

AUG 18 2023



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Attorneys for Plaintiff(s),
PAULA JOHNSON, and all others similarly situated
(Additional attorneys for Plaintiff(s) on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
(UNLIMITED JURISDICTION)

PAULA JOHNSON, on behalf of herself and all
others similarly situated, and as an "aggrieved
employee" on behalf of other "aggrieved
employees" under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

NAN MCKAY & ASSOCIATES, INC., a
California corporation; and DOES 1-50,
inclusive,

Defendant(s).

Case No.: CGC-20-586796

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
SETTLEMENT**

Action filed: September 24, 2020
Hearing Date: August 9, 2023
Hearing Time: 9:30 a.m.
Hearing Dept: 302, The Hon. Richard
B. Ulmer

FILED
Superior Court of California
County of San Francisco

AUG 31 2023

CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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1 This matter came on for hearing on August 9, 2023 at 9:30 a.m. in Department 302 of
2 the above-captioned court on Plaintiff's Motion for Final Approval of a Class Action Settlement
3 pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class
4 Action Settlement and Release of Claims (the "Settlement") filed herewith which provides for
5 a Gross Settlement Amount ("GSA") of \$280,000.00 in compromise of all disputed claims on
6 behalf of all persons Defendant Nan McKay & Associates, Inc. employed in California as hourly
7 or non-exempt employees during the Class Period. The "Class Period" means the period of time
8 from September 25, 2016, through June 16, 2022. All capitalized terms used herein shall have
9 the same meaning as defined in the Settlement.

10 In accordance with the Court's prior ruling granting Preliminary Approval of Class
11 Action Settlement, Class Members have been given notice of the terms of the Settlement and
12 the opportunity to request exclusion, comment upon or object to it or to any of its terms. Having
13 received and considered the Settlement, the supporting papers filed by the Parties, and the
14 evidence and argument received by the Court in conjunction with the motions for preliminary
15 and final approval of the Settlement, the Court grants final approval of the Settlement and
16 **HEREBY ORDERS, DECREES AND MAKES THE FOLLOWING DETERMINATIONS:**

17 1. The Court has jurisdiction over the subject matter of the Action and over all
18 Parties to the Action, including all Class Members who did not request to be excluded from the
19 Settlement. Pursuant to this Court's ruling granting the Motion for Preliminary Approval of
20 Class Action Settlement of February 27, 2023, the Class Notice was sent to each Class Member
21 by First Class U.S. mail. The Class Notice informed Class Members of the terms of the
22 Settlement, their right to receive their proportional share of the Settlement, their right to request
23 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
24 person or by counsel at the final approval hearing and be heard regarding final approval of the
25 Settlement. Adequate periods of time were provided by each of these procedures. No member
26 of the Class presented written objections to the proposed Settlement as part of this notice
27 process, stated an intention to appear, or actually appeared at the final approval hearing.

28 2. For purposes of this Settlement, the "Settlement Class" means all persons
Defendant employed in California as hourly or non-exempt employees (collectively "Class
Members") during the Class Period.

3. The Court finds and determines that the notice procedure afforded adequate



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1 protections to Class Members and provides the basis for the Court to make an informed decision
2 regarding final approval of the Settlement based on the responses of Class Members. The Court
3 finds and determines that the notice provided in this case was the best notice practicable, which
4 satisfied the requirements of law and due process as to all persons entitled to such notice.

5 4. **Release by Plaintiff and Class Members.** Plaintiff and Class Members. The
6 Parties agree that it is their intent that the resolution set forth in this Settlement will release and
7 discharge the Released Claims by way of any further attempt, by lawsuit, administrative claim
8 or action, arbitration, demand, or other action of any kind by each and all of the Settlement Class
9 Members (including participation to any extent in any representative or collective action) against
10 the Released Parties. This release will not take effect until Defendant has paid the Gross
11 Settlement Amount in full per this Settlement Agreement. All PAGA Members, regardless of
12 whether they submit timely and valid requests for exclusion from the Settlement, will release all
13 Released Claims under PAGA against the Released Parties. The State of California will also
14 release all Released Claims under PAGA against the Released Parties.

15 Release of Claims by Plaintiff. Upon the Effective Date, and only after Defendant pays
16 the entirety of the Gross Settlement Amount, Plaintiff will be deemed to have released the
17 Released Parties of and from all of the Released Claims during the Class Period. These claims
18 include all claims alleged or could have been alleged based on the facts, circumstances, and/or
19 primary rights at issue in the Complaint and any amendments thereto. They include without
20 limitation: (1) all claims for failure to pay wages earned, including minimum wages, and
21 overtime wages; (2) all claims for failure to provide rest periods and claims for rest period
22 premium pay; (3) all claims for failure to provide meal periods and claims for meal period
23 premium pay; (4) all claims for failure to provide accurate wage statements and related penalties;
24 (5) all claims for failure to timely pay wages during employment and at termination; (6) all
25 claims for violation of California Business and Professions Code §§ 17200, et seq., to the extent
26 such claims are predicated on the other claims released herein; and (7) all claims for violation
27 of PAGA and all related claims for penalties, to the extent such claims are predicated on the
28 other claims released herein. Plaintiff's release set forth herein shall include a waiver of all rights
under California Civil Code §1542, which includes a release of all known and unknown claims
against the Released Parties during the Class Period.

Civil Code section 1542 provides: A GENERAL RELEASE DOES NOT EXTEND TO



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1 CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
2 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
3 RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
4 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5 Upon the Effective Date, Plaintiff will be deemed to have waived her rights under Civil
6 Code §1542 during the Class Period, as set forth above. However, Plaintiff's release excludes
7 any claim for worker's compensation. It also excludes her claims in the matter of Paula Johnson
8 v. Nan McKay & Associates, Inc., San Francisco Superior Court Case No. CGC-21-591646,
9 which has since been dismissed with prejudice.

10 Class Counsel. As of the date the Judgment becomes Final, and except as otherwise
11 provided by this Agreement, Class Counsel and any counsel associated with Class Counsel (The
12 Spivak Law Firm and United Employees Law Group), including without limitation David G.
13 Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys fees and
14 expenses against Defendant or the Released Parties arising from or related to the Action, except
15 those incurred to enforce this Agreement and collect the Judgment.

16 Tax Liability. Defendant makes no representation as to the tax treatment or legal effect
17 of the payments called for in this Agreement, and Plaintiff, Settlement Class Members, and
18 PAGA Members are not relying on any statement, representation, or calculation by Defendant
19 or by the Settlement Administrator in this regard. Plaintiff, Settlement Class Members, and
20 PAGA Members understand and agree that except for Defendant's payment of the employer's
21 portion of any payroll taxes, it will be solely responsible for the payment of any taxes and
22 penalties assessed on the payments described herein.

23 Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
24 OF THIS SECTION, THE ACKNOWLEDGING PARTY AND EACH PARTY TO THIS
25 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN OTHER PARTY)
26 ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT,
27 AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE
28 PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED
TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE
OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING
OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS



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1 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
2 UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR
3 ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B)
4 HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
5 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
6 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
7 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
8 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
9 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
10 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
11 OF ANY SUCH ATTORNEY S OR ADVISER S TAX STRATEGIES (REGARDLESS OF
12 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
13 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF
14 ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
15 AGREEMENT. (Settlement Agreement §V.)

16 NON-PUBLICITY PROVISION. The Parties and their counsel agree that they will not
17 issue any press releases, initiate any contact with the press, respond to any press inquiry, or have
18 any communication with the press about the fact, amount, or terms of the Settlement. In addition,
19 the Parties and their counsel agree that they will not engage in any advertising or distribute any
20 marketing materials relating to the Settlement of this case in any manner that identifies the
21 Defendant, including but not limited to any postings on any websites maintained by Class
22 Counsel. Neither Plaintiff nor Class Counsel will discuss the terms or the fact of the Settlement
23 with third parties other than (1) their immediate family members, (2) their respective
24 accountants or lawyers as necessary for tax purposes; or (3) other Class Members. Plaintiff and
25 Class Counsel agree not to publish any of the terms or conditions of this Settlement in any
26 manner that identifies the Defendant. However, Class Counsel may identify this Settlement in
27 other matters to demonstrate their adequacy as counsel in such other matters. (Settlement
28 Agreement §VI.)

5. The Court further finds and determines that the terms of the Settlement are fair,
reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
provisions of the Settlement, including the release of claims contained therein, should be and



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1 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
2 according to its terms. As of the Effective Date of Settlement, and for the duration of the Class
3 Period, all Class Members are hereby deemed to have waived and released all Released Claims
4 and are forever barred and enjoined from prosecuting the Released Claims against the Releasees
5 as fully set forth in the Settlement. No objections were received by the Parties or the Court
6 through the date of this Final Order.

7 6. The Court finds and determines that the payment of \$4,000.00 in PAGA penalties
8 under the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.),
9 seventy five percent (75%) or \$3,000.00 of which will be distributed to the LWDA and the
10 remaining twenty-five percent (25%) or \$1,000.00 will be distributed to the Class Members as
11 part of the Net Settlement Amount as provided for by the Settlement are fair and reasonable.
12 The Court hereby grants final approval to, and orders the payment of, those amounts be made
13 to the Participating Class Members and to the California Labor & Workforce Development
14 Agency, in accordance with the terms of the Settlement.

15 7. The Court further grants final approval to and orders that the following payments
16 be made in accordance with the terms of the Settlement:

17 a. A Class Counsel Fees Payment in the amount of \$93,333.33 for
18 attorney's fees and a Class Counsel Litigation Expenses Payment in the amount of \$14,839.47
19 to Class Counsel;

20 b. \$7,500.00 as a Class Representative Payment payable to Plaintiff Paula
21 Johnson for her service as the class representative;

22 c. \$10,000.00 in Settlement Administrator's fees payable to CPT Group,
23 Inc. for its services as the Settlement Administrator;

24 d. Payment of \$3,000.00 (75% of the \$4,000.00 PAGA penalty) to the
25 LWDA; and

26 e. Employer-side payroll taxes (to be paid in addition to the Gross
27 Settlement Amount by Defendant.

28 8. The settlement administration shall proceed as directed in the Settlement, and no
payments pursuant to the Settlement shall be distributed until after the Effective Date. Without
affecting the finality of this Final Order in any way, the Court retains jurisdiction of all matters
relating to the interpretation, administration, implementation, effectuation and enforcement of



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1 this Final Order and the Settlement pursuant to California Rule of Court 3.769(h).

2 9. Within 10 calendar days of the Effective Date, Defendant shall pay the Gross
3 Settlement Amount into the Settlement Account designated by the Settlement Administrator.
4 Defendant shall also pay its share of the employer-side payroll taxes in addition to the GSA.

5 10. Defendant's payment of such sums shall be the sole financial obligation of
6 Defendant under the Settlement, and shall be in full satisfaction of all claims released herein,
7 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
8 expenses.

9 11. Participating Class Members shall have one hundred and eighty (180) days from
10 the date of the check's issuance to cash their Settlement Share check. After the expiration of the
11 180-day period, on Defendant's behalf, the Settlement Administrator shall remit any amounts
12 from Voided Settlement Checks and otherwise unclaimed (the "Residue"), plus interest on the
13 Residue at the legal rate of interest from the date of entry of the initial judgement, as follows: to
14 the California Unclaimed Property Fund.

15 12. The Parties shall file a final accounting report by March 12, 2024. The
16 Compliance Hearing re Settlement is scheduled for March 26, 2024 at 9:30 a.m. in Department
17 302.

18 13. Nothing in this Final Order shall preclude any action to enforce the Parties'
19 obligations under the Settlement or hereunder, including the requirement that Defendant deposit
20 funds for distribution by the Settlement Administrator to participating Class Members in
21 accordance with the Settlement.

22 14. The Court hereby enters Orders in this case in accordance with the terms of the
23 Settlement, Order Granting Motion for Preliminary Approval of Class Action Settlement, and
24 this Final Approving Order.

25 15. The Parties are hereby ordered to comply with the terms of the Settlement.

26 16. The Parties shall bear their own costs and attorneys' fees except as otherwise
27 provided by the Settlement and this Final Order.

28 17. The Settlement is not an admission by Defendant nor is this Final Order a finding
of the validity of any claims in the Action or of any wrongdoing by Defendant. Furthermore, the
Settlement is not a concession by Defendant and shall not be used as an admission of any fault,
omission, or wrongdoing by Defendant. Neither this Final Order, Settlement, any document

1 referred to herein, any exhibit to any document referred to herein, any action taken to carry out
2 the Settlement, nor any negotiations or proceedings related to the Settlement are to be construed
3 as, or deemed to be evidence of, or an admission or concession with regard to, the denials or
4 defenses of Defendant, and shall not be offered in evidence in any proceeding against the Parties
5 hereto in any Court, administrative agency, or other tribunal for any purpose whatsoever other
6 than to enforce the provisions of this Final Order. This Final Order, the Settlement and exhibits
7 thereto, and any other papers and records on file in the Action may be filed in this Court or in
8 any other litigation as evidence of the settlement by Defendant to support a defense of res
9 judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar
defense as to the Released Class Claims and the Released PAGA Claims.

10 **IT IS SO ORDERED, AND DECREED.**

11 Date: 8/31/23

12 Ul
13 **THE HONORABLE RICHARD B. ULMER**
14 **JUDGE OF THE SUPERIOR COURT**



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