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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

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

Plaintiffs,

vs.

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  
PRELIMINARY APPROVAL OF CLASS  
AND PAGA ACTION SETTLEMENT**

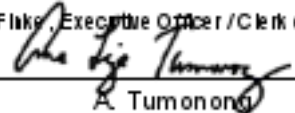
Date: February 28, 2024  
Time: 2:30 p.m.

Judge: Hon. Brad Seligman  
Department: 23

Trial Date: N/A  
Action Filed: February 21, 2023

Reservation ID: 599606922236

**FILED**  
Superior Court of California  
County of Alameda  
02/29/2024

Clerk of the Court, Executive Officer / Clerk of the Court  
By:  Deputy  
A. Tumorong

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1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 This matter having come before the Honorable ~~Brad Seligman~~<sup>Vasanth S. Srinivasan</sup> of the Superior Court of the State  
3 of California, in and for the County of Alameda, at 2:30 p.m. on February 28, 2024, with the attorneys  
4 from the JCL Law Firm, APC and Zakay Law Group, APLC as counsel for Plaintiff Abigail McMurry  
5 (“Plaintiff”), counsel from O’Hagan Meyer appearing for Defendants NVN Management LLC dba  
6 Arbor Lodging Management and NVN Hotels, Arbor Lodging Partners LLC, and NVN San Leandro,  
7 LLC (collectively “Defendants”). The Court, having carefully considered the briefs, argument of  
8 counsel and all the matters presented to the Court, and good cause appearing, hereby GRANTS  
9 Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA Action  
12 Claims and Release of Claims (“Settlement Agreement” or “Agreement”) a true and correct copy of  
13 which is attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the Settlement  
14 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of  
15 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

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

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that  
19 Defendants shall pay is Two Hundred Sixty-Seven Thousand Dollars and Zero Cents (\$267,000.00). It  
20 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate, and  
21 reasonable as to all potential Class Members when balanced against the probable outcome of further  
22 litigation relating to certification, liability, and damages issues. It further appears that investigation and  
23 research have been conducted such that counsel for the Parties are able to reasonably evaluate their  
24 respective 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 further  
26 prosecution of the litigation. It further appears that the Settlement has been reached as the result of  
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1 intensive, serious, and non-collusive arms-length negotiations.

2 4. The Court preliminarily finds that the Settlement appears to be within the range of  
3 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has  
4 reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds  
5 that the monetary settlement awards made available to the Class Members are fair, adequate, and  
6 reasonable when balanced against the probable outcome of further litigation relating to certification,  
7 liability, and damages issues.

8 5. The Agreement specifies for Attorneys' Fees awarded to Class Counsel in the amount of  
9 up-to one-third of the Gross Settlement Amount for attorneys' fees, currently estimated to be Eighty-  
10 Nine Thousand Dollars and Zero Cents (\$89,000.00) **and** an award of Attorneys' Expenses not to  
11 exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), and proposed Service Award to the  
12 Class Representative, Abigail McMurry, in an amount not to exceed Ten Thousand Dollars and Zero  
13 Cents (\$10,000.00). While these awards appear to be within the range of reasonableness, the Court will  
14 not approve the Attorneys' Fees, Attorneys' Expenses, or the Service Award, until the Final Approval  
15 Hearing. Class Counsel and the Class Representative will be required to present evidence supporting  
16 these requests, including lodestar, prior to final approval.

17 6. The Court recognizes that Plaintiff and Defendants stipulate and agree to certification of  
18 a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other  
19 proceeding should this Settlement not become final. For settlement purposes only, the Court  
20 conditionally certifies the following Class:  
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22 All non-exempt employees who are or previously were employed by  
23 Defendants and performed work at the Hilton Garden Inn located at 510  
24 Lewelling Boulevard, San Leandro in California during the period  
25 beginning on February 21, 2019 to November 20, 2023.

26 7. The Court concludes that, for settlement purposes only, the Class meets the requirements  
27 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class  
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1 Members are ascertainable and so numerous that joinder of all members of the Class Members is  
2 impracticable; (b) common questions of law and fact predominate, and there is a well-defined  
3 community of interest amongst the Class Members with respect to the subject matter of the litigation;  
4 (c) the claims of the Class Representative are typical of the claims of the Class Members; (d) the Class  
5 Representative will fairly and adequately protect the interests of the Class Members; (e) a class action  
6 is superior to other available methods for the efficient adjudication of this controversy; and (f) Class  
7 Counsel are qualified to act as counsel for the Class Representative in her individual capacity and as the  
8 representative of the Class Members.

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10 8. The Court provisionally appoints plaintiff Abigail McMurry as the representative of the  
11 Class Members.

12 9. The Court provisionally appoints the attorneys of the JCL LAW FIRM, APC, and of  
13 ZAKAY LAW GROUP, APLC, as Class Counsel for the Class Members.

14 10. The Court hereby approves, as to form and content, the proposed Notice Packet attached  
15 to the Agreement as **Exhibit "A"**. The Court finds that the Notice Packet appears to fully, and accurately  
16 inform the Class Members of all material elements of the proposed Settlement, including Class  
17 Members' right to be excluded from the Class by submitting a written request for exclusion, and of each  
18 Class Member's right and opportunity to object to the Settlement. The Court further finds that the  
19 distribution of the Notice Packet substantially in the manner and form set forth in the Agreement and  
20 this Order meets the requirements of due process, is the most reasonable notice under the circumstances,  
21 and shall constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing  
22 of the Notice Packet by first class mail, pursuant to the terms set forth in the Agreement.

23 11. The Court hereby appoints Apex Class Action LLC as Settlement Administrator. Within  
24 ten (10) business days of this order, Defendants shall provide, to the Settlement Administrator the Class  
25 Data, including information regarding Class Members that Defendants will in good faith compile from  
26 their records, including each Settlement Class Member's full name; last known address; Social Security  
27 Number; start dates and end dates of employment. No later than twenty-one (21) calendar days after the  
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1 entry of this order, the Settlement Administrator shall mail the Notice Packet to all identified, potential  
2 Class Members via first class U.S. Mail using the most current mailing address information available.

3 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the  
4 Settlement of the Released Claims. Any Class Member may individually choose to opt out of and be  
5 excluded from the Settlement of the Released Claims as provided in the Notice Packet by following the  
6 instructions for requesting exclusion from the Settlement of the Released Claims that are set forth in the  
7 Notice. All requests for exclusion must be postmarked or received by the Response Deadline which is  
8 forty-five (45) calendar days after the date the Notice Packet is mailed to the Class Members or, in the  
9 case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response Deadline.  
10 Any such person who chooses to opt out of and be excluded from the Settlement of the Released Claims  
11 will not be entitled to an Individual Settlement Payment under the Settlement and will not be bound by  
12 the Settlement, or have any right to object, appeal or comment thereon. Class Members who have not  
13 requested exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A  
14 request for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of  
15 a group, class, or subclass of individuals is not permitted and will be deemed invalid.  
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17 13. Any Class Member who has not opted out may appear at the final approval hearing and  
18 may object or express the Class Member's views regarding the Settlement and may present evidence and  
19 file briefs or other papers that may be proper and relevant to the issues to be heard and determined by  
20 the Court as provided in the Notice Packet. Class Members will have forty-five (45) days from the date  
21 the Settlement Administrator mails the Notice Packets to postmark their written objections to the  
22 Settlement Administrator.

23 14. A final approval hearing shall be held before this Court on **June 26 , 2024 at 2:30 PM** in  
24 Department 23 of the Alameda County Superior Court to determine all necessary matters concerning  
25 the Settlement, including: whether the proposed settlement of the Action on the terms and conditions  
26 provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the  
27 Court; whether an Order Granting Final Approval should be entered herein; whether the plan of  
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1 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Class  
2 Members; and to finally approve the Attorneys' Fees, Attorneys' Expenses, Service Award, the PAGA  
3 Payment, and the Claims Administration Expenses. All papers in support of the motion for final  
4 approval and the motion for Attorneys' Fees, Attorneys' Expenses and Service Award shall be filed with  
5 the Court and served on all counsel no later than sixteen (16) court days before the hearing.

6 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder shall  
7 be construed as a concession or admission by Defendants in any way, and shall not be used as evidence  
8 of, or used against Defendants as, an admission or indication in any way, including with respect to any  
9 claim of any liability, wrongdoing, fault or omission by Defendants or with respect to the truth of any  
10 allegation asserted by any person. Whether or not the Settlement is finally approved, neither the  
11 Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor  
12 any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,  
13 received as or deemed to be evidence for any purpose adverse to the Defendants, including, but not  
14 limited to, evidence of a presumption, concession, indication or admission by Defendants of any  
15 liability, fault, wrongdoing, omission, concession or damage.  
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17 16. In the event the Settlement does not become effective in accordance with the terms of the  
18 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become  
19 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties  
20 shall revert to their respective positions as of before entering into the Agreement. In such an event, the  
21 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used,  
22 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the  
23 Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.  
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1           17.     The Court reserves the right to adjourn or continue the date of the final approval hearing  
2 and all dates provided for in the Agreement without further notice to Class Members and retains  
3 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.  
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6 IT IS SO ORDERED.

7 Dated:     02/29/2024  
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10 JUDGE OF THE SUPERIOR COURT  
11 **Tara Desautels / Judge**  
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