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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ABIGAIL MCMURRY, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,
v.

NVN MANAGEMENT LLC dba ARBOR
LODGING MANAGEMENT and NVN
HOTELS, a Delaware limited liability
company; ARBOR LODGING PARTNERS
LLC, an Illinois limited liability company;
NVN SAN LEANDRO LLC, a Delaware
limited liability company, and DOES 1-50,
Inclusive,
Defendants.

Case No. 23CV028220

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: June 27, 2024
Time: 10:00 A.M.

Judge: Hon. Michael Markman
Dept.: 23

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class and
2 PAGA Action Claims and Release of Claims ("Agreement") and Motion for Attorneys' Fees,
3 Attorneys' Expenses, and Service Award duly came on for hearing on June 27, 2024, before the
4 above-entitled Court. Zakay Law Group, APLC and the JCL Law Firm, APC appeared on behalf
5 of Plaintiff ABIGAIL MCMURRY ("Plaintiff"). O'Hagan Meyer appeared on behalf of Defendants
6 NVN MANAGEMENT LLC (dba ARBOR LODGING MANAGEMENT and NVN HOTELS),
7 ARBOR LODGING PARTNERS LLC, and/or NVN SAN LEANDRO LLC (hereinafter
8 "Defendants").

9 **I.**

10 **FINDINGS**

11 Based on the oral and written argument and evidence presented in connection with the
12 motion, the Court makes the following findings:

13 1. All capitalized terms used herein shall have the same meaning as defined in
14 the Agreement.

15 2. This Court has jurisdiction over the subject matter of this litigation pending
16 in the California Superior Court for the County of Alameda ("Court"), Case No. 23CV028220,
17 entitled *McMurry v. NVN Management LLC, et al.*, and over all Parties to this litigation, including
18 the Class.

19 **Preliminary Approval of the Settlement**

20 3. On February 29, 2024, the Court granted preliminary approval of a class-wide
21 settlement. At this same time, the court approved certification of a provisional settlement class for
22 settlement purposes only. The Court confirms this Order and finally approves the settlement and
23 the certification of the Class.

24 **Notice to the Class**

25 4. In compliance with the Preliminary Approval Order, the Notice Packet was
26 mailed by first class mail to the Class Members at their last known addresses on March 21, 2024.
27 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the
28 circumstances and was reasonably calculated to communicate actual notice of the litigation and the

1 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
2 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

3 5. The Response Deadline for opting out or objecting was May 6, 2024. There
4 was an adequate interval between notice and deadline to permit Class Members to choose what to
5 do and act on their decision. No Class Members objected. No Class Members requested exclusion.
6 100% of the Class Members will be participating in the Settlement and will be sent Individual
7 Settlement Payments.

8 **Fairness Of the Settlement**

9 6. The Agreement provides for a Gross Settlement Amount of \$267,000.00.
10 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
11 Cal.App.4th 1794, 1801.)

12 a. The settlement was reached through arms-length bargaining between
13 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
14 settlement.

15 b. The Parties' investigation and discovery have been sufficient to allow
16 the Court and counsel to act intelligently.

17 c. Counsel for all parties are experienced in similar employment class
18 action litigation and have previously settled similar class claims on behalf of employees claiming
19 compensation. All counsel recommended approval of the Settlement.

20 d. The percentage of objectors and requests for exclusion is zero. No
21 objections were received. No requests for exclusion were received.

22 e. The participation rate is high. 100% of Class Members will be
23 participating in the Settlement and will be sent settlement payments.

24 7. The consideration to be given to the Class Members under the terms of the
25 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
26 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
27 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
28 litigation and the delays which would ensue from continued prosecution of the Action.

1 8. The Agreement is finally approved as fair, adequate, and reasonable and in
2 the best interests of the Settlement Class Members.

3 **Attorneys' Fees and Attorneys' Expenses**

4 9. The Agreement provides for an award of Attorneys' Fees and Attorneys'
5 Expenses in the amount of up to One Hundred and Nine Thousand Dollars and Zero Cents
6 (\$109,000.00). Subject to Court approval, the award of Attorneys' Expenses and Attorneys' Fees
7 consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount, or Eighty-Nine
8 Thousand Dollars and Zero Cents (\$89,000.00) and reimbursement of costs and expenses in the
9 amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00).

10 10. An award of Attorneys' Expenses and Attorneys' Fees of One Hundred and
11 Nine Thousand Dollars and Zero Cents (\$109,000.00) comprised of attorneys' fees in the amount
12 of or Eighty-Nine Thousand Dollars and Zero Cents (\$89,000.00) and reimbursement of actually
13 incurred costs and expenses in the amount of up to Twenty Thousand Dollars and Zero Cents
14 (\$20,000.00) is reasonable in light of the contingent nature of Class Counsel's fee, the hours worked
15 by Class Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award
16 represents 1/3 of the common fund, which is reasonable and at the low end of the range for fee
17 awards in common fund cases and is supported by Class Counsel's lodestar.

18 **Service Award**

19 11. The Agreement provides for a Service Award of Ten Thousand Dollars and
20 Zero Cents (\$10,000.00) to Plaintiff, subject to the Court's approval. The Court finds that the amount
21 of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff is reasonable in light of the risks
22 and burdens undertaken by the Plaintiff in this class action litigation.

23 **Administration Expenses**

24 12. The Agreement provides for Administration Expenses to be paid in an
25 amount not to exceed \$7,000.00. The Declaration of the Settlement Administrator provides that the
26 actual claims administration expenses were \$7,000.00. The amount of this payment is reasonable
27 in light of the work performed by the Settlement Administrator.

II.
ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

1. The Class is certified for the purposes of settlement only. The Settlement Class is hereby defined to include all non-exempt employees who are or previously were employed by Defendants and performed work at the Hilton Garden Inn located at 510 Lewelling Boulevard, San Leandro in California ("Class") at any time between February 21, 2019 to November 20, 2023 ("Class Period").

2. Every person in the Class who did not submit a timely and valid Request for Exclusion is a Settlement Class Member. The Court finds, based on the declaration of the Settlement Administrator, that zero Class Members opted-out of the Settlement.

3. The Agreement is hereby approved as fair, reasonable, adequate, and in the best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with this Order and the terms of the Agreement.

4. Class Counsel are awarded \$109,000.00 for the award of Attorneys' Fees and Attorney's Expenses comprised of one-third of the Gross Settlement Amount, or Eighty-Nine Thousand Dollars and Zero Cents (\$89,000.00) and litigation expenses in the amount of \$20,000. Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendants, Plaintiff, or members of the Class.

5. The payment of the Service Award to Plaintiff in the amount of \$10,000.00 is approved.

6. The payment of \$7,000.00 to the Settlement Administrator for Administration Expenses is approved.

7. The PAGA Payment of \$12,000.00 is hereby approved as fair, reasonable, adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds that Plaintiff and Class Counsel negotiated the PAGA Penalties at arms-length, absent of any fraud or collusion.

1 8. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge
3 of Defendants, as well as Defendants' present and former owners, officers, shareholders, directors,
4 agents, members, managers, employees, attorneys, insurers, parent companies, successors, affiliates
5 or subsidiaries, and assigns from all class claims alleged in the operative complaint, or which could
6 have been alleged in the operative complaint based on the facts alleged, which occurred during the
7 Class Period, and expressly excluding all other claims, including claims for vested benefits,
8 wrongful termination, unemployment insurance, disability, social security, workers' compensation,
9 and class claims outside of the Class Period.

10 9. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
11 California and all Aggrieved Employees, pursuant to the California Labor Code Private Attorneys'
12 General Act ("PAGA") and shall release Defendants, as well as Defendants' present and former
13 owners, officers, shareholders, directors, agents, members, managers, employees, attorneys,
14 insurers, parent companies, successors, affiliates or subsidiaries, and assigns, from all PAGA claims
15 alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during
16 the PAGA Period, and expressly excluding all other claims, including claims for vested benefits,
17 wrongful termination, unemployment insurance, disability, social security, workers' compensation
18 and PAGA claims outside the PAGA Period.

19 10. The term "Aggrieved Employees" is hereby defined as all non-exempt
20 employees who are or previously were employed by Defendants and performed work at the Hilton
21 Garden Inn located at 510 Lewelling Boulevard, San Leandro in California during the PAGA Period.
22 The PAGA Period means the period between December 14, 2021 to November 20, 2023.

23 11. In addition to the release given by each Settlement Class Member, Plaintiff
24 also generally releases Defendants from any and all claims as set forth in the General Release by
25 Plaintiff in the Agreement.

26 12. The Agreement is not an admission by Defendants, nor is this Final Approval
27 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
28 Defendants. Neither this Final Approval Order, the Settlement, nor any document referred to herein,

1 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
2 admission by or against Defendants of any fault, wrongdoing, or liability whatsoever. The entering
3 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
4 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
5 to the denials or defenses by Defendants and shall not be offered in evidence in any action or
6 proceeding against Defendants in any court, administrative agency or other tribunal for any purpose
7 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
8 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
9 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
10 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
11 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
12 or issue preclusion or similar defense as to the claims being released by the Settlement.

13 13. Notice of entry of this Final Approval Order and Judgment shall be given to
14 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
15 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
16 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
17 in the Notice Packet.

18 14. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
19 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
20 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
21 connection with the distribution of settlement benefits.

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15. If the Settlement does not become final and effective in accordance with the terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to Defendants consistent with the terms of the Settlement, then this Final Approval Order and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

IT IS SO ORDERED.

DATED: _____, 2024

Hon. Michael Markman
JUDGE OF THE SUPERIOR COURT