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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13
14 GUILLERMO NUNEZ and ERIBERTO
15 AQUINO, on behalf of the State of California,
16 as private attorneys general, and as individuals
17 on behalf of themselves and on behalf of
18 others similarly situated,

19 Plaintiffs,

20 vs.

21 INTERSTATE MANAGEMENT
22 COMPANY, L.L.C., a Limited Liability
23 Company; INTERSTATE HOTELS AND
24 RESORTS, INC.; and DOES 1 through 50,
25 inclusive,

26 Defendants.

CASE NO.: **37-2021-00023535-CU-OE-CTL**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: August 4, 2023

Hearing Time: 8:30 a.m.

Judge: Hon. Keri Katz

Dept.: 74

Date Action Filed: May 27, 2021

Trial Date: Not set

1 This matter, having come before the Honorable Keri Katz of the Superior Court of the
2 State of California, in and for the County San Diego, on August 4, 2023, for the motion by
3 Plaintiffs Guillermo Nunez and Eriberto Aquino (“Plaintiffs”) for preliminary approval of the
4 class settlement with Defendants Interstate Management Company, LLC and Interstate Hotels and
5 Resorts, Inc. (“Defendants”). The Court, having considered the briefs, argument of counsel and all
6 matters presented to the Court and good cause appearing, hereby GRANTS Plaintiffs’ Motion for
7 Preliminary Approval of Class Action Settlement.

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9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Class Action and PAGA Settlement
11 Agreement (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
12 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This is based
13 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
14 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
15 Procedure and California Rules of Court, rule 3.769.

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

18 3. The Gross Settlement Amount is Two Million Nine Hundred Twenty Thousand
19 Dollars (\$2,920,000). It appears to the Court on a preliminary basis that the settlement amount
20 and terms are fair, adequate and reasonable as to all potential Class Members when balanced
21 against the probable outcome of further litigation and the significant risks relating to certification,
22 liability and damages issues. It further appears that investigation and research have been
23 conducted such that counsel for the Parties are able to reasonably evaluate their respective
24 positions. It further appears to the Court that settlement at this time will avoid substantial
25 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
26 further prosecution of the Action. It further appears that the Settlement has been reached as the
27 result of serious and non-collusive, arms-length negotiations. The Court therefore preliminarily

1 finds that the Settlement is fair, adequate, and reasonable when balanced against the probable
2 outcome of further litigation and the significant risks relating to certification, liability, and
3 damages issues.

4 4. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
5 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$40,000, and
6 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
7 \$10,000 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
8 of any service award, until the Final Approval Hearing.

9 5. The Court recognizes that Plaintiffs and Defendants stipulate and agree to
10 certification of a class for settlement purposes only. This stipulation will not be deemed
11 admissible in this or any other proceeding should this Settlement not become final. For settlement
12 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
13 previously were employed by Defendants Interstate Management Company, LLC; and Interstate
14 Hotels and Resorts, Inc. in California who were classified as hourly, non-exempt employees
15 during the Class Period." The Class Period is January 1, 2020 through January 31, 2023.

16 6. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
22 the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a class
23 action is superior to other available methods for the efficient resolution of this controversy; and (f)
24 counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate
25 representatives of the Class.

26 7. The Court provisionally appoints the Plaintiffs as the representatives of the Class.
27 The Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit

1 Bhowmik, Nicholas J. DeBlouw, and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De
2 Blouw LLP and Armond M. Jackson., Andrea Fernandez-Jackson, and Anthony Filer Jr. of
3 Jackson Law, APC as Class Counsel for the Class.

4 8. The Court hereby approves, as to form and content, the Notice of Proposed
5 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
6 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
7 accurately inform the Class of all material elements of the proposed Settlement, of the Class
8 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
9 Class Member’s right and opportunity to object to the Settlement. The Court further finds that the
10 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
11 and this Order meets the requirements of due process, is the best notice practicable under the
12 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
13 Class Notice shall include a Spanish translation of the Class Notice. The Court orders the mailing
14 of the Class Notice by first class mail, pursuant to the terms set forth in the Agreement.

15 9. The Court hereby appoints ILYM Group as Administrator. No later than thirty (30)
16 calendar days after preliminary approval of the Settlement by the Court, Defendants shall provide
17 to the Administrator an electronic spreadsheet with the Class Data. The Administrator will
18 perform address updates and verifications as necessary prior to the mailing of the Class Notice.
19 Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving
20 the Class Data, the Administrator will mail the Class Notice Packets to all Class Members via
21 first-class U.S. Mail. Before mailing Class Notices, the Administrator shall update Class Member
22 addresses using the National Change of Address database.

23 10. The Court hereby preliminarily approves the proposed procedure for exclusion
24 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
25 from the Class as provided in the Class Notice by following the instructions for requesting
26 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
27 postmarked by the Response Deadline, which is forty-five (45) calendar days after the date of the
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1 mailing of the Class Notice, and received by the Administrator. If the Class Notice Packet is re-
2 mailed, the Response Deadline will be extended an additional 14 days. Any such person who
3 chooses to opt out of and be excluded from the Class will not be entitled to any recovery under the
4 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
5 thereon. Class Members who have not requested exclusion shall be bound by all determinations
6 of the Court, the Agreement and the Judgment. A request for exclusion may only opt out that
7 particular individual, and any attempt to opt out a group, class, or subclass of individuals is not
8 permitted and will be deemed invalid. Subject to the Court's final approval of the Settlement, all
9 Aggrieved Employees will be paid their allocation of the PAGA Penalties and will remain bound
10 by the release of the Released PAGA Claims in the Agreement regardless of their request for
11 exclusion.

12 11. Any Class Member who has not opted out ("Participating Class Member") may
13 appear at the final approval hearing and may object or express the Member's views regarding the
14 Settlement and may present evidence and file briefs or other papers that may be proper and
15 relevant to the issues to be heard and determined by the Court as provided in the Notice.
16 Participating Class Members will have until the Response Deadline to submit their written
17 objections to the Administrator in accordance with the instructions in the Class Notice. If the
18 Class Notice Packet is re-mailed, the Response Deadline will be extended an additional 14 days.
19 Alternatively, Participating Class Members may appear at the Final Approval Hearing to make an
20 oral objection.

21 12. A Final Approval Hearing shall be held before this Court on December 8, 2023 at
22 8:30 a.m. in Department 74 at the San Diego County Superior Court to determine all necessary
23 matters concerning the Settlement, including: whether the proposed settlement of the Action on
24 the terms and conditions provided for in the Agreement is fair, adequate and reasonable and
25 should be finally approved by the Court; whether the Final Approval Order and Judgment should
26 be entered herein; whether the plan of allocation contained in the Agreement should be approved
27 as fair, adequate and reasonable to the Class Members; and to finally approve attorneys' fees and
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1 costs, the service award, and the expenses of the Administrator. All papers in support of the
2 motion for final approval and the motion for attorneys' fees, costs and service award shall be filed
3 with the Court and served on all counsel no later than sixteen (16) court days before the hearing
4 and both motions are scheduled for and shall be heard at the Final Approval Hearing,.

5 13. Neither the Settlement nor any exhibit, document, or instrument delivered
6 thereunder shall be construed as a concession or admission by Defendants in any way that the
7 claims asserted have any merit or that this Action was properly brought as a class or representative
8 action, and shall not be used as evidence of, or used against Defendants as, an admission or
9 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
10 omission by Defendants or with respect to the truth of any allegation asserted by any person.
11 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
12 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
13 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
14 deemed to be evidence for any purpose adverse to the Defendants, including, but not limited to,
15 evidence of a presumption, concession, indication or admission by Defendants of any liability,
16 fault, wrongdoing, omission, concession or damage.

17 14. In the event the Settlement does not become effective in accordance with the terms
18 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
19 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
20 and the Parties shall revert to their respective positions as of before entering into the Agreement,
21 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
22 including all available defenses and affirmative defenses, and arguments that any claim in the
23 Action could not be certified as a class action and/or managed as a representative action. In such
24 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
25 referred to in litigation for any purpose.

26 15. The Court reserves the right to adjourn or continue the date of the final approval
27 hearing and all dates provided for in the Agreement without further notice to Class Members and
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1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: _____

8 HON. KERI KATZ
9 JUDGE, SUPERIOR COURT OF CALIFORNIA
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