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13 Attorneys for Plaintiff,

14 PAULA JOHNSON, and all others similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SAN FRANCISCO**

17 **(UNLIMITED JURISDICTION)**

18 PAULA JOHNSON, on behalf of herself, all
19 others similarly situated, the general public, and
20 as an “aggrieved employee” on behalf of other
21 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

22 *Plaintiff(s),*

23 vs.

24 NAN MCKAY & ASSOCIATES, INC., a
25 California corporation; and DOES 1–50,
26 inclusive,

27 *Defendant(s).*

Case No. CGC-20-586796

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Hearing Date: February 27, 2023

Hearing Time: 9:30 a.m.

Hearing Dept.: 302

Action filed: September 24, 2020



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1 The Motion of Plaintiff Paula Johnson (hereafter referred to as “Plaintiff”) for Preliminary
2 Approval of a Class Action Settlement (the “Motion”) was considered by the Court, Samuel K.
3 Feng presiding. The Court having considered the Motion, the Joint Stipulation of Class Action
4 Settlement and Release of Claims (“Settlement” or “Settlement Agreement”), and supporting
5 papers, HEREBY ORDERS THE FOLLOWING:
6

7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
10 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
11 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
12 Settlement falls within the range of reasonableness and appears to be presumptively valid, subject
13 only to any objections that may be raised at the final hearing and final approval by this Court. The
14 Court will make a determination at the hearing on the motion for final approval of class action
15 settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and
16 reasonable to the Settlement Class.
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18

19 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
20 all persons hourly or nonexempt employee in California (collectively “Class Members”), who
21 worked anytime during the Class Period. The “Class Period” shall mean the period of time from
22 September 25, 2016, through the earlier of Court preliminary approval of this Settlement or June
23 16, 2022. Defendant estimates that as of the earlier of Court preliminary approval of this
24 Settlement or June 16, 2022, there were 319 potential Settlement Class Members. The “Effective
25 Date” means as follows: If no objection to this Settlement or to any of the terms and or conditions
26 of the Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor
27
28



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1 to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final
2 approval of this Settlement; however, if any objection to this Settlement or to any of the terms
3 and or conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor
4 to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any
5 appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted,
6 then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and
7 when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ.
8 The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any
9 funds into the Settlement Account.
10

11 3. This action is provisionally certified pursuant to section 382 of the California Code
12 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
13 purposes of settlement only with respect to the proposed Settlement Class.
14

15 4. The Court hereby preliminarily finds that the Settlement was the product of
16 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making
17 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,
18 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation
19 of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a
20 compromise of the Parties' respective positions. The Court further preliminarily finds that the
21 terms of the Settlement have no obvious deficiencies and do not improperly grant preferential
22 treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the
23 Settlement was entered into in good faith.
24

25 5. The Court finds that the dates set forth in the Settlement for mailing and
26 distribution of the Class Notice meet the requirements of due process and provide the best notice
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1 practicable under the circumstances, and constitute due and sufficient notice to all persons entitled
2 thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as
3 set forth in the Settlement. Accordingly, the Court orders the following implementation schedule
4 for further proceedings:

5
6 a. No later than fourteen (14) days Defendant shall provide CPT Group, Inc., the
7 appointed Settlement Administrator, with: (a) An electronic database of all
8 Class Members, last known mailing address, Social Security number and
9 Defendant's employee identification number ("Class Members' Data"); and
10 (b) Corresponding to each Class Member's name, Defendant shall provide a
11 figure indicating the total number of Pay Periods during the Class Period in
12 which Defendant employed the Class Member. That number of Pay Periods
13 shall be referred to as that Class Member's "Individual Pay Periods;" (c) If any
14 of the Class Members' Data are unavailable to Defendant, Defendant will so
15 inform Class Counsel and the Parties will make their best efforts to reconstruct
16 or otherwise agree upon the Class Members' Data prior to when it must be
17 submitted to the Settlement Administrator. Class Members' Data will
18 otherwise remain confidential and will not be disclosed to anyone, except as
19 necessary to applicable taxing authorities, or pursuant to Defendant's express
20 written authorization or by order of the Court.

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23
24 b. **Mailing of Class Notice.** No later than fourteen (14) days after receiving the
25 Class Members' Data, or as soon thereafter as it can do so, the Settlement
26 Administrator will mail the Class Notice to all identified Class Members via
27 first-class U.S. mail using the mailing address information provided by
28



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1 Defendant, unless modified by any updated address information that the
2 Settlement Administrator obtains in the course of administration of the
3 Settlement.

4
5 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
6 address, the Settlement Administrator will promptly, and not later than ten (10)
7 days from receipt of the returned Class Notice, search for a more current
8 address for the Class Member and re-mail the Class Notice to the Class
9 Member. The Settlement Administrator will use the Class Members' Data and
10 otherwise work with Defendant's Counsel and Class Counsel to find a more
11 current address. The Settlement Administrator will be responsible for taking
12 reasonable steps, consistent with its agreed-upon job parameters, court orders,
13 and fee, to trace the mailing address of any Class Member for whom a Class
14 Notice is returned as undeliverable by the U.S. Postal Service. These
15 reasonable steps shall include the tracking of all undelivered mail; performing
16 address searches for all mail returned without a forwarding address; and
17 promptly re-mailing to Class Members for whom new addresses are found. If
18 the Class Notice is re-mailed, the Settlement Administrator will note for its
19 own records and notify Class Counsel and Defendant's Counsel of the date and
20 address of each such re-mailing as part of a weekly status report provided to
21 the Parties.
22

23
24 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
25 court days prior to the Final Approval Hearing, the Settlement Administrator
26 will provide the Parties for filing with the Court a declaration of due diligence
27
28



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1 setting forth its compliance with its obligations under this Agreement. Prior to
2 the Final Approval Hearing, the Settlement Administrator will supplement its
3 declaration of due diligence if any material changes occur from the date of the
4 filing of its prior declaration.

5 **e. Requests for Exclusion from Settlement; and Objections to Settlement.**

6 Class Members may submit requests to be excluded from the effect of the
7 Settlement, or objections to the Settlement, pursuant to the following
8 procedures:
9

10 **i. Request for Exclusion from Settlement.** A Class Member may
11 request to be excluded from the effect of this Agreement, and any
12 payment of amounts under this Agreement, by timely mailing a letter
13 to the Settlement Administrator stating that the Class Member wants to
14 be excluded from this Action. This letter must include the Class
15 Member's name, address, telephone number, and signature. To be valid
16 and timely, the request to be excluded must be postmarked by the date
17 specified in the Class Notice (no later than 60 days from the initial
18 mailing of the Class Notice by the Settlement Administrator). A Class
19 Member who properly submits a valid and timely request to be
20 excluded from the Action shall not receive any payment of any kind in
21 connection with this Agreement or this Action, shall not be bound by
22 or receive any benefit of this Agreement, and shall have no standing to
23 object to the Settlement. A request for exclusion must be mailed to the
24 Settlement Administrator at the address provided on the Class Notice.
25
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The Settlement Administrator shall transmit the request for exclusion to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Peter Choi
Gordon Rees Scully Mansukhani, LLP
Mr. Peter Choi Esq.
633 West Fifth Street
52nd Floor
Los Angeles, CA 90071

ii. **Objections to Settlement.** The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator no later than 60 days after the Settlement Administrator mails the Class Notice, a written objection to the Settlement which sets forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Peter Choi
Gordon Rees Scully Mansukhani, LLP
Mr. Peter Choi Esq.
633 West Fifth Street
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1 The written objection should state the objecting Class Member's full
2 name, address, and the approximate dates of his or her employment
3 with Defendant. The written objection should state the basis for each
4 specific objection and any legal support in clear and concise terms. The
5 written objection also should state whether the Class Member intends
6 to formally intervene and become a party of record in the action, and
7 upon formally intervening, appear and argue at the Final Approval
8 Hearing. However, the objectors will be provided with the opportunity
9 to speak at the final approval hearing regardless of whether they have
10 filed an appearance or submitted a written opposition beforehand.

11
12
13 If the objecting Class Member does not formally intervene in the action
14 and/or the Court rejects the Class Member's objection, the Class
15 Member may still be bound by the terms of this Agreement.

- 16 f. **Report.** Not later than fourteen (14) days after the deadline for submission of
17 requests for exclusion, the Settlement Administrator will provide the Parties
18 with a complete and accurate list of all Class Members who sent timely
19 requests to be excluded from the Action and all Class Members who objected
20 to the settlement.
21

22 6. The Court approves, as to form and content, the Class Notice in substantially the
23 form attached as Exhibit A to the Settlement.
24

25 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
26 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

27 8. The Court approves, for settlement purposes only, Paula Johnson as the Class
28



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1 Representative.

2 9. The Court approves CPT Group, Inc. as the Settlement Administrator.

3 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
4 costs subject to final review by the Court.

5 11. The Court preliminarily approves the estimated Settlement Administrator costs
6 payable to the Settlement Administrator subject to final review by the Court.

7 12. The Court preliminarily approves Plaintiff's Class Representative Payment subject
8 to final review by the Court.

9
10 13. A Final Approval Hearing shall be held on _____ at _____.m. in the
11 Superior Court for the State of California, County of San Francisco, located at Civic Center
12 Courthouse, 400 McAllister Street, San Francisco, CA 94102 to consider the fairness, adequacy
13 and reasonableness of the proposed Settlement preliminarily approved by this Preliminary
14 Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs
15 and the Class Representative Payment to the Class Representative. The notice of motion and all
16 briefs and materials in support of the motion for final approval of class action settlement and
17 motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before
18 sixteen (16) court days.

19
20
21 14. If for any reason the Court does not execute and file a final approval order and
22 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
23 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
24 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
25 litigation, as more specifically set forth in the Settlement.

26
27 15. The Court expressly reserves the right to adjourn or continue the Final Approval
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Hearing from time to time without further notice to members of the Class. The Plaintiff shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

DATE

**THE HONORABLE SAMUEL K. FENG,
JUDGE OF THE SUPERIOR COURT**



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