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Attorneys for Plaintiff MANDISA AIN LYONS, as an individual and on behalf of all similarly situated employees,

SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

MANDISA AIN LYONS,

Plaintiff,

vs.

PALECEK IMPORTS, INC.,

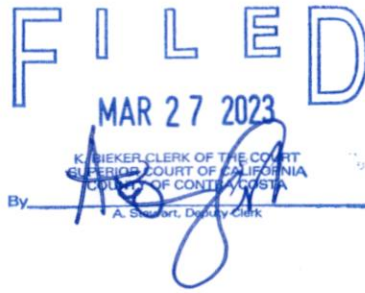
Defendants.

) CASE NO. MSC21-01222

) **ORDER AFTER HEARING**
) **NOVEMBER 17, 2022; RE:**
) **PRELIMINARY APPROVAL OF**
) **CLASS ACTION & PAGA**
) **SETTLEMENT**

) JUDGE: Edward G. Weil

) DEPT: 39



1 Plaintiff Mandisa Lyons moves for preliminary approval of her class action and PAGA
2 settlement with defendant Palacek Imports, Inc., which operates a furniture manufacturing and
3 wholesale business.

4 **A. Background and Settlement Terms**

5 The original complaint was filed on June 14, 2021, raising claims on behalf of
6 nonexempt employees, alleging that defendant violated the Labor Code in various ways,
7 including failure to pay minimum and overtime wages, failure to provide meal and rest breaks,
8 failure to provide proper wage statements, failure to reimburse necessary business expenses, and
9 failure to pay all wages due on separation. The complaint included PAGA claims only, based
10 on notices previously provided to the LWDA. A First Amended Complaint was filed on August
11 10, 2022, expanding the case to include class action claims.

12 The settlement would create a gross settlement fund of \$900,000. The class
13 representative payment to the plaintiff would be \$5,000. Attorney's fees would be \$300,000
14 (one-third of the settlement). Litigation costs would not exceed \$20,000. The settlement
15 administrator's (Phoenix's) costs will not exceed \$20,000. PAGA penalties would be \$10,000,
16 resulting in a payment of \$7,500 to the LWDA. The net amount paid directly to the class
17 members would be about \$572,500. The fund is non-reversionary. Based on the class size, the
18 average payment to each class member would be about \$2,000.

19 The entire settlement amount will be deposited with the settlement administrator within
20 30 days after the effective date of the settlement (which is specifically defined to account for
21 contingencies such as objections and appeals).

22 The proposed settlement would certify a class of all current and former hourly employees
23 in California at any time between June 1, 2017 and the date of preliminary approval "excluding
24 any persons who were represented by counsel, and had a civil action pending as of July 1, 2022."
25 The class has about 285 members.

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

1 worked during the class period. Various prescribed follow-up steps will be taken with respect to
2 mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing
3 will be voided, and will be provided to the State Controller's unclaimed property fund.

4 The settlement contains release language covering "any and all claims that were asserted
5 in the Action, or that arise from or could have been asserted based on the facts...alleged in
6 Plaintiff's complaint or First Amended Complaint," as well as a number of specifically
7 identified claims. Under recent appellate authority, the limitation to those claims with the "same
8 factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt.*,
9 LLC (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope
10 of the allegations of the complaint." "Put another way, a release of claims that goes beyond the
11 scope of the allegations in the operative complaint' is impermissible."] *Id.*, quoting *Marshall v.*
12 *Northrop Grumman Corp.* (C.D. Cal. 2020) 469 F.Supp.3d 942, 949.)

13 Informal discovery was undertaken, resulting in the production of substantial documents,
14 including a 20% sampling of certain records. Counsel retained an expert to review the material.
15 The matter settled after arms-length negotiations, which included a session with an experienced
16 mediator on June 28, 2022. The First Amended Complaint was filed on August 10, 2022. The
17 court docket indicates that the stipulation was signed by counsel on June 8, 2022, and approved
18 June 9, with both documents officially filed June 10, 2022. The First Amended Complaint
19 included the class action allegations, but did not otherwise expand the scope of the facts alleged,
20 and therefore did not require new discovery and investigation.

21 Counsel also has provided an analysis of the case, broken down by each type of claim
22 and how the settlement compares to the potential value of the case, after allowing for various
23 risks and contingencies. This includes an estimate of the maximum value of each claim, with a
24 "reasonable estimated value" of the claim at a percentage of the maximum (20% for the meal
25 and rest break claims, 30% for the wage statement claims, 50% for waiting time penalties, and
26 50% for reimbursement claims. These percentages presumably reflect various risk-based
27 contingencies, including problems of proof.
28

1 Similarly, an estimate of PAGA penalties is provided, starting at a theoretical maximum
2 of \$10 million. PAGA penalties are difficult to evaluate for a number of reasons: they derive
3 from other violations, they include “stacking” of violations, the law may only allow application
4 of the “initial violation” penalty amount, and the total amount may be reduced in the discretion
5 of the court. (See Labor Code, §2699(e)(2) [PAGA penalties may be reduced where “based on
6 the facts and circumstances of the particular case, to do otherwise would result in an award that
7 is unjust arbitrary and oppressive, or confiscatory.”])

8 Counsel attest that notice of the proposed settlement was transmitted to the LWDA
9 immediately before filing the motion.

10 The agreement provides that “if, for any reason the Court does grant Preliminary
11 Approval, Final Approval or enter Judgment, Palacek reserves.... all available defenses to the
12 claims in the Action.” (Mahoney Dec., Ex. A, par. 13.1) Presumably this was intended to state
13 if “the Court does NOT grant” approval, Palacek reserves its defenses. At the hearing, counsel
14 confirmed that this inadvertent error would be corrected.

15 **B. Legal Standards**

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

24 Because this matter also proposes to settle PAGA claims, the Court also must consider
25 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*
26 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court
27 found that the “fair, reasonable, and adequate” standard applicable to class actions applies to
28 PAGA settlements. (*Id.*, at p. 64) The Court also held that the trial court must assess “the fairness

1 of the settlement's allocation of civil penalties between the affected aggrieved employees[.]"
2 (Id., at pp. 64-65.)

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

15 C. Attorney fees

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

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

1 payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175
2 Cal.App.4th 785, 804-807.

3 **D. Discussion and Conclusion**

4 The settlement is sufficiently fair, reasonable, and adequate to justify *preliminary*
5 approval. Counsel are directed to prepare an order reflecting this entire ruling, the other findings
6 in the previously submitted proposed order, and to obtain a hearing date for the motion for final
7 approval from the Department clerk. Other dates in the scheduled notice process should track as
8 appropriate to the hearing date. The ultimate judgement must provide for a compliance hearing
9 after the settlement has been completely implemented. Plaintiffs' counsel are to submit a
10 compliance statement one week before the compliance hearing date. 5% of the attorney's fees
11 are to be withheld by the claims administrator pending satisfactory compliance as found by the
12 Court.

13 **E. Final Approval**

14 The final approval hearing is set for September 7, 2023. Moving papers must be filed
15 sixteen (16) court days before the hearing.

16
17 **DATED:**

18 MAR 24 2023



19 Hon. Jill C. Fannin
20 Judge of the Superior Court

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

PROOF OF SERVICE
Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **March 20, 2023**, I served [X] true copies [] originals of the following document(s): **ORDER AFTER HEARING NOVEMBER 17, 2022; RE: PRELIMINARY APPROVAL OF CLASS ACTION & PAGA SETTLEMENT**. I served the document(s) on the person(s) below as follows:

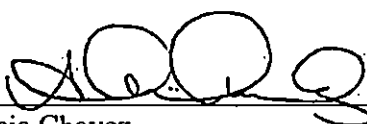
John V. Ricca, Esq. Sat Sang Khalsa, Esq. GORDON & REES LLP 275 Battery Street, 2 Ste. 2000 San Francisco, CA 94111	Attorneys for Defendant PALECEK IMPORTS, INC. Telephone: (415) 986-5900 Facsimile: (415) 986-8054 Emails: jricca@grsm.com jvernon@grsm.com skhalsa@grsm.com
Graham S.P. Hollis, Esq. Vilmarie Cordero, Esq. Hali Anderson, Esq. Nathan J. Reese, Esq. GRAHAMHOLLIS APC 3555 Fifth Ave. Ste. 200 San Diego, CA 92103	Attorneys for Plaintiff CRYSTAL SARUCA Telephone: (619) 692-0800 Facsimile: (619) 692-0822 Emails: ghollis@grahamhollis.com vcordero@grahamhollis.com handerson@grahamhollis.com nrcese@grahamhollis.com

The document(s) were served by the following means:

☒ **By e-mail:** Based upon court order or an agreement of the parties to accept service by e-mail, I caused the document(s) to be sent to the persons at the electronic service addresses listed above from the email address achavez@mahoney-law.net. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **March 20, 2023**, at Long Beach, California.


Alicia Chavez