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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF CONTRA COSTA

15 KRISTINA MURDOCK, NOEL HUDSON,
16 and ALEXANDRA SOTO on behalf of
17 themselves and on behalf of all persons
18 similarly situated,

19 Plaintiff,

20 vs.

21 ASPEN SURGERY CENTER, LLC, a
22 Limited Liability Company; SURGERY
23 PARTNERS, INC., a Corporation; and DOES
24 1 through 50, inclusive,

25 Defendants.

CASE NO.: MSC21-02047

[Consolidated with Case No. MSC21-02137]

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

Hearing Date: August 22, 2024

Hearing Time: 9:00 a.m.

Judge: Hon. Charles S. Treat

Dept: 12

Date Filed: October 1, 2021

Trial Date: Not set

1 The unopposed motion of Plaintiffs Kristina Murdock, Noel Hudson and Alexandra Soto
2 (“Plaintiffs”) for an order finally approving the Class Action and PAGA Settlement Agreement
3 (“Agreement”) with Defendants Aspen Surgery Center, LLC and Surgery Partners, Inc.
4 (“Defendants”), attorneys’ fees and costs, service payments, and the expenses of the Administrator
5 duly came on for hearing on August 22, 2024 before the Honorable Charles S. Treat.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of Contra Costa, and over all
13 Parties to this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiffs and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Three Million Dollars
16 (\$3,000,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, and the assistance of an experienced mediator in the settlement process, among other
21 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On April 9, 2024, the Court granted preliminary approval of the Settlement. At this
24 same time, the Court approved conditional certification of the Class for settlement purposes only.

25 **Notice to the Class**

- 26 6. In compliance with the Preliminary Approval Order, the Court-approved Class
27 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
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1 about May 8, 2024. Mailing of the Class Notice to their last-known addresses was the best notice
2 practicable under the circumstances and was reasonably calculated to communicate actual notice
3 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class
4 Members fully and accurately informed the Class Members of all material elements of the
5 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
6 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
7 fully with the laws of the State of California, the United States Constitution, due process and other
8 applicable law. The Class Notice fairly and adequately described the Settlement and provided
9 Class Members adequate instructions and a variety of means to obtain additional information.

10 7. The Response Deadline for opting out or submitting written objections to the
11 Settlement was July 8, 2024, which for re-mailings was extended by fourteen (14) days. There
12 was an adequate interval between notice and the deadline to permit Class Members to choose what
13 to do and to act on their decision. A full and fair opportunity has been afforded to the Class
14 Members to participate in this hearing, and all Class Members and other persons wishing to be
15 heard have had a full and fair opportunity to be heard. Class Members also have had a full and
16 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
17 Court determines that all Class Members who did not timely and properly submit a request for
18 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

19 **Fairness of the Settlement**

20 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
21 48 Cal.App.4th 1794, 1801 (1996).

22 a. The settlement was reached through arm's-length bargaining between the
23 Parties during an all-day mediation before Hon. Carl J. West (Ret.), a respected jurist and mediator
24 of wage and hour class actions. There has been no collusion between the Parties in reaching the
25 Settlement.

26 b. Plaintiffs and Class Counsel's investigation and discovery have been
27 sufficient to allow the Court and counsel to act intelligently.

1 c. Counsel for all Parties are experienced in similar employment class action
2 litigation. Class Counsel recommended approval of the Agreement.

3 d. The percentage of objectors and requests for exclusion is small. No
4 objections were received. Only two (2) requests for exclusion were received.

5 e. The participation rate was high. 1,678 Class Members will be mailed a
6 settlement payment, representing 99.88% of the overall Class.

7 9. The consideration to be given to the Class Members under the terms of the
8 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
9 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
10 Members' claims, given the uncertainties and significant risks of the litigation and the delays
11 which would ensue from continued prosecution of the action.

12 10. The Agreement is approved as fair, adequate and reasonable and in the best
13 interests of the Class Members.

14 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

15 11. An award of \$1,000,000 for attorneys' fees, representing one-third of the Gross
16 Settlement Amount, and \$18,922.12 for litigation costs and expenses, is reasonable, in light of the
17 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
18 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
19 and billing statement.

20 **Class Representative Service Payment**

21 12. The Agreement provides for a Class Representative Service Payment of not more
22 than \$10,000 each to the Plaintiffs, subject to the Court's approval. The Court finds that Class
23 Representative Service Payments in the amount of \$10,000 each to the Plaintiffs are reasonable in
24 light of the risks and burdens undertaken by the Plaintiffs in this litigation and for his time and
25 effort in bringing and prosecuting this matter on behalf of the Class.

26 **Administration Expenses Payment**

27 13. The Administrator shall calculate and administer the payment to be made to the
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1 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
2 Class Representative Service Payments to the Plaintiffs, issue all required tax reporting forms,
3 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
4 Administrator has documented \$21,950 in fees and expenses, and this amount is reasonable in
5 light of the work performed by the Administrator.

6 **PAGA Penalties**

7 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
8 Amount of \$60,000, which shall be allocated \$45,000 to the Labor & Workforce Development
9 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
10 Agreement pursuant to the PAGA and \$15,000 to be distributed to the Aggrieved Employees and
11 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
12 (\$15,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
13 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
14 Periods. "Aggrieved Employees" are all individuals who worked for Defendants in California
15 who were classified as non-exempt any time during the PAGA Period, excluding non-exempt
16 hourly hospital workers employed by Heart Hospital of BK, LLC. The PAGA Period is from
17 March 20, 2021 to June 11, 2023. Pursuant to Labor Code section 2699, subdivision (l)(2), the
18 LWDA was provided notice of the Agreement and these settlement terms and has not indicated
19 any objection thereto. The Court finds the PAGA Penalties to be reasonable.

20 **II.**

21 **ORDERS**

22 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

23 15. The Class is certified for the purposes of settlement only. The Class is defined as
24 follows:

25 All individuals who are or previously worked for Defendants in California who
26 were classified as non-exempt at any time during the Class Period, excluding non-
27 exempt hourly hospital workers employed by Heart Hospital of BK, LLC.

28 The Class Period is from October 1, 2017 to June 11, 2023.

1 16. All persons who meet the foregoing definition are members of the Class, except for
2 those individuals who filed a valid request for exclusion (“opt out”) from the Class. Two (2)
3 requests for exclusion were received from the following individuals: Darlene Campbell and
4 Kathryn Harada.

5 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
6 best interest of the Class. Defendants shall fully fund the Gross Settlement Amount, and also fund
7 the amounts necessary to fully pay Defendants’ share of payroll taxes in accordance with the
8 Agreement, by transmitting the funds to the Administrator no later than 15 days after the Effective
9 Date.

10 18. Class Counsel are awarded attorneys’ fees in the amount of \$1,000,000 and costs in
11 the amount of \$18,922.12. Class Counsel shall not seek or obtain any other compensation or
12 reimbursement from Defendants, Plaintiffs or members of the Class. Five percent of the
13 attorney’s fees awarded are to be withheld by the Administrator pending satisfactory compliance
14 as found by the Court.

15 19. The payment of Class Representative Service Payments in the amount of \$10,000
16 each to the Plaintiffs is approved.

17 20. The payment of \$21,950 to the Administrator for its fees and expenses is approved.

18 21. The PAGA Penalties of \$60,000 is approved and is to be distributed in accordance
19 with the Agreement.

20 22. Pursuant to Labor Code section 2699, subdivision (1)(2), Class Counsel shall
21 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
22 entry.

23 23. Neither the Agreement nor this Settlement is an admission by Defendants, nor is
24 this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of
25 any wrongdoing by Defendants or that this Action is appropriate for class or representative
26 treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment,
27 the Agreement, nor any document referred to herein, nor any action taken to carry out the
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1 Agreement is, may be construed as, or may be used as an admission by or against Defendants of
2 any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement,
3 and any negotiations or proceedings related thereto, shall not in any event be construed as, or
4 deemed to be evidence of, an admission or concession with regard to the denials or defenses by
5 Defendants. Notwithstanding these restrictions, Defendants may file in the Action or in any other
6 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
7 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,
8 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
9 Released Class Claims and/or Released PAGA Claims.

10 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
11 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
12 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
13 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
14 to individual Class Members.

15 25. If the Agreement does not become final and effective in accordance with the terms
16 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
17 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
18 revert to their respective positions as of before entering into the Agreement, and expressly reserve
19 their respective rights regarding the prosecution and defense of this Action, including all available
20 defenses and affirmative defenses, and arguments that any claim in the Action could not be
21 certified as a class action and/or managed as a representative action.

22 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

23 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
24 Plaintiffs, and all members of the Class, shall take nothing in the Action.

25 27. The Court shall retain jurisdiction to construe, interpret, implement and enforce the
26 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
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1 supervise and adjudicate any dispute arising from or in connection with the distribution of
2 settlement benefits.

3 28. All Parties shall bear their own attorneys' fees and costs, except as otherwise
4 provided in the Agreement and in this Final Approval Order and Judgment.

5 29. Effective on the date when Defendants fully fund the entire Gross Settlement
6 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
7 Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will
8 release claims against all Released Parties as follows:

9 (a) All Participating Class Members, on behalf of themselves and their
10 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
11 and assigns, release Released Parties from the Released Class Claims. The "Released Class
12 Claims" are all class claims pled or could have been pled based on the factual allegations
13 contained in the Operative Complaint which occurred during the Class Period. Except as expressly
14 set forth in this Agreement, Participating Class Members do not release any other claims,
15 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
16 Housing Act, unemployment insurance, disability, social security, workers' compensation, or
17 claims based on facts occurring outside the Class Period.

18 (b) All Aggrieved Employees and the LWDA are deemed to release, on behalf
19 of themselves and their respective former and present representatives, agents, attorneys, heirs,
20 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
21 The "Released PAGA Claims" are all PAGA claims pled or could have been pled based on the
22 factual allegations contained in the Operative Complaint and PAGA Notice sent by plaintiff Noel
23 Hudson that occurred during the PAGA Period. The Released PAGA Claims do not include other
24 PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination,
25 unemployment insurance, disability and worker's compensation, and claims outside of the PAGA
26 Period.

1 (c) Plaintiffs and their respective former and present spouses, representatives,
2 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge
3 Released Parties from all claims, transactions, or occurrences that occurred during the Class
4 Period, including, but not limited to: (a) all claims that were, or reasonably could have been,
5 alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that
6 were, or reasonably could have been, alleged based on facts contained in the Operative Complaint,
7 and PAGA Notice ("Plaintiffs' Release") as fully set forth in the Agreement.

8 30. For any Class Member or Aggrieved Employee whose Individual Class Payment
9 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
10 Administrator shall transmit the funds represented by such checks to the California Controller's
11 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
12 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

13 31. The Court hereby enters judgment in the entire Action as of the filing date of this
14 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
15 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
16 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
17 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

18 32. A compliance hearing is set for June 26, 2025 at 9:30 a.m., with a compliance
19 report to be filed 14 days before this hearing.

20 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

21
22 Dated: _____

23 _____
24 HON. CHARLES S. TREAT
25 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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