in particular the Gross Settlement Amount
15 ("GSA") of \$186,049.70 to be distributed as set forth herein and in the Settlement Agreement, is in all
16 respects fair, reasonable, and adequate and is hereby approved. *See* California Labor Code § 2699(l)(2).
17 Specifically, the GSA will be used to pay the LWDA Settlement Proceeds, the PAGA Employees
18 Settlement Proceeds, the Service Award, Attorneys' Fees and Costs, and the Settlement Administration
19 Costs. The GSA is the maximum settlement amount that Defendant ATBA, LLC will pay in connection
20 with this Settlement; Defendants shall have no further obligation for costs, expenses, interests, attorneys'
21 fees, or for any other charge or expense relating to the claims released herein. This is a non-reversionary
22 Settlement; no portion of the GSA will return to Defendants under any circumstances.

23 9. Pursuant to the terms of the Settlement, Settlement Administration Costs in the amount of
24 \$4,500, which are necessary and reasonable to administer the Settlement, are hereby granted and shall be
25 paid to Xpand Legal, the designated third-party Settlement Administrator.

26 10. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount of
27 \$62,016.57 represents one-third of the GSA and are reasonable under both the common fund method and
28 the lodestar method. The GSA represents a true and common fund, as the full amount of the GSA must

1 be paid, and no amount of the GSA will return to Defendants under any circumstances. It is recognized
2 that attorneys who recover a common fund are entitled to a reasonable fee award from the fund. *See, e.g.,*
3 *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“a litigant or a lawyer who recovers a common
4 fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee
5 from the fund as a whole.”); *In re Washington Public Power Supply Sys. Sec. Litig.* (9th Cir. 1994) 19
6 F.3d 1291, 1300 (“[T]hose who benefit from the creation of the fund should share the wealth with the
7 lawyers whose skill and effort helped create it.”); *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“[W]hen a
8 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
9 Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff
10 may be awarded attorney’s fees out of the fund. [Citations.]”).

11 11. One-third or more of the common fund is standard in settlements similar to this one. *See,*
12 *e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees of one-third of
13 the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 (“Empirical
14 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
15 class actions average around one-third of the recovery.”); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
16 43, 66 n.11 (recognizing that fee awards in class actions average around one-third of the recovery”).

17 12. The Court also finds that the requested attorneys’ fees are reasonable under the lodestar
18 method, or as a crosscheck on the percentage fee. *See Laffitte*, 1 Cal.5th at 506. Plaintiff’ counsel’s
19 lodestar of \$71,740 far exceeds the attorneys’ fees amount. In fact, the fee award amounts to a significant
20 implied negative multiplier on Plaintiff’s counsel’s lodestar.

21 13. The Court further finds that Plaintiff’ counsel’s requested litigation costs of \$15,235.40
22 are reasonable and were necessary to prosecute the action.

23 14. Accordingly, and consistent with California Labor Code § 2699(g)(1), which authorizes an
24 award of attorneys’ fees and costs, the requested attorneys’ fees in the amount of \$62,016.57 and
25 litigation costs in the amount of \$15,235.40, are hereby granted and the fees and costs to each firm shall
26 be paid to the Wand Law Firm, P.C. Except as otherwise approved by the Court in this Amended Final
27 Order and Judgment approving the settlement, each Party shall bear its own attorneys’ fees and costs.
28

1 15. Pursuant to the terms of the Settlement, a Service Award in the amount of \$7,500.00 shall
2 be paid to Plaintiff Victor Castro, in recognition of his efforts in prosecuting this action for the benefit of
3 the State of California and PAGA Employees, and Plaintiff's broad General Release of all of their
4 individual claims against Defendants, including a waiver of all rights and benefits of section 1542 of the
5 Civil Code of the State of California, is hereby granted and shall be paid to Plaintiff Victor Castro.
6 Comparable service awards are routinely issued to named Plaintiff in analogous wage-and-hour class
7 action settlements. *See, e.g., Cellphone Termination Cases*, 186 Cal. App. 4th 1380, 1394-1395 (2010)
8 (approving enhancement awards of \$10,000 to each of the four named plaintiffs); *Vizzi v. Mitsubishi*
9 *Motors North America, Inc.*, No. 08-cv-00650-JVS (RNBx), 2010 WL 11508375, at * 11 (C.D. Cal. Mar.
10 29, 2010) (approving \$10,000 service award); *Covillo v. Specialtys Cafe*, 2014 WL 954516, at *8 (N.D.
11 Cal. Mar. 6, 2014) (awarding \$8,000 each to two named Plaintiff, noting that "the incentive awards are
12 particularly appropriate in this wage and hour class action, where Plaintiff undertook a significant
13 'reputational risk' in bringing this action against their former employer."); *Alikhan v. Goodrich Corp.*,
14 2020 WL 4919382, at * (C.D. Cal. Jun. 25, 2020) (approving a \$10,000 service award). Court also
15 routinely approve service awards in PAGA settlements like this one. *See, e.g., Abelar v. American*
16 *Residential Services, L.L.C.*, 2019 WL 6054607, at *6 (C.D. Cal. Nov. 14, 2019) (approving PAGA only
17 settlement and holding "[t]he service award of \$5000 is reasonable compensation for the time and
18 acceptance of adverse employment risk by Plaintiff."); *Garcia v. Macy's West Stores, Inc.*, San
19 Bernardino County Superior Court, Case No. CIVDS1515007 (Sept. 13, 2017) (awarding the PAGA
20 plaintiff a service award of \$10,000).

21 16. After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the
22 Service Award from the GSA, the remainder of \$96,797.73, consistent with California Labor Code §
23 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to
24 PAGA Employees. Accordingly, \$72,598.30 shall be paid to the LWDA, and \$24,199.43 shall be paid to
25 PAGA Employees. The payments to the PAGA Employees will be paid proportionally based on the
26 number of pay periods that each individual employee worked for Defendant ATBA, LLC during the
27 PAGA Period. PAGA Employees shall have 180 days from the original date of its issuance to cash or
28 deposit the settlement check. If a PAGA Employee does not negotiate their settlement check by then,

1 those funds will be paid to the State of California Controller's Unclaimed Property division in their name.
2 Neither the Defendants, Defendants' counsel, Plaintiff, nor Plaintiff's Counsel will have any liability for
3 lost or stolen settlement payment checks, forged signatures on settlement payment checks, unauthorized
4 negotiation of settlement payment checks or failure to timely cash a settlement payment check within the
5 180-day period.

6 17. The Court finds and determines that Defendant ATBA, LLC and the Released Parties (i.e.,
7 Defendant ATBA, LLC and their respective former, present, and future parents, subsidiaries, affiliates,
8 divisions, predecessors, successors, assigns, owners, officers, directors, employees, agents, managers,
9 administrators, consultants, members, partners, joint venturers, shareholders, representatives, insurers,
10 reinsurers, licensees, lessors, fiduciaries, accountants, legal representatives, and any other related
11 companies, entities, or individuals, including spouses and children), by operation of this Final Order and
12 Judgment, and upon the full funding of the Gross Settlement Amount, are hereby fully, finally, and
13 forever released, relinquished, and discharged from all Released Claims by Plaintiff, the PAGA
14 Employees, and the State of California. Upon the Funding Date, Plaintiff, as the representative for the
15 State of California, and on behalf of PAGA Employees, will forever completely release and discharge the
16 Released Parties from any and all known and unknown claims for the recovery of civil penalties under
17 the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.*, that were or could
18 have been pleaded based on the factual allegations of the operative complaint on file in this Action, or in
19 Plaintiff's PAGA notice dated July 27, 2023, for the PAGA Release Period. "Released Claims" includes
20 any and all claims, transactions, and occurrences that occurred during the PAGA Release Period,
21 including all claims that were or reasonably could have been alleged by Plaintiff on behalf of himself and
22 the State of California arising from any of the factual allegations in the Operative Complaint and/or
23 Plaintiff's PAGA Claim Notification, and including any and all claims for civil penalties under the
24 Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, such as for failure to
25 provide compliant meal and rest periods and associated premium payments, failure to pay overtime and
26 minimum wages, failure to timely pay all wages during employment and upon conclusion of
27 employment, failure to maintain required records, failure to maintain and furnish accurate itemized wages
28 statements, failure to provide compliant sick leave, failure to reimburse necessary business-related

1 expenses, and for failure to comply with Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
2 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare
3 Commission Wage Orders. This Settlement shall not impact any PAGA Employee's ability to assert
4 California Labor Code claims other than PAGA claims (i.e., California Labor Code claims other than one
5 brought under California Labor Code § 2698, *et. seq.*).

6 18. The Court finds and determines that, in addition to the Release as to the PAGA Claim,
7 Plaintiff agrees to a General Release by Plaintiff only. This General Release by Plaintiff only releases all
8 known and unknown claims against Defendant ATBA, LLC, the Released Parties, Defendant Aspen
9 Skilled Healthcare, Inc., and their respective affiliated companies, including their respective former,
10 present, and future parents, subsidiaries, affiliates, divisions, predecessors, successors, assigns, owners,
11 officers, directors, employees, agents, managers, administrators, consultants, members, partners, joint
12 venturers, shareholders, representatives, insurers, reinsurers, licensees, lessors, fiduciaries, accountants,
13 legal representatives, and any other related companies, entities, or individuals, including spouses and
14 children. This General Release also includes a waiver of all rights and benefits of section 1542 of the
15 Civil Code of the State of California.

16 19. Accordingly, Defendant ATBA, LLC is dismissed from the Action with prejudice.
17 Defendant Aspen Skilled Healthcare, Inc. is dismissed from the Action without prejudice as to the
18 Aggrieved Employees and the State of California. All Defendants are dismissed with prejudice as to
19 Plaintiff's individual claims.

20 20. The terms of the Settlement Agreement, and this Order, are binding on the Plaintiff and
21 PAGA Employees, and those terms shall have res judicata and other preclusive effect in all pending and
22 future claims, lawsuits or other proceedings maintained by or on behalf of PAGA Employees, to the
23 extent those claims, lawsuits or other proceedings constitute Released Claims as set forth in the
24 Settlement Agreement.

25 21. Neither this Order nor the Settlement Agreement (nor any other document referred to
26 herein, nor any action taken to carry out this Order) is, may be construed as, or may be used as, an
27 admission or concession by or against Defendants or the Released Parties of the validity of any claim or
28 actual or potential fault, wrongdoing, or liability. Entering into or carrying out the Settlement Agreement,

1 and any negotiations or proceedings related to it, shall not be considered as, or deemed evidence of, an
2 admission or concession as to Defendants' denials or defenses and shall not be offered or received in
3 evidence in any action or proceeding against any party hereto in any court, administrative agency or other
4 tribunal for any purpose whatsoever, except as evidence of the Settlement or to enforce the provisions of
5 this Order and the Settlement Agreement; provided, however, that this Order and the Settlement
6 Agreement may be filed in any action against or by Defendant ATBA, LLC or the Released Parties to
7 support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar
8 or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar
9 defense or counterclaim.

10 22. The Parties' request for approval of the Settlement Agreement is GRANTED. Judgment in
11 this matter is entered in accordance with the terms of the Settlement Agreement and Approval Order.
12 This judgment is intended to be a final disposition of the above captioned action in its entirety, and it is
13 intended to be immediately appealable.

14 23. The Court reserves exclusive and continuing jurisdiction over the lawsuit for the purposes
15 of supervising the implementation, enforcement, construction, administration, and interpretation of the
16 Settlement Agreement and this Order.

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18 **IT IS SO ORDERED.**

19 DATED: Aug. 6, 2025

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21 
22 Honorable George J. Abdallah
23 Judge of the Superior Court
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