

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

shani@zakaylaw.com

Jackland K Hom (State Bar #327243)

jackland@zakaylaw.com

Jennifer Gerstenzang (State Bar #279810)

jenny@zakaylaw.com

Jaclyn Joyce (State Bar #285124)

jaclyn@zakaylaw.com

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

jlapuyade@jcl-lawfirm.com

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ANDREW ELLENBERG-WILEY, an
individual, on behalf of himself, and on behalf
of all persons similarly situated,

Plaintiffs,

vs.

SAN FRANCISCO AIDS FOUNDATION, a
California nonprofit corporation; and DOES 1-
50, Inclusive,

Defendants.

Case No. CGC-23-609040

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: August 26, 2025

Time: 9:00 a.m.

Dept.: 302

1 This matter having come before the Superior Court of the State of California, in and for the
2 County of San Francisco, at 9:00 a.m. on August 26, 2025, with Jean-Claude Lapuyade, Esq., of the
3 JCL Law Firm, APC and Shani O. Zakay, Esq. of the Zakay Law Group, APLC as counsel for Plaintiff
4 ANDREW ELLENBERG-WILEY (“Plaintiff”), and Kathleen Carter, Esq., Jeffrey Gillette, Esq., and
5 Dale A. Anderson, Esq. of Messner Reeves, LLP, as counsel for Defendant SAN FRANCISCO AIDS
6 FOUNDATION (hereinafter “Defendant”). The Court, having carefully considered the briefs,
7 argument of counsel and all the matters presented to the Court, and good cause appearing, hereby
8 GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Class Action and PAGA Settlement and Release of
11 Claims (“Settlement Agreement” or “Agreement”), a true and correct copy of which is attached to the
12 Declaration of Jackland K Hom, Esq. as Exhibit “1”. This is based on the Court’s determination that
13 the Settlement Agreement is within the range of possible final approval, pursuant to the provisions of
14 Section 382 of the California Code of Civil Procedure and California Rules of Court, Rule 3.769.

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

17 3. Subject to the terms of the Settlement Agreement, the Total Settlement Amount that
18 Defendant shall pay is Three Hundred Eighty-Five Thousand Dollars and Zero Cents (\$385,000.00).
19 It appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate,
20 and reasonable as to all Class Members when balanced against the probable outcome of further
21 litigation relating to certification, liability, and damages issues. It further appears that investigation and
22 research have been conducted such that counsel for the Parties are able to reasonably evaluate their
23 respective positions. It further appears to the Court that settlement at this time will avoid substantial
24 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further
25 prosecution of the litigation. It further appears that the Settlement has been reached as the result of
26 intensive, serious, and non-collusive arms-length negotiations.

27 4. The Court preliminarily finds that the Settlement appears to be within the range of
28 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court

1 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
2 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and
3 reasonable when balanced against the probable outcome of further litigation relating to certification,
4 liability, and damages issues.

5 5. Plaintiff seeks Attorneys' Fees in the amount not to exceed one-third of the Gross
6 Settlement Amount, currently estimated at One Hundred Twenty-Eight Thousand Three Hundred
7 Thirty-Three Dollars and Thirty-Three Cents (\$128,333.33), plus a reimbursement of reasonably
8 incurred expenses in an amount of up to Thirty Thousand Dollars and Zero Cents (\$30,000.00), and
9 proposed Service Award to the Class Representative, Andrew Ellenberg-Wiley, in an amount of not
10 more than Ten Thousand Dollars and Zero Cents (\$10,000.00). While these awards appear to be within
11 the range of reasonableness, the Court will not approve the Attorneys' Fees and Attorneys' Expenses,
12 or the Service Award until the Final Approval Hearing.

13 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of
14 a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any other
15 proceeding should this Settlement not become final. For settlement purposes only, the Court
16 conditionally certifies the following Class:

17 All persons who are or previously were employed by Defendant in
18 California and classified as non-exempt employees ("Class") at any time
19 during the period from September 13, 2019, to the earlier of the date the
20 Court grants preliminary approval of the Settlement or the date on which
21 the total number of Workweeks worked by Class Members equals 15,500
22 ("Class Period").

23 7. The Court concludes that, for settlement purposes only, the Class meets the requirements
24 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is
25 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)
26 common questions of law and fact predominate, and there is a well-defined community of interest
27 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the
28 Class Representative are typical of the claims of the Class Members; (d) the Class Representative will

1 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other
2 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified
3 to act as counsel for the Class Representative in his individual capacity and as the representative of the
4 Class Members.

5 8. The Court provisionally appoints Plaintiff Andrew Ellenberg-Wiley as the representative
6 of the Class.

7 9. The Court provisionally appoints Shani Zakay, of Zakay Law Group, APLC, and Jean-
8 Claude Lapuyade, Esq., of JCL Law Firm, APC as Class Counsel for the Class Members.

9 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of
10 Class and Representative Action Settlement and Final Hearing Date ("Class Notice" or "Notice")
11 attached to the Agreement as Exhibit "A". The Court finds that the Class Notice appears to fully and
12 accurately inform the Class Members and Aggrieved Employees of all material elements of the
13 proposed Settlement, including the right of any Class Member to be excluded from the Class by
14 submitting a written request for exclusion, and of each Class Member's right and opportunity to object
15 to the Settlement. The Court further finds that the distribution of the notices substantially in the manner
16 and form set forth in the Agreement and this Order meets the requirements of due process, is the most
17 reasonable notice under the circumstances, and shall constitute due and sufficient notice to all persons
18 entitled thereto. The Court orders the mailing of the Class Notice by first class mail, pursuant to the
19 terms set forth in the Agreement.

20 11. The Court hereby appoints Apex Class Action LLC as Settlement Administrator. Within
21 ten (10) business days after Defendant receives notice of an order granting preliminary approval of this
22 Settlement, Defendant shall provide the Settlement Administrator with the Class Data for purposes of
23 preparing and mailing Notice Packets to the Class Members. The Class Data includes information
24 regarding Class Members that Defendant will in good faith compile from its records, including each
25 Class Member's full name, last-known mailing address, Social Security number, and start and end dates
26 of employment. No later than twenty-one (21) calendar days after preliminary approval of the
27 Settlement, the Settlement Administrator shall mail copies of the Notice Packet to all Class Members
28 via regular First-Class U.S. Mail.

1 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
2 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
3 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
4 Settlement of the Released Class Claims that are set forth in the Notice. All requests for exclusion must
5 be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the
6 Settlement Administrator mails the Notice Packets to Class Members or, in the case of re-mailed
7 Notice, not more than fifteen (15) days from the original Response Deadline. Any such person who
8 chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual
9 Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to
10 object, appeal or comment thereon. Class Members who have not requested exclusion shall be bound
11 by all determinations of the Court, the Agreement, and Judgment.

12 13. Any Class Member who has not opted out may appear at the final approval hearing and
13 may object or express the Class Member's views regarding the Settlement and may present evidence
14 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined
15 by the Court as provided in the Notice. Class Members will have forty-five (45) calendar days from the
16 date the Settlement Administrator mails the Class Notice to postmark their written objections to the
17 Settlement Administrator.

18 14. A hearing on Plaintiff's Motion for Final Approval and Plaintiff's Motion for Attorneys'
19 Fees and Attorneys' Expenses, and Service Award shall be held before this Court on _____ **at**
20 _____ **AM/PM** in Department 302 of the San Francisco County Superior Court to determine all
21 necessary matters concerning the Settlement, including: whether the proposed settlement of the Action
22 on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should
23 be finally approved by the Court; whether an Order Granting Final Approval should be entered herein;
24 whether the plan of allocation contained in the Agreement should be approved as fair, adequate and
25 reasonable to the Class; and to finally approve the Attorneys' Fees and Attorneys' Expenses, Service
26 Award, and the Claims Administration Expenses. All papers in support of the motion for final approval
27 and the motion for Attorneys' Fees, Attorneys' Expenses, and Service Award shall be filed with the
28 Court and served on all counsel within twenty-eight (28) days following the expiration of the Response

1 Deadline.

2 15. In the event the Settlement does not become effective in accordance with the terms of the
3 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become
4 effective for any reason, this Settlement Agreement shall be rendered null and void and shall be vacated,
5 and the Parties shall revert to their respective positions as of before entering into the Agreement. In
6 such an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order,
7 shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to
8 alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it
9 is not approved.

10 16. The Court reserves the right to adjourn or continue the date of the final approval hearing
11 and all dates provided for in the Agreement without further notice to Class Members and retains
12 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.
13
14
15

16 Dated: _____

17 JUDGE OF THE SUPERIOR COURT
18
19
20
21
22
23
24
25
26
27
28