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FILED  
JUL 06 2023  
K. BEKER CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
CONTRA COSTA  
By: *[Signature]*

5 **ABRAMSON LABOR GROUP**  
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9 Attorneys for Plaintiff and the proposed class

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF CONTRA COSTA**

13 GILDARDO MOTA STEVENS, an  
14 individual, on behalf of herself and others  
similarly situated,

15 PLAINTIFF,

16 v.

17 PURPLE EAGLE LLC; and DOES 1 thru 50,  
18 inclusive,

19 DEFENDANTS.

CASE NO. MSC21-02204

[Case Assigned for All Purposes to Hon.  
Charles S. Treat in Dept. 12]

20 ~~[PROPOSED]~~ **AMENDED ORDER**  
**GRANTING PRELIMINARY APPROVAL**  
**OF CLASS ACTION SETTLEMENT**

21 Date: June 8, 2023  
Time: 9:00 a.m.  
Dept.: 12

22 Complaint Filed: October 26, 2021  
23 Trial Date: None Set

1 The Motion for Preliminary Approval of the Stipulation for Settlement of Class and  
2 Representative Action (“Agreement” or “Settlement”), a copy of which is attached as  
3 to the Declaration of Liane Katzenstein Ly as Exhibit “1”, came before this Court on June 8,  
4 2023. The Court, having considered the papers submitted in support of the motion of the parties,  
5 **HEREBY ORDERS THE FOLLOWING:**

6 1. The Court grants preliminary approval of the Agreement and the Class based  
7 upon the terms set forth in the Agreement filed herewith. The Settlement is fair, adequate, and  
8 reasonable to the Class. The Court finds that: (a) the Agreement resulted from extensive arm’s  
9 length negotiations; and (b) the Agreement is sufficient to warrant notice of the Settlement to  
10 persons in the Class and a full hearing on the final approval of the Settlement.

11 2. “Class” or “Settlement Class” means all individuals who are or were employed by  
12 Defendant as non-exempt employees in California during the Class Period.

13 3. The “Class Period” is October 26, 2017 to March 25, 2023.

14 4. “Aggrieved Employee” or “PAGA Settlement Class” means all individuals who  
15 are or were employed by Defendant as non-exempt employees in California during the PAGA  
16 Period.

17 5. The “PAGA Period” means the period from October 26, 2020 to March 25, 2023.

18 6. The Settlement falls within the range of reasonableness and appears to be  
19 presumptively valid, subject only to any objections that may be raised at the final fairness  
20 hearing and final approval by this Court.

21 7. The Court makes the following preliminary findings for settlement purposes  
22 only:

- 23 A. The Class Members, which consist of approximately 351 persons, is so  
24 numerous that joinder of all members is impracticable;  
25 B. There appear to be questions of law or fact common to the Class Members  
26 for purposes of determining whether this Settlement should be approved;  
27 C. Plaintiff’s claims appear to be typical of the claims being resolved  
28 through the proposed settlement;  
D. Plaintiff appears to be capable of fairly and adequately protecting the  
interests of the Class Members in connection with the proposed  
settlement;

1 E. Common questions of law and fact appear to predominate over questions  
2 affecting only the Class Members. Accordingly, the Class Members  
3 appear to be sufficiently cohesive to warrant settlement by representation;  
4 and

5 F. Certification of the class appears to be superior to other available methods  
6 for the fair and efficient resolution of the claims of the Class Members.

7 8. The Court approves, as to form and content, the Notice to Class Members in  
8 substantially the form attached to the Agreement as Exhibit "A" (Class Notice).

9 9. The Court approves the procedure for Class Members to object to the Settlement  
10 as set forth in the Class Notice to Class Members.

11 10. The Court approves the procedure for Class Members to become Participating  
12 Class Members as set forth in the Notice to Class Members.

13 11. The Court directs the mailing of the Notice to Class Members by first class mail  
14 to the Class Members in accordance with the Implementation Schedule set forth below. The  
15 Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in  
16 the Implementation Schedule, meet the requirements of due process and provide the best notice  
17 practicable under the circumstances and shall constitute due and sufficient notice to all persons  
18 entitled thereto.

19 12. The Court confirms Kingsley & Kingsley, APC and Abramson Labor Group as  
20 Class Counsel.

21 13. The Court confirms the named Plaintiff in the operative complaint in the Action  
22 as the Class Representative.

23 14. The Court approves Phoenix Settlement Administrators as the Settlement  
24 Administrator.

25 15. The Court orders that pursuant to the California Private Attorneys General Act,  
26 Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will  
27 continue to be given to the Labor & Workforce Development Agency.

28 16. The Court orders the following Implementation Schedule for further proceedings:

|    |    |  |  |
|----|----|--|--|
| 1  | a. | Preliminary Approval   | June 8, 2023   |
| 2  | b. | Deadline for Defendant to Provide Class List to Administrator                    | 15 calendar days from Preliminary Approval                               |
| 3  |    |  |  |
| 4  | c. | Mail Notice to Class Members   | 14 calendar days from Administrator's receipt of Class Data              |
| 5  |    |  |  |
| 6  |    |  |  |
| 7  |    |  |  |
| 8  | d. | Deadline for Class Members to Postmark Any Opt-Out                               | 60 calendar days from mailing of Notice Packet (judged by postmark date) |
| 9  |    |  |  |
| 10 |    |  |  |
| 11 | e. | Deadline for Class Members to Postmark Any Objection                             | 60 calendar days from mailing of Notice Packet (judged by postmark date) |
| 12 |    |  |  |
| 13 |    |  |  |
| 14 |    |  |  |
| 15 | f. | Deadline for Class Counsel to file Motion for Final Approval of Class Settlement | September 27, 2023   |
| 16 |    |  |  |
| 17 | g. | Deadline for Class Counsel to file Motion for Class Counsel Award                | September 27, 2023   |
| 18 |    |  |  |
| 19 | h. | Final Approval Hearing   | October 19, 2023 at 9:00 a.m.  |
| 20 |    |  |  |

21 17. The Court will not decide the amount of the Class Counsel's attorney's fees and  
 22 costs and Plaintiff's enhancement payment until the final approval hearing.

23 18. The Court ORDERS that five percent (5%) of Class Counsel's attorney's fees are  
 24 to be withheld by the Administrator pending satisfactory compliance as found by the Court.

25 19. The Court will set a compliance hearing after the completion of the distribution  
 26 process and the expiration of the time to cash checks for Class Counsel and the Administrator to  
 27 comply with CCP 384(b) and to submit a summary accounting how the funds have been  
 28 distributed to the class members and the status of unresolved issues. Plaintiff's Counsel are to

1 submit a compliance statement one (1) week prior to the compliance hearing date. If the  
2 distribution is completed, the Court will at that time release any hold-back of attorney fees.

3 20. The Motion for Preliminary Approval came up for hearing on June 8, 2023 in  
4 Department 12 of the above-entitled Court, where the Court issued a tentative ruling. The Court  
5 directed Counsel to prepare an order reflecting the entire tentative ruling, which is attached here  
6 as Exhibit "A".

7 21. On June 8, 2023, Plaintiff moved for preliminary approval of his class action and  
8 PAGA settlement with defendant Purple Eagle LLC, and the Court has granted the motion.

9 22. Defendant is the parent of Hand & Stone Massage and Facial Spa. Plaintiff was  
10 employed with defendant as a neuromuscular therapist in the spring of 2021, though only briefly.  
11 The original complaint was filed on October 26, 2021. A PAGA claim was added by amendment  
12 in January 2022.

13 23. The settlement would create a gross settlement fund of \$150,000. The class  
14 representative payment to the plaintiff would be \$5,000. Attorney's fees would be \$50,000 {one-  
15 third of the settlement). Litigation costs would not exceed \$15,000. The settlement  
16 administrator's costs are estimated at \$10,000. PAGA penalties would be \$10,000, resulting in a  
17 payment of \$7,500 to the LWDA. The net amount paid directly to the class members would be  
18 about \$62,500, not including distribution of the PAGA penalty. The fund is non-reversionary.  
19 There are an estimated 351 class members. Based on the estimated class size, the average net  
20 payment for each class member is approximately \$178, not including PAGA. The individual  
21 payments will vary considerably, however, because of the allocation formula prorating payments  
22 according to the number of weeks worked during the relevant time. The number of aggrieved  
23 employees for PAGA purposes is smaller, because the starting date of the relevant period is later.

24 24. The entire settlement amount will be deposited with the settlement administrator  
25 within 14 days after the effective date of the settlement.

26 25. The proposed settlement would certify a class of all current and former non-  
27 exempt employed at Defendants' California facilities between October 26, 2017 and March 25,  
28 2023. For PAGA purposes, the period covered by the settlement is October 26, 2020 through

1 March 25, 2023.

2 26. The class members will not be required to file a claim. Class members may object  
3 or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the  
4 settlement.) Funds would be apportioned to class members based on the number of workweeks  
5 worked during the class period.

6 27. A list of class members will be provided to the settlement administrator within 15  
7 days after preliminary approval. The administrator will use skip tracing as necessary. Various  
8 prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.  
9 Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to  
10 the Controller's unclaimed property fund.

11 28. The settlement contains release language covering all claims and causes of  
12 action, alleged or which could have reasonably been alleged based on the allegations in the  
13 operative pleading, including a number of specified claims\_ Under recent appellate authority, the  
14 limitation to those claims with the "same factual predicate" as those alleged in the complaint is  
15 critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court cannot  
16 release claims that are outside the scope of the allegations of the complaint.") "Put another way,  
17 a release of claims that goes beyond the scope of the allegations in the operative complaint' is  
18 impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469  
19 F.Supp.3d 942, 949.)

20 29. Formal discovery was undertaken, resulting in the production of substantial  
21 documents. The matter settled after arms-length negotiations, which included a session with an  
22 experienced mediator.

23 30. Counsel also has provided an analysis of the case, and how the settlement  
24 compares to the potential value of the case, after allowing for various risks and contingencies.  
25 Plaintiff's principal claim centers on allegations that because therapy appointments are scheduled  
26 for the start of each shift, it was necessary for employees to arrive early to prepare the spa rooms,  
27 resulting in unpaid work time. Defendant responded that employees could clock in, and begin  
28 getting paid, when they arrived and started working. Plaintiff also asserted violations concerning

1 rest breaks and meal breaks, but can point to no stated policy in violation of the law; hence,  
2 defendant contended that there is no documentation of any such violations, which are in any  
3 event difficult to prove and to certify for class treatment. Plaintiff also contended that employees  
4 were required to use their personal cell phones for clocking in and related purposes, but  
5 defendant contended that there is no such requirement.

6 31. The potential liability needs to be adjusted for various evidence and risk-based  
7 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a  
8 number of reasons: they derive from other violations, they include "stacking" of violations, the  
9 law may only allow application of the "initial violation" penalty amount, and the total amount  
10 may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties  
11 may be reduced where "based on the facts and circumstances of the particular case, to do  
12 otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."))  
13 Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory  
14 penalties, as opposed to actual missed wages. (See, e.g. *Naranjo v. Spectrum Security Services,*  
15 *Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90  
16 Cal.App.5th 548, 566-67.)

17 32. Counsel attest that notice of the proposed settlement was transmitted to the  
18 LWDA concurrently with the filing of the motion.

19 33. The primary determination to be made is whether the proposed settlement is "fair,  
20 reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,  
21 including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of  
22 further litigation, the risk of maintaining class action status through trial, the amount offered in  
23 settlement, the extent of discovery completed and the state of the proceedings, the experience  
24 and views of counsel, the presence of a governmental participant, and the reaction ... to the  
25 proposed settlement." (See also *Amaro*, 69 Cal.App.5th 521.)

26 34. Because this matter also proposes to settle PAGA claims, the Court also must  
27 consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in  
28 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*,

1 the court found that the "fair, reasonable, and adequate" standard applicable to class actions  
2 applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the  
3 fairness of the settlement's allocation of civil penalties between the affected aggrieved  
4 employees". (*Id.*, at 64-65.)

5 35. California law provides some general guidance concerning judicial approval of  
6 any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University*  
7 *of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement  
8 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,  
9 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "The court cannot surrender  
10 its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere  
11 puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990)  
12 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply,  
13 because "Where the rights of the public are implicated, the additional safeguard of judicial  
14 review, though more cumbersome to the settlement process, serves a salutatory purpose."  
15 (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48,  
16 63.)

17 36. Plaintiff seeks one-third of the total settlement amount as fees, relying on the  
18 "common fund" theory. Even a proper common fund-based fee award, however, should be  
19 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th  
20 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine  
21 whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of  
22 a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the  
23 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable  
24 range, but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.)  
25 Following typical practice, however, the fee award will not be considered at this time, but only  
26 as part of final approval.

27 37. Similarly, litigation costs and the requested representative payment of \$5,000 for  
28 the plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative



1 payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175  
2 Cal.App.4th 785, 804-07.

3 38. IT IS FURTHER ORDERED that if the Court does not execute and file an Order  
4 of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the  
5 Agreement, does not occur for any reason, the Agreement and the proposed Settlement that is the  
6 subject of this Order shall become null, void, unenforceable and inadmissible in any judicial,  
7 administrative or arbitral proceeding for any purpose, and all evidence, court orders and  
8 proceedings had in connection therewith, shall be without prejudice to the status quo ante rights  
9 of the Parties to the litigation, as more specifically set forth in the Agreement.

10 39. IT IS FURTHER ORDERED that, pending further Order of this Court, all  
11 proceedings in this matter except those contemplated herein and in the Agreement are hereby  
12 stayed.

13 40. The Court expressly reserves the right to adjourn or continue the Final Fairness  
14 Hearing from time to time without further notice to members of the Class.

15  
16 DATED: JUL 06 2023

17   
18 Hon. Jill C. Fannin  
19 JUDGE OF THE SUPERIOR COURT

20 PRESIDING JUDGE  
21 PER C.C.P. 635  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT "A"**

Superior Court of California, Contra Costa County

Department 12  
925-608-1000  
[www.cc-courts.org](http://www.cc-courts.org)



K. Bieker  
Court Executive Officer

| <b>MINUTE ORDER</b>  |   |
|--|---|
| <b>GILDARDO STEVENS VS. PURPLE EAGLE LLC</b>   | <b>MSC21-02204</b>                                    |
| <b>HEARING DATE: 06/08/2023</b>  |   |
| <b>PROCEEDINGS:</b>  | <b>*HEARING ON MOTION IN RE: PRELIMINARY APPROVAL</b> |
| DEPARTMENT 12<br>JUDICIAL OFFICER: CHARLES S TREAT   | CLERK: A. MONTGOMERY<br>COURT REPORTER: NOT REPORTED  |
| <b><u>JOURNAL ENTRIES:</u></b>   |   |
| - No appearance either party.  |   |
| There being no opposition to the tentative ruling, the tentative ruling becomes the order of the court as follows:   |   |
| Plaintiff Gilardo Mota Stevens moves for preliminary approval of his class action and PAGA settlement with defendant Purple Eagle LLC. The motion is <b>granted</b> .  |   |
| <b>A. Background and Settlement Terms</b>  |   |
| Defendant is the parent of Hand & Stone Massage and Facial Spa. Plaintiff was employed with defendant as a neuromuscular therapist in the spring of 2021, though only briefly.   |   |
| The original complaint was filed on October 26, 2021. A PAGA claim was added by amendment in January 2022.   |   |
| The settlement would create a gross settlement fund of \$150,000. The class representative payment to the plaintiff would be \$5,000. Attorney's fees would be \$50,000 (one-third of the settlement). Litigation costs would not exceed \$15,000. The settlement administrator's costs are estimated at \$10,000. PAGA penalties would be \$10,000, resulting in a payment of \$7,500 to the LWDA. The net amount paid directly to the class members would be about \$62,500, not including distribution of the PAGA penalty. The fund is non-reversionary. There are an estimated 351 class members. Based on the estimated class size, the average net payment for each class member is approximately \$178, not including PAGA. 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 14 days after the effective date of the settlement.  |   |
| The proposed settlement would certify a class of all current and former non-exempt employed at Defendants' California facilities between October 26, 2017 and March 25, 2023. For PAGA purposes,   |   |

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the period covered by the settlement is October 26, 2020 through March 25, 2023.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 15 days after preliminary approval. The administrator will use skip tracing as necessary. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the Controller'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. Plaintiff's principal claim centers on allegations that because therapy appointments are scheduled for the start of each shift, it was necessary for employees to arrive early to prepare the spa rooms, resulting in unpaid work time. Defendant responded that employees could clock in, and begin getting paid, when they arrived and started working. Plaintiff also asserted violations concerning rest breaks and meal breaks, but can point to no stated policy in violation of the law; hence, defendant contended that there is no documentation of any such violations, which are in any event difficult to prove and to certify for class treatment. Plaintiff also contended that employees were required to use their personal cell phones for clocking in and related purposes, but defendant contended that there is no such requirement.

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

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Court Executive Officer

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*, 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. Recently, 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 salutary purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

### C. Attorney Fees

Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. 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.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of \$5,000 for the plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07.

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K. Bieker  
Court Executive Officer

**D. Discussion and Conclusion**

The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

Counsel is directed to prepare an order reflecting this entire tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk by phone. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. 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.

DATED: 6/8/2023

BY: \_\_\_\_\_

A. MONTGOMERY, DEPUTY CLERK