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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JOY NAVA, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

CHANNING HOUSE, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 22CV398619

[Assigned for all purposes to The
Honorable Charles F. Adams, Dept. 7]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: May 2, 2024
Time: 1:30 p.m.
Dept.: 7

1 Plaintiff Joy Nava's ("Plaintiff") Motion for an Order Granting Preliminary Approval of
2 Class Action Settlement was filed with the Court and a hearing was held before this Court on
3 May 2, 2024. Appearances for Plaintiff and Defendant Channing House ("Defendant") were
4 noted on the record.

5 I. INTRODUCTION

6 This is a putative class and representative action arising out of various alleged wage and
7 hour violations. on May 26, 202, Plaintiff filed her class and PAGA Complaint against
8 Defendant in the Superior Court of California, County of Santa Clara. The Complaint alleges
9 causes of action for: (1) violation of Labor Code § 226; (2) violation of Labor Code §§ 201-204,
10 233, and 246; (3) violation of Labor Code §§ 226.7 and 512; (4) violation of Labor Code § 226.7;
11 (5) violation of the Private Attorneys General Act (the "PAGA"); and (6) violation of Business
12 and Professions Code § 17200, *et seq.*

13 The parties have reached a settlement. Plaintiff now moves for preliminary approval of
14 the settlement. The motion is unopposed.

15 II. LEGAL STANDARD

16 Generally, "questions whether a settlement was fair and reasonable, whether notice to the
17 class was adequate, whether certification of the class was proper, and whether the attorney fee
18 award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple*
19 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*
20 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

21 In determining whether a class settlement is fair, adequate and reasonable, the trial court
22 should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expense,
23 complexity and likely duration of further litigation, the risk of maintaining class action
24 status through trial, the amount offered in settlement, the extent of discovery completed
25 and the stage of the proceedings, the experience and views of counsel, the presence of a
governmental participant, and the reaction of the class members to the proposed
settlement."

26 (*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801
27 and *Officers for Justice v. Civil Service Com'n*, etc. (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

1 “The list of factors is not exclusive, and the court is free to engage in a balancing and
2 weighing of factors depending on the circumstances of each case.” (*Wershba*, supra, 91
3 Cal.App.4th at p. 245.) The court must examine the “proposed settlement agreement to the extent
4 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
5 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
6 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting *Dunk*, supra, 48
7 Cal.App.4th at p. 1801 and *Officers*, supra, 688 F.2d at p. 625, internal quotation marks omitted.)

8 The burden is on the proponent of the settlement to show that it is fair and reasonable.
9 However “a presumption of fairness exists where: (1) the settlement is reached through
10 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
11 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
12 the percentage of objectors is small.”

13 (*Wershba*, supra, 91 Cal.App.4th at p. 245, citing *Dunk*, supra, 48 Cal.App.4th at p. 1802.)

14 III. DISCUSSION

15 A. Provisions of the Settlement

16 The case has been settled on behalf of the following classes:

- 17 (a) All of Defendant’s current and former non-exempt employees in the state of
18 California who were paid sick pay in the same workweek in which they earned any
19 nondiscretionary remuneration, including without limitation, shift differentials and
20 shift premiums during the Class Period [from May 25, 2018 through June 22,
21 2023] (the “Sick Pay Class”).
- 22 (b) All of Defendant’s current and former non-exempt employees in the State of
23 California who were paid any meal period premium payments in the same
24 workweek in which they earned any non-discretionary remuneration, including
25 without limitation, shift differentials and shift premiums, covering the same period
26 that meal period premiums were paid, during the Class Period (the “Meal Period
27 Premium Class”).
- 28 (c) All of Defendant’s current and former non-exempt employees in the State of
California who were paid any rest period premium payments in the same
workweek in which they earned any non-discretionary remuneration, including
without limitation, shift differentials and shift premiums, covering the same period
that rest period premiums were paid, during the Class Period (the “Rest Period
Premium Class”).

See Joint Stipulation of Class Action and PAGA Settlement (“Agreement”) ¶ I(2), attached as
Exhibit 1 to the Declaration of Dennis S. Hyun.

The class also contains a subset of aggrieved employees that are defined as “individuals
who fall within any of the three [class] definitions above during the PAGA Period, *i.e.* April 7,

2021, through June 22, 2023.” *Id.* ¶ I(3).

The Agreement provides for \$195,000.00 as the Gross Settlement Amount. *See* Agreement ¶ 1.22. The Net Settlement Amount, calculated after deduction of attorneys’ fees (up to \$65,000.00), litigation costs (up to \$30,000.00), the service award to the Class Representative (up to \$10,000.00), payment of PAGA penalties to the LWDA (\$14,625.00) and Aggrieved Employees (\$4,875.00), and Administrative Costs (up to \$8,250.00), is estimated to be approximately \$62,250.00. *Id.* ¶ I(29).

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ I(20)). Similarly, aggrieved employees will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period. (*Id.* ¶ I(25)).

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the California State Controller to be held in the name of the class member. (*See* Agreement ¶ II(11)(d)).

As a condition of participating in this settlement, Eligible Class Members who do not opt out of the Settlement will release the following claims (“Released Claims”) upon the Effective Date and Defendant’s funding of the Gross Settlement Amount:

The term “Released Claims,” as applied to releases by Eligible Class Members, shall mean any and all claims, demands, liabilities, damages, attorneys’ fees, costs, and penalties against Released Parties, relating to any and all facts and claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including but not limited to claims arising from alleged unpaid sick pay wages; meal and rest period violations during employment; wage statement violations based on unpaid sick pay wages, meal and rest period violations; timely pay wages based on unpaid sick pay wages, meal and rest period violations upon separation of employment.

(*See* Agreement ¶¶ I(38), II(9)).

Regardless of whether they opt out of the class portion of the settlement, Class Members

1 who are also Aggrieved Employees will release the following PAGA claims:

2 Plaintiff, on behalf of the State of California and Aggrieved Employees shall
3 release any and all PAGA penalties based on unpaid sick pay wages, meal and rest
4 period violations during the PAGA Period. Regardless of whether Class Members
opt-out of the Class Settlement, Aggrieved Employees and the State of California
shall release all PAGA claims as alleged on behalf of all Aggrieved Employees, as
detailed herein.

5 (Agreement ¶¶ I(38), II(9)).

6 Plaintiff further agrees to a general release. (*Id.* ¶ I(38)(k)).

7 B. Fairness of the Settlement

8 Plaintiff asserts that the settlement is fair, reasonable, and adequate, given the strength of
9 her claims, the inherent risks of litigation, including substantial risks relative to class certification
10 and the merits of the claims, and the costs of pursuing litigation. Shortly after Plaintiff initiated
11 the action, Defendant provided Plaintiff with informal discovery, which included data and
12 information pertaining to the number of putative class members, and a sampling of time and
13 payroll records. Subsequently, the parties attended mediation with Todd Smith, Esq., which
14 resulted in this settlement which was unsuccessful. Plaintiff estimates that Defendant faced a
15 maximum potential liability of \$2,272,279.16 for all claims. Plaintiff provides a detailed
16 breakdown of this amount by claim. Plaintiff asserts that for the approximately 341 class
17 members, the average recovery is approximately \$182.55 per class member.

18 The settlement represents approximately 8.6 percent of the maximum potential value of
19 Plaintiff's claims. The proposed settlement amount is within the general range of percentage
20 recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete,*
21 *Inc.* (E.D.Cal. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at
22 *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

23 Overall, the court finds the settlement is fair. The settlement provides for some recovery
24 for each class member and eliminates the risk and expense of further litigation.

25 C. Incentive Award, Fees, and Costs

26 Plaintiff requests an incentive award of \$10,000 for the class representative. The rationale
27 for making enhancement or incentive awards to named plaintiffs is that they should be
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1 compensated for the expense or risk they have incurred in conferring a benefit on other members
2 of the class. An incentive award is appropriate if it is necessary to induce an individual to
3 participate in the suit. Criteria courts may consider in determining whether to make an incentive
4 award include: 1) the risk to the class representative in commencing suit, both financial and
5 otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the
6 amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5)
7 the personal benefit (or lack thereof) enjoyed by the class representative as a result of the
8 litigation. These “incentive awards” to class representatives must not be disproportionate to the
9 amount of time and energy expended in pursuit of the lawsuit. (*Cellphone Termination Fee*
10 *Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations
11 omitted.) Prior to the final approval hearing, the class representative shall file a supplemental
12 declaration specifically detailing her participation in the action and an estimate of the time spent.
13 The court will make a determination at that time.

14 The court also has an independent right and responsibility to review the requested attorney
15 fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles*
16 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff’s counsel will seek
17 attorney fees of \$166,667 (1/3 of the gross settlement fund). Plaintiff’s counsel shall submit
18 lodestar information (including hourly rates and hours worked) prior to the final approval hearing
19 in this matter so the court can compare the lodestar information with the requested fees.
20 Plaintiff’s counsel shall also submit evidence of actual costs incurred as well as settlement
21 administration costs.

22 D. Conditional Certification of Class

23 Plaintiff requests that the putative class be conditionally certified for purposes of the
24 settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an
25 order approving or denying certification of a provisional settlement class after [a] preliminary
26 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
27 class “when the question is one of a common or general interest, of many persons, or when the
28 parties are numerous, and it is impracticable to bring them all before the court” As

1 interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and
2 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*
3 *Superior Court* (2004) 34 Cal.4th 319, 326.)

4 The “community-of-interest” requirement encompasses three factors: (1) predominant
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and,
6 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v.*
7 *Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the
8 probability that each class member will come forward ultimately to prove his or her separate
9 claim to a portion of the total recovery and whether the class approach would actually serve to
10 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)
11 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits” to
12 both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381,
13 385.)

14 As explained by the California Supreme Court,

15 The certification question is essentially a procedural one that does not ask whether an
16 action is legally or factually meritorious. A trial court ruling on a certification motion
17 determines whether the issues which may be jointly tried, when compared with those
18 requiring separate adjudication, are so numerous or substantial that the maintenance of a
19 class action would be advantageous to the judicial process and to the litigants.

20 (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation
21 marks, ellipses, and citations omitted.)

22 Plaintiff states there are approximately 341 class members that can be ascertained from
23 Defendant’s records. There are common questions regarding whether class members were
24 subjected to common practices that violated wage and hour laws. No issue has been raised
25 regarding the typicality or adequacy of Plaintiff as class representative. In sum, the court finds
26 that the proposed class should be conditionally certified for settlement purposes.

27 E. Class Notice

28 The content of a class notice is subject to court approval. “If the court has certified the
action as a class action, notice of the final approval hearing must be given to the class members in

1 the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)

2 The notice generally complies with the requirements for class notice. (Agreement, Ex. A.)
3 It provides basic information about the settlement, including the settlement terms, and procedures
4 to object or request exclusion.

5 Having considered the Class Action and PAGA Settlement Agreement (“Agreement”) and
6 all other papers filed in this action, the Court HEREBY FINDS AND ORDERS as follows:

7 1. This Court grants preliminary approval of the Agreement between Plaintiff and
8 Defendant filed herewith. The Agreement appears to be fair, adequate, and reasonable to the
9 Class.

10 2. The Class Representative and Defendant (hereafter, “Settling Parties”), through
11 their counsel of record in the Litigation, have reached an agreement to settle the class and PAGA
12 claims in the Litigation as set forth in the Settlement Agreement, on behalf of the Class (as
13 defined below and in the Agreement).

14 3. The Court hereby conditionally certifies the following Classes for settlement
15 purposes only:

- 16 a. All of Defendant’s current and former non-exempt employees in the state
17 of California who were paid sick pay in the same workweek in which they
18 earned any nondiscretionary remuneration, including without limitation,
19 shift differentials and shift premiums during the Class Period [from May
20 25, 2018 through June 22, 2023] (the “Sick Pay Class”).
- 21 b. All of Defendant’s current and former non-exempt employees in the State
22 of California who were paid any meal period premium payments in the
23 same workweek in which they earned any non-discretionary remuneration,
24 including without limitation, shift differentials and shift premiums,
25 covering the same period that meal period premiums were paid, during the
26 Class Period (the “Meal Period Premium Class”).
- 27 c. All of Defendant’s current and former non-exempt employees in the State
28 of California who were paid any rest period premium payments in the same
workweek in which they earned any non-discretionary remuneration,
including without limitation, shift differentials and shift premiums,
covering the same period that rest period premiums were paid, during the
Class Period (the “Rest Period Premium Class”).

4. Should for whatever reason the Agreement not become Final, the fact that the
Parties were willing to stipulate to certification of a class as part of the Agreement shall have no
bearing on, or be admissible in connection with, the Litigation or the issue of whether a class

1 should be certified in a non-settlement context.

2 5. The Court appoints and designates: (a) Plaintiff Joy Nava as the Class
3 Representative and (b) William L. Marder of Polaris Law Group and Dennis Hyun of Hyun Legal
4 APC as Class Counsel for the Class. Class Counsel is authorized to act on behalf of the Class
5 with respect to all acts or consents required by, or which may be given, pursuant to the
6 Agreement, and such other acts reasonably necessary to finalize the Agreement and its terms.
7 Any Class Member may enter an appearance through his or her own counsel at such Class
8 Member's own expense. Any Class Member who does not enter an appearance or appear on his
9 or her own behalf will be represented by Class Counsel.

10 6. The Court hereby approves the terms and conditions provided for in the
11 Agreement. The Court finds that on a preliminary basis the Agreement falls within the range of
12 reasonableness of a settlement, including the amount of the PAGA penalties, and appears to be
13 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
14 and final approval by the Court. It appears to the Court on a preliminary basis that the settlement
15 is fair, adequate, and reasonable as to all potential Class Members when balanced against the
16 probable outcome of further litigation relating to liability, class certification, and damages issues.
17 It also appears that investigation and research into the claims, liability, and damages have been
18 conducted so that counsel for the Settling Parties are able to reasonably evaluate their respective
19 positions. It appears to the Court that settlement at this time will avoid substantial additional costs
20 by all Settling Parties, as well as avoid the delay and risks that would be presented by the further
21 prosecution of the Litigation. It also appears that settlement has been reached as a result of
22 intensive, serious, and non-collusive arm's-length negotiations.

23 7. A final fairness hearing on the question of whether the proposed Agreement, the
24 allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, payment to
25 the Settlement Administrator, payment to the Labor Workforce & Development Agency and
26 Aggrieved Employees, and the service award to the Class Representative should be finally
27 approved as fair, reasonable, and adequate as to the members of the Class is hereby set for
28 _____, 2024, at 1:30 p.m. in this Court. The Motion for Final Approval

1 shall be filed by the Class Representative no later than sixteen (16) court days before the final
2 fairness hearing.

3 8. The Court hereby approves, as to form and content, the Class Notice to be sent to
4 Class Members. The Court finds that distribution of the Class Notice Class Members substantially
5 in the manner and form set forth in the Agreement and this Order meets the requirements of due
6 process and shall constitute due and sufficient notice to all parties entitled thereto.

7 9. The Court appoints and designates ILYM Group, Inc. as the Settlement
8 Administrator. The Court hereby directs the Settlement Administrator to provide the approved
9 Notice of Settlement to Class Members using the procedures set forth in the Agreement.

10 10. Any Class Member may choose to opt out of and be excluded from the Settlement
11 as provided in the Agreement and Notice of Settlement, and by following the instructions for
12 requesting exclusion. Any person who timely and properly opts out of the Settlement will not be
13 bound by the Agreement except for the Released Claims under the PAGA, from which there is no
14 opt out, or have any right to object, appeal, or comment thereon. Any Requests for Exclusion
15 must be in writing and signed by each such Class Member opting out and must otherwise comply
16 with the requirements delineated in the Notice of Settlement. Class Members who have not
17 requested exclusion by submitting a valid and timely request by the deadline shall be bound by all
18 determinations of the Court, the Agreement, and Judgment.

19 11. Any Class Member may object to the Agreement or express his or her views
20 regarding the Agreement, and may present evidence and file briefs or other papers that may be
21 proper and relevant to the issues to be heard and determined by the Court as provided in the
22 Notice of Settlement.

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1 12. The Court reserves the right to adjourn or continue the date of the Settlement
2 Fairness Hearing and all dates provided for in the Agreement without further notice to the Class,
3 and retains jurisdiction to consider all further applications arising out of or connected with the
4 Agreement.

5 IT IS SO ORDERED.

6 DATED: _____

HON. CHARLES F. ADAMS
SUPERIOR COURT OF CALIFORNIA

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