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2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

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12 Attorneys for Plaintiffs

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF CONTRA COSTA**
16

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

21 Plaintiffs,

22 vs.

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

27 Defendants.
28

CASE NO.: **MSC21-02047**

[Consolidated with Case No. MSC21-02137]

NOTICE OF ENTRY OF JUDGMENT

Hearing Date: August 22, 2024

Hearing Time: 9:00 a.m.

Judge: Hon. Charles S. Treat

Dept.: 12

Action Filed: October 1, 2021

Trial Date: Not set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT on September 12, 2024, the Court entered
3 the Final Approval Order After Hearing and the Judgment in the above entitled action. A
4 true and correct copy of the Judgment is attached hereto as Exhibit #1. A true and correct
5 copy of the Final Approval Order After Hearing is attached hereto as Exhibit #2. The Order
6 and the Judgment are also served on the LWDA pursuant to the Proof of Service below.

7 Respectfully submitted,

8
9 Dated: September 12, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

10 By: /s/ Kyle Nordrehaug
11 Kyle R. Nordrehaug
12 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Kyle Nordrehaug, am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037.

On September 12, 2024, I served the document(s) described as:

1. Notice of Entry of Judgment

X (BY ELECTRONIC SERVICE): I caused the above entitled document(s) to be transmitted through electronic mail to counsel Defendant at the following address(es):

JACKSON LEWIS P.C.
Kevin D. Reese, Esq.
Marina I. Garcia, Esq.
50 California Street, 9th Floor
San Francisco, California 94111-4615
T: (415) 394-9400; F: (415) 394-9401

Attorneys for Defendants
ASPEN SURGERY CENTER, LLC and
SURGERY PARTNERS, INC.

Emails: Kevin.Reese@jacksonlewis.com;
Marina.Garcia@jacksonlewis.com

JACKSON LEWIS P.C.
Karen Luh, Esq.
725 South Figueroa Street, Suite 2500
Los Angeles, CA 90017-5408
T: 213-689-0404; F: 213-689-0430

Leonora.Schloss@jacksonlewis.com
Karen.Luh@jacksonlewis.com

X (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the Labor Workforce Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the LWDA.

X (State): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 12, 2024, at La Jolla, California.



Kyle Nordrehaug

EXHIBIT #1

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: MSC21-02047
[Consolidated with Case No. MSC21-02137]

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

FILED

2024 SEP 12 P 12:33

KATE BIEKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY: [Signature]
CLERK

JUDGMENT

1 WHEREAS, this Court entered a tentative ruling granting Plaintiff s Kristina Murdock,
2 Noel Hudson and Alexandra Soto's motion for final approval and for attorneys' fees, costs, and
3 service payments.

4 WHEREAS, this Court signed the Final Approval Order After Hearing, which is
5 incorporated herein by reference.

6 Based on the Final Approval Order After Hearing, and good cause appearing therefore, **IT**
7 **IS HEREBY ORDERED, ADJUDICATED, AND DECREED THAT:**

8
9 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
10 Plaintiffs, and all members of the Class, shall take nothing in the Action.

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

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

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

21 (a) All Participating Class Members, on behalf of themselves and their
22 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
23 and assigns, release Released Parties from the Released Class Claims. The "Released Class
24 Claims" are all class claims pled or could have been pled based on the factual allegations
25 contained in the Operative Complaint which occurred during the Class Period. Except as expressly
26 set forth in this Agreement, Participating Class Members do not release any other claims,
27 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
28

JUDGMENT

1 Housing Act, unemployment insurance, disability, social security, workers' compensation, or
2 claims based on facts occurring outside the Class Period.

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

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

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

24 6. The Court hereby enters judgment in the entire Action as of the filing date of this
25 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
26 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
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JUDGMENT

1 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
2 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

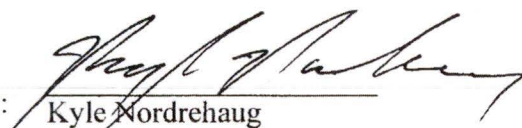
3 7. A compliance hearing is set for July 17, 2025 at 9:00 a.m., with a compliance
4 report to be filed 14 days before this hearing.

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

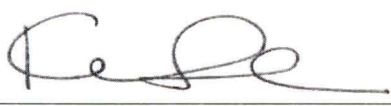
6
7 Dated: SEP 11 2024

8 
9 HON. CHARLES S. TREAT
10 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

11
12 Approved as to form:

13 
14 By: Kyle Nordrehaug

15 Attorney for Plaintiff

16 
17 By: Karen Luh

18 Karen Luh, Attorney for Defendant
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JUDGMENT

EXHIBIT #2

FILED

2024 SEP 12 P 12:21

WATE RIEKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY: JACALA, DEPUTY CLERK

**BLUMENTHAL NORDREHAUG BHOWMIK
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: MSC21-02047

[Consolidated with Case No. MSC21-02137]

**FINAL APPROVAL ORDER AFTER
HEARING**

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

FINAL APPROVAL ORDER

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. The Court,
6 having considered the briefs, argument of counsel and all matters presented to the Court and good
7 cause appearing, and based upon the tentative ruling which was confirmed by the Court and is
8 attached hereto as Exhibit #1 and incorporated herein,

9 **I.**

10 **FINDINGS**

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

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

25 **Preliminary Approval of the Settlement**

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

1 **Notice to the Class**

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

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

22 **Fairness of the Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

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

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

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

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

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

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

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

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

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

24 **Class Representative Service Payment**

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

3 **Administration Expenses Payment**

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

10 **PAGA Penalties**

11 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
12 Amount of \$60,000, which shall be allocated \$45,000 to the Labor & Workforce Development
13 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
14 Agreement pursuant to the PAGA and \$15,000 to be distributed to the Aggrieved Employees and
15 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
16 (\$15,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
17 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
18 Periods. "Aggrieved Employees" are all individuals who worked for Defendants in California
19 who were classified as non-exempt any time during the PAGA Period, excluding non-exempt
20 hourly hospital workers employed by Heart Hospital of BK, LLC. The PAGA Period is from
21 March 20, 2021 to June 11, 2023. Pursuant to Labor Code section 2699, subdivision (1)(2), the
22 LWDA was provided notice of the Agreement and these settlement terms and has not indicated
23 any objection thereto. The Court finds the PAGA Penalties to be reasonable.

24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
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FINAL APPROVAL ORDER

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

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

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

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

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

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

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

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

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

25 22. Pursuant to Labor Code section 2699, subdivision (1)(2), Class Counsel shall
26 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
27 entry.
28

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

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

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

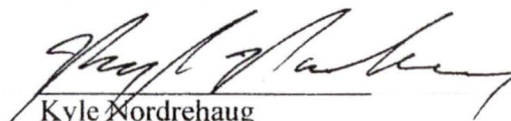
1 26. A compliance hearing is set for July 17, 2025 at 9:00 a.m., with a compliance
2 report to be filed 14 days before this hearing.

3
4 **IT IS SO ORDERED.**

5
6 Dated: SEP 11 2024

7 
8 HON. CHARLES S. TREAT
9 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

10
11
12 Approved as to form:

13 
14 By: Kyle Nordrehaug
15 Attorney for Plaintiff

16 
17 By: Karen Luh
18 Karen Luh, Attorney for Defendant

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FINAL APPROVAL ORDER

EXHIBIT 1

23. 9:00 AM CASE NUMBER: MSC21-02047

CASE NAME: MURDOCK VS. ASPEN SURGERY CENTER

*HEARING ON MOTION IN RE: FINAL APPROVAL

FILED BY:

TENTATIVE RULING:

Plaintiffs Kristina Murdock, Noel Hudson, and Alexandra Soto move for preliminary approval of their class action and PAGA settlement with defendants Aspen Surgery Center, LLC and Surgery Partners, Inc. They also move for approval of her attorney's fees, litigation costs, administration costs, and representative payments.

Since preliminary approval was granted, the administrator has mailed notices to 1678 class members, as well as talking to two other self-reported class members. 68 packets were returned by the post office. Follow up resulted in new addresses, leaving 17 non-deliverable. No objections have been received, and only two class members have opted out.

The motion is **granted**.

A. Background and Settlement Terms

Defendants operate a surgical facility. Plaintiffs were employed there as nurses – two of them from 2016 to 2020, though the third plaintiff's dates are not provided.

The original complaint was filed on October 1, 2021 as a class action. Plaintiff Hudson separately filed a PAGA action on the previous day. The parties stipulated to consolidate the actions.

The settlement will create a gross settlement fund of \$3,000,000. The class representative payments to the plaintiffs will be \$10,000 each. Attorney's fees will be \$1,000,000 (one-third of the settlement). Litigation costs are \$18,922. The settlement administrator's costs are \$21,950. PAGA penalties will be \$60,000, resulting in a payment of \$45,000 to the LWDA. The net amount paid directly to the class members will be about \$1,814,128, not including PAGA penalties. The fund is non-reversionary. There are 1,676 class members not opting out. Based on the estimated class size, the average net payment for each class member is approximately \$1,142. (The moving papers state a slightly lower number but do not account for the reduced actual litigation costs.) 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.

The entire settlement amount will be deposited with the settlement administrator within 15 days after the effective date of the settlement.

The proposed settlement will certify a class of all current and former non-exempt employed at Defendants' California facilities between October 1, 2017 and June 11, 2023. For PAGA purposes, the period covered by the settlement is March 20, 2021 to June 11, 2023. Funds will be apportioned to class members based on the number of workweeks worked during the class period.

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 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, mileage, and masks), 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 v. Anaheim Arena Mgmt., LLC*, 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. 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 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.)

C. Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$1,000,000. 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.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$314,460, representing an implied multiplier of about 3.2. The multiplier is on the high end for settlements of this kind, but it is (barely) within the acceptable range in light of the very good results obtained. No adjustment from the one-third fee is necessary. The attorney's fees are reasonable and are approved.

The requested representative payments of \$10,000 each for the named plaintiffs were deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiffs point out that they executed a broader release than the class as a whole, but does not identify any particular claims of value that they may have. They also risk damage to her reputation and more difficulty in obtaining employment. They are also on the high end of acceptable given that there are three of them, but they are still within the permissible range in the circumstances. The representative payments are approved.

Litigation costs of \$18,922 (mostly mediation, filing, and consultant fees) are reasonable and are approved.

The settlement administrator's costs of \$21,950 are reasonable and are approved.

D. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motion[] is granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. 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.