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STEPHANIE BOHRER, CLERK
BY  DEPUTY

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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **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] FINAL ORDER AND
JUDGMENT**

Action Filed:
Trial Date:

February 2, 2024
None Set

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The Court has before it the Parties' Stipulation for Approval of PAGA Settlement,¹ and determining that the Settlement provides genuine and meaningful relief that benefits the public, is fair, adequate, reasonable, and otherwise being fully informed and good cause appearing therefor, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

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

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

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

4. The Court finds that Plaintiff has exhausted all administrative remedies required to bring the PAGA claims asserted in this Action and is authorized to act as private attorney general with respect to the PAGA claims being released under the terms of the Settlement Agreement. The California Labor and Workforce Development Agency ("LWDA") was provided with notice of the settlement and the settlement approval papers via its online process in accordance with California Labor Code Section

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 2699(l)(2), and no objection has been received to the settlement or the approval papers from the LWDA.
2 Plaintiff's Counsel is ordered to provide the LWDA with an electronic copy of this order within 10 days
3 after the Court's entry of this order

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

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

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

17 8. The Court finds that the Settlement, and in particular the Gross Settlement Amount
18 ("GSA") of \$135,000.00 to be distributed as set forth herein and in the Settlement Agreement, is in all
19 respects fair, reasonable, and adequate and is hereby approved. *See* California Labor Code § 2699(l)(2).
20 Specifically, the GSA will be used to pay the LWDA Settlement Proceeds, the PAGA Employees
21 Settlement Proceeds, the Service Award, Attorneys' Fees and Costs, and the Settlement Administration
22 Costs. The GSA is the maximum settlement amount that Defendant ATBA, LLC will pay in connection
23 with this Settlement; Defendants shall have no further obligation for costs, expenses, interests, attorneys'
24 fees, or for any other charge or expense relating to the claims released herein. This is a non-reversionary
25 Settlement; no portion of the GSA will return to Defendants under any circumstances.

26 9. Pursuant to the terms of the Settlement, Settlement Administration Costs in the amount of
27 \$4,500, which are necessary and reasonable to administer the Settlement, are hereby granted and shall be
28 paid to Xpand Legal, the designated third-party Settlement Administrator.

1 10. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount of
2 \$45,000.00 represents one-third of the GSA and are reasonable under both the common fund method and
3 the lodestar method. The GSA represents a true and common fund, as the full amount of the GSA must
4 be paid, and no amount of the GSA will return to Defendants under any circumstances. It is recognized
5 that attorneys who recover a common fund are entitled to a reasonable fee award from the fund. *See, e.g.,*
6 *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer who recovers a common
7 fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
8 from the fund as a whole."); *In re Washington Public Power Supply Sys. Sec. Litig.* (9th Cir. 1994) 19
9 F.3d 1291, 1300 ("[T]hose who benefit from the creation of the fund should share the wealth with the
10 lawyers whose skill and effort helped create it."); *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("[W]hen a
11 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
12 Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff
13 may be awarded attorney's fees out of the fund. [Citations.]").

14 11. One-third or more of the common fund is standard in settlements similar to this one. *See,*
15 *e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees of one-third of
16 the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 ("Empirical
17 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
18 class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
19 43, 66 n.11 (recognizing that fee awards in class actions average around one-third of the recovery").

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

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

26 14. Accordingly, and consistent with California Labor Code § 2699(g)(1), which authorizes an
27 award of attorneys' fees and costs, the requested attorneys' fees in the amount of \$45,000.00 and
28 litigation costs in the amount of \$15,235.40, are hereby granted and the fees and costs to each firm shall

1 be paid to the Wand Law Firm, P.C. Except as otherwise approved by the Court in its Final Order and
2 Judgment approving settlement, each Party shall bear its own attorneys' fees and costs.

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

23 16. After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the
24 Service Award from the GSA, the remainder of \$62,764.60, consistent with California Labor Code §
25 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to
26 PAGA Employees. Accordingly, \$47,073.45 shall be paid to the LWDA, and \$15,691.15 shall be paid to
27 PAGA Employees. The payments to the PAGA Employees will be paid proportionally based on the
28 number of pay periods that each individual employee worked for Defendant ATBA, LLC during the

1 PAGA Period. PAGA Employees shall have 180 days from the original date of its issuance to cash or
2 deposit the settlement check. If a PAGA Employee does not negotiate their settlement check by then,
3 those funds will be paid to the State of California Controller's Unclaimed Property division in their name.
4 Neither the Defendants, Defendants' counsel, Plaintiff, nor Plaintiff's Counsel will have any liability for
5 lost or stolen settlement payment checks, forged signatures on settlement payment checks, unauthorized
6 negotiation of settlement payment checks or failure to timely cash a settlement payment check within the
7 180-day period.

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

1 employment, failure to maintain required records, failure to maintain and furnish accurate itemized wages
2 statements, failure to provide compliant sick leave, failure to reimburse necessary business-related
3 expenses, and for failure to comply with Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
4 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare
5 Commission Wage Orders. This Settlement shall not impact any PAGA Employee's ability to assert
6 California Labor Code claims other than PAGA claims (i.e., California Labor Code claims other than one
7 brought under California Labor Code § 2698, *et. seq.*).

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

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

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

27 21. Neither this Order nor the Settlement Agreement (nor any other document referred to
28 herein, nor any action taken to carry out this Order) is, may be construed as, or may be used as, an

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

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

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

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20 **IT IS SO ORDERED.**

21 DATED: May 21, 2025

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23 
24 Honorable George J. Abdallah
25 Judge of the Superior Court
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