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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF CONTRA COSTA**

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

15 Plaintiffs,

16 vs.

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

21 Defendants.

Case No. MSC21-02047

[Consolidated with Case No. MSC21-02137]

**DECLARATION OF ALEXANDRA
SOTO IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Hearing Date:

Hearing Time: 9:00 a.m.

Judge: Hon. Charles S. Treat

Dept: 12

Date Filed: October 1, 2021

Trial Date: Not set

1 I, Alexandra Soto, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary
4 Approval of Class Settlement and in support of my application for a Class Representative
5 Service Payment.
6

7 2. I have personal knowledge of all the facts stated herein. I could and would competently
8 testify under oath to these facts in court if requested to do so.

9 3. During the class period I have worked as a registered nurse for the defendants (“Aspen
10 Surgery”) in California and during that time period I have been classified by Aspen Surgery as a
11 non-exempt employee.
12

13 4. I retained my attorneys who are experienced in both class action and PAGA
14 representative action litigation and claims against employers for violations of the California
15 Labor Code. I have no personal relationship or family ties to my attorneys or any officer of the
16 Court. I am not aware of having any actual or potential conflicts of interest with another class
17 member in this case nor am I aware of having any actual or potential conflicts of interest with
18 ILYM Group, Inc., the settlement administrator. I am not aware of any other pending matter or
19 action asserting claims that will be extinguished or adversely affected by this settlement.
20

21 5. I decided to pursue this class action lawsuit and be a plaintiff/class representative
22 because I felt that my legal rights as an employee and others like me were violated. For example,
23 due in part to chronic understaffing, I often did not receive compliant meal and rest breaks which
24 were late, interrupted or missed entirely. I also did not receive all the meal and rest break
25 premiums I was entitled to and when I did receive premium payments they were often an
26 incorrect amount. As to rest breaks in particular, Aspen Surgery had a policy that did not allow
27

1 employees to leave the premises. I should have received duty-free rest breaks including the
2 ability to leave the premises if I chose to do so but this was not permitted. Aspen Surgery also
3 had a policy that employees were required to clock in at the actual start time of their shift and be
4 ready to work immediately. This meant I was not paid for the time I needed to spend off the
5 clock dressing into my scrubs at Aspen Surgery's facility. Aspen Surgery would also send me
6 home from work on short notice from time to time if business was slow due to various reasons
7 such as appointment cancellations but I was not paid reporting time pay when this occurred.

9 6. I spoke to my attorneys several times and discussed how Aspen Surgery implemented
10 its company policies and procedures. I also assisted my attorneys in their investigation into my
11 claims by providing them documents and answering their questions. I reviewed the complaint
12 before it was filed and after it was filed I was given access to an electronic file sharing program
13 that alerted me via email when important documents were filed so that I could review them and
14 keep up with the developments in the case which I understood was one of my duties as a class
15 representative. I would also contact my attorneys from time to time if I had any questions about
16 the case.

18 7. Even though this action is in the process of settling, I was and remain prepared to
19 perform all the duties of a class representative. I understand that as a class representative I have
20 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent class
21 members. I have understood that as a fiduciary, I have a duty to prosecute this action for the
22 benefit of the class members and surrender any right to compromise the group action for an
23 individual gain.

25 8. I understood that being a plaintiff/class representative in this case meant that I
26 was seeking damages not only for myself but also other current and/or former non-exempt
27

1 employees working for Aspen Surgery in California who make up the class. I felt that these
2 individuals were not aware of their labor law rights and even if they were they would probably
3 be apprehensive about speaking up or even simply because of the time, effort and risk involved
4 in filing a class action lawsuit.

5
6 9. I understood that being a part of this lawsuit involved risks. For example, my
7 attorneys explained to me that if the case went to trial and we lost, I could be held responsible to
8 pay for all or part of the attorney fees and costs paid by Aspen Surgery to defend this lawsuit.
9 Also, I knew there was a risk that future employers, if they ever find out about this lawsuit, could
10 hold it against me or downgrade me as a potential hire. As one of only three named Plaintiffs in
11 this case it would not be difficult for a future employer to become aware that I sued my employer
12 for labor law violations. Ultimately I decided these risks were worth it and decided to fight for
13 my rights and the rights of others regardless of the risks, time and effort I spent on this case.
14

15 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also
16 kept up to date on important developments by reviewing court filings that were made available to
17 me electronically as I described above.

18 11. A mediation took place on April 11, 2023 with Hon. Carl J. West (Ret.), a well-
19 respected and experienced mediator of wage and hour class actions. After the mediation the
20 parties were able to reach an agreement to settle the action based on a mediator's proposal. I
21 communicated with my attorneys regarding the terms of the settlement which was reached
22 between the parties and understood that I was representing absent class members and therefore
23 wanted the best possible result to be obtained for the class members and I believe a very positive
24 result was in fact achieved via settlement. I reviewed and signed the Memorandum of
25 Understanding on April 13, 2023 and when the final settlement papers were ready, I closely
26
27

1 reviewed the Settlement Agreement which I signed on August 29, 2023.

2 12. I have been actively involved with this lawsuit performing the duties described above.
3 Although I did not keep time records, I was in regular contact with my attorneys, reviewed court
4 filings, and spent a significant amount of time on the issues presented during the lawsuit and in
5 the settlement process. I estimate that I spent approximately 30-40 hours working on this case
6 up until this point. I believe I have been diligent and have done what is expected of a named
7 plaintiff and a proposed class representative to date, and will continue to do so. I have and
8 always will maintain the best interest of the class members.
9

10 13. My attorneys explained to me that the settlement process involves a two-step
11 review by the Court to determine whether the settlement is fair before approving the settlement.
12 I know this process also involves notifying all class members of the settlement terms and of their
13 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
14 settlement.
15

16 14. I believe I did the right thing by filing this case on behalf of the class members who,
17 subject to court approval, are in line to receive monetary payments as a result of this case and
18 settlement. This is money they may never have ever gotten if I did not pursue this action on their
19 behalf. I feel significant personal satisfaction to know that I played a role in the class members
20 being entitled to monetary payments as a result of the filing of this lawsuit. I also believe that
21 the requested Class Representative Service Payment of \$10,000 from the settlement is fair
22 compensation for the work I performed and the risks I undertook.
23

24 15. As part of the settlement it was necessary for me to sign a general release of all claims I
25 may have against Aspen Surgery. I believe the Class Representative Service Payment I have
26 requested provides me with some compensation for this agreed release.
27

16. In light of all the time and effort I have spent on this case, the risk I undertook by suing my employer, the exposure to being responsible for paying Aspen Surgery's costs in the event we did not win the case, the reputational risk that future employers may hold this lawsuit against me, the general release and in light of the size of the settlement, I believe the request for \$10,000 as a Class Representative service payment is fair and reasonable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Jan 10, 2024, at Dublín, Ca.
(city, state)


Alexandra Soto (Jan 10, 2024 14:17 PST)

Alexandra Soto