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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] PRELIMINARY
APPROVAL ORDER**

Hearing Date: March 28, 2024 _____
Hearing Time: 2:00 p.m.

Judge: Hon. Charles S. Treat
Dept: 12

Date Filed: October 1, 2021
Trial Date: Not set

26 This matter came before the Honorable Chrles S. Treat of the Superior Court of the State
27 of California, in and for the County Contra Costa, on March 28, 2024, for hearing on the
28 unopposed motion by Plaintiffs Kristina Murdock, Noel Hudson and Alexandra Soto ("Plaintiffs")

PRELIMINARY APPROVAL ORDER

1 for preliminary approval of the Settlement with Defendants Aspen Surgery Center, LLC and
2 Surgery Partners, Inc. (“Defendants”). The Court, having considered the briefs, argument of
3 counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
4 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

5
6 **IT IS HEREBY ORDERED:**

7 1. The Court preliminarily approves the Class Action and PAGA Settlement
8 Agreement (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
9 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is based
10 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
11 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
12 Procedure and California Rules of Court, rule 3.769.

13 2. This Order incorporates by reference the definitions in the Agreement, and all
14 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

15 3. The Gross Settlement Amount that Defendant shall pay is Three Million Dollars
16 (\$3,000,000). It appears to the Court on a preliminary basis that the settlement amount and terms
17 are fair, adequate and reasonable as to all potential Class Members when balanced against the
18 probable outcome of further litigation and the significant risks relating to certification, liability and
19 damages issues. It further appears that investigation and research have been conducted such that
20 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
21 to the Court that the Settlement will avoid substantial additional costs by all Parties, as well as
22 avoid the delay and risks that would be presented by the further prosecution of the Action. It
23 further appears that the Settlement has been reached as the result of serious and non-collusive,
24 arm’s-length negotiations.

25 4. The Court preliminarily finds that the Settlement appears to be within the range of
26 reasonableness of a settlement that could ultimately be given final approval by this Court. The
27 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
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1 preliminarily finds that the monetary settlement awards made available to the Class is fair,
2 adequate, and reasonable when balanced against the probable outcome of further litigation and the
3 significant risks relating to certification, liability, and damages issues.

4 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
5 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$22,000, and
6 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
7 \$10,000 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
8 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
9 evidence supporting these requests, including lodestar, prior to final approval.

10 6. The Court recognizes that Plaintiffs and Defendants stipulate and agree to
11 representative treatment and certification of a class for settlement purposes only. This stipulation
12 will not be deemed admissible in this or any other proceeding should this Settlement not become
13 final. For settlement purposes only, the Court conditionally certifies the Class which consists of
14 "all individuals who are or previously worked for Defendants in California who were classified as
15 non-exempt at any time during the Class Period, excluding non-exempt hourly hospital workers
16 employed by Heart Hospital of BK, LLC." The "Class Period" is October 1, 2017 to June 11,
17 2023.

18 7. The Court concludes that, for settlement purposes only, the Class meets the
19 requirements for certification under section 382 of the California Code of Civil Procedure in that:
20 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
21 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
22 community of interest amongst the members of the Class with respect to the subject matter of the
23 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
24 the Plaintiffs will fairly and adequately protect the interests of the members of the Class; (e) a
25 class action is superior to other available methods for the efficient adjudication of this controversy;
26 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are
27 adequate representatives of the Class.

1 8. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
2 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
3 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

4 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
5 Amount of \$60,000, which shall be allocated \$45,000 to the Labor & Workforce Development
6 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
7 Agreement pursuant to the PAGA and \$15,000 to the Aggrieved Employees. “Aggrieved
8 Employees” are all individuals who worked for Defendants in California who were classified as
9 non-exempt any time during the PAGA Period, excluding non-exempt hourly hospital workers
10 employed by Heart Hospital of BK, LLC. The PAGA Period is from March 20, 2021 to June 11,
11 2023. Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA will be provided notice
12 of the Agreement and these settlement terms. The Court finds the PAGA Penalties to be
13 reasonable.

14 10. The Court hereby approves, as to form and content, the Class Notice attached to the
15 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
16 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
17 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
18 and opportunity to object to the Settlement. The Court further finds that the distribution of the
19 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
20 the requirements of due process, is the best notice practicable under the circumstances, and shall
21 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
22 the Class Notice in English with a Spanish translation by first class mail pursuant to the terms set
23 forth in the Agreement. If a Class Notice Packet is returned because of an incorrect address, the
24 Administrator will promptly search for a more current address for the Class Member and re-mail
25 the Class Notice Packet to any new address for the Class Member no later than seven (7) days
26 after the receipt of the undelivered Class Notice.

1 11. The Court hereby appoints ILYM Group as the Administrator. No later than fifteen
2 (15) days after this Order, Defendant will provide the Class Data to the Administrator in
3 accordance with the Agreement. The Administrator will perform address updates and
4 verifications as necessary prior to the first mailing. Using best efforts to mail it as soon as
5 possible, and in no event later than fourteen (14) days after receiving the Class Data, the
6 Administrator will mail the Class Notice Packet to all Class Members via first-class regular U.S.
7 Mail to their last known address.

8 12. The Court hereby preliminarily approves the proposed procedure for exclusion
9 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
10 from the Class as provided in the Class Notice by following the instructions for requesting
11 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
12 postmarked or received no later than sixty (60) calendar days after the date of the mailing of the
13 Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline
14 for requests for exclusion will be extended an additional fourteen (14) days. A Request for
15 Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
16 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
17 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
18 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
19 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
20 exclusion may only opt out that particular individual, and any attempt to effect an opt-out of a
21 group, class, or subclass of individuals is not permitted and will be deemed invalid.

22 13. Any Class Member who has not opted out may appear at the final approval hearing
23 and may object or express the Member’s views regarding the Settlement and may present evidence
24 and file briefs or other papers that may be proper and relevant to the issues to be heard and
25 determined by the Court as provided in the Class Notice. Class Members will have until the
26 Response Deadline to submit their written objections to the Administrator. Written objections
27 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
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1 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
2 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
3 Hearing to make an oral objection.

4 14. A final approval hearing shall be held before this Court on August 15, 2024 at 2:00
5 p.m. in Department 12 at the Contra Costa County Superior Court to hear the motion for final
6 approval and the motion for attorneys' fees and costs, and to determine all necessary matters
7 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
8 and conditions provided for in the Agreement is fair, adequate and reasonable and should be
9 finally approved by the Court; whether the Final Approval Order and Judgment should be entered
10 herein; whether the plan of allocation contained in the Agreement should be approved as fair,
11 adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs,
12 service award, and the fees and expenses of the Administrator. All papers in support of the motion
13 for final approval and the motion for attorneys' fees, costs and service awards shall be filed with
14 the Court and served on all counsel no later than sixteen (16) court days before the hearing and
15 both motions shall be heard at this final approval hearing.

16 15. Neither the Settlement nor any exhibit, document, or instrument delivered
17 thereunder shall be construed as a concession or admission by Defendants in any way that the
18 claims asserted have any merit or that this Action was properly brought as a class or representative
19 action, and shall not be used as evidence of, or used against Defendant as, an admission or
20 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
21 omission by Defendants or with respect to the truth of any allegation asserted by any person.
22 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
23 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
24 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
25 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
26 evidence of a presumption, concession, indication or admission by Defendants of any liability,
27 fault, wrongdoing, omission, concession or damage.

16. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement, and expressly reserve their respective rights regarding the prosecution and defense of this Action, including all available defenses and affirmative defenses, and arguments that any claim in the Action could not be certified as a class action and/or managed as a representative action . In such an event, the Court's orders regarding the Settlement, including this Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Agreement with respect to the effect of the Agreement if it is not approved.

17. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

Dated: _____

HON. CHARLES S. TREAT
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA