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of herself and similarly situated employees
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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 JANICE INSIXIENGMAY, individually and
on behalf of all other similarly situated
13 employees,

14 Plaintiff,

15 vs.

16 HYATT CORPORATION DBA HYATT
17 REGENCY SACRAMENTO, a Delaware
18 Corporation; and DOES 1 to 100, inclusive,

19 Defendants.
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21
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Case No. 2:18-cv-02993-TLN-DB

CLASS ACTION

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

Date: November 16, 2023
Time: 2:00 p.m.
Courtroom: 2, 15th Floor
Judge: Hon. Troy L. Nunley

Filed: October 4, 2018
FAC Filed: April 7, 2020
SAC Filed: April 6, 2023
Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on November 16, 2023, at 2:00 p.m., in Department 2,
4 15th Floor, before the Honorable Troy L. Nunley, presiding. Plaintiff Janice Insixiengmay
5 (“Plaintiff”) filed this putative class action on October 4, 2018. The operative Complaint alleges that
6 Defendant Hyatt Corporation dba Hyatt Regency Sacramento (“Defendant”) failed to pay overtime,
7 failed to provide meal periods of premiums in lieu thereof, failed to provide rest periods or premiums
8 in lieu thereof, failed to provide accurate wage statements, failed to timely pay final wages, and
9 engaged in unfair competition. Plaintiff has also alleged Defendant is liable for a civil penalties under
10 the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought attorneys’
11 fees and costs as part of this Action. Defendant denied all of Plaintiff’s claims and denied that this
12 case was appropriate for class treatment. No class has been certified.

13 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
14 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
15 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
16 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
17 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary
18 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
19 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
20 DETERMINATIONS AS FOLLOWS:

21 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
22 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is
24 appropriate under Rule 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure and related case law:

25 All non-exempt employees who are currently or were formerly employed
26 by Defendant at the Hyatt Regency in Sacramento, California between
October 4, 2014, and June 1, 2023

27 The Court recognizes that the foregoing definition is for Class Member identification purposes
28 only and is not intended to capture the claims at issue or limit or alter the released claims under the

1 Agreement. The Court finds that Class Members meet the ascertainability and numerosity requirements
2 since the parties can identify with a matter of certainty, based on payroll records, approximately 980
3 individuals that fall within the definition of Class Members. The number of Class Members involved in
4 this case would make joinder impractical. The commonality and predominance requirements are met for
5 settlement purposes since there are questions of law and fact common to Class Members. The common
6 questions of law or fact in this case all stem from Plaintiff's contentions that Defendant caused the
7 violations outlined above by failing to incorporate the value of all types of non-discretionary
8 remunerations into Class Members' regular rates of pay for the purpose of paying overtime, paid sick
9 time, and meal and rest period premiums. Additionally, Plaintiff alleged the existence of scheduling
10 practices and working conditions that she contended caused her and similarly situated employees to miss
11 all meal and rest periods they were legally entitled to. The PAGA, waiting time penalty, wage statement
12 violation, and unfair competition claims also derive from these violations. Additionally, Class Members
13 seek the same remedies under state law. The typicality requirement for settlement purposes is also
14 satisfied since the claims of the Class Representative is based on the same facts and legal theories as
15 those applicable to the class members.

16 The Court also finds that preliminarily and conditionally certifying the settlement class is
17 required to avoid each Class Member from litigating similar claims individually. This Settlement will
18 achieve economies of scale for Class Members with relatively small individual claims and conserve the
19 resources of the judicial system.

20 The Court finds that Plaintiff Janice Insixiengmay and Plaintiff's counsel, Galen T. Shimoda
21 Justin P. Rodriguez, and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
22 representatives of the settlement class. The Court appoints them as Class Representative and Class
23 Counsel, respectively.

24 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

25 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
26 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
27 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
28 approval by this Court. The Court finds the Settlement was agreed upon only after extensive

1 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
2 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
3 of continued litigation. The Court also acknowledges that Class Members may present any objections to
4 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
5 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
6 therein as if stated here in full, including the \$295,000 Gross Settlement Amount.

7 The Court approves of CPT Group, Inc. acting as the Settlement Administrator in this case and
8 hereby appoints them to fulfill those duties as outlined in the Agreement.

9 The Court approves of the Ten Thousand (\$10,000) PAGA Payment, which shall be paid from
10 the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged
11 PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
12 Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved
13 Employees on a pro rata basis as described in the Agreement. The Court also finds that, under the facts
14 and circumstances of this case, the Agreement provides a recovery that creates an effective, substantial
15 deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

16 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
17 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
18 deadline to do so shall be donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for
19 Workers’ Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
20 Gross Settlement Amount will revert to Defendant for any reason.

21 The releases and waivers for Class Members who do not opt out of being bound by the
22 Agreement (*i.e.*, Participating Class Members), Aggrieved Employees, and the Class Representative are
23 also approved by the Court as set forth in the Agreement.

24 At this stage of preliminary approval, the Court does not make any determination on the specific
25 amount of attorney’s fees and costs, Settlement Administrator Costs, or Class Representative
26 Enhancement Payment that may ultimately be awarded in connection with the Court’s review at final
27 approval. However, the Court finds that the common fund doctrine may be appropriate in this case
28 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that

1 Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced
2 as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee
3 request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half*
4 *Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271
5 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a
6 common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee
7 from the fund as a whole.”). The amounts allocated under the Agreement for attorney’s fees and costs,
8 for an Enhancement Payment to the Class Representative, and Settlement Administrator Costs shall be
9 included in the Notice of Settlement to enable Class Members to review and comment thereon. The
10 Court will consider the reaction of Class Members when evaluating the reasonableness of the requested
11 amounts at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal.
12 2005) (“the absence of objections or disapproval by class members to class counsel’s fee request further
13 supports finding the fee request reasonable”). Plaintiff and Class Counsel are directed to provide
14 information in connection with the motion for final approval that will enable the Court to assess the
15 appropriateness of any requested fee percentage, to perform a lodestar cross check of the requested fee
16 percentage, and to quantify the amount of time spent by Plaintiff on this case and any further risks
17 and/or burdens incurred as a result of acting as a Class Representative. Class Counsel is also directed to
18 provide an updated declaration and itemization regarding actual litigation costs incurred. The
19 Settlement Administrator shall also submit a declaration attesting to Settlement Administrator Costs
20 incurred. The Court will review these amounts and allocations in connection with the final approval
21 hearing. To the extent the Court ultimately awards less than the amounts allocated under the Agreement
22 for attorney’s fees and costs, for an Enhancement Payment to the Class Representative, and/or
23 Settlement Administrator Costs, the difference between the amounts awarded and the amounts requested
24 shall be added to the Net Settlement Amount for distribution to Participating Class Members pro rata as
25 set forth in the Agreement. Plaintiff shall file the motion for attorneys’ fees and costs, Class
26 Representative Enhancement Payment, and Settlement Administrator Costs no later than fifteen (15)
27 calendar days before the end of the class notice period. The motion shall be heard on the same day as
28 the final fairness hearing.

1 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
2 **INCLUDING THE NOTICE OF SETTLEMENT**

3 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
4 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
5 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
6 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
7 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
8 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
9 Settlement and proposed distribution of such notice by maintaining a website accessible to Class
10 Members and sending copies of the Notice of Settlement by first class mail to each identified Class
11 Member at his or her most recent address based on a National Change of Address database search from
12 the Class Members' last known address and a skip trace on any Class Members who have the Notice of
13 Settlement returned as "undeliverable" or "not at this address" comports with all constitutional
14 requirements, including those of due process. The Court finds that the notification procedures set forth
15 in the Agreement provide the best notice practicable under the circumstances of this case.

16 The Court also finds that because there is a strong interest in providing Class Members the
17 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
18 privacy rights, the sharing of employment information, including social security numbers, is not a
19 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
20 name, last known mailing address, social security number, and total number of Qualifying Workweeks
21 to the Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this
22 settlement as contemplated within the Agreement and approved by this Order. The Settlement
23 Administrator shall only use this information for the purposes identified in the Agreement and shall keep
24 this information confidential consistent with the terms of the Agreement.

25 **IV. IMPLEMENTATION SCHEDULE**

26 Accordingly, with good cause shown, the Court hereby approves and orders that the following
27 implementation schedule be adhered to:
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1 2 3	Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
4 5 6	Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
7 8 9	Last day for Class Counsel to file Motion for Attorney's Fees and Costs, Settlement Administrator Costs, and an Enhancement Payment to the Class Representative	At least 15 calendar days before the conclusion of the Notice Period
10 11	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
12 13 14 15	Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics, including, but not limited to, the number of Class Members who opted out of the Settlement	Within 14 calendar days after end of the Notice Period
16 17 18 19	Last day for Defendant to provide notice of, and exercise, right of withdrawal based on the number of opt-outs pursuant to Section 7.5.2	Within 14 calendar days after the Settlement Administrator provided signed declaration reporting on settlement administration statistics, including, but not limited to, the number of Class Members who opted out of the Settlement.

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of April 11, 2024, at 2:00 p.m., with briefs and supporting documentation to be submitted according to the Federal Rules of Civil Procedure, in this Department. Participating Class Members who object in a timely manner as set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the

1 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
2 purpose other than approving a settlement class. The parties will revert to their respective positions as if
3 no settlement had been reached at all.

4 **IT IS SO ORDERED.**

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6 Date: _____

By: _____

Honorable Troy L. Nunley

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